

# EXHIBIT A

# STATE OF NORTH CAROLINA

ONSLOW

County

File No.

20-CVS- 316

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

MARK ANTHONY GUTHRIE

Address

c/o: Stubbs & Perdue, P.A. 9208 Falls of Neuse Road, Suite 201

City, State, Zip

Raleigh NC 27615

VERSUS

Name Of Defendant(s)

PHH MORTGAGE CORPORATION, TRANS UNION, LLC,  
EQUIFAX INC., EQUIFAX INFORMATION SERVICES, LLC  
and EXPERIAN INFORMATION SOLUTIONS, INC.

## CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

### To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

PHH MORTGAGE CORPORATION

Attn: Corporation Service Company - Registered Agent

2626 Glenwood Avenue, Suite 550

Raleigh NC 27608

Name And Address Of Defendant 2

TRANS UNION, LLC

Attn: The Prentice-Hall Corporation System, Inc.

2626 Glenwood Avenue, Suite 550

Raleigh NC 27608



**IMPORTANT!** You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

**¡IMPORTANTE!** ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

### A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

LONDON G. VAN WINKLE, ESQ.

STUBBS & PERDUE, P.A.

9208 Falls of Neuse Road, Suite 201

Raleigh NC 27615

Date Issued

1/31/2020

Time

10:56

☒ AM ☐ PM

Signature

Darlene C Futral

☐ Deputy CSC

☒ Assistant CSC

☐ Clerk Of Superior Court

### ☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC

☐ Assistant CSC

☐ Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE			
I certify that this Summons and a copy of the complaint were received and served as follows:			
<b>DEFENDANT 1</b>			
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant	
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.			
<div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>			
<input type="checkbox"/> Other manner of service (specify)			
<input type="checkbox"/> Defendant WAS NOT served for the following reason:			
<b>DEFENDANT 2</b>			
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant	
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.			
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<input type="checkbox"/> Other manner of service (specify)			
<input type="checkbox"/> Defendant WAS NOT served for the following reason:			
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return	
Date Received		Name Of Sheriff (type or print)	
Date Of Return		County Of Sheriff	
<small>AOC-CV-100, Side Two, Rev. 4/18 © 2018 Administrative Office of the Courts</small>			

<b>STATE OF NORTH CAROLINA</b>  _____ _____ County		File No. 20-CVS- <u>316</u>  In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division						
Name Of Plaintiff <b>MARK ANTHONY GUTHRIE</b>  Address c/o: Stubbs & Perdue, P.A. 9208 Falls of Neuse Road, Suite 201  City, State, Zip Raleigh NC 27615		<b>CIVIL SUMMONS</b>  <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)						
<b>VERSUS</b>		G.S. 1A-1, Rules 3 and 4						
Name Of Defendant(s) <b>PHH MORTGAGE CORPORATION, TRANS UNION, LLC,          EQUIFAX INC., EQUIFAX INFORMATION SERVICES, LLC          and EXPERIAN INFORMATION SOLUTIONS, INC.</b>		Date Original Summons Issued  Date(s) Subsequent Summons(es) Issued						
<b>To Each Of The Defendant(s) Named Below:</b>								
Name And Address Of Defendant 1 <b>PHH MORTGAGE CORPORATION</b> Attn: Corporation Service Company - Registered Agent 2626 Glenwood Avenue, Suite 550 Raleigh NC 27608	Name And Address Of Defendant 2 <b>TRANS UNION, LLC</b> Attn: The Prentice-Hall Corporation System, Inc. 2626 Glenwood Avenue, Suite 550 Raleigh NC 27608							
<div style="display: flex; align-items: flex-start;"> <div style="text-align: center; margin-right: 20px;"> </div> <div> <p><b>IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!</b></p> <p><b>¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!</b></p> <p><b>Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!</b></p> </div> </div> <p><b>A Civil Action Has Been Commenced Against You!</b></p> <p>You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> <li>1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and</li> <li>2. File the original of the written answer with the Clerk of Superior Court of the county named above.</li> </ol> <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>								
Name And Address Of Plaintiff's Attorney (If none, Address Of Plaintiff) <b>LONDON G. VAN WINKLE, ESQ.</b> <b>STUBBS &amp; PERDUE, P.A.</b> 9208 Falls of Neuse Road, Suite 201 Raleigh NC 27615	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Date Issued <b>1/31/2020</b></td> <td style="width: 60%;">Time <b>10:56</b> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature <b>Darlene C Futral</b></td> </tr> <tr> <td colspan="2"> <input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court         </td> </tr> </table>		Date Issued <b>1/31/2020</b>	Time <b>10:56</b> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Signature <b>Darlene C Futral</b>		<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
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<p><b>NOTE TO PARTIES:</b> Many counties have <b>MANDATORY ARBITRATION</b> programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.</p>								
(Over)								
AOC-CV-100, Rev. 4/18 © 2018 Administrative Office of the Courts								



RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
<b>DEFENDANT 1</b>		
Date Served	Time Served <div style="text-align: center;"><input type="checkbox"/> AM   <input type="checkbox"/> PM</div>	Name Of Defendant
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<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
<b>DEFENDANT 2</b>		
Date Served	Time Served <div style="text-align: center;"><input type="checkbox"/> AM   <input type="checkbox"/> PM</div>	Name Of Defendant
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Date Of Return	County Of Sheriff	
<small>AOC-CV-100, Side Two, Rev. 4/18 © 2018 Administrative Office of the Courts</small>		

# STATE OF NORTH CAROLINA

ONSLOW

County

FILED

File No.

20-CVS- 316

In The General Court Of Justice  
☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

MARK ANTHONY GUTHRIE  
 c/o: Stubbs & Perdue, P.A.  
 9208 Falls of Neuse Road, Suite 201  
 Raleigh NC 27615

2020 JAN 31 A 10: 58

ONSLOW CO., C.S.C.

GENERAL

CIVIL ACTION COVER SHEET

Name And Address Of Plaintiff 2

BY

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1

PHH MORTGAGE CORPORATION  
 Attn: Corporation Service Company - Reg. Agent  
 2626 Glenwood Avenue, Suite 550  
 Raleigh NC 27608

Name And Address Of Attorney Or Party, If Not Represented  
 (complete for initial appearance or change of address)

LANDON G. VAN WINKLE, ESQ.  
 Stubbs & Perdue, P.A.  
 9208 Falls of Neuse Road, Suite 201  
 Raleigh NC 27615

Summons Submitted

☒ Yes ☐ No

Telephone No.

(919) 870-6258

Cellular Telephone No.

NC Attorney Bar No.

52590

Attorney Email Address

lvankwinkle@stubbsperdue.com

☒ Initial Appearance in Case ☐ Change of Address

Name And Address Of Defendant 2

TRANS UNION, LLC  
 Attn: The Prentice-Hall Corporation System, Inc. - Reg. Agent  
 2626 Glenwood Avenue, Suite 550  
 Raleigh NC 27608

Name Of Firm

STUBBS & PERDUE, P.A.

Fax No.

(919) 870-6259

Summons Submitted

☒ Yes ☐ No

Counsel For

☒ All Plaintiffs ☐ All Defendants ☐ Only: (list party(ies) represented)

☒ Jury Demanded In Pleading ☐ Complex Litigation ☐ Stipulate to Arbitration

TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)
- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Assess Costs (COST)
- ☐ Answer/Reply (ANSW-Response) (see Note)
- ☐ Change Venue (CHVN)
- ☒ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL)
- ☐ Contempt (CNTP)
- ☐ Continue (CNTN)
- ☐ Compel (CMPL)
- ☐ Counterclaim (CTCL) Assess Court Costs
- ☐ Crossclaim (list on back) (CRSS) Assess Court Costs
- ☐ Dismiss (DISM) Assess Court Costs
- ☐ Exempt/Waive Mediation (EXMD)
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL)
- ☐ Extend Time For Complaint (EXCO)
- ☐ Failure To Join Necessary Party (FJNP)

- ☐ Failure To State A Claim (FASC)
- ☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- ☐ Improper Venue/Division (IMVN)
- ☐ Including Attorney's Fees (ATTY)
- ☐ Intervene (INTR)
- ☐ Interplead (OTHR)
- ☐ Lack Of Jurisdiction (Person) (LJPN)
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM)
- ☐ Modification Of Child Support In IV-D Actions (MSUP)
- ☐ Notice Of Dismissal With Or Without Prejudice (VOLD)
- ☐ Petition To Sue As Indigent (OTHR)
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA)
- ☐ Sanctions (SANC)
- ☐ Set Aside (OTHR)
- ☐ Show Cause (SHOW)
- ☐ Transfer (TRFR)
- ☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD)
- ☐ Withdraw As Counsel (WDCN)
- ☐ Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

AOC-CV-751, Rev. 3/19, © 2019 Administrative Office of the Courts

COPY

# CLAIMS FOR RELIEF

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Administrative Appeal (ADMI)      | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD)   |
| <input type="checkbox"/> Appointment Of Receiver (APRC)    | <input type="checkbox"/> Medical Malpractice (MDML)                                  | <input type="checkbox"/> Real Property (RLPR)   |
| <input type="checkbox"/> Attachment/Garnishment (ATTC)     | <input type="checkbox"/> Minor Settlement (MSTL)                                     | <input type="checkbox"/> Specific Performance (SPPR)  |
| <input type="checkbox"/> Claim And Delivery (CLMD)         | <input type="checkbox"/> Money Owed (MNYO)   | <input checked="" type="checkbox"/> Other (specify and list each separately)  |
| <input type="checkbox"/> Collection On Account (ACCT)      | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG)                           | (1) NCGS 75-1.1 ; (2) NCGS 75-50 ; (3) NCGS 58-70-1 ; (4) FCRA, 15 U.S.C. 1681 ; (5) TCPA, 47 U.S.C. 227; (6) RESPA, 12 U.S.C. 2601; (7) FDCPA, 15 U.S.C. 1692; (8) IIED; (9) NIED; (10) Negligence |
| <input type="checkbox"/> Condemnation (CNDM)               | <input checked="" type="checkbox"/> Negligence - Other (NEGO)                        |   |
| <input type="checkbox"/> Contract (CNTR)                   | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN)                  |   |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP)                      |   |
| <input type="checkbox"/> Injunction (INJU)                 |  |   |

Date

01/30/2020

Signature Of Attorney/Party

## FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)  
Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
Supplemental Procedures (SUPR)

## PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)	
No.	<input checked="" type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)
3	EQUIFAX, INC.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4	EQUIFAX INFORMATION SERVICES, LLC	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5	EXPERIAN INFORMATION SOLUTIONS, INC.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

**FILED** IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2020 JAN 31 A 10:58

FILE NO. 20-CVS- 316

ON SLOW CO., C.S.C.

MARK ANTHONY GUTHRIE,

BY )           

*Plaintiff,*

v.

**COMPLAINT**

PHH MORTGAGE CORPORATION f/k/a )  
OCWEN LOAN SERVICING, LLC d/b/a )  
PHH MORTGAGE SERVICES, TRANS )  
UNION, LLC, EQUIFAX, INC., EQUIFAX )  
INFORMATION SERVICES, LLC, and )  
EXPERIAN INFORMATION )  
SOLUTIONS, INC., )

**[JURY TRIAL DEMANDED]**

*Defendants.*

NOW COMES Plaintiff MARK ANTHONY GUTHRIE ("Plaintiff"), by and through undersigned counsel of record, and complaining of PHH MORTGAGE CORPORATION f/k/a OCWEN LOAN SERVICING, LLC d/b/a PHH MORTGAGE SERVICES ("PHH" or "Defendant PHH"), TRANS UNION, LLC ("Transunion" or "Defendant Transunion"), EQUIFAX, INC. ("Defendant EI") and EQUIFAX INFORMATION SERVICES, LLC ("Defendant EIS") (collectively "Equifax" or "Defendant Equifax"), and EXPERIAN INFORMATION SOLUTIONS, INC. ("Experian" or "Defendant Experian") (collectively "Defendants") and hereby alleges and asserts as follows:

**INTRODUCTION AND NATURE OF THE ACTION**

1. This action is commenced by Plaintiff seeking actual and compensatory damages, treble or punitive damages, reasonable attorneys' fees and expenses, in redress of (i) PHH's violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.* (the "UDTPA"); (ii) PHH's violations of the North Carolina Debt Collection Act,

STUBBS & PERDUE, P.A.  
Attorneys at Law

**FILE**  
**COPY**

N.C. Gen. Stat. § 75-50 *et seq.* (the “NCDCA”) or, in the alternative, (iii) PHH’s violations of the North Carolina Collection Agency Act, N.C. Gen. Stat. § 58-70-1 *et seq.* (the “NCCAA”); (iv) all Defendants’ violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (the “FCRA”); (v) PHH’s violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”); (vi) PHH’s violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* (the “RESPA”); (vii) PHH’s violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”); (viii) PHH’s intentional infliction of emotional distress; and, in the alternative, (ix) PHH’s negligent infliction of emotional distress; and (x) all Defendants’ negligence.

#### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over Defendants pursuant to N.C. Gen. Stat. § 1-75.4(1), as they are foreign corporations engaged in substantial activity within the State of North Carolina, and this action arises from conduct and events which took place, and occurred within, Onslow County, North Carolina.

3. Subject-matter jurisdiction is conferred upon, and vested in, this Court pursuant to, and by virtue of, *inter alia*, N.C. Gen. Stat. §§ 7A-240 and 7A-243.

4. Venue is proper in this Court, pursuant to N.C. Gen. Stat. §§ 1-80 and 1-82, as Plaintiff is a citizen and resident of Onslow County, North Carolina, and all of the actions complained of and giving rise to the claims for relief alleged herein arose in Onslow County, North Carolina, within which Defendants regularly conduct their business operations and affairs.

#### **IDENTIFICATION OF PARTIES**

5. Plaintiff is a natural person and a citizen and resident of Onslow County, North Carolina.

6. Plaintiff is currently a commissioned officer serving on active duty in the United States Marine Corps and is stationed at Marine Corps Air Station New River ("MCAS New River"), where he serves as a pilot and the executive officer ("XO") of Marine Medium Tiltrotor Squadron 263 ("VMM-263").

7. PHH, upon information and belief, is a corporation formed and existing under the laws of the State of New Jersey.

8. PHH, upon information and belief, engages in mortgage lending and mortgage servicing throughout the United States, including throughout the State of North Carolina, extending credit to consumers for the purposes of purchasing new or previously-built homes, condominiums, and similar residential properties.

9. PHH has applied for and obtained a certificate of authority to transact business within the State of North Carolina from the North Carolina Secretary of State, pursuant to N.C. Gen. Stat. § 55-15-01(a).

10. Upon information and belief, and according to the records maintained by the North Carolina Secretary of State, the registered agent for PHH, accepting service of process at 2626 Glenwood Avenue, Suite 550, Raleigh, North Carolina 27608, is Corporation Service Company.

11. On or about May 31, 2019, PHH merged with OCWEN LOAN SERVICING, LLC ("Ocwen"), with PHH being the surviving entity, as evidenced by the Certificate of Merger issued by the Treasurer for the State of New Jersey that was subsequently filed by Ocwen with the North Carolina Secretary of State on or about August 13, 2019 (the "Certificate of Merger"). A copy of the Certificate of Merger is attached hereto as **EXHIBIT 1** and incorporated herein by reference.

12. Following the issuance and recordation of the Certificate of Merger, PHH became the successor-by-merger of Ocwen.

13. Accordingly, each and every act and/or omission of Ocwen, as further alleged and detailed in this Complaint, is attributable to PHH as a matter of law.

14. To be clear, and for the avoidance of doubt, each and every allegation contained herein directed at Ocwen is also directed at PHH as the successor-by-merger of Ocwen.

15. Upon information and belief, and as a successor-in-interest to Ocwen, PHH had knowledge of each and every act, omission, communication, and practice undertaken by Ocwen with respect to the loan transaction at issue in this action.

16. Transunion, upon information and belief, is a limited liability company organized and existing under the laws of the State of Delaware which engages in the collection and compilation of consumer credit information or other information related to consumers, which it publishes and furnishes to third parties for use in interstate commerce.

17. Transunion has applied for and obtained a certificate of authority to transact business within the State of North Carolina from the North Carolina Secretary of State, pursuant to N.C. Gen. Stat. § 57D-7-01(a).

18. Upon information and belief, and according to the records maintained by the North Carolina Secretary of State, the registered agent for Transunion, accepting service of process at 2626 Glenwood Avenue, Suite 550, Raleigh, North Carolina 27608, is The Prentice-Hall Corporation System, Inc.

19. Defendant EI, upon information and belief, is a corporation formed and existing under the laws of the State of Georgia, which engages in the collection and compilation of consumer credit information or other information related to consumers, which it publishes and

furnishes to third parties for use in interstate commerce.

20. Defendant EI has applied for and obtained a certificate of authority to transact business within the State of North Carolina from the North Carolina Secretary of State, pursuant to N.C. Gen. Stat. § 55-15-01(a).

21. Upon information and belief, and according to the records maintained by the North Carolina Secretary of State, the registered agent for Defendant EI, accepting service of process at 2626 Glenwood Avenue, Suite 550, Raleigh, North Carolina 27608, is The Prentice-Hall Corporation System, Inc.

22. Defendant EIS, upon information and belief, is a limited liability company organized and existing under the laws of the State of Georgia which engages in the collection and compilation of consumer credit information or other information related to consumers, which it publishes and furnishes to third parties for use in interstate commerce.

23. Defendant EIS has applied for and obtained a certificate of authority to transact business within the State of North Carolina from the North Carolina Secretary of State, pursuant to N.C. Gen. Stat. § 57D-7-01(a).

24. Upon information and belief, and according to the records maintained by the North Carolina Secretary of State, the registered agent for Defendant EIS, accepting service of process at 2626 Glenwood Avenue, Suite 550, Raleigh, North Carolina 27608, is Corporation Service Company.

25. Upon information and belief, and at all times relevant to this Complaint, Defendant EI and Defendant EIS were acting in concert pursuant to a joint venture.

26. Alternatively, upon information and belief, and at all times relevant to this Complaint, Defendant EI was the agent of Defendant EIS with the actual, implied, or apparent



authority to act for, on behalf, and legally bind, Defendant EIS.

27. Alternatively, upon information and belief, and at all times relevant to this Complaint, Defendant EIS was the agent of Defendant EI with the actual, implied, or apparent authority to act for, on behalf, and legally bind, Defendant EI.

28. Upon information and belief, Defendant EI and Defendant EIS, collectively, engage in the collection, organization, and dissemination of consumer credit information and are known jointly to members of the general public as "Equifax."

29. Experian upon information and belief, is a corporation formed and existing under the laws of the State of Ohio which engages in the collection and compilation of consumer credit information or other information related to consumers, which it publishes and furnishes to third parties for use in interstate commerce.

30. Experian has applied for and obtained a certificate of authority to transact business within the State of North Carolina from the North Carolina Secretary of State, pursuant to N.C. Gen. Stat. § 55-15-01(a).

31. Upon information and belief, and according to the records maintained by the North Carolina Secretary of State, the registered agent for Experian, accepting service of process at 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615-6417, is CT Corporation System.

32. At all times relevant to this Complaint, PHH and its predecessor-in-interest, Ocwen, was acting as a "servicer" as that term is defined by 12 C.F.R § 1024.2(b).

33. At all times relevant to this Complaint, Transunion, Equifax, and Experian (collectively, and hereinafter the "CRA Defendants") were each acting as a "consumer reporting agency" as that term is defined by 15 U.S.C. § 1681a(f).

### **FACTUAL ALLEGATIONS**

34. On or about August 21, 2009, Plaintiff and his former spouse, Ms. Tonia M. Guthrie (hereinafter referred to as "Former Spouse"), purchased a home in Jacksonville, North Carolina located at 401 Joy Court, Jacksonville, North Carolina 28540 (the "Property").

35. In connection with their purchase of the Property, Plaintiff and Former Spouse executed an Adjustable Rate Note (the "Note") in the original principal amount of One Hundred Ninety Thousand One Hundred Twenty-Six Dollars and 0/100 (\$190,126.00), which was to be repaid to GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P. ("Gateway"), in three hundred sixty (360) monthly installment payments consisting of principal and amortized interest, at the variable rate which was initially established as four percent (4.0%) per annum.

36. Repayment of the Note was secured by a lien and encumbrance on the Property, through the filing of a Deed of Trust dated August 21, 2009, and recorded in Book 3289, Page 18 of the Onslow County Registry on or about September 1, 2009 (the "Deed of Trust") (the Note, Deed of Trust, and related documents are hereinafter collectively referred to as the "Loan").

37. Following Plaintiff and Former Spouse's execution of the Note and Deed of Trust, Gateway assigned all of its right, title, and interest in the Loan to ALLY BANK f/k/a GMAC BANK (collectively "Ally"), who subsequently assigned all of its right, title, and interest in the Loan to GMAC MORTGAGE, LLC ("GMAC").

38. Thereafter, Plaintiff filed an individual voluntary petition for relief under chapter 13 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") on or about April 21, 2011 (the "Petition Date"), in the United States Bankruptcy Court for the Eastern District of North Carolina (the "Bankruptcy Court"), BK Case No. 11-03134-8-RDD (hereinafter

the “Bankruptcy Case”).<sup>1</sup>

39. On or about November 30, 2011, and in the Bankruptcy Case, GMAC filed a proof of claim, Claim No. 13-2, (the “GMAC Proof of Claim”), in which it asserted a claim against Plaintiff, arising from the Loan, in the amount of \$195,701.44. A copy of the GMAC Proof of Claim is attached hereto as EXHIBIT 2 and incorporated herein by reference.

40. Prior to the Petition Date, Plaintiff and Former Spouse separated, with Former Spouse leaving the State of North Carolina, while Plaintiff remained in the Property with their two (2) minor children.

41. On or about June 14, 2011, Plaintiff and Former Spouse divorced, as evidenced by a Decree of Divorce entered by the Chancery Court for the First Judicial District of Jones County, Mississippi.

42. On or about August 16, 2011, the Bankruptcy Court entered an Order (the “Confirmation Order”) confirming the Debtor’s Chapter 13 Plan of Reorganization (the “Chapter 13 Plan”)(the Chapter 13 Plan and the Confirmation Order are collectively referred to herein as the “Confirmed Plan”) pursuant to 11 U.S.C. § 1325.

43. The Confirmed Plan provided that Plaintiff would resume making the regular contractual monthly installment payments on the Loan and would cure any prepetition arrearage owed to GMAC over the life of the Chapter 13 Plan.

44. Following his separation from Former Spouse, Plaintiff and his minor children relocated to base housing on MCAS New River on or about January 22, 2013.

45. As a result of his relocation onto base housing, Plaintiff filed a Motion to Allow

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<sup>1</sup> Following the untimely passing of the Hon. Randy D. Doub, United States Bankruptcy Judge, in 2015, the Bankruptcy Case was reassigned to the Hon. David M. Warren, United States Bankruptcy Judge, and the case number accordingly changed to 11-03134-8-DMW.

Surrender of Real Property and Modification of Chapter 13 Plan (the "Motion to Surrender") in the Bankruptcy Case, seeking an Order from the Bankruptcy Court allowing the Debtor to surrender the Property to GMAC and modify his Confirmed Plan to exclude any further payments to GMAC on account of the Loan. A copy of the Motion to Surrender is attached hereto as **EXHIBIT 3** and incorporated herein by reference.

46. On or about February 7, 2013, the Bankruptcy Court entered an Order allowing the Motion to Surrender and permitting the modification of the Confirmed Plan to exclude further payments to GMAC on the Loan (the "Surrender Order"). A copy of the Surrender Order is attached hereto as **EXHIBIT 4** and incorporated herein by reference.

47. Following entry of the Surrender Order, on or about March 15, 2013, PHH, through its predecessor in interest OCWEN LOAN SERVICING, LLC ("Ocwen"), filed a Transfer of Claim other than for Security (the "Notice of Transfer of Claim") in the Bankruptcy Case, notifying Plaintiff, the Bankruptcy Court, and other parties in interest that the holder of the claim against Plaintiff arising from the Loan had been transferred from GMAC to Ocwen. A copy of the Notice of Transfer of Claim is attached hereto as **EXHIBIT 5** and incorporated herein by reference.

48. Beginning in approximately November 2013, Ocwen began harassing Plaintiff by placing collection telephone calls to him in connection with the Loan on a weekly basis, averaging approximately one (1) to three (3) calls to Plaintiff's cellular telephone each and every week, which persisted through approximately January 2016 (collectively the "Ocwen Collection Calls").

49. Plaintiff conservatively estimates that the total number of phone calls comprising the Ocwen Collection Calls amounts to approximately two hundred twenty-five (225) telephone

calls over a period of approximately 113 weeks.

50. Ocwen initiated each of the Ocwen Collection Calls with the use of equipment which has the capacity to store, produce, and dial multiple telephone numbers.

51. Plaintiff vociferously objected to each and every one of the Ocwen Collection Calls, repeatedly asking Ocwen to cease contacting him concerning the Loan.

52. Plaintiff enlisted the aid of his counsel in the Bankruptcy Case, Douglas M. Strout, Esq., who sent Ocwen at least two (2) separate warning letters informing it that the Confirmed Plan had been modified by the Surrender Order and that, consequently, Ocwen was not entitled to collect, or attempt to collect, amounts owed under the Loan from Plaintiff, even while the Bankruptcy Case remained pending.

53. Ocwen acknowledged receipt of these letters, but completely ignored the warnings contained therein.

54. In fact, in a letter dated March 13, 2014 (the "March 13, 2014 Letter"), Ocwen acknowledged that it was aware that Plaintiff was represented by Mr. Strout, and further informed Plaintiff that "all communications including verbal, mail, and email will be stopped."

55. Notwithstanding this promise, Ocwen persisted in contacting Plaintiff directly, telephonically and in writing, between 2013 and 2019, both through the continued placement of the Ocwen Collection Calls, and through numerous pieces of written correspondence as further alleged herein.

56. Adding to Plaintiff's sense of helplessness and frustration in attempting to have Ocwen modify its conduct to comply with applicable state and federal law, the Confirmed Plan, and the Surrender Order, Mr. Strout called Ocwen in 2014 and spoke with a representative who assured him that Plaintiff's records would be updated to reflect the entry of the Surrender Order,

and that no further collection attempts would be made.

57. Notwithstanding this telephonic representation, Ocwen never “updated” its records, nor did it cease attempting to collect the Loan from Plaintiff; instead, it continued to place the Ocwen Collection Calls and continued to send Plaintiff written correspondence attempting to collect the Loan.

58. Following entry of the Surrender Order, Plaintiff, through his counsel in the Bankruptcy Case, informed Ocwen of the existence of the Surrender Order and that the Property had been surrendered through the Bankruptcy Case.

59. In a letter to Plaintiff dated November 4, 2015 (the “November 4, 2015 Letter”), Ocwen appeared to acknowledge the surrender of the Property in the Bankruptcy Case, and informed Plaintiff that “relief [from the automatic stay of 11 U.S.C. § 362] has not been granted on the property. Therefore, we are in the process of filing a Motion for Relief on the property.” A copy of the November 4, 2015 Letter is attached hereto as **EXHIBIT 6** and incorporated herein by reference.

60. Notwithstanding its representation in the November 4, 2015 Letter, Ocwen never filed any “motion for relief” in the Bankruptcy Case relating to the Property, nor did it take any other action that was promised in the November 4, 2015 Letter.

61. On or about May 18, 2016, and after successfully completing all of the payments required under his Chapter 13 Plan, as modified by the Surrender Order, Plaintiff received a discharge of debt pursuant to 11 U.S.C. § 1328(a) (the “Discharge”). A copy of the Discharge is attached hereto as **EXHIBIT 7** and incorporated herein by reference.

62. The Discharge relieved, and discharged, Plaintiff from any legal obligation to make any further payments on the Loan.

63. Both GMAC and PHH (through Ocwen, its predecessor in interest) received copies of the Discharge, as copies of the same were sent, via first class U.S. Mail, by the Bankruptcy Noticing Center, to the addresses provided by GMAC and PHH to the Bankruptcy Court, on or about May 20, 2016, as evidenced in the Certificate of Notice prepared by the Bankruptcy Noticing Center and filed in the Bankruptcy Case on May 20, 2016 (the "Certificate of Notice"). A copy of the Certificate of Notice is attached hereto as **EXHIBIT 8** and incorporated herein by reference.

64. On or about July 20, 2016, the Chapter 13 Trustee in the Bankruptcy Case filed a Final Report, and on August 22, 2016, the Bankruptcy Court entered a Final Decree, closing the Bankruptcy Case.

65. Following entry of the Surrender Order and the Discharge in the Bankruptcy Case, Ocwen, and later PHH, were no longer under any affirmative obligation to continue providing periodic monthly mortgage statements to Plaintiff, pursuant to 12 C.F.R. § 1026.41(e)(5)(i)(B)(2).

66. However, and notwithstanding entry of the Discharge and Ocwen's awareness of the same, it continued to seek payment on account of the Loan from Plaintiff through periodic monthly mortgage statements, demand letters, and similar correspondence between June 2016 and January 2019.

67. On or about June 19, 2017, Ocwen sent, and Plaintiff received, a document entitled "Mortgage Account Statement" which demanded payment from Plaintiff, on account of the Loan, in the amount of \$68,118.79, that was purportedly due to Ocwen on or before July 1, 2017.

68. On or about July 17, 2017, Ocwen sent, and Plaintiff received, a document

entitled "Mortgage Account Statement" which demanded payment from Plaintiff, on account of the Loan, in the amount of \$69,134.38, that was purportedly due to Ocwen on or before August 1, 2017.

69. When Plaintiff alerted Ocwen of its ongoing violations of the Discharge and various applicable state and federal debt collection laws, Ocwen responded to Plaintiff, in a Kafkaesque letter dated August 3, 2017 (the "August 3, 2017 Letter"), that while it was aware of the Bankruptcy Case, the Surrender Order, and entry of the Discharge, that pursuant to its own guidelines, "collection process will continue on loans which are out of bankruptcy." A copy of the August 3, 2017 Letter is attached hereto as EXHIBIT 9 and incorporated herein by reference.

70. Notwithstanding the Discharge entered in Plaintiff's Bankruptcy Case, Plaintiff's entreaties to Ocwen to update its records reflecting the Discharge and to cease misreporting and attempting to collect upon the Loan, Ocwen continued to attempt to collect payments from Plaintiff in connection with the Loan.

71. On or about August 17, 2017, Ocwen sent, and Plaintiff received, a document entitled "Mortgage Account Statement" which demanded payment from Plaintiff, on account of the Loan, in the amount of \$70,234.97, that was purportedly due to Ocwen on or before September 1, 2017.

72. On or about September 18, 2017, Ocwen sent, and Plaintiff received, a document entitled "Mortgage Account Statement" which demanded payment from Plaintiff, on account of the Loan, in the amount of \$71,576.06, that was purportedly due to Ocwen on or before October 1, 2017.

73. On or about September 27, 2017, Ocwen sent, and Plaintiff received, a letter



informing Plaintiff that the Loan was in substantial arrears, that a payment of \$70,836.67 was immediately due in order to bring the Loan current, that Plaintiff was sixty-one (61) payments behind on the Loan, and that “if these payments are not made or we do not reach another resolution, we may soon be forced to commence the foreclosure process as required by state law.”

74. On or about October 17, 2017, Ocwen sent, and Plaintiff received, a document entitled “Mortgage Account Statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$72,923.85, that was purportedly due to Ocwen on or before November 1, 2017.

75. On or about November 17, 2017, Ocwen sent, and Plaintiff received, a document entitled “Mortgage Account Statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$74,144.94, that was purportedly due to Ocwen on or before December 1, 2017.

76. On or about December 18, 2017, Ocwen sent, and Plaintiff received, a document entitled “Mortgage Account Statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$75,481.03, that was purportedly due to Ocwen on or before January 1, 2018.

77. On or about January 17, 2018, Ocwen sent, and Plaintiff received, a document entitled “Mortgage Account Statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$76,566.11, that was purportedly due to Ocwen on or before February 1, 2018.

78. On or about March 19, 2018, Ocwen sent, and Plaintiff received, a document entitled “Mortgage Account Statement” which demanded payment from Plaintiff, on account of

the Loan, in the amount of \$78,752.09, that was purportedly due to Ocwen on or before April 1, 2018.

79. On or about March 23, 2018, Ocwen sent, and Plaintiff received, a letter informing Plaintiff that the Loan was in substantial arrears, that a payment of \$77,680.85 was immediately due in order to bring the Loan current, that Plaintiff was sixty-seven (67) payments behind on the Loan, and similarly warned Plaintiff that if the purportedly-delinquent payments were not made, that Ocwen might initiate foreclosure proceedings with respect to the Property.

80. On or about January 17, 2019, Ocwen sent, and Plaintiff received, a document entitled "Mortgage Account Statement" which demanded payment from Plaintiff, on account of the Loan, in the amount of \$89,174.12, that was purportedly due to Ocwen on or before February 1, 2019.

81. Ocwen, upon information and belief, submitted at least ten (10) additional monthly mortgage statements to Plaintiff, in an attempt to collect amounts owed pursuant to the Loan from Plaintiff, during the months of February 2018, April 2018, May 2018, June 2018, July 2018, August 2018, September 2018, October 2018, November 2018, and December 2018.

82. Additionally, and in violation of Plaintiff's rights under the Discharge, Ocwen continued to report to one or more consumer reporting agencies, as that term is defined by 15 U.S.C. § 1681a(f), that Plaintiff was delinquent on payments to Ocwen and that the Loan was in default and subject to substantial arrears, notwithstanding that Plaintiff's liability concerning the Loan was discharged in the Bankruptcy Case.

83. On or about January 14, 2019, Ocwen sent Plaintiff a letter (the "Notice of Servicing Transfer") informing him that it had "joined forces with PHH Mortgage Services," and that, as a result of such "joining forces," Ocwen would be "consolidating all mortgage accounts

into one company, PHH Mortgage Services . . . .” A copy of the Notice of Servicing Transfer is attached hereto as **EXHIBIT 10** and incorporated herein by reference.

84. Following the “transfer” of servicing obligations for the Loan from Ocwen to PHH, its successor-by-merger, PHH continued in Ocwen’s footsteps of unlawfully attempting to collect a discharged debt, falsely reporting the validity, status, and amount of the Loan to one or more consumer reporting agencies, and completely ignoring any attempt by Plaintiff to have PHH update its records, conform its actions to applicable law, and cease attempting to collect payments on account of the Loan from Plaintiff.

85. On or about February 19, 2019, PHH sent, and Plaintiff received, a document entitled “Your monthly mortgage statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$90,359.07, that was purportedly due to PHH on or before March 1, 2019.

86. On or about March 18, 2019, PHH sent, and Plaintiff received, a document entitled “Your monthly mortgage statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$91,537.44, that was purportedly due to PHH on or before April 1, 2019.

87. On or about April 15, 2019, PHH sent, and Plaintiff received, a letter entitled “Notice of Right to Cure Default/45 Day Pre-Foreclosure Notice for Home Loans”, which informed Plaintiff that the Loan was in default, that a payment in the amount of \$85,903.49 was required to be remitted to PHH, in certified funds, on or before May 30, 2019, and that if such payment was not timely received, PHH would initiate foreclosure proceedings against Plaintiff in connection with the Loan.

88. On or about April 16, 2019, PHH sent, and Plaintiff received, a document entitled

“Your monthly mortgage statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$92,753.45, which payment was purportedly due to PHH on or before May 1, 2019.

89. On or about May 16, 2019, PHH sent, and Plaintiff received, a document entitled “Your monthly mortgage statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$93,949.46, that was purportedly due to PHH on or before June 1, 2019.

90. On or about November 18, 2019, PHH sent, and Plaintiff received, a document entitled “Your monthly mortgage statement” which demanded payment from Plaintiff, on account of the Loan, in the amount of \$102,600.39, that was purportedly due to PHH on or before December 1, 2019.

91. PHH, upon information and belief, submitted at least six (6) additional monthly mortgage statements to Plaintiff, in an attempt to collect amounts owed pursuant to the Loan from Plaintiff, during the months of June 2019, July 2019, August 2019, September 2019, October 2019, and December 2019.

92. Additionally, and between the period from February 2019 through November 2019, PHH placed or caused to be placed numerous collection calls to Plaintiff’s cellular telephone, averaging 1 to 2 calls each and every week, for an estimated total of approximately fifty-eight (58) collection calls (the “PHH Collection Calls”) (collectively, with the Ocwen Collection Calls, the “Collection Telephone Calls”).

93. In connection with these Collection Telephone Calls, PHH used equipment which has the capacity to store or produce telephone numbers to be called and to dial such numbers.

94. Plaintiff vociferously objected to the placement, and his receipt, of each of the PHH Collection Calls, and repeatedly asked PHH to cease placing such calls to Plaintiff, but to

no avail.

95. For example, on or about June 4, 2019, a PHH agent or employee who identified herself as “Ebony” and provided her employee identification code as “XWD” called Plaintiff’s cellular telephone, using an autodialer, at approximately 2:57 pm local time, from the phone number (856) 917-2946, and demanded payment from Plaintiff in connection with the Loan.

96. Ebony in fact confirmed to Plaintiff, during this telephone call, that she and PHH used an automated system to generate such phone calls.

97. On or about June 25, 2019, a PHH agent or employee who identified herself as “Roshanda” and provided her employee identification code as “DBW” called Plaintiff’s cellular telephone, using an autodialer, at approximately 11:02 am local time, and demanded payment from Plaintiff in connection with the Loan.

98. On or about July 12, 2019, a PHH agent or employee who identified himself as “Kevin” and provided his employee identification code as “7TS” or “ZTS” called Plaintiff’s cellular telephone, using an autodialer, at approximately 11:58 am local time, and demanded payment from Plaintiff in connection with the Loan.

99. On or about September 19, 2019, a PHH agent or employee who identified herself as “Cecilia” and provided her employee identification code as “DCK” called Plaintiff’s cellular telephone, using an autodialer, at approximately 4:24 pm local time, and demanded payment from Plaintiff in connection with the Loan.

100. During this telephone conversation, Cecilia also confirmed that she and PHH used an automated system to generate such phone calls.

101. In addition to calling Plaintiff from (856) 917-2946, agents and/or employees of PHH also placed PHH Collection Calls to Plaintiff from, among other telephone numbers, phone

numbers (800) 449-8767 and (800) 330-0423.

102. Following entry of Plaintiff's Discharge, and based upon false and misleading information submitted by PHH and/or Ocwen, the CRA Defendants continued to report, inaccurately, that Plaintiff (i) remained liable to Ocwen and/or PHH for all or any portion of the balance of the Loan; (ii) was in default under the terms of the Loan; (iii) was more than one hundred twenty (120) days past due in remitting contractually-owed payments under the Loan to PHH and/or Ocwen; and (iv) was in breach of the terms of the Loan and was otherwise failing to perform his obligations under the Note.

103. In a consumer report, as defined by 15 U.S.C. § 1681a(d), dated December 31, 2017, Transunion reported that Plaintiff (i) remained indebted to Ocwen for the Loan; (ii) was more than one hundred twenty (120) days past due in performing his obligations under the Loan; (iii) owed a past-due balance of \$90,762.00 in connection with the Loan; and (iv) had been past-due for at least one hundred twenty (120) days or more for each and every month between October 2015 and December 2017 (the "2017 Transunion Report"). A copy of the relevant excerpted information in the 2017 Transunion Report is attached hereto as EXHIBIT 11 and incorporated herein by reference.

104. In a consumer report, as defined by 15 U.S.C. § 1681a(d), dated January 11, 2019, Transunion reported that Plaintiff (i) remained indebted to Ocwen for the Loan; (ii) was current in performing his obligations under the Loan; (iii) owed a total outstanding balance of \$235,403.00 in connection with the Loan; (iv) had been past-due for at least one hundred twenty (120) days or more for each and every month between October 2015 and August 2018; and (v) for the period from September 2018 through November 2018, the Loan was reported as "OK" with the additional remark that the Loan account was "AFFCTD BY NTRL/DCLRD DISASTR"

(the “2019 Transunion Report”). A copy of the 2019 Transunion Report is attached hereto as **EXHIBIT 12** and incorporated herein by reference.

105. Upon information and belief, the notation in the 2019 Transunion Report that Plaintiff’s Loan account was “AFFCTD BY NTRL/DCLRD DISASTR” means that the account was “affected by a natural and/or declared disaster,” and that this notation for the months of November 2018, October 2018, and September 2018, is the only reason the Loan was reflected as current or “OK” for the months noted therein, not because of any proactive or corrective action taken by Transunion, Ocwen, or PHH.

106. In fact, this conclusion is supported by Transunion’s own actions in connection with Plaintiff’s efforts to address these inaccuracies.

107. Specifically, during late December 2018 or early January 2019, and using the process provided by Transunion, Plaintiff formally disputed the accuracy of the information being supplied by Transunion on Plaintiff’s consumer reports concerning the Loan, namely that Plaintiff was not liable on the Loan, and therefore was not in default under the Loan, did not owe Ocwen and/or PHH any outstanding balance whatsoever under the Loan, and that he was not late, delinquent, or past due on any payments purportedly owed in connection with the Loan (collectively the “2019 Transunion Dispute”).

108. In response to the 2019 Transunion Dispute, and in a letter to Plaintiff dated January 28, 2019 (the “Transunion Dispute Response”), Transunion inexplicably refused to correctly update Plaintiff’s consumer report to display accurate information concerning the Loan. A copy of the Transunion Dispute Response is attached hereto as **EXHIBIT 13** and incorporated herein by reference.

109. Rather than update its records to reflect the fact that the Loan had been discharged

in Plaintiff's Bankruptcy Case, and that Plaintiff was not liable to Ocwen or PHH in any amount in connection with the Loan, Transunion instead simply updated its records concerning the Loan to reflect that it was "OK" for the months of September 2018 and October 2018, because the account, according to Transunion, was "AFFCTD BY NTRL/DCLRD DISASTR."

110. Nevertheless, and as evidenced in the Transunion Dispute Response, Transunion continued to report that Plaintiff was at least one hundred twenty (120) days delinquent in payment of the Loan for each and every month from May 2016 through August 2018.

111. In late March 2019 or early April 2019, Plaintiff similarly initiated a dispute with Experian in which he disputed the accuracy of Experian's credit file and consumer report with respect to the Loan.

112. Notwithstanding the entry of the Discharge three (3) years earlier, Experian inexplicably informed Plaintiff that the information concerning the Loan had "been verified as accurate," and, as of April 10, 2019, Plaintiff, according to Experian, was indebted to PHH in the principal amount of \$239,843, of which the sum of \$84,745.00 was past due as of April 2019, and in connection with which, Plaintiff was more than one hundred eighty (180) days past due.

113. Experian, upon information and belief, continued to report this inaccurate and false information concerning the Loan to multiple users of Plaintiff's consumer credit file and report, as further alleged herein.

114. Similarly, during the same time period, Plaintiff initiated a dispute with Equifax concerning the accuracy of the consumer credit file and report maintained by Equifax as it related to the Loan.

115. Equifax, similarly, did not conduct an investigation into Plaintiff's dispute, and instead joined its sister agencies in informing Plaintiff that the information concerning the Loan



was accurate, that Plaintiff was in substantial arrears under the Loan, and that the Loan was past due and delinquent.

116. During this same period, Plaintiff suffered actual damages as a direct and proximate result of the willful, reckless, and/or negligent failure of the CRA Defendants to provide complete, accurate, and truthful information to users of Plaintiff's consumer report with respect to the Loan.

117. In early 2019, when attempting to purchase a new vehicle, Plaintiff applied for an extension of credit with SUNTRUST BANK ("SunTrust") but was denied based upon information SunTrust discovered in a consumer report concerning Plaintiff and the Loan, which was provided to SunTrust by Transunion.

118. In a letter to Plaintiff dated April 23, 2019 (the "SunTrust Denial Letter"), SunTrust informed Plaintiff, pursuant to the relevant provisions of the FCRA, that it had taken adverse action with respect to his application for an extension of credit "based in whole or in part on information from this consumer reporting agency," referencing a consumer report provided to SunTrust by Transunion which was dated April 18, 2019. A copy of the SunTrust Denial Letter is attached hereto as EXHIBIT 14 and incorporated herein by reference.

119. Specifically, SunTrust cited, as reasons for denying Plaintiff's application, that Plaintiff had a "Serious delinquency," that the "length of time since account not paid as agreed" was too long, that a "Proportion of loan balances to loan amounts is too high," and that the "Amount past due on accounts" was too high.

120. The 2019 Transunion Report, which predates the report provided to, and acted upon by, SunTrust by approximately three (3) months, reveals that the only account reported as delinquent by Transunion was the account related to the Loan.

121. Every other account listed in the 2019 Transunion Report, with the exception of the account associated with the Loan, was reported as "Current; Paid or Paying as Agreed," and no other account in the 2019 Transunion Report reflects any past due balance.

122. Plaintiff did not fall behind on any of his obligations to creditors between January 2019 and April 2019.

123. Accordingly, upon information and belief, the consumer report dated April 18, 2019 and provided to SunTrust by Transunion contained only one account which disclosed a "serious delinquency," or which disclosed a lengthy period of time in which the account was "not paid as agreed," or was otherwise past due: the account related to the Loan, which Plaintiff had previously unsuccessfully disputed, and which Transunion purportedly verified with Ocwen and/or PHH.

124. As a direct and proximate result of the willful, reckless, and/or negligent acts and/or omissions of PHH and Transunion, Plaintiff was denied credit by SunTrust, and was thus unable to complete the planned vehicle purchase he had undertaken.

125. Upon information and belief, and absent the false and materially misleading information contained in the consumer report prepared by Transunion and provided to SunTrust, Plaintiff would not have been denied credit, and would have been approved for the credit requested.

126. Similarly, in late 2018 and early 2019, Plaintiff had begun applying for mortgage financing to purchase a residence for himself and his two (2) minor children, in order to relocate from another home.

127. As part of his attempt to purchase a new home, Plaintiff applied for, and was denied, a mortgage loan with NAVY FEDERAL CREDIT UNION ("NFCU").

128. In a letter to Plaintiff dated January 29, 2019 (the "NFCU Denial Letter"), NFCU disclosed to Plaintiff that it was denying his application for a mortgage loan, and that the "principal reasons" for denying Plaintiff's application was "Delinquent Past or Present Credit Obligations with Others." A copy of the NFCU Denial Letter is attached hereto as **EXHIBIT 15** and incorporated herein by reference.

129. As further detailed in the NFCU Denial Letter, NFCU based its decision to reject Plaintiff's application "in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below[.]" which listed the CRA Defendants.

130. Upon information and belief, each consumer report concerning Plaintiff that was accessed by, or tendered to, NFCU in connection with Plaintiff's mortgage loan application with NFCU contained only one account which was purportedly subject to any delinquency or past due amount: the Loan.

131. Accordingly, had the CRA Defendants provided consumer reports to NFCU which included only truthful and accurate information concerning Plaintiff and his creditworthiness, Plaintiff would have been approved for a mortgage loan with NFCU.

132. Worse than the embarrassing and inconvenient inability to meaningfully use his credit, which, but for the false information concerning the Loan, reflected a generally excellent payment history, Plaintiff also suffered, and continues to suffer, severe and grievous economic damages and has been effectively rendered unable to do his job in defense of this country as a direct and proximate result of the willful, reckless, and/or negligent acts of Defendants.

133. Plaintiff, a commissioned officer in the United States Marine Corps, is a trained tiltrotor pilot who is certified to operate the MV-22 Osprey, a unique aircraft capable of landing vertically like a helicopter, but with the speed and fuel range of a fixed-wing airplane, which is

used by the Marine Corps to insert and exfiltrate ground troops, supplies, and equipment from conflict zones around the world.

134. As part of his job duties, and by virtue of his status as a pilot, Plaintiff secured and has maintained a top secret security clearance (hereinafter the "Security Clearance").

135. Additionally, as part of his duties as the XO of VMM-263, Plaintiff is required to act as the commanding officer of VMM-263, a squadron of over two hundred (200) Marines, in the event the commanding officer is deployed or otherwise unavailable.

136. As the XO, and when serving as the acting commanding officer, Plaintiff is required to view, possess, analyze, and otherwise interact with classified information, material, and tangible objects, which requires Plaintiff to maintain his Security Clearance.

137. Moreover, as an active pilot, Plaintiff is required to maintain a certain number of flight hours in a flight simulator, which, because of the classified nature of its design and capabilities, also requires—as a condition of use—that Plaintiff maintain his Security Clearance.

138. In the event Plaintiff is unable to maintain his simulator hours, he faces potential grounding (i.e., ineligibility to fly), removal from his current posting as a pilot, and reassignment to a non-flying billet.

139. Plaintiff's unit operates on a periodic deployment rotation, wherein some Marines and aircraft in the unit are deployed to combat areas overseas, while others remain stateside in a state of training and deployment preparation, with each group rotating according to the needs of the Marine Corps.

140. In the event Plaintiff is unable to maintain his Security Clearance, he will also be ineligible to deploy overseas with his unit and may be subject to a permanent reassignment to a non-aviation duty assignment.

141. As a member of the Department of Defense ("DoD") with a Security Clearance, Plaintiff is subject to oversight by the Continuous Evaluation Program ("CEP") implemented by the Office of the Director of National Intelligence ("ODNI") in concert with the Office of Personnel Management ("OPM") and the DoD.

142. The CEP is an ongoing screening process intended to ensure that individuals with a Security Clearance continue to satisfy the requirements of maintaining such a clearance, in part by using automated record checks that periodically report potentially adverse incidents concerning the person to whom a Security Clearance has been granted.

143. When DoD personnel are granted a Security Clearance, they are automatically enrolled in an information technology system maintained by the DoD called "Mirador."

144. Mirador periodically checks available commercial, government, and public records for all individuals holding a Security Clearance, and generates an alert if it uncovers potentially negative information concerning the holder of the Security Clearance, such as arrest records, criminal activity, suspicious financial activity, etc.

145. Once Mirador generates an alert, a DoD analyst working as part of the CEP reviews the alert to verify that the information flagged by Mirador pertains to the correct person within DoD, was not previously known by DoD or the CEP, and is relevant to the individual's continued eligibility for access to classified information.

146. If the DoD analyst confirms that these criteria are met, he or she validates the alert and generates a report based upon the alert, which is forwarded to the individual's Security Management Official ("SMO"), as well as to the DoD's Consolidated Adjudications Facility ("DoD CAF").

147. Once the SMO reviews the report, he or she prepares a final report and submits

the same to the DoD CAF, which then reviews the alert, the initial report, and the final report before requesting additional investigation or taking action based on the reports before it.

148. On or about May 30, 2019, Mirador conducted a routine scan of Plaintiff's credit reports and discovered, in a consumer report prepared and maintained by Transunion, that Plaintiff had past due accounts with PHH and Ocwen, and that the total delinquent debt associated with these delinquent accounts was \$65,000.00 (hereinafter the "CEP Alert").

149. On or about October 8, 2019, a DoD analyst verified and validated the alert, and forwarded the alert, along with the analyst's report, to Plaintiff's prior command in California.

150. On or about November 18, 2019, and in connection with the CEP Alert, the DoD CAF submitted a letter to the SMO of Plaintiff's prior command, which was located in California, seeking additional information from the SMO regarding the CEP Alert.

151. Plaintiff did not become aware of the CEP Alert and the ensuing investigation until early January 2020, when the CEP Alert and letter from DoD CAF were forwarded to the SMO at Plaintiff's command.

152. Since the transmission of the CEP Alert to the SMO at Plaintiff's command, which occurred, upon information and belief, on or about January 15, 2020, Plaintiff's job duties have ground to a virtual halt.

153. First, Plaintiff's Security Clearance has been modified from current and active to an indeterminate status, which has had the practical effect of revoking, in its entirety, Plaintiff's Security Clearance.

154. For example, and since approximately mid-January 2020, Plaintiff has been informed that his access to the flight simulator has been suspended indefinitely because he lacks the requisite Security Clearance to use the simulator.

155. Similarly, Plaintiff's billet of XO at his unit has been placed in significant jeopardy, as he can no longer perform mission-critical functions in this role, because he is required to have a valid and current Security Clearance to do so.

156. Further, Plaintiff is ineligible to fly while his Security Clearance remains in question and is accordingly in jeopardy of losing his entitlement to aviation incentive pay moving forward.

157. Plaintiff was recently notified that he has become eligible for promotion to Lieutenant Colonel, a prestigious promotion which would entail not only a rank and pay increase, but eligibility for assignment to a new duty station, a higher billet, and additional perquisites.

158. However, Plaintiff's prospective promotion to Lieutenant Colonel is now in jeopardy, as any such promotion would require, as a baseline for eligibility, that the candidate possess a valid Security Clearance.

159. Additionally, Plaintiff has become ineligible to participate in certain training drills being conducted by his unit in preparation for an overseas deployment in support of the Global War on Terror, as a result of which, Plaintiff's deployment readiness, and that of his unit, has been materially impaired.

160. In addition to the monumental impact that the CEP Alert has had on his day-to-day operations within his unit, Plaintiff has also suffered severe and ongoing professional embarrassment, as he has had to explain to numerous other Marines why he cannot participate in this or that activity because of the status of his Security Clearance.

161. Plaintiff has also suffered significant medical damages as a direct and proximate result of the acts and/or omissions of Defendants as outlined herein.

162. Specifically, beginning approximately two (2) years ago, when Ocwen and PHH continued to incessantly attempt to collect the Loan from Plaintiff while purposefully ignoring the legal effect and import of the Discharge, Plaintiff began suffering from extreme and persistent anxiety which was so pervasive that it manifested as a severely elevated heart rate and consistently high blood pressure, which was documented by his flight surgeon on numerous occasions during regular checkups of Plaintiff.

163. Additionally, and as a result of the extreme stress and rigors of his job as an active duty Marine, Plaintiff developed gastroesophageal reflux disease (“GERD”) beginning in 2006, which required daily drugs to manage hisB symptoms.

164. Following Plaintiff’s initial diagnosis of GERD in 2006, Plaintiff successfully mitigated the effect of the disease and was symptom-free as a result of medication and changes to diet and exercise, until approximately two (2) years ago, when, as a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff’s GERD symptoms worsened appreciably.

165. In fact, as a result of the extreme anxiety, stress, hopelessness, and feelings of despair and helplessness caused by Defendants’ obnoxious refusal to recognize the validity and legal effect of Plaintiff’s Discharge, Plaintiff was forced to change prescriptions to battle with worsening symptoms of his GERD.

166. Plaintiff continues to suffer from extreme and persistent anxiety and a material worsening of his GERD symptoms, and will continue to do so for as long as Defendants are able to completely trample upon Plaintiff’s livelihood with impunity.

167. On or about December 16, 2019, in a vain attempt to ameliorate the situation, Plaintiff, through his undersigned counsel, submitted correspondence to PHH entitled *Qualified*



*Written Request, Notice of Error, Notice of Disputed Information and Requests for Information Pursuant to the Real Estate Settlement Procedures Act and Chapter 45 of the North Carolina General Statutes*, (the “QWR”), in which Plaintiff provided PHH with his name and that of Former Spouse, together with information which would enable PHH to identify the Loan with particularity, and an assertion of the numerous ongoing servicing errors being committed by PHH. A copy of the QWR is attached hereto as EXHIBIT 16 and incorporated herein by reference.

168. The QWR was mailed to the address designated by PHH as the established address, pursuant to 12 C.F.R. §§ 1024.35(c) and 1024.36(b), at which PHH would receive notices of error and requests for information (hereinafter the “QWR Address”).

169. The QWR was in fact received by PHH on December 20, 2019, as evidenced by the Domestic Return Receipt (the “QWR Receipt”) which was attached to the envelope containing the QWR and returned to Plaintiff upon delivery of the QWR by the United States Postal Service. A copy of the QWR Receipt is attached hereto as EXHIBIT 17 and incorporated herein by reference.

170. Notwithstanding the mandate set forth in 12 C.F.R. §§ 1024.35(d) and 1024.36(c), PHH failed to provide Plaintiff with a written response acknowledging its receipt of the QWR.

171. The QWR made clear to PHH that Plaintiff was in fact represented by the undersigned, by including in the QWR, for PHH’s reference, a signed and notarized document captioned *Letter Evidencing Legal Authority of Attorney to Act on Behalf of Client*, in which Plaintiff made clear that he was represented by the undersigned in connection with the Loan.

172. Notwithstanding its actual knowledge that Plaintiff was represented by an attorney in connection with the Loan, PHH proceeded to send correspondence attempting to

collect the Loan directly to Plaintiff.

173. Specifically, PHH sent Plaintiff a payoff statement dated December 30, 2019, in which it asserted that Plaintiff owed a total of \$253,465.93 in connection with the Loan (the "December 2019 Payoff Statement").

174. Upon learning that PHH had sent the December 2019 Payoff Statement directly to Plaintiff, rather than his undersigned counsel, Plaintiff, through the undersigned, prepared and sent a second letter to PHH, captioned *Second Notification that Borrower is Represented by Counsel; Instruction to Cease Communicating Directly with Borrower in Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.* (the "Cease and Desist Letter"), in which Plaintiff again notified PHH that he was represented by counsel, and requested and instructed PHH to direct all future correspondence concerning Plaintiff or the Loan to the undersigned. A copy of the Cease and Desist Letter is attached hereto as **EXHIBIT 18** and incorporated herein by reference.

175. The Cease and Desist Letter was mailed to PHH at its registered agent in the State of North Carolina, as well as to the address designated by PHH as its exclusive mailing address for the receipt of notices of error and/or requests for information.

176. The Cease and Desist Letter was in fact received by PHH, through its registered agent, on January 10, 2020, as evidenced by the Domestic Return Receipt reflecting delivery of the same to PHH's registered agent (the "Cease and Desist Return Receipt 1"), a copy of which is attached hereto as **EXHIBIT 19** and incorporated herein by reference.

177. Further, the Cease and Desist Letter was received by PHH through receipt at its QWR Address on January 13, 2020, as evidenced by the Domestic Return Receipt reflecting delivery of the same to PHH's QWR Address (the "Cease and Desist Return Receipt 2"), a copy

of which is attached hereto as **EXHIBIT 20** and incorporated herein by reference.

178. Notwithstanding its receipt of the QWR and the Cease and Desist Letter, and to date, Plaintiff has not received any substantive response from PHH in connection with the QWR, other than the December 2019 Payoff Statement sent directly to Plaintiff.

179. PHH, through its acts and omissions with respect to Plaintiff and the Loan, has demonstrated a pattern and practice of willful, malicious, intentional and callous disregard for Plaintiff's rights and the efficacy and legal effect of the Discharge entered in the Bankruptcy Case.

180. Moreover, PHH has consistently demonstrated a pattern and practice of disregard for applicable state and federal law in violation of the rights of individual consumers nationwide, including Plaintiff.

181. Such a pattern and practice is demonstrated by the following civil actions, each of which involved allegations and/or findings that PHH knowingly, recklessly, or negligently violated state and/or federal law to the detriment of individual consumers:

A. PHH's violation of the FCRA in connection with an individual citizen and consumer in the State of West Virginia, which resulted in a jury holding PHH liable and imposing punitive damages of Two Million Five Hundred Thousand Dollars and 0/100 (\$2,500,000.00), as evidenced and documented in the Memorandum Opinion and Order entered on October 12, 2016 in *Daugherty v. Ocwen Loan Servicing, LLC*, No. 5:14-cv-24506, 2016 U.S. Dist. LEXIS 159586 (S.D. W. Va. Oct. 12, 2016), (the "Daugherty Opinion") a copy of which is attached hereto as **EXHIBIT 21** and incorporated herein by reference;

B. PHH's willful violation of the discharge injunction of 11 U.S.C. § 524, in which it attempted to collect discharged debt from a chapter 13 debtor, and in connection with which Judge Humrickhouse of the United States Bankruptcy Court for the Eastern District of North Carolina awarded punitive damages to the aggrieved debtor in the amount of \$100 per day, which totaled over \$60,000.00, as memorialized in the Order entered on January 24, 2011 in *In re Adams*, No. 5:10-CV-340-BR, 2011 U.S. Dist. LEXIS 158090 (E.D.N.C. Jan. 24, 2011), (the "Adams Order") a copy of which is attached hereto as

**EXHIBIT 22** and incorporated herein by reference;

- C. PHH's negligent and willful violations of the FCRA, in connection with which the aggrieved borrower was awarded \$360,000.00 in punitive damages, as evidenced by the Final Judgment entered in *Jeffers v. Ocwen Loan Servicing, LLC*, No. 17-cv-000025-WYD-KHR, Docket Entry 90 (D. Colo. Feb. 23, 2018), (the "Jeffers Judgment") a copy of which is attached hereto as **EXHIBIT 23** and incorporated herein by reference; and
- D. PHH's willful violations of the Real Estate Settlement Procedures Act ("RESPA") and the Fair Debt Collection Practices Act ("FDCPA"), in connection with which the aggrieved borrower was awarded \$3,000,000.00 in punitive damages, which was reduced to \$582,000.00 by the United States Court of Appeals for the Seventh Circuit on appeal, as evidenced by opinion entered in *Saccameno v. U.S. Bank, N.A. et al.*, 943 F.3d 1071 (7th Cir. 2019), (the "Saccameno Opinion") a copy of which is attached hereto as **EXHIBIT 24** and incorporated herein by reference.

182. Absent an award of punitive damages, PHH's willful, malicious, and unlawful practices are expected to continue to harm individual consumers, including Plaintiff.

183. As a direct and proximate result of the acts and omissions of Defendants, jointly and severally, Plaintiff has suffered actual damages in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00).

**THE SERVICEMEMBER'S CIVIL RELIEF ACT OPERATES TO TOLL OTHERWISE  
RELEVANT STATUTES OF LIMITATIONS APPLICABLE TO THIS ACTION**  
[50 U.S.C. § 3936(a)]

184. At all times relevant to this Complaint, from prior to the filing of the Bankruptcy Case, up through and including the date of the filing of this Complaint, Plaintiff was, and remains, a "servicemember" as that term is defined in 50 U.S.C. § 3911(1), and was, at all times during the aforementioned period, engaged in "military service" as that term is defined in 50 U.S.C. § 3911(2).

185. Accordingly, pursuant to 50 U.S.C. § 3936(a), the period of Plaintiff's military service may not be included in the computation of "any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau,

commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember . . . .” *Id.*

186. Therefore, this action is timely-filed without regard to any otherwise-applicable statute of limitations that may have otherwise run in the interim, including, but not necessarily limited to, 12 U.S.C. § 2614, 15 U.S.C. § 1681p, N.C. Gen. Stat. § 1-52, N.C. Gen. Stat. § 75-16.2, and 28 U.S.C. § 1658(a).

**FIRST CLAIM FOR RELIEF**

**Violations of the North Carolina Unfair and Deceptive Trade Practices Act  
[N.C. Gen. Stat. § 75-1.1 *et seq.*]  
(Defendant PHH)**

187. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

188. Plaintiff is a natural person who is a citizen of, and consumer residing in, the State of North Carolina.

189. PHH, in violation of the UDTPA, utilized means, methods, and measures, the natural consequences of which were to oppress, harass, and/or abuse Plaintiff.

190. The unscrupulous, deceptive, unfair, misleading, immoral, oppressive and harassing actions and conduct of PHH, as set forth herein, proximately caused economic injury to Plaintiff, are in and affecting commerce, and have the capacity and tendency to deceive and/or mislead ordinary North Carolina consumers.

191. PHH’s actions and course of conduct, with respect to the transactions described herein, are unfair and deceptive in violation of N.C. Gen. Stat. § 75-1.1 in that such actions offend the established public policy of the State of North Carolina.

192. Said actions, in addition, have the capacity and tendency to deceive the average citizen, consumer, and/or business.

193. PHH has utilized a myriad of false, deceptive, unscrupulous, and/or misleading representations and conduct, including but not limited to the following:

- A. PHH's continued and ongoing refusal to acknowledge the fact that Plaintiff's *in personam* liability in connection with the Loan was subject to the Discharge entered in the Bankruptcy Case;
- B. PHH's statement, in the August 3, 2017 Letter, that notwithstanding the existence and validity of Plaintiff's Discharge, that its "collection process will continue on loans which are out of bankruptcy," a statement clearly evidencing PHH's complete and utter disregard for the existence and import of the Discharge;
- C. PHH's continuing attempts to collect amounts from Plaintiff in connection with the Loan, even though it knows that Plaintiff is not liable for any amount in connection with the same;
- D. PHH's continuing transmission of false, inaccurate, and misleading information concerning the Loan to one or more of the CRA Defendants;
- E. PHH's false and deceptive verification of the Loan to one or more of the CRA Defendants, which it knew was not a valid obligation of Plaintiff when it purported to verify the accuracy of the Loan debt to one or more of the CRA Defendants;
- F. PHH's continuing communications with Plaintiff, intended to attempt to collect payments in connection with the Loan, when PHH knew that Plaintiff was represented by the undersigned;
- G. PHH's consistent and repeated refusal to update its records and cease attempting to collect all or any portion of the Loan from Plaintiff; and
- H. PHH's heavy-handed, unfair, and unscrupulous actions and pattern of conduct described herein.

194. PHH's actions, pattern of conduct and willful disregard for applicable North Carolina law and Plaintiff's rights, constitute unfair and deceptive acts or practices proscribed by N.C. Gen. Stat. § 75-1.1.

195. PHH's course of conduct and willful refusal to fully and adequately rectify the situation offends established public policy, state law, and is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers located in the State of North Carolina.

196. As a direct and proximate result of the conduct of PHH, as alleged herein, Plaintiff is entitled to recover from PHH (i) actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00); (ii) trebled pursuant to N.C. Gen. Stat. §75-16; and (iii) those reasonable costs and attorneys' fees incurred by Plaintiff as a natural consequence of PHH's course of conduct, as provided in N.C. Gen. Stat. § 75-16.1.

197. The pattern of conduct, actions and omissions by PHH—as alleged herein—constitute willful and wanton conduct in reckless disregard for, and indifference to, the well-being of Plaintiff and other North Carolina citizens and consumers.

198. Upon information and belief, PHH has engaged in a pattern of similar conduct against other citizens in the State of North Carolina.

199. On account of its continued willful and wanton disregard for the UDTPA, Plaintiff's rights, and those of other North Carolina consumers, Plaintiff is entitled to an award of punitive damages against PHH in an amount to be determined at the trial of this matter.

**SECOND CLAIM FOR RELIEF**  
**Violations of the North Carolina Debt Collection Act**  
**[N.C. Gen. Stat. § 75-50 *et seq.*]**  
**(Defendant PHH)**

200. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

201. To the extent PHH invokes N.C. Gen. Stat. § 58-70-15(c)(11) or any similar statute or otherwise contends it was, or is found to have been, collecting or attempting to collect amounts owed under the Loan as a "debt collector," as defined in N.C. Gen. Stat. § 75-50(3), rather than as a "collection agency," as defined in N.C. Gen. Stat. § 58-70-15(a), Plaintiff asserts that PHH has violated numerous provisions of the NCDCA.

202. Plaintiff is a natural person who incurred liability to PHH, in connection with the

Loan, for personal, family, household, or agricultural purposes.

203. Plaintiff is therefore a “consumer,” as that term is defined under N.C. Gen. Stat. § 75-50(1).

204. PHH’s ongoing attempts to collect amounts from Plaintiff under the Loan constitutes a “debt,” as that term is defined in N.C. Gen. Stat. § 75-50(2), because the Loan constitutes an obligation alleged to be due or owed by Plaintiff, a consumer.

205. PHH, by virtue of the above-referenced course of conduct, actions and practices, engaged—directly and indirectly—in the collection of the Loan from Plaintiff.

206. PHH, in attempting to collect upon the Loan, is a “debt collector” as that term is defined pursuant to N.C. Gen. Stat. § 75-50(3), because PHH has been engaged, directly or indirectly, in the collection of the Loan, a debt, from Plaintiff, a consumer.

207. PHH—through its agents, officers, representatives, and employees—engaged, directly and indirectly, in soliciting, asserting and enforcing the right to collect the alleged outstanding balance under the Loan from Plaintiff.

208. Upon information and belief, the aforementioned practices and actions displayed by PHH are its standard procedure and practice towards borrowers, such as Plaintiff, for which PHH is motivated by enhanced profits.

209. PHH’s conduct, including but not limited to, multiple false representations concerning the status and/or balance of the Loan, the multiple false representations concerning its rights and intentions under the Loan, and its continuing refusal or inability to acknowledge that the Discharge excused Plaintiff from paying any amount in connection with the Loan, violates the NCDCA.

210. PHH, through its agents, employees, and representatives, utilized false, deceptive,



misleading, oppressive, and unscrupulous, representations, measures or methods in connection with the collection, servicing and other activities relating to Plaintiff and the Loan, as prohibited by Chapter 75 of the North Carolina General Statutes including, but not limited to falsely representing the character, amount or legal status of a debt, as prohibited by N.C. Gen. Stat. § 75-54, and used false representations or deceptive measures to collect or attempt to collect a debt from Plaintiff.

211. Said actions, representations, measures and methods include, but are not limited to, the following:

- A. Repeatedly misrepresenting the character and legal status of the Loan, in violation of N.C. Gen. Stat. § 75-54(4);
- B. Using and/or threatening to use illegal means to cause harm to the reputation of Plaintiff, including the continued false representation to the CRA Defendants that Plaintiff remained liable for, and in default under, the Loan, in violation of N.C. Gen. Stat. § 75-51(1);
- C. Falsely representing to CRAs, including Experian, Equifax, and TransUnion, that Plaintiff had not paid or had willfully refused to make payments owed under the Loan, when in Plaintiff was under no such obligation, in violation of N.C. Gen. Stat. § 75-51(3);
- D. Attempting to collect from Plaintiff amounts allegedly owed in connection with the Loan, when the same were not actually owed by Plaintiff, in violation of N.C. Gen. Stat. § 75-54(4);
- E. Failing to disclose, in all communications with Plaintiff, that the communications remitted by PHH were communications from a debt collector, the purpose of which was to collect a debt, in violation of N.C. Gen. Stat. § 75-54(2);
- F. Communicating with Plaintiff when PHH had been notified by the undersigned that the undersigned represents Plaintiff, in violation of N.C. Gen. Stat. § 75-55(3);
- G. Falsely representing to Plaintiff that amounts allegedly owed in connection with the Loan would be increased by the addition of attorneys' fees, collection fees, and other fees, services, or charges, none of which PHH was legally entitled to assess against, or collect from, Plaintiff, all in violation of N.C. Gen. Stat. § 75-54(6);

- H. Employing the aforementioned collection methods and procedures, with the explicit knowledge that such conduct was in violation of the provisions of applicable North Carolina law; and
- I. Undertaking actions which PHH knew, or should have known, offend the well-established public policy of the State of North Carolina, state law, and which were otherwise immoral, oppressive, unscrupulous, deceptive and substantially injurious to consumers, such as Plaintiff.

212. PHH utilized false, deceptive and misleading written and telephonic communications and representations in connection with the collection of the Loan from Plaintiff, which possessed the tendency or capacity to mislead or created likelihood of deception, in violation of N.C. Gen. Stat. § 75-1.1.

213. PHH displayed willfulness and indifference to the repeated errors and falsity of the information that was communicated to Plaintiff between May 2016, and the filing of this Complaint, given its continued communication and dissemination of false, misleading, and inaccurate information concerning Plaintiff and the Loan, which it knew to be false, misleading, inaccurate, incomplete and/or inconsistent.

214. The aforementioned actions and conduct displayed and undertaken by PHH constitute unconscionable, unfair, deceptive, misleading, and unscrupulous conduct, the natural consequence of which is to harass, oppress or abuse Plaintiff in connection with the collection of the amounts allegedly owed under the Loan, in violation of the UDTPA.

215. The actions of PHH complained of herein were willful as demonstrated by its continued refusal to recognize the legal effect of the Discharge, cease attempting to collect amounts allegedly owed under the Loan from Plaintiff, and otherwise conform its actions and conduct to applicable North Carolina law.

216. PHH's actions and conduct were, in addition, patently unfair when judged against its profit-incentivized motive and the extremely negative effect that its actions and conduct have upon average North Carolina citizens and consumers, including Plaintiff.

217. The unscrupulous, immoral, oppressive and harassing actions and conduct of PHH, as set forth herein, proximately caused economic injury to Plaintiff, are in and affecting commerce, and have the capacity and tendency to deceive an ordinary consumer.

218. PHH's actions, pattern of conduct, and continued refusal to cease any and all false, misleading, deceptive, and unlawful communications and conduct aimed at Plaintiff, as alleged herein, constitute unfair and deceptive acts or practices proscribed by Chapter 75 of the North Carolina General Statutes.

219. Plaintiff, on account of PHH's course of conduct, as alleged herein, sustained substantial damages including, but not limited to, impairment to his creditworthiness, denial of requests for extensions of credit, including Plaintiff's requests for credit directed to SunTrust and NFCU, severe and debilitating emotional distress, medical damages and physical pain and suffering as a direct and proximate result of the worsening of existing medical conditions because of PHH's conduct, reputational and professional harm arising from the CEP Alert and the revocation of Plaintiff's Security Clearance, and other pecuniary losses, expenses, costs and damages, including but not limited to, the attorneys' fees and expenses incurred in connection with the prosecution of this matter.

220. As a direct and proximate result of the foregoing actions, conduct and practices employed by PHH, Plaintiff is entitled to have and recover judgment consisting of (i) actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00), trebled pursuant to N.C. Gen. Stat. § 75-16; (ii) reasonable costs and attorneys'

fees, as provided in N.C. Gen. Stat. §§ 75-16.1 and 75-56; and (iii) civil penalties of not less than FIVE HUNDRED DOLLARS AND 0/100 (\$500.00) nor greater than FOUR THOUSAND DOLLARS AND 0/100 (\$4,000.00) for each and every one of PHH's violations of the NCDCA, pursuant to N.C. Gen. Stat. § 75-56.

**THIRD CLAIM FOR RELIEF**

***In the Alternative- Violations of the North Carolina Collection Agency Act*  
[N.C. Gen. Stat. § 58-70-1 *et seq.*]  
(Defendant PHH)**

221. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

222. To the extent PHH contends it was, or is found to have been, attempting to collect amounts owed under the Loan in its capacity as a collection agency, rather than as a debt collector, Plaintiff asserts that it violated parallel provisions of the NCCAA.

223. Plaintiff is a natural person who incurred liability to PHH, under the Loan, for personal, family, household, or agricultural purposes.

224. Plaintiff is therefore a "consumer," as that term is defined under N.C. Gen. Stat. § 58-70-90(2).

225. The relationship between Plaintiff and PHH arose out of the Loan, which constitutes a "debt," as that term is defined in N.C. Gen. Stat. § 58-70-90(3).

226. PHH, by virtue of the above-referenced course of conduct, actions and practices, engaged—directly and indirectly—in the collection of the Loan.

227. PHH, in attempting to collect upon the Loan, acted as a "collection agency," as that term is defined in N.C. Gen. Stat. § 58-70-90(1) and § 58-70-15(a)-(b).

228. PHH—through its agents, officers, representatives, and employees—engaged, directly and indirectly, in soliciting, asserting and enforcing the right to collect the alleged

outstanding balance under the Loan from Plaintiff.

229. Upon information and belief, the aforementioned practices and actions displayed by PHH are its standard procedure and practice towards borrowers, such as Plaintiff, for which PHH is motivated by enhanced profits.

230. PHH's conduct, including but not limited to, multiple false representations concerning the status and/or balance of the Loan, the multiple false representations concerning its rights and intentions under the Loan, and its continuing refusal or inability to recognize the legal effect of the Discharge on Plaintiff's liability under the Loan, violates the NCCAA.

231. PHH, through its agents, employees, and representatives, utilized false, deceptive, misleading, oppressive, and unscrupulous, representations, measures or methods in connection with the collection, servicing and other activities relating to Plaintiff and the Loan, as prohibited by Part 3 of Article 70 of Chapter 58 of the North Carolina General Statutes including, but not limited to falsely representing the character, amount or legal status of a debt, as prohibited by N.C. Gen. Stat. § 58-70-110(4), and used false representations or deceptive measures to collect or attempt to collect a debt from Plaintiff.

232. Said actions, representations, measures and methods include, but are not limited to, the following:

- A. Repeatedly misrepresenting the character and legal status of the Loan, in violation of N.C. Gen. Stat. § 58-70-110(4);
- B. Using and/or threatening to use illegal means to cause harm to the reputation of Plaintiff, including the continued false representation to the CRA Defendants that Plaintiff remained liable for, and in default under, the Loan, in violation of N.C. Gen. Stat. § 58-70-95(1);
- C. Falsely representing to CRAs, including Experian, Equifax, and TransUnion, that Plaintiff had not paid or had willfully refused to make payments owed under the Loan, when in Plaintiff was under no such obligation, in violation of N.C. Gen. Stat. § 58-70-95(3);

- D. Attempting to collect from Plaintiff amounts allegedly owed in connection with the Loan, when the same were not actually owed by Plaintiff, in violation of N.C. Gen. Stat. § 75-54(4);
- E. Failing to disclose, in all communications with Plaintiff, that the communications remitted by PHH were communications from a debt collector, the purpose of which was to collect a debt, in violation of N.C. Gen. Stat. § 58-70-110(2);
- F. Communicating with Plaintiff when PHH had been notified by the undersigned that the undersigned represents Plaintiff, in violation of N.C. Gen. Stat. § 58-70-115(3);
- G. Falsely representing to Plaintiff that amounts allegedly owed in connection with the Loan would be increased by the addition of attorneys' fees, collection fees, and other fees, services, or charges, none of which PHH was legally entitled to assess against, or collect from, Plaintiff, all in violation of N.C. Gen. Stat. § 58-70-110(6);
- H. Employing the aforementioned collection methods and procedures, with the explicit knowledge that such conduct was in violation of the provisions of applicable North Carolina law; and
- I. Undertaking actions which PHH knew, or should have known, offend the well-established public policy of the State of North Carolina, state law, and which were otherwise immoral, oppressive, unscrupulous, deceptive and substantially injurious to consumers, such as Plaintiff.

233. PHH utilized false, deceptive and misleading written and telephonic communications and representations in connection with the collection of the Loan from Plaintiff, which possessed the tendency or capacity to mislead, or created likelihood of deception, in violation of N.C. Gen. Stat. § 75-1.1.

234. PHH displayed willfulness and indifference to the repeated errors and falsity of the information that was communicated to Plaintiff between May 2016, and the filing of this Complaint, given its continued communication and dissemination of false, misleading, and inaccurate information concerning Plaintiff and the Loan, which it knew to be false, misleading, inaccurate, incomplete, and/or inconsistent.

235. The aforementioned actions and conduct displayed and undertaken by PHH constitute unconscionable, unfair, deceptive, misleading, and unscrupulous conduct, the natural consequence of which is to harass, oppress, or abuse Plaintiff in connection with the collection of the amounts allegedly owed under the Loan, in violation of the NCCAA.

236. The actions of PHH complained of herein were willful as demonstrated by its continued refusal to recognize the legal effect of the Discharge, refusal to cease attempting to collect amounts allegedly owed under the Loan from Plaintiff, and otherwise conform its actions and conduct to applicable North Carolina law.

237. PHH's actions and conduct were, in addition, patently unfair when judged against its profit-incentivized motive, intention, and the extremely negative effect that its actions and conduct have upon average North Carolina citizens and consumers, including Plaintiff.

238. The unscrupulous, immoral, oppressive, and harassing actions and conduct of PHH, as set forth herein, proximately caused economic injury to Plaintiff, are in and affecting commerce and have the capacity to deceive an ordinary consumer.

239. PHH's actions, pattern of conduct, and continued refusal to cease any and all false, misleading, deceptive, and unlawful communications and conduct aimed at Plaintiff, as alleged herein, constitute unfair and deceptive acts or practices pursuant to Chapter 58 of the North Carolina General Statutes.

240. Plaintiff, on account of PHH's course of conduct, as alleged herein, sustained substantial damages including, but not limited to, impairment to his creditworthiness, denial of requests for extensions of credit, including Plaintiff's requests for credit directed to SunTrust and NFCU, severe and debilitating emotional distress, medical damages and physical pain and suffering as a direct and proximate result of the worsening of existing medical conditions

because of PHH's conduct, reputational and professional harm arising from the CEP Alert and the revocation of Plaintiff's Security Clearance, and other pecuniary losses, expenses, costs and damages, including but not limited to, the attorneys' fees and expenses incurred in connection with the prosecution of this matter.

241. As a direct and proximate result of the foregoing actions, conduct and practices employed by PHH, Plaintiff is entitled to have and recover judgment consisting of (i) actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00), trebled pursuant to N.C. Gen. Stat. §§ 75-16 and 58-70-130(a) and (c); (ii) reasonable costs and attorneys' fees, as provided in N.C. Gen. Stat. §§ 75-16.1 and 75-56; and (iii) civil penalties not less than FIVE HUNDRED DOLLARS AND 0/100 (\$500.00) nor greater than FOUR THOUSAND DOLLARS AND 0/100 (\$4,000.00) for each violation of the NCCAA, pursuant to N.C. Gen. Stat. § 58-70-130(b).

**FOURTH CLAIM FOR RELIEF**  
**Violations of the Fair Credit Reporting Act**  
**[15 U.S.C. § 1681 *et seq.*]**  
**(All Defendants)**

242. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

243. PHH is a "furnisher of information" to consumer reporting agencies, as contemplated by 15 U.S.C. § 1681s-2(b).

244. The CRA Defendants are each "consumer reporting agenc[ies]" as that term is defined in 15 U.S.C. § 1681a(f).

245. Pursuant to 15 U.S.C. § 1681s-2(b)(1)(E), furnishers of information, after receiving notice of a dispute from a CRA and conducting an investigation and/or reinvestigation, are required, for any inaccurate, incomplete, or unverifiable information, to promptly:



- (i) modify that item of information;
- (ii) delete that item of information; or
- (iii) permanently block the reporting of that item of information.

15 U.S.C. § 1681-s2(b)(1)(E)(i) through (iii).

246. Plaintiff notified Transunion of the inaccuracy and falsity of the information on Transunion's consumer report concerning the Loan on or about January 1, 2019.

247. Plaintiff notified Equifax of the inaccuracy and falsity of the information on Equifax's consumer report concerning the Loan on or about April 1, 2019.

248. Plaintiff notified Experian of the inaccuracy and falsity of the information on Experian's consumer report concerning the Loan on or about April 1, 2019.

249. Plaintiff also notified PHH of the inaccuracy of the information contained in his consumer reports in numerous prior correspondences, beginning in 2016 and culminating, most recently, in the transmission of the QWR to PHH, which also disputed the accuracy of information contained in Plaintiff's consumer reports.

250. Despite actual notice from Plaintiff, and, upon information and belief, from one or more of the CRA Defendants, PHH failed to adequately investigate the disputes.

251. At no time did PHH, Transunion, Equifax, or Experian notify Plaintiff that they considered Plaintiff's disputes frivolous or irrelevant.

252. PHH failed to timely modify, delete, or permanently block the reporting of the false information concerning the Loan to the CRA Defendants.

253. As alleged in detail above, each of the CRA Defendants failed to conduct a reasonable investigation into Plaintiff's separate disputes with Transunion, Equifax, and Experian concerning the Loan.

254. PHH has failed to adequately investigate Plaintiff's disputes and alter its reporting

to the CRA Defendants, in violation of 15 U.S.C. § 1681s-2(b).

255. Additionally, the CRA Defendants have failed to implement corrections made or suggested by PHH, or, alternatively, have failed to conduct an adequate reinvestigation, in violation of 15 U.S.C. § 1681i.

256. Plaintiff suffered actual damages from Defendants' violations of the FCRA, including, but not limited to impairment to his creditworthiness, denial of requests for extensions of credit, including Plaintiff's requests for credit directed to SunTrust and NFCU, severe and debilitating emotional distress, medical damages and physical pain and suffering as a direct and proximate result of the worsening of existing medical conditions because of PHH's conduct, reputational and professional harm arising from the CEP Alert and the revocation of Plaintiff's Security Clearance, and other pecuniary losses, expenses, costs and damages, including but not limited to, the attorneys' fees and expenses incurred in connection with the prosecution of this matter.

257. Moreover, as a direct and proximate result of the failure of the CRA Defendants to conduct a reasonable investigation and/or reinvestigation, and as a direct and proximate result of PHH's failure to conduct a reasonable investigation into Plaintiff's multiple disputes, the CEP Alert was issued, which has resulted in Plaintiff's daily job grinding to a halt and remaining at a standstill, and has placed his job, his billet, his promotion, and his entire career as a Marine aviator in substantial jeopardy.

258. All of Defendants' violations of the FCRA outlined herein constituted willful noncompliance, entitling Plaintiff to statutory damages of not less than ONE HUNDRED DOLLARS AND 0/100 (\$100.00) and not more than ONE THOUSAND DOLLARS AND 0/100 (\$1,000.00) per violation of the FCRA, together with punitive damages, costs, and

reasonable attorneys' fees, pursuant to 15 U.S.C. § 1681n.

259. Alternatively, all of Defendants' violations of the FCRA outlined herein constituted negligent noncompliance, entitling Plaintiff to actual damages, costs, and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1681o.

260. As a direct and proximate result of the conduct of Defendants, as alleged herein, Plaintiff is entitled to recover from Defendants, jointly and severally, actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00).

**FIFTH CLAIM FOR RELIEF**  
**Violations of the Telephone Consumer Protection Act**  
**[47 U.S.C. § 227]**  
**(Defendant PHH)**

261. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

262. Ocwen made, or caused to be made, the Ocwen Collection Calls to Plaintiff, at a rate of approximately one to three calls per week between November 2013 and January 2016, totaling an additional estimated two hundred twenty-five (225) telephone calls.

263. PHH made, or caused to be made, the PHH Collection Calls to Plaintiff, at a rate of approximately one to two calls per week, between February 2019 and November 2019, totaling an estimated fifty-eight (58) telephone calls.

264. In total, between November 2013 and November 2019, Ocwen and/or PHH placed, or caused to be placed, in excess of two hundred eighty-three (283) Collection Telephone Calls to Plaintiff's cellular telephone.

265. PHH is a "person" as that term is defined in 47 U.S.C. § 153(39), because it is a corporation.

266. Each of the Collection Telephone Calls was made by PHH and/or Ocwen using an

“automatic telephone dialing system” as that term is defined in 47 U.S.C. § 227(a)(1).

267. Each of the Collection Telephone Calls was made to a telephone number assigned to a cellular telephone service and licensed to Plaintiff for his private non-commercial use.

268. Further, the Collection Telephone Calls were made to Plaintiff's cellular telephone using multiple different phone numbers which were, upon information and belief, utilized by PHH and/or Ocwen as part of an artifice or scheme to conceal the identity of the caller from the person answering the telephone.

269. Plaintiff at no time consented to PHH's, or any of its predecessors (including Ocwen), use of an auto dialer or similar device in communicating with Plaintiff.

270. Plaintiff in fact objected to each of the Collection Telephone Calls, repeatedly requesting that PHH and/or Ocwen cease initiating such calls.

271. However, PHH and/or Ocwen flatly ignored Plaintiff's requests to cease contacting him telephonically.

272. Each of the Collection Telephone Calls were made within the United States.

273. Alternatively, and to the extent the Collection Telephone Calls were made from outside the United States, Plaintiff, at all times he received such Collection Telephone Calls, was located within the United States.

274. Plaintiff suffered actual damages as a direct and proximate result of the acts and/or omissions of PHH as outlined herein.

275. Plaintiff is entitled, on account of PHH's repeated violations of the TCPA outlined herein, to have and recover from PHH the greater of (i) Plaintiff's actual monetary loss for each of PHH's violations of the TCPA; or (ii) statutory damages in the amount of FIVE HUNDRED DOLLARS AND 0/100 (\$500.00), for each of PHH's violations of the TCPA,

pursuant to 47 U.S.C. § 227(b)(3)(B).

276. Additionally, and to the extent that the aforementioned violations of the TCPA by PHH were knowing and/or willful, Plaintiff is entitled to an award of up to treble the amount of the greater of his actual or statutory damages, at the discretion of this Court, pursuant to 47 U.S.C. § 227(b)(3).

**SIXTH CLAIM FOR RELIEF**

**Violations of the Real Estate Settlement Procedures Act  
[12 U.S.C. § 2601 *et seq.*; 12 C.F.R. § 1024.1 *et seq.*]  
(Defendant PHH)**

277. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

278. At all times relevant to this action, both Ocwen and PHH were each considered a “servicer” as that term is defined in 12 C.F.R. § 1024.2.

279. Similarly, and at all times relevant to this action, the Loan constituted a “federally related mortgage loan” as that term is defined in 12 C.F.R. § 1024.2.

280. The QWR, which was received by Defendant PHH on December 20, 2019 constituted a notice of error pursuant to 12 C.F.R. § 1024.35, as it alleged that PHH had committed multiple errors, each separate and distinct, relating to the servicing of, and collection of amounts allegedly owed under, the Loan.

281. Similarly, the QWR constituted a request for information pursuant to 12 C.F.R. § 1024.36, as it was in writing, included the name of Plaintiff and Former Spouse, as the borrowers under the Loan, included information that enabled PHH to identify Plaintiff’s individual mortgage loan account, and stated the information that Plaintiff was requesting in connection with the Loan.

282. Further, and as alleged above, the QWR was mailed to the address designated by

PHH, pursuant to 12 C.F.R. §§ 1024.35(c) and 1024.36(b), as its exclusive mailing address for receiving qualified written requests and notices of error.

283. PHH failed to respond to the QWR, including the notice of error contained therein, within thirty (30) days of its receipt of the QWR.

284. PHH failed to supply the requested information sought in the QWR, with the exception of the December 2019 Payoff Statement sent directly to Plaintiff, within thirty (30) days of receiving the QWR.

285. PHH failed to acknowledge receipt of the QWR within five (5) days of receiving the same.

286. PHH failed to notify Plaintiff that it required any extension of time within which to investigate, correct, and respond to the notice of error contained in the QWR, nor did it notify Plaintiff that it required additional time to gather and provide to Plaintiff the documents requested by the request for information contained within the QWR.

287. Among the information requested in the request for information contained within the QWR was a request that PHH, pursuant to 12 C.F.R. § 1024.36(a), provide Plaintiff with the identity, address, and other relevant contact information for the current holder or owner of the Note comprising the Loan.

288. Notwithstanding its obligation, pursuant to 12 C.F.R. § 1024.36(d)(2)(i)(A), PHH failed to provide Plaintiff with the above-referenced information concerning the current holder or owner of the Note connected with the Loan within ten (10) days of its receipt of the QWR.

289. In fact, as of the date of the filing of this Complaint, PHH has still not disclosed this information to Plaintiff.

290. PHH, in failing to even acknowledge receipt of the QWR, much less respond to

the same, failed to conduct, upon information and belief, any investigation whatsoever into the errors and issues with the Loan highlighted by the QWR, much less an investigation which would have been reasonable under the circumstances.

291. Had PHH conducted a reasonable investigation, it would have discovered that Plaintiff's liability under the Loan had been extinguished by the entry of the Discharge and would have further realized that numerous applicable state and federal laws barred it from continuing to attempt to collect amounts related to the Loan from Plaintiff.

292. Upon information and belief, PHH's failure to comply with the provisions of the RESPA as outlined herein was willful, intentional, and deliberate, as PHH made clear, in the August 3, 2017 Letter, that according to its own internal policies, and notwithstanding applicable law to the contrary, it would continue to attempt to collect loans which were out of bankruptcy, regardless of whether the borrower, such as Plaintiff in this case, had received a discharge with respect to the Loan.

293. In failing to timely respond to the QWR, and in fact, as of the date of filing this Complaint, failing to respond in any fashion to the QWR, PHH provided Plaintiff with no explanation as to why the errors he had asserted, including PHH's ongoing illegal attempts to collect the Loan from Plaintiff, and its false, misleading, and inaccurate assertions that Plaintiff remains in default under the Loan, were proper under the terms of the Loan and not errors that must be corrected.

294. PHH's complete and utter failure to respond to the notice of error and request for information contained within the QWR constitute willful violations of 12 C.F.R. §§ 1024.35 and 1024.36.

295. The foregoing actions and failures of PHH constitute a pattern and practice of

behavior in conscious disregard for Plaintiff's rights under RESPA and other applicable law.

296. As an actual and proximate result of PHH's failure to conduct a reasonable investigation into the errors raised by Plaintiff in the QWR, Plaintiff has incurred actual damages including those incurred in communicating with PHH in an effort to get accurate and complete information related to the Loan.

297. Based upon the foregoing, Plaintiff is entitled to have and recover judgment against PHH consisting of (i) the actual damages suffered by Plaintiff in an amount exceeding TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00), pursuant to 12 U.S.C. § 2605(f)(1)(A); (ii) statutory damages in an amount equal to TWO-THOUSAND DOLLARS AND 0/100 (\$2,000.00) for each separate violation of the RESPA, pursuant to 12 U.S.C. § 2605(f)(1)(B); and (iii) the costs of this action, including the reasonable attorneys' fees incurred by Plaintiff in connection with the prosecution of this lawsuit, pursuant to 12 U.S.C. § 2605(f)(3).

**SEVENTH CLAIM FOR RELIEF**  
**Violations of the Fair Debt Collection Practices Act**  
**[15 U.S.C. § 1692 *et seq.*]**  
**(Defendant PHH)**

298. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

299. Plaintiff is a natural person who was allegedly obligated to pay a debt.

300. Accordingly, Plaintiff is a "consumer" as that term is defined in 15 U.S.C. § 1692a(3).

301. PHH contacted Plaintiff, directly or vicariously, using instrumentalities of interstate commerce, including, but not limited to, telephonic communications and written letters sent via U.S. Mail, the principal purpose of which was to collect a debt asserted to be owed by



Plaintiff to PHH.

302. When Ocwen first obtained the rights to collect, or attempt to collect, sums owed in connection with the Loan, the same was in default, as Plaintiff was then a debtor in the Bankruptcy Case, and the Loan was in arrears on the Petition Date.

303. When PHH obtained the rights to collect, or attempt to collect, sums owed in connection with the Loan, the same was in default, as evidenced by PHH's first correspondence sent to Plaintiff, dated February 6, 2019, in which PHH asserted that the Loan was in arrears in the amount of \$91,312.35.

304. Accordingly, PHH is a "debt collector" as that term is defined in 15 U.S.C. § 1692a(6).

305. PHH sent Plaintiff at least thirty-four (34) written letters, statements, and related correspondence, the principal purpose of each of which was to collect a debt from Plaintiff, namely amounts allegedly owed under the Loan.

306. In each such written correspondence, PHH falsely represented the character, amount, and legal status of the Loan, in direct violation of 15 U.S.C. § 1692e(2).

307. Between May 2016 and through 2019, PHH communicated credit information concerning Plaintiff and the Loan to the CRA Defendants which PHH knew or should have known was false, in direct violation of 15 U.S.C. § 1692e(8).

308. As early as early as August 3, 2017, PHH knew, or reasonably should have known, that Plaintiff's liability under the Loan was disputed, as evidenced by its nonsensical response to Plaintiff's request that it honor the Discharge, in the August 3, 2017 Letter, when it ignored the fact that Plaintiff's liability under the Loan had been discharged, and instead informed Plaintiff that its collection processes would continue notwithstanding the entry of the

Discharge.

309. Accordingly, and thereafter, PHH continued to communicate information concerning Plaintiff and the Loan to the CRA Defendants but failed to communicate to the CRA Defendants that the debt was disputed, in violation of 15 U.S.C. § 1692e(8).

310. Additionally, PHH, in one or more pieces of written correspondence sent to, and received by, Plaintiff, failed to disclose that the communication was from a debt collector, or that the purpose of the communication was to collect a debt, or that any information obtained in connection with the communication was be used for such purpose, in violation of 15 U.S.C. § 1692e(11).

311. PHH placed the Collection Telephone Calls with the intent to annoy, harass, and/or abuse Plaintiff, as evidenced by the fact that PHH completely ignored Plaintiff's continued requests to stop calling him, in violation of 15 U.S.C. § 1692d(5).

312. PHH continued, on numerous occasions and for several years, to communicate with Plaintiff and attempt to collect the Loan from him, notwithstanding that Plaintiff, through Mr. Strout, had previously informed Ocwen, in writing, that it was to cease communicating with Plaintiff concerning the Loan, which Ocwen acknowledged in the March 13, 2014 Letter.

313. In continuing to communicate with Plaintiff concerning the Loan and continuing to attempt to collect the Loan from Plaintiff following the mailing of the March 13, 2014 Letter (in which it promised to stop doing exactly what it persisted in doing), PHH violated 15 U.S.C. § 1692c(c) on numerous occasions.

314. Further, PHH continued to communicate with Plaintiff via written correspondence after it knew Plaintiff was represented by the undersigned, in violation of 15 U.S.C. § 1692c(a)(2).

315. At no time did PHH communicate, or attempt to communicate, with the undersigned, nor did the undersigned at any time consent to PHH continuing to communicate directly with Plaintiff.

316. PHH, in submitting numerous written demands for payment in connection with the Loan to Plaintiff, falsely represented that Plaintiff was personally liable under the Loan, and thus PHH used false representations and/or deceptive means in its attempts to collect a debt, in direct violation of 15 U.S.C. § 1692e(10).

317. As a direct and proximate result of PHH's violations of the FDCPA, Plaintiff has suffered actual damages, including, but not limited to, impairment to his creditworthiness, denial of requests for extensions of credit, including Plaintiff's requests for credit directed to SunTrust and NFCU, severe and debilitating emotional distress, medical damages and physical pain and suffering as a direct and proximate result of the worsening of existing medical conditions because of PHH's conduct, reputational and professional harm arising from the CEP Alert and the revocation of Plaintiff's Security Clearance, and other pecuniary losses, expenses, costs and damages, including but not limited to, the attorneys' fees and expenses incurred in connection with the prosecution of this matter.

318. As a result of PHH's willful violations of the FDCPA, Plaintiff is entitled to recover (i) his actual damages, pursuant to 15 U.S.C. § 1692k(a)(1); (ii) additional statutory damages in an amount not to exceed ONE THOUSAND DOLLARS AND 0/100 (\$1,000.00) pursuant to 15 U.S.C. § 1692k(a)(2); and (iii) the costs of this action, together with the reasonable attorneys' fees incurred by Plaintiff in prosecuting the same, pursuant to 15 U.S.C. § 1692k(a)(3).

319. As a direct and proximate result of the conduct of PHH, as alleged herein,

Plaintiff is entitled to recover from PHH actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00).

**EIGHTH CLAIM FOR RELIEF**  
**Intentional Infliction of Emotional Distress**  
**(Defendant PHH)**

320. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

321. PHH, on its own behalf, and through its predecessor-in-interest, Ocwen, engaged in a protracted course of extreme and outrageous conduct in attempting to collect the Loan from Plaintiff.

322. As alleged in detail herein, PHH obstinately and consistently refused to:

- A. Honor Plaintiff's wishes that it cease placing the Collection Telephone Calls to Plaintiff's cellular telephone;
- B. Update its records to reflect that Plaintiff's personal liability for the Loan had been discharged in the Bankruptcy Case;
- C. Perform the acts it promised Plaintiff it would perform, including filing a "motion for relief" in the Bankruptcy Case following entry of the Surrender Order, and ceasing all written, telephonic, and electronic communication with Plaintiff, notwithstanding its promise to that effect in the March 13, 2014 Letter;
- D. Cease reporting false, inaccurate, and erroneous information concerning the Loan to the CRA Defendants, notwithstanding PHH's actual knowledge that the same information was grossly inaccurate and misleading; and
- E. Conform its conduct with applicable federal and North Carolina law, as alleged in detail herein.

323. Moreover, Ocwen and PHH's course of conduct herein constitutes part of a willful pattern and practice of callous disregard for the rule of law and the rights of borrowers, such as Plaintiff, under applicable state and federal law, as evidenced by Ocwen's cavalier admission to Plaintiff, in the August 3, 2017 Letter, that its collection process in connection with

the Loan would continue, notwithstanding that (i) Plaintiff had received the Discharge; and (ii) Plaintiff had expressly, on numerous occasions, instructed Ocwen and PHH to stop communicating with him and stop attempting to collect the Loan from him.

324. The actions and course of conduct undertaken by PHH, as alleged and set forth herein, were done willfully, maliciously, deliberately and with the intention of inflicting severe emotional distress upon Plaintiff.

325. Alternatively, the actions and course of conduct undertaken by PHH, as alleged and set forth herein, were done with reckless disregard for the high probability of causing the aforementioned severe emotional distress to Plaintiff

326. Further, and as alleged in detail herein, PHH knew, or reasonably should have known, that the natural and proximate consequences of it persisting in its course of conduct would be to oppress, harass, abuse, and discourage Plaintiff, and to cause Plaintiff severe and debilitating emotional distress.

327. Plaintiff, as a direct and proximate result of the extreme and outrageous pattern and course of conduct engaged in by PHH, has in fact suffered severe and grievous emotional distress, crippling anxiety, and other severe and disabling mental conditions which may be generally recognized and diagnosed by a competent medical professional trained to do so.

328. Specifically, and as alleged in detail herein, Plaintiff has suffered extreme and debilitating anxiety as a result of PHH's persistent and obnoxious course of conduct, which has physically manifested over several years, as observed by Plaintiff's treating physician(s), in the form of abnormally elevated pulse/heart rate, and unexplainably elevated blood pressure.

329. Further, during the course of Ocwen and PHH's unceasing campaign to tarnish Plaintiff's reputation and punish him for seeking relief under the U.S. Bankruptcy Code, Plaintiff

suffered a significant alcoholic relapse, which significantly interfered with Plaintiff's physical, mental, and emotional well-being, undermined his ability to perform his job, and had a generally deleterious effect on his overall quality of life.

330. Neither Plaintiff, nor any other reasonable person in a modern civilized society, should be expected to endure the persistent, unreasoning, abusive, and intolerable pattern and practice of conduct displayed by Ocwen and PHH as alleged herein.

331. Ocwen and PHH's course of conduct, as outlined herein, exceeds all bounds usually tolerated by a decent society and is particularly reprehensible in light of Ocwen and PHH's profit-incentivized motive in engaging in such a course of conduct.

332. As a direct and proximate result of the extreme and outrageous conduct of Ocwen and PHH, as outlined herein, Plaintiff is entitled to recover from Defendant PHH actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00).

333. Ocwen and PHH's conduct is made even more egregious by the fact that they undertook the aforementioned course of conduct for the sole purpose of punishing Plaintiff for failing to pay off the Loan, and attempting, unlawfully, to collect a debt from Plaintiff for which he was no longer personally liable.

334. Upon information and belief, the inexplicably nonresponsive and outrageous course of conduct engaged in by Ocwen and PHH in attempting to collect a discharged debt from Plaintiff constitutes PHH's standard operating procedure in its dealings with similarly-situated borrowers who have sought relief under the U.S. Bankruptcy Code.

335. Accordingly, and on account of the willful, wanton, and malicious conduct undertaken by Ocwen and PHH as alleged herein, Plaintiff is entitled to recover from PHH punitive damages in an amount to be determined at the trial of this matter.

**NINTH CLAIM FOR RELIEF**  
***In the Alternative – Negligent Infliction of Emotional Distress***  
**(Defendant PHH)**

336. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

337. PHH owed a duty to Plaintiff to exercise reasonable care, skill, and diligence in the servicing of the Loan, and the attempts to collect amounts allegedly owed in connection therewith.

338. PHH breached this duty to Plaintiff, and was otherwise negligent as further alleged herein, in causing Plaintiff to suffer severe and grievous emotional distress.

339. It was reasonably foreseeable to PHH that Plaintiff would suffer severe emotional distress when PHH completely ignored all communications from Plaintiff and his counsel concerning the Loan, the Discharge, and the Bankruptcy Case, and instead continued to attempt to aggressively collect the Loan from Plaintiff over the course of nearly a decade.

340. As a direct and proximate result of PHH's negligent conduct, Plaintiff has in fact suffered, and continues to suffer, severe and grievous emotional distress, including crippling anxiety which has become so severe that it has caused marked increases in Plaintiff's heart rate and blood pressure, has caused a severe exacerbation of Plaintiff's GERD symptoms, and resulted in Plaintiff temporarily relapsing in his treatment for alcoholism.

341. On account of the foregoing, Plaintiff is entitled to recover, from Defendant PHH, his actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00).

**TENTH CLAIM FOR RELIEF**  
***In the Alternative – Negligence***  
**(All Defendants)**

342. Plaintiff incorporates by reference all the allegations contained in this Complaint as if fully set forth herein.

343. At all times relevant to this Complaint, Defendants owed Plaintiff a duty of ordinary care, to act as reasonably prudent mortgage servicers or consumer reporting agencies would in the same or similar circumstances.

344. Defendants, through their agents and/or employees, breached that duty and were otherwise negligent in acting or failing to act in the following manner:

- A. Failing to properly account for the effect of the Discharge on Plaintiff's liability under the Loan, and attempting to collect a debt for which Plaintiff was not liable;
- B. Failing to update their records to reflect the true state of facts surrounding Plaintiff, the Bankruptcy Case, the Discharge, and the Loan;
- C. Failing to exercise ordinary care in creation, maintenance, and dissemination of consumer reports;
- D. Failing to conduct a reasonable investigation into Plaintiff's multiple notices that the continued attempts to collect the Loan from him were in error, that he was not liable under the Loan, that he was not in default under the Loan, and that he was otherwise no longer obligated to perform any act whatsoever in connection with the Loan following the entry of the Discharge;
- E. Failing to respond to Plaintiff's requests for information;
- F. Failing to implement and maintain safeguards and appropriate oversight in the recordation, investigation, and resolution of borrower disputes;
- G. Failing to implement and maintain a reasonable procedure or set of procedures for the receipt, analysis, and resolution of credit disputes; and
- H. Otherwise failing to act as reasonably prudent mortgage servicers, and/or consumer reporting agencies would in the same or similar circumstances.

345. Had Defendants, their agents, and/or their employees, exercised reasonable care



in communicating to Plaintiff and other third parties concerning the Loan, they would not have wrongfully continued to report that Plaintiff remained liable under the Loan, was in substantial arrears with respect thereto, and was otherwise in default under the terms of the Loan.

346. Plaintiff suffered actual harm as a direct and proximate result of Defendants' negligence, including impairment to his creditworthiness, denial of requests for extensions of credit, including Plaintiff's requests for credit directed to SunTrust and NFCU, severe and debilitating emotional distress, medical damages and physical pain and suffering as a direct and proximate result of the worsening of existing medical conditions because of Defendants' conduct, reputational and professional harm arising from the CEP Alert and the revocation of Plaintiff's Security Clearance, and other pecuniary losses, expenses, costs and damages, including but not limited to, the attorneys' fees and expenses incurred in connection with the prosecution of this matter.

347. As a direct and proximate result of the conduct of Defendants, as alleged herein, Plaintiff is entitled to recover from Defendants, jointly and severally, or alternatively, individually, actual damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00).

#### **PRAYER FOR RELIEF**

**WHEREFORE**, and based upon the foregoing, Plaintiff respectfully prays for entry of an Order awarding him the following relief:

1. Plaintiff, on account of the conduct, practices, and repeated violations of applicable law, including the UDTPA, as herein described, have and recover judgment for compensatory damages in an amount in excess of TWENTY-FIVE THOUSAND DOLLARS AND 0/100 (\$25,000.00) against Defendants, jointly and severally, or, alternatively,

individually;

2. Trebling any actual damages awarded to Plaintiff, on account of PHH's violations of the UDTPA, pursuant to N.C. Gen. Stat. § 75-16 and/or N.C. Gen. Stat. § 58-70-130(c);

3. Awarding Plaintiff civil penalties of not less than FIVE HUNDRED DOLLARS AND 0/100 (\$500.00) nor greater than FOUR THOUSAND DOLLARS AND 0/100 (\$4,000.00) for each and every one of PHH's violations of the NCDCA, pursuant to N.C. Gen. Stat. § 75-56 or, as applicable, the NCCAA, pursuant to N.C. Gen. Stat. § 58-70-130(b);

4. Awarding Plaintiff statutory damages of not less than ONE HUNDRED DOLLARS AND 0/100 (\$100.00) and not more than ONE THOUSAND DOLLARS AND 0/100 (\$1,000.00) per violation of the FCRA, against all Defendants, jointly and severally, or alternatively, individually, pursuant to 15 U.S.C. § 1681n;

5. Plaintiff have and recover from Defendants, jointly and severally, or alternatively, individually, the costs of this action, including Plaintiff's reasonable attorneys' fees incurred in the prosecution of this matter, as prescribed by N.C. Gen. Stat. § 75-16.1, 15 U.S.C. §§ 1681n and/or 1681o, 12 U.S.C. § 2605(f)(3), and 15 U.S.C. § 1692k(a)(3);

6. Plaintiff have and recover from Defendant PHH, on account of its violations of the TCPA, statutory damages in an amount not to exceed FIVE HUNDRED DOLLARS AND 0/100 (\$500.00) for each and every one of Defendant PHH's violations of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B);

7. For the trebling of the statutory damages in the preceding paragraph, on account of Defendant PHH's willful and/or knowing violations of the TCPA, pursuant to 47 U.S.C. § 227(b)(3);

8. Plaintiff have and recover from Defendant PHH, on account of its violations of

the FDCPA, in addition to recovery of his actual damages, statutory damages in an amount not to exceed ONE THOUSAND DOLLARS AND 0/100 (\$1,000.00) pursuant to 15 U.S.C. § 1692k(a)(2)(A);

9. Plaintiff have and recover from Defendants, on account of the willful and wanton nature of their actions alleged herein, punitive damages in an amount to be determined at the trial of this matter;

10. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under applicable law;

11. For a trial by jury on all issues so triable; and

12. For such other and further relief as this Court deems just and proper.

Respectfully submitted this, the 30<sup>th</sup> day of January, 2020.

**STUBBS & PERDUE, P.A.**

BY: 

BLAKE Y. BOYETTE (NCSB No. 44239)  
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Telephone: (919) 870-6258  
Telecopy: (919) 870-6259

*Counsel for Plaintiff Mark Anthony Guthrie*

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 20-CVS-\_\_\_\_\_

MARK ANTHONY GUTHRIE,

*Plaintiff,*

v.

PHH MORTGAGE CORPORATION f/k/a  
OCWEN LOAN SERVICING, LLC d/b/a  
PHH MORTGAGE SERVICES, TRANS  
UNION, LLC, EQUIFAX, INC., EQUIFAX  
INFORMATION SERVICES, LLC, and  
EXPERIAN INFORMATION  
SOLUTIONS, INC.,

*Defendants.*

**INDEX OF EXHIBITS TO  
COMPLAINT**

<b>Exhibit No.</b>	<b>Exhibit Title/Short Name</b>	<b>Page No.</b>
1	Certificate of Merger	0001
2	GMAC Proof of Claim	0002
3	Motion to Surrender	0037
4	Surrender Order	0044
5	Notice of Transfer of Claim	0045
6	November 4, 2015 Letter	0046
7	Discharge	0048
8	Certificate of Notice	0050
9	August 3, 2017 Letter	0055
10	Notice of Servicing Transfer	0057
11	2017 Transunion Report	0065
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16	QWR	0092
17	QWR Receipt	0105
18	Cease and Desist Letter	0106
19	Cease and Desist Return Receipt 1	0110
20	Cease and Desist Return Receipt 2	0111
21	Daugherty Opinion	0112
22	Adams Order	0117
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STUBBS & PERDUE, P.A.  
Attorneys at Law

SOSID: 0631476  
Date Filed: 8/13/2019 5:00:00 PM  
Elaine F. Marshall  
North Carolina Secretary of State  
C2019 219 00205

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
CERTIFICATE OF MERGER  
100051189

PHH MORTGAGE CORPORATION  
With the Previous or Alternate Name  
LIBERTY HOME EQUITY SOLUTIONS

I, the Treasurer of the State of New Jersey, do hereby certify, that the above-named corporation on the 31st day of May, 2019, filed and recorded in this department a Certificate of Merger, merging into a OCWEN LOAN SERVICING, LLC PHH MORTGAGE CORPORATION which is the surviving business entity. This certificate is herein issued as by the statutes of this State require.



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and  
affixed my Official Seal  
at Trenton, this  
2nd day of August, 2019.

A handwritten signature in cursive script, likely belonging to Elizabeth Maher Muoio.

Certificate Number: 141606134

Verify this certificate online at:

[https://www1.state.nj.us/TYTR\\_SkimmingCert/ASP/Verify\\_Cert.jsp](https://www1.state.nj.us/TYTR_SkimmingCert/ASP/Verify_Cert.jsp)

Elizabeth Maher Muoio  
Treasurer

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF NORTH CAROLINA		PROOF OF CLAIM						
Name of Debtor: <b>MARK ANTHONY GUTHRIE</b>	Case Number: <b>11-03134-8-RDD</b>	<p><b>COURT USE ONLY</b></p> <p><input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.</p> <p>Court Claim Number: <b>13</b>  <i>(If known)</i></p> <p>Filed on: <b>09/14/2011</b></p> <p><input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.</p>						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.								
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>GMAC Mortgage, LLC successor by merger to GMAC Mortgage Corporation</b>								
Name and address where notices should be sent: <b>GMAC Mortgage, LLC  Attn: Bankruptcy Department  1100 Virginia Ave  Ft. Washington, PA 19034</b>								
Name and address where payment should be sent (if different from above): <b>GMAC Mortgage, LLC  Attn: Payment Processing  3451 Hammond Ave  Waterloo, IA 50702</b>								
<p>1. Amount of Claim as of Date Case Filed: <b>\$195,701.44</b>  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.</p> <p><input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.</p>								
<p>2. Basis for Claim: <u>money loaned</u>  (See instruction #2)</p>								
<p>3. Last four digits of any number by which creditor identifies debtor:  <span style="background-color: black; color: black;">XXXXXXXXXX</span></p>	<p>3a. Debtor may have scheduled account as:  (See instruction #3a)</p>	<p>3b. Uniform Claim Identifier (optional):  (See instruction #3b)</p>						
<p>4. Secured Claim (See instruction #4)</p> <p>Check the appropriate box if the claim is secured by a lien on property or a right of setoff; attach required redacted documents, and provide the requested information.</p> <p style="text-align: right;"><b>\$12,152.38</b></p> <p>Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other  Describe: <b>401 Jay Court, Jacksonville, NC 28540</b></p> <p>Basis for perfection: <b>Deed of Trust</b></p> <p>Value of Property: <u>Unknown</u>  Annual Interest Rate <u>4%</u> (Subject to Change) <input type="checkbox"/> Fixed or <input checked="" type="checkbox"/> Variable (when case was filed).</p> <p>Amount of Secured Claim: <b>\$195,701.44</b>  Amount Unsecured:</p>								
<p>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(e). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</p> <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before this case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (e)(4). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (e)(5). </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (e)(7). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (e)(8). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (e)( ). </td> </tr> </table> <p style="text-align: right;">Amount entitled to priority: \$ _____</p> <p><small>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small></p>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before this case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (e)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (e)(5).	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (e)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (e)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (e)( ).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before this case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (e)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (e)(5).						
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (e)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (e)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (e)( ).						
<p>6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)</p>								

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If

the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Neil D. Jonas, Bar #31622

Title: Bankruptcy Attorney

Company: Rogers Townsend & Thomas, PC

Address and telephone number (if different from notice address above):

2250 W. Tynola Road, Ste. 320

Charlotte, NC 28217

Telephone number: 704-442-9500

email:

/s/ Neil D. Jonas  
(Signature)

11-30-11  
(Date)

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

#### INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

##### Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

##### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

##### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

##### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

##### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

##### 3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

##### 3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

##### 4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

##### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a):

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

##### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

##### 7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(e) and (f). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

##### 8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a service, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.



DEFINITIONS

INFORMATION

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claims Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacerusa.uscourts.gov](http://www.pacerusa.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(a), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.



### Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: MARK ANTHONY GUTHRIE

Case number: 11-03134-8-RDD

Name of creditor: GMAC Mortgage, LLC successor by merger to  
GMAC Mortgage Corporation

Last four digits: [REDACTED]

#### Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due		(1)	\$187,345.16																				
2. Interest due	<table border="0"><tr><td>Interest rate</td><td>From</td><td>To</td><td>Amount</td></tr><tr><td></td><td>mm/dd/yyyy</td><td>mm/dd/yyyy</td><td></td></tr><tr><td>4%</td><td>07/01/2010</td><td>04/21/2011</td><td>\$8,047.46</td></tr><tr><td>_____ %</td><td>____/____/____</td><td>____/____/____</td><td>\$ _____</td></tr><tr><td>_____ %</td><td>____/____/____</td><td>____/____/____</td><td>\$ _____</td></tr></table>	Interest rate	From	To	Amount		mm/dd/yyyy	mm/dd/yyyy		4%	07/01/2010	04/21/2011	\$8,047.46	_____ %	____/____/____	____/____/____	\$ _____	_____ %	____/____/____	____/____/____	\$ _____		
Interest rate	From	To	Amount																				
	mm/dd/yyyy	mm/dd/yyyy																					
4%	07/01/2010	04/21/2011	\$8,047.46																				
_____ %	____/____/____	____/____/____	\$ _____																				
_____ %	____/____/____	____/____/____	\$ _____																				
Total interest due as of the petition date			\$8,047.46																				
3. Total principal and interest due	Copy total here	(2) +	\$8,047.46																				
		(3)	\$193,392.62																				

#### Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates Incurred	Amount
1. Late charges	09/01/2010 to 04/01/2011	(1) \$422.60
2. Non-sufficient funds (NSF) fees	07/13/2010	(2) \$25.00
3. Attorney's fees (Bankruptcy)	11/28/2011	(3) \$175.00
4. Filing fees and court costs		(4) \$ _____
5. Advertisement costs		(5) \$ _____
6. Sheriff/auctioneer fees		(6) \$ _____
7. Title costs		(7) \$ _____
8. Recording fees		(8) \$ _____
9. Appraisal/broker's price opinion fees		(9) \$ _____
10. Property inspection fees	07/01/2010 to 03/29/2011	(10) \$95.25
11. Tax advances (non-escrow)		(11) \$ _____
12. Insurance advances (non-escrow)		(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)	04/26/2011	(13) \$588.79
14. Property preservation expenses. Specify: _____		(14) \$ _____
15. Other. Specify: Speedpay Fees	07/21/2010 to 04/01/2011	(15) \$37.50
16. Other. Specify: _____		(16) \$ _____
17. Other. Specify: _____		(17) + \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$1,344.34

**Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date**

Does the installment payment amount include an escrow deposit?

☐ No.

☒ Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	03/31/2011	
	Number of installment payments due	(1) 11	
2. Amount of installment payments due	7 installments @ \$1,059.98	\$7,419.86	
	2 installments @ \$1,066.67	\$2,133.34	
	2 installments @ \$1,117.42	+ \$2,234.84	
	<b>Total installment payments due as of the petition date</b>	<b>\$11,788.04</b>	Copy total here ▶ (2) \$11,788.04
3. Calculation of cure amount	Add total prepetition fees, expenses, and charges		Copy total from Part 2 here ▶ + \$1,344.34
	Subtract total of unapplied funds (funds received but not credited to account)		- \$ _____
	Subtract amounts for which debtor is entitled to a refund		- \$ _____
	<b>Total amount necessary to cure default as of the petition date</b>		<b>(3) \$13,132.38</b>
			Copy total onto item 4 of Proof of Claim form

**ARREARAGE BREAKDOWN**

7 Payments @ \$1,059.98 From 08/01/10 through 02/01/11	\$9,553.20
2 Payments @ \$1,066.67 From 03/01/11 through 04/01/11	
2 Post-Petition Pre-Confirmation Payments @ \$1,117.42 From 05/01/11 through 06/01/11	\$2,234.84
Bankruptcy Attorney Fees	\$175.00
Administrative Fees Uncollected Late Charges \$386.50 Accrued Late Charges \$36.30 NSF Fee \$25.00 Property Inspections \$95.25 Speedpay Fees \$37.50	\$580.55
Escrow Shortage	\$588.79
<b>Total</b>	<b>\$13,132.38</b>

**AMOUNT OF SECURED CLAIM BREAKDOWN**

Principal Balance	\$187,345.16
Interest	\$6,047.46
Administrative Fees Uncollected Late Charges \$386.50 Accrued Late Charges \$36.30 NSF Fee \$25.00 Property Inspections \$95.25 Speedpay Fees \$37.50	\$580.55
Bankruptcy Attorney Fees	\$175.00
Escrow Advances	\$1,553.27
<b>Total</b>	<b>\$195,701.44</b>

**Post-Petition Monthly Mortgage Payment Effective 05/01/11: \$1,117.42**



11238

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION**

IN RE	)	CASE NO. 11-03134-8-RDD
MARK ANTHONY GUTHRIE	)	CHAPTER 13
DEBTOR	)	
	)	
	)	

---

**FEE ASSESSMENT STATEMENT**

Re: Loan Number [REDACTED]  
Address: 401 Joy Court, Jacksonville, North Carolina 28540  
Lender: GMAC Mortgage, LLC successor by merger to GMAC Mortgage Corporation

This Statement shall serve as notice pursuant to NCGS Sec. 45-91 that GMAC Mortgage, LLC successor by merger to GMAC Mortgage Corporation has incurred a fee which will be assessed to your loan as follows:

**Date:** November 28, 2011

**Amount:** \$175.00

**Description:** Post-Petition/Pre-Confirmation Bankruptcy Attorneys' Fees for the preparation of Proof of Claim, Review of Schedules, Review of Loan Documents, and Review of Plan.

This information is provided for informational purposes, if and to the extent, N.C. Gen. Stat. 45-91 applies and to preserve the creditor's right to seek and collect its attorneys' fees described herein.

DATE: 8/2/2009  
GUTHRIE M 7

### ADJUSTABLE RATE NOTE

**THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.**

August 21, 2009  
(Date)

Raleigh  
(City)  
401 Joy Court  
Jacksonville, NC 28540

NC  
(State)

(Property Address)

**1. PARTIES**

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means Gateway Funding Diversified Mortgage Services L.P.

and its successors and assigns.

**2. BORROWER'S PROMISE TO PAY; INTEREST**

In return for a loan received from Lender, Borrower promises to pay the principal sum of One Hundred Ninety Thousand One Hundred Twenty Six and no/100 Dollars (U.S. \$190,126.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Four percent (4.0000%) per year until the full amount of principal has been paid. The interest rate may change in accordance with Paragraph 5(C) of this Note.

**3. PROMISE TO PAY SECURED**

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

**4. MANNER OF PAYMENT**

**(A) Time**

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on October 01, 2009. Any principal and interest remaining on the first day of September 2009, will be due on the date, which is called the "Maturity Date."

**(B) Place**

Payment shall be made at 300 Welsh Road, Building 5, Horsham, PENNSYLVANIA 19044

or at such other place as Lender may designate in writing by notice to Borrower.

MULTISTATE VA ADJUSTABLE RATE NOTE--UNIFORM INSTRUMENT  
REAL ESTATE (2007) Page 1 of 4 pages

"OneDica"  
To Check Call 1-800-488-0778

(C) Amount

Initially, each monthly payment of principal and interest will be in the amount of U.S. \$807.70. This amount will be part of a larger monthly payment required by the Security Instrument that shall be applied to principal, interest and other items in the order described in the Security Instrument. This amount may change in accordance with Paragraph 5(E) of this Note.

5. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Date

The interest rate may change on the first day of January 2016, and on that day of each succeeding year.

"Change Date" means each date on which the interest rate could change.

(B) The Index

Beginning with the first Change Date, the interest rate will be based on an Index. "Index" means the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. "Current Index" means the most recent Index figure available 30 days before the Change Date. If the Index (as defined above) is no longer available, Lender will use as a new Index any index prescribed by the Department of Veterans Affairs. Lender will give Borrower notice of the new Index.

(C) Calculation of Interest Rate Changes

Before each Change Date, Lender will calculate a new interest rate by adding a margin of Two percentage points ( 2.0000%) to the current Index and rounding the sum to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Paragraph 5(D) of this Note, this rounded amount will be the new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

On the first Change Date, the existing interest rate will never increase or decrease by more than Two percentage points ( 2.0000%). Thereafter, the interest rate will never increase or decrease on any single Change Date by more than Two percentage points ( 2.0000%) from the rate of interest in effect from the last Change Date. The interest rate will never be more than Six percentage points (6.0000%) higher than the initial interest rate stated in Paragraph 2 of this Note. The interest rate will never be lower than the margin stated in Paragraph 5(C) of this Note.

(E) Calculation of Payment Change

If the interest rate changes on a Change Date, Lender will calculate the amount of monthly payment of principal and interest which would be necessary to repay the unpaid principal balance in full at the Maturity Date at the new interest rate through substantially equal payments. In making such calculation, Lender will use the unpaid principal balance which would be owed on the Change Date if there had been no default in payment on the Note, reduced by the amount of any prepayments to principal. The result of this calculation will be the amount of the new monthly payment of principal and interest.

(F) Notice of Changes

Lender will give notice to Borrower of any change in the interest rate and monthly payment amount. The notice must be given at least 25 days before the new monthly payment amount is due, and must set forth (i) the date of the notice, (ii) the Change Date, (iii) the old interest rate, (iv) the new interest rate, (v) the new monthly payment amount, (vi) the Current Index and the date it was published, (vii) the method of calculating the change in monthly payment amount, and (viii) any other information which may be required by law from time to time.

(G) Effective Date of Changes

A new interest rate calculated in accordance with Paragraphs 5(C) and 5(D) of this Note will become effective on the Change Date. Borrower shall make a payment in the new monthly amount beginning on the first payment date which occurs at least 25 days after Lender has given Borrower the notice of changes required by Paragraph 5(F) of this Note. Borrower shall have no obligation to pay any increase in the monthly payment amount calculated in accordance with Paragraph 5(E) of this Note for any payment date occurring less than 25 days after Lender has given the required notice. If the monthly payment amount calculated in accordance with Paragraph 5(E) of this Note decreased, but Lender failed to give timely notice of the decrease and Borrower made any monthly payment amount exceeding the payment amount which should have been stated in a timely notice, then Borrower has the option to either (i) demand the return to Borrower of any excess payment, with interest thereon at the Note rate (a rate equal to the interest rate which should have been stated in a timely notice), or (ii) request that any excess payment, with interest thereon at the Note rate, be applied as payment of principal. Lender's obligation to return any excess payment with interest on demand is not enforceable even if this Note is otherwise assigned before the demand for return is made.

MULTISTATE VA ADJUSTABLE RATE NOTE—UNIFORM INSTRUMENT

MSA 2011-0101

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EXHIBIT 2

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

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no change in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

**7. BORROWER'S FAILURE TO PAY**

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

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of Five percent ( 5.0000%) of the overdue amount of each payment.

**(B) Default**

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Department of Veterans Affairs in the case of payment default, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. This Note does not authorize acceleration when not permitted by the Department of Veterans Affairs.

**(C) Payment of Costs and Expenses**

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

**8. WAIVERS**

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

**9. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

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

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

**11. ALLONCE, RIDER, ADDENDUM, ATTACHMENT OR OTHER MODIFICATION (HEREINAFTER REFERRED TO AS ALLONCE) TO THIS NOTE**

If an allonce providing for payment adjustments, or for any other supplemental information, is executed by Borrower together with this Note, the covenants of the allonce shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonce were a part of this Note. [Check applicable box.]

☐ Graduated Payment Allonce

☐ Other [specify]

☐ Other [specify]

MULTISTATE VA ADJUSTABLE RATE NOTE—UNIFORM INSTRUMENT

FORM 2009-1 (2009)

(Page 3 of 4 pages)

DocuSign  
To Order Call: 1-800-368-6778


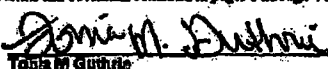
**12. UNIFORM SECURED NOTE**

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

**Transfer of the Property.** This loan may be declared immediately due and payable upon transfer of the Property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

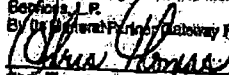
If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 14 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 4 of this Note.

 (Seal)  (Seal)  
Tonia M. Guthrie Borrower Tonia M. Guthrie Borrower

\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
Borrower Borrower

*[Sign Original Only]*

Pay to the order of Ally Bank f/k/a GMAC Bank  
without recourse  
Gateway Funding Diversified Mortgage  
Securities, L.P.  
By    
Chris Thomas  
Collateral Manager

MULTISTATE VA ADJUSTABLE RATE NOTE—UNIFORM INSTRUMENT  
ITEM 8221A (09/01) (Page 4 of 4 pages)

Check Date  
To Order Call 1-800-451-2773



Pay to the order of  
GMAC Mortgage, LLC  
Without Recourse:  
*D. Chodo*  
D. Chodo, Assistant Secretary  
Jilly Bank f/w/a GMAC Bank

PAY TO THE ORDER OF  
WITHOUT RECOURSE  
*[Signature]*  
ERAY  
LIMITED SIGNING OFFICER  
GMAC MORTGAGE, LLC f/w/a  
GMAC MORTGAGE CORPORATION

Doc ID: 007580810017 Type: CFP  
Recorded: 06/01/2000 at 12:00:02 PM  
Fee Amt: \$72.00 Page 3 of 17  
Unslow County, NE  
Rebecca L. Pollard Reg. of Deeds  
BK3289 PG18-34

**J. ALLAN WHITLOCK**  
**5834 FARINGDON PL.**  
**RALEIGH, NC 27609**

**THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 19 and 20. Certain rules regarding the usage of words used in this document are also provided in Section 15.

**Borrower is the trustee under this Security Instrument.**

organized and existing under  
Linder's address is

**This Instrument was drafted by:**

**NORTH CAROLINA—Single Family—UNIFORM INSTRUMENT**

(Page 9 of 12 pages)

**OSTERLÄND**

(B) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Fint, MI 48301-2026, tel. (313) 679-MERS.

(C) "Note" means the promissory note signed by Borrower and dated August 21, 2008. The Note states that Borrower owes Lender One Hundred Ninety Thousand One Hundred Twenty Six and no/100 Dollars (U.S. \$189,125.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than September 01, 2029.

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

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

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

- ☐ Condominium Rider ☐ Graduated Payment Rider  
☐ Planned Unit Development Rider ☐ Other(s) [specify]

(G) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-applicable judicial opinions. If the indebtedness secured hereby is guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of the parties hereto, and any provisions of this or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations are hereby amended to conform thereto.

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

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

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

(K) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverage described in Section 3) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

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

(M) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

NORTH CAROLINA—Single Family—UNIFORM INSTRUMENT

1221-007-01 (2001)—MCS

(Page 2 of 12 pages)

Revised: 04/20/04 by the NCBA/REBN

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

See Legal Description attached hereto and made a part hereof.

which currently has the address of

Jacksonville  
(City)

North Carolina

401 Joy Court  
(Street)

28840  
(Zip Code)

("Property Address")

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

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

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

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

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

NORTH CAROLINA—Single Family—UNIFORM INSTRUMENT

REDACTED (b)(7)—(D)

(Page 3 of 11 pages)

REDACTED (b)(7)—(D)  
Tel: 800-541-4000 ext. 22 or 800-777-4111

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

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

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

NORTH CAROLINA—Sail. F. D.—UNIFORM INSTRUMENTS

or earnings on the Funds. Borrower and Lender agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any Lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the Lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the Lien in good faith by, or defends against enforcement of the Lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the Lien while those proceedings are pending, but only until such proceedings are concluded; or (c) obtains from the holder of the Lien an agreement satisfactory to Lender subordinating the Lien to this Security Instrument. If Lender determines that any part of the Property is subject to a Lien which can obtain priority over this Security Instrument, Lender may give Borrower a notice identifying the Lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the Lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property; if the restoration or repair is economically feasible and Lender's security is not lowered. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly.

NORTH CAROLINA—Single Family—UNIFORM CONTINUING

ITEM 0071A (2007)-0220

(Page 3 of 11 pages)

CREATED BY  
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Lender may disburse proceeds for the repair and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the same secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender requires the Property under Section 24 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount sufficient to exceed the amount repaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or remove the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

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

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

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

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

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may take priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or securing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums required by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

NORTH CAROLINA - Single Family - IMPROVEMENT INSTRUMENT

FORM NO. 100-1000

(Page 6 of 12 pages)

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

10. Assignment of Miscellaneous Proceeds; Foreclosure. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, would result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

12. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"); (a) is co-signing this Security Instrument only to co-oblige, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums

NORTH CAROLINA—Single Party—UNIFORM INSTRUMENT

FORM 607-2 (2007)—A-200

(Page 7 of 12 pages)

Contract Law is  
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secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 17, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees in writing to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 19) and benefit the successors and assigns of Lender.

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

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

14. **Notice.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

17. **Transfer of the Property.** This loan may be declared immediately due and payable upon transfer of the Property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 14 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the

NORTH CAROLINA—Single Family—TRUSTED INSTRUMENT

NOTARY PUBLIC (2010-2014)

(Page 8 of 12 pages)

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Note as if no acceleration had occurred; (b) cure any default of any other covenants or agreements; (c) pay all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reimbursement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check; bank check; treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally or jointly; or (d) Electronic Funds Transfer. Upon reimbursement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reissue shall not apply in the case of acceleration under Section 17.

19. **Sale of Note; Change of Loan Servicer; Notice of Default.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer pursuant to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loans are serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual or party or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 14) of such alleged breach and afforded the other party a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 14 and the notice of acceleration given to Borrower pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 19.

20. **Hazardous Substances.** As used in this Section 20: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

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

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

21. **Funding Fee.** A fee equal to one-half of one percent of the balance of this loan as of the date of transfer of the Property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the borrower fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to the

NOTICE CAROLINA - Single Family - UNIFORM INSTRUMENT

FORM 1007 (11-2011) 400708

(Page 9 of 12 pages)

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already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the borrower is exempt under the provisions of 38 U.S.C. 3729(c). (Note: The funding fee for loans assumed between 12/13/02 and 9/30/03 will be 1 percent.)

22. **Processing Charge.** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the borrower and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.

23. **Indemnity Liability.** If any obligation is assumed, then the borrower hereby agrees to assume all of the obligations of the veteran under the terms of the instrument creating and securing the loan. The borrower further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

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

24. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 17 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 24, including, but not limited to, reasonable attorney's fees and costs of this evidence.

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

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 0.0000% of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.

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

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

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


NORTH CAROLINA—Single Realty—UNIFORM INSTRUMENT

THIS INSTRUMENT (NOTE)—SINGLE

(Page 10 of 12 pages)

RECEIVED IN  
TRUSTEE'S OFFICE 11/30/11

BY SIGNING UNDER SEAL BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 12 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

\_\_\_\_\_  
(Seal) Borrower (Seal) Borrower  
 (Seal) Borrower (Seal) Borrower  
Mark Anthony Guthrie Tonja M Guthrie

Witness:

Witness:

State of North Carolina,

County of: ORANGE

I, J. ALLAN WHITLOCK, a Notary Public of the County of ORANGE  
State of North Carolina, do hereby certify that Mark Anthony Guthrie, Tonja M Guthrie

personally appeared before me this day and acknowledged the due execution  
of the foregoing instrument.

Witness my hand and official seal this 21st day of August 2009



  
Notary Public

My commission expires: 6/9/14

NORTH CAROLINA—Single Family—UNIFORM INSTRUMENT

Notarized (2007—2009)

(Page 11 of 11 pages)

RECEIVED & RECORDED IN DEEDS 11/30/11

State of North Carolina,

County as:

The foregoing certificate of

, State of NC

, a Notary Public of the County of

, is certified to be correct.

This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Register of Deeds for

County.

By \_\_\_\_\_

Deputy/Assistant Register of Deeds

After Recording Return To:  
Gateway Funding Diversified Mortgage Services  
L.P.  
320 Walsh Road, Building 8  
Harrisburg, PENNSYLVANIA 17144

NORTH CAROLINA—Single Family—INFORM INSTRUMENT

NEW CAROLINA (2001) - 2534

(Page 12 of 12 pages)

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To Notary Public: 1-800-455-1234 or Fax: 800-767-1234

**VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER**

**NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.**

THIS VA GUARANTEED LOAN AND ASSUMPTION POLICY IS MADE this 1st day of August 2009 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Deed to Secure Debt (herein "Security Instrument") dated of even date herewith, given by the undersigned (herein "Borrower") to secure Borrower's Note to Gateway Funding Diversified Mortgage Services L.P. (herein "Lender") and covering the Property described in the Security Instrument and located at 401 Joy Court Jacksonville, North Carolina 28540 (Party Address)

**VA GUARANTEED LOAN COVENANT:** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows: If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of Borrower and Lender. Any provisions of the Security Instrument or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations, including, but not limited to, the provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision that the Lender may accelerate payment of the secured indebtedness pursuant to Covenant 17 of the Security Instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or Regulations.

**LATE CHARGE:** At Lender's option, Borrower will pay a "late charge" not exceeding four per centum (4%) of the overdue payment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured hereby.

**GUARANTY:** Should the Department of Veterans Affairs fail or refuse to issue its guaranty in full amount within 60 days from the date that this loan would normally become eligible for such guaranty committed upon by the Department of Veterans Affairs under the provisions of Title 38 of the U. S. Code "Veterans Benefits", the Mortgagee may declare the indebtedness hereby secured at once due and payable and may foreclose immediately or may exercise any other rights hereunder or take any other proper action as by law provided.

MULTISTATE VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER  
Page 1 of 2

**TRANSFER OF THE PROPERTY:** This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

An authorized transfer ("assumption") of the property shall also be subject to additional covenants and agreements as set forth below:

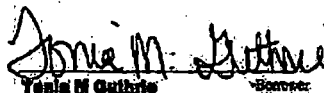
a) **ASSUMPTION FUNDING FEE:** A fee equal to one-half of 1 percent (.50%) of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the borrower fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the borrower is exempt under the provisions of 38 U.S.C. 3729 (c).

b) **ASSUMPTION PROCESSING CHARGE:** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the borrower and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.

c) **ASSUMPTION INDEMNITY LIABILITY:** If this obligation is assumed, then the borrower hereby agrees to assume all of the obligations of the veteran under the terms of the instrument creating and securing the loan. The borrower further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Borrower(s) has executed this VA Guaranteed Loan and Assumption Policy Rider.

  
Mark Anthony Guthrie      Borrower

  
Yenia M Guthrie      Borrower

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower



### **ADJUSTABLE RATE RIDER**

## **THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.**

THIS ADJUSTABLE RATE RIDER is made this 21st day of August 2009 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to Gateway Funding Diversified Mortgage Services L.P.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:  
401 Jay Court  
Jacksonville, NC 28540

(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

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

#### **INTEREST RATE AND MONTHLY PAYMENT CHANGES**

##### **(A) Change Dates**

The interest rate may change on the first day of January 2010, and on that day of each succeeding year. "Change Date" means each date on which the interest rate could change.

##### **(B) The Index**

Beginning with the first Change Date, the interest rate will be based on an Index. "Index" means the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. "Current Index" means the most recent index figure available 30 days before the Change Date. If the Index (as defined above) is no longer available, Lender will use as a new Index any index prescribed by the Department of Veterans Affairs. Lender will give Borrower notice of the new Index.

##### **(C) Calculation of Interest Rate Changes**

Before each Change Date, Lender will calculate a new interest rate by adding a margin of Two percentage points ( 2.0000%) to the Current Index and rounding the sum to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Paragraph (D) of this Rider, this rounded amount will be the new interest rate until the next Change Date.

MULTISTATE VA ADJUSTABLE RATE RIDER

Item 2011.5 (part)

(Page 1 of 2 pages)

Continued  
To Order Call 1-800-488-4773



**(D) Limits on Interest Rate Changes**

On the first Change Date, the existing interest rate will never increase or decrease by more than Two percentage point(s) ( 2.00000%). Thereafter, the interest rate will never increase or decrease on any single Change Date by more than Two percentage point(s) ( 2.00000%) from the rate of interest in effect from the last Change Date. The interest rate will never be more than Six percentage point(s) (6.00000%) higher than the initial interest rate. The interest rate will never be lower than the margin stated in Paragraph (C) of this Rider.

**(E) Calculation of Payment Change**

If the interest rate changes on a Change Date, Lender will calculate the amount of monthly payment of principal and interest which would be necessary to repay the unpaid principal balance in full at the maturity date at the new interest rate through substantially equal payments. In making such calculation, Lender will use the unpaid principal balance which would be owed on the Change Date if there had been no default in payment on the Note, reduced by the amount of any payments to principal. The result of this calculation will be the amount of the new monthly payment of principal and interest.

**(F) Notice of Changes**

Lender will give notice to Borrower of any change in the interest rate and monthly payment amount. The notice must be given at least 25 days before the new monthly payment amount is due, and must set forth (i) the date of the notice, (ii) the Change Date, (iii) the old interest rate, (iv) the new interest rate, (v) the new monthly payment amount, (vi) the Current Index and the date it was published, (vii) the method of calculating the change in monthly payment amount, and (viii) any other information which may be required by law from time to time.

**(G) Effective Date of Changes**

A new interest rate calculated in accordance with paragraphs (C) and (D) of this Rider will become effective on the Change Date. Borrower shall make a payment in the new monthly amount beginning on the first payment date which occurs at least 25 days after Lender has given Borrower the notice of changes required by Paragraph (F) of this Rider. Borrower shall have no obligation to pay any increase in the monthly payment amount calculated in accordance with Paragraph (E) of this Rider for any payment date occurring less than 25 days after Lender has given the required notice. If the monthly payment amount calculated in accordance with Paragraph (E) of this Rider decreased, but Lender failed to give timely notice of the decrease and Borrower made any monthly payment amounts exceeding the payment amount which should have been stated in a timely notice, then Borrower has the option to either (i) demand the return to Borrower of any excess payment, with interest thereon at the Note rate (a rate equal to the interest rate which should have been stated in a timely notice), or (ii) request that any excess payment, with interest thereon at the Note rate, be applied as payment of principal. Lender's obligation to return any excess payment with interest on demand is not assignable even if the Note is otherwise assigned before the demand for return is made.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 and 2 of this Adjustable Rate Rider.

 (Seal)  (Seal)  
Tonya M. Guthrie Borrower Tonya M. Guthrie Borrower

(Seal) (Seal)  
Borrower Borrower

MULTISTATE VA ADJUSTABLE RATE RIDER

10/18/2012 (2012)

(Page 2 of 3 pages)

[Sign Original Only]

0000000000  
To Order Call 1-800-888-6771

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

BEING ALL OF LOT 39, ROCK CREEK VILLAGE, AS PER MAP RECORDED IN  
MAP BOOK 76, PAGE 18, SLIDE E-46, ONSLOW COUNTY REGISTRY, NORTH  
CAROLINA.

GUTHRIE

**ASSIGNMENT OF DEED OF TRUST**

**MERS Phone: 1-888-679-6377**

FOR VALUE RECEIVED, Mortgage Electronic Registration Systems, Inc., as nominee for Gateway Funding Diversified Mortgage services, L.P. its successors and assigns, hereby assigns and transfers to GMAO Mortgage, LLC (successor by merger to GMAC Mortgage Corporation) all its right, title and interest in and to a certain Deed of Trust executed by Mark Anthony Guffria and Tonia M. Guffria, bearing the date of August 21, 2009 and recorded on September 1, 2009, in Book No. 3289, at Page 18-34, Document # 007530610017 in the office of the Register of Deeds of Onslow County, State of North Carolina.

Signed on 15 day of Nov, 2011

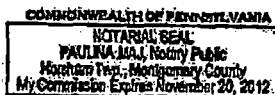
Mortgage Electronic Registration Systems, Inc.,  
as nominee for Gateway Funding Diversified Mortgage  
services, L.P. its successors and assigns

By Joseph Lyons  
Name: Joseph Lyons  
Vice President

STATE OF Pennsylvania  
COUNTY OF Montgomery

On 11/15, 2011, before me, the undersigned notary public, personally appeared Joseph Lyons, Vice President Mortgage Electronic Registration Systems, Inc., as nominee for Gateway Funding Diversified Mortgage services, L.P. its successors and assigns, known to me to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.



Paulina Maj  
Notary Public  
(SHAL)

PREPARED BY:  
Rogers Townsend & Thomas, PC  
2550 West Tyvola Road  
Suite 520  
Charlotte, NC 28217  
Patricia Blythe 11238

**GMAC**  
**Mortgage**

3451 Hammond Avenue  
Indianapolis, IN 46202  
1-800-766-4822/Follow the Prompt

35

Important Note: In accordance with RESPA requirements, this notice is being sent as a result of the analysis completed on your escrow account.

# ESCROW ANALYSIS STATEMENT

ACCOUNT NUMBER: [REDACTED]

PROPERTY ADDRESS:  
401 JOY COURT  
JACKSONVILLE NC 28540

ANALYSIS DATE: APRIL 26, 2011

MARK ANTHONY GUTHRIE  
TONIA B GUTHRIE  
401 JOY CT  
JACKSONVILLE NC 28540-8301

PLEASE KEEP THIS ESCROW ANALYSIS FOR COMPARISON TO NEXT YEAR'S STATEMENT.

Section 1:	DESCRIPTION	NEXT DUE DATE	ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT	AMOUNT(S) USED IN PRIOR ANALYSIS
	COUNTY	JANUARY 2012	880.81	880.81
	FIRE	APRIL 2012	1,886.00	827.00
		TOTAL ANNUAL DISBURSEMENTS:	2,516.81	1,807.81
		TOTAL ESCROW PAYMENT:	209.78	168.98

The amounts above are based on either an estimate previously provided or the amount last disbursed.

NOTE: If you pay the escrow shortage amount of \$688.78, your new total payment will automatically be adjusted to \$1,117.42 effective with your MAY 01, 2011 payment. If you do not pay the shortage, your total payment effective MAY 01, 2011 will be \$1,168.48.

Payment change:	Now	Prior Analysis
Escrow	209.78	158.88
Surplus/Shortage	48.08	0.00
Escrow Shortage Spread 12 Months		

Total	259.78	158.88
Principal/Interest	807.88	807.88
Total Payment	1,067.66	1,066.67

Depending on the timing of when your next billing notice is released, you may not see the payment change until the following billing notice.

For details about the difference between the old and new payment amounts, please reference the ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT and AMOUNT(S) USED IN PRIOR ANALYSIS columns listed above.

Any questions regarding changes in the "Estimated Amount of Next Disbursement" should be directed to your Tax Authority and/or Insurance Company.  
To reach our Insurance department call: 1-800-256-9962.

By sending your check, please be aware that you are authorizing us to use information on your check to make a one-time electronic debit to your account at the financial institution indicated on the check. This electronic debit will be for the amount of your check.

If you are utilizing a military allotment, or third-party company to make payments on your behalf, please notify your service of any payment changes.

NOTE— you must use the below address when remitting your escrow shortage payment

**GMAC**  
**Mortgage**

MARK ANTHONY GUTHRIE  
TONIA B GUTHRIE

GMAC MORTGAGE  
PO BOX 78182  
PHOENIX AZ 85062 8182

## THIS IS NOT A CHECK

NOTE you must use this address when remitting your escrow shortage payment

Account Number	Shortage Amount
[REDACTED]	688.78

Total Amount Enclosed \$

If you pay the escrow shortage amount of \$688.78, your new payment will be automatically adjusted to \$1,117.42 effective with your MAY 01, 2011 payment.

By sending your check, please be aware that you are authorizing us to use information on your check to make a one-time electronic debit to your account at the financial institution indicated on the check. This electronic debit will be for the amount of your check.

ANALYSIS TYPE: 1/6 AGGREGATE  
PROJECTED ESCROW BALANCE AS OF: APRIL 30, 2011

ACCOUNT NUMBER: [REDACTED]  
-169.28 \*

\* Projected balance reflects all receipts and disbursements made prior to the date of analysis and all mortgage payments and disbursements anticipated to be made prior to the effective date of analysis.

DATE	RECEIPTS	PROJECTED DISBURSEMENTS	CUR. BAL. PROJECTIONS	REQ. BAL. PROJECTIONS
PROJECTED BALANCE			169.28-	419.51
08/01/11	209.73	.00	40.45	629.24
09/01/11	209.73	.00	250.18	829.07
07/01/11	209.73	.00	459.91	1,048.70
08/01/11	209.73	.00	659.64	1,258.43
09/01/11	209.73	.00	879.37	1,468.16
10/01/11	209.73	.00	1,089.10	1,677.89
11/01/11	209.73	.00	1,298.83	1,887.62
12/01/11	209.73	.00	1,508.56	2,097.35
01/01/12	209.73	980.81-	737.46	1,829.07
02/01/12	209.73	.00	947.19	1,638.00
03/01/12	209.73	.00	1,156.92	1,448.73
04/01/12	209.73	1,836.00-	169.33-	419.48 L

Current Escrow Balance: 1,553.27-

<u>Esc. Rec'd to Eff. Dt.</u>		<u>Esc. Disb. Prior to Eff. Dt.</u>	
<u>Due Dt.</u>	<u>Due Amt.</u>	<u>Disb. Date</u>	<u>Disb. Amt.</u>
08/10	152.29		
09/10	152.29		
10/10	1,078.61 *		

\*Indicates Sum of Remaining Escrow Payments  
Prior to Escrow Disbursements to Effective Date.

L ANTICIPATED LOW POINT FOR ANALYSIS PERIOD:  
-169.33

MAXIMUM PERMITTED LOWPOINT: (EXCLUDING MIP)  
419.48

Section 3:

SHORTAGE

568.79

ESCROW ACCOUNT ACTIVITY (MARCH 01, 2011 - APRIL 30, 2011)

DATE	TXN	PREV PROJ AMOUNT	PREV PROJ BALANCE	TXN	ACTUAL AMOUNT	ACTUAL BALANCE
12/01/10	PAYMENT	152.29	1,822.84		.00	128.88-
01/01/11	PAYMENT	152.29	774.71		.00	128.88-
01/01/11	TAX	800.52-	274.71		.00	128.88-
02/01/11	PAYMENT	152.29	827.00		.00	128.88-
	BEGINNING BALANCE		827.00			128.88-
03/01/11	PAYMENT	158.98	1,085.98		.00	128.88-
04/01/11	PAYMENT	158.98	917.96	PAYMENT	151.71	1,553.27-
04/01/11	FIRE	827.00-	917.96	FIRE	1,556.00-	1,553.27-

INTERNET REPRINT

**GMAC**  
**Mortgage**

REPRESENTATION OF PRINTED DOCUMENT  
2481 Harwood Avenue  
Huntsville, TN 37402  
1 800 768 4622/Follow the Prompts

Important Note: In accordance with RESPA requirements, this notice is being sent as a result of the review completed on your escrow account.

**ESCROW ANALYSIS STATEMENT**

ACCOUNT NUMBER: [REDACTED]  
PROPERTY ADDRESS:  
401 JOY COURT  
JACKSONVILLE NC 28540  
ANALYSIS DATE: MAY 08, 2011

MARK ANTHONY BUTHRIE  
TONIA M GUTHRIE  
401 JOY CT  
JACKSONVILLE NC 28540-8301

PLEASE KEEP THIS ESCROW ANALYSIS FOR COMPARISON TO NEXT YEAR'S STATEMENT.

Section 1:	DESCRIPTION	NEXT DUE DATE	ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT	AMOUNT(S) USED IN PRIOR ANALYSIS
	COUNTY FIRE	JANUARY 2012 APRIL 2012	980.81 1,558.00	980.81 927.00
	TOTAL ANNUAL DISBURSEMENTS:		2,538.81	1,907.81
	TOTAL ESCROW PAYMENT:		208.73	158.98

The amounts above are based on either an estimate previously provided or the amount last disbursed.

New Payment Amount:	1,117.42
New Payment Effective:	MAY 01, 2011
Next Scheduled Analysis:	MAY 01, 2012
Payment change:	New Prior Analysis
Escrow	208.73 158.98
Total	208.73 158.98
Principal/Interest	907.69 807.09
Total Payment	1,117.42 1,065.87

For details about the difference between the old and new payment amounts, please reference the ESTIMATED AMOUNT(S) OF NEXT DISBURSEMENT and AMOUNT(S) USED IN PRIOR ANALYSIS columns listed above.

Any questions regarding changes in the "Estimated Amount of Next Disbursement" should be directed to your Tax Authority and/or Insurance Company.  
To reach our Insurance department call: 1-800-256-9962.

If you are utilizing a military allotment, or third-party company to make payments on your behalf, please notify your service of any payment changes.

**GMAC**  
**Mortgage**

THIS SECTION IS INTENTIONALLY LEFT BLANK

ANALYSIS TYPE: 1/8 AGGREGATE  
PROJECTED ESCROW BALANCE AS OF: APRIL 30, 2011

ACCOUNT NUMBER: [REDACTED]  
1,008.30

- Projected balance reflects all receipts and disbursements made prior to the date of analysis and all mortgage payments and disbursements anticipated to be made prior to the effective date of analysis.

DATE	RECEIPTS	PROJECTED DISBURSEMENTS	CUR. BAL. PROJECTIONS	REQ. BAL. PROJECTIONS
PROJECTED BALANCE			415.51	415.51
PDC SHTG	588.78		1,008.30	
05/01/11	209.73	.00	1,218.03	829.24
06/01/11	209.73	.00	1,427.76	839.97
07/01/11	209.73	.00	1,637.49	1,048.70
08/01/11	209.73	.00	1,847.22	1,258.43
09/01/11	209.73	.00	2,056.95	1,468.16
10/01/11	209.73	.00	2,266.68	1,677.89
11/01/11	209.73	.00	2,476.41	1,887.62
12/01/11	209.73	.00	2,686.14	2,097.35
01/01/12	209.73	980.51	1,915.06	1,326.37
02/01/12	209.73	.00	2,124.79	1,536.00
03/01/12	209.73	.00	2,334.52	1,745.73
04/01/12	209.73	1,536.00	1,008.25	415.48 L

Current Escrow Balance: 1,533.27

Due Date	Due Amt	Disc Date	Disc Amt
08/10	182.28		
09/10	182.28		
10/10	1,079.41		

\*Indicates Sum of Remaining Escrow Payments  
A/c Escrow Disbursements to Effective Date

L ANTICIPATED LOW POINT FOR ANALYSIS PERIOD:  
1,008.25

MAXIMUM PERMITTED LOW POINT (EXCLUDING MIP)  
415.48

Section 3: [REDACTED] 0.00

ESCROW ACCOUNT ACTIVITY (MARCH 01, 2011 - APRIL 30, 2011)

DATE	TXN	PREV PROJ AMOUNT	PREV PROJ BALANCE	TXN	ACTUAL AMOUNT	ACTUAL BALANCE
12/01/10	PAYMENT	152.29	1,522.94		.00	128.98-
01/01/11	PAYMENT	182.28	774.71		.00	128.98-
01/01/11	TAX	800.52-	774.71		.00	128.98-
02/01/11	PAYMENT	182.28	927.00		.00	128.98-
	BEGINNING BALANCE		927.00		.00	128.98-
03/01/11	PAYMENT	189.88	1,066.88		.00	128.98-
04/01/11	PAYMENT	189.88	317.88	PAYMENT	181.71	1,553.27-
04/01/11	FIRE	927.00-	317.88	FIRE	1,588.00-	1,553.27-

INTERNET REPRINT



Client:  
Loan #  
Guarantor: VA

Mortgagor: MARK ANTHONY GUTHRIE  
Address: 401 JOY COURT  
JACKSONVILLE NC 28540-0000

**Print Close**

CoreLogic Field Services  
1 First American Way  
Wardlake, TX 75282  
1-800-873-4532

Order Id	Main/PLS Code	Request On	Request Type	FAFS Received Date	Completed Date	Invoice Date	Invoice #	Invoice Amount	Occupancy Status	Order Status
227058884		Property	Borrower Interview	4/21/2011	4/28/2011	-			Occupied Name Unknown	Completed
226597040		Property	Borrower Interview	3/23/2011	3/28/2011	3/28/2011	33875321	\$13.00	Occupied Name Unknown	Completed
225845132		Property	Borrower Interview	2/08/2011	2/14/2011	2/15/2011	33085083	\$11.25	Occupied Name Unknown	Completed
225343451		Property	Borrower Interview	1/08/2011	1/10/2011	1/14/2011	32880750	\$14.75	Occupied Name Unknown	Completed
224802782		Property	Borrower Interview	12/07/2010	12/15/2010	12/15/2010	32231020	\$11.25	Occupied Name Unknown	Completed
224808227		Property	Insurance Loss Draft	12/07/2010	12/10/2010	12/10/2010	32188272	\$25.00	Occupied Name Unknown	Completed
224158391		Property	Borrower Interview	10/22/2010	10/28/2010	10/29/2010	31817952	\$11.25	Occupied Name Unknown	Completed
223500888		Property	Borrower Interview	8/22/2010	-	-				Canceled
223003526		Property	Borrower Interview	8/18/2010	8/27/2010	8/30/2010	30870416	\$11.25	Occupied Name Unknown	Completed
222482002		Property	Borrower Interview	7/23/2010	7/28/2010	7/30/2010	30200327	\$11.25	Occupied Name Unknown	Completed
221838088		Property	Borrower Interview	6/23/2010	6/29/2010	6/30/2010	28738835	\$11.25	Occupied Name Unknown	Completed
220882894		Property	Borrower Interview	4/22/2010	-	-				Canceled
218943757		Property	Borrower Interview	3/03/2010	-	-				Canceled



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION

In Re: **Mark Anthony Guthrie**  
Debtor(s)

Case No.: **11-03134-8-RDD**

Address: **401 Joy Court**  
**Jacksonville, NC 28540**

Social Security No(s): [REDACTED]

Chapter: **13**

**MOTION TO ALLOW SURRENDER OF REAL PROPERTY AND  
MODIFICATION OF CHAPTER 13 PLAN**

NOW COMES the debtor, Mark Anthony Guthrie, through counsel, and respectfully moves the Court for an Order authorizing him to surrender his real property and home located at 401 Joy Court, Jacksonville, North Carolina, and to thereby satisfy the secured indebtedness that GMAC Mortgage holds on that real property, and also for an Order providing for the modification and reduction of his Chapter 13 plan payments after the surrender of the real property to reflect a new payment to the trustee of \$825.00 per month for the remaining thirty-nine (39) months starting with his February 2013 payment; and in support of this motion show the Court as follows:

1. That Debtor filed a case under Chapter 13 of the Bankruptcy Code on April 21, 2011.
2. That Debtor's Chapter 13 plan was confirmed in an order entered on August 16, 2011, providing for sixty (60) payments of \$1,825.00.
3. That GMAC Mortgage, lien holder on the debtor's real property and home located at 401 Joy Court, Jacksonville, North Carolina, filed a secured claim in the amount of \$195,701.44.
4. That as part of the Debtor's confirmed Chapter 13 plan, his monthly mortgage payment is paid by the Trustee through the plan.
5. That the debtor, a United States Marine, is moving into base housing on January 22, 2013.
6. That Debtor wishes to surrender his interest in said property in order to reduce his monthly Chapter 13 Plan payments.

WHEREFORE, the Debtor prays for an Order authorizing the surrender of his real property and home located at 401 Joy Court, Jacksonville, North Carolina, and modifying his Chapter 13 plan to provide for twenty-one (21) monthly payments of \$1,825.00 each, followed by thirty-nine (39) monthly payments of \$825.00 each; allowing counsel for the debtors non-base additional attorneys fees in the amount of \$250.00 as allowed under the Local Rules of this district; and providing such other and further relief as to the Court may seem just and proper.

Dated: January 2, 2013.

LAW OFFICES OF DOUGLAS M. STROUT

s:/Douglas M. Strout  
DOUGLAS M. STROUT  
Attorney for Debtor  
North Carolina State Bar #17938  
300 Western Boulevard, Suite A  
Jacksonville, NC 28546  
Telephone (910) 347-9300  
Facsimile (910) 347-2002

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION

In Re: **Mark Anthony Guthrie**  
Debtor(s)

Case No.: **11-03134-8-RDD**

Address: **401 Joy Court**  
**Jacksonville, NC 28540**

Social Security No(s): [REDACTED]

Chapter: **13**

**NOTICE OF MOTION**

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TO: THE DEBTORS, TRUSTEE, AND OTHER PARTIES OF INTEREST

NOTICE IS HEREBY GIVEN of the **Motion to Allow Surrender of Real Property and Modification of Chapter 13 plan** filed simultaneously herewith by the debtor's attorney in the above captioned case; and;

FURTHER NOTICE IS HEREBY GIVEN that if you fail to respond or otherwise plead or request a hearing in writing within twenty (20) days from the date of this notice, the relief requested in the motion may be granted without further hearing or notice; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and a request for a hearing is filed in writing by the debtor, trustee or other parties in interest named herein, a hearing will be conducted in the motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is filed the Court may rule on the motion in response thereto ex parte without further notice.

DATE OF NOTICE January 2, 2013.

LAW OFFICES OF DOUGLAS M. STROUT

s:/Douglas M. Strout  
DOUGLAS M. STROUT  
Attorney for Debtor  
North Carolina State Bar #17938  
300 Western Boulevard, Suite A  
Jacksonville, NC 28546  
Telephone (910) 347-9300  
Facsimile (910) 347-2002

**CERTIFICATE OF SERVICE**

I, Douglas M. Strout, of Law Offices of Douglas M. Strout certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on January 2, 2013, I served a copy of the foregoing **Motion to Allow Surrender of Real Property and Modification of Chapter 13 Plan** to the following by causing a true and correct copy to be mailed, first class postage prepaid

Mr. Richard M. Stearns  
Bankruptcy Trustee  
1015 Conference Drive  
Greenville, NC 27858

Allied Restoration  
Attn: Managing Agent  
2725-3C Old Wrightsboro  
Wilmington, NC 28405

U.S. Bankruptcy Court  
1760 A Parkwood Blvd.  
Wilson, NC 27893

Bill Me Later  
Attn: Managing Agent  
P.O. Box 105658  
Atlanta, GA 30348

Mr. Mark Anthony Guthrie  
401 Joy Court  
Jacksonville, NC 28540

CANDICA LLC  
c/o Weinstein and Riley PS  
2001 Western Ave., Ste. 400  
Seattle, WA 98121

GMAC Mortgage  
3451 Hammond Avenue  
Waterloo, IA 50702

CBCS  
Attn: Managing Agent  
P.O. Box 2589  
Columbus, OH 43216

Oak Harbor Capital III, LLC  
c/o Weinstein & Riley, P.S.  
2001 Western Ave., Ste. 400  
Seattle, WA 98121

Capital One  
Attn: Managing Agent  
11013 W. Broad Street  
Glen Allen, VA 23060

Aarons  
Attn: Managing Agent  
1161 Western Blvd.  
Jacksonville, NC 28546

Capital One  
Attn: Managing Agent  
P.O. Box 26030  
Richmond, VA 23260

Target National Bank  
c/o Weinstein and Riley, PS  
2001 Western Ave., Ste. 400  
Seattle, WA 98121

Capital One  
Attn: Managing Agent  
P.O. Box 71083  
Charlotte, NC 28272

Chase bank USA NA  
P.O. Box 15145  
Wilmington, DE 19850

Chase/Best Buy  
Attn: Managing Agent  
Cardmember Service  
P.O. Box 15325  
Wilmington, DE 19886

Children's Place  
Attn: Managing Agent  
P.O. Box 5002  
Sioux Falls, SD 57117

Children's Place/Citi  
Attn: Managing Agent  
P.O. Box 653084  
Dallas, TX 75265

First Premier  
Attn: Managing Agent  
P.O. Box 1348  
Sioux Falls, SD 57101

First Premier Bank  
Attn: Managing Agent  
601 S. Minnesota Avenue  
Sioux Falls, SD 57104

Franklin Collection Svc.  
Attn: Managing Agent  
2978 W. Jackson Street  
Tupelo, MS 38801

Furniture Plus  
Attn: Managing Agent  
817 N. Marine Blvd.  
Jacksonville, NC 28540

GEMB/Gap  
Attn: Managing Agent  
P.O. Box 965005  
Orlando, FL 32896

GEMB/Lowe's  
Attn: Managing Agent  
P.O. Box 981083  
El Paso, TX 79998

GMAC Mortgage  
Attn: Managing Agent  
3451 Hammond Ave.  
P.O. Box 780  
Waterloo, IA 50704

GMAC Mortgage LLC  
Attn: Bankruptcy Dept.  
1100 Virginia Ave.  
Ft. Washington, PA 19034

JCPenney  
Attn: Managing Agent  
P.O. Box 27570  
Albuquerque, NM 87125

JCPenney/GEMB  
Attn: Managing Agent  
P.O. Box 960090  
Orlando, FL 32896

Just Military Loans  
Attn: Managing Agent  
901 N. Market St., Ste. 463  
Wilmington, DE 19801

LTD Financial Svcs.  
Attn: Managing Agent  
7322 Southwest Frwy, Ste. 1600  
Houston, TX 77074

Lowe's  
Attn: Managing Agent  
P.O. Box 103080  
Roswell, GA 30076

Marine Federal Credit Union  
P.O. Box 1336  
Jacksonville, NC 28541

Marine Federal Credit Union  
Attn: Managing Agent  
159 Brynn Marr Rd.  
Jacksonville, NC 28546

Rent A Center  
Attn: Managing Agent  
236 Brynn Marr Rd.  
Jacksonville, NC 28546

Marine Federal Credit Union  
Attn: Managing Agent  
165 Center Street  
Jacksonville, NC 28546

Target  
Attn: Managing Agent  
P.O. Box 660170  
Dallas, TX 75266

Marine Federal Credit Union  
Attn: Managing Agent  
P.O. Box 1551  
Jacksonville, NC 28541

USAA  
Attn: Managing Agent  
10750 Int Hwy 10 W.  
San Antonio, TX 78284

Marine Federal Credit Union  
Attn: Managing Agent  
P.O. Box 31279  
Tampa, FL 33631

USAA  
Attn: Managing Agent  
10750 McDermott Freeway  
San Antonio, TX 78288

Old Navy/GEMB  
Attn: Managing Agent  
P.O. Box 530942  
Atlanta, GA 30353

USAA  
Attn: Managing Agent  
P.O. Box 47504  
San Antonio, TX 78265

Omni Financial of NC  
Attn: Managing Agent  
431 Western Blvd., Ste. H  
Jacksonville, NC 28546

USAA  
P.O. Box 829009  
Dallas, TX 75382

Portfolio Investments I LLC  
c/o Recovery Mgmt Sys Corp  
25 SE 2<sup>nd</sup> Ave., Ste. 1120  
Miami, FL 33131

Zales  
Attn: Managing Agent  
P.O. Box 9714  
Gray, TN 37615

Portfolio Recovery Associates LLC  
P.O. Box 41067  
Norfolk, VA 23541

Zales/CBSD  
Attn: Managing Agent  
P.O. Box 689182  
Des Moines, IA 50368

Premier Bankcard/Charter  
P.O. Box 2208  
Vacaville, CA 95696

I certify under penalty of perjury that the foregoing is true and correct.

Dated: January 2, 2013.

Law Offices of Douglas M. Strout

By: s:/Douglas M. Strout  
Douglas M. Strout  
North Carolina State Bar No.: 17938  
300 Western Boulevard, Suite A  
Jacksonville, NC 28546  
Telephone: (910) 347-9300  
Fax: (910) 347-200



**SO ORDERED.**

**SIGNED this 07 day of February, 2013.**



Randy D. Doub  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION

In Re: Mark Anthony Guthrie  
Debtor(s)

Case No.: 11-03134-8-RDD

Address: 401 Joy Court  
Jacksonville, NC 28540

Social Security No(s): [REDACTED]

Chapter: 13

**ORDER ALLOWING SURRENDER OF REAL PROPERTY AND  
MODIFICATION OF CHAPTER 13 PLAN**

**THIS MATTER** coming on for hearing upon motion of Counsel of Record for Debtor(s), seeking an Order authorizing the Debtor to surrender his real property and modification of Debtor(s) Chapter 13 Plan, and;

**IT APPEARING** to the undersigned United States Bankruptcy Judge that a modification of Debtors' Chapter 13 Plan is warranted and is in the best interest of the Debtor.

**IT FURTHER APPEARING** that notice to creditors having gone forward, pursuant to Rule 2002(a) of the Bankruptcy Rules, and no objection having been filed thereto;

**IT IS THEREFORE, ORDERED** that the motion of the Debtors be, and the same is, hereby granted authorizing the surrender of the Debtor's real property and home located at 401 Joy Court, Jacksonville, North Carolina, and modifying the Debtor's Chapter 13 plan to provide for twenty-one (21) monthly payments of \$1,825.00 each, followed by thirty-nine (39) monthly payments of \$825.00 each; allowing counsel for Debtor non-base additional attorneys fees in the amount of \$250.00 as allowed under the Local Rules of this district; and providing such other and further relief as to the Court may seem just and proper.

In the event that the Creditor's allowed claim exceeds the value of the Collateral, the Creditor is entitled to seek a deficiency claim to the extent allowed by state law and the contractual rights of the parties. The Creditor shall have the right to file a proof of claim for any deficiency to be allowed as an unsecured claim within 120 days of the entry of this order.

END OF DOCUMENT

**EXHIBIT 4**



113473-05310

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION

IN RE ) Case No. 11-03134-8-RDD  
Mark Anthony Guthrie )  
Debtor(s) ) Chapter 13

**TRANSFER OF CLAIM OTHER THAN FOR SECURITY**

A CLAIM HAS BEEN FILED IN THIS CASE or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Ocwen Loan Servicing, LLC

Name of Transferee

GMAC Mortgage, LLC

Name of Transferor

Name and Address where notices to transferee should be sent:

Court Claim #: 13  
Amount of Claim: \$195,701.44  
Date Claim Filed: November 30, 2011

Ocwen Loan Servicing, LLC  
Attn: Bankruptcy Department  
1100 Virginia Drive  
Fort Washington, PA 19034  
Phone:  
Last Four Digits of Acct#: [REDACTED]

Name and Address where transferee payments should be sent (if different from above):

Ocwen Loan Servicing, LLC  
Attn: Payment Processing  
3451 Hammond Avenue  
Waterloo, IA 50702  
Phone:  
Last Four Digits of Acct#: [REDACTED]

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: /s/ Neil D. Jonas  
Transferee/Transferee's Agent  
Neil D. Jonas  
N.C. Bar No. 31622

Date: March 15, 2013

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18U.S.C. §§ 152 & 3571.*



**Ocwen Loan Servicing, LLC**  
WWW.OCWEN.COM  
Helping Homeowners Is What We Do!™

1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Toll Free: (800) 746-2936

11/04/2013

Mark Anthony Guthrie

Property Address: 401 Joy Ct  
Jacksonville, NC 28540-9301

Dear Mark Anthony Guthrie

Ocwen Loan Servicing, LLC (OCWEN) would like to take this opportunity to thank you for your recent communication regarding the above referenced loan. We appreciate the time and effort on your part to bring your concern to our attention. Pursuant to your request, we have reviewed the loan and below is our response to the concern raised:

**Concern#1** You stated that you have surrendered the property in bankruptcy and requested us to update our records accordingly.

**Response**

Our records indicate that you (Mark Anthony Guthrie) filed protection under Bankruptcy Chapter 13 on April 21, 2011 and the relief was granted on February 7, 2013.

We contacted the appropriate department and were notified that you surrendered the property under Bankruptcy Chapter 13; however, relief has not been granted on the property. Therefore, we are in the process of filing a Motion for Relief on the property.

For any questions or concerns regarding the loan, you may contact our Bankruptcy department at (888) 354-6599.

We trust that the information provided has fully addressed your concern. Please note that you may request copies of collateral or certain loan documents that were relied upon in making this determination. You may receive these documents by sending in a written request to the Research Department at the address mentioned below. Please visit our website ([www.ocwencustomers.com](http://www.ocwencustomers.com)) which is available 24 hours a day, seven days a week, as many of the answers to your account specific questions may be found there.

NMLS # 1852

RRCMAINLTRM

*This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is purely provided to you for informational purposes only with regard to our secured lien on the above referenced property. It is not intended as an attempt to collect a debt from you personally.*

Page 1 of 2

**EXHIBIT 6**

Page 0046



**Ocwen Loan Servicing, LLC**

**WWW.OCWEN.COM**

*Helping Homeowners Is What We Do!*

1661 Worthington Road, Suite 100

West Palm Beach, FL 33409

Toll Free: (800) 746-2936

However, should you have any further questions in regards to this issue, please contact our Research Department at (800) 241-9960. After speaking with our Research Department, if you still have questions or concerns, please feel free to contact the OCWEN consumer advocate through OCWEN's website or by phone at (800) 390-4656. You may also send written correspondence to the following address:

Ocwen Loan Servicing, LLC  
Attention: Research Department  
P.O. Box 24736  
West Palm Beach, FL 33416-4736

Sincerely,  
Ramitha K A  
Research Department  
Ocwen Loan Servicing, LLC

NMLS # 1852

RRCMAINLTRM

*This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is purely provided to you for informational purposes only with regard to our secured lien on the above referenced property. It is not intended as an attempt to collect a debt from you personally.*

Page 2 of 2

**EXHIBIT 6**

Page 0047

United States Bankruptcy Court Eastern District of North Carolina New Bern Division					
Debtor 1	<u>Mark Anthony Guthrie</u>			Social Security number or ITIN	<u>[REDACTED]</u>
	First Name	Middle Name	Last Name	EIN	_____-_____-____
Debtor 2				Social Security number or ITIN	_____
(Spouse, if filing)	First Name	Middle Name	Last Name	EIN	_____-_____-____
Case number: 11-03134-8-DMW					

## Order of Discharge

12/15

IT IS ORDERED: A discharge under 11 U.S.C. § 1328(a) is granted to:

**Mark Anthony Guthrie**

5/18/16

By the court: **David M. Warren**  
United States Bankruptcy Judge

### Explanation of Bankruptcy Discharge in a Chapter 13 Case

This order does not close or dismiss the case.

#### Creditors cannot collect discharged debts

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily. 11 U.S.C. § 524(f).

#### Most debts are discharged

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts provided for by the chapter 13 plan.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

#### Some debts are not discharged

Examples of debts that are not discharged are:

- ♦ debts that are domestic support obligations;
- ♦ debts for most student loans;
- ♦ debts for certain types of taxes specified in 11 U.S.C. §§ 507(a)(8)(C), 523(a)(1)(B), or 523(a)(1)(C) to the extent not paid in full under the plan;

For more information, see page 2

- ◆ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ◆ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ◆ some debts which the debtors did not properly list;
- ◆ debts provided for under 11 U.S.C. § 1322(b)(5) and on which the last payment or other transfer is due after the date on which the final payment under the plan was due;
- ◆ debts for certain consumer purchases made after the bankruptcy case was filed if obtaining the trustee's prior approval of incurring the debt was practicable but was not obtained;
- ◆ debts for restitution, or damages, awarded in a civil action against the debtor as a result of malicious or willful injury by the debtor that caused personal injury to an individual or the death of an individual; and
- ◆ debts for death or personal injury caused by operating a vehicle while intoxicated.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of a chapter 13 discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**

United States Bankruptcy Court  
Eastern District of North Carolina

In re:  
Mark Anthony Guthrie  
Debtor

Case No. 11-03134-DMW  
Chapter 13

**CERTIFICATE OF NOTICE**

District/off: 0417-8

User: kemp\_br  
Form ID: 3180W

Page 1 of 3  
Total Noticed: 55

Date Rcvd: May 18, 2016

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 20, 2016.

db +Mark Anthony Guthrie, [REDACTED]  
cr +GMAC Mortgage, 3451 Hammond Avenue, Waterloo, IA 50702-5300  
asnor +GMAC Mortgage, LLC, 1100 Virginia Drive, Fort Washington, PA 19034-3204  
asnee +Ocwen Loan Servicing, LLC, 1100 Virginia Drive, P.O. Box 8300,  
Fort Washington, PA 19034-8300  
3929889 +Aarons, Attn: Managing Agent, 1161 Western Blvd., Jacksonville, NC 28546-6652  
3929890 #+Allied Restoration, Attn: Managing Agent, 2725-3C Old Wrightsboro,  
Wilmington, NC 28405-8065  
3929891 Bill Me Later, Attn: Managing Agent, P.O. Box 105658, Atlanta, GA 30348-5658  
3929895 +CBCS, Attn: Managing Agent, P.O. Box 2589, Columbus, OH 43216-2589  
3929901 +Franklin Collection Serv, Attn: Managing Agent, 2978 W. Jackson St.,  
Tupelo, MS 38801-6731  
3929902 +Furniture Plus, Attn: Managing Agent, 817 N. Marine Blvd., Jacksonville, NC 28540-6197  
3929905 +GMAC Mortgage, Attn: Managing Agent, 3451 Hammond Avenue, P.O. Box 780,  
Waterloo, IA 50704-0780  
4133371 +GMAC Mortgage, LLC, Attn: Bankruptcy Dept., 1100 Virginia Ave.,  
Ft. Washington, PA 19034-3204  
3929908 +++Just Military Loans, Attn: Managing Agent, 901 N. Market St., Suite 463,  
Wilmington, DE 19801-3013  
3929916 ++MARINE FEDERAL CREDIT UNION, P O BOX 1336, JACKSONVILLE NC 28541-1336  
(address filed with court: MFCU, Attn: Managing Agent, 165 Center Street,  
Jacksonville, NC 28540)  
3929915 MFCU, Attn: Managing Agent, 159 Brynn Marr Rd., Jacksonville, NC 28546  
3929914 Marine Federal Credit Un, Attn: Managing Agent, P.O. Box 31279, Tampa, FL 33631-3279  
3929912 +Marine Federal Credit Un, Attn: Managing Agent, P.O. Box 1551,  
Jacksonville, NC 28541-1551  
3929911 +Marine Federal Credit Un, Attn: Managing Agent, 165 Center Street,  
Jacksonville, NC 28546-5708  
3929913 Marine Federal Credit Un, Attn: Managing Agent, 159 Brynn Marr Rd.,  
Jacksonville, NC 28546  
3943861 Marine Federal Credit Union, PO Box 1336, Jacksonville, NC 28541-1336  
3929918 +Omni Financial of NC, Attn: Managing Agent, 431 Western Blvd., Suite H,  
Jacksonville, NC 28546-6823  
3991399 USAA, PO Box 829009, Dallas, TX 75382-9009  
3929923 USAA, Attn: Managing Agent, 10750 Int Hwy 10 W., San Antonio, TX 78265  
3929926 Zales/CBSD, Attn: Managing Agent, P.O. Box 689182, Des Moines, IA 50368

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

asnor +EDI: OPHSUBSID.COM May 19 2016 01:48:00 Candica, LLC, C/O WEINSTEIN & RILEY,  
2001 WESTERN AVENUE, SUITE 400, SEATTLE, WA 98121-3132  
cr EDI: AIS.COM May 19 2016 01:48:00 Midland Funding LLC by American InfoSource LP as a,  
PO Box 4457, Houston, TX 77210-4457  
cr +EDI: OPHSUBSID.COM May 19 2016 01:48:00 Oak Harbor Capital III, LLC,  
c/o Weinstein & Riley, P.S., 2001 Western Ave., Ste. 400, Seattle, WA 98121-3132  
cr +EDI: RECOVERYCORP.COM May 19 2016 01:48:00  
PORTFOLIO INVESTMENTS I LLC C/O RECOVERY MANAGEMEN, 25 SE 2ND AVENUE SUITE 1120,  
MIAMI, FL 33131-1605  
cr +EDI: OPHSUBSID.COM May 19 2016 01:48:00 Vanda, LLC, c/o Weinstein & Riley, P.S.,  
2001 Western Ave., Ste. 400, Seattle, WA 98121-3132  
3980003 +EDI: OPHSUBSID.COM May 19 2016 01:48:00 CANDICA L.L.C., C O WEINSTEIN AND RILEY, PS,  
2001 WESTERN AVENUE, STE 400, SEATTLE, WA 98121-3132  
3929893 +EDI: CAPITALONE.COM May 19 2016 01:48:00 Capital One, Attn: Managing Agent,  
11013 W. Broad St., Glen Allen, VA 23060-6017  
3929894 +EDI: CAPITALONE.COM May 19 2016 01:48:00 Capital One, Attn: Managing Agent,  
P.O. Box 26030, Richmond, VA 23260-6030  
3929892 +EDI: CAPITALONE.COM May 19 2016 01:48:00 Capital One, Attn: Managing Agent,  
P.O. Box 71083, Charlotte, NC 28272-1083  
3971467 EDI: CHASE.COM May 19 2016 01:48:00 Chase Bank USA, N.A., PO Box 15145,  
Wilmington, DE 19850-5145  
3929896 +EDI: CHASE.COM May 19 2016 01:48:00 Chase/Best Buy, Attn: Managing Agent,  
Cardmember Service, P.O. Box 15325, Wilmington, DE 19886-5325  
3929897 +EDI: CITICORP.COM May 19 2016 01:48:00 Children's Place, Attn: Managing Agent,  
P.O. Box 5002, Sioux Falls, SD 57117-5002  
3929898 +EDI: CITICORP.COM May 19 2016 01:48:00 Children's Place/Citi, Attn: Managing Agent,  
P.O. Box 653084, Dallas, TX 75265-3084  
3929899 +EDI: AMINFOP.COM May 19 2016 01:48:00 First Premier, Attn: Managing Agent,  
P.O. Box 1348, Sioux Falls, SD 57101-1348  
3929900 +EDI: AMINFOP.COM May 19 2016 01:48:00 First Premier Bank, Attn: Managing Agent,  
601 S. Minnesota Ave., Sioux Falls, SD 57104-4868  
3929903 +EDI: RMSC.COM May 19 2016 01:48:00 GEMB/Gap, Attn: Managing Agent, P.O. Box 965005,  
Orlando, FL 32896-5005  
3929904 +EDI: RMSC.COM May 19 2016 01:48:00 GEMB/Lowe's, Attn: Managing Agent, P.O. Box 981083,  
El Paso, TX 79998-1083

**EXHIBIT 8**

Page 0050

District/off: 0417-8

User: kemp\_br  
Form ID: 3180W

Page 2 of 3  
Total Noticed: 55

Date Rcvd: May 18, 2016

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center (continued)

3929906 EDI: RMSC.COM May 19 2016 01:48:00 JC Penney, Attn: Managing Agent, P.O. Box 27570, Albuquerque, NM 87125

3929907 EDI: RMSC.COM May 19 2016 01:48:00 JC Penney/GEMB, Attn: Managing Agent, P.O. Box 960090, Orlando, FL 32896-0090

3929910 +EDI: LTDFINANCIAL.COM May 19 2016 01:48:00 LTD Financial Services, Attn: Managing Agent, 7322 Southwest Frwy, Suite 1600, Houston, TX 77074-2134

3929909 EDI: RMSC.COM May 19 2016 01:48:00 Lowe's, Attn: Managing Agent, P.O. Box 103080, Roswell, GA 30076

3929917 EDI: RMSC.COM May 19 2016 01:48:00 Old Navy/GEMB, Attn: Managing Agent, P.O. Box 530942, Atlanta, GA 30353-0942

4066590 EDI: PRA.COM May 19 2016 01:48:00 Portfolio Recovery Associates, LLC, POB 12914, Norfolk VA 23541

4008748 EDI: RECOVERYCORP.COM May 19 2016 01:48:00 Portfolio Investments I LLC, c/o Recovery Management Systems Corporat, 25 SE 2nd Avenue Suite 1120, Miami FL 33131-1605

3960247 +E-mail/Text: csidl@sbcbglobal.net May 19 2016 01:56:25 Premier Bankcard/Charter, P.O. Box 2208, Vacaville CA 95696-8208

3929919 +E-mail/Text: bankruptcy@rentacenter.com May 19 2016 01:56:37 Rent A Center, Attn: Managing Agent, 236 Brynn Marr Rd., Jacksonville, NC 28546-5705

3946940 +E-mail/Text: bncmail@w-legal.com May 19 2016 01:56:16 TARGET NATIONAL BANK, C O WEINSTEIN AND RILEY, PS, 2001 WESTERN AVENUE, STE 400, SEATTLE, WA 98121-3132

3929920 EDI: WTRRNBNK.COM May 19 2016 01:48:00 Target, Attn: Managing Agent, P.O. Box 660170, Dallas, TX 75266-0170

3929924 +EDI: USAA.COM May 19 2016 01:48:00 USAA, Attn: Managing Agent, P.O. Box 47504, San Antonio, TX 78265-7504

3929922 +EDI: USAA.COM May 19 2016 01:48:00 USAA, Attn: Managing Agent, 10750 McDermott Freeway, San Antonio, TX 78288-1600

3929925 +EDI: CITICORP.COM May 19 2016 01:48:00 Zales, Attn: Managing Agent, P.O. Box 9714, Gray, TN 37615-9714

TOTAL: 31

\*\*\*\*\* BYPASSED RECIPIENTS (undeliverable, \* duplicate) \*\*\*\*\*

cr GMAC Mortgage, LLC

cr Ocwen Loan Servicing, LLC

cr USAA Federal Savings Bank

asnee\* +Oak Harbor Capital III, LLC, c/o Weinstein & Riley, P.S., 2001 Western Ave., Ste. 400, Seattle, WA 98121-3132

asnor\* +Target National Bank, c/o Weinstein and Riley, PS, 2001 Western Avenue, Ste 400, Seattle, WA 98121-3132

asnee\* +Vanda, LLC, c/o Weinstein & Riley, P.S., 2001 Western Ave., Ste. 400, Seattle, WA 98121-3132

TOTALS: 3, \* 3, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

Addresses marked '+' were redirected to the recipient's preferred mailing address pursuant to 11 U.S.C. 342(f)/Fed.R.Bank.PR.2002(g) (4).

Addresses marked '+' were transmitted to the recipient's preferred mailing address pursuant to 11 U.S.C. 342(e).

Addresses marked '#' were identified by the USPS National Change of Address system as requiring an update. While the notice was still deliverable, the notice recipient was advised to update its address with the court immediately.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 20, 2016

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

Case 11-03134-8-DMW Doc 49 Filed 05/20/16 Entered 05/21/16 01:15:43 Page 3 of 5

District/off: 0417-8

User: kemp\_br  
Form ID: 3180W

Page 3 of 3  
Total Noticed: 55

Date Rcvd: May 18, 2016

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on May 18, 2016 at the address(es) listed below:

Douglas M. Strout on behalf of Debtor Mark Anthony Guthrie bankruptcy@stroutlaw.com  
Richard M Stearns nharrison@suddenlinkmail.com

TOTAL: 2



United States Bankruptcy Court Eastern District of North Carolina New Bern Division			
Debtor 1	<u>Mark Anthony Guthrie</u>		Social Security number or ITIN <span style="background-color: black; color: black;">[REDACTED]</span>
	First Name	Middle Name	Last Name
Debtor 2			Social Security number or ITIN _____
(Spouse, if filing)	First Name	Middle Name	Last Name
			EIN ____-____-____
Case number: 11-03134-8-DMW			

## Order of Discharge

12/15

**IT IS ORDERED:** A discharge under 11 U.S.C. § 1328(a) is granted to:

**Mark Anthony Guthrie**

5/18/16

By the court: David M. Warren  
United States Bankruptcy Judge

### Explanation of Bankruptcy Discharge in a Chapter 13 Case

This order does not close or dismiss the case.

#### Creditors cannot collect discharged debts

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily. 11 U.S.C. § 524(f).

#### Most debts are discharged

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts provided for by the chapter 13 plan.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

#### Some debts are not discharged

Examples of debts that are not discharged are:

- ♦ debts that are domestic support obligations;
- ♦ debts for most student loans;
- ♦ debts for certain types of taxes specified in 11 U.S.C. §§ 507(a)(8)(C), 523(a)(1)(B), or 523(a)(1)(C) to the extent not paid in full under the plan;

For more information, see page 2

- ◆ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ◆ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ◆ some debts which the debtors did not properly list;
- ◆ debts provided for under 11 U.S.C. § 1322(b)(5) and on which the last payment or other transfer is due after the date on which the final payment under the plan was due;
- ◆ debts for certain consumer purchases made after the bankruptcy case was filed if obtaining the trustee's prior approval of incurring the debt was practicable but was not obtained;

- ◆ debts for restitution, or damages, awarded in a civil action against the debtor as a result of malicious or willful injury by the debtor that caused personal injury to an individual or the death of an individual; and
- ◆ debts for death or personal injury caused by operating a vehicle while intoxicated.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of a chapter 13 discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**



**Ocwen Loan Servicing, LLC**  
 www.ocwen.com  
 Helping Homeowners Is What We Do®

1661 Worthington Road, Suite 100  
 West Palm Beach, FL 33409  
 Toll Free: 800.746.2936

08/03/2017

Mark Anthony Gubite

Property Address: 401 Joy Ct  
 Jacksonville, NC 28540

Dear Mark Anthony Gubite,

Ocwen Loan Servicing, LLC (OCWEN) would like to take this opportunity to thank you for your recent communication regarding the above referenced loan. We appreciate the time and effort on your part to bring your concern to our attention. Pursuant to your request, we have reviewed the loan and below is our response to the concern raised:

**Concern:** You provided us with the bankruptcy discharged documents and specified that no collection attempts to be made as per discharged document, therefore, requested to update our records.

**Response:** Our records have been updated to reflect that you (Mark Anthony Gubite) filed for protection under Bankruptcy Chapter 13 on 04/21/2011, which was discharged on 05/18/2016.

Please be advised that as per the Bankruptcy chapter 13 discharged guidelines, collection process will continue on loans which are out of bankruptcy. The creditor's violation for collection process as in general mentioned in all the discharged documents. We would follow the bankruptcy chapter 13 discharged guidelines. However, if you do not wish to receive the billing statements, please send us a written request.

For any further information or inquiries regarding the loan, you may contact our Customer Care Center at 1-800-746-2936 (Monday through Friday 8:00 am to 9:00 pm ET, Saturday 8:00 pm to 5:00 pm ET and Sunday 9:00 am to 9:00 pm ET).

NMLS # 1852

RRCMANITRM

This communication is from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is purely provided to you for informational purposes only with regard to our secured lien on the above referenced property. It is not intended as an attempt to collect a debt from you personally.



8-014-AH220-000742-001-01-000-000-000-000



MARK ANTHONY GUTHRIE  
TONIA M GUTHRIE





Ocwen Loan Servicing, LLC  
www.ocwen.com  
Helping Homeowners is What We Do!®

1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Toll Free: 800.745.2936

1/14/2019

78144TER1-000001-002-01-000-000-000



MARK ANTHONY GUTHRIE  
TONIA M GUTHRIE

Property Address:  
401 Joy Ct  
Jacksonville, NC 28540

Dear Customer(s),



Why We Are  
Sending This  
Letter

This is an important notice containing information critical to this mortgage account.

Ocwen Loan Servicing has joined forces with PHH Mortgage Services, a mortgage company with well-established mortgage origination and servicing capabilities. As a result, we will be consolidating all mortgage accounts into one company, PHH Mortgage Services ("PHH").

Effective 2/1/2019, PHH will be the new servicer for this account and will be collecting the mortgage payments going forward.

Please rest assured that Ocwen will be here through this transition. Together, Ocwen and PHH stand ready to assist in any way we can. For any questions regarding the transition, please call 855.245.3916.



What Needs  
To Be Done

Please send all payments due on or after 2/1/2019 to PHH at this address:

PHH Mortgage Services  
P.O. Box 371458  
Pittsburgh, PA 15250-7458

If currently using an Online Bill Payment provider, please contact them to update the payee, remittance address and new account number (if applicable). Failure to make these updates could delay the crediting of payments. If currently mailing in a payment, please use the coupon provided or wait until the new PHH statement is mailed.



What We  
Will Do

Due to this transfer, the account number will change. The Ocwen account number is [REDACTED] and the new PHH account number will be [REDACTED].

During the first week after 2/1/2019, no transactions can be made on the account while PHH verifies the accuracy of all account information in its system. As soon as this process is completed, the account will be activated and you will receive a welcome letter from PHH.

During the 60-day period following the transfer date of 2/1/2019, any payment received by Ocwen on or before its due date will not be treated as late by PHH and no late fee will be charged.

NMLS # 1852

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GBYEPHH\_ACH

Page 1

EXHIBIT 10

Page 0058



**Ocwen Loan Servicing, LLC**

www.ocwen.com  
*Helping Homeowners is What We Do!*

1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Toll Free: 800.746.2936

MortgageQuestions.com is PHH's website for its servicing customers, which you will be able to access once the transfer process is complete, by 2/7/2019.

We encourage registration on the website to access all the account activity, including payment due date and amounts, escrow balances and other account information. Election of paperless billing, direct debits and various alerts, including payments received, hazard disbursements, tax disbursements, paperless documents, and year-end statements are also available. Specific registration instructions for Ocwen customers is listed on the MortgageQuestions.com home page.

NMLS # 1852

GBYEPHH\_ACH

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1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Toll Free: 800.746.2936

**NOTICE OF SERVICING TRANSFER**  
**EFFECTIVE 2/1/2019**



The servicing of your mortgage is being transferred, effective 2/1/2019. This means that on or after this date, PHH will be collecting the mortgage payments. The transfer of servicing does not affect any term or condition of the mortgage other than terms directly related to the servicing of the account.

Ocwen Loan Servicing, LLC ("Ocwen") is now collecting the payments. Ocwen will stop accepting payments received after 1/31/2019. PHH Mortgage Services ("PHH") will collect the payments going forward. PHH will start accepting payments received on 2/1/2019.

Please send all payments due on or after 2/1/2019 to PHH at this address:

**PHH Mortgage Services**  
P.O. Box 371458  
Pittsburgh, PA 15250-7458

For any questions about the mortgage account or this transfer, please contact Ocwen or PHH using this information:

	Until 1/31/2019:	On or After 2/1/2019:
<b>Servicer</b>	Current Servicer Ocwen Loan Servicing, LLC	New Servicer PHH Mortgage Services
<b>Department</b>	Customer Service	Customer Service
<b>Toll-Free Number</b>	800.746.2936	877.744.2506
<b>Website</b>	ocwencustomers.com	MortgageQuestions.com
<b>Address</b>	P.O. Box 24736 West Palm Beach, FL 33416	1 Mortgage Way Mt. Laurel, NJ 08054
<b>Account Number</b>		

Under Federal law, during the 60-day period following the effective date of the transfer of mortgage servicing, a payment received by Ocwen on or before its due date may not be treated by PHH as late, and a late fee may not be assessed to the account.

Remember, Ocwen will be here for you throughout this transfer to assist in any way we can. If you have questions regarding this transition, please call us at 855.245.3916.

Sincerely,  
Ocwen Loan Servicing, LLC

NMLS # 1852

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www.ocwen.com  
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1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Toll Free: 800.746.2936

**Why is my mortgage account being transferred?**

Ocwen Loan Servicing has joined forces with PHH Mortgage Services, a mortgage company with well-established mortgage origination and servicing capabilities. As a result, we will be consolidating all mortgage accounts under one company, PHH Mortgage Services ("PHH").

**What payment methods are available?**

PHH offers several convenient options. In addition to making a payment by mail, the accountholder may enroll for recurring payments from a checking or savings account or make payments online at MortgageQuestions.com. If the monthly payment is made through an online bill payment service with a biweekly program or via a government allotment service, please be sure to change the payee to PHH and use the new payment address and account details as applicable.

**How will this affect the credit reporting on my mortgage?**

After 2/1/2019, the current Ocwen account number will be reported to the credit bureaus as "Account Transferred to another Servicer/Company." Activity on the new account number will appear under the name "PHH Mortgage Services" on the credit report going forward.

**What if I made a payment to Ocwen, but it does not show up on my PHH account?**

If Ocwen receives a payment on or after 2/1/2019, the payment will be forwarded automatically to PHH. It may take a few days for PHH to receive and apply the payments, but this forwarding will not negatively impact the account or credit report during the first 60 days after transfer.

**Does PHH have a website?**

The PHH website is MortgageQuestions.com. We encourage registration on the website to access all the account activity, including payment due dates and amounts, escrow balances and other account information. Election of paperless billing, direct debits and various alerts, including payments received, hazard disbursements, tax disbursements, paperless documents, and year-end statements are also available.

**Can I use my ocwencustomers.com username and password to log in to MortgageQuestions.com?**

Your current user name will not transfer to MortgageQuestions.com. After 2/7/2019, you can set up the account on the PHH website, MortgageQuestions.com by establishing a new username and password.

**Will I continue to receive paperless billing notifications?**

Yes. If enrolled in paperless billing, you will continue to receive emails notifying you of the availability of the billing statement at MortgageQuestions.com.

**I am under the protection of the Servicemembers Civil Relief Act (SCRA). Do I need to take action regarding this?**

The service transfer does not impact any service member protections. Please notify us of any change in active duty status.

NMLS # 1852

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A trial modification plan is currently in place, but payments remain due before the account is permanently modified.  
What should be done?

Monthly payments should continue to be made as required in the modification plan. Ocwen's records will be maintained by PHH Mortgage Services, including the status of the modification. Please allow 30 days for PHH to review and process the information. It is not necessary to call for a status prior to 30 days, as the agent will not have any additional information to provide.

If the trial plan is scheduled to end within 60 days of the mortgage account transfer date, the trial plan will not expire until the later of (a) the last day of the month the modification becomes effective, as noted in the final Modification Agreement, or (b) the due date by which the final Modification Agreement must be returned, as noted in the final Modification Agreement.

A trial modification is currently in place. Is it necessary to provide any additional information for the mortgage account to be permanently modified?

No. There is no need to send any additional documentation for PHH to send a final Modification Agreement. Once the executed, final Modification Agreement is returned and all required monthly trial plan payments have been made, PHH will permanently modify the mortgage.

How can the account Relationship Manager be contacted?

After 2/11/2019, the Relationship Manager can be contacted by calling the PHH Customer Care Center at 877.744.2506 and requesting to speak with him/her.

A modification application has just been submitted to Ocwen. Should this also be sent to PHH?

It is not necessary to resubmit the application or documents to PHH. Please allow up to 30 days from the date of the account transfer for PHH to process the application and determine eligibility. It is not necessary to call prior to 30 days, as the agent will not have any additional information to provide.

I received a notice from Ocwen that there were missing documents for a modification, but I have not sent them yet.

Should these documents be sent to PHH now?

Yes, please send the documents to PHH Mortgage Services by fax to 856.917.2848 or by email to HAT@mortgagefamily.com. Ocwen will be providing PHH with the status of the modification (trial plan or initial application), copies of the initial application and information identifying the missing documentation.

NMLS # 1852

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**I have a Short Sale or Deed in Lieu application pending with Ocwen. Do I have to resend all the documentation to PHH now and re-apply?**

If there is a pending foreclosure sale date or closing scheduled in the next 60 days, please resend the documentation to PHH by fax to 856.917.2848 or by email to HAT@mortgagefamily.com. If there is not a foreclosure sale or scheduled closing in the next 60 days, Ocwen will provide PHH the status of the pending resolution. PHH will follow up with a final approval or denial. Please allow PHH Mortgage Services 30 days to process the Short Sale or Deed in Lieu application.

**I received approval from Ocwen for a Short Sale or Deed in Lieu. Will this approval be honored by PHH?**

Yes, it will be honored as long as the original requirements or contingencies for approval provided by Ocwen are met. With respect to Short Sales, please note that the original expiration date of Ocwen's approval (the "good through" date) still applies; if it has expired, the approval is no longer valid. Ocwen will be providing these approval requirements to PHH.

NMLS # 1852

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West Palm Beach, FL 33409  
Toll Free: 800.746.2936



X

<b>Payable to:</b>  PHH Mortgage Services P.O. Box 371458 Pittsburgh, PA 15250-7458		<b>Note:</b>  Amount of Payment: \$ _____
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NMLS # 1852

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**OCWEN LOAN SVC LLC**  
 1801 WORTHINGTON RD STE 100  
 WEST PALM BEACH, FL 33409  
 (561) 832-8000

Date Opened: 08/21/2008  
 Responsibility: Joint Account  
 Account Type: Mortgage Account  
 Loan Type: VA REAL ESTATE MORTGAGE

Date Updated: 12/31/2017  
 Payment Received: \$0  
 Last Payment Made: 10/11/2015

Pay Status: >Account 120 Days Past Due Date<  
 Terms: \$1,117 per month, paid Monthly for 360 months  
 >Maximum Delinquency of 120 days in 10/2015 and in 12/2017 for \$50,782<

High Balance: High balance of \$180,129 from 08/2010 to 03/2017; \$180,126 from 06/2017 to 12/2017  
 Estimated month and year that this item will be removed: 08/2018

Page 4 of 17

	12/2017	11/2017	10/2017	09/2017	08/2017	07/2017	06/2017	05/2017	04/2017	03/2017
Balance	\$179,974	\$179,974	\$179,974	\$179,974	\$179,974	\$179,974	\$179,974			\$179,974
Amount Paid	\$0	\$0	\$0	\$0	\$0	\$0	\$0			\$0
Rating	120	120	120	120	120	120	120	120	120	120

	02/2017	01/2017	12/2016	11/2016	10/2016	09/2016	08/2016	07/2016	06/2016	05/2016
Balance	\$179,974	\$179,974	\$179,974	\$179,974	\$179,974	\$179,974				
Amount Paid	\$0	\$132	\$0	\$0	\$0	\$0				
Rating	120	120	120	120	120	120	120	120	120	120

	04/2015	03/2016	02/2016	01/2016	12/2015	11/2015	10/2015	09/2015	08/2015	07/2015
Rating	120	120	120	120	120	120	120	OK	X	X



Report Created On: 01/11/2019  
File Number: [REDACTED]

[REDACTED]

SSN: [REDACTED]

You have been on our files since 09/01/2000  
Date of Birth: [REDACTED]

**Names Reported:** MARK ANTHONY GUTHRIE, MARK A. GUNTHER and MARK A. GURTHIE

**Addresses Reported:**

Address

Date Reported

401 JOY CT, JACKSONVILLE, NC 28540-8301

05/05/2008

**Telephone Numbers Reported:**

**Employment Data Reported:**

Employer Name

Position

Date Hired

Date Verified

USMC MARINE CORP

PILOT

**Adjustable Rate Mortgage Information**

The information regarding adjustable rate mortgages was obtained from public records and appears on your report. TransUnion uses a vendor to collect Adjustable Rate Mortgage ("ARM") information from public record sources. This ARM data may be included in your report when it is requested by TransUnion customers qualified to receive it. The information was obtained from the Recorder's Office in the jurisdiction and state specified. None of these items contains adverse information; they are simply a listing of the information filed in the Recorder's Office concerning your adjustable rate mortgage.

**MORTGAGE DETAILS FROM PUBLIC RECORD**

Recorder's Office:  
ONslow, NC

Origination Date: 08/2009  
Initial Rate Adjustment: 01/2015  
Next Rate Change Date: 01/2019  
Rate Change Frequency: Yearly  
Rate Change Interval: 01  
Index Type: constantMaturityBill  
Look Back Period (days): 30

Loan Amount: \$180,126  
Rate Calculation Change: 2%  
Change Percent Limit: 2%  
Maximum Rate: 6%  
Combined Loan to Value: 109.50%

**Account Information**

Typically, creditors report any changes made to your account information monthly. This means that some accounts listed below may not reflect the most recent activity until the creditor's next reporting. This information may include things such as balances, payments, dates, remarks, ratings, etc. The key(s) below are provided to help you understand some of the account information that could be reported.

**Rating Key**

Some creditors report the timeliness of your payments each month in relation to your agreement with them. The ratings in the key below describe the payments that may be reported by your creditors. Please note: Some but not all of these ratings may be present in your credit report.

N/A	X	On	30	60	90	120	180	VS	30	60	120
Not Reported	Unknown	Current	30 days late	60 days late	90 days late	120+ days late	Collection	Voluntary Surrender	Repossession	Charge Off	Foreclosure



#### Remarks Key

Additionally, some creditors may notate your account with comments each month. We refer to these creditor comments as "Remarks". The key below gives the descriptions of the abbreviated remarks contained in your credit file. Any remark containing brackets > < indicates that this remark is considered adverse.

AND - AFFECTED BY NATURAL DISASTER

#### Adverse Accounts

Adverse information typically remains on your credit file for up to 7 years from the date of the delinquency. To help you understand what is generally considered adverse, we have added >brackets< to those items in this report. For your protection, your account numbers have been partially masked, and in some cases scrambled. Please note: Accounts are reported as "Current; Paid or paying as agreed" if paid within 30 days of the due date. Accounts reported as Current may still incur late fees or interest charges if not paid on or before the due date.

**OCWEN LOAN SVCG LLC**  
1661 WORTHINGTON RD STE 100  
WEST PALM BEACH, FL 33409  
(561) 682-8000

Date Opened: 08/21/2009  
Responsibility: Joint Account  
Account Type: Mortgage Account  
Loan Type: VA REAL ESTATE MORTGAGE

Date Updated: 11/30/2018  
Payment Received: \$0  
Last Payment Made: 10/11/2013

Pay Status: Current; Paid or Paying as Agreed  
Terms: \$1,071 per month, paid Monthly for 372 months  
>Maximum Delinquency of 120 days in 10/2015 and in 08/2018 for \$81,249<

High Balance: High balance of \$190,126 from 03/2018 to 11/2018

	11/2018	10/2018	09/2018	08/2018	07/2018	06/2018	05/2018	04/2018	03/2018	02/2018
Balance	\$235,403	\$235,703	\$233,785	\$234,093	\$234,653	\$233,862	\$231,864	\$179,974	\$179,974	
Scheduled Payment	\$1,071	\$1,071	\$1,071	\$1,071	\$1,071	\$1,071	\$1,071	\$1,071	\$1,071	
Amount Paid	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Past Due	\$0	\$0	\$0	\$81,249	\$81,249	\$80,207	\$78,251	\$76,291	\$74,337	
Remarks	AND	AND	AND							
Rating	OK	OK	OK	120	120	120	120	120	120	120

	01/2018	12/2017	11/2017	10/2017	09/2017	08/2017	07/2017	06/2017	05/2017	04/2017
Rating	120	120	120	120	120	120	120	120	120	120

	03/2017	02/2017	01/2017	12/2016	11/2016	10/2016	09/2016	08/2016	07/2016	06/2016
Rating	120	120	120	120	120	120	120	120	120	120

	05/2016	04/2016	03/2016	02/2016	01/2016	12/2015	11/2015	10/2015	09/2015	08/2015
Rating	120	120	120	120	120	120	120	120	OK	X

	07/2015	06/2015	05/2015	04/2015	03/2015	02/2015	01/2015	12/2014	11/2014	10/2014
Rating	X	X	X	X	X	X	X	X	X	X

#### Satisfactory Accounts



The following accounts are reported with no adverse information. For your protection, your account numbers have been partially masked, and in some cases scrambled. Please note: Accounts are reported as "Current; Paid or paying as agreed" if paid within 30 days of the due date. Accounts reported as Current may still incur late fees or interest charges if not paid on or before the due date.

**AMERICAN HONDA FINANCE**

1235 OLD ALPHARETTA RD  
SUITE 190  
ALPHARETTA, GA 30005  
(800) 543-5636

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: AUTOMOBILE

Balance: \$0  
Date Updated: 04/08/2009  
Payment Received: \$0  
Last Payment Made: 04/08/2009  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED

	03/2009	02/2009	01/2009	12/2008	11/2008	10/2008	09/2008	08/2008	07/2008	06/2008
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	05/2008	04/2008	03/2008	02/2008	01/2008	12/2007	11/2007	10/2007	09/2007	08/2007
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	07/2007	06/2007	05/2007
Rating	OK	OK	OK

**MARINE FEDERAL CREDIT UN**

SUSAN NELSON MEM ADV OFFC  
PO BOX 1551  
JACKSONVILLE, NC 28541-1551  
(910) 577-7333 x3170

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: AUTOMOBILE

Balance: [REDACTED]  
Date Updated: 11/02/2009  
Payment Received: [REDACTED]  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED

	10/2009	09/2009	08/2009	07/2009	06/2009	05/2009	04/2009	03/2009	02/2009	01/2009
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	12/2008	11/2008	10/2008	09/2008	08/2008
Rating	OK	OK	OK	OK	OK

**MARINE FEDERAL CREDIT UN**

SUSAN NELSON MEM ADV OFFC  
PO BOX 1551  
JACKSONVILLE, NC 28541-1551  
(910) 577-7333 x3170

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: UNSECURED

Balance: [REDACTED]  
Date Updated: 08/04/2009  
Payment Received: [REDACTED]  
Last Payment Made: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]





Remarks: CLOSED

	07/2009
Rating	OK

**MARINE FEDERAL CREDIT UN**

SUSAN NELSON MEM ADV OFFC  
PO BOX 1551  
JACKSONVILLE, NC 28541-1551  
(910) 577-7333 x3170

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: UNSECURED

Balance: \$0  
Date Updated: 06/02/2009  
Payment Received: [REDACTED]  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED

	05/2009	04/2009	03/2009	02/2009	01/2009	12/2008	11/2008	10/2008	09/2008	08/2008
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	07/2008	06/2008	05/2008	04/2008	03/2008	02/2008	01/2008	12/2007	11/2007
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK

**NAVY FEDERAL CR UN**

POB 3700  
MERRIFIELD, VA 22119-3700  
(888) 842-6328

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Revolving Account  
Loan Type: CREDIT CARD

Date Updated: 12/24/2018  
Payment Received: \$0  
Last Payment Made: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]

	12/2018	11/2018	10/2018	09/2018	08/2018	07/2018	06/2018	05/2018	04/2018	03/2018
Balance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Scheduled Payment	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Amount Paid	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Past Due	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Credit Limit	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
High Balance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK



	02/2018	01/2018	12/2017	11/2017	10/2017	09/2017	08/2017	07/2017	06/2017	05/2017
Balance										
Scheduled Payment										
Amount Paid										
Past Due										
Credit Limit										
High Balance										
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	04/2017	03/2017	02/2017	01/2017	12/2016	11/2016	10/2016	09/2016	08/2016	07/2016
Balance										
Scheduled Payment										
Amount Paid										
Past Due										
Credit Limit										
High Balance										
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	06/2016	05/2016	04/2016	03/2016	02/2016	01/2016	12/2015	11/2015	10/2015	09/2015
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	08/2015	07/2015	06/2015	05/2015	04/2015	03/2015	02/2015
Rating	OK	OK	OK	OK	OK	OK	OK

NAVY FEDERAL CR UN  
POB 3700  
MERRIFIELD, VA 22119-3700  
(888) 842-5328

Date Opened:  
Responsibility:  
Account Type:  
Loan Type:

Date Updated:  
Payment Received:  
Last Payment Made:

07/27/2018

Pay Status:

Current; Paid or Paying as  
Agreed

Terms:  
Date Closed:  
Date Paid:

Paid Monthly

High Balance:

Credit Limit:

Remarks: ACCOUNT CLOSED BY CONSUMER; CLOSED



	07/2018	06/2018	05/2018	04/2018	03/2018	02/2018	01/2018	12/2017	11/2017	10/2017
Balance										
Scheduled Payment										
Amount Paid										
Past Due										
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	09/2017	08/2017	07/2017	06/2017	05/2017	04/2017	03/2017	02/2017	01/2017	12/2016
Balance										
Scheduled Payment										
Amount Paid										
Past Due										
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

	11/2016	10/2016	09/2016	08/2016	07/2016	06/2016	05/2016
Balance							
Scheduled Payment							
Amount Paid							
Past Due							
Rating	OK	OK	OK	OK	OK	OK	OK

**OMNI MILITARY LOANS NORTH**

P.O. BOX 53628  
FAYETTEVILLE, NC 28305  
(910) 353-6767

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: NOTE LOAN

Balance: [REDACTED]  
Date Updated: 10/05/2010  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED

	09/2010	08/2010
Rating	OK	OK

**OMNI MILITARY LOANS NORTH**

P.O. BOX 53628  
FAYETTEVILLE, NC 28305  
(910) 353-6767

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: NOTE LOAN

Balance: [REDACTED]  
Date Updated: 06/15/2010  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED



	05/2010
Rating	OK

**OMNI MILITARY LOANS NORT**

P.O. BOX 53628  
FAYETTEVILLE, NC 28305  
(910) 353-6767

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: NOTE LOAN

Balance: [REDACTED]  
Date Updated: 03/06/2010  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED

	02/2010
Rating	OK

**OMNI MILITARY LOANS NORT**

P.O. BOX 53628  
FAYETTEVILLE, NC 28305  
(910) 353-6767

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: NOTE LOAN

Balance: [REDACTED]  
Date Updated: 12/08/2009  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: CLOSED

	11/2009	10/2009
Rating	OK	OK

**SAN DIEGO COUNTY CU**

PO BOX 910107  
SAN DIEGO, CA 92191  
(877) 732-2848 x2388

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Installment Account  
Loan Type: AUTOMOBILE

Date Updated: 01/02/2019  
Payment Received: [REDACTED]  
Last Payment Made: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]

High Balance: [REDACTED]

	01/2019	12/2018	11/2018	10/2018	09/2018	08/2018	07/2018	06/2018	05/2018	04/2018
Balance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Scheduled Payment	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Amount Paid	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Past Due	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK



	03/2018	02/2018	01/2018	12/2017	11/2017	10/2017	09/2017	08/2017	07/2017	06/2017
Balance										
Scheduled Payment										
Amount Paid										
Part Due										
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK

**USAA FED SVG BK - SAN AN**

PO BOX 47504  
SAN ANTONIO, TX 78265-7504  
(800) 631-2265

Date Opened: [REDACTED]  
Responsibility: Individual/Account  
Account Type: Installment Account  
Loan Type: AUTOMOBILE

Balance: [REDACTED]  
Date Updated: 11/17/2009  
Payment Received: [REDACTED]  
Last Payment Made: [REDACTED]  
High Balance: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Closed: [REDACTED]

Remarks: ACCOUNT CLOSED BY CONSUMER; CLOSED

	10/2009
Rating	OK

**WF/FMG**

PO BOX 14517  
DES MOINES, IA 50306  
(877) 302-6157

Date Opened: [REDACTED]  
Responsibility: Individual Account  
Account Type: Revolving Account  
Loan Type: CHARGE ACCOUNT

Date Updated: 12/11/2018  
Payment Received: [REDACTED]  
Last Payment Made: [REDACTED]

Pay Status: Current; Paid or Paying as Agreed  
Terms: [REDACTED]  
Date Paid: [REDACTED]

High Balance: [REDACTED]  
Credit Limit: [REDACTED]

	12/2018	11/2018	10/2018	09/2018	08/2018	07/2018
Balance						
Scheduled Payment						
Amount Paid						
Part Due						
Rating	OK	OK	OK	OK	OK	OK

**Regular Inquiries**

Regular Inquiries are posted when someone accesses your credit information from TransUnion. The presence of an Inquiry means that the company listed received your credit information on the dates specified. These inquiries will remain on your credit file for up to 2 years.

NAVY FEDERAL CREDIT via EQUIFAX MORTGAGE SERVICE

NAVY FCU  
1820 FOLLIN LANE  
VIENNA, VA 22180



815 EAST GATE DR  
SUITE 102  
MOUNT LAUREL, NJ 08054  
(800) 685-5000

Requested On: [REDACTED]  
Inquiry Type: Individual  
Permissible Purpose: CREDIT TRANSACTION

**WELLS FARGO BANK NA**

PO BOX 14517  
DES MOINES, IA 50306  
(800) 642-4720

Requested On: [REDACTED]  
Inquiry Type: Individual

**CHASE AUTO**

PO BOX 991003  
FORT WORTH, TX 76101  
(800) 336-6675

Requested On: [REDACTED]  
Inquiry Type: Individual

**HOEHN HONDA via 700CRHOEHN HONDA**

5454 PASEO DEL NORTE  
CARLSBAD, CA 92008  
Phone number not available

Requested On: [REDACTED]  
Inquiry Type: Individual  
Permissible Purpose: CREDIT TRANSACTION

**Promotional Inquiries**

The companies listed below received your name, address and other limited information about you so they could make a firm offer of credit or insurance. They did not receive your full credit report. These inquiries are not seen by anyone but you and do not effect your score.

**GEMB/SAMS**

PO BOX 981400  
EL PASO, TX 79998  
(800) 984-1817

Requested On: [REDACTED]

**PROGRESSIVE INSURANCE**

PO BOX 43258  
RICHMOND HEIGHTS, OH 44123  
(216) 732-3035

Requested On: [REDACTED]

**NATIONWIDE INSURANCE CO**

1 NATIONWIDE PLZ  
COLUMBUS, OH 43215-2220  
(800) 882-2822

Requested On: [REDACTED]

(800) 255-8062

Requested On: [REDACTED]  
Inquiry Type: Individual

**CAPITAL ONE AUTO FINANCE**

3905 N DALLAS PARKWAY  
PLANO, TX 75083  
(800) 946-0332

Requested On: [REDACTED]  
Inquiry Type: Individual

**TD AUTO FINANCE**

PO BOX 8223  
FARMINGTON HILLS, MI 48333  
(800) 558-8172

Requested On: [REDACTED]  
Inquiry Type: Individual

**CAPITAL ONE BANK USA NA**

PO BOX 30281  
SALT LAKE CITY, UT 84130  
(800) 955-7070

Requested On: [REDACTED]  
Inquiry Type: Individual

**LENDING CLUB**

370 CONVENTION WAY  
REDWOOD CITY, CA 94063  
(800) 994-7637

Requested On: [REDACTED]

**ALLSTATE INSURANCE**

2775 SANDERS RD  
NORTHBROOK, IL 60062-6110  
(800) 255-7828

Requested On: [REDACTED]

**GOLDMAN SACHS BANK USA**

PO BOX 45400  
SALT LAKE CITY, UT 84145  
(844) 627-2671

Requested On: [REDACTED]



**NRRM LLC**  
DBA: STOPREPAIRBILLS.COM  
389 MID RIVERS MALL DR  
SAINT PETERS, MO 63376  
(800) 436-3185

Requested On: [REDACTED]

**GRANITE BAY ACCEPTANCE INC**  
1781 VINEYARD DR.  
#222  
ANTIOCH, CA 94509  
(925) 779-1901

Requested On: [REDACTED]

**GEICO**  
1 GEICO PLZ  
WASHINGTON, DC 20076-0003  
(773) 582-2886

Requested On: [REDACTED]

**LIBERTY MUTUAL**  
13 RIVERSIDE RD  
WESTON, MA 02193  
(888) 535-1615

Requested On: [REDACTED]

#### **Account Review Inquiries**

The listing of a company's inquiry in this section means that they obtained information from your credit file in connection with an account review or other business transaction with you. These inquiries are not seen by anyone but you and will not be used in scoring your credit file (except insurance companies may have access to other insurance company inquiries, certain collection companies may have access to other collection company inquiries, and users of a report for employment purposes may have access to other employment inquiries, where permitted by law).

**GEICO**  
ONE GEICO PLAZA  
WASHINGTON, DC 20079  
(800) 841-3000

Requested On: [REDACTED]

Permissible Purpose: INSURANCE UNDERWRITING

**GOGOCAR via 700CR 2**  
27777 FRANKLIN RD  
SUITE 1850  
SOUTHFIELD, MI 48034  
(847) 397-1700

Requested On: [REDACTED]

Permissible Purpose: CREDIT TRANSACTION

**DEPT OF DEF CE DMD C**  
DOD CE  
PO BOX 188  
BOYERS, PA 16020  
(800) 467-5528

Requested On: [REDACTED]

**FACTACT FREE DISCLOSURE**  
P O BOX 1000  
CHESTER, PA 19016  
(800) 918-8800

Requested On: [REDACTED]

**TU INTERACTIVE**  
100 CROSS ST  
202  
SAN LUIS OBISPO, CA 93401  
(844) 580-6816

Requested On: [REDACTED]

**NAVY FEDERAL CIU**  
PO BOX 3501  
MERRIFIELD, VA 22081  
(703) 255-7608

Requested On: [REDACTED]

**FISERV CHECKFREE CORP**  
6000 PERIMETER DR  
DUBLIN, OH 43017  
(877) 347-8348

Requested On: [REDACTED]

**DISCOVER PLCYR**  
P O BOX 1531  
WILMINGTON, DE 19850  
(800) 347-2683

Requested On: [REDACTED]

**GOLDMAN SACHS BANK USA**  
PO BOX 45400  
SALT LAKE CITY, UT 84145  
(844) 627-2871

Requested On: [REDACTED]

**WEBBANKLENDINGCLUB**  
71 STEVENSON ST  
SUITE 1000  
SAN FRANCISCO, CA 94105  
(888) 598-3157





Requested On: [REDACTED]

**MARLETTE FUND BEST EGG**

1521 CONCORD PIKE  
WILMINGTON, DE 19803  
(302) 358-2730

Requested On: [REDACTED]

**MARK ANTHONY GUTHRIE via TRANSUNION  
INTERACTIVE**

100 CROSS STREET 202  
SAN LUIS OBISPO, CA 93401  
(844) 580-6816

Requested On: [REDACTED]

Permissible Purpose: CONSUMER REQUEST

**Additional Information**

The following disclosure of information might pertain to you. This additional information may include Special Messages, Office of Foreign Assets Control ("OFAC") Potential Name Matches, Inquiry Analysis, Military Lending Act ("MLA") Covered Borrower Information, and/or Third Party Supplemental Information. Authorized parties may also receive the additional information below from TransUnion.

**Military Lending Act**

The Military Lending Act provides important safeguards to Active Military personnel and their dependents. Under the Military Lending Act (MLA), if you are an active duty member of the armed forces or are on active Guard or Reserve duty, you cannot be charged an interest rate higher than 36% on some types of consumer loans. It also protects your spouse and certain dependents.

To assist financial institutions with complying with this requirement, TransUnion receives information about an individual's military status from the U.S. Department of Defense through their data center known as the DMDC (Department of Defense Manpower Data Center). When potential lenders request your credit file from TransUnion, they can also request this information.

The identifying information that appears on your TransUnion credit file is considered a potential match to information listed on the U.S. Department of Defense database.

For more details regarding the DMDC, please contact: [guthrie.dcdc-mb.dmdc.mbx.mla@mail.mil](mailto:guthrie.dcdc-mb.dmdc.mbx.mla@mail.mil)

For more information concerning the above messages, visit <http://www.transunion.com/customer-support/faqs/support>.

**Inquiry Analysis**

The companies that request your credit report must first provide certain information about you. Within the past 90 days, companies that requested your report provided the following information:

**NAVY FEDERAL CREDIT via EQUIFAX MORTGAGE  
SERVICE**

Requested On: [REDACTED]

Identifying information they provided:  
MARK GUTHRIE

[REDACTED]

**NAVY FCU**

Requested On: [REDACTED]

Identifying information they provided:  
MARK A. GUTHRIE

[REDACTED]

**Employer: UNITED STATES MARINE CORPS**

Should you wish to contact TransUnion, you may do so,  
Online:





To report an inaccuracy, please visit: [dispute.transunion.com](http://dispute.transunion.com)  
For answers to general questions, please visit: [www.transunion.com](http://www.transunion.com)

**By Mail:**  
TransUnion Consumer Relations  
P.O. Box 2000  
Chester, PA 19016-2000

**By Phone:**  
(800) 916-8800  
You may contact us between the hours of 8:00 a.m. and 11:00 p.m. Eastern Time, Monday through Friday, except major holidays.

**For all correspondence, please have your TransUnion file number available (located at the top of this report).**

## Consumer Rights

*Para informacion en espanol, visite [www.consumerfinance.gov](http://www.consumerfinance.gov) o escriba a la Consumer Financial Protection Bureau, 1700 G Street N.W. Washington, DC 20552.*

### A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). **For more information, including information about additional rights, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment - or to take another adverse action against you - must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your 'file disclosure'). You will be required to provide proper identification, which may include your Social Security Number. In many cases, the disclosure will be free. You are entitled to a free disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert on your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) for more additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need usually to consider an application with a creditor, insurer, employer, landlord or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-567-8688 (888-5OPTOUT).
- **CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE.** You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.  
A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.
- **As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost.** An initial fraud alert is a 1-year alert that is placed on a consumer's credit file. Upon seeing a fraud alert display on a consumer's credit file, a business is required to take steps to verify the consumer's identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court. You may also have the right to file suit under state law.
- **Identify theft victims and active duty military personnel have additional rights.** For more information, visit [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates	Bureau of Consumer Financial Protection 1700 G Street NW Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
2. To the extent not included in item 1 above:	Office of the Comptroller of the Currency
a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	Federal Reserve Consumer Help (FRCH) PO Box 1200 Minneapolis, MN 55480 1-888-851-1920
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and	FDIC Consumer Response Center



Insured state savings associations	1100 Walnut Street, Box #11 Kansas City, MO 64106
d. Federal Credit Unions	National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590 1-202-366-1306
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423
5. Creditors subject to Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street NE Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center-FCRA Washington, DC 20580 1-877-382-4357

TransUnion LLC  
PO Box 805  
Woodlyn, PA 19094-0805

01/28/2019

TransUnion. 

MARK ANTHONY GUTHRIE

Dear MARK ANTHONY GUTHRIE,

We understand that recently something on your credit report did not seem right to you. We take this matter seriously, and we want to make sure your TransUnion credit report is accurate. It's our commitment to you.

If we were able to make changes to your credit report based on information you provided, we made those changes. Otherwise, we asked the company reporting the information you disputed to do all of the following:

1. Review relevant information we sent them, including any documents you gave us as part of your dispute
2. Investigate your dispute and verify whether the information they report is accurate
3. Provide us a response to your dispute and update any other information
4. Update their records and systems, if necessary

Your dispute is important. In the pages that follow you will see your detailed investigation results, including the business name and contact details of the source of the information. Please review the results carefully.

### How to Read Your Investigation Results

You will see that, for each disputed item, a summary explanation appears in the gray box, followed by a brief paragraph describing the results of our investigation, followed by a view of how the item appears in your updated credit report. Please note any changes we made to personal information (name, address, employment, SSN, date of birth) will appear at the end of Your Investigation Results.

Want to review a full copy of your credit report? Get yours at [www.transunion.com/fullreport](http://www.transunion.com/fullreport)

P 8K022-012 00594-003227 01/10

### A Note on Credit Report Updates

Information in your credit report is updated frequently which means items you disputed may not appear on your credit report or have already changed by the time we received your dispute. In most cases, the Date Updated represents the last time the account information was updated or reported by the data furnisher. Please note that this date may not change following our investigation of your dispute. For Payment Received and Last Payment Made, please keep in mind, the data may not represent very recent payment activity. For inactive accounts or accounts that have been closed and paid, Pay Status represents the last known status of the account.

### Definitions

For your reference, here are some definitions to help you understand Your Investigation Results.

#### For ACCOUNTS:

<b>Balance:</b> The balance owed as of the date the account was verified or reported	<b>Original Charge Off:</b> If applicable, the amount charged off due to non-payment of the account
<b>Credit Limit:</b> The maximum amount of credit approved by the creditor on the account	<b>Past Due:</b> The amount past due as of the date the account was verified or reported
<b>Date Opened:</b> The date the account was Opened	<b>Pay Status:</b> The current status of the account; how you are currently paying
<b>High Balance:</b> The highest amount ever owed on an account	<b>Remarks:</b> If applicable, the creditor may provide additional information here related to the account
<b>Last Payment Made:</b> The date the creditor received the last payment on the account	<b>Responsibility:</b> The type of contractual ownership (individual, joint, authorized user, etc.) of the account
<b>Maximum Delinquency:</b> If applicable, the maximum amount past due before an account becomes a charge-off or a collection account	<b>Terms:</b> The monthly payment amount or monthly minimum payment due on the account

### Rating Key

Some creditors report the timeliness of your payments each month in relation to your agreement with them. The ratings in the key below describe the payments that may be reported by your creditors. This rating key will help you understand any updates to your PAYMENT HISTORY, if applicable to YOUR INVESTIGATION RESULTS. Any rating that is shaded or any value in the account detail appearing with brackets (> <) may indicate that it is considered adverse.

N/R	X	OK	30	60	90	120	COL	VS	RPO	EO	FC
Not Reported	Unknown	Current	30 days late	60 days late	90 days late	120+ days late	Collection	Voluntary Surrender	Repossession	Charge Off	Foreclosure

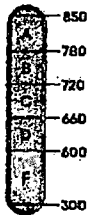
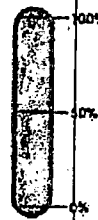
File Number: [REDACTED]  
Date Issued: 01/28/2019

Page 3 of 5

## TransUnion Credit Score

MARK ANTHONY GUTHRIE

### YOUR CREDIT SCORE

Your Score & Grade	Score & Grade Range	Where You Rank
<p>Score <b>Not Purchased</b> (See Below)</p> <p>Grade -</p> <p>Created on 01/28/2019</p> <p>Based on your TransUnion credit report, this is a depiction of your creditworthiness.</p>	<p>Unavailable (See Below)</p>  <p>The numerical score ranges from 850 to 300 equating grade ranges from A to F.</p>	<p>Unavailable (See Below)</p>  <p>Your credit ranks higher than --% of the nation's population.</p>

### Summary

You did not order a TransUnion credit score. You can purchase your credit score for \$9.95 by calling 1-866-SCORE-TU or 1-866-726-7388.

Want to review a full copy of your credit report? Get yours at [www.transunion.com/fullreport](http://www.transunion.com/fullreport)

P BK023-002 00564-1005228 03/10

File Number:  
Date Issued:

01/28/2018

Page 4 of 5

## Your Investigation Results

### INVESTIGATION RESULTS - DISPUTED INFORMATION UPDATED AND OTHER INFORMATION

**UPDATED:** A change was made to the item(s) based on your dispute and other information has also changed.

**OCWEN LOAN SVCG LLC #80241\*\*\*\*** (1661 WORTHINGTON RD, STE 100, WEST PALM BEACH, FL 33409, (561) 682-8000)

We investigated the information you disputed and updated: **Rating**. Here is how this item appears on your credit report following our investigation.

Date Opened:	08/21/2009	Balance:	\$235,403	Pay Status:	Current; Paid or Paying as
Responsibility:	Joint Account	Date Updated:	11/30/2018		Agreed
Account Type:	Mortgage Account	Last Payment Made:	10/11/2013	Terms:	\$1,071 per month, paid
Loan Type:	VA REAL ESTATE MORTGAGE	High Balance:	\$180,128		Monthly for 372 months
					>Maximum Delinquency of 120 days in
					05/2018 and in 08/2018<

Remarks: AFFECTED BY NTRU/DCLRD DISASTR

	10/2016	09/2017	08/2018	07/2019	06/2020	05/2021	04/2022	03/2023	02/2024	01/2025	12/2025	11/2026
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
	10/2017	09/2018	08/2019	07/2020	06/2021	05/2022	04/2023	03/2024	02/2025	01/2026	12/2026	11/2027
Rating	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
	10/2018	09/2019	08/2020	07/2021	06/2022	05/2023	04/2024	03/2025	02/2026	01/2027	12/2027	11/2028
Rating	OK	OK	OK	OK	OK	OK	X	X	X	X	X	X
	10/2019	09/2020	08/2021	07/2022	06/2023	05/2024	04/2025	03/2026	02/2027	01/2028	12/2028	10/2029
Rating	X	X	X	X	X	X	X	X	X	X	X	X

Want to review a full copy of your credit report? Get yours at [www.transunion.com/fullreport](http://www.transunion.com/fullreport)

P 91022-002 00594-1005230 04/10



In the preceding pages we have provided details on the results of our investigation. If our investigation has not resolved your dispute, here's what you can do next:

- **Add a 100-word statement to your report.** What this means is that you have the right to send us a note of 100 words or less describing your situation or why you disagree with the results, and we will add this statement to your report. Anyone who views your report will see this statement. Please know that if you include any medical information in your statement, this means you're giving TransUnion permission to include that information in any future credit report we issue on your behalf.
- **Dispute directly with the company that reported the information to us.** If you want changes made to information found on your credit report you may dispute with the company that reported it using the contact information listed in **Your Investigation Results**.
- **Provide to us any other information or documents about your dispute.** Please visit [www.transunion.com/dispute](http://www.transunion.com/dispute) and let us know you are filing a repeat dispute. Be sure to include any other information or documentation you feel will help us resolve your dispute.
- **File a complaint about the company reporting the account or about TransUnion with the Consumer Financial Protection Bureau or with your State's Attorney General's office.**

If there has been a change to your credit report as a result of our investigation, or if you have added a statement to your report, you may ask TransUnion to send an updated credit report to those who have received your report within the last 2 years for employment purposes or within the last 6 months for any other purpose.

### Should You Wish to Contact TransUnion

Please have your TransUnion **FILE NUMBER** available. Your unique **FILE NUMBER** is located at the top of each page of this correspondence.

**Online:**

To dispute information contained in your credit report, please visit: [www.transunion.com/disputonline](http://www.transunion.com/disputonline)  
For more information please visit our Frequently Asked Questions page at <http://transunion.com/consumerfaq>

**By Mail:**

TransUnion  
P. O. Box 2000  
Chester, PA 19016-2000

**By Phone:**

(800) 916-8800

You may contact us between the hours of 8:00 AM – 11:00 PM ET, Monday through Friday, except major holidays.

Want to review a full copy of your credit report? Get yours at [www.transunion.com/fullreport](http://www.transunion.com/fullreport)

PEK022-012 00594-1005231 09/10



## Summary of Rights

GENERAL SUMMARY OF RIGHTS UNDER THE FCRA	
<p>Para información en español, visite <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a> o escriba a la Consumer Financial Protection Bureau, 1700 G Street N.W. Washington, DC 20552.</p>	
<p><b>A Summary of Your Rights Under the Fair Credit Reporting Act</b></p>	
<p>The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). For more information, including information about additional rights, go to <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a> or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.</p>	
<ul style="list-style-type: none"> <li>• <b>You must be told if information in your file has been used against you.</b> Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.</li> <li>• <b>You have the right to know what is in your file.</b> You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security Number. In many cases, the disclosure will be free. You are entitled to a free disclosure if: <ul style="list-style-type: none"> <li>• a person has taken adverse action against you because of information in your credit report;</li> <li>• you are the victim of identity theft and place a fraud alert on your file;</li> <li>• your file contains inaccurate information as a result of fraud;</li> <li>• you are on public assistance;</li> <li>• you are unemployed but expect to apply for employment within 60 days.</li> </ul> </li> </ul>	
<p>In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a> for more additional information.</p>	
<ul style="list-style-type: none"> <li>• <b>You have the right to ask for a credit score.</b> Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>You have the right to dispute incomplete or inaccurate information.</b> If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a> for an explanation of dispute procedures.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.</b> Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Consumer reporting agencies may not report outdated negative information.</b> In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Access to your file is limited.</b> A consumer reporting agency may provide information about you only to people with a valid need usually to consider an application with a creditor, insurer, employer, landlord or other business. The FCRA specifies those with a valid need for access.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>You must give your consent for reports to be provided to employers.</b> A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a>.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.</b> Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-567-8688 (888-5OPTOUT).</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE.</b> You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely</li> </ul>	

approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

- As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is placed on a consumer's credit file. Upon seeing a fraud alert display on a consumer's credit file, a business is required to take steps to verify the consumer's identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.
- You may seek damages from violators. If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court. You may also have the right to file suit under state law.
- Identity theft victims and active duty military personnel have additional rights. For more information, visit [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:		
<b>TYPE OF BUSINESS:</b>	<b>CONTACT:</b>	
1. a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates  b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	a. Consumer Financial Protection Bureau 1700 G Street, N.W. Washington, DC 20552  b. Federal Trade Commission Consumer Response Center 600 Pennsylvania Avenue, N.W. Washington, DC 20580 (877) 382-4357	
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks  b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.  c. Nonmember insured banks, insured state branches of foreign banks, and insured state savings associations  d. Federal Credit Unions	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050  b. Federal Reserve Consumer Help Center PO Box 1200 Minneapolis, MN 55480  c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106  d. National Credit Union Administration Office of Consumer Financial Protection (OCFP) Division of Consumer Compliance Policy and Outreach 1775 Duke Street Alexandria, VA 22314	
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590	
4. Creditors Subject to the Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423	
5. Creditors Subject to the Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor	
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, S.W., Suite 8200 Washington, DC 20416	
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549	
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090	
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	Federal Trade Commission Consumer Response Center 600 Pennsylvania Avenue, N.W. Washington, DC 20580 (877) 382-4357	



Dealer Financial Services  
P.O. Box 26150  
Richmond, VA 23260

April 23, 2019

MARK A. GUTHRIE

Dear Mark A. Guthrie:

Re: Credit Application  
Application Number: [REDACTED]

Thank you for your recent request for financing, forwarded to us by SANDERS FORD INC. After careful consideration, we regret we are unable to approve your credit request for the reason(s) indicated below:

Serious delinquency  
Length of time since account not paid as agreed  
Proportion of loan balances to loan amounts is too high  
Amount past due on accounts

The consumer reporting agency referenced below did not make this decision and is unable to provide you with the specific reasons why your application was not approved. However, since our decision was based in whole or in part on information from this consumer reporting agency, under the Fair Credit Reporting Act, you are entitled to know the information provided to us. You also have the right to receive a free copy of your consumer report from the consumer reporting agency, if you request it within 60 days of this notice. In addition, you also have the right to notify the consumer reporting agency and dispute the accuracy or completeness of any information on your consumer report. To receive this information, contact:

TransUnion - Disclosure Request  
P.O. Box 1000  
Chester, PA 19022-1000  
1-800-888-4213

We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: 609  
Date: April 18, 2019

Score range from a low of 250 to a high of 900  
Key factors that adversely affected your credit score:  
Serious Delinquency  
Time since delinquency is too recent or unknown  
Proportion of loan balances to loan amounts is too high  
Amount past due on accounts  
Inquiries impacted the score

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington DC 20006.

If you have questions or are in need of additional information, please contact the above referenced dealership.

Very truly yours,  
SunTrust Bank  
Dealer Financial Services

1

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The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington DC 20006.

## Statement of Credit Denial, Termination or Change

**Applicant**

**Creditor**

**MARK A GUTHRIE**  
[REDACTED]

Navy Federal Credit Union  
820 Pollin Lane  
Vienna, VA 22180

**Application or Loan Number:** [REDACTED]

**Date:** 1/29/2019

**"We"** means Creditor.

**"You"** means Applicant

**Property Address:** To Be Determined, JACKSONVILLE, NC 28546

☐ **Multiple Creditors.** We are providing this notice on behalf of us and the following creditor(s):

**Description of Account, Transaction or Requested Credit:** A Residential Real Estate Loan

**Description of Action Taken:** Credit Denial

### Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- |   |   |
|---|---|
| <input type="checkbox"/> Credit Application Incomplete                      | <input checked="" type="checkbox"/> Delinquent Past or Present Credit Obligations with Others |
| <input type="checkbox"/> Insufficient Number of Credit References Provided  | <input type="checkbox"/> Collection Action or Judgment  |
| <input type="checkbox"/> Unacceptable Type of Credit References Provided    | <input type="checkbox"/> Garnishment or Attachment  |
| <input type="checkbox"/> Unable to Verify Credit References                 | <input type="checkbox"/> Foreclosure or Repossession  |
| <input type="checkbox"/> Temporary Or Irregular Employment                  | <input type="checkbox"/> Bankruptcy   |
| <input type="checkbox"/> Unable To Verify Employment                        | <input type="checkbox"/> Number of Recent Inquiries on Credit Bureau Report                   |
| <input type="checkbox"/> Length of Employment                               | <input type="checkbox"/> Value or Type of Collateral not Sufficient                           |
| <input type="checkbox"/> Income Insufficient for Amount of Credit Requested |   |
| <input type="checkbox"/> Excessive Obligations in Relation to Income        |   |
| <input type="checkbox"/> Unable to Verify Income                            |   |
| <input type="checkbox"/> Length of Residence                                |   |
| <input type="checkbox"/> Temporary Residence                                |   |
| <input type="checkbox"/> Unable to Verify Residence                         |   |
| <input type="checkbox"/> No Credit File                                     |   |
| <input type="checkbox"/> Limited Credit Experience                          |   |
| <input type="checkbox"/> Poor Credit Performance with Us                    |   |
| <input type="checkbox"/> No Credit Score                                    |   |

### Disclosure of Use of Information Obtained from an Outside Source

- ☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

NP0112



Consumer Reporting Agency Name	Mailing Address	Telephone Toll-Free	Web Address
Equifax	P.O. Box 740241 Atlanta, GA 30374	(800)-685-1111	www.equifax.com
Experian	701 Experian Parkway P.O. Box 2002 Allen, TX 75013	(888)-397-3742	www.experian.com/reportacc ess
TransUnion	P.O. Box 2000 Chester, PA 19022	(800)-916-8800	www.transunion.com

- ☒ We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

- Your credit score: 776
- Date: 1/9/2019
- Scores range from a low of 334 to a high of 818
- Key factors that adversely affected your credit score:
  - 02 - LEVEL OF DELINQUENCY ON ACCOUNTS
  - 30 - TIME SINCE MOST RECENT ACCOUNT OPENING IS TOO SHORT
  - 10 - PROPORTION OF BALANCES TO CREDIT LIMITS ON BANK/NATIONAL REVOLVING OR OTHER REVOLVING ACCOUNTS
  - 08 - TOO MANY INQUIRIES IN THE LAST 12 MONTHS

If you have any questions regarding your credit score, you should contact Equifax at their address and telephone number above.

- ☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

#### Questions

If you have any questions regarding this notice, you should contact:

Creditor's Name: Navy Federal Credit Union  
Address: 620 Follin Lane  
Vienna, VA 22180  
Telephone: (877)573-2324

**Notice:** The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20006

NF0112

Laurie B. Biggs  
Blake Y. Boyette  
Matthew W. Buckniller  
Joseph Z. Frost  
Patrick D. Holmes  
John W. King, Jr.  
William H. Kroll  
Trawick H. Smiddy, Jr.  
Landon G. Van Winkle

Gary R. Perdue  
(1947 - 1997)

**SP**  
**STUBBS PERDUE**  
ATTORNEYS AT LAW

9208 Falls of Neuse Road Suite 201  
Raleigh, North Carolina 27615

Telephone (919) 870-6258  
Facsimile (919) 870-6259

New Bern Office  
310 Craven Street  
P.O. Box 1654  
New Bern, North Carolina 28563

Telephone (252) 633-2700  
Facsimile (252) 633-9600

December 16, 2019

**VIA CERTIFIED UNITED STATES MAIL,**  
**RETURN RECEIPT REQUESTED**

PHH Mortgage Services  
Post Office Box 66002  
Lawrenceville, New Jersey 08648

**QUALIFIED WRITTEN REQUEST, NOTICE OF ERROR, NOTICE OF**  
**DISPUTED INFORMATION AND REQUESTS FOR INFORMATION PURSUANT**  
**TO REAL ESTATE SETTLEMENT PROCEDURES ACT AND CHAPTER 45 OF**  
**THE NORTH CAROLINA GENERAL STATUTES<sup>1</sup>**

*[12 U.S.C. § 2605(e); 15 U.S.C. § 1681s-2(a)(8); 12 C.F.R. §§ 1024.35-36; N.C. Gen. Stat. §§ 45-39.7 and 45-93]*

<b>Borrower(s):</b>	<b>Mark Anthony Guthrie</b> <b>Tonia M. Guthrie</b>
<b>Loan No.:</b>	[REDACTED]
<b>Address:</b>	<b>401 Joy Court</b> <b>Jacksonville, North Carolina 28540</b>
<b>S&amp;P File No.:</b>	<b>20190236.00</b>

Dear Sir or Madam:

Please be advised that myself and Stubbs & Perdue, P.A. have been retained by

<sup>1</sup>This correspondence constitutes a dispute and notice of error, made by the Borrower pursuant to 12 C.F.R. § 1024.35 of Regulation X of the Mortgage Servicing Act under the Real Estate Settlement Procedures Act ("RESPA"), which became effective on January 10, 2014, and implemented the mortgage loan servicing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173 ("Dodd-Frank"). Thereunder, you are required to respond within seven (7) days and must advise of your responses to this notice within thirty (30) days of receipt thereof (excluding legal public holidays, Saturdays and Sundays).



PHH Mortgage Corporation f/k/a Ocwen Loan Servicing, LLC d/b/a  
PHH Mortgage Services  
December 16, 2019  
Page 2 of 11

MARK ANTHONY GUTHRIE (the "Borrower") in connection with the above-referenced loan, Loan No. [REDACTED] the "Loan") which, upon information and belief, is held by ALLY BANK f/k/a GMAC BANK ("GMAC") and serviced by PHH MORTGAGE CORPORATION f/k/a OCWEN LOAN SERVICING, LLC d/b/a PHH MORTGAGE SERVICES ("PHH"), which is secured by real property having a physical address of 401 Joy Court, Jacksonville, North Carolina 28540 (the "Property"). Please find enclosed a

This correspondence is a qualified written request, notice of error, and request for information pursuant to the Federal Servicemember Act, which is a part of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e), and a request for information pursuant to N.C. Gen. Stat. §§ 45-39.7 and 45-98, relating to the above-referenced Loan.

As PHH is aware, and on or about August 21, 2009 (the "Loan Execution Date"), and in order to purchase the Property, the Borrowers executed a Note in favor of GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P. ("Gateway") in the original principal amount of \$190,126.00, with interest accruing thereon at a rate initially equal to four percent (4.00%) per annum (the "Note"), which called for monthly installment payments in the amount of \$907.70, consisting of principal and interest, commencing on October 1, 2009, with a final payment of the outstanding principal and interest due on or before September 1, 2039 (the "Maturity Date"). The Note was secured by a Deed of Trust on the Property, which is owned by the Borrowers and utilized was previously utilized as their primary residence, that was recorded on September 1, 2009, in Book 3289, Page 18 of the Onslow County Registry (collectively, the "Deed of Trust") (together with the Note, the "Mortgage").

Following execution of the Mortgage, and on or about April 21, 2011, the Borrower filed a voluntary petition for relief under chapter 13 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy Court for the Eastern District of North Carolina (the "Bankruptcy Court"), which was assigned Case No. 11-03134-8-RDD (the "Bankruptcy Case"). GMAC filed a proof of claim, Claim No. 13-2, in the Bankruptcy Case, asserted a claim in the amount of \$195,701.44, the balance of which was secured by the Property pursuant to the Deed of Trust, arising from the Mortgage. On July 18, 2011, the Chapter 13 Trustee (the "Trustee") filed a Notice of Amended Motion for Confirmation of Plan (D.E. 18) through which the Borrower proposed a chapter 13 plan of reorganization (the "Plan") which would have paid the Mortgage according to its contractual terms, as well as cured any prepetition arrearage owed thereunder over the sixty (60) month life of the Plan. On August 18, 2011, the Bankruptcy Court entered an Order approving and confirming the Plan (D.E. 21).

Thereafter, on or about January 1, 2013, the Borrower, through counsel and in the

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Bankruptcy Case, filed a Motion to Allow Surrender of Real Property and Modification of Chapter 13 Plan (D.E. 36; the "Surrender Motion"), seeking the authorization of the Bankruptcy Court to surrender the Property securing repayment of the Mortgage and reduce the payments made to the Trustee under his Plan accordingly. GMAC received notice of the Surrender Motion and did not file any response or objection thereto. Accordingly, and on February 7, 2013, the Bankruptcy Court entered an Order Allowing Surrender of Real Property and Modification of Chapter 13 Plan (D.E. 38; the "Surrender Order"). Pursuant to the terms of the Surrender Order, GMAC was authorized to liquidate the Property and filed a deficiency claim in the Bankruptcy Court, for treatment as a general unsecured claim under the Plan, within one hundred twenty (120) days of entry of the Surrender Order.

Following entry of the Surrender Order, and on or about March 15, 2013, PHH, through its predecessor-in-interest OCWEN LOAN SERVICING, LLC, filed a Transfer of Claim Other than for Security in the Bankruptcy Court (D.E. 40; the "Notice of Transfer of Claim"). As asserted in the Notice of Transfer of Claim, GMAC transferred all right, title, and interest in the Mortgage, including the rights to collect payments arising thereunder, to PHH. Following the transfer of rights under the Mortgage from GMAC to PHH, and notwithstanding the deadline for filing a deficiency claim established by the Surrender Order, neither GMAC, PHH, or any of their agents, employees, or assigns took any action to liquidate the Property or file any deficiency claim related thereto.

On May 18, 2016, and upon completion of all payments called for under the Plan, as amended, the Borrower received a discharge pursuant to 11 U.S.C. § 1328(a) (D.E. 48; the "Discharge"). On August 22, 2016, and following the filing and acceptance of the final accounting and report from the Trustee, the Bankruptcy Court entered an Order closing the Bankruptcy Case (D.E. 52).

Thereafter, and notwithstanding that the Borrower's *in personam* obligations under the Mortgage were discharged pursuant to the Discharge entered in the Bankruptcy Case, of which PHH received notice, PHH continued to report the Borrower as delinquent under the Mortgage to one or more consumer reporting agencies ("CRAs") as that term is defined in 15 U.S.C. § 1681a(f), which false and derogatory information caused Borrower actual damages including a material decrease in his credit score, impairment to his creditworthiness, and the denial of requests for extension of credit which, but for the misinformation submitted by PHH, would have been approved.

This false and misleading communication of information concerning the Mortgage and Borrower to one or more CRAs is even more inexplicable in light of the fact that PHH had actual knowledge of the entry of the Discharge. Additionally, and

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following entry of the Discharge and notification by Borrower that the Mortgage had been discharged, PHH, in a letter dated August 8, 2017, informed Borrower that, notwithstanding the entry of the Discharge, it would continue to pursue collection processes against Borrower "per the Bankruptcy chapter 13 discharged guidelines." Thereafter, PHH continued to send periodic monthly mortgage statements to Borrower falsely and deceptively demanding payments on the Mortgage notwithstanding that the same had been discharged in the Bankruptcy Case.

Unexplainably PHH continues to attempt to collect a discharged debt from the Borrower and continues to provide false and erroneous information regarding Borrower's payment history and the status of the Mortgage to one or more CRAs.

To independently confirm that the balance of the Loan has been discharged, and to ensure accurate reporting of the same to various third parties including, but not limited to, CRAs, financial institutions, the Internal Revenue Service (the "IRS") and other third-party users, my client needs to conduct a complete accounting of the Loan from its inception through the present, including any and all amendments, restatements, or modifications thereto.

Upon receipt of this correspondence, please refrain from reporting any negative credit information to any credit reporting agencies, including Experian Information Solutions, Inc. ("Experian"), Equifax, Inc. ("Equifax"), and TransUnion, LLC ("TransUnion") (collectively, "CRAs"), until you respond to each of the following requests. It is strongly urged to conduct an internal audit of the above-referenced Loan since its inception to the present, paying particular attention to the collection and servicing of the Loan following entry of the Discharge. Please do not rely on previous servicer(s), originator(s), or holder(s) records, assurances, or indemnity agreements, or otherwise refuse to conduct a full audit of the Loan.

It has come to the attention of my client that multiple errors, committed by PHH with respect to its servicing and collection of amounts alleged to be owed under the Loan, have wrongfully resulted in, *inter alia*, (i) an incorrect outstanding principal balance for the Loan, (ii) assertions that he remains indebted to PHH and/or GMAC in any amount, (iii) the existence of an alleged past due and outstanding balance on the Loan, (iv) furnishing incorrect, inaccurate, and/or false information to CRAs relating to my client and the Loan, including alleged past due and outstanding payments and amounts and payment dates, (v) increased amounts applied to, and attributed towards fees, interest, or expenses, on the Loan, and (vi) the assessment, application and collection of interest, late fees, attorneys' fees, property inspection fees, force-placed insurance costs and expenses, and other costs, fees, and expenses that my client is not legally obligated to pay under the terms of the Loan, attendant loan documents, including the Deed of Trust, and the Discharge.

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To be clear, and for the avoidance of any doubt, Borrower is asserting that PHH has made or continues to make the following errors in connection with its servicing of the Loan:

- a. Assessing, collecting, or attempting to collect fees, expenses, costs, attorneys' fees, or other charges from Borrower which are neither authorized under applicable law, or pursuant to the terms of the Deed of Trust, the Note, and the Discharge, in violation of N.C. Gen. Stat. § 45-91(4);
- b. Failing to timely notify Borrower, in writing and in a form and within the time specified in 15 U.S.C. § 1681s-2(a)(7), that PHH has, is, and continues to supply negative information of and concerning Borrower to one or more CRAs; and
- c. Continuing to report to one or more CRAs that the Loan is in default, is delinquent, or otherwise communicating to CRAs that Borrower is failing to perform under the Mortgage when PHH knows the same to be false, in violation of the Fair Credit Reporting Act (the "FCRA"), specifically 15 U.S.C. § 1681s-2(a)(1)(A).

PHH is hereby formally advised that, pursuant to 15 U.S.C. § 1681s-2(a)(1)(B) and (a)(8), it is prohibited from further reporting inaccurate information related to the Loan or Borrower to any CRA and must conduct its own reasonable investigation of the disputed information and report the results of that investigation to Borrower within *thirty (30) days of receipt of this letter*. 15 U.S.C. §§ 1681s-2(a)(8)(E)(iii) and 1681i(a)(1)(A).

Therefore, and in an effort to ensure that these errors and other concerns are adequately and timely addressed, on behalf of my client, the Borrower, I am requesting the following information:

1. A complete and itemized statement of the account and loan history ranging from the date the Loan was executed on August 21, 2009, the Loan Execution Date, through the date of this correspondence including, but not limited to, all receipts by way of payment or otherwise and all charges to the Loan in whatever form, and the dates of each and every debit and credit to any accounts related to this Loan, the nature and purpose of each such debit and credit, and the name and address of the payee of any type of disbursement related to these accounts.
2. A complete and itemized statement of all advances or charges against this Loan, for any purpose, that are not reflected on the loan history

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transaction statement provided in response to the item above.

3. A complete and itemized statement of the escrow accounts of the Loan, if any, from the Loan Execution Date to the date of this correspondence, including, but not limited to, any receipts or disbursements with respect to real estate property taxes, fire or hazard insurance, flood insurance, mortgage insurance, credit insurance, or any other insurance product.

4. A complete copy of the "servicing file" compiled and maintained by PHH as required by 12 C.F.R. § 1024.38(c).

5. Copies of all documentation and information relied upon by you in conducting a reasonable investigation into this matter, as required by 12 C.F.R. § 1024.35(e)(4).

6. A complete and itemized statement from the inception of the Loan to the date of this correspondence of any forced-placed insurance and expenses related thereto, related in any way to these Loan, including but not limited to, homeowners, flood, hazard, wind, hail and other casualty insurance.

7. A complete and itemized statement from the date of the Loan to the date of this letter of any suspense account entries and/or any corporate advance entries related in any way to the Loan.

8. A complete and itemized statement from the Loan Execution Date to the date of this correspondence of any property inspection fees, property preservation fees, broker opinion fees, appraisal fees, bankruptcy monitoring fees, foreclosure fees, attorneys' fees, environmental fees, forced-placed insurance costs and expenses, or other similar fees or expenses related in any way to these Loan or the Property.

9. Identify the provision under the applicable instrument(s), security agreement(s), mortgage(s), deed(s) of trust, and/or other attendant loan document(s) that authorize PHH to charge each and every fee, cost or expense, including those in the request above, against the Loan.

10. All copies of property inspection reports and appraisals relating to the Property, serving as security for the Loan, as more particularly described in the Deed of Trust.

11. A complete and itemized statement, or other document,

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evidencing any and all arrearages including each month in which the default occurred, and the amount of each monthly default for the Loan.

12. A complete and itemized statement, or other document, of any late charges to the Loan from the Loan Execution Date to the date of this correspondence.

13. The amount, if applicable, of any "satisfaction fees" related to the Loan.

14. A complete and itemized statement from the Loan Execution Date to the date of this correspondence of any fees incurred to modify, extend, or amend the Loans or to defer any payment due under the terms of the Loan.

15. A full and complete comprehensible definitional dictionary of all transaction codes and other similar terms used in the statements, materials and items requested above.

16. A complete and itemized statement of any funds deposited in any suspension account(s) or corporate advance account(s) associated or maintained with respect to the Loan, including, but not limited to, the balance in any such account or accounts and the nature, source and date of any and all funds deposited in such account or accounts.

17. A complete and itemized statement from the Loan Execution Date to the date of this letter of the amount, payment date, purpose and recipient of all foreclosure expenses, NSF check charges, legal fees, attorney fees, professional fees and other expenses and costs that have been charged against or assessed to these Loans.

18. The full legal name, address (principal business office and registered agent for service of process), and phone number of the current holder of the Loan, (as including the name, address and phone number of any trustee or other fiduciary). This request is being made pursuant to § 1641(f)(2) of the Truth In Lending Act (the "TILA"), requiring PHH, as the servicer, to identify the holder of the Loan.

19. The name, address and phone number of any master servicers, servicers, sub-servicers, contingency servicers, back-up servicers or special servicers for the underlying Loan.

20. A copy of any mortgage Pooling and Servicing Agreement and all

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Disclosure Statements provided to any investors with respect to any mortgage-backed security trust or other special purpose vehicle related to the Pooling and Servicing Agreement as well as any and all amendments and supplements thereto. If a copy of the Pooling and Servicing Agreement has been filed with the Securities and Exchange Commission (the "SEC"), a copy of SEC Form 8k and the Prospectus Supplement, SEC Form 424b5. The name, address and phone number of any Trustee under any Pooling or Servicing Agreement related to this Loan.

21. Copies of all servicing, master servicing, sub-servicing, contingency servicing, special servicing, or back-up servicing agreements with respect to this Loan and account.

22. All written loss-mitigation rules and work-out procedures related to any defaults regarding this Loan.

23. The procedural manual used by PHH and/or its subsidiaries, agents, employees or representatives, with respect to the servicing or sub-servicing of these Loan.

24. A summary of all fixed or standard legal fees approved for any form of legal services rendered in connection with this Loan and account.

25. If this Loan are subject to any Electronic Tracking Agreement, then the full name and address of the Electronic Agent and the full name and address of the Mortgage Electronic Registration System.

26. If this is a MERS Designated Mortgage Loan, then identify the Electronic Agent (name, address and contact information) and the type of mortgage electronic system used by said agent.

27. If the servicing of this Loan is provided pursuant to any type of mortgage electronic registration system, then attach a copy of the mortgage electronic registration system procedures manual.

28. A copy of the LSAMS Transaction History Report for the mortgage loan account, corresponding to this Loan, with a detailed description of all transaction, activity and fee codes.

29. If this Loan are part of a "mortgage warehouse loan," then state the full name and address of the lender and attach a copy of the Warehouse Loan Agreement and state if, upon any default or notice of default, whether or not the Mortgage Warehouse Lender has the right to override any

servicers or sub-servicers and provide instructions directly to the Electronic Agent and specifically identify the legal basis for such authority.

30. If PHH has placed or ordered any forced-placed insurance policies on the Property serving as security for the Loan, please list the date of each policy ordered or placed on the Property as well as the following information with respect to each policy identified: (i) the price; (ii) the agent; (iii) why each policy was placed on the Property; (iv) an explanation of how such policies are beneficial to my client; (v) how such policies are protective of the Property; (vi) whether any forced-placed insurance fees have been assessed, charged, and/or collected to the Loan or any escrow account thereunder; (vii) what provisions in the Note, the Deed of Trust or any agreement executed that allow, permit, proscribe, or provide the basis for the assessment, charging, or collection of fees for forced-placed insurance fees, costs and expenses against the Loan.

Pursuant to N.C. Gen. Stat. § 45-36.7, my client also requests the following additional information relating to the Loan and the Property:

1. An exact reproduction of the life of loan mortgage transactional history for this loan on the system of record used by the servicer from August 21, 2009, to your receipt of this request.<sup>2</sup>

2. Please provide proof of proper crediting and application of all payments since execution of the Loan, to interest, principal and escrow in that order of application as required by the applicable law (both state and federal), the covenants of the applicable security instruments, including the Deed of Trust, and the provisions of the Loan.

3. Identify and briefly describe all loss mitigation operations that were available to my client from the owner or assignee of the Loan from 2009 until receipt of this request and for each loss mitigation application that you received during the applicable period, identify:

a. The date it was received;

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<sup>2</sup> For purposes of identification, the life of loan transactional history means any software program or system by which the servicer records the current mortgage balance, the receipt of all payments, the assessment of any late fees or charges, and the recording of any corporate advances for any fees or charges including, but not limited to, property inspection fees, broker price opinion fees, legal fees, escrow fees, processing fees, technology fees or any other collateral charge. To the extent that this transactional history includes numeric or alpha-numeric codes, please attach a complete list of all such codes and state in plain English a short description for each code, which is also being requested pursuant to N.C. Gen. Stat. § 45-93(d).

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PHH Mortgage Corporation d/b/a Ocwen Loan Servicing, LLC d/b/a  
PHH Mortgage Services  
December 16, 2019  
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- b. The date you sent my client an acknowledgement of receipt of the application;
- c. The date you determined it was complete;
- d. A description of your evaluation of it, including your determination of which loss mitigation options were or were not offered to my client.

4. A copy of statements or bills for services submitted and paid by PHH and/or its subsidiaries, agents, assignees and related entities, to any attorney, law firm or third-party for any form of legal services rendered after the Lawsuit that was applied or charged to the Loan.

5. The full name, address and telephone number of the current owner of the Loan, including the holder of the Note and the beneficiary under the Deed of Trust. If owned by a trust, please provide the name, address (both the principal business address and the registered agent for service of process) and phone number of any trustee under trust or other fiduciary, pursuant to N.C. Gen. Stat. § 45-93(1).

Please be advised that PHH must acknowledge receipt of this request pursuant to 12 U.S.C. § 2605(e)(1)(A), Reg. X § 3500.21(e)(1), and Chapter 45 of the North Carolina General Statutes. Please provide documents requested and a detailed answer to each question within the time frame required by RESPA and Chapter 45 of the North Carolina Statutes. Upon receipt of your response, an audit will be conducted that may lead to a further request under any additional correspondence or requests.

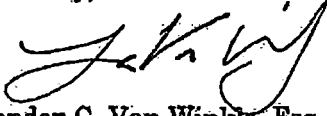
Additionally, please be advised that my client will seek the recovery of monetary damages, costs, and reasonable legal fees for any failure by PHH to timely and accurately respond to, or otherwise comply with the requests made herein, or to otherwise fail to comply with the terms of the Loan and Deed of Trust, as modified by the Discharge. Borrower, likewise, reserves the right to seek statutory damages and resulting attorneys' fees and expenses for each violation of any part of 12 U.S.C. § 2605 and Chapter 45 of the North Carolina General Statutes, the Code of Federal Regulations, the United States Code, and applicable North Carolina law.

Your prompt attention to this matter is greatly appreciated. If you have any questions regarding the foregoing, please don't hesitate to let me know.

Stubbs & Perdue, P.A.

PHH Mortgage Corporation f/k/a Ocwen Loan Servicing, LLC d/b/a  
PHH Mortgage Services  
December 16, 2019  
Page 11 of 11

Sincerely,



Landon G. Van Winkle, Esq.

Enclosures

cc: Mark Anthony Guthrie (via e-mail delivery only)

Stubbs & Perdue, P.A.

Laurie B. Bagg  
Blake Y. Boyette  
Matthew W. Buckmiller  
Joseph Z. Frost  
Patrick D. Holmes  
John W. King, Jr.  
William H. Kroll  
Travick H. Stubbs, Jr.  
Landon G. Van Winkle

Gary R. Perdue  
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New Bern Office  
310 Craven Street  
P.O. Box 1654  
New Bern, North Carolina 28563

Telephone (252) 633-2700  
Facsimile (252) 633-0600

December 12, 2019

**LETTER EVIDENCING LEGAL AUTHORITY OF  
ATTORNEY TO ACT ON BEHALF OF CLIENT**

To whom it may concern:

My name is MARK ANTHONY GUTHRIE (hereinafter "I" "Me" "My" or "Mr. Guthrie"). Please be advised that I have retained the services of STUBBS & PERDUE, P.A. (the "Firm") to represent Me in connection with the servicing of My current mortgage account which is serviced by PHH MORTGAGE CORPORATION d/b/a OCWEN LOAN SERVICING, LLC d/b/a PHH MORTGAGE SERVICES ("PHH"), and which is more particularly described as follows:

Borrower(s):

Mark Anthony Guthrie  
Teria M. Guthrie

Loan No.:

Property Address:

401 Joy Court  
Jacksonville, North Carolina 28540

(collectively the "Mortgage").

The Firm and its attorneys, as listed on the letterhead above, as My attorney-at-law, have been authorized and retained to act on My behalf for all lawful and permissible purposes, including, but not limited to, (i) corresponding with PHH or any other person or entity that the Firm, in its sole discretion, deems reasonably necessary to communicate with on My behalf; (ii) requesting information and receiving disclosures from any person on My behalf that the Firm, in its sole discretion, deems reasonably necessary and desirable to procure; (iii) inquiring into, discussing, and ascertaining the current status of the Mortgage and any and all other matters related thereto, including pending or past lawsuits, foreclosure actions, or other legal actions of any kind, with any person, entity or firm, including but not limited to PHH, that the Firm, in its sole discretion, deems reasonably necessary or desirable to communicate with on My behalf; and (iv) to act for any and all other legal purposes on My behalf as My attorney-at-law.

As evidenced by My acknowledged signature below, this letter shall constitute *prima facie* evidence of the Firm's legal authority to act for and on behalf of Me as My attorney for all lawful purposes whatsoever.

By signing below, I acknowledge the legal authority of the Firm to act on My behalf in the manner

Guthrie - Letter Evidencing Representation  
20190238.00  
Page 1 of 2

and capacity stated above.

DATE: 12 Dec 2019

MARK ANTHONY GUTHRIE

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I certify that MARK ANTHONY GUTHRIE personally appeared before me this, the  
12 day of DECEMBER, 2019 and acknowledged to me that he signed the  
foregoing document.

(OFFICIAL SEAL)



[Signature]  
VIMF263 Legal Officer  
Notary Public and Consul of the  
United States, 10 U.S.C. 104a  
Commission Expires: Indefinite

[Signature]  
Signature of Notary Public

JILL JAMES NATALEE  
Name of Notary Public (Print)

My commission expires on INDEF.

Guthrie - Letter Evidencing Representation  
20190238.00  
Page 2 of 2

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature  </p> <p>B. Received by (Printed Name)            Charles B. ...</p> <p>C. Date of Delivery            DEC 20 2019</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:  <b>PHH MORTGAGE SERVICES</b>  <b>POST OFFICE BOX 66002</b>  <b>LAWRENCEVILLE, NJ 08648</b></p>		<p>3. Service Type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input checked="" type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery  <input type="checkbox"/> Mail  <input type="checkbox"/> Mail Restricted Delivery (RM)</p> <p>4. Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>2. Article Number (Transfer from service label)  <b>7019 1120 0002 2411 7611</b></p>		<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	

<p><b>USPS TRACKING®</b></p> <p><b>9590 9402 5512 9249 6428 76</b></p>	<p><b>First-Class Mail</b>  <b>Postage &amp; Fees Paid</b>  <b>USPS</b>  <b>Permit No. G-10</b></p>
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<p><b>United States Postal Service</b></p>	<p>• Sender: Please print your name, address, and ZIP+4® in this box•</p> <p><b>Stubbs Perdue</b>  <b>9208 Falls of Neuse Road</b>  <b>Suite 201</b>  <b>Raleigh, NC 27615</b></p>
--	--

RETURN TO LGV → 20190235.00 - QWR TO PHH

Laurel B. Biggs  
Blake Y. Boyette  
Matthew W. Buckmiller  
Joseph Z. Frost  
Patrick D. Holmes  
John W. King, Jr.  
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**SP**  
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January 8, 2020

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310 Craven Street  
P.O. Box 1654  
New Bern, North Carolina 28563

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Facsimile (252) 633-9600

**VIA CERTIFIED UNITED STATES MAIL**  
**RETURN RECEIPT REQUESTED**

PHH Mortgage Services  
Post Office Box 66002  
Lawrenceville, New Jersey 08648

PHH Mortgage Corporation d/b/a PHH  
Mortgage Services  
Attn: Corporation Service Co. - Reg. Agent  
2626 Glenwood Avenue, Suite 550  
Raleigh, North Carolina 27608

**RE: Second Notification that Borrower is Represented by Counsel;  
Instruction to Cease Communicating Directly with Borrower in  
Violation of the Fair Debt Collection Practices Act, 15 U.S.C.  
§ 1692 et seq.**

Dear sir or madam:

As you have been made aware, by correspondence dated December 16, 2019 and received at your offices on December 20, 2019, myself and my law firm, Stubbs & Perdue, P.A. (the "Firm") represent MARK ANTHONY GUTHRIE (the "Borrower") in connection with the mortgage loan, Loan No. [REDACTED] the "Loan") which, upon information and belief, is held by ALLY BANK f/k/a GMAC BANK ("GMAC") and serviced by PHH MORTGAGE CORPORATION f/k/a OCWEN LOAN SERVICING, LLC d/b/a PHH MORTGAGE SERVICES ("PHH"), which is secured by real property having a physical address of 401 Joy Court, Jacksonville, North Carolina 28540 (the "Property").

As submitted in our prior correspondence to your offices, please find enclosed a Letter Evidencing Legal Authority of Attorney to Act on Behalf of Client (the "Authorization"), which confirms that the Firm represents the Borrower in this matter. Notwithstanding PHH's actual notice of the Authorization, it nevertheless, and inexplicably, remitted correspondence to Borrower dated December 30, 2019, which appears to be a payoff statement generated in connection with the Loan.

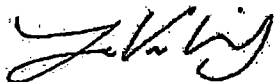
PHH Mortgage Corporation f/k/a Ocwen Loan Servicing, LLC d/b/a  
PHH Mortgage Services  
January 8, 2020  
Page 2 of 2

You are hereby advised, for the second time, that this Firm represents Borrower in connection with this matter. Accordingly, please refrain from contacting Borrower directly for any purpose whatsoever, and instead direct all such communications and correspondence to my offices.

Please be advised that further direct communications with Borrower without his consent, and with the actual knowledge that Borrower is represented by this Firm, is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the "FDCPA"), including, but not necessarily limited to, 15 U.S.C. § 1692c(a)(2), as well as the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-50 *et seq.* (the "NCDCA"), including, but not necessarily limited to, N.C. Gen. Stat. § 75-55(3), and that Borrower expressly reserves the right to seek appropriate judicial relief for all such past and future violations of the FDCPA, the NCDCA, and other applicable law.

Your prompt attention to this matter is greatly appreciated. If you have any questions regarding the foregoing, please don't hesitate to let me know.

Sincerely,



Landon G. Van Winkle, Esq.

Enclosures

cc: Mark Anthony Guthrie (via e-mail delivery only)

Stubbs & Perdue, P.A.

Laurie B. Buge  
Blake V. Boyette  
Maurice W. Buckneller  
Joseph Z. Fries  
Patrick D. Holmes  
John W. King, Jr.  
William H. Koell  
Trevor H. Ruffin, Jr.  
Landon G. Van Winkle

Gary B. Pridem  
(1947 - 1997)



**STUBBS PERDUE**  
ATTORNEYS AT LAW

9208 Falls of Neuse Road Suite 201  
Raleigh, North Carolina 27615

Telephone (919) 970-6258  
Facsimile (919) 970-6259

New Bern Office  
310 Carven Street  
P.O. Box 1654  
New Bern, North Carolina 28563

Telephone (252) 633-2700  
Facsimile (252) 633-9500

December 12, 2019

**LETTER EVIDENCING LEGAL AUTHORITY OF**  
**ATTORNEY TO ACT ON BEHALF OF CLIENT**

To whom it may concern:

My name is MARK ANTHONY GUTHRIE (hereinafter "I," "Me," "My" or "Mr. Guthrie"). Please be advised that I have retained the services of STUBBS & PERDUE, P.A. (the "Firm") to represent Me in connection with the servicing of My current mortgage account which is serviced by PHEI MORTGAGE CORPORATION d/b/a OCWEN LOAN SERVICING, LLC d/b/a PHEI MORTGAGE SERVICES ("PHEI"), and which is more particularly described as follows:

Borrower(s):

Mark Anthony Guthrie

Loan No.:

Tyisha M. Guthrie

Property Address:

401 Joy Court  
Jacksonville, North Carolina 28540

(collectively the "Mortgage").

The Firm and its attorneys, as listed on the letterhead above, as My attorney-at-law, have been authorized and retained to act on My behalf for all lawful and permissible purposes, including, but not limited to, (i) corresponding with PHEI or any other person or entity that the Firm, in its sole discretion, deems reasonably necessary to communicate with on My behalf; (ii) requesting information and receiving disclosures from any person on My behalf that the Firm, in its sole discretion, deems reasonably necessary and desirable to procure; (iii) inquiring into, discussing, and ascertaining the current status of the Mortgage and any and all other matters related thereto, including pending or past lawsuits, foreclosure actions, or other legal actions of any kind, with any person, entity or firm, including but not limited to PHEI, that the Firm, in its sole discretion, deems reasonably necessary or desirable to communicate with on My behalf; and (iv) to act for any and all other legal purposes on My behalf as My attorney-at-law.

As evidenced by My acknowledged signature below, this letter shall constitute *prima facie* evidence of the Firm's legal authority to act for and on behalf of Me as My attorney for all lawful purposes whatsoever.

By signing below, I acknowledge the legal authority of the Firm to act on My behalf in the manner

Guthrie - Letter Evidencing Representation

20190238.00

Page 1 of 2



and capacity stated above.

DATE: 12 Dec 2019

  
MARK ANTHONY GUTHRIE


STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I certify that MARK ANTHONY GUTHRIE personally appeared before me this, the  
12 day of DECEMBER, 2019 and acknowledged to me that he signed the  
foregoing document.

(OFFICIAL SEAL)



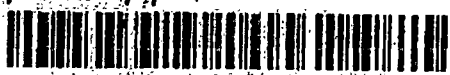
  
Vicki M. Legal Officer  
Notary Public and Consul of the  
United States, 10 U.S.C. 1044a  
Commission Expires: Indefinite

  
Signature of Notary Public

VICKI M. LEGAL OFFICER  
Name of Notary Public (Print)



My commission expires on INDEF

Guthrie - Letter Evidencing Representation  
20190238.00  
Page 2 of 2

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<p>■ Complete Items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:  <b>PHH MORTGAGE CORP. D/B/A PHH  MORTGAGE SERVICES  ATTN: CORPORATION SERVICES CO. -  REG. AGENT  2626 GLENWOOD AVE. STE 550  RALEIGH, NC 27608</b></p>  <p>9590 9402 5512 9249 6428 21</p>	<p>A. Signature  <b>X</b> <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>H. Huong</i> C. Date of Delivery <i>11/10/2020</i></p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If YES, enter delivery address below:</p>																
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PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

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United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box\*

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9208 Falls of Neuse Road  
Suite 201  
Raleigh, NC 27615**

**RETURN TO LGU  
20190238.00 - CEASE? DESIST**

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> <i>Macy Williams</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>PHH MORTGAGE SERVICES            POST OFFICE BOX 66002            LAWRENCEVILLE, NJ 08648</p>		<p>B. Received by (Print Name) <i>Macy Williams</i></p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7019 1120 0002 2411 7703</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>	
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<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

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• Sender: Please print your name, address, and ZIP+4® in this box•

Stubbs Perdue  
9208 Falls of Neuse Road  
Suite 201  
Raleigh, NC 27615

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**Daugherty v. Ocwen Loan Servicing, LLC**

United States District Court for the Southern District of West Virginia, Beckley Division

October 12, 2016, Decided; October 12, 2016, Filed

CIVIL ACTION NO. 5:14-cv-24506

**Reporter**

2016 U.S. Dist. LEXIS 159586 \*

DAVID M. DAUGHERTY, Plaintiff, v. OCWEN  
LOAN SERVICING, LLC, Defendant.

**Judges:** IRENE C. BERGER, UNITED STATES  
DISTRICT JUDGE.

**Prior History:** Daugherty v. Equifax Info. Servs.  
LLC, 2015 U.S. Dist. LEXIS 144679 (S.D. W. Va.,  
Oct. 26, 2015)

**Opinion by:** IRENE C. BERGER

**Opinion**

**Core Terms**

remittitur, punitive damages, award of punitive  
damages, reprehensibility, ratio, compensatory  
damages, willful violation, emotional distress,  
present evidence, physical injury

**Counsel:** [\*1] For David M. Daugherty, Plaintiff:  
Christopher B. Frost, Jed Robert Nolan, Ralph C.  
Young, Steven R. Broadwater, Jr., LEAD  
ATTORNEYS, HAMILTON BURGESS YOUNG  
& POLLARD, Fayetteville, WV; Sarah K. Brown,  
LEAD ATTORNEY, MOUNTAIN STATE  
JUSTICE, INC., Charleston, WV.

For Ocwen Loan Servicing, LLC, Defendant: Jason  
E. Manning, John C. Lynch, LEAD ATTORNEYS,  
Jonathan M. Kenney, TROUTMAN SANDERS,  
Virginia Beach, VA.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the *Defendant Ocwen Loan Servicing, LLC's Motion for Remittitur* (Document 219) and *Memorandum in Support* (Document 220), the *Plaintiff's Response in Opposition to Defendant's Motion for Remittitur* (Document 227), the *Reply Memorandum in Support of Defendant Ocwen Loan Servicing, LLC's Motion for Remittitur* (Document 232), and all attached exhibits. For the reasons set forth herein, the Court finds that the motion should be denied.

**PROCEDURAL HISTORY**

The Plaintiff initiated the present action with the filing of a *Complaint* on June 8, 2014, in the Circuit Court of Raleigh County, West Virginia. The Plaintiff named Equifax Information Services, LLC ("Equifax") and Ocwen Loan [\*2] Servicing, LLC ("Ocwen") as Defendants, asserting that when the Plaintiff sought to refinance a mortgage loan,

currently serviced by Ocwen, false or misleading statements on his credit report attributable to both Defendants prevented him from doing so. The Plaintiff asserted a number of claims against the Defendants, including violation of Section 1681s-2(b)(1)(A) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §1681s-2(b)(1)(A), unlawful debt collection practices under West Virginia Code §46A-2-127(d), and various claims arising under West Virginia common law, including negligence and the tort of outrage. The Plaintiff also requested that the court exercise equitable power to prevent foreclosure of his property, invoking the common law doctrine that equity abhors a forfeiture.

On August 7, 2014, the case was removed to the United States District Court for the Southern District of West Virginia. Ocwen filed its *Answer* to the Plaintiff's complaint on August 8, 2014. Ocwen denied any unlawful conduct and all claims of liability. On July 8, 2015, counsel for the Plaintiff notified the Court by letter that all claims against Defendant Equifax had been settled. On September 11, 2015, Ocwen moved for summary judgment on all claims raised by the Plaintiff. On October [\*3] 26, 2015, the Court entered a *Memorandum Opinion and Order*, granting summary judgment for the Defendant on the Plaintiff's state law claims, but denying summary judgment on the Plaintiff's claims under the FCRA. The Plaintiff agreed to voluntarily dismiss his claims for state law negligence.

Trial began on May 16, 2016, and concluded on May 23, 2016. At the conclusion of the evidence, Ocwen moved for judgment as a matter of law. The Court denied the motion, and the case proceeded to the jury. (See May 19, 2016 Transcr., at 111:2-114:15) (Document 206). The jury returned a verdict finding Ocwen liable for willfully violating the FCRA, and awarding damages of six thousand, one hundred twenty-eight dollars and thirty-nine cents (\$6,128.39) and punitive damages of two million, five hundred thousand dollars (\$2,500,000). Ocwen filed the present motion on June 24, 2016. The Plaintiff filed his response on

July 11, 2016, and Ocwen's reply was filed on July 21, 2016. The motion is ripe for review.

## STANDARD OF REVIEW

There is no specific provision for remittitur under the Federal Rules of Civil Procedure, but it is well established in the Fourth Circuit that a "remittitur should be ordered when [\*4] a jury award will result in a miscarriage of justice." Hughston v. New Home Media, 552 F.Supp.2d 559, 564 (E.D.Va. 2008), quoting Bennett v. Fairfax County, 432 F.Supp.2d 596, 599 (E.D. Va. 2006) (citations omitted). The decision as to whether a damage award is excessive and should be set aside is "entrusted to the sound discretion of the trial court." Robles v. Prince George's County, Maryland, 302 F.3d 262, 271 (4th Cir. 2002).

The Supreme Court has held that punitive damages may be imposed by a jury to "further 'legitimate interests in punishing unlawful conduct and deterring its repetition.'" Saunders v. Branch Banking and Trust Co. of Va., 526 F.3d 142, 152 (4th Cir. 2008), quoting BWM of N. Am., Inc. v. Gore, 517 U.S. 559, 568, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996). Federal law does not establish a bright line, permissible ratio for punitive and compensatory damages. State Farm Mut. Auto Ins. v. Campbell, 538 U.S. 408, 416, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). However, the Supreme Court has indicated that there are "procedural and substantive" limitations on a punitive damages award. *Id.* (citations omitted). In the context of willful violations of the FCRA, the Fourth Circuit has upheld jury verdicts where the ratio of punitive to compensatory damages was 80:1. See Saunders v. Branch Banking and Trust Co. of Va., 526 F.3d 142 (4th Cir. 2008) (*Saunders II*). The Fourth Circuit has instructed district courts, when reviewing an award of punitive damages on motion for remittitur, to look to "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages

award; and (3) the difference between the punitive damages [\*5] awarded by the jury and the civil penalties ... in comparable cases." Saunders II, 526 F.3d at 152.

## DISCUSSION

Ocwen requests that the Court remit the punitive damages award because (1) its conduct was not reprehensible; (2) it did not repeatedly violate the FCRA; (3) there was no evidence that Ocwen deployed malice, trickery, or deceit; and (4) because the "disparity between the actual harm suffered and the punitive damages award" requires remittitur. (Def.'s Mem. of Law in Supp. of Mot. for Remittitur, at 3-7.) The first three arguments can all be grouped under the "reprehensibility" analysis set forth by the Supreme Court in State Farm, 538 U.S. at 419, citing Gore, 517 U.S. at 576-77. The final argument falls within the second prong of the State Farm analysis, which addresses the disparity between compensatory and punitive damages. For the reasons that follow, the Defendant's arguments fail.

Ocwen argues that the punitive damages award should be reduced or stricken because its conduct was not "malicious," did not "cause physical harm," or "endanger the health and safety of others." (Def.'s Mem. of Law in Supp. of Mot. for Remittitur, at 3.) In assessing reprehensibility, there are four factors courts will generally consider:

whether (1) the harm caused was physical [\*6] as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; (3) the target of the conduct has financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm, 538 U.S. at 419, citing Gore, 517 U.S. at 576-77.

Ocwen argues first that the Plaintiff in this case did not suffer physical injury, and that while the jury did find that the Plaintiff suffered emotional distress, that is insufficient to satisfy "physical injury" under State Farm. (Def.'s Mem. of Law in Supp. of Mot. for Remittitur, at 4.) Further, Ocwen argues that its tortious conduct did not demonstrate reckless disregard for the safety of others. (*Id.* at 4-5.) In making this argument, Ocwen relies heavily upon Bach v. First Union Nat. Bank, 149 Fed.Appx. 354 (6th Cir. 2005), an unpublished decision from the Sixth Circuit that predates Saunders II, wherein the Sixth Circuit found that emotional distress was "not the sort of physical injury" contemplated by State Farm. Bach, 149 Fed.Appx. at \*\*9. Notably, the Sixth Circuit cited no precedent to support this conclusion. Bach is an unpublished decision without persuasive value which does not reflect the law of the Fourth [\*7] Circuit regarding emotional distress. The trial court in Saunders II discussed Bach at length, and indicated that the "reasoning appears to be soundly applicable to FCRA cases where both compensatory and punitive damages have been awarded." Saunders v. Equifax Information Services, L.L.C., 469 F.Supp.2d 343, 353 (E.D. Va. 2007) (Saunders I). However, Saunders I did not involve evidence of emotional distress, and the Fourth Circuit did not expressly adopt the trial court's view of Bach in affirming the decision. See generally Saunders II, 526 F.3d at 142-153. To the contrary, the Fourth Circuit has never held that in the context of the FCRA, or in the context of punitive damages, emotional distress is insufficient to satisfy the physical injury prong of State Farm. At trial, the Plaintiff testified at length about the emotional toll that Ocwen's conduct inflicted upon him, and his wife corroborated that testimony. The jury clearly accepted this testimony, at least in part, by finding that the Defendant had willfully violated the FCRA, and awarded compensatory and punitive damages. The Court finds that this counsels against remittitur of the punitive damages award.

Even if the Court were to agree with Ocwen regarding the Sixth Circuit's holding in Bach, and



the absence of physical injury in this case, [\*8] Ocwen's request for remittitur would still fail. The Fourth Circuit noted, in *Saunders II*, that FCRA violations will "very infrequently cause physical harm or endanger the health and safety of others." However, the Fourth Circuit also noted that "Congress ... nevertheless authorized punitive damages" for willful violations of the FCRA, and therefore, held that "the absence of [the first and second factors of the *State Farm* analysis]" did not "weigh strongly" against an award of punitive damages. *Saunders II*, 526 F.3d at 153. Therefore, even if physical injury were absent in this case, that would not provide meaningful support for Ocwen's remittitur request.

The third *State Farm* factor, the financial vulnerability of the Plaintiff, was clearly present in this case, and Ocwen does not dispute this conclusion. (See Def.'s Mem. in Supp. of Mot. for Remittitur, at 6.) The Plaintiff faced a balloon payment on his mortgage, and testified that because of inaccurate entries on his credit report, and a credit score tarnished, in part, by inaccurate reports of a foreclosure that Ocwen failed to reasonably investigate and rectify, he was unable to obtain refinancing for an extended period of time. Therefore, the Court will [\*9] proceed to the fourth factor, and determine whether Ocwen engaged in the type of "repeated actions" contemplated by *State Farm*. Ocwen again invokes *Bach I* to argue that it did not engage in repetitive misconduct, noting the Sixth Circuit's finding that *State Farm* required evidence of a "nationwide pattern of tortious conduct." *Bach I*, 149 Fed.Appx. at 365, citing *Gore*, 517 U.S. at 576-77. Ocwen misconstrues *Gore*. The Plaintiff attempted to establish reprehensibility in *Gore* by arguing that the Defendant's conduct was "part of a nationwide pattern of tortious conduct." The Supreme Court rejected that contention, and certainly did not hold that the reprehensibility analysis requires such a nationwide pattern. *Gore*, 517 U.S. at 560. In this case, the Plaintiff presented evidence that Ocwen repeatedly failed to reasonably investigate his credit disputes, and presented evidence to establish that

Ocwen's conduct was willful. The Plaintiff presented evidence showing that Ocwen gave only cursory attention to the many disputes that were submitted regarding his credit history and an inaccurate foreclosure entry. The jury found that Ocwen had willfully violated the FCRA, and it is reasonable to infer that the jury determined, in reaching a punitive damages verdict, [\*10] that Ocwen would not change its behavior absent the imposition of significant punitive damages. The Court, therefore, finds that this factor weighs against remittitur. The Court also notes that in reaching its verdict, the jury necessarily rejected Ocwen's arguments that it complied with the requirements of the FCRA. *Saunders II* supports this conclusion. In *Saunders II*, the Fourth Circuit did not find that the defendant engaged in repeated violations of the FCRA, but nonetheless found that the defendant's "intentional misconduct and longstanding refusal to correct its errors [were] more reprehensible than negligence or a mistake quickly corrected." *Saunders II*, 526 F.3d at 153. This conclusion is equally applicable here. Even if Ocwen had not engaged in repeated misconduct, the jury found that Ocwen willfully violated the FCRA, and the Plaintiff presented evidence at trial showing that Ocwen repeatedly refused to reasonably investigate the Plaintiff's credit disputes.

As to the fifth *State Farm* factor, the Court agrees with Ocwen that the Plaintiff did not establish malice, deceit, or trickery. However, this alone is not enough to support remittitur. While there is no evidence that Ocwen's conduct was malicious [\*11] or deceitful, the Plaintiff presented evidence that Ocwen repeatedly refused to comply with its statutory duty under the FCRA to reasonably investigate credit disputes, despite the fact that the Plaintiff was clearly financially vulnerable. The Plaintiff presented evidence that Ocwen's conduct resulted in significant emotional distress, and the jury ultimately found that Ocwen willfully violated the FCRA, and therefore imposed punitive damages. Under these facts, Ocwen's conduct was sufficiently reprehensible that *State Farm* does not dictate granting Ocwen's request for

remittitur.

This brings the Court to the question of whether the punitive damages verdict should be remitted based on the disparity between punitive and compensatory damages. The jury awarded compensatory damages of \$6,128.39, and punitive damages of \$2,500,000, for a ratio of approximately 408:1. Ocwen argues that this ratio alone should form the basis for remittitur. The Court cannot agree, and again, finds support in *Saunders II*. In *Saunders II*, the Fourth Circuit declined to remit a jury verdict where the ratio of punitive damages to compensatory damages was 80:1, noting that while "[p]unitive damages awards that exceed a [\*12] single digit ratio" may present "constitutional problems," the Supreme Court, in *State Farm*, recognized that "greater ratios may comport with due process ... when "reprehensible conduct results 'in only a small amount of economic damages.'" *Saunders II*, 526 F.3d at 154, quoting *State Farm*, 538 U.S. at 425. The Fourth Circuit also reviewed a number of FCRA cases, and declined to "conclude that an award [of punitive damages 80 times larger than the compensatory damages was] grossly excessive or arbitrary. *Id.*

Here, while the jury verdict did not include *any* economic damages, the jury awarded a relatively modest amount of total compensatory damages. The jury then imposed a significant punitive damages sanction, presumably to deter Ocwen from placing future homeowners in a similar predicament. As the Fourth Circuit noted in *Saunders II*, other circuits have permitted punitive-compensatory ratios of up to 2173:1. See *Id.* at 153, citing *Kemp v. Am. Tel. & Tel. Co.*, 393 F.3d 1354, 1364-65 (11th Cir. 2004) (allowing punitive damages award of \$250,000 accompanying compensatory damages of \$115.05); *Abner v. Kan. City S. R.R.*, 513 F.3d 154, 165 (5th Cir. 2008) (affirming punitive damages award of \$125,000 accompanying nominal damages of \$1.) Thus, restricting a punitive damages verdict to a single digit ratio would not, in the words of the *Saunders II* court, "serve as a meaningful deterrent" [\*13] to

Ocwen's reprehensible conduct. The jury was instructed that it could consider a number of factors in determining whether to award and what amount of punitive damages to award. These factors included the Defendant's financial status. The jury's punitive damages verdict in this case comports with the due process clause, fits squarely within the Fourth Circuit's holding in *Saunders II*, and is a legally appropriate sanction for a jury to impose, in light of Ocwen's willful violations of the FCRA. Therefore, Ocwen's motion for remittitur must fail.

## CONCLUSION

Wherefore, after careful consideration, the Court **ORDERS** that the *Defendant Ocwen Loan Servicing, LLC's Motion for Remittitur* (Document 219) be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: October 12, 2016

/s/ Irene C. Berger

IRENE C. BERGER

UNITED STATES DISTRICT JUDGE

SOUTHERN DISTRICT OF WEST VIRGINIA

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**In re Adams**

United States District Court for the Eastern District of North Carolina, Western Division

January 24, 2011, Decided; January 24, 2011, Filed

NO: 5:10-CV-340-BR

**Reporter**

2011 U.S. Dist. LEXIS 158090 \*

IN RE CRAIG L. ADAMS and MONICA L.  
ADAMS

**Judges:** W. Earl Britt, Senior U.S. District Judge.

**Opinion by:** W. Earl Britt

**Prior History:** In re Adams, 2010 Bankr. LEXIS 2207 (Bankr. E.D.N.C., July 7, 2010)

**Opinion**

**Core Terms**

bankruptcy court, injunction, sanctions, punitive damages, mortgage, contempt, punitive, modified, modification, discharged, award of punitive damages, interest rate, reporting, mortgage lender, ratio, contempt sanction, criminal contempt, impermissible, compensatory damages, residential mortgage, civil contempt, show cause, circumstances, confirmation, inaccurate, contends, coerce, court order, violations, orders

**Counsel:** [\*1] For Ocwen Loan Servicing, LLC, Appellant: Jason K. Purser, LEAD ATTORNEY, Kimberly A. Sheek, Shapiro & Ingle, LLP, Charlotte, NC.

For Craig L. Adams, Monica L. Adams, Appellees: Douglas Q. Wickham, Hatch Little & Bunn, LLP, Raleigh, NC.

**ORDER**

Before this court is an appeal by creditor-appellant Ocwen Loan Servicing, LLC ("Ocwen") from the 7 July 2010 order of United States Bankruptcy Judge Stephani Humrickhouse. In that order, Judge Humrickhouse found Ocwen in contempt of the discharge injunction and the bankruptcy court's 23 May 2008 order. For the reasons set forth below, the bankruptcy court's decision is affirmed.

**I. BACKGROUND <sup>1</sup>**

On 26 October 2004, debtors filed a chapter 13 petition. (DE #2-1.) By order dated 25 April 2008, the bankruptcy court granted debtors discharge. (DE #3-2.) On 29 April 2008, debtors filed a motion for a declaration that they were current on their residential mortgage payments to Ocwen, their mortgage servicer. (DE #3-1.) Ocwen did not respond [\*2] to the motion. On 23 May 2008, the bankruptcy court issued an order declaring debtors'

<sup>1</sup> The facts are taken primarily from the bankruptcy court's 7 July 2010 order. Where appropriate, the court cites to the record on appeal, by docket entry ("DE #").

indebtedness to Ocwen current and providing that any attempt to collect the "discharged principal payments, interest, fees or expenses . . . shall be deemed to be a willful violation of the discharge injunction and contempt of the orders of this Court; and that such action shall give the right to the Debtors to pursue a proceeding before this Court for contempt and appropriate sanctions." (DE #1-1.)

In the summer of 2008, debtors sought to refinance their mortgage, but were turned down after Ocwen transmitted an inaccurate payoff statement and loan history to the proposed new lender. Ocwen's documents reported that the loan on debtors' residence was in foreclosure, even though the loan has never been in foreclosure. Debtors, individually and through their attorney, repeatedly notified Ocwen of this error, but Ocwen failed to rectify its mistake. Debtors filed motions to reopen their bankruptcy case and to show cause why Ocwen should not be held in contempt on 12 September 2008. (DE #3-5, 3-6.) The bankruptcy court allowed the motion to reopen. (DE #3-7.) Ocwen subsequently filed a brief response to [\*3] the show cause motion, requesting that the "matter be set for hearing while it investigates the claims made by the Debtors." (DE #4-1.) The bankruptcy court set the matter for hearing in November 2008; however, the hearing was continued a number of times on the parties' representations that they were attempting to resolve the matter without court intervention. (See DE ##4-3 to 4-13.) The bankruptcy court ultimately held the show cause hearing in May 2010. At the hearing's conclusion, the court found Ocwen in contempt of the discharge injunction<sup>2</sup> and its 23 May 2008 order and took the issue of damages under advisement. (DE #1-2.)

On 7 July 2010, the bankruptcy court issued a written order memorializing its finding Ocwen in

contempt and assessing compensatory damages in the amount of \$2500, plus attorneys' fees of \$2250. (Id.) The court lowered the mortgage's interest rate to [\*4] 6%, which it determined was a reasonable market rate for the period after the 23 May 2008 order. (Id.) Applying the modified interest rate, the court set the balance owing on the mortgage as of 1 July 2010 at \$65,373.12. (Id.) Additionally, the court imposed punitive damages in the amount of \$66,300, representing \$100 per day from 12 September 2008, the date on which Ocwen was served with debtors' motion to show cause, until the date of entry of the contempt order. (Id.)

## II. DISCUSSION

The court reviews the bankruptcy court's findings of fact for clear error and its legal conclusions *de novo*. See *In re Meredith*, 527 F.3d 372, 375 (4th Cir. 2008). A court reviewing an order of civil contempt applies the abuse of discretion standard. *JTH Tax, Inc. v. H & R Block Eastern Tax Servs., Inc.*, 359 F.3d 699, 705 (4th Cir. 2004).

Ocwen contends that Judge Humrickhouse erred in a number of respects. It argues that (1) the bankruptcy court lacked the authority to modify the terms of debtors' residential mortgage; (2) the bankruptcy court lacked the authority to order a contempt sanction for violations of the discharge injunction; (3) the punitive damages award constitutes an impermissible criminal [\*5] contempt sanction; and (4) the amount of the punitive damages award is constitutionally excessive. (Appellant's Br. at 2-4.) The court addresses these arguments in turn.

### A. Residential Loan Modification Exception

Ocwen first contends that the bankruptcy court is prohibited from modifying terms of debtors' mortgage pursuant to *11 U.S.C. § 1322(b)(2)*. Under that statute, "[a] debtor's Chapter 13 plan may 'modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence.'" *In re Ennis*, 558 F.3d 343.

<sup>2</sup> A discharge in bankruptcy "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such [discharged] debt as a personal liability of the debtor, whether or not discharge of such debt is waived." *11 U.S.C. § 524(a)(2)*.

345 (4th Cir. 2009) (quoting 11 U.S.C. § 1322(b)(2)) (emphasis added). The statute's mortgage anti-modification clause was enacted "to encourage the flow of capital into the home lending market." Nobelman v. American Sav. Bank, 508 U.S. 324, 332, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (1993) (Stevens, J., concurring).

In examining what constitutes impermissible modification of a residential mortgage under § 1322(b)(2), the Fourth Circuit explains:

The bankruptcy courts have consistently interpreted the no-modification provision of § 1322(b)(2) to prohibit any fundamental alteration in a debtor's obligations, e.g., lowering monthly payments, [\*6] converting a variable interest rate to a fixed interest rate, or extending the repayment term of a note. See, e.g., In re Schum, 112 B.R. 159, 161-62 (Bankr. N.D. Tex. 1990) (concluding that plan was impermissible modification because it proposed to reduce monthly payments and secured valuation). In In re Gwinn, 34 B.R. 936, 944-45 (Bankr. S.D. Ohio 1983), the court approved a plan as a permissible cure under § 1322(b)(5), because the plan did not propose to lower monthly payments, extend the repayment period, or make the obligation conditional. It instead sought only to reinstate the original contract with a minor delay in payment. *Id.*; see also In re Cooper, 98 B.R. 294 (Bankr. W.D. Mich. 1989) (finding impermissible modification where plan proposed new payment schedule). Along similar lines, another bankruptcy court concluded that confirmation of a Chapter 13 plan would have constituted an impermissible modification because the plan proposed to alter fundamental aspects of the debtor's obligations, i.e., the nature and rate of interest, and the maturity features of the loan. In re Coffey, 52 B.R. 54, 55 (Bankr. D.N.H. 1985). As these decisions have emphasized, § 1322(b)(2) prohibits [\*7] modifications that would alter at least one fundamental aspect of a claim.

In re Litton, 330 F.3d 636, 643-44 (4th Cir. 2003).

Significant here is § 1322(b)(2)'s prohibition against a plan that modifies a fundamental aspect of a residential mortgage creditor's secured claim. The bankruptcy court confirmed debtors' Chapter 13 plan on 14 March 2005. (DE #2-3.) No one contends that the confirmed plan modified debtors' obligations to Ocwen. As such, no violation of § 1322(b)(2) has occurred.

Ocwen's argument suggests that the bankruptcy court can never modify a debtor's residential mortgage, even where the creditor has violated the Bankruptcy Code or a court order, to the detriment of a debtor. Such a result is contrary to the plain language of § 1322(b)(2) and the "fresh start" that the Bankruptcy Code envisions a debtor receives upon emerging from bankruptcy. In analyzing whether § 1322(b)(2) forecloses a Chapter 13 debtors' claim against the mortgage lender for allegedly attempting to collect fees and costs post-discharge, another bankruptcy court's observations are particularly instructive:

Essentially, [the mortgage lender] reads too much into § 1322(b)(2). Section 1322(b)(2) prevents [\*8] a chapter 13 plan from modifying a mortgage lender's contract rights. A chapter 13 debtor may not modify principal or interest payments or discharge fees and expenses allowed by the mortgage contract. But § 1322(b)(2)'s protections do not place mortgage lenders outside the court's purview.

Section 1322(b)(2) prevents a plan from modifying a mortgage lender's substantive contract rights, but § 1322(b)(2) does not allow a mortgage lender to ignore the procedural limits imposed by the Bankruptcy Code and Rules that govern how those rights are exercised. A mortgage lender must exercise its contract rights in the manner allowed by the Bankruptcy Code, Bankruptcy Rules, and court orders. Bankruptcy Rule 2016 requires mortgage lenders to disclose any fees and costs

the mortgage lender intends to collect from the debtor. Enforcement of Rule 2016 is necessary to enforce the rights and obligations imposed by specific Code provisions. Failure to enforce Bankruptcy Code and Rule requirements would allow mortgage lenders to deny debtors the promised fresh start, despite their diligent compliance with all that the Code and the court asked of them.

In re Cano, 410 B.R. 506, 521 (Bankr. S.D. Tex. 2009).

Here, [\*9] the bankruptcy court's modifications of the subject mortgage constitute contempt sanctions, assessed independently of debtors' plan. The court modified the mortgage as a result of Ocwen's violation of the discharge injunction and the court's order and to thereby compensate debtors for losses incurred. A modification of a residential mortgage under these circumstances is not subject to any limitations imposed by § 1322(b)(2).<sup>3</sup>

#### B. Sanctions Under Section 105

Ocwen next argues that the bankruptcy court did not have the authority under 11 U.S.C. § 105 to impose sanctions under the circumstances here. This statute empowers the bankruptcy court to hold parties in civil contempt for violating the

Bankruptcy Code as well as its orders. See 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); In re Walters, 868 F.2d 665, 669 (4th Cir. 1989). While recognizing that the bankruptcy court possesses such authority, Ocwen contends a predicate violation of neither the Bankruptcy Code nor a court order occurred here. (Appellant's Br. at 2-3, 10-11.) Specifically, Ocwen claims that its "mere delay" in updating its accounts to reflect the discharge does not constitute an act to collect, [\*11] recover or offset a discharged debt in violation of the discharge injunction nor an attempt to collect the discharged principal payments, interest, fees, or expenses in violation of the court's 23 May 2008 order.

Ocwen points to many cases which recognize that a creditor's reporting of inaccurate credit information about the debtor, without evidence of intent to coerce payment of the discharged debt, does not violate the discharge injunction. Another bankruptcy court summarizes the law in this regard.

[C]ourts have frequently held that acts which by their nature constitute efforts to collect discharged debts—such as filing suit against the debtor, sending dunning notices, or attaching the debtor's property—are not excused simply because they were mistakenly pursued. However, a distinction must be made between acts which have as their direct and natural purpose the collection of debts and acts which have some other lawful purpose but could also be used (or, more accurately, misused) to coerce payment of a debt. The reporting of a delinquent debt to a credit reporting agency is not inherently an act to collect a debt but rather to share information relevant to credit granting decisions. [\*12] A creditor reports both performing and delinquent accounts in the expectation that other credit grantors will do the same, enhancing each creditor's ability to evaluate proposed credit transactions and to avoid extending credit or making loans to poor

<sup>3</sup> In a footnote, Ocwen asserts that there is no factual basis for the bankruptcy court's determination that 6% is a reasonable market rate debtors could have obtained had they refinanced in 2008. (Appellant's Br. at 9 n.4.) At the hearing on the motion to show cause, as possible sanctions against Ocwen, debtors' counsel suggested a modified interest rate on the subject mortgage of 6% through 2008, of 5.5% for the first six months in 2009, and 5% thereafter. (DE #11 at 13.) When the court subsequently questioned Ocwen's counsel about this "creative solution," Ocwen's counsel pointed out that 5% is below the current market rate. (Id. at 24.) She acknowledged "six percent through 2008 is most probably accurate. As is the 5.5 percent for 2009." (Id. at 25.) She stated [\*10] the current market rate, for creditors with "pristine credit," is "right around 5.45 to 5.5 percent." (Id.) The bankruptcy court's determination that 6% was an appropriate interest rate by which to sanction Ocwen was not an abuse of discretion (or clearly erroneous, if one characterizes the determination of the interest rate a finding of fact).



credit risks.

This is not to say that the reporting of a discharged debt as delinquent rather than discharged would not, at least in some circumstances, place pressure on a debtor to pay the debt. And the court does not doubt that there are at least some creditors who report discharged debts without an indication of their bankruptcy status in the hope that debtors will be pressured into paying them as a condition of obtaining future credit. But where the action complained of does not on its face constitute an act to collect a debt, the burden is on the debtor to show that the creditor took the challenged action for the specific purpose of collecting a discharged debt. ....

Of course there will be circumstances in which an improper motive may be inferred, thereby shifting the burden to the creditor of showing otherwise. For example, if a creditor, having been informed of the problem, inexplicably fails to take corrective action, a debt [\*13] collection motive may be inferred (particularly where the creditor fails to respond to the motion to reopen alleging such a motive). In those circumstances, reopening the case to award injunctive relief and attorneys fees might well be appropriate, even in the absence of other provable damages. ...

*In re Jones*, 367 B.R. 564, 569-70 (Bankr. E.D. Va. 2007) (citations and footnote omitted).

This case falls within that latter situation the *Jones* court identifies. The evidence shows Ocwen did more than delay updating its accounts. It transmitted an inaccurate payoff quote and loan history to debtors' potential mortgagee; assessed discharged principal, fees, and costs; reported inaccurate information to credit reporting agencies; and, most importantly, after the inaccurate information had been brought to its attention a number of times, failed to correct the information, at least as of the date of the bankruptcy court's hearing. Ocwen never presented any evidence to

the contrary. The court agrees with the bankruptcy court that Ocwen willfully violated the discharge injunction and the bankruptcy court's 23 May 2008 order. As such, the bankruptcy court had the authority pursuant to 11 U.S.C. § 105 [\*14] to sanction Ocwen for these violations.

### C. Punitive Damages

Ocwen next argues that even if the bankruptcy court had the authority to hold it in civil contempt under § 105, the punitive damages award constitutes an impermissible criminal contempt sanction.<sup>4</sup> Ocwen correctly recognizes that how a court labels a contempt sanction is not dispositive. Rather,

the critical features for determining whether a contempt remedy is civil or criminal are the substance of the proceeding and the character of the relief that the proceeding will afford. When the nature of the relief and the purpose for which the contempt sanction is imposed is remedial and intended to coerce the contemnor into compliance with court orders or to compensate the complainant for losses sustained, the contempt is civil; if, on the other hand, the relief seeks to vindicate the authority of the court by punishing the contemnor and deterring future litigants' misconduct, the contempt is criminal. For these reasons, putatively civil contempt sanctions will be held to be criminal sanctions in cases when the fines were not conditioned on compliance with a court order, not tailored to compensate the complaining party, but instead [\*15] initiated to vindicate the authority of the court and to punish the actions of the alleged contemnor.

*Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 821-22 (4th Cir. 2004) (citations, alteration, and quotations omitted). If the contempt sanction is in

<sup>4</sup>Notably, Ocwen does not argue that its conduct does not meet the standard the bankruptcy court applied to assess punitive damages, i.e., "egregious conduct," "malevolent intent," or "clear disregard of the bankruptcy laws," (DE #1-2 at 11).

fact criminal, certain due process protections must be provided and procedures followed prior to its imposition. See id. at 820.

A number of courts recognize that punitive damages may be awarded as a contempt sanction under § 105 for violation of the discharge injunction. See, e.g., In re Workman, 392 B.R. 189, 195, 196 (Bankr. D.S.C. 2007) (awarding plaintiffs/debtors punitive damages of \$100 per day, from time mortgagee sent plaintiffs/debtors letter inaccurately notifying them they were past due on mortgage and responsible for fees through entry of contempt order, for violating confirmation and discharge orders as "appropriate to coerce compliance with the orders"); In re Mooney, 340 B.R. 351, 361-62 (Bankr. E.D. Tx. 2006) [\*16] (finding a punitive damages award of \$40,000 for violation of the discharge injunction as "necessary and appropriate to carry out the provisions of the Bankruptcy Code" where creditor continued with its course of conduct even after having been informed of its violations of the discharge injunction); In re Cherry, 247 B.R. 176, 187, 189-90 (Bankr. E.D. Va. 2000) (although ultimately concluding punitive damages were not warranted, recognizing most courts allow punitive damages for violation of the discharge injunction). But see In re Dyer, 322 F.3d 1178, 1195 (9th Cir. 2003) ("[W]hen a bankruptcy court exercises the contempt authority of § 105(a), it may not impose serious punitive sanctions.").

The imposition of punitive damages as a contempt sanction does not necessarily constitute a criminal contempt sanction. As a bankruptcy court has noted,

[t]he imposition of punitive damages under the authority granted under § 105 in this context does not carry this court into the realm of criminal contempt as contemplated by 18 U.S.C. § 401[, the criminal contempt statute,] and Griffith v. Oles (In re Hipp), 895 F.2d 1503, 1515 (5th Cir. 1990)[, where the Fifth Circuit held that bankruptcy courts [\*17] do

not have jurisdiction to try for criminal contempt]. Clearly every assessment of punitive damages does not occur within that forbidden realm. The assertion that all criminal contempt sanctions are punitive in nature does not render all punitive sanctions criminal in nature. This Court is not assessing these punitive sanctions for contempt of this Court's authority. It is assessing these sanctions, as requested by the debtor, for the violation of the statutory protections provided to her under § 524 and to which she is entitled as the *quid pro quo* for properly disclosing and surrendering all of her non-exempt property to the trustee for the benefit of her creditors. The vindication of these statutory protections is critical to the proper restructuring of the debtor-creditor relationship and is an integral part of the bankruptcy case, not separate and independent from it. Issuing reasonable sanctions of this type under the proper circumstances is clearly "necessary and appropriate" to insure that the bankruptcy system actually works. Although language utilized in some jurisprudence has unfortunately blurred the lines in this area, [the creditor] committed no crime here, nor is it [\*18] being punished for one.

Mooney, 340 B.R. at 362 n.29.

In this case, the court finds that the bankruptcy court's \$66,300 punitive sanction was a proper civil contempt sanction. It is clear from the record that the bankruptcy court was most concerned about Ocwen's failure to correct its reports or the information it reports to credit reporting agencies, despite having been repeatedly notified of such failure and in the face of the motion to show cause and hearing thereon. (See DE #1-2 at 7 (recognizing at the hearing that the court was presented with no evidence that Ocwen had taken any corrective action to date), 8 ("That Ocwen still proposes to correct its reporting, and has not yet given proof of having done so, is mind-boggling." (emphases in original)), 9 ("The fact that Ocwen is unwilling to acknowledge the seriousness of this

matter even today carries significant weight with the court."); DE #11 at 54 ("I find most egregious here, although . . . violation of an order of this court is egregious in and of itself, is the continued reporting of this loan in the fashion, almost to date. I find that most egregious and if I, in fact, do award punitive damages, it will be based in large [\*19] part upon that.") Specifically with reference to punitive damages, Judge Humrickhouse stated, "Ocwen has given every indication that it is and will remain indifferent to the statutory significance of the discharge injunction and to the express terms of the May 23, 2008 order, unless it is compelled to take note." (DE #1-2 at 11 (citing Cherry, 247 B.R. 176, 189-90).) These statements evidence the judge's belief that Ocwen would not take any action on its records without a punitive sanction being imposed. Thus, the punitive sanction was intended to coerce Ocwen into correcting its records and the information it was disseminating about debtors' accounts and thereby coercing Ocwen to comply with the discharge injunction and the court's 23 May 2008 order. Ultimately, an award of this type is necessary and appropriate to carry out the "fresh start" provisions of the Bankruptcy Code and is a proper civil contempt sanction under the facts here.

#### D. Constitutionality of Punitive Sanctions

Finally, Ocwen contends that the bankruptcy court's punitive damages award is unconstitutionally excessive. In evaluating the reasonableness of a punitive damage award, courts consider (1) the degree of reprehensibility [\*20] of the wrongdoer's conduct; (2) the ratio of the punitive damages award to compensatory damages; and (3) punitive damage awards or sanctions for comparable misconduct. See BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 574-84, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996). The court examines each of these in turn.

Evaluation of reprehensibility is based on five factors:

- (1) whether the harm done was physical as opposed to economic; (2) whether the conduct

involved indifference to the health or safety of others; (3) whether the victim was financially vulnerable; (4) whether the conduct involved repeated actions or was isolated; and (5) whether the harm suffered by the plaintiff resulted from conduct that was known or suspected to be unlawful.

EEOC v. Federal Express Corp., 513 F.3d 360, 376-77 (4th Cir. 2008) (citing BMW, 517 U.S. at 576-77). Considering these factors, Ocwen's conduct was, indeed, reprehensible. Its gross misrepresentation of the status of debtors' mortgage debt was not an isolated incident. In fact, it continued over a period of many months, despite debtors' and their attorney's repeated requests that Ocwen rectify its error and their filing of a motion to show cause. Such persistent misconduct can only be characterized [\*21] as willful and intentional. Furthermore, as previously recognized, debtors depended upon Ocwen's accurate reporting to take full advantage of the "fresh start" offered by the bankruptcy system. Ocwen's conduct is particularly worthy of punitive sanctions, given debtors' financial vulnerability. See BMW, 517 U.S. at 576 ("To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct or when the target is financially vulnerable, can warrant substantial penalty." (citation omitted)).

Turning to the ratio of punitive damages to the compensatory award, Ocwen contends that the amount of the punitive award is impermissibly excessive because it represents a 14-to-1 ratio. It is true that awards exceeding a single-digit ratio will generally be deemed unconstitutionally excessive. See Exxon Shipping Co. v. Baker, 554 U.S. 471, 501, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008) ("[W]e have determined that 'few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process'. . . ." (citation omitted)). However, Ocwen's argument fails to consider the previously-determined permissible loan balance modification in its [\*22] ratio calculation.

Including the value of loan balance modification, the ratio between the punitive and compensatory damages awards is, in fact, 4-to-1, and falls squarely within the confines of due process.<sup>5</sup>

Finally, the punitive damages award is consistent with damage awards in comparable cases. See Workman, 392 B.R. at 196-97 (\$100.00 per day for each day mortgagee violated the confirmation and discharge orders (relying on A.H. Robins Co., Inc., 197 B.R. 561 (E.D. Va. 1994) (sanctioning an attorney \$100.00 per day for each day that he was in violation of a confirmation order)).

In sum, the court finds that the punitive damages award does not exceed constitutional limitations.

### III. [\*23] CONCLUSION

The 7 July 2010 Order of the Bankruptcy Court of the Eastern District of North Carolina is AFFIRMED.

This 24 January 2011.

/s/ W. Earl Britt

W. Earl Britt

Senior U.S. District Judge

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End of Document

<sup>5</sup> The value of the loan modification is the difference in the amount Owen claimed as the principal owing as of 23 May 2008 (\$76,426.43) and the amount the bankruptcy court set as the balance remaining as of 1 July 2010 (\$65,373.12). (See DE #1-2 at 11.) This calculation does not take into account the effect of the new 6% interest rate over the remaining life of the loan, which would presumably result in an even higher compensatory damage figure and thus a lower ratio of punitive damages to compensatory damages.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00025-WYD-KHR

VALERIE JEFFERS,

Plaintiff,

v.

OCWEN LOAN SERVICING, LLC,

Defendant.

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FINAL JUDGMENT

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THIS MATTER came before the Court and a jury of ten duly sworn to try the matter on February 20, 2018 the Honorable Wiley Y. Daniel, Senior United States District Judge, presiding. On February 22, 2018, the jury returned its verdict as follows:

**Verdict Form**

We, the jury, being duly empaneled and sworn to try the above-captioned case, do unanimously find our Verdict as follows:

**I. Fair Credit Reporting Act Claims**

**Question 1:** Has the Plaintiff proved by a preponderance of the evidence that Defendant negligently violated the Fair Credit Reporting Act as defined in Instruction Nos. 7, 12 and 13?

Answer: YES

**Question 2:** Has the Plaintiff proved by a preponderance of the evidence that Defendant willfully violated the Fair Credit Reporting Act as defined in Instruction Nos. 10, 11, 12 and 13?

Answer: YES

**Question 3:** If you answered "YES" to Question 1 or Question 2, or both, then state the amount of Plaintiff's actual damages on her Fair Credit Reporting Act claims:

\$25,000.00

**Question 4:** If you answered "YES" to Question 2, then state the amount of Plaintiff's punitive damages on her Fair Credit Reporting Act claim:

\$360,000.00

**II. Breach of Contract Claim**

**Question 5:** Has the Plaintiff proved by a preponderance of the evidence that Defendant breached the contract?

Answer: YES

**Question 6:** If you answered "YES" to Question 5, has the Plaintiff proved by a preponderance of the evidence that she incurred damages on her Breach of Contract claim as defined in Instruction Nos. 20, 21 and 22?

Answer: YES

If your answer to Question 6 is "YES," in what amount?

\$15,000.00

**Proceed to sign the appropriate form of certification section.**

IT IS THEREFORE

ORDERED that judgment is hereby entered in favor of Plaintiff, Valerie Jeffers, and against Defendant, Ocwen Loan Servicing, LLC, in the total amount of \$25,000.00 on Plaintiff's Fair Credit Reporting Act Claims. It is further

ORDERED that judgment is hereby entered in favor of Plaintiff, Valerie Jeffers, and against Defendant, Ocwen Loan Servicing, LLC, in the total amount of \$360,000.00 for punitive damages on Plaintiff's Fair Credit Reporting Act Claims. It is further

ORDERED that judgment is hereby entered in favor of Plaintiff, Valerie Jeffers, and against Defendant, Ocwen Loan Servicing, LLC, in the total amount of \$15,000.00 on Plaintiff's Breach of Contract Claim. It is further

ORDERED that post-judgment interest shall accrue on the total amount of \$400,000.00 at the legal rate of 1.97% per annum from the date of entry of judgment. It is further

ORDERED that Plaintiff shall have its costs by the filing of a Bill of Costs with the Clerk of this Court within fourteen (14) days of entry of judgment, and pursuant to the procedures set forth in Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

DATED at Denver, Colorado this 23rd day of February, 2017.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

s/ Robert R. Keech

Robert R. Keech,  
Deputy Clerk

APPROVED AS TO FORM:

s/ Wiley Y. Daniel

WILEY Y. DANIEL,  
SENIOR UNITED STATES DISTRICT JUDGE

In the  
**United States Court of Appeals**  
**For the Seventh Circuit**

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No. 19-1569

MONETTE E. SACCAMENO,

*Plaintiff-Appellee,*

*v.*

U.S. BANK NATIONAL ASSOCIATION, as  
trustee for C-BASS MORTGAGE LOAN  
ASSET-BACKED CERTIFICATES, Series 2007  
RP1, and OCWEN LOAN SERVICING, LLC,

*Defendants-Appellants.*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.  
No. 1:15-cv-01164 — Joan B. Gottschall, Judge.

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ARGUED SEPTEMBER 16, 2019 — DECIDED NOVEMBER 27, 2019

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Before BAUER, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Chapter 13 bankruptcy is a promise to a debtor: if you comply with the bankruptcy plan, then you can get a fresh start. That promise went unfulfilled for Monette Saccameno. She had done everything that was required of her: she cured the delinquencies in her mortgage and made

42 monthly mortgage payments under the court's watchful eye. Near the end of her bankruptcy, she obtained statements from her mortgage servicer, Ocwen Loan Servicing, LLC, that she was paid up—that she was paid ahead even. The court granted her a discharge.

Ocwen, however, immediately began trying to collect money that it was not owed and threatening foreclosure. No problem, Saccameno thought, it must be a simple mistake. She sent Ocwen all the paperwork it could have needed to fix its records. When that did not work, she sent it again. Then she sent it a third and fourth time, with a request from an acquaintance, a lawyer, for an explanation why Ocwen thought she owed money. Ocwen did not explain. Ocwen did not care. Ocwen did not truly grasp how wrong its records were until almost four years later, two days into Saccameno's jury trial when its witness was testifying.

It is little wonder, then, that the jury awarded Saccameno substantial damages for the pain, frustration, and emotional torment Ocwen put her through. The jury ordered Ocwen to pay \$500,000 in compensatory damages based on three causes of action that could not support punitive damages. A fourth claim, under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA), 815 ILCS 505/1, did allow punitive damages, and for that claim the jury awarded them to the tune of \$3,000,000, plus compensatory damages of an additional \$82,000. Ocwen challenged this verdict on a variety of grounds, but the district court upheld the verdict in its entirety. On appeal, Ocwen has limited its arguments to the punitive damages award, which it contends was not authorized by Illinois law and is so large that it deprives the company of property without due process of law. We agree with the

district court that the jury was well within its rights to punish Ocwen. We must, however, conclude that the amount of the award is excessive. We therefore remand to the district court to amend the judgment.

### **I. Background**

Around 2009, Saccameno fell behind on her \$135,000 home mortgage and her bank, U.S. Bank National Association (nominally a defendant but irrelevant for our purposes), began foreclosure proceedings. To keep her home, she sought the protection of the bankruptcy court and, in December 2009, began a Chapter 13 plan under which she was required to cure her default over 42 months while maintaining her ongoing monthly mortgage payments. *See* 11 U.S.C. § 1322(b)(5).

Saccameno first began having problems with Ocwen in October 2011, shortly after it acquired her previous servicer. Ocwen sent her a loan statement saying, inexplicably, that she owed \$16,000 immediately. With her attorney's advice, Saccameno ignored the statement and continued making payments based on her plan. Her statements continued to fluctuate: her February 2013 statement said she owed about \$7500, her March statement, \$9000. A month later, Ocwen now owed Saccameno about \$1000 in credit, and Ocwen told her she did not need to pay again until September. Still, Saccameno continued making payments through June, the last month of her plan. At that time the bankruptcy court issued a notice of final cure, Fed. R. Bankr. P. 3002.1, informing Ocwen that Saccameno had completed her payments. Ocwen never responded to the notice, and the court entered a discharge order on June 29, 2013. Saccameno's last statement pre-discharge showed that the credit in her favor had grown to \$2800 and she was paying down her loan.

Within days, however, an Ocwen employee, whom Ocwen refers to only as "Marla," reviewed the discharge but mistakenly treated it as a dismissal. As far as Ocwen was concerned, then, the bankruptcy stay had been lifted and it could immediately start collecting Saccameno's debts. This might not have been a problem—for Saccameno of course did not have a debt anymore—but Marla's mistake was only the tip of the iceberg. Apparently, in March, Ocwen had manually set the due date for Saccameno's plan payments to September 2013, hence the credit. That manual setting took place in a bankruptcy module that overrode and hid Ocwen's active foreclosure module, which instead reflected that Saccameno had not made a single valid payment in 2013, as each check was being placed into a suspense account and not being applied to the loan. Marla's dismissal entry deactivated the bankruptcy module and reactivated the foreclosure one. If Marla had properly marked Saccameno's bankruptcy as a discharge, then someone in Ocwen's bankruptcy department would have reconciled the plan payments with the suspense accounts before closing both modules.

Instead, on July 6 and 9, Ocwen sent Saccameno two letters saying it had not heard from her since its non-existent recent communication about her "severely delinquent mortgage." The letters offered the contact information of governmental and non-profit services for people unable to make their home mortgage payments. They also warned Saccameno that failure to respond could result in fees from foreclosure, sale of the property, and eviction, and that this process could ruin her credit, making it hard for her even to find a new rental property. Saccameno understandably dubbed these the "you'll never rent in this town again" letters.

Before these letters arrived, Saccameno called Ocwen to ask about lowering her interest rate. An Ocwen employee said she was not eligible because she was several thousand dollars in default. Knowing this was a mistake, two weeks out from her discharge, Saccameno asked how to correct the records and was given a number where she could fax her documents. She did so a few days later, and with that paperwork Ocwen corrected Marla's mistake before July was over.

If only that were the end of this story. With the corrected records, Ocwen's bankruptcy department performed a reconciliation and recognized that Saccameno had made several payments in 2013, so her default was nowhere near as large as the employee had said. Nevertheless, it somehow determined that she had missed two payments during her bankruptcy, so she was still in default—albeit to a lesser extent—and the foreclosure module remained open. In August, Ocwen sent Saccameno a letter declaring that it had "waived" \$1600 in fees (that had been discharged) and that it was missing two of her plan payments (which, even if true, would also have been discharged under the terms of the plan). Around this time Ocwen assigned Saccameno a "relationship manager," Anthony Gomes, who scheduled a call with Saccameno. He was not familiar with her file or the documents she had sent, and asked Saccameno to resend them. She did, and they never spoke again. Instead Saccameno would frequently call Ocwen's customer service line and each time was directed to a new, similarly unhelpful person.

While this was all going on, Saccameno remained optimistic and continued to make her monthly payments. Ocwen had accepted her payments for July and August 2013 but began rejecting them in September because each payment was not



enough to cure her supposed default. After a few months of rejection, more letters like those sent in July, and further futile phone calls, Saccameno recruited an acquaintance, an attorney named Susan Van Sky, to help. Van Sky wrote to Ocwen, explained how Saccameno had made all her payments during her bankruptcy, as confirmed by the court, and asked for an explanation how, then, Saccameno could be in default. She followed up with a phone call and an Ocwen representative insisted that the company never rejects payments and requested proof that it had done so. Van Sky followed directions and faxed 100 pages of Saccameno's paperwork to the number Ocwen had provided. Somehow this paperwork was routed to the wrong department and the receiving department refused to do anything with it. Van Sky continued to call Ocwen, also reaching new people each time. Some asked her to fax the same papers again, so she sent them once more.

Eventually, Ocwen sent Van Sky something back, though calling it a response would be generous. The form letter referred to the dates of Saccameno's bankruptcy but otherwise mentioned nothing about her loan and did not answer any of Van Sky's questions. Ocwen had not even updated the form with Saccameno's name. Instead it referred to another mortgagor. Attached was a spreadsheet that supposedly explained how Saccameno was behind in her payments; Van Sky, though, could not decipher the spreadsheet, and Ocwen did not elucidate. Exhausted from the lack of progress, and no longer having time to help, Van Sky dropped out and Saccameno hired counsel.

Ocwen, meanwhile, continued to reject Saccameno's payments. The erroneous default grew and grew as the underlying foreclosure action remained pending in the Circuit Court

of Cook County. Though the Circuit Court had stayed the case because of the bankruptcy, Ocwen was internally preparing to revive it and seek a judgment of foreclosure. Periodically, its experts appraised the property, and agents checked each month if Saccameno was still living in the home (and if they concluded she was not, they would have placed locks on the doors). Ocwen added the costs of these measures to Saccameno's debt. It also produced affidavits to support a request for judgment of foreclosure, including one prepared as early as July 2013, and gave them to its local law firm. That firm filed an appearance in the foreclosure proceeding in 2014 and told Ocwen, in January 2015, that it needed only one more document before it could move for judgment.

Perhaps part of the reason Ocwen never did move for judgment was this suit, filed the next month. As relevant to this appeal, Saccameno sought damages under four legal theories: breach of contract, for the refused payments; the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, for the false collection letters; the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601, for the inadequate responses to Saccameno and Van Sky's inquiries; and the ICFA. The ICFA claim related to Ocwen's false oral and written statements regarding Saccameno's default and its unfair practices in violation of consent decrees that Ocwen previously had entered with various regulatory bodies. These decrees addressed, among other things, its inadequate recordkeeping, misapplication of payments, and poor customer service. Among the steps Ocwen had consented to take was to track Chapter 13 plan payments accurately and to reconcile its accounts on discharge or dismissal.

Once Ocwen received the complaint, it overrode the foreclosure module again with the bankruptcy module. This had two effects. First, just a week after she filed the complaint, Ocwen sent Saccameno an offer to refinance her mortgage, deigning to grant her the "opportunity" to stay in her home. This offer would have lowered her interest rate and her monthly payment but increased her principal. Saccameno could afford her payments post-bankruptcy, though, and wanted to make progress toward owning her home outright. Ocwen sent another offer in July 2015, though Saccameno was even less pleased with this one. She viewed it as a "life sentence" because, though it would have lowered her interest rate, it would have increased her principal, reset her mortgage to last another thirty years, and ended with a balloon payment of nearly half the principal. Second, Ocwen inexplicably started accepting Saccameno's payments for March and April. She stopped sending them, on her attorney's advice. Little else happened regarding the loan, except that Ocwen voluntarily dismissed the state-court foreclosure case in March 2016.

The jury heard all of this at trial—as well as testimony regarding the mental and emotional strain Saccameno went through because of Ocwen's continuous errors. Ocwen had promised the jury, in its opening statement, that it would explain why it received only 40 payments during the bankruptcy. It never had the chance, though, as Saccameno's counsel diligently walked Ocwen's representative through its own records payment by payment. Just before lunch on the second day of trial, the representative counted to 42, confirming that Saccameno had made each payment. Ocwen never again argued otherwise. It instead focused on Marla's mistake in July of 2013—the marking of dismissal instead of discharge. The jury evidently did not buy the story that Saccameno's years of

woeful treatment could be placed on the shoulders of a single, essentially anonymous, line employee. Notably, Ocwen did not produce Marla—did not even give her a last name. Its corporate representative admitted that it had not investigated Marla, had never checked to see if she—or anyone else—had done something similar before or since, and did not know even if Marla was still employed with the company (though the representative suspected not, because her name was not in the email directory).

The jury found in Saccameno's favor on all counts. By the parties' agreement, the verdict form included a single line for compensatory damages under the breach of contract, FDCPA, and RESPA claims and the jury wrote \$500,000 on that line. Because only the ICFA claim could include punitive damages, and it requires that one prove economic damages before receiving other damages, *see* 815 ILCS 505/10a(a), Saccameno agreed to place that claim in its own section of the verdict form with a line each for economic, non-economic, and punitive damages. The parties further agreed that the ICFA damages would not be treated as a subset of the damages on the other three counts. For this claim, the jury awarded \$12,000 in economic, \$70,000 in non-economic, and \$3,000,000 in punitive damages, resulting in a total award of \$3,582,000.

Ocwen responded with three post-verdict motions. The first, a motion for new trial, objected to the admission of the consent decrees. The second, a request for judgment as a matter of law, challenged the sufficiency of the evidence on every count other than the FDCPA claim. As relevant here, it argued that the award of punitive damages was not supported by sufficient evidence. The third motion, to amend the judgment, argued that the punitive damage amount was excessive, in

violation of the Due Process Clause. Ocwen primarily sought to compare the \$3,000,000 award to the \$12,000 in economic damages the jury found. Saccameno instead urged the district court to compare the punitive award to the combined damages on all four counts.

The district court thoroughly considered and deflected Ocwen's barrage of arguments and upheld the verdict. On the punitive damages, the district court concluded that the jury reasonably found Ocwen's employees had been deliberately indifferent to the risk that Saccameno would be harmed, and Ocwen's management had notice of—and ratified—its employees conduct. On the constitutional question, the court decided that the proper comparator for the punitive damages award was the total amount awarded on all four counts, as they involved related conduct. That resulted in a punitive damages ratio of roughly 5:1, which the court concluded was not unconstitutionally high given the reprehensibility of Ocwen's conduct.

## II. Sufficiency of the Evidence

We address first Ocwen's argument that there was insufficient evidence for the jury to award punitive damages at all. We review the sufficiency of the evidence *de novo* and ask whether the record, viewed in the light most favorable to the prevailing party, can support the jury's verdict. *Parks v. Wells Fargo Home Mortg., Inc.*, 398 F.3d 937, 942 (7th Cir. 2005).

Under Illinois law, punitive damages may be awarded only if "the defendant's tortious conduct evinces a high degree of moral culpability, that is, when the tort is 'committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross

negligence as to indicate a wanton disregard of the rights of others.” *Slovinski v. Elliot*, 927 N.E.2d 1221, 1225 (Ill. 2010) (quoting *Kelsay v. Motorola, Inc.*, 384 N.E.2d 353, 359 (Ill. 1978)). When the defendant is a corporation, like Ocwen, the plaintiff must demonstrate also that the corporation itself was complicit in its employees’ tortious acts. See *Kemner v. Monsanto Co.*, 576 N.E.2d 1146, 1156 (Ill. App. Ct. 1991); see also *Douglass v. Hustler Magazine, Inc.*, 769 F.2d 1128, 1145–46 (7th Cir. 1985). Ocwen contends that Saccameno’s case failed in both respects.

The parties first accuse each other of waiving their arguments regarding corporate complicity, but both assertions are meritless. Saccameno contends that Ocwen cannot challenge the verdict because it did not object to the jury instructions. The instructions properly tracked Illinois law and Ocwen’s arguments, so it is permitted to argue that the jury misapplied those instructions to the facts. See *Jabat, Inc. v. Smith*, 201 F.3d 852, 857 (7th Cir. 2000). Saccameno offers nothing else on this issue, so Ocwen responds that *she* has waived the chance to seek affirmance of the district court’s decision. An appellee cannot waive an argument as easily as an appellant can, though. See *Thayer v. Chiczewski*, 705 F.3d 237, 247 (7th Cir. 2012). Even if an appellee forgoes a brief entirely, we may still affirm. See *Blackwell v. Cole Taylor Bank*, 152 F.3d 666, 673 (7th Cir. 1998). We are especially unwilling to deem Saccameno’s argument waived, as it goes to the validity of the jury’s verdict, to which we are inclined to defer, e.g., *Gracia v. SigmaTron Int’l, Inc.*, 842 F.3d 1010, 1018–19 (7th Cir. 2016).

On the merits, Ocwen argues that the evidence could support only a finding of negligence, not a “conscious and deliberate disregard” for Saccameno’s rights. *Parks*, 398 F.3d at 942.

It continues to place most of the blame on what it calls “an isolated ‘miscoding’ error committed by a lone employee, identified as ‘Marla.’”

Ocwen cannot pin this case on Marla. Her error was one among a host of others, and each error was compounded by Ocwen’s obstinate refusal to correct them. If this case were truly Marla’s fault, then Saccameno’s troubles would have lasted a month—most of July 2013. That was how long it took for Saccameno to point Ocwen toward Marla’s mistake, and for Ocwen to change the dismissal to a discharge. The real problems only began at that point though, as Ocwen falsely claimed that Saccameno had missed two plan payments for the first time in August and started improperly rejecting Saccameno’s payments in September. Ocwen apparently did not discover the former until the second day of trial and likely would have continued the latter until it filed for foreclosure, had this lawsuit not gotten in the way.

Ocwen contends that the miscounting of payments was also a human error—though it does not identify a human. We are not sure how many human errors a company like Ocwen gets before a jury can reasonably infer a conscious disregard of a person’s rights, but we are certain Ocwen passed it. The record is replete with evidence that Ocwen’s servicing of Saccameno’s loan was chaos from the moment Ocwen began working on the loan in 2011 to the day of the jury’s verdict nearly seven years later. Saccameno’s successful bankruptcy should have made things easier by resetting everything to zero—“fully current as of the date of the trustee’s notice,” the plan said. With her bankruptcy papers in hand, Saccameno repeatedly attempted to inform Ocwen that it had made an obvious mistake. This was not enough, though, and when



Saccameno and Van Sky sought to find out why, Ocwen did not explain. Instead it sent her a letter written to someone else.

Ocwen likens itself to the bank in *Cruthis v. Firststar Bank, N.A.*, 822 N.E.2d 454 (Ill. App. Ct. 2004), which illegally reversed payments into the plaintiffs' account at the behest of the payor. *Id.* at 458–59. Though this act was conversion, the court found punitive damages unjustified because the bank had credited the plaintiffs' account after being confronted. *Id.* at 465. On seeing their account had been emptied, the plaintiffs had inquired with a bank manager; that manager helped them to challenge the withdrawal and did his own internal investigation. *Id.* at 459. Initially, a vice president wrongly said the withdrawal had been fine, but within two months the bank had corrected the plaintiffs' account and waived all charges. *Id.* at 460. Ocwen, in contrast, never noticed most of its mistakes, even well into this case. Its "waiver" of fees was not an acceptance of responsibility but a result of the discharge. No helpful manager assisted Saccameno—though Ocwen tries to cast Gomes in this role, he is a pale imitation. He spoke with Saccameno once, knew nothing of her case, offered no assistance, and only requested that she send paperwork that Ocwen already had twice over.

Ocwen's comparison to *Parks v. Wells Fargo Home Mortgage* is even further afield. There, a mortgagee failed to pay taxes on a couple's home, allowing a tax scavenger to fraudulently obtain title. 398 F.3d at 939–40. In concluding that the defendant had not acted with conscious disregard of the Parks' rights, we emphasized that the company, on learning of its mistakes, "set out to make matters right, and it succeeded in doing so in relatively short order." *Id.* at 943. When the plaintiffs had called in, the company "immediately put two

researchers on the job to find out what could be going on"; those researchers discovered and explained exactly how the taxes had gone unpaid, and the company succeeded in getting the fraudulent deed vacated. *Id.* at 940. Ocwen, however, still has offered no real explanation for any of the errors its employees made, and never acted to correct its mistakes. This "unwilling[ness] to take steps to determine what occurred" warranted punitive damages under the ICFA. *Dubey v. Pub. Storage, Inc.*, 918 N.E.2d 265, 280 (Ill. App. Ct. 2009).

The utter lack of explanation also supports a finding of corporate complicity. Illinois law insists on managerial involvement before punitive damages may be awarded against a corporation. See *Mattyasovszky v. W. Towns Bus Co.*, 330 N.E.2d 509, 512 (Ill. 1975) (listing four ways this complicity can be demonstrated). Saccameno, however, interacted only with line employees and never escalated her dispute. The district court thus rightly recognized that the only plausible basis on this record for corporate complicity is that "the principal or a managerial agent of the principal ratified or approved the act" of its employees. *Id.*; *Kemner*, 576 N.E.2d at 1156. Ratification is governed by agency principles and is "the equivalent of authorization, but it occurs after the fact, when a principal gains knowledge of an unauthorized transaction but then retains the benefits or otherwise takes a position inconsistent with nonaffirmation." *Progress Printing Corp. v. Jane Byrne Political Comm.*, 601 N.E.2d 1055, 1067 (Ill. App. Ct. 1992).

As the district court recognized, Illinois law permits a finding of ratification based on a corporation's litigation conduct, if that conduct is inconsistent with nonaffirmation. In *Robinson v. Wieboldt Stores, Inc.*, 433 N.E.2d 1005 (Ill. App. Ct. 1982), a part-time security guard had falsely imprisoned a

woman on suspicion she had stolen a scarf, despite her receipt. *Id.* at 1007. The defendant's chief of security testified that a receipt alone was not a reason for a guard to conclude a person was not a thief, and initially denied that any guards were working on the day in question. *Id.* at 1009. On cross-examination, though, he revealed that the plaintiff's description of the guard matched that of a part-timer, who the corporation never produced. *Id.* at 1008. Based on this conduct, the court permitted the jury to consider an award of punitive damages against the corporation, as it had "continued to defend the actions of its agent throughout the course of th[e] litigation and ... shown no attempt to alter its procedures." *Id.* at 1009. *Robinson*, though, does not stand for the proposition that defending a lawsuit alone ratifies employees' actions. So the court held in *Kennan v. Checker Taxi Co.*, 620 N.E.2d 1208 (Ill. App. Ct. 1993), in which the corporation "did not ignore plaintiff's complaint" that he had been beaten by one of its drivers. *Id.* at 1210, 1214. Instead, the company sent an investigator to speak with the plaintiff, its president directed that the driver's lease not be renewed, and by the time of trial, the driver and company were "no longer associated." *Id.* at 1214. These facts invalidated the punitive damages award. *Id.*

Though a corporation need not go as far as the Checker Taxi Company to avoid a finding that it ratified its employees conduct, it must do more than Ocwen did here. We start with Marla. Even if she *were* to blame, Ocwen's position regarding her could reasonably be seen as inconsistent with nonaffirmation. Much like the security director in *Robinson*, Ocwen's corporate representative knew nothing about Marla (besides her first name). The representative testified that she did not speak with Marla, did not know where Marla's office was, did not know how long Marla had been an Ocwen employee, and did

not know if she remained one to this day. The jury heard evidence that *no one* at Ocwen took any steps, whatsoever, to investigate how Marla's mistake—which according to Ocwen was all but the sole cause of Saccameno's woes—was made or how Ocwen would prevent it from happening again. Ocwen did not need to fire Marla to defeat the inference that it had ratified her actions, but it needed something from which the jury could have seen an "attempt to alter its procedures." *Robinson*, 433 N.E.2d at 1009.

Marla's mistake, though, was not the only problem. The jury's ratification finding was supported further by Ocwen's complete lack of insight into its other, unnamed employees' errors. Ocwen corrected Marla's mistake shortly after it occurred, and though Ocwen did not know why Marla had made it or take any steps to prevent it from recurring, the company at least acknowledged that it *was* a mistake (and apologized on Marla's behalf). In contrast, Ocwen went into this litigation—and the first day of trial—with the view that Saccameno had missed two payments during her bankruptcy. Once its misconception was corrected through the testimony of its own representative, Ocwen had no explanation for how this whole ordeal happened, let alone how it might be avoided in the future. The closest it got was to blame the miscount on Saccameno's first fax, in which she mistakenly said that she had sent three payments in May. (She sent them in March.) Ocwen's representative suspected that this comment caused researchers to limit the scope of their review to the time before May when counting the payments. Why they thought it notable that Saccameno owed two payments, when she had two months left on her plan at the time they stopped looking, eludes us. Still, the representative admitted that this

explanation justified only the letter in August, as no one else at Ocwen would have had any reason to limit themselves so.

The jury was not obligated to withhold punishment because Ocwen's acts were not purely harmful. Ocwen contends the erroneous credit toward Saccameno in the last few months of her bankruptcy demonstrates its employees were incompetent, not malicious. Saccameno ignored this false credit, though, and did not benefit from it; if she had believed Ocwen, and waited until September to pay her mortgage, she would have defaulted during her plan, risking the *real* dismissal of her bankruptcy. Ocwen next points to its offers of assistance as demonstrating good faith, but we agree with the district court that the jury could have found those aggravating, not mitigating. Ocwen had pushed Saccameno towards financial assistance, but as the district court explained, "Saccameno no longer needed financial assistance; she simply needed Ocwen to correct its records." The loan modification offers were even worse. Putting to one side their timing, the terms, especially of the second offer, were far from generous. Why would Saccameno, having then endured four years with Ocwen, want to chain herself to the company three decades more, only to owe it money at the end?

The jury, having little evidence to the contrary, concluded that Ocwen had accepted its employees' indifference to Saccameno. *Robinson*, 433 N.E.2d at 1009; *see also Dubey*, 918 N.E.2d at 280. Ocwen insisted it had not seen errors like these before, but its representative admitted it had never bothered to look. The jury was not required to accept Ocwen's bare assertion that this was a unique case—especially considering the consent decrees implying it was not—and could have

inferred that this is just how Ocwen does business. For that, Illinois law permits punitive damages.

### III. Due Process

We next turn to the amount of punitive damages awarded to Saccameno—\$3,000,000. Ocwen contends that this award exceeds constitutional limits and we address its arguments on those terms. We remind litigants, though, that the Constitution is not the most relevant limit to a federal court when assessing punitive damages, as it comes into play “only after the assessment has been tested against statutory and common-law principles.” *Perez v. Z Frank Oldsmobile, Inc.*, 223 F.3d 617, 625 (7th Cir. 2000); see also *Beard v. Wexford Health Sources, Inc.*, 900 F.3d 951, 955 (7th Cir. 2018). The Constitution is the only federal restraint on a state court’s award of punitive damages, so it takes center stage in Supreme Court review of state judgments. *Perez*, 223 F.3d at 625. A federal court, however, can (and should) reduce a punitive damages award sometime before it reaches the outermost limits of due process. *Id.*; *Payne v. Jones*, 711 F.3d 85, 97–100 (2d Cir. 2013).

Compensatory and punitive damages serve different purposes. Compensatory damages seek to make the plaintiff whole and to redress the wrongs committed against her, but punitive damages are retributive in nature and seek to deter wrongful acts in the first place. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). The risk of grossly excessive or arbitrary punishment, well beyond that necessary to deter, requires close scrutiny of the amounts of these awards. *Id.* at 416–17. We therefore conduct an “[e]xacting” de novo review of the jury’s award, in which we consider three guideposts: the degree of reprehensibility, the disparity between the harm suffered and the damages awarded, and the

difference between the award and comparable civil penalties. *Id.* at 418; *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575–85 (1996); *Green v. Howser*, No. 18-2757, \_\_ F.3d \_\_, 2019 WL 5797158, at \*6 (7th Cir. Nov. 7, 2019). Reviewing these guideposts, we conclude that the \$3,000,000 awarded here exceeds constitutional limits and must be reduced to \$582,000.

#### A. Reprehensibility

The first and most important guidepost is the reprehensibility of the defendant's conduct, which we judge based on five factors including whether

the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

*Campbell*, 538 U.S. at 419; *Green*, 2019 WL 5797158 at \*6. The existence of any one factor may not always be enough to sustain a punitive damages award, but “the absence of all of them renders any award suspect.” *Campbell*, 538 U.S. at 419. The district court considered these factors here, concluding that the first two factors were inapplicable, but that the last three were present. Though the parties challenge the district court's analysis of all five factors, we largely agree with its reasoning, though not its result.

The district court rightly concluded that the first two factors are irrelevant to this case. Saccameno argues otherwise by framing her depression, anxiety, and panic disorders as



physical injuries. “Mental deterioration, however, is a psychological rather than a physical problem.” *Sanders v. Melvin*, 873 F.3d 957, 959 (7th Cir. 2017) (interpreting Prison Litigation Reform Act, 28 U.S.C. § 1915(g)). The first factor is intended to draw a line—however hard to police—between physical injuries and those that are essentially economic, even if those economic injuries cause distress. With that understanding, we agree that Saccameno did not identify any evidence that she suffered physical symptoms or that Ocwen should have been aware of a risk to her health. Cf. *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 901 F.3d 1282, 1288–89 (11th Cir. 2018) (finding factors met because plaintiff’s depression caused projectile vomiting and she had told her mortgage servicer she was suffering undue stress).

On the third factor, the district court concluded that Saccameno was highly vulnerable financially because she was just coming out of bankruptcy. Ocwen contends this was error, as it did not intentionally “exploit” her vulnerability. This argument is unconvincing both legally and factually. We have not required intentional exploitation to find that this factor weighs in favor of punitive damages. See *Green*, 2019 WL 5797158 at \*6 (finding factor relevant because plaintiff was unemployed); *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 839 (7th Cir. 2013) (same for plaintiff who testified he needed his abusive job). Moreover, Ocwen’s conduct would have been both different and less reprehensible had Saccameno not recently come out of bankruptcy. Ocwen sent the letters based on its belief that the bankruptcy court had dismissed Saccameno’s case, reflecting her extreme vulnerability. Ocwen’s representative also explained that it would have acted differently if the 2009 foreclosure were not pending, as Ocwen ordinarily starts with a formal demand letter before filing a complaint

and only then sends the “you’ll never rent in this town again” letters. Though the evidence does not show that Ocwen mistreated Saccameno because she was in bankruptcy, and so does not favor a massive award, the close connection between her bankruptcy and the conduct in this case supports some award of punitive damages.<sup>1</sup>

The fourth factor is whether “the conduct involved repeated actions or was an isolated incident.” *Campbell*, 538 U.S. at 419. Ocwen asks us to adopt the position of the Sixth Circuit that this factor refers exclusively to recidivism, see *Bridgeport Music, Inc. v. Justin Combs Publ’g*, 507 F.3d 470, 487 (6th Cir. 2007), and thus that the factor does not apply here. We again disagree legally and factually. We have consistently found this factor met in cases involving repeated acts against the same person. See *Rainey v. Taylor*, 941 F.3d 243, 254 (7th Cir. 2019) (“Taylor continued to grope and expose Rainey’s most intimate body parts even after she protested, so his misconduct was both repetitious and malicious.”); *Estate of Moreland v. Dieter*, 395 F.3d 747, 757 (7th Cir. 2005) (“The defendants’ assault on Moreland was sustained rather than momentary, and involved a series of wrongful acts, not just a single blow ....”). We agree with the Third Circuit that recidivism may often be more reprehensible than repeated acts against the same party, but that goes to the degree and not the relevance of the factor. *CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 499 F.3d 184, 191 (3d Cir. 2007). In any event, the record contains evidence that Ocwen was a recidivist. The consent

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<sup>1</sup> Ocwen also argues Saccameno is not vulnerable because she won such a large verdict. We reject the implication that a defendant’s conduct is less reprehensible if it causes more harm.

decrees described how it had treated other customers as it did Saccameno, and that it had continued its ways despite repeated warnings from regulators. The number of opportunities Ocwen had to fix its mistakes is the core fact that justifies punishment in this case.

Finally, the last factor is whether the harm was "the result of intentional malice, trickery, or deceit, or mere accident." *Campbell*, 538 U.S. at 419. Ocwen continues to insist that its employees were only negligent. Like the district court, we think Ocwen's actions were not "mere accident." The evidence shows instead "reckless indifference," which we have found to suffice for this factor to be relevant. *Autozone*, 707 F.3d at 839. Certainly, it would be worse if Ocwen had preyed on Saccameno intentionally but Ocwen does not need to be the worst to be subject to punitive damages.

Ocwen's conduct was reprehensible, but not to an extreme degree. It caused no physical injuries and did not reflect any indifference to Saccameno's health or safety. Ocwen was, however, indifferent to her rights, including those rights that originated from her bankruptcy. No evidence supports that Ocwen was acting maliciously, though the number of squandered chances it had to correct its mistakes comes close. These factors then point toward a substantial punitive damages award, but not one even approaching the \$3,000,000 awarded here. Such an award was deemed proper in *McGinnis v. American Home Mortgage Servicing, Inc.*, 901 F.3d 1282, a factually similar case, but there the jury found a specific intent to harm, and the Eleventh Circuit considered evidence supporting all five factors. *Id.* at 1288–91. Ocwen's conduct was less reprehensible than that in *McGinnis* and thus warrants a smaller punishment.

**B. Ratio**

Ocwen's primary concern on appeal is with the second guidepost, the disparity between the harm to the plaintiff and the punitive damages awarded. *Campbell*, 538 U.S. at 424. This guidepost is often represented as a ratio between the compensatory and punitive damages awards. The Supreme Court, however, has been reluctant to provide strict rules regarding the calculation of this ratio and instead has offered some general points of guidance. *Id.* at 425. First, few awards exceeding a single-digit ratio "to a significant degree" will satisfy due process. *Id.* Second, the ratio is flexible. Higher ratios may be appropriate when there are only small damages, and conversely, "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit." *Id.* Third, the ratio should not be confined to actual harm, but also can consider potential harm. *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 460–61 (1993).

Ocwen argues the district court wrongly inflated this ratio by looking to the entire compensatory award instead of just the \$82,000 awarded under the ICFA. We agree, not because the district court was obligated to use a certain denominator but because the choice between available denominators—and their resulting ratios—reflecting the same underlying conduct and harm should not unduly influence whether a given award is constitutional.

The district court calculated its ratio by adding the compensatory damages awarded on all counts, resulting in a roughly 5:1 ratio, which the court approved because it was a single digit. In doing so, it recognized that several courts of appeals have implied or held that courts should calculate

punitive damages ratios claim-by-claim. *See, e.g., Quigley v. Winter*, 598 F.3d 938, 953–55 (8th Cir. 2010) (considering compensatory damages on one claim while ignoring a small additional award); *Dubey*, 918 N.E.2d at 279–82 (considering punitive damages on two claims separately); *see also Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1044 (9th Cir. 2003) (considering punitive damages on only one claim and ignoring other award that included statutory double damages); *Zimmerman v. Direct Fed. Credit Union*, 262 F.3d 70, 82 n.9 (1st Cir. 2001) (finding it “appropriate” to consider ratio claim-by-claim but considering both ratios). The Eighth Circuit explained its rationale for this approach in *JCB, Inc. v. Union Planters Bank, NA*, 539 F.3d 862 (8th Cir. 2008). In that case, the two claims—trespass and conversion—“protect[ed] distinct legal rights” and were based on separate acts, so the two awards of punitive damages were considered separately as a matter of both state law and due process. *Id.* at 874–75. The district court here followed the corollary of this logic and aggregated the damages because Saccameno’s four claims involved related conduct. *See Bains LLC v. Arco Prod. Co.*, 405 F.3d 764, 776 (9th Cir. 2005) (aggregating a compensatory award with nominal damages on separate claims because conduct was “intertwined”). In doing so, the court relied on *Fastenal Co. v. Crawford*, 609 F. Supp. 2d 650 (E.D. Ky. 2009), which reasoned that the related conduct addressed in other counts was like potential harm, which the Supreme Court has deemed a valid consideration. *Id.* at 660–61.

The *Fastenal* court started with the premise that “the award would be unconstitutionally excessive if the ratio is calculated on a claim-by-claim basis, but it would be appropriate under an aggregate basis.” *Id.* at 660. No matter which denominator we use here, though, the actual award of \$3,000,000

remains the same. More importantly, so does Ocwen's conduct and the harm it caused, and it is that conduct and harm we must assess against the amount awarded. Said another way, given the same conduct, an increased compensatory damages award leads to a decreased permissible ratio, and vice-versa. *Campbell*, 538 U.S. at 425; *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003); *Cooper v. Casey*, 97 F.3d 914, 919–20 (7th Cir. 1996). As the Second Circuit explained in *Payne v. Jones*, 711 F.3d 85, the ratio without regard to the amount “tells us little of value.” *Id.* at 103. If the jury had awarded more compensation, then a small ratio of punitive damages might seem high; but if the jury had awarded less, a larger ratio becomes permissible. *Id.* Tellingly, most cases considering whether to aggregate damages reach the same result either way. See *Pollard v. E.I. DuPont De Nemours, Inc.*, 412 F.3d 657, 668 (6th Cir. 2005) (affirming); *Bains*, 405 F.3d at 776 (reversing); *Zimmerman*, 262 F.3d at 82 & n.9 (affirming). More tellingly, the sole exception among federal appellate decisions is *JCB*, which based its analysis on principles of state law distinguishing the different harms—the different conduct—that each claim represented. 539 F.3d at 874–76.

The disparity guidepost is not a mechanical rule. The court must calculate the ratio to frame its analysis, but the ratio itself does not decide whether the award is permissible. See *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (“It is not that such a ratio violates the Constitution. Rather, the mathematics alerts the courts to the need for special justification.”). The answer might be yes, despite a high ratio, if the probability of detection is low, the harms are primarily dignitary, or if there is a risk that limiting recovery to barely more than compensatory damages would allow a defendant to act with impunity. *Mathias*, 347 F.3d at 676–77. It might be

no, even with a low ratio, if the acts are not that reprehensible and the damage is easily or already accounted for. Rather than simply move numbers around on a verdict form to reach a single-digit ratio, courts should assess the purpose of punitive damages and the conduct at issue in order to evaluate the award. On the facts of this case, Ocwen's conduct, which overlaps all four claims, would be no more or less reprehensible or harmful if the jury had shifted \$50,000 from the compensatory award on the other claims to the ICFA claim or if the verdict form had provided only one line for compensatory damages on all four claims.<sup>2</sup>

The district court recognized this problem. It noted that the 37:1 ratio without aggregation was high but thought it might still be constitutional. It did not go so far as to hold, in the alternative, that this ratio *was* constitutional, however, and it was right to hesitate. It listed several cases upholding even higher ratios on compensatory awards ranging from about \$300 to \$8500. Most notable is our decision in *Mathias v. Accor Economy Lodging*, where we upheld a 37:1 ratio on \$5000 in compensatory damages. 347 F.3d 672. The compensatory damages in this case and *Mathias*, though, are quite different. Moreover, the acts in *Mathias* were incredibly reprehensible. The defendant motel company knew its rooms were infested to "farcical proportions" with bedbugs but refused to pay a small fee to have them exterminated; it instead told employees to call them ticks and avoid renting infested rooms (unless

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<sup>2</sup> We express no opinion on whether the verdict form could have or should have been drafted differently absent the parties' agreement. The best verdict form for a given case is a question left to the broad discretion of the district court and is informed by the unique facts, legal issues, and other circumstances presented.



the motel was full). *Id.* at 674–75. On those facts, a modest punishment of \$186,000 was constitutional, and the high ratio did not undermine that conclusion. *Id.* at 678. In contrast, the \$3,000,000 here is not a modest award, and the \$82,000 in compensatory damages for the ICFA claim are substantial enough that a huge multiplier was not needed to reflect harm that was “slight and at the same time difficult to quantify.” *Id.* at 677. A single-digit punitive damages ratio relative to the \$82,000 reflects an appropriate punishment on these facts.

The district court should have hesitated just as much before upholding a 5:1 ratio relative to the \$582,000 compensatory award on all four claims. *Campbell* instructs that a “substantial” award merits a ratio closer to 1:1. 538 U.S. at 425. Owen correctly notes that courts have found awards of roughly this magnitude “substantial” under *Campbell* and imposed a 1:1 ratio. See, e.g., *Jones v. United Parcel Serv., Inc.*, 674 F.3d 1187, 1208 (10th Cir. 2012) (\$630,000); *Bach v. First Union Nat. Bank*, 486 F.3d 150, 156 (6th Cir. 2007) (\$400,000); *Williams*, 378 F.3d at 799 (\$600,000). But see *Lompe v. Sunridge Ptrs., LLC*, 818 F.3d 1041, 1069 (10th Cir. 2016) (noting that other cases draw the line at roughly \$1,000,000). What counts as substantial depends on the facts of the case, and an award of this size (or larger) might not mandate a 1:1 ratio on another set of facts. See *Rainey*, 941 F.3d at 255 (upholding 6:1 ratio relative to \$1.13 million compensatory award because defendant’s conduct was “truly egregious”). Here, though, \$582,000 is a considerable compensatory award for the indifferent, not malicious, mistreatment of a single \$135,000 mortgage. Moreover, nearly all this award reflects emotional distress damages that “already contain [a] punitive element.” *Campbell*, 538 U.S. at 426. A ratio relative to this denominator, then, should not exceed 1:1.

### C. Civil Penalties

The final guidepost is the disparity between the award and “civil penalties authorized or imposed in comparable cases.” *Campbell*, 538 U.S. at 428 (quoting *Gore*, 517 U.S. at 575). The district court identified two civil penalties to compare to the punitive damages award. The first was the \$50,000 monetary penalty authorized by the ICFA, which can be calculated per offense if there is intent to defraud. 815 ILCS 505/7(b). Ocwen concedes that this penalty is appropriately considered but argues it cannot support a \$3,000,000 award. We agree that Ocwen’s actions are not so reprehensible that they might justify an award equal to the maximum penalty for 60 intentional violations. Notably, we see no evidence that Ocwen’s actions in this case were either intentional or fraudulent, only indifferent. This aspect of the guidepost thus points to a lower award.

The second civil penalty the district court considered was the possibility that Ocwen could have its license to service mortgages suspended or revoked under the Illinois Residential Mortgage License Act (RMLA), 205 ILCS 635/4-5. The court noted that this was far from hypothetical—as Ocwen had its license placed on probation for, among other things, RESPA violations. Ocwen insists the court could not consider the possibility its license would be revoked both because it was based on the RESPA claim, and not the ICFA, and because comparing a punitive damages award to a major corporation losing its license would allow just about any amount of damages.

We do not think the district court erred in considering the possibility that Ocwen could lose its license. First of all, the ICFA too, allows, the attorney general to seek “revocation,

forfeiture or suspension of any license ... of any person to do business," 815 ILCS 505/7(a), and though that may give way here to the more specific provisions in the RMLA, *that* law allows revocation of licenses for violation of "any ... law, rule or regulation of [Illinois] or the United States," 205 ILCS 635/4-5(a)(1), presumably including the ICFA as well as the RESPA. This does not mean, of course, that any punitive award that is less than the value of Ocwen's business license is *per se* constitutional—far from it. Illinois is not likely to take away Ocwen's business license for deceptively saying one customer owes a few thousand dollars on a \$135,000 mortgage, no matter how unjustified the error. Like a criminal penalty, then, this sort of extreme equitable remedy has "less utility" when it is used to determine the amount of an award. *Campbell*, 538 U.S. at 428. Still, also like a criminal penalty, this weapon in Illinois's arsenal has "bearing on the seriousness with which a State views the wrongful action." *Id.* This seriousness would be exaggerated by comparing the award here with the loss of Ocwen's license but would be unduly minimized by limiting an award to only the \$50,000 civil penalty.

#### D. Remedy

Considering all the factors together, we are convinced that the maximum permissible punitive damages award is \$582,000. An award of this size punishes Ocwen's atrocious recordkeeping and service of Saccameno's loan without equating its indifference to intentional malice. It reflects a 1:1 ratio relative to the large total compensatory award and a roughly 7:1 ratio relative to the \$82,000 awarded on the ICFA claim alone, both of which are consistent with the Supreme Court's guidance in *Campbell*. It is equivalent to the maximum punishment for less than 12, not 60, intentional violations of

the ICFA, though it is also a miniscule amount compared to the value of Ocwen's business license.

The final issue the parties dispute is whether the Seventh Amendment mandates an offer of a new trial after determining the constitutional limit on the punitive damages award. We have previously said, without deciding the issue, that this offer of a new trial is "a matter of sound procedure, not constitutional law." *Beard*, 900 F.3d at 955. Ocwen insists that this holding was limited by the fact that no party had asked us to decide the constitutional question, and here it asks us to do so. Though we continue to emphasize that parties should focus first on procedural and statutory limits on punitive damages awards, *id.* at 955–56, we agree with every circuit to address this question that the constitutional limit of a punitive damage award is a question of law not within the province of the jury, and thus a court is empowered to decide the maximum permissible amount without offering a new trial. See *Lompe*, 818 F.3d at 1062; *Cortez v. Trans Union, LLC*, 617 F.3d 688, 716 (3d Cir. 2010); *Bisbal-Ramos v. City of Mayaguez*, 467 F.3d 16, 27 (1st Cir. 2006); *Ross v. Kansas City Power & Light Co.*, 293 F.3d 1041, 1049–50 (8th Cir. 2002); *Leatherman Tool Grp. v. Cooper Indus.*, 285 F.3d 1146, 1151 (9th Cir. 2002); *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1330–31 (11th Cir. 1999); see also *Cooper Indus. v. Leatherman Tool Grp.*, 532 U.S. 424, 437 (2001) ("[T]he level of punitive damages is not really a 'fact' 'tried' by the jury.").

#### IV. Conclusion

We therefore remand for the district court to amend its judgment and reduce the punitive damages award to \$582,000. Each party is to bear its own costs on appeal.

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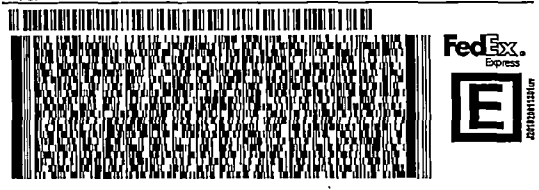
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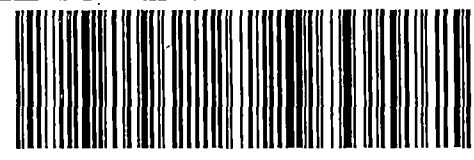


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