THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VERONICA A. WILLIAMS **Plaintiffs,** **v.** **LITTON LOAN SERVICING; HSBC BANK USA, N.A.; GOLDMAN SACHS MORTGAGE COMPANY; FREMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; OCWEN LOAN SERVICING LLC; STERN & EISENBERG, PC; AND OCWEN FINANCIAL CORPORATION,** **Defendants.**	**Case No.: 2:16-cv-05301-ES-JAD** **NOTICE OF DEFENDANTS' MOTION TO DISMISS COMPLAINT**

TO: Veronica A. Williams
P.O. Box 978
South Orange, NJ 07079-0978
Plaintiff Pro Se

PLEASE TAKE NOTICE that the undersigned attorneys for Defendants, Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs Mortgage Company (incorrectly pled as Goldman Sachs); Ocwen Loan Servicing LLC (incorrectly pled as Ocwen), and Ocwen Financial Corporation ("***Defendants***"), shall move before the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, on **January 17, 2017** at 9:00 a.m., or as soon thereafter as the matter can be heard, for an Order dismissing Plaintiff Veronica A. Williams' Complaint.

PLEASE TAKE FURTHER NOTICE, that Defendants requests oral argument if timely objection is made to the within application, and will rely on the accompanying Certification of Stuart I. Seiden, and the Brief in Support of Motion to Dismiss. A proposed form of Order is submitted herewith.

Respectfully submitted,

DUANE MORRIS LLP

/s/ Stuart I. Seiden

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Attorneys for Defendants Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs Mortgage Company; Ocwen Loan Servicing LLC, and Ocwen Financial Corporation

Dated: December 20, 2016

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VERONICA A. WILLIAMS

Plaintiffs,

v.

LITTON LOAN SERVICING; HSBC BANK USA, N.A.; GOLDMAN SACHS; FREMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; OCWEN LOAN SERVICING LLC; STERN & EISENBERG, PC; AND OCWEN FINANCIAL CORPORATION,

Defendants.

Case No.: 2:16-cv-05301-ES-JAD

DEFENDANTS' BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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I. INTRODUCTION

Presently at issue is the motion of Defendants Litton Loan Servicing ("***Litton***"), HSBC Bank USA, N.A., as trustee for Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C ("***HSBC***"); Goldman Sachs Mortgage Company ("***Goldman Sachs***")[1]; Ocwen Loan Servicing LLC ("***Ocwen***"), and Ocwen Financial Corporation (collectively, "***Defendants***"), which seeks to dismiss the complaint in its entirety pursuant to Fed. R. Civ. Pro. 12(b)(6) (the "***Motion***").

Plaintiff Veronica A. Williams ("***Williams***") admits that this action is not her first lawsuit against Defendants – Williams has been actively litigating identical claims against Defendants since 2009. Yet, contrary to her assertion that she has "not received a response" from the state courts, the procedural history shows that Williams has had her day in court. Williams is simply dissatisfied with the previous ruling and now seeks to circumvent the state court judgment by filing this federal action. Because the *Rooker-Feldman* doctrine and *res judicata* bar this action, this Motion should be granted and the Complaint should be dismissed.

II. FACTS RELEVANT TO THIS MOTION[2]

In March 2006, Williams refinanced the property located at 541 Scotland Road, South Orange, NJ 07079 (the "***Property***"). Complaint, ¶ 3. On March 27, 2006, Williams executed a Mortgage to Mortgage Electronic Registration Systems, as nominee for FGC Commercial Mortgage Finance, DBA Fremont Mortgage its Successors and/or Assigns ("***Fremont***"), in the amount of $261,000.00 (the "***Mortgage***"), which is recorded in the Essex County Records at Book 11177 at page 730. Certification of Stuart I. Seiden ("***Seiden Cert.***"), ¶ 3; Ex. A.

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[1] The complaint names "Goldman Sachs". As no legal entity named "Goldman Sachs" exists, it has been assumed simply for purposes of pleading herein that Plaintiff intended to name Goldman Sachs Mortgage Company. All rights are reserved with respect to such assumption.

[2] In light of the state court procedural history on these claims, which constitute the basis for this motion, the following is a limited summary of the facts underpinning the Plaintiff's claims.

In early 2009, Williams applied for a loan modification. Complaint, ¶ 15. By correspondence dated May 28, 2009, Litton[3] offered Williams a Loan Workout Plan requiring Williams to apply for a permanent loan modification and make three (3) trial payments of $3,054.83 on or before July 1, 2009, August 1, 2009, and September 1, 2009. Complaint, ¶ 18. Williams signed and returned the Loan Workout Plan. Complaint, ¶ 19. Williams allegedly made timely payments on July 1, 2009 and August 1, 2009. Complaint, ¶ 21. But, Williams also admits that she made the third required payment ***after*** the deadline, not sending it until September 11, 2009. Complaint, ¶ 26.

The mortgage is presently held by HSBC. Complaint, ¶ 4. Since acquiring Litton in 2011, Ocwen Loan Servicing LLC ("***Ocwen***") has been, and is currently, the loan servicer of Williams' mortgage.[4] Complaint, ¶ 8.

III. PROCEDURAL HISTORY

On June 12, 2013, Williams filed a complaint in the Superior Court of New Jersey against all of the same defendants in this action, except Ocwen Financial Corporation, Ocwen's parent corporation: Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs Mortgage Company; Ocwen Loan Servicing LLC ("***State Court Complaint***").[5] Seiden Cert, ¶ 4; Ex. B. In the State Court Complaint,

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[3] Williams avers that Goldman Sachs owned Litton in 2007. Complaint, ¶ 6. However, Plaintiff fails to make any other allegations against Goldman Sachs, citing no action by Goldman Sachs regarding the servicing of Williams' mortgage or Litton's loan modification process. Nor does Plaintiff allege any basis for disregarding the separate existence of Goldman and Litton. Goldman Sachs obviously reserves all rights with respect to any other allegations made.

[4] Ocwen Financial is named in the current complaint only for its ownership in Ocwen Loan Servicing, and no independent allegations are made against Ocwen Financial.

[5] Williams also references the foreclosure action filed by HSBC in 2013, Complaint, ¶ 72, which is Essex County docket number F-000839-13. HSBC was represented in this action by Defendant Stern & Eisenberg., PC. Summary judgment and final judgment were filed in this action in favor of HSBC. The summary judgment order indicated that the law department action was severable

Williams asserts four claims against Defendants: violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. ("FDCPA") (Count I), violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq*. ("NJCFA") (Count II), Breach of Contract (Count III), and for Intentional Infliction of Emotional Distress (Count IV). *See* Seiden Cert., Ex. B.

After discovery, Defendants filed for summary judgment on all four claims. Seiden Cert., ¶ 5. On January 23, 2015, this Court entered an order granting summary judgment in favor of Defendants on Counts I and IV and denying summary judgment on Counts II and III. Seiden Cert., ¶ 6. However, the clerk's office erroneously dismissed the Complaint in its entirety when it entered the January 23, 2015 order. Seiden Cert., ¶ 7; Ex. D.

Subsequently, on January 22, 2016, Defendants requested the reopening of Counts II and III and filed a motion for summary judgment on these remaining two counts. Seiden Cert., ¶ 8. The state court granted this motion in part on February 19, 2016, dismissing the Complaint against all Defendants besides Litton. Seiden Cert., ¶ 9, Ex. E. Thus, Litton was the only remaining party in the case.

On February 17, 2016, shortly before the summary judgment motion was decided, Williams had filed a motion to amend the State Court Complaint to add new causes of action against the dismissed defendants. Seiden Cert., ¶ 10 Defendants opposed this motion, which ultimately was denied in part by an order dated March 4, 2016 ("***Denial Order***"). Seiden Cert., ¶ 11, Ex. F. The Denial Order expressly indicated that Williams could only amend her allegations supporting the remaining Counts II and III against Litton, ***not add any new causes of action***, and

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from the foreclosure action; thus, the entire controversy doctrine does not apply. Seiden Cert., ¶ 18, Ex. J.

that "no new causes of action may be brought against any other Defendant as this Court ***has dismissed all parties except Litton***, from this case." *See* Seiden Cert., Ex. F.

On April 27, 2016, Williams filed a motion for leave to appeal Denial Order to the Appellate Division of the Superior Court of New Jersey. Seiden Cert., ¶ 12. By order dated June 13, 2016, the Appellate Division denied the motion and dismissed the appeal as interlocutory. Seiden Cert., ¶ 13, Ex. G.

Williams took no further action on Counts II and III in the state court. On June 14, 2016, the Superior Court of New Jersey dismissed Williams' State Court Complaint due to lack of prosecution. Seiden Cert., ¶ 14, Ex. H. This dismissal notice expressly stated that "judgments previously entered in this case are not affected by this [dismissal] order." *Id.*

On July 5, 2016, Williams claims that she filed a notice of appeal of her Denial Order to the Supreme Court of New Jersey. Seiden Cert., ¶ 15, Ex. I. To date, no docketing order has been issued by the Supreme Court of New Jersey. Seiden Cert., ¶ 16. Williams has taken no further action to reinstate or pursue her State Court Complaint against Litton. Seiden Cert., ¶ 17.

Instead, on October 13, 2016, Williams filed this brand new complaint against all Defendants in this Court with the same four claims: violation of the FDCPA (Count I), violation of the NJCFA (Count II), Breach of Contract (Count III), and Intentional Infliction of Emotional Distress (Count IV). Williams has also added a fifth count for Deliberate Indifference against Defendants and a sixth count only against Stern & Eisenberg.

IV. ARGUMENT

A. STANDARD OF REVIEW

1. Dismissal Under Rule 12(b)(1)

"Rule 12(b)(1) governs jurisdictional challenges to a complaint." *Otto v. Wells Fargo Bank, N.A.,* 2016 U.S. Dist. LEXIS 92711, *4 (D.N.J. July 15, 2016). "These may be either facial or

factual attacks." *Id.* (citing 2 *Moore's Federal Practice* § 12.30[4] (3d ed. 2007) and *Mortensen v. First Fed. Sav. & Loan Ass'n,* 549 F.2d 884, 891 (3d Cir. 1977)). "A court considering such a facial challenge assumes that the allegations in the complaint are true, and may dismiss the complaint only if it nevertheless appears that the plaintiff will not be able to assert a colorable claim of subject matter jurisdiction." *Otto,* 2016 U.S. Dist. LEXIS 92711, *4 (dismissing federal court complaint based on *Rooker-Feldman* doctrine where federal court lacked jurisdiction because borrowers had already litigated claims in state court).

Generally, when determining a motion under Rule 12(b)(6), the court may only consider the complaint and its attached exhibits. However, while "a district court may not consider matters extraneous to the pleadings, a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss into one for summary judgment." *Angstadt v. Midd-West Sch. Dist.,* 377 F.3d 338, 342 (3d Cir. 2004).

B. THE COMPLAINT IS BARRED BY THE *ROOKER-FELDMAN* DOCTRINE AND SHOULD BE DISMISSED.

This Court has recently observed that a "federal district court does not sit to hear appeals from state court judgments." *Otto v. Wells Fargo Bank, N.A.,* 2016 U.S. Dist. LEXIS 92711, *5. "*Rooker–Feldman* operates to prevent a disgruntled party in state court litigation from collaterally attacking the results of that litigation in federal court, claiming constitutional or other error." *Id.*

The *Rooker–Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: ***cases brought by state-court losers. . . inviting district court review and rejection of [the state court's] judgments***." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (emphasis added). The Third Circuit has summarized its application:

> The *Rooker–Feldman* doctrine bars federal jurisdiction under two circumstances: if the claim was "actually litigated" in state court or if the claim is "inextricably intertwined" with the state adjudication. If the relief requested in the federal action requires determining that the state court's decision is wrong or would void the state

> court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.

ITT Corp. v. Intelnet Int'l, 366 F.3d 205, 210-11 (3d Cir. 2004) (internal citations omitted).

In *ITT Corp. v. Intelnet Int'l*, the Third Circuit reviewed the application of the *Rooker–Feldman* doctrine to the state court's order denying ITT Corp.'s motion to amend its pleading to add new counterclaims. 366 F.3d at 208. Reviewing whether a denial of a motion to amend should be considered an adjudication on the merits under New Jersey law, the Third Circuit reasoned that "there is no point to permitting the filing of an amended pleading when a subsequent motion to dismiss must be granted." *Id.* at 215. While the state court order and opinion denying the motion to amend had not specified whether the dismissal was with or without prejudice, "a state court's brevity does not prevent application of *Rooker–Feldman*." *Id.* at 212. Furthermore, because the dismissal was neither jurisdictional or disciplinary, it qualified under New Jersey law as an "adjudication on the merits." *Id.* at 213. Accordingly, the Third Circuit concluded:

> New Jersey law permits a state court to deny an amendment on procedural grounds (such as inordinate delay in filing) or because the amendment fails to state a claim. The ***latter is treated like a motion to dismiss for failure to state a claim and is a permissible decision on the merits under state law*** and thus for *Rooker–Feldman* purposes. [The state court] denied the amendment at least in part on the ground that it failed, as a matter of law, to state a claim upon which relief can be granted. In this context, the *Rooker–Feldman* doctrine bars federal jurisdiction in this case. Accordingly, we vacate the decision of the District Court and dismiss for lack of jurisdiction.

366 F.3d at 217 (emphasis added).

The Third Circuit's guidance is instructive in this case, as Williams already litigated the same claims regarding her loan modification applications against Defendants in the State Court Complaint. On or about February 17, 2016, Williams filed a motion for leave to amend her complaint so that she could add additional claims; but this motion was already reviewed on the merits and denied by the Superior Court of New Jersey. The state court also made clear that

Williams could not proceed against any other Defendant except Litton, as the court had already entered summary judgment in favor of those defendants and dismissed them from the State Court Complaint against them.

Because Williams failed to pursue her remaining state court claims against Litton in any meaningful way, the case was administratively dismissed for lack of prosecution. Clearly Williams should not now be allowed to pursue relief in this Court which could be, or have been, obtained in the state court proceedings.

The factual allegations in Williams' complaint pending in this Court are identical to those pled in the State Court Complaint:

Allegations	State Complaint	Federal Complaint
Litton offers Williams Loan Workout Plan in July 2009, which Williams signs.	¶ 16	¶ 17-20
Williams fails to make timely third trial payment under Workout Plan by Sept. 1, 2009.	¶¶ 17-19	¶ 21
Litton offered second Loan Workout Plan in October/November 2009 with lower monthly payments.	¶ 22	¶ 28
Litton sent Williams a third offer for a Loan Workout Plan in March 2010.		¶ 37
Williams claims that Litton prevented her from obtaining a loan modification, although it offered her three different modification options and despite that Williams did not make the required monthly trial payments under any of the third modification offers.	¶¶ 24-27	¶ 38
Williams claims that Litton's loan modification application process prevented her from obtaining a job with the Federal Management Agency.	¶ 38	¶ 39
Williams claims that Litton "breached" the Loan Workout Plan, even though she never accepted the offer.	¶ 27	¶ 42

Likewise, the instant Complaint ***files the same four claims against Defendants*** as she did in the State Court Complaint – violation of the FDCPA (Count I), violation of the NJCFA (Count II), Breach of Contract (Count III), and Intentional Infliction of Emotional Distress (Count IV) – but then adds a fifth, intertwined count for Deliberate Indifference.[6]

Here, as in *ITT Corp. v. Intelnet Int'l*, Williams is seeking to re-litigate her FDCPA and Intentional Infliction of Emotional Distress against Litton, on which Litton already obtained summary judgment in January 2015. Additionally, Williams is seeking to re-litigate all four claims against all of the other Defendants besides Litton, who already obtained summary judgment on all of these claims in February 2016. The factual allegations underlying all four claims of the complaint pending in this Court are identical to those facts which have already been pled, reviewed and fully adjudicated in the State Court case. The addition of the fifth count for deliberate indifference is intertwined with, and does not alter the crux of, Williams' core factual allegations, which is that she suffered damages due to her inability to secure a modification under any of Litton's three modification offers.

The *Rooker-Feldman* doctrine applies to this precise situation in which Williams, who lost summary judgment on the majority of claims in state court, is now seeking to get a second opportunity to litigate the same claims in federal court. To review these same four claims again would require this Court to "determin[e] that the state court's decision is wrong or would void the state court's ruling," and thus, "the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit." *ITT Corp.,* 366 F.3d 205, 210-11. All Defendants would be forced to re-litigate claims on which they already obtained judgment.

[6] The sixth count for defamation is only filed against defendant, Stern & Eisenberg.

Even though the State Court Complaint was administratively dismissed without prejudice, the Superior Court of New Jersey made clear that the dismissal was only as to the remaining two claims against Litton – ***it did not affect the judgments already entered in any way.*** If Williams wishes to pursue those remaining two claims against Litton, she must be confined to her previously filed state court litigation, as the parties have already completed discovery and are past summary judgment in that state court action. To permit Williams to start anew would impermissibly prejudice Litton and the other Defendants, as well as waste judicial resources.

Accordingly, the *Rooker-Feldman* doctrine deprives this Court of jurisdiction to hear this case and this Court should dismiss this Complaint against all Defendants.

C. EVEN IF THIS COURT FINDS JURISDICTION, WILLIAMS' CLAIMS ARE PRECLUDED BY RES JUDICATA.

Res judicata is grounds for a motion to dismiss for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). "*Res judicata* encompasses two preclusion concepts—issue preclusion, which forecloses litigation of a litigated and decided matter often referred to as direct or collateral estoppel, and claim preclusion, which disallows litigation of a matter that has never been litigated but which should have been presented in an earlier suit." *Great W. Min. & Mineral Co. v. ADR Options, Inc.,* 882 F. Supp. 2d 749, 760 (D.N.J. 2012), *aff'd*, 533 F. App'x 132 (3d Cir. 2013).

1. Collateral Estoppel Bars William's Claims Because Her Core Issues Were Already Fully Litigated In The State Court Action.

Collateral estoppel "prevents parties or their privies from re-litigating an issue if a court possessing personal and subject matter jurisdiction has already delivered a valid, final judgment on the merits." *Great W. Min. & Mineral Co. v. ADR Options, Inc*., 882 F. Supp. 2d 749, 760 (D.N.J. 2012), *aff'd*, 533 F. App'x 132 (3d Cir. 2013).

"The doctrine applies if four requirements are met: (1) the issue sought to be precluded is the same as that involved in the prior action; (2) that issue was actually litigated; (3) it was

determined by a final and valid judgment; and (4) the determination was essential to the prior judgment." *Id.* Similar to *res judicata*, "the purpose of the collateral estoppel doctrine is to promote judicial consistency, encourage reliance on court decisions, and protect defendants from being forced to repeatedly re-litigate the same issues in multiple lawsuits." *Id.* at 760. Here, collateral estoppel applies and bars all of Williams' claims.

First, as noted above, *supra*, the factual allegations supporting Williams' State Court Complaint are precisely the same factual allegations supporting each of Williams' claims in the present Complaint. "In deciding the identity of issues, this Court "should consider whether there is substantial overlap of evidence or argument in the second proceeding; whether the evidence involves application of the same rule of law; whether discovery in the first proceeding could have encompassed discovery in the second; and whether the claims asserted in the two actions are closely related." *Feng Li v. Peng*, 516 B.R. 26, 42 (D.N.J. 2014), *aff'd sub nom. In re Feng Li*, 610 F. App'x 126 (3d Cir. 2015), *cert. denied sub nom. Feng Li v. Peng*, 136 S. Ct. 1189, 194 L. Ed. 2d 203 (2016).

In the State Court Complaint, the main issue of Williams' claims was her allegation that Litton "breached" its obligation to give her a loan modification, even though she does not allege that any loan modification agreement was ever finalized. This is precisely the same issue that Williams avers to support her claims for all five of her current claims before this Court. Complaint, ¶¶ 17-42. Her fifth claim for deliberate indifference further arises from this same core allegation, with Williams averring that Litton's "aim of these action was to force plaintiff out of her home."

Second, the issues herein were already fully litigated because the state court entered summary judgment on two of the four claims against Litton and on all four against the other non-

Litton Defendants. The "actually litigated" standard is "satisfied when a party had the opportunity to present his evidence to a competent tribunal." *Feng Li*, 516 B.R. at 45. Additionally, the Third Circuit recognizes that denial of a motion to amend based on a substantive review of the proposed claims acts as a dismissal on the merits, so the state court's denial of Williams' motion to add new counts to her State Court Complaint further bars Williams' attempt to add new claims against Litton, i.e. Count Five. *ITT Corp.*, 366 F.3d at 208; *Great W. Min. & Mineral Co. v. ADR Options, Inc.*, 882 F. Supp. 2d 749, 762 (D.N.J. 2012), *aff'd*, 533 F. App'x 132 (3d Cir. 2013) (finding collateral estoppel applied to bar claims that were denied in a previous lawsuit).

In the previous action, both Williams and Ocwen submitted their legal arguments on all four claims to the state court for review at summary judgment. After reviewing both sides' arguments and evidence, the state court granted summary judgment in favor of all non-Litton Defendants, in favor of Litton on two counts, and denied Williams' motion to amend. Thus, there is no argument that these claims were not fully litigated.

Third, it is well settled that "the Third Circuit, relying on the Second Restatement of Judgments, has held that 'for the purposes of issue preclusion . . . 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive [effect]." *Feng Li*, 516 B.R. at 46 (finding summary judgment constitutes a final judgment to evoke collateral estoppel).[7] Here, the state court order was a final judgment because it terminated the claims at hand – after summary judgment was entered, all of the claims between Williams and the non-Litton Defendants were dismissed and there were only two claims remaining against Litton (which were ultimately dismissed for want of prosecution).

[7] Furthermore, "[u]nlike claim preclusion, the effectiveness of issue preclusion, sometimes called collateral estoppel, does not require the entry of a judgment, final in the sense of being appealable." *Feng Li*, 516 B.R. at 46.

Fourth, the state court's review of the loan modification allegations were essential to the final determination to enter summary judgment in the state court action. "Under the generally accepted meaning of the term, a fact may be deemed *essential* to a judgment where, without that fact, the judgment would lack factual support sufficient to sustain it." *Feng Li*, 516 B.R. at 47. The state court's entry of summary judgment in favor of all non-Litton Defendants, on all four counts, was based on its consideration of whether there was any evidence supporting any of Williams claims. The state court found there was not. Regarding Litton, the state court also found that there was no evidence supporting the emotional distress or FDCPA claims. So, the state court's full consideration of all evidence was essential to its decision to enter summary judgment.

Accordingly, Williams' claims are barred by collateral estoppel, the Defendants' Motion should be granted and the Complaint should be dismissed.

2. Williams' Claims Are Barred By Claim Preclusion.

"Res judicata, or claim preclusion, is a broader doctrine than collateral estoppel." *ADR Options, Inc.*, 882 F. Supp. 2d at 760. "It applies not only to claims brought in a previous lawsuit, but also to claims that could have been brought in that suit." *Id. (*citing *CoreStates Bank, N.A. v. Huls America, Inc.,* 176 F.3d 187, 194 (3d Cir. 1999)).

Claim preclusion attaches if there has been: (1) a final judgment on the merits in a previous lawsuit involving: (2) the same parties or their privies; and (3) a subsequent action based on the same cause of action." *ADR Options, Inc.*, 882 F. Supp. 2d at 760. "[T]he focus of the inquiry is 'whether the acts complained of were the same, whether the material facts alleged in each suit were the same, and whether the witnesses and documentation required to prove such allegations were the same.'" *Id.* at 762 (quoting *Duhaney v. Attorney General of U.S.,* 621 F.3d 340, 348 (3d Cir. 2010)).

"The Third Circuit has stated that summary judgment is a final judgment on the merits for the purposes of res judicata. *McLaughlin v. Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan,* 2016 U.S. Dist. LEXIS 141840, at *10 (D.N.J. Oct. 13, 2016). "Additionally, the fact that a judgment has been appealed does not affect the finality of the judgment for purposes of res judicata." *Id.*

The *res judicata* analysis is similar to the analysis above regarding issue preclusion, as a facial comparison of the factual allegations in the Complaint makes clear that the allegations are nearly identical and at least four of the claims filed in this action are identical to the State Court Complaint. The parties are also identical in both actions, as Williams has named all of the same Defendants in this action as in the State Court Action. *Compare* Seiden Cert., Ex B *with* Complaint. Finally, it is undeniable that the summary judgment order entered in favor of all non-Litton Defendants on four claims, and in favor of Litton on two claims, is as a final judgment on the merits. Accordingly, Williams' claims are barred by *res judicata*.

D. WILLIAMS' CLAIMS ARE TIME BARRED.

Finally, even if the Complaint could withstand the *Rooker-Feldman* and preclusion bars, which it cannot, then Williams' claims all are barred by the respective statutes of limitations. Of Williams' claims, the NJCFA and breach of contract claims have the longest statute of limitations, at six years. N.J.S.A. 2A:14–1. Under New Jersey law, it is clear that the date that a "cause of action is deemed to have 'accrued' is 'the date upon which the right to institute and maintain a suit first arises.'" *Belmont Condo. Ass'n, Inc. v. Geibel*, 74 A.3d 10, 29 (N.J. Sup. Ct. App. Div. 2013) (internal citation omitted); *see* N.J.S.A. 2A:14-2 (intentional tort statute of limitations is two years); 15 U.S.C. § 1692k(d) (FDCPA statute of limitations is one year).

Williams alleges that Litton's purported "fraud" and "breach" occurred on or around September 2009 during her loan modification application. Complaint, ¶ 26. Thus, the statute of

limitations expired six years later in September 2015. Williams filed this action in August 2016, a year after the statute of limitations on her breach of contract and NJCFA claims expired.

V. CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court dismiss Williams' Complaint in its entirety against all Defendants.

Dated: December 20, 2016

Respectfully submitted,

DUANE MORRIS LLP

/s/ Stuart I. Seiden
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Attorneys for Defendants Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs; Ocwen Loan Servicing LLC (incorrectly pled as Ocwen) and Ocwen Financial Corporation

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VERONICA A. WILLIAMS **Plaintiffs,** **v.** **LITTON LOAN SERVICING; HSBC BANK USA, N.A.; GOLDMAN SACHS MORTGAGE COMPANY; FREMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; OCWEN LOAN SERVICING LLC; STERN & EISENBERG, PC; AND OCWEN FINANCIAL CORPORATION,** **Defendants.**	**Case No.: 2:16-cv-05301-ES-JAD** **CERTIFICATION OF COUNSEL IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT**

I, Stuart I. Seiden, of full age, hereby certify as follows:

1. I am an attorney duly admitted to practice before the Courts of the State of New Jersey and an associate of the law firm Duane Morris LLP, counsel for Defendants Litton Loan Servicing ("***Litton***"), HSBC Bank USA, N.A., as trustee for Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C ("***HSBC***"); Goldman Sachs Mortgage Company ("***Goldman Sachs***"); Ocwen Loan Servicing LLC ("***Ocwen***"), and Ocwen Financial Corporation (collectively, "***Defendants***").

2. I make this Certification in support of Defendants' Motion to Dismiss Plaintiff's Complaint.

3. Attached as Exhibit "A" is a true and correct copy of the recorded Mortgage executed by Williams and recorded in the public records of Essex County in Book 11177 at page 730.

4. Attached as Exhibit "B" is a true and correct copy of the Complaint filed by Plaintiff Veronica Williams in the Superior Court of New Jersey, Essex County, on June 12, 2013, which was dockets as L-004753-13. (the "***State Court Action***").

5. In the State Court Action, Defendants, through undersigned counsel, filed for summary judgment on all four claims.

6. On January 23, 2015, this Court entered an order granting summary judgment in favor of Defendants on Counts I and IV and denying summary judgment on Counts II and III. Attached as Exhibit "C" is a true and correct copy of the Court's Order granting summary judgment in the State Court Action.

7. Attached hereto as Exhibit "D" is a true and correct copy of the ACMS screen listing this case as dismissal as of February 13, 2015.

8. On January 22, 2016, Defendants requested the reopening of Counts II and III and filed a motion for summary judgment on these remaining two counts.

9. On February 19, 2016, the court granted Defendants' motion in part, entering summary judgment in favor of all Defendants except Litton on Counts II and III, and dismissing the Complaint against those Defendants. Attached hereto as Exhibit "E" is a true and correct copy of the ACMS screen listing this case as dismissal as of February 13, 2015.

10. On February 17, 2016, while the summary judgment motion was still pending, Williams had filed a motion to amend the State Court Complaint to add new causes of action against the dismissed defendants.

11. Williams' motion to amend was denied, in part, by an order dated March 4, 2016. Attached hereto as Exhibit "F" is a true and correct copy of the March 4, 2016 denial order.

12. On April 27, 2016, Williams filed a motion for leave to appeal Denial Order to the Appellate Division of the Superior Court of New Jersey.

13. By order dated June 13, 2016, the Appellate Division denied the motion and dismissed the appeal as interlocutory. Attached hereto as Exhibit "G" is a true and correct copy of the June 13, 2016 denial order.

14. On June 14, 2016, the Superior Court of New Jersey dismissed Williams' State Court Complaint due to lack of prosecution and without prejudice. Attached hereto as Exhibit "H" is a true and correct copy of the June 14, 2016 dismissal order.

15. On July 5, 2016, Williams claims that she filed a notice of appeal of her Denial Order to the Supreme Court of New Jersey. Attached as Exhibit "I" is a true and correct copy of the notice of appeal from Williams.

16. To date, no docketing order has been issued by the Supreme Court of New Jersey.

17. Williams has not filed any motion to reinstate her State Court Complaint against Litton.

18. In the related foreclosure action filed in Essex County Chancery Division, Docket No F-839-13, summary judgment was entered in favor of Plaintiff on February 6, 2014. Attached hereto as Exhibit "J" is a true and correct copy of the February 6, 2014 order.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

/s/ Stuart I. Seiden
STUART I. SEIDEN

Dated: December 20, 2016

EXHIBIT A

MAY-17-2012 15:36 P.14

6053635

Return To:
FREMONT MORTGAGE
P.O. BOX [illegible]
FULLERTON, CA [illegible]

Prepared By:
[illegible]

MAY 30 2007
POSTPT. REC'D
IN RELEASES
BOOK 1959 PAGE 186

6-4-2009
ASSGT. REC'D.
BK 1797 PAGE 1661

Instr# [illegible] Carole A. [illegible]
Recorded/Filed [illegible] Essex County Register
[illegible] Bk 11177 Pg 730 #Pgs 21

[illegible]

[Space Above This Line For Recording Data]

MORTGAGE

MIN [illegible]

NO. B 9063419 (Discharged 3-23-2012)
LISPENDENS FILED 7-29 2009
HSBC Bank / Veronica Williams
COMPLT. DEFT.
BILL TO FORECLOSURE
FILED 5-29 2009

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated March 27, 2006, together with all Riders to this document.
(B) "Borrower" is VERONICA WILLIAMS

NO. B 7071053 (Discharged 7-30-2009)
LISPENDENS FILED May 31 2007
Fremont Inv. / Veronica Williams
COMPLT. DEFT.
BILL TO FORECLOSURE
FILED May 18 20 07

Borrower is the mortgagor under this Security Instrument.
(C) "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 mortgagee 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, Flint, MI 48501-2026, tel. (888) 679-MERS.

NEW JERSEY - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

[illegible] Form [illegible]
Page 1 of 18
VMP Mortgage Solutions - [illegible]

Inst# 6053635 BK# 11177 PG# 730

(D) "Lender" is FBC COMMERCIAL MORTGAGE FINANCE, DBA FREMONT MORTGAGE ITS SUCCESSORS AND/OR ASSIGNS
Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA
Lender's address is 2727 E IMPERIAL HIGHWAY, BREA CA 92821

(E) "Note" means the promissory note signed by Borrower and dated March 27, 2006
The Note states that Borrower owes Lender Two Hundred Sixty-One Thousand and No/100 ---------- Dollars
(U.S. $ 261,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2036
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "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.
(H) "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]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(I) "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-appealable judicial opinions.
(J) "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.
(K) "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, telephonic instrument, computer, or magnetic tape so as 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 transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) 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.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "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.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 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.

Initials:

(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

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 these purposes, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the County of ESSEX :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE APART THEREOF

Property Account Number: 0040800000755084 which currently has the address of

541 SCOTLAND RD [Street]

SOUTH ORANGE [City], New Jersey 07079 [Zip Code]

("Property Address"):

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 interests 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 seised 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 encumbrances of record.

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

Initials:

Property. The property consists of the land and all the buildings and structures on the land in the Township of Village of South Orange
County of Essex and State of New Jersey. The legal description is:

Township of Village of South Orange, County of Essex, State of New Jersey, being more particularly described as follows:

BEGINNING at a point in the dividing line between Lots 73 and 58 as shown on a map entitled "Map of Scotland Homes situated in The Village of South Orange, Essex County, New Jersey made by Halsey Brothers May 18, 1965, therein distant 70.00 feet southwesterly from a point in the southwest line of Randolph Place which point is distant 112.31 feet from the intersection of the said line of Randolph Place with the westerly line of Scotland Road and running thence; (1) N55° 57' W, 5.01 feet to a point in lot 58 on aforementioned map; thence (2) S 37° 45' W, 45.31 feet to the northerly line of a 12 foot sewer right of way as shown on aforementioned map; thence (3) along said line of 12' sewer right of way S 52° 15' E, 5.00 feet to a point in the westerly line of lot 73 on aforementioned map; thence (4) along said line of lot 73 N 37° 45' E, 40.62 feet to a point; thence (5) S 55° 57' E, 15.32 feet to a point, thence (6) N 34° 03' E, 5.00 feet to a point in the northerly line of Lot 73 on aforementioned map; thence (7) N 55° 57' W, 15.00 feet to the point or place of Beginning.

Said premises are known as 541 Scotland Road, South Orange, New Jersey.

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

1. Payment of Principal, Interest, Escrow 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 Escrow 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.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future. If Lender accepts such payments, it shall apply such payments at the time such payments are accepted. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance 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.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment

Initials:

of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can 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 attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, 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) secures 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 attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

Initials:

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 Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected 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 (including 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, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings 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 lessened. 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. Lender may disburse proceeds for the repairs 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 sums 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.

Initials:

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 acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid 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 restore 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 repairs 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 persons or entities 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 attain 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 assessing 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 secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

Initials:

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.

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. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

Initials:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. 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 repairs 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 interest 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 owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Initials:

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could 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 19, 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.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization 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 amortization 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 amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **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 mortgage, 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 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 18, 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 to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **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, attorneys' 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 maximum loan 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: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) 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.

Initials:

15. Notices. 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.

16. 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.

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

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

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 15 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.

19. 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 Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys'

Initials:

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 reinstatement 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, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** 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 unrelated 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 Loan is 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 litigant 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 15) of such alleged breach and afforded the other party hereto 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 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (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 uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

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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 Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, 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.

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

22. 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 18 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; (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, foreclosure by judicial proceeding and sale of the Property; (e) the Borrower's 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 foreclosure; and (f) any other disclosure required under the Fair Foreclosure Act, codified at Section 2A:50-53 et seq. of the New Jersey Statutes, or other Applicable Law. 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 foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence permitted by Rules of Court.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall cancel this Security Instrument. 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.

24. No Claim of Credit for Taxes. Borrower will not make deduction from or claim credit on the principal or interest secured by this Security Instrument by reason of any governmental taxes, assessments or charges. Borrower will not claim any deduction from the taxable value of the Property by reason of this Security Instrument.

Initials:

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

DANIEL J. ROY
Attorney At Law Of N.J.

VERONICA WILLIAMS (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

STATE OF NEW JERSEY, Essex County ss:

On this 27th day of MARCH 2006, before me, the subscriber, personally appeared

Veronica Williams

who, I am satisfied, is/are the person(s) named in and who executed the within instrument, and thereupon acknowledged that he/she/they signed, sealed and delivered the same as his/her/their act and deed, for the purposes therein expressed.

Notary Public DANIEL J. ROY
Attorney At Law Of N.J.

Initials

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 27th day of March 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to
FDC COMMERCIAL MORTGAGE FINANCE, DBA FREMONT MORTGAGE
ITS SUCCESSORS AND/OR ASSIGNS

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
541 SCOTLAND ROAD SOUTH ORANGE, NJ 07079

[Property Address]

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 11.350 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of April 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is:
the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the WALL STREET JOURNAL. The most recent Index figure available as of the date: ☒ 45 days ☐ _____ before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and Ninety-Nine Hundredths percentage points (6.9905 %) to the Current Index. The Note Holder will then round the result of this addition to the ☒ Nearest ☐ Next Highest ☐ Next Lowest One-Eighth (0.125 %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

☐ Interest-Only Period

The "Interest-only Period" is the period from the date of this Note through N/A . For the Interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

Initials:

(D) Limits on Interest Rate Changes
(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)

☐ (1) There will be no maximum limit on interest rate changes.
☒ (2) The interest rate I am required to pay at the first Change Date will not be greater than 13.550 % or less than 11.5500 %. Thereafter, subsequent
☒ (3) My interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage points (1.5000 %) from the rate of interest I have been paying for the preceding period.
☒ (4) My interest rate will never be greater than 17.5500 %, which is called the "Maximum Rate."
☒ (5) My interest rate will never be less than 11.5500 %, which is called the "Minimum Rate."
☒ (6) My interest rate will never be less than the initial interest rate.
☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 13.550 % or less than 11.5500 %. Thereafter, subsequent my interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage points (1.5000 %) from the rate of interest I have been paying for the preceding period.

(E) Effective Date of Changes
My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes
The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

Initials:

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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 15 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.

Initials:

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

VERONICA WILLIAMS (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Property. The property consists of the land and all the buildings and structures on the land in the Township of Village of South Orange County of Essex and State of New Jersey. The legal description is:

Township of Village of South Orange, County of Essex, State of New Jersey, being more particularly described as follows:

BEGINNING at a point in the dividing line between Lots 73 and 58 as shown on a map entitled "Map of Scotland Homes situated in The Village of South Orange, Essex County, New Jersey made by Halsey Brothers May 18, 1965, therein distant 70.00 feet southwesterly from a point in the southwest line of Randolph Place which point is distant 112.31 feet from the intersection of the said line of Randolph Place with the westerly line of Scotland Road and running thence; (1) N55° 57' W, 5.01 feet to a point in lot 58 on aforementioned map; thence (2) S 37° 45' W, 45.31 feet to the northerly line of a 12 foot sewer right of way as shown on aforementioned map; thence (3) along said line of 12' sewer right of way S 52° 15' E, 6.00 feet to a point in the westerly line of lot 73 on aforementioned map; thence (4) along said line of lot 73 N 37° 45' E, 40.62 feet to a point; thence (5) S 55° 57' E, 15.32 feet to a point, thence (6) N 34° 03' E, 5.00 feet to a point in the northerly line of Lot 73 on aforementioned map; thence (7) N 55° 57' W, 15.00 feet to the point or place of Beginning.

Said premises are known as 541 Scotland Road, South Orange, New Jersey.

EXHIBIT

EXHIBIT B

ESSEX COUNTY - CIVIL DIVISION
SUPERIOR COURT OF NJ
465 MARTIN LUTHER KING JR BLVD
NEWARK NJ 07102

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 693-5529
COURT HOURS

DATE: JUNE 12, 2013
RE: WILLIAMS VS LITTON LOAN SERVICING
DOCKET: ESX L -004753 13

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON RANDAL C. CHIOCCA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002 AT: (973) 693-6443 EXT 6431.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: JOSHUA W. DENBEAUX
DENBEAUX & DENBEAUX
366 KINDERKAMACK ROAD
WESTWOOD NJ 07675

JUMJB3

Joshua Denbeaux
Denbeaux & Denbeaux
366 Kinderkamack Road
Westwood, New Jersey 07675
(201) 664-8855 / Fax: (201) 666-8589
Counsel for Plaintiff Veronica Williams

VERONICA WILLIAMS,

Plaintiff

v.

LITTON LOAN SERVICING, HSBC BANK USA, N.A., FREEMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; GOLDMAN SACHS; OCWEN, STERN & EISENBERG, PC, POWERS KIRN, LLC ,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET No.: ESX-L- 4753-13

COMPLAINT AND JURY DEMAND

I, Veronica Williams, of full age, hereby counter-complain of Plaintiffs as follows:

JURISDICTION AND VENUE

1. The New Jersey Superior Court has jurisdiction over this matter as the property in question is located in the City of South Orange, County of Essex and State of New Jersey, because the Defendant resides in the State of New Jersey, because Plaintiff transacts business within the State of New Jersey and because all causes of action arose from conduct undertaken within the State of New Jersey.

2. Venue is appropriately laid in the Essex Viciniage because the Defendant resides in the County of Essex and Plaintiff conducts business within the County of Essex.

PARTIES

3. Veronica Williams is the Plaintiff in this matter. She resides in her home at 541 Scotland Road, South Orange, New Jersey, which she refinanced on or about March 31, 2006.

4. Defendant Litton Loan Servicing was the lender who serviced Defendant's refinanced mortgage on her residence immediately after closing the refinance loan.

5. Defendant HSBC Bank USA, N.A. is the Trustee for Defendant Fremont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C was the entity who alleged in its Complaint filed January 9, 2013, under docket F-28279-09, to have acquired the loan via assignment on or about September 1, 2006.

6. Defendant Fremont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C was the entity who alleged in its Complaint filed January 9, 2013, under docket F-839-13, to have acquired the loan via assignment on or about September 1, 2006.

7. Defendant Goldman Sachs acquired ownership of Defendant Litton Loan Servicing in or about December 2007.

8. Defendant Ocwen acquired Litton Loan Servicing from Goldman Sachs on or about September 2011.

9. Defendant Powers & Kirn LLC is the law firm that previously represented HSBC Bank USA, N.A. as Trustee under the Pooling and Servicing Agreement dated as of September 1, 2006, Freemont Home Loan Trust 2006-C in its second effort to wrongfully foreclose on Plaintiff's home and wrongfully collect a debt.

10. Defendant Stern & Eisnenberg PC, LLC is the law firm that now represents represented HSBC Bank USA, N.A. as Trustee under the Pooling and Servicing Agreement dated as of

September 1, 2006, Freemont Home Loan Trust 2006-C in its second effort to wrongfully foreclose on Plaintiff's home and wrongfully collect a debt.

ALLEGATIONS COMMON TO ALL COUNTS

The Loan Workout Plan Breach

11. Plaintiff Veronica Williams is the president of Absolute Computer Technologies (ACT) Inc. and holds a BA in Economics from Brandeis University and an MBA from Northwestern University.

12. ACT Inc. is a management-consulting and technology-services firm based in Washington, D.C., servicing private and public clients since 1986.

13. Plaintiff's clients have included American Express, the United States Army, Motorola, IBM, the New York Board of Trade, and Cingular.

14. On or about March 31, 2006, Litton Loan Servicing (Litton), , serviced Defendant's mortgage loan for the subject property at 541 Scotland Road, South Orange, New Jersey.

15. In or about 2009, Defendant was delinquent in payment of residential debt for unexpected and unavoidable reasons.

16. Defendant negotiated a Loan Workout Plan with Litton effective July 1, 2009, consisting of three monthly arrears payments.

17. On or about June 25, 2009, Defendant sent Litton her timely payments due on or before July 1 and August 1, respectively, pursuant to the Loan Workout Plan.

18. Defendant timely notified Litton in advance that the September payment, the third of three payments pursuant to the Loan Workout Plan, would be delayed because of major water damage in the rental portion of the subject property that required immediate repairs in order to continue to produce income.

19. On or about September 11, 2009, Defendant satisfied her obligation to pay Litton the third monthly arrears payment pursuant to the Loan Workout Plan.

20. Litton returned Defendant's monthly arrears payments rather than recognizing them.

21. On or about September 25, 2009, Litton informed Defendant that it would delay foreclosure until November 4, 2009.

22. Litton modified and reinstated the Loan Workout Plan offered to Defendant by lowering the amounts due for the three monthly payments and by setting three new due dates beginning November 1, 2009.

23. On or about October 28, 2009 Defendant timely resubmitted all three Loan Workout Plan payments in full to Litton Loan.

24. Although Litton inexplicably failed to recognize the same arrears payments provided earlier, Litton recognized the October 28 payments in amounts totaling $9,216.61.

25. Litton's failure to recognize Defendant's monthly arrears payments when originally submitted by Defendant was a breach of the Loan Workout Plan.

26. Litton's breach was part of business model that required a percentage of its loans in collection to default.

27. By breaching the contract with Plaintiff, Litton and the true owner of the loan stood to collect money from insurance proceeds that made the breach more profitable than honoring the loan as performing.

28. Plaintiff advised the law firm of Powers Kirn LLC that the foreclosure suit it was prosecuting was in violation of the modification contract entered into. Powers Kirn LLC continued to prosecute the action in a harassing manner for a long time despite being advised of the existing modification and breach by the bank.

29. In the resultant foreclosure litigation, Plaintiff dismissed the action after Defendant objected to the fraudulent conduct of Litton that caused her the injury she suffered.

30. Litton's misconduct caused the destruction of Defendant's business.

31. In January 2013 a new foreclosure complaint was again wrongfully filed under docket 0839-13.

FEMA Background Check Disruption

32. In or about 2009, the Federal Emergency Management Agency (FEMA) offered Defendant a position as an independent contractor.

33. The only condition for FEMA's employment of Defendant was the acquisition of a favorable suitability determination based on a security background investigation.

34. On or about September 20, 2009, Defendant initiated the security background investigation required for FEMA's employment.

35. On or about November 17, 2009, FEMA responded to Defendant's security background investigation by issuing a pending unsuitable decision. The only indication FEMA provided to Defendant for her pending unsuitable decision was past due balances on mortgage debt. FEMA provided Defendant thirty calendar days in which to appeal her pending unsuitable decision.

36. On or about December 12, 2009, Defendant issued FEMA a timely and thorough response to appeal her pending unsuitable decision. All outstanding past due balances on loans were documented to be settled or in current payment, except for the Litton balance, due to Litton's protracted and uncooperative modification process.

37. Defendant explained in her timely and thorough response to FEMA that she had proactively sought to mitigate and rectify her account with Litton but Litton failed to recognize her timely payments.

38. On or about May 12, 2010, FEMA deemed Defendant unsuitable for employment.

COUNT I

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

(ALL DEFENDANTS)

39. Plaintiff incorporates by reference all prior facts and allegations in this Complaint as if set forth here at length again.

40. Defendants have provided Plaintiff with inconsistent written documentation indicating who the owner(s) and servicer(s) of the mortgage loan are.

41. Defendant Litton Loan Services, its successors, and agents, attempted to collect a disputed debt in violation of the Fair Debt Collection Practices Act by:

a. Using foul and abusive language

b. Contacting Plaintiff repetedly in a harassing manner after the debt was disputed by Plaintiff.

c. Refusal to validate the debt upon demand

d. Harassing plaintiffs by calling at inconvenient hours, repeatedly, with the intention of causing plaintiff distress.

42. The foregoing list is a partial list of known violations and is provided in the pleadings to provide notice of the claim for violation of the Fair Debt Collection Practices Act. Further violations are likely to be discovered during litigation.

43. Defendants acted in concert to violate the FDCPA.

44. Defendant Powers and Kirn LLC acted as a third party debt collector in seeking to foreclose on Plaintiff's home. After being notified that a modification contract was executed and that Defendant breached the contract, Powers Kirn LLC continued to prosecute the foreclosure action and to send harassing debt collection correspondence to Plaintiff.

45. As a result of the actions of defendants which violate FDCPA, plaintiffs have suffered embarrassment, loss of sleep, depression, other physical symptoms of stress, fees paid to attorneys, loss of income, and other financial and physical harm.

COUNT II

VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT (CFA)

(All Defendants)

46. Plaintiffs incorporate by reference all prior facts and allegations in this Complaint here as if set forth at length again.

47. The defendants' decision to solicite, offer and enter into a modification agreement for which it had no intention to honor constitutes an unconscionable commercial practice.

48. The defendants' decision to continue prosecuting the foreclosure action in violation of the contract between the parties, constituted an unconscionable commercial practice.

49. Defendants' continued harassment of the plaintiff, after executing a permanent modification constitutes acts of unconscionable commercial practice.

50. Defendants' public listing of the plaintiff's home for foreclosure sale, even after its rights to do so were extinguished, constitutes an unconscionable commercial practice.

51. The foregoing listing of the defendants' combined acts of unconscionable commercial practice are not exhaustive, and are designed to put defendants on notice that their various actions to foreclose on the plaintiffs' home following the modification agreement were all acts of unconscionable commercial practice.

52. On information and belief, defendants paid other actors, individuals or businesses, to assist them in their unconscionable commercial practices. Those other entities and persons are identified in the pleadings as John Does I-X.

53. As a result of the defendants' acts of unconscionable commercial practices, plaintiffs have suffered damages and injury.

COUNT III

BREACH OF CONTRACT

(All Defendants)

54. Plaintiffs incorporate by reference all prior facts and allegations in this Complaint here as if set forth at length again.

55. There exists a contract between plaintiffs and Litton Loan Servicing. The contract was entered into by Litton in its individual capacity and on behalf of the other defendants to this action.

56. The contract extinquished the plaintiff's default on the mortgage note that HSBC Bank USA, N.A. as Turstee for Fremont Home Loan Trust 2006-C, Mortgage-Backed Certificates, Series 2006-C sued to enforce under docket F-28279-09 and again under docket F-839-13

57. Plaintiffs made payments and performed in accordance with their obligations under the contract. Litton Loan Services thereafter refused to continue accepting monthly payments made by Plaintiff.

58. On information and belief, Litton Loan Services was instructed to stop accepting modification payments by the true owner of the loan. Litton Loan Services has claimed that the owner of the loan at the relevant time was HSBC Bank USA, N.A. as Turstee for Fremont Home Loan Trust 2006-C, Mortgage-Backed Certificates, Series 2006-C.

59. Despite Plaintiffs compliance with the contract. Defendant wrongly continued to prosecute a foreclosure complaint and litigated the matter to final judgment.

60. Litton Loan Services and HSBC Bank USA, N.A. as Turstee for Fremont Home Loan Trust 2006-C, Mortgage-Backed Certificates, Series 2006-C later entered into a consent order vacating final judgment, a writ of execution, and dismissing the foreclosure action in its entirety. This act was an admission of Defendants wrongdoing.

61. Defendants Litton Loan Services and its successors in interest, HSBC Bank USA, N.A. as Turstee for Fremont Home Loan Trust 2006-C, Mortgage-Backed Certificates, Series 2006-C, were aware fo the existence of a modification loan and intentional breach by Defendant.

62. As a result of the Defendants actions, the contract was breached and Plaintiff was harmed.

63. Plaintiff has suffered damages.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(*All Defendants*)

64. Plaintiff incorporates by reference all prior facts and allegations in this Complaint here as if set forth at length herein.

65. The defendants' actions were intentional, and were designed to cause plaintiff distress.

66. The aim of these actions was to force plaintiff out of her home in breach of an agreement to not continue pursuing any such action.

67. The aim of these actions was to harass plaintiff and to cause disruption to her business and personal life.

68. In order to compel Plaintiff to leave her home, defendants jointly engatged in a series of actions which were designed to make the plaintiff unhappy, cause her distress and force her to give up in an inappropriate war of attrition.

69. These acts were pursued even thought he defendants knew that they lacked the legal right to continue foreclosure actions or otherwiseharass plaintiff.

70. As a result of the relentless barrage of harassment by defendants jointly, plaintiff has suffered health problems and has incurred injury.

WHEREFORE, plaintiff demands:

a. Compensatory Damages

b. Punitive Damages

c. Statutory Damages

d. Restitution

e. Attorneys fees and costs

f. All other relief which this Court determines to be just and fair

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Joshua W. Denbeaux, Esq. as trial counsel on the action herein pursuant to the New Jersey Rules of Court.

CERTIFICATION PURSUANT TO *R.* 4:5-1(B)(2)

Defendant hereby certifies that there are not any other pending actions in any other court or arbitration, no other such proceedings are presently contemplated and there are no other non-parties who should be joined with this action at this time, other than the foreclosure action, presently pending,

DEMAND FOR TRIAL BY JURY

Defendant herein demands a trial by jury and will not be satisfied with a jury of less than six.

DENBEAUX & DENBEAUX
Attorneys for Plaintiff

Dated: June 3, 2013

By: JOSHUA W. DENBEAUX

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under *Rule* 4:5-1
Pleading will be rejected for filing, under *Rule* 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: ☐ CK ☐ CG ☐ CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY / PRO SE NAME	TELEPHONE NUMBER	COUNTY OF VENUE
Joshua W. Denbeaux	(201) 664-8855	Essex L-4753-13
FIRM NAME (if applicable)		DOCKET NUMBER (when available)
Denbeaux & Denbeaux		
OFFICE ADDRESS 366 Kinderkamack Road Westwood, NJ 07675		DOCUMENT TYPE Complaint
		JURY DEMAND ■ YES ☐ NO

NAME OF PARTY (e.g., John Doe, Plaintiff)	CAPTION
Veronica Williams, Plaintiff	Veronica Williams v. Litton Loan Servicing, HSBC Bank USA, Freemont Home Loan trust 2006-C Mortgage-Backed Certificates Series 2006-C; Goldman Sachs; Ocwen, Stern & Eisenberg, PC Powers Kirn, LLC
CASE TYPE NUMBER (See reverse side for listing) 599	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☐ NO IF YOU HAVE CHECKED "YES," SEE *N.J.S.A.* 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.
RELATED CASES PENDING? ■ YES ☐ NO	IF YES, LIST DOCKET NUMBERS F-000839-13
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ■ NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ■ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?	IF YES, IS THAT RELATIONSHIP:
■ YES ☐ NO	☐ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ■ BUSINESS

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ■ NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ■ NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION
WILL AN INTERPRETER BE NEEDED? ☐ YES ■ NO	IF YES, FOR WHAT LANGUAGE?

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

ATTORNEY SIGNATURE:

Side 2

CIVIL CASE INFORMATION STATEMENT
(CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502 BOOK ACCOUNT (debt collection matters only)
505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
506 PIP COVERAGE
510 UM or UIM CLAIM (coverage issues only)
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (summary action)
999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

305 CONSTRUCTION
509 EMPLOYMENT (other than CEPA or LAD)
599 CONTRACT/COMMERCIAL TRANSACTION
603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
605 PERSONAL INJURY
610 AUTO NEGLIGENCE – PROPERTY DAMAGE
621 UM or UIM CLAIM (includes bodily injury)
699 TORT – OTHER

Track III - 450 days' discovery

005 CIVIL RIGHTS
301 CONDEMNATION
602 ASSAULT AND BATTERY
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
303 MT. LAUREL
508 COMPLEX COMMERCIAL
513 COMPLEX CONSTRUCTION
514 INSURANCE FRAUD
620 FALSE CLAIMS ACT
701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

285 STRYKER TRIDENT HIP IMPLANTS
288 PRUDENTIAL TORT LITIGATION
289 REGLAN
290 POMPTON LAKES ENVIRONMENTAL LITIGATION
291 PELVIC MESH/GYNECARE
292 PELVIC MESH/BARD
293 DEPUY ASR HIP IMPLANT LITIGATION
295 ALLODERM REGENERATIVE TISSUE MATRIX
623 PROPECIA

Mass Tort (Track IV)

266 HORMONE REPLACEMENT THERAPY (HRT)
271 ACCUTANE/ISOTRETINOIN
274 RISPERDAL/SEROQUEL/ZYPREXA
278 ZOMETA/AREDIA
279 GADOLINIUM
281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
282 FOSAMAX
284 NUVARING
286 LEVAQUIN
287 YAZ/YASMIN/OCELLA
601 ASBESTOS

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics.

Please check off each applicable category ☐ **Putative Class Action** ☐ **Title 59**

EXHIBIT C

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Attorneys for Defendants Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs; Ocwen Loan Servicing LLC (incorrectly pled as Ocwen)

VERONICA WILLIAMS

Plaintiff,

v.

LITTON LOAN SERVICING, HSBC BANK USA, N.A., FREEMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; GOLDMAN SACHS; OCWEN, STERN & EISENBERG, PC, POWERS KIRN LLC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ESSEX COUNTY

DOCKET NO. ESX-L-4753-13

CIVIL ACTION

ORDER

THIS MATTER having been opened to the Court by Duane Morris LLP, counsel for Defendants Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs; and Ocwen Loan Servicing LLC (incorrectly pled as Ocwen), upon notice to Josh Denbeaux, Esquire, counsel for Plaintiff Veronica Williams, for entry of an Order Granting Summary Judgment in favor of Defendants (the "Motion"), and for other such relief as the Court deems equitable and just;

AND the Court having read and considered the pleadings herein, and the papers filed in connection with the aforesaid application, and having heard the arguments of all parties;

AND for the reasons set forth on the record before the Court, and for good cause otherwise having been shown;

IT IS on this 23 day of Jan, ~~2014~~ 2015

ORDERED that the Motion is **GRANTED** and Plaintiff Veronica Williams's Complaint is hereby **DISMISSED WITH PREJUDICE**; and it is further

Only as to Plaintiff's Fair Debt Collection Practices Act and Intentional Infliction of Emotional Distress Claims.

Ordered that Defendants' motion is otherwise denied; and it is further

ORDERED that a copy of this Order shall be served on all parties within seven (7) days of its receipt by counsel.

J.S.C.

Hon. Stephanie A. Mitterhoff, J.S.C.

___ Opposed

X Unopposed

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

VERONICA WILLIAMS, Plaintiff	SUPERIOR COURT OF NEW JERSEY
v.	ESSEX COUNTY DOCKET NO.: ESX-L-4753-13
LITTON LOAN SERVICING, et al., Defendants	**OPINION**

Decided: January 23, 2015

By: Stephanie A. Mitterhoff, J.S.C.

I. Background

Plaintiff is sophisticated in business matters and has over 30 years of financial experience. On March 27, 2006, Plaintiff took out a loan secured by a mortgage on her house in the amount of $261,000. On November 9, 2007, the loan was modified to a fixed interest rate of 7.250% and an unpaid principal balance of $295,892.58. The loan was held by Defendant Fremont Home Loan Trust 2006-C Mortgage-Backed Certificates (Fremont Trust). Defendant HSBC Bank is the Trustee for the Fremont Trust. Defendant Litton Loan Servicing (Litton) serviced the loan. In December 2007, Defendant Goldman Sachs acquired ownership of Litton. In September 2011, Defendant Ocwen acquired Litton from Goldman Sachs. On November 1, 2011, Litton stopped servicing Plaintiff's loan and Ocwen began servicing it.

Plaintiff Veronica Williams's claims center around her testimony that employees of Litton Loan Servicing (Litton), promised her that she could obtain a favorable modification of her loan if she defaulted on her mortgage payments. Plaintiff intentionally failed to make several payments and Litton thereafter sent Plaintiff a written offer for modification that was contingent on her submitting proof of income showing that she could not afford the mortgage on its current terms. Plaintiff failed to submit the required proof of income. As a result, Plaintiff was not able to modify her mortgage. Plaintiff's default on the mortgage caused her to lose her security clearance, which precluded a lucrative contract with FEMA which Plaintiffs claims she would have received if she maintained the security clearance.

Plaintiff brought causes of action for violations of the Fair Debt Collection Practices Act (FDCPA), violations of the New Jersey Consumer Fraud Act (CFA), breach of contract, and intentional infliction of emotional distress. Before the court are Defendants' motions for summary judgment on all counts.

II. The Summary Judgment Standard.

Defendants' motion for summary judgment is governed by Rule 4:46-2, which provides that summary judgment should be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. In Brill, the Supreme Court explained that in determining whether a genuine issue of material fact exists, the question is whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540

(1995). Brill explained that "[c]redibility determinations will continue to be made by a jury and not the judge," but "when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Ibid. (citations and internal quotation marks omitted).

III. Plaintiff's Claims are Not Barred by Collateral Estoppel or Res Judicata.

Defendants argue that the foreclosure complaint filed against Plaintiff, on which summary judgment was entered in February of 2014, bars Plaintiffs complaint under the doctrines of res judicata and collateral estoppel. Defendants assert that "Plaintiff had had opportunity to present the arguments raised in the Complaint either in the Answer in or opposition to the Motion for Summary Judgment."

However, Judge Klein's grant of summary judgment in the foreclosure action was "without prejudice" to Plaintiff's claims in this suit. Furthermore, Defendants have not identified an issue litigated in the foreclosure action that is dispositive of any of Plaintiff's claims. Therefore, Defendants have failed to show that Plaintiff's claims are precluded under either collateral estoppel or res judicata.

IV. Defendants Are Entitled to Summary Judgment on the Fair Debt Collection Practices Act Claims.

The Fair Debt Collection Practices Act (FDCPA) only extends liability to what it defines as a "debt collector." Pollice v. Nat'l Tax Funding, L.P., 255 F.3d 379, 403 (3d Cir. 2000). Creditors who are owed the debt are specifically excluded by the statutory definition of "debt collector," and therefore, creditors are not liable under the FDCPA. Ibid.; 15 U.S.C. § 1692a(4), (6). Also excluded from the definition of "debt collector" is "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement." 15

U.S.C. § 1692(6)(F). Further, to be liable under the FDCPA, a debt collector must engage in some type of prohibited activity such as improper communication with the consumer debtor or third parties, § 1692c, harassment or abuse, § 1692d, unfair or deceptive attempts to collect the debt, §§ 1692e, 1692f, refusal to provide validation of the debt, § 1692g, refusal to apply payments among multiple debts in accordance with the debtor's instructions, § 1692h, bringing a legal action in an improper venue, § 1692i, or furnishing certain deceptive forms, § 1692j. The FDCPA has a one year statute of limitations running from the date of the alleged violation. § 1692k(d); Glover v. FDIC, 698 F.3d 139, 145 (3d Cir. 2012).

Because Defendant Fremont Trust owns Williams's debt, it is a creditor and not a debt collector under the FDCPA. See Pollice, supra, 255 F.3d at 403. As trustee of the Fremont Trust, Defendant HSBC had a bona fide fiduciary obligation to collect the debt on behalf of Fremont Trust and is also excluded from the definition of debt collector under the FDCPA. See § 1692(6)(F). Therefore, Williams fails to raise a genuine issue as to her FDCPA claim against HSBC or the Fremont Trust.

Williams is similarly barred from asserting an FDCPA against Litton. Because Litton stopped servicing Plaintiff's loan in November 2011 and Plaintiff filed her complaint on June 11, 2013, Plaintiff's complaint was filed over one year after any improper collection activity by Litton and any FDCPA claim against Litton would be barred by the statute of limitations. § 1692k(d).

As to Ocwen, Plaintiff's FDCPA claim fails because it is based on the fact that Ocwen engaged in collection activity when she believed that she was entitled to a modification and the fact that Ocwen refused to provide a transaction history rather than being based on any misleading, harassing, or unfair collection conduct. Plaintiff testified that she could not

remember Ocwen ever using foul or abusive language. When asked whether Ocwen harassed her she stated that "'Harassment' is a nebulous word in that case. When people call and try to collect money from you that wasn't entitled to be collected, I don't know how to describe that. But it's not pleasant." When asked whether Ocwen called and an inconvenient hour, Plaintiff replied in the affirmative. When asked "What's inconvenient?" she stated that "I was very sick when Ocwen was doing that . . . . they could have called me in the middle of the afternoon when I was resting from medicines and it would have been inconvenient for me, but not inconvenient for most people." Although it might not have been "pleasant," Ocwen's conduct does not rise to the level of a violation of the FDCPA. See § 1692c-j. Viewing this evidence in the light most favorable to Plaintiff, no rational fact finder could conclude that Ocwen's activity fits within any of statutory categories of liability under the FDCPA. Therefore, Plaintiff fails to raise a genuine issue as to whether Ocwen violated the FDCPA.

As to Defendant Goldman Sachs, the owner of Litton and then Ocwen, Plaintiff introduced no evidence that Goldman engaged in independent attempts to collect the debt. Therefore, Plaintiff fails to raise a genuine issue as to Goldman Sachs's liability under the FDCPA. For the foregoing reasons, all Defendants are entitled to summary judgment as to Plaintiff's FDCPA claims.

V. Defendants Are Not Entitled to Summary Judgment on the New Jersey Consumer Fraud Act Claims.

In her complaint, Williams alleges that Defendants engaged in unconscionable commercial practices under the New Jersey Consumer Fraud Act (CFA) by entering into a modification agreement which they had no intention to honor, prosecuting a foreclosure action in violation of an alleged contract with plaintiff, and harassing plaintiff after executing a modification. CFA claims require proof of (1) an unlawful practice, (2) an ascertainable loss,

and (3) a causal relationship between the unlawful conduct and the ascertainable loss." Gonalez v. Wiltshire Credit Corp., 207 N.J. 557, 576 (2001) (citations and internal quotation marks omitted). Actionable unlawful conduct includes "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission." N.J.S.A. § 56:8-2. Unconscionability is an "amorphous concept" that implies a lack of "of 'good faith, honesty in fact and observance of fair dealing.'" Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994). A further requirement under the CFA is that the conduct complained of must occur "in connection with the sale or advertisement of any merchandise or real estate." The act defines "advertisement" and "merchandise" broadly enough to include the provision of consumer credit such as Plaintiff's mortgage. Lemelledo v. Benefit Mgmt. Corp., 150 N.J. 255, 265 (1997).

Here, Plaintiff's CFA claim raises a genuine issue of fact. In her complaint, Plaintiff pled fraud sufficiently by alleging that Litton entered into a modification plan that it had no intention to honor and Litton's decision not to honor the modification "was part of a business model that required a percentage of its loans in collection to default" and that the default allowed Litton to collect insurance proceeds "that made the breach more profitable than honoring the loan as performing." The allegations were supported by Plaintiff's deposition testimony, which described Litton engaging in fraudulent conduct by verbally assuring her that it was a "done deal" and that all she had to do was make three arrears payments, while later refusing to modify her loan on the ground that she failed to submit proof of income. Plaintiff's testimony belies defense counsel's assertion that "The record is completely void of any proof that Defendants made any misrepresentations to Plaintiff that her loan would be permanently modified or that she

was guaranteed a modification." On summary judgment, the court must accept the truth of this testimony, leaving the question of Plaintiff's credibility to the jury. Brill, supra, 142 N.J. at 540. Plaintiff further testified that Litton's conduct caused her to suffer an ascertainable loss in the form of having her security clearance denied and the resulting loss of her FEMA contract. Viewing the evidence in the light most favorable to Plaintiff, a jury could properly determine that Plaintiff has satisfied the three elements of a CFA claim under Gonalez, supra, 207 N.J. at 576. Furthermore, because Litton's conduct was in connection with the provision of consumer credit, it falls within the scope of the CFA. See Lemelledo, supra, 150 N.J. at 265.

However, Plaintiff has failed to introduce evidence that Ocwen engaged in and fraudulent or deceptive conduct. Rather, her complaints are limited to them not providing a transaction history, being her loan servicer, and engaging in collection activity. This conduct was not misleading or deceptive. Similarly, it does not rise to the level of bad faith or unfairness that constitutes an unlawful practice under the CFA. Plaintiff has introduced no evidence that Ocwen serviced the loan in bad faith.

Furthermore, Plaintiff's testimony indicates that Ocwen's conduct could not have caused an ascertainable loss. Plaintiff testified that the March 2010 modification program offered by Litton "didn't matter by this time because I had already lost everything. They had already reneged on so many mods that I lost the clearance." Plaintiff also testified that by the time she lost her security clearance in May of 2010 a loan modification was useless because "I was dead in the water by that point." Id. T95:9-10. Plaintiff explained how the damage to her reputation was fatal to her job prospects:

> So how am I, in the financial industry, a financial person, going to go back and say I want to handle your operations, your financials, but I just lost a security clearance and I can't pay my mortgage.

As mentioned above, Ocwen did not begin servicing Plaintiff's loan until November of 2011. Therefore, if Plaintiff was "dead in the water" in mid 2010, Ocwen's activity could not have caused her an ascertainable loss.

Although Ocwen and Goldman Sachs are not liable under the CFA for their direct conduct, they may bear successor liability for Litton's activity because they acquired Litton. Fremont and HSBC may be liable as the principal of Litton. Defendants' motion papers fail to address these issues. As explained above, Plaintiff raises a genuine issue as to her CFA claim based on Litton's conduct. Therefore, summary judgment is denied as to Plaintiff's CFA claims.

VI. Defendants Are Not Entitled to Summary Judgment on the Breach of Contract Claims.

As explained above, Plaintiff testified that Litton Loan employees orally stated that she could receive a loan modification if she failed to make several payments. Plaintiff testified that Litton employees assured her that if she missed the payments it was a "done deal." Based on this testimony, a rational jury could conclude that Litton promised Plaintiff that she would receive a modification after missing loan payments. After missing several payments, Plaintiff was sent a written offer for modification that contradicted the alleged oral promise by making modification contingent on Plaintiff submitting additional documents proving that she could not afford the loan on its current terms.

Defendants' motion papers do not address why Litton's oral promises could not form the basis for a contact. Viewing the evidence in the light most favorable to Plaintiff, Litton's oral promise was an offer to enter into unilateral contract. A unilateral contract is accepted, and the promisor is bound, when the promisee renders the performance sought. Here, a jury could properly determine that Plaintiff accepted the contract by missing payments, which would mean that Litton is bound to give Plaintiff a loan modification. Plaintiff's testimony therefore raises a

genuine issue as to whether Litton breached this contract by refusing to offer the modification. As to Defendants Fremont, and HSBC, they may be liable as principals of Litton. Ocwen and Goldman Sachs may bear successor liability for Litton's activity because they acquired Litton. Therefore, summary judgment is denied as to Plaintiff's breach of contract claims.

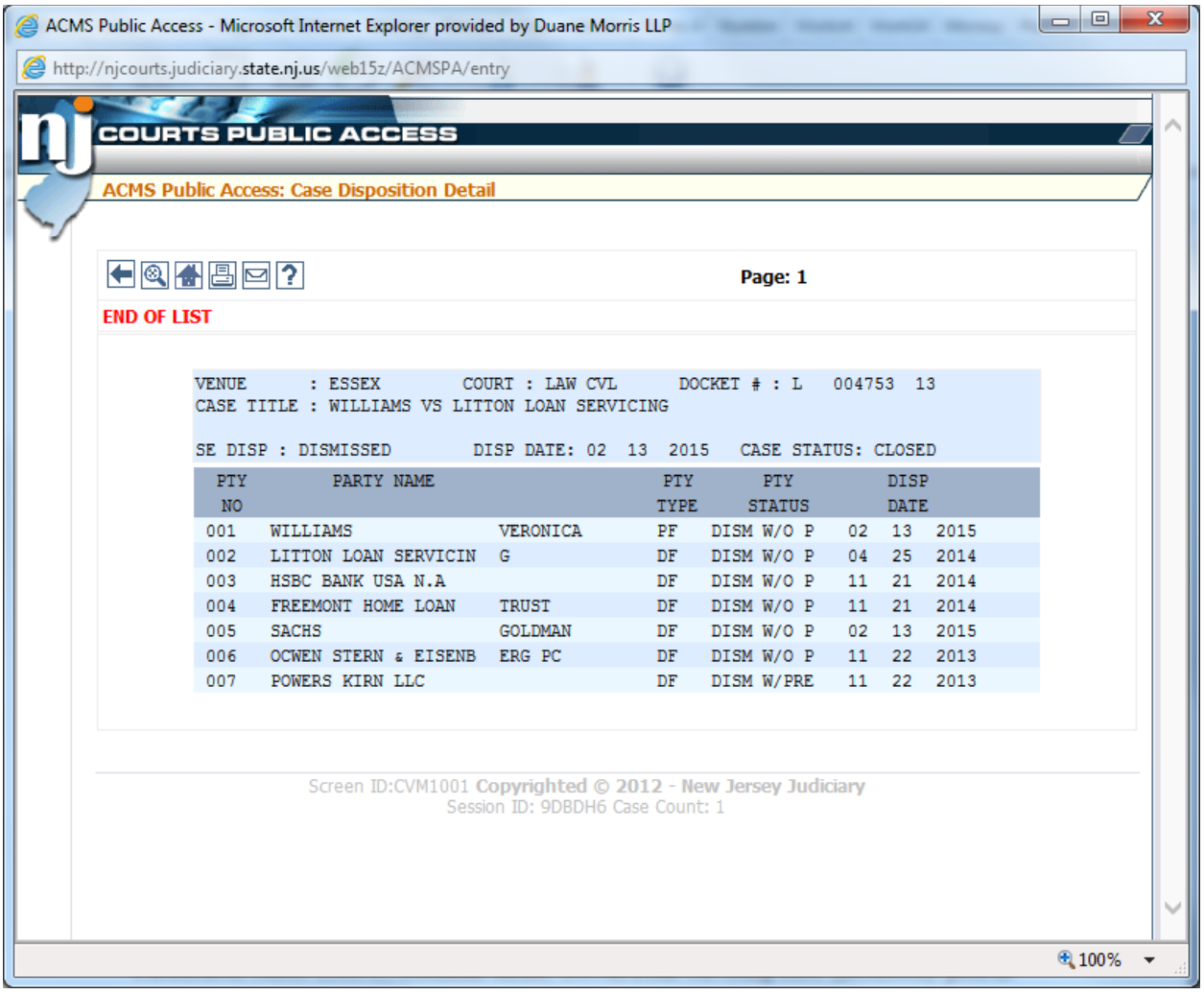
VII. Defendants Are Entitled to Summary Judgment on the Intentional Infliction of Emotional Distress Claims.

A claim for intentional infliction of emotional distress (IIED) requires proof of (1) intentional or reckless conduct, (2) that is also outrageous, and (3) proximately causes (4) severe emotional distress. Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15, 22-23 (App. Div. 2001). The statute of limitations for IIED claims is two years. N.J.S.A. § 2A:14-2.

Here, any IIED claim would be barred by the two year statute of limitations. Plaintiff's claim accrued no later than March 2010. Plaintiff testified that the promised modification program "didn't matter by this time because I had already lost everything. They had already reneged on so many mods that I lost the clearance." Plaintiff filed her complaint on June 11, 2013, over two years later. Therefore, Plaintiff fails to raise a genuine issue as to the timeliness of her IIED claim and Defendants are entitled to summary judgment on that count.

For the foregoing reasons, summary judgment is granted as to the FDCPA and IIED claims, but not the CFA and breach of contract claims.

EXHIBIT D



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Page: 1

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VENUE : ESSEX COURT : LAW CVL DOCKET # : L 004753 13
CASE TITLE : WILLIAMS VS LITTON LOAN SERVICING

SE DISP : DISMISSED DISP DATE: 02 13 2015 CASE STATUS: CLOSED

PTY NO	PARTY NAME		PTY TYPE	PTY STATUS	DISP DATE
001	WILLIAMS	VERONICA	PF	DISM W/O P	02 13 2015
002	LITTON LOAN SERVICIN	G	DF	DISM W/O P	04 25 2014
003	HSBC BANK USA N.A		DF	DISM W/O P	11 21 2014
004	FREEMONT HOME LOAN	TRUST	DF	DISM W/O P	11 21 2014
005	SACHS	GOLDMAN	DF	DISM W/O P	02 13 2015
006	OCWEN STERN & EISENB	ERG PC	DF	DISM W/O P	11 22 2013
007	POWERS KIRN LLC		DF	DISM W/PRE	11 22 2013

Screen ID:CVM1001 Copyrighted © 2012 - New Jersey Judiciary
Session ID: 9DBDH6 Case Count: 1

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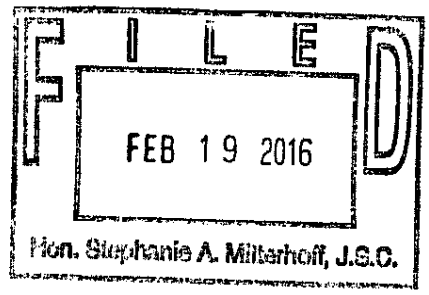
EXHIBIT E



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Attorneys for Defendants Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs; Ocwen Loan Servicing LLC (incorrectly pled as Ocwen)

VERONICA WILLIAMS Plaintiff, v. LITTON LOAN SERVICING, HSBC BANK USA, N.A., FREEMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; GOLDMAN SACHS; OCWEN, STERN & EISENBERG, PC, POWERS KIRN LLC., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ESSEX COUNTY DOCKET NO. F-015619-13 CIVIL ACTION **ORDER**

THIS MATTER having been opened to the Court by Duane Morris LLP, counsel for Defendants Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs; and Ocwen Loan Servicing LLC (incorrectly pled as Ocwen) (collectively, "Defendants"), for entry of an order reopening Counts II and III and granting summary judgment in favor of Defendants on these two remaining counts (the "Motion"), and for other such relief as the Court deems equitable and just;

AND the Court having read and considered the pleadings herein, and any opposition papers filed in connection with the aforesaid application, and having heard the arguments of all parties;

AND for the reasons set forth on the record before the Court, and for good cause otherwise having been shown;

IT IS on this 19th day of February, 2016 **ORDERED:**

1. The Clerk's office **REOPEN** Counts II and III of this action;
2. Defendants' Motion is **GRANTED** in part and denied in part.
3. Summary judgment is entered in favor of Defendants other than Litton on Counts II and III; and
4. A copy of this Order shall be served on all parties within seven (7) days of its receipt by counsel.

Hon. Stephanie A. Mitterhoff, J.S.C.

✓ Opposed

___ Unopposed

For the reasons set forth in the attached Opinion

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

VERONICA WILLIAMS, Plaintiff	SUPERIOR COURT OF NEW JERSEY
v.	ESSEX COUNTY DOCKET NO.: ESX-L-4753-13
LITTON LOAN SERVICING, et al., Defendants	**OPINION**

Decided: February 19, 2016

By: Stephanie A. Mitterhoff, J.S.C.

STATEMENT OF FACTS

Before the court is a motion for reconsideration of the court's January 23, 2015 Order partially granting Defendants' motion for summary judgment. Plaintiff's claims center around allegations that employees of Litton Loan Servicing (Litton), promised her that she could obtain a favorable modification of her loan if she defaulted on her mortgage payments. In reliance on those representations, Plaintiff claims she intentionally failed to make several payments on her mortgage. Soon after, Litton sent Plaintiff written offers for modification, on three separate occasions, that were all contingent on her submitting proof of income and paying three month trial payment amounts. Plaintiff failed to comply with those contingencies and as a result Plaintiff was not able to modify her mortgage. Plaintiff claims that the default on her mortgage

has caused her to lose her security clearance, which precluded a lucrative contract with FEMA which Plaintiff claims she would have received if she maintained the security clearance.

The facts are as follows: on March 27, 2006, Plaintiff, Veronica Williams, took out a loan secured by a mortgage on her house in the amount of $261,000. On November 9, 2007, the loan was modified to a fixed interest rate of 7.250%, with an unpaid principal balance of $295,892.58. The loan was held by Defendant Fremont Home Loan Trust 2006-C Mortgage-Backed Certificates (Fremont Trust). Defendant HSBC Bank is the Trustee for Fremont Trust. Defendant Litton Loan Servicing (Litton) serviced the loan. In December 2007, Defendant Goldman Sachs acquired ownership of Litton. Plaintiff testified that she wanted to modify her mortgage and she first contacted Litton in 2008. Plaintiff testified that she told Litton that she would seek to refinance her mortgage with another lender but "they said, we can do the same thing. Do it with us." Seiden Ex. E. T32:3-7. Plaintiff testified that a person at Litton told her that "to get the program you want, get you the best deal, you have to be three months in arrears. So I didn't pay based on their instruction." Id. T:32:17-20; T75:6-10. Plaintiff defaulted on April 1, 2009. In a letter dated May 28, 2009, Litton sent Plaintiff an offer to enter into a modification program which explained that she needed to (1) complete a hardship affidavit (2) submit required documentation of her income and (3) make timely monthly trial period payments. The letter invited Plaintiff to accept the offer by informing them no later than June 11, 2009. The letter explained that if her income documentation did not support the income amount "previously provided in our discussions," her monthly payments under the plan could change or she may not qualify for the modification program. According to Defendants, in a July 31, 2009 phone call, Williams refused to submit the financial information required under the initial workout plan. At her deposition, Williams testified that she provided Litton everything

needed to review her request for a loan modification but that Litton defrauded her by "asking for information over and over." Seiden Ex. E, T33:10, T22:11-13. Plaintiff testified that, based on her conversations with people at Litton, all she had to do was make three monthly payments and she would be given a modification. Seiden Ex. E, ¶ T33:10-34:7. She asserted that the workout plan was an actual modification rather than a trial and that the people at Litton made it clear that "it will be a done deal." Id. T47:22-48:5. By letter dated August 14, 2009, Litton informed plaintiff that they would not offer the modification because they had not received all of the requested financial documents. Plaintiff testified that she made payments pursuant to the workout plan, but Litton returned the payments and refused to recognize them. Seiden Ex. E T34:12-18. Plaintiff testified that "they said, we are sorry; it shouldn't have been returned; send us that check and a little bit more by this date and you are definitely going to have the work-out plan this time." Id. at 44:20-45:1.

In a September 25, 2009 letter, Plaintiff was offered another Home Affordable Modification Program (HAMP) modification plan ("the second modification") that provided for three trial payments and similarly required plaintiff to provide proof of income. Plaintiff testified that the people at Litton told her that "once we get all three of those payments, it's a done deal." Seiden Ex. E T51-52:8. Plaintiff alleges that she timely paid and Litton recognized these payments. In January 2010 Litton advised Plaintiff that she would likely be denied the HAMP modification due to her income being too high.

In March 2010 Williams was denied a HAMP modification but offered a non-HAMP trial workout program that required her to make three payments ("the third modification"). Plaintiff testified that she didn't make the payments because she lost her FEMA contract as a result of her defaults and inability to get a modification. Seiden Ex. E T94:1-24. Accordingly, Plaintiff was

denied the non-HAMP modification. In September 2011, Defendant Ocwen acquired Litton from Goldman Sachs. On November 1, 2011, Litton stopped servicing Plaintiffs loan and Ocwen began servicing it.

Plaintiff brought causes of action for violations of the Fair Debt Collection Practices Act (FDCPA), violations of the New Jersey Consumer Fraud Act (CFA), breach of contract, and intentional infliction of emotional distress. Defendants moved for summary judgment on all counts on January 23, 2015. The court partially granted the motion, dismissing Plaintiff's Fair Debt Collection Practices Act claim and her intentional infliction of emotional distress claim. The court concluded that genuine questions of material fact existed as to the CFA and breach of contract causes of action and therefore denied summary judgment on those claims. However, the court clerk inadvertently dismissed the complaint in its entirety.

Defendants now move to reopen counts II (CFA) and III (breach of contract) and for reconsideration of the court's decision to deny summary judgment as to those causes of action. Defendants' motion is premised on the fact that since the court's decision was made the Appellate Division has made clear that a mortgage modification trial plan is a unilateral offer by a lender that requires the borrower's full compliance to create a contract.[1] Accordingly, because Plaintiff failed to fully comply with all three of the trial plans, Defendants argue that no contract ever existed between the parties. Furthermore, Defendants assert that because Plaintiff cannot show that a loan modification contract was formed, she cannot satisfy the elements of her CFA claim.

[1] Arias v. Elite Mortgage Grp., Inc., 439 N.J. Super. 273, 279 (App. Div. 2015).

DISCUSSION

I. Motion for Reconsideration

Motions for reconsideration are governed by R. 4:49-2, which states that such a motion "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2. A motion for reconsideration will be granted only in those limited cases in which either "the Court has expressed its decision based upon a palpably incorrect or irrational basis, or it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); citing, D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990). "Reconsideration is a matter within the sound discretion of the Court, to be exercised in the interest of justice." D'Atria, 242 N.J. Super. at 401. Justice may indeed require the granting of such reconsideration, "nevertheless, motion practice must come to an end at some point . . . [t]hus, the Court must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration." Id. at 401-02.

II. Arias v. Elite Mortg. Group, Inc., 439 N.J. Super 273 (App. Div. 2015)

In Arias, the Appellate Division, for the first time, squarely dealt with the contractual status of a Trial Period Plan Agreement ("TPP Agreement") pursuant to a HAMP mortgage loan. The plaintiffs brought causes of action for breach of contract and breach of the duty of good faith and fair dealing after they were offered and then subsequently denied a modification on their mortgage. The court held that the TPP Agreement was a unilateral offer pursuant to which the bank promised to give the mortgagors a loan modification, provided they complied fully and timely with their obligations under the TPP Agreement. In coming to that holding, the court began its analysis by considering the language of the TPP Agreement. "The first sentence of the Agreement's text states:

> If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Servicer will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3.

In turn, Section 3 provides, in pertinent part, that the Servicer will determine the amounts of unpaid interest and other charges to be added to the loan balance and determine 'the new payment amount.' This section then repeats that:

> *If I comply with the requirements in Section 2* and my representations in Section 1 continue to be true in all material respects, the Servicer will send me a Modification Agreement for my signature.
>
> [(Emphasis added).]

Significantly, Section 2 of the TPP Agreement required plaintiffs to make the trial period payments of $1860 each, by the specified due dates of October 1, 2009, November 1, 2009, and December 1, 2009. Paragraph 2A notified plaintiffs, in capital letters, that 'TIME IS OF THE ESSENCE under this Plan.' Paragraph 2 defined the 'Modification Effective Date' as the first day of the month following the month in which the last payment was due (in this case, January 1, 2010). Paragraph 2F unambiguously stated that:

> If prior to the Modification Effective Date, (i) the Servicer does not provide me a fully executed copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Servicer determines that my representations in Section 1 are no long true and correct, *the Loan Documents will not be modified* and this Plan will terminate.
>
> [(Emphasis added).]

Paragraph 2G further put plaintiffs on notice that the TPP itself was not a loan modification and their failure to strictly comply with the terms of the TPP would result in denial of a loan modification:

> I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. *I further understand and agree that the Servicer will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan.* [(Emphasis added).]"

The court concluded that, based on its reading of the agreement, it was a unilateral offer, pursuant to which the bank promised to give plaintiffs a loan modification, "if and only if plaintiffs complied fully and timely with their obligations under the TPP, including making all payments timely and providing documentation establishing that the financial representations they made to the bank in applying for the TPP were accurate when made and continued to be accurate." Arias, supra, 439 N.J. Super. at 279. Accordingly, because the record clearly established that the plaintiffs had failed to comply with the payment schedule and had not submitted the required financial documentation, the court held that the bank was justified in refusing to give them a loan modification and dismissed the complaint.

While the court recognizes the significance of Arias, it being the first published New Jersey case to deal with the contractual status of a loan modification offer, the court does not perceive it to establish that every loan modification agreement will be treated as a unilateral offer rather than a binding contract. Rather, the Arias holding was fact-specific, and was a result of the language in the loan modification agreement. Accordingly, the court will compare the language of the Arias

modification agreement with the letters sent to Plaintiff in order to determine whether they should be dismissed as mere contractual offers rather than binding contracts in and of themselves.

Here, the opening sentence of the Litton loan modification agreement letter states, in bold letters, "You may qualify for a modification – a way to make your payment more affordable." The second sentence goes on to state, "*If you qualify for this modification* and comply with the terms of the [enclosed] Workout Plan, we will modify your mortgage loan and you can avoid foreclosure" (emphasis added). Just from these two opening sentences, it is quite clear to the reader that a loan modification is a possibility, not a certainty. The letter then lists three things the debtor must submit in order to "take advantage of this offer," including: (1) Explain the financial hardship that makes it difficult for you to pay your mortgage loan using the Hardship Affidavit (enclosed); (2) Submit the required documentation of your income; (3) Make timely monthly trial period payments.

The next page of the letter provides, in capitalized bold letters: "Step 2: LET US KNOW THAT YOU ACCEPT THIS OFFER." The paragraph beneath it informs the debtor to inform Litton no later than June 11, 2009 that they accept the Workout Plan. The third page of the letter informs the debtor on how to accept the offer, which entails submitting to Litton five things, which are identified in list form. The list includes: (1) Two copies of the enclosed Workout Plan signed by all borrowers; (2) Your first month's trial period payment in the amount of $3,054.83; (3) The enclosed Hardship Affidavit completed and signed by all borrowers; (4) A signed and dated copy of the IRS Form 4506-T (Request for Transcript of Tax Return) for each borrower; (5) Documentation to verify all of the income of each borrower.

The next page of the letter contains information relating to how a loan modification will affect the debtor's current mortgage and their credit. Importantly, at the top of this page, the paragraph entitled, "Workout Plan/Modification Agreement" conveys the fact that the Workout Plan "is the first

step." The paragraph explains, "In addition to successfully completing the trial period, you will need to sign and promptly return to us both copies of the Modification Agreement *or your loan can not be modified*." (emphasis added).

The Loan Workout Plan itself, located on page 6 of the letter sent to Plaintiff, uses markedly similar language to the workout plan at issue in Arias. The opening paragraph states, "If I am in compliance with this Loan Workout Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement." As with the Arias document, Section 2 of Litton's workout plan clearly states that three payments of $3,054.83 must be made on July 1, 2009, August 1, 2009 and September 1, 2009. Immediately below the payment schedule is the exact same notification enumerated in the Arias plan: "TIME IS OF THE ESSENCE" and, below that in paragraph 2F: "if prior to the Modification Effective Date . . . I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Lender determines that my representations in Section 1 are no longer true and correct, *the Loan Documents will not be modified and this Plan will terminate* (emphasis added). Most importantly, however, is the fact that paragraph 2G uses the same language, verbatim, as the Arias language to notify the debtor that the plan itself is not a loan modification, stating: "I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. *I further understand and agree that the Servicer will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan.*" (emphasis added).

Clearly, the Litton letter and modification plan sent to Plaintiff on May 28, 2009 is similar, if not nearly identical to, the modification plan at issue in Arias. The second modification offer sent to

Plaintiff on September 25, 2009 is the same as the one sent on May 28, 2009. The non-HAMP modification offer has not been submitted to the court, however it appears undisputed that initial payments were necessary under that plan and that Plaintiff did not remit those payments. Accordingly, pursuant to Arias, the two HAMP loan modification plans sent to Plaintiff were unilateral contract offers that had no binding effect on the parties.

III. The Court Will Not Change its Decision to Deny Summary Judgment on Plaintiff's Breach of Contract and CFA Causes of Action as to Defendant Litton

Defendants' present motion is couched in the assertion that recent New Jersey case law, namely, Arias, supra, compels the dismissal of Plaintiff's remaining claims. As discussed, supra, Arias squarely dealt with whether a loan modification plan, offered to a debtor struggling with their mortgage payments, was merely a unilateral offer or a binding contract in and of itself. The case did not deal with the conduct and representations made by the lender in relation to the offered modification plan. Here, the crux of Plaintiff's breach of contract claim is that she was orally offered and promised a loan modification if she defaulted on her loan by Litton employees she spoke to. In its prior summary judgment Order, the court determined that evidence had been submitted to raise genuine questions of material fact as to whether this conduct created an oral contract. In coming to that conclusion the court pointed to Plaintiff's deposition, wherein she testified that Litton employees orally promised that she would receive a loan modification if she failed to make several payments and testified that Litton employees assured her that if she missed the payments it was a "done deal." Based on this testimony, the court determined that a rational jury could conclude that Litton promised Plaintiff she would receive a modification after she missed her loan payments. In concluding a genuine question had been raised as to the existence of a contract the court stated, "[a] unilateral contract is accepted, and the promisor is bound, when the promisee renders the performance sought. Here, a jury could properly

determine that Plaintiff accepted the contract by missing payments, which would mean that Litton is bound to give Plaintiff a loan modification."

The court also noted that Defendants' underlying summary judgment papers did not address why Litton's oral promises could not form the basis for a contact. Therefore, viewing the evidence in a light most favorable to Plaintiff, the court found Litton's oral promise to be an offer to enter into a unilateral contract. Here, again, Defendants fail to address why Litton's oral promises and Plaintiff's performance in response could not form the basis for a contract, instead solely relying on Arias for the proposition that the modification plan letters sent to plaintiff cannot be considered enforceable contracts for a modification of her loan. As discussed, although the court agrees that the modification plan letters themselves are insufficient to create an enforceable contract, there still exists genuine questions of material fact relating to whether the parties' conduct formed the basis for an enforceable unilateral contract.

For the same reasons, the court will not alter its conclusions made relating to Plaintiff's CFA cause of action. Defendants argue Plaintiff's CFA claim must be dismissed because the sole basis for the claim is the allegation that Defendants failed to honor their contract to modify her loan, however there was no enforceable contract pursuant to Arias. Therefore, Defendants argue that the uncontroverted evidence clearly shows that Plaintiff was only offered the chance to enroll in a trial modification program and that there is no evidence Defendants misrepresented any terms of the loan workout plan. These arguments are unavailing. First, the court's determination that questions of material fact exist as to Plaintiff's CFA claim was not reliant on its conclusion that an enforceable contract may have existed. Rather, the court determined that evidence had been submitted to question whether Litton had made oral misrepresentations to Plaintiff regarding her loan and how it could be modified. Namely, Plaintiff testified that she

was told by Litton that all she had to do was miss several payments and then her loan would be modified. This representation was proven false by the loan modification plan documents sent to Plaintiff which required, among other things, additional documentation from Plaintiff that she was not initially aware of and that ultimately made her ineligible for a modification. In sum, viewing the evidence in a light most favorable to Plaintiff, the court concluded that a reasonable jury could properly conclude that Plaintiff has satisfied all three elements of her CFA claim and thus denied Defendants' motion for summary judgment. Defendants have failed to show that this conclusion was based on a palpably incorrect or irrational basis, or it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence. Cummings, supra, 295 N.J. Super. at 384.

Therefore, for the foregoing reasons, the court will again deny summary judgment on Plaintiff's breach of contract and CFA claims as to Defendant Litton.

The court will, however, grant summary judgment as to all of the other named Defendants, namely, HSBC, Freemont Home Loan Trust, Goldman Sachs, Ocwen, Stern & Eisenberg, and Powers Kirn LLC. Plaintiff has failed to show the existence of a genuine question of material fact relating to the involvement of these entities or their liability in this matter. From what has been submitted to the court, it is clear that it was Litton's alleged conduct, alone, that formed the basis for Plaintiff's breach of contract and CFA claims.

CONCLUSION

In conclusion, for the foregoing reasons, Defendants' motion to reopen Counts II and III is granted. Defendants' motion for the court to reconsider its prior order and to grant summary judgment on those claims is granted in part and denied in part. Summary judgment is granted as to all Defendants other than Litton. Summary judgment is denied as to Litton.

EXHIBIT F

Veronica Williams, Pro Se

VERONICA WILLIAMS	:	SUPERIOR COURT OF NEW JERSEY
	:	ESSEX COUNTY
Plaintiff,	:	LAW DIVISION
	:	
vs.	:	DOCKET NO: ~~L-000081-11~~ L-4753-13
	:	
	:	CIVIL ACTION
LITTON LOAN SERVICING L.P.	:	
	:	ORDER
	:	
Defendant.	:	

THIS MATTER having been brought before the Court by Plaintiff, Veronica Williams **AND** the Court having considered the moving papers and for other good cause shown,

IT IS ORDERED on this 4th day of March, 2011 that the Plaintiff's Motion to Amend the Complaint is ~~**GRANTED.**~~ Partially Granted.

Ordered: Plaintiff is permitted to amend to include the following Causes of action against Litton only: Common Law Fraud, Negligent Misrepresentation, Bad Faith and Tortious Interference with Contract.

, J.S.C.

Hon. Stephanie A. Mitterhoff, J.S.C.

Further Ordered: No new Causes of action may be brought against any other Defendant, as the Court has dismissed all parties, except for Litton, from this Case.

EXHIBIT G

FILED, Clerk of the Appellate Division, June 15, 2016, **A-002981-15**

ORDER ON *MOTION*

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002981-15T1
MOTION NO. M-006783-15
BEFORE PART H
JUDGE(S): ELLEN L. KOBLITZ
JOHN C. KENNEDY

VERONICA WILLIAMS
VS
LITTON LOAN SERVICING, HSBC BANK USA, FREMONT HOME LOAN, ETC

MOTION FILED: 04/27/2016 BY: VERONICA WILLIAMS

ANSWER(S) FILED:

SUBMITTED TO COURT: June 13, 2016

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 15th day of June, 2016, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR LEAVE TO APPEAL DENIED

SUPPLEMENTAL:

The motion for leave to appeal is denied and the appeal is dismissed as interlocutory.

FOR THE COURT:

ELLEN L. KOBLITZ, J.A.D.

L-004753-13 ESSEX
ORDER - REGULAR MOTION
KLK

FILED, Clerk of the Appellate Division, June 15, 2016, **A-002981-15**

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002981-15T1
MOTION NO. M-006782-15
BEFORE PART H
JUDGE(S): ELLEN L. KOBLITZ
JOHN C. KENNEDY

VERONICA WILLIAMS
VS
LITTON LOAN SERVICING, HSBC BANK USA, FREMONT HOME LOAN, ETC

MOTION FILED: 04/27/2016 BY: VERONICA WILLIAMS

ANSWER(S) FILED:

SUBMITTED TO COURT: June 13, 2016

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 15th day of June, 2016, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO PROCEED AS AN INDIGENT	DENIED
MOTION TO WAIVE FEES FOR TRANSCRIPTS	DENIED

SUPPLEMENTAL:

FOR THE COURT:

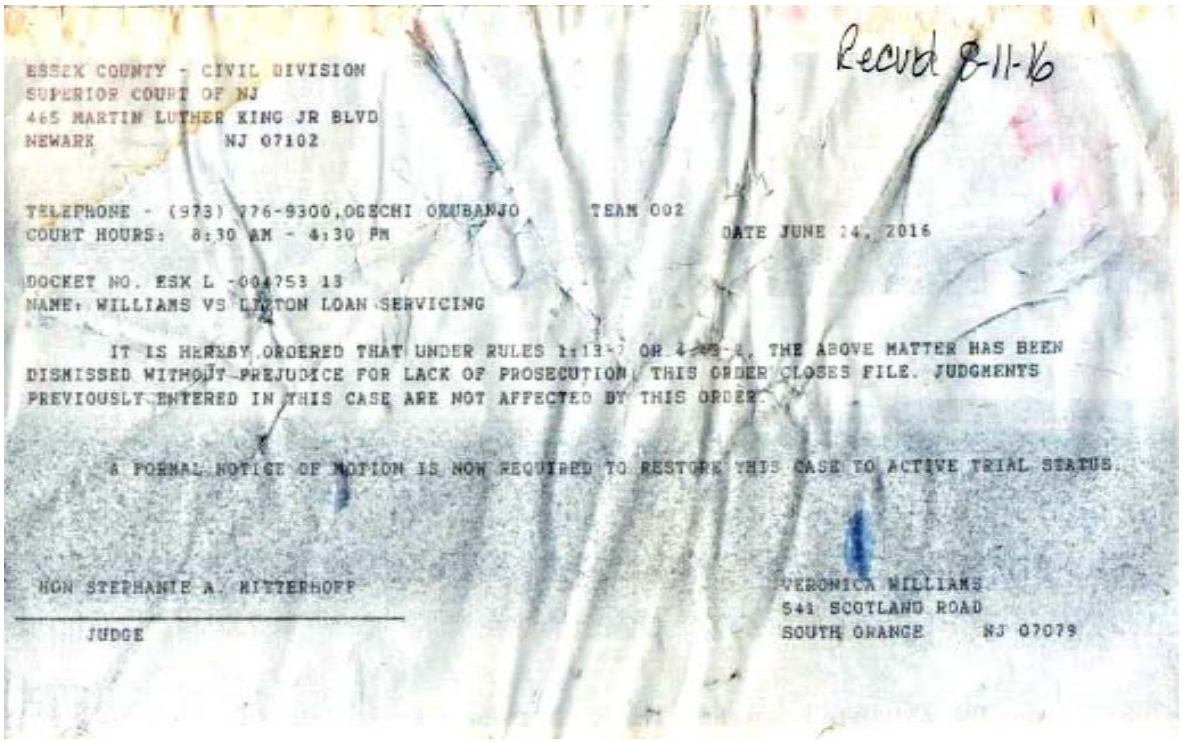
ELLEN L. KOBLITZ, J.A.D.

L-004753-13 ESSEX
ORDER - REGULAR MOTION
KLK

EXHIBIT H

ATTACHMENT I

Case Dismissed Without Plaintiff's Knowledge



Recvd 8-11-16

ESSEX COUNTY - CIVIL DIVISION
SUPERIOR COURT OF NJ
465 MARTIN LUTHER KING JR BLVD
NEWARK NJ 07102

TELEPHONE - (973) 776-9300,OGECHI OKUBANJO TEAM 002
COURT HOURS: 8:30 AM - 4:30 PM DATE JUNE 14, 2016

DOCKET NO. ESX L -004753 13
NAME: WILLIAMS VS LEXTON LOAN SERVICING

IT IS HEREBY ORDERED THAT UNDER RULES 1:13-7 OR 4:43-2, THE ABOVE MATTER HAS BEEN DISMISSED WITHOUT PREJUDICE FOR LACK OF PROSECUTION. THIS ORDER CLOSES FILE. JUDGMENTS PREVIOUSLY ENTERED IN THIS CASE ARE NOT AFFECTED BY THIS ORDER.

A FORMAL NOTICE OF MOTION IS NOW REQUIRED TO RESTORE THIS CASE TO ACTIVE TRIAL STATUS.

HON STEPHANIE A. MITTERHOFF
JUDGE

VERONICA WILLIAMS
541 SCOTLAND ROAD
SOUTH ORANGE NJ 07079

EXHIBIT I

Veronica Ann Williams
Mailing Address: P.O. Box 978 ❖ South Orange, NJ 07079-0978
Residence – NO MAIL: 541 Scotland Road ❖ South Orange, NJ 07079-3009

July 2, 2016

Supreme Court of New Jersey
Appellate Division Clerk's Office
P.O. Box 970
Trenton, New Jersey, 08625

Download this submission at www.FinFix.org/Appeal-NJS.pdf

Subject: Appeal of Cases DOCKET No. ESSEX-L-004753-13 & Docket No. ESSEX-F – 000839-13

To The Supreme Court of New Jersey,

I am appealing both cases listed above and requesting a jury trial by September. There are many reasons that justify why a jury trial should be granted immediately *with my original claim against all defendants*. Here are just two: I have been denied due process and, two defendants have recent Federal settlements that include the same charges that I levied in this case.

Any financial professional with a modicum of financial education and a smidgeon of common sense knows that anyone who has lived in a property for 26 years without a foreclosure has been paying their mortgage. I submitted an amortization of all mortgages since I purchased my home in 1983, with supporting documentation, proving that the defendants inflated my principal balance by more than $200,000! This is just one of the preponderance of evidence that helped the Federal government convince two of the defendants, HSBC and Goldman Sachs, to pay at least $470M and $5B in fines, respectively. Yet, Judge Cocchia dismissed these defendants without proper procedure and without my knowledge!

This submission includes an excerpt of the 2 appeals filed with the Superior Court of New Jersey Appellate Division (Appeals Court). As instructed by the Court, each has been reduced. The 25 page target has been met by submitting a total of 50 pages for both documents. One appeal was reduced to 21 pages, and the other to 28 pages. Attachment I proves that each appeal was received by the Appeals Court. Yet only 1 appeal was assigned a case number. Critical documents to which I have been made privy or that I filed are listed below. Hyperlinks to download these documents are also provided.

No. Pgs	Documents	Download
33	Appeal F – 000839-13	http://www.finfix.org/Appeal-NJF.pdf
59	Appeal L – 004753-13	www.FinFix.org/Appeal-NJ.pdf
118	Enclosures	www.FinFix.org/Appeal-Encl-NJ.pdf
93	Case Files	www.FinFix.org/CaseFiles-NJ.pdf
750	Discovery	http://www.finfix.org/proof/DD/Motion-for-Proof-Hearing_SHARED.pdf
205	Motion for Proof Hearing	http://finfix.org/proof/DD/Discovery-Documents_ALL_11-18-14.pdf
1,258	**TOTAL**	
PLEASE NOTE THIS IS *LESS THAN 2%* OF THE DOCUMENTATION ASSOCIATED WITH THIS CASE.		

Both cases are fraught with improprieties. Several actions by the NJ Courts constitute a quantum miscarriage of justice.

I only learned when I called the Appeals Court a few days ago that my appeal had been denied and my second appeal had not been recorded. This request is that the Supreme Court grant the Leave of Motion filed for DOCKET No. ESSEX-L-004753-13 and the appeal filed for the overturn of Docket No. ESSEX-F – 000839-13.

The defendants initiated their fraud against me a decade ago. They have successfully protracted my legal effort since 2009. The failure to grant me a speedy trial is a travesty. My health and finances have been decimated by the defendants. I want a decision on this appeal this month and a trial no later than the end of September. **Otherwise, I have no choice but to remove these cases to the Federal courts.**

I am scheduled to hear a case in September so we will need to hold scheduling conference call soon to schedule the trial for this appeal.

If you require additional information or have questions please contact me by email at StopFraud@vawilliams.com or by phone at 973-715-8580.

Since the NJ ourts have failed to notify me of most critical dates and matters, please send your response by email to StopFraud@vawilliams.com or via facsimile to 888-492-5864,

Thank you,

Veronica Williams
Plaintiff & Owner of 541 Scotland Road since 1983

Attachment and Enclosures

cc without enclosures (parties have already received enclosures):

David M. Lambropoulos, Stern & Eisenberg, PC via US certified mail & via email
Superior Court of New Jersey, Essex County Veterans Courthouse, Room 131 via US Mail
Judge Stephanie Ann Mitterhorf via facsimile to
Stuart Seiden, Duane Morris LLP via US certified mail & via email
Brett L. Messinger, Partner, Duane Morris via email
Office of the Attorney General of the United States, Investigation No. 3017165
Federal Mortgage Working Group

ATTACHMENT I

Proof of Delivery of Appeals: DOCKET No. ESSEX-L-004753-13 & Docket No. ESSEX-F – 000839-13

APPEAL OF FORECLOSURE ♦ F – 000839-13 ♦ Mailing & Shipping Receipts

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Total Postage & Fees $2.20
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0355 08
Postmark Here
05/17/2016
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Street, Apt. No.; or PO Box No.: PO Box 006
City, State, ZIP+4: Trenton, NJ 08625
PS Form 3800, August 2006 See Reverse for Instructions
7014 0150 0000 0304 9408

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Restricted Delivery Fee (Endorsement Required) $0.00
Total Postage & Fees $2.20
$8.20
0355 08
Postmark Here
05/17/2016
Sent To: David M. Lambropoulos, Skomo Eisenberg
Street & Apt. No., or PO Box No.: 1040 N. Kings Hwy, Suite 407
City, State, ZIP+4: Cherry Hill, NJ 08034
PS Form 3800, July 2014 See Reverse for Instructions
7014 2120 0004 0860 5189

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Return Receipt Fee (Endorsement Required) $0.00
Restricted Delivery Fee (Endorsement Required) $0.00
Total Postage & Fees $2.20
$8.20
0355 08
Postmark Here
05/17/2016
Sent To: Mr. Stuart Seiden, Duane Morris L.P.
Street & Apt. No., or PO Box No.: 30 S. 17th St. Floor 5
City, State, ZIP+4: Philadelphia, PA 19103
PS Form 3800, July 2014 See Reverse for Instructions
7014 2120 0004 0860 5196

UP AND UP INC
71 S ORANGE AVE
SOUTH ORANGE, NJ 070791
05/17/2016 15:52:50
CREDIT CARD
MC SALE

Card #	XXXXXXXXXXXX6353
SEQ #:	15
Batch #:	1653
INVOICE	16
Approval Code:	079055
Entry Method:	Swiped
Mode:	Online
Tax Amount:	$0.00

SALE AMOUNT $53.75

CUSTOMER COPY

US Certified Mail Receipt 7014 0150 0000 0304 9408 Purchased 5/17/16 Sent to:

Superior Court of NJ
PO Box 006
Trenton, NJ 08625

US Certified Mail Receipt 7014 0150 0000 0304 9408 Delivered & Signed 5/20/16

SENDER: COMPLETE THIS SECTION
- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: Superior Court of NJ Appellate Division Clerk's office PO Box 006 Trenton, NJ 08625

9590 9402 1363 5285 2422 52

2. Article Number (Transfer from service label) 7014 0150 0000 0304 9408

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COMPLETE THIS SECTION ON DELIVERY
A. Signature
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? If YES, enter delivery address below:
3. Service Type

LOCATION: C:\CriticalFiles\CURRENT_Post2010\Veronica Williams\Legal_Prepaid\Case_LittonLoan\COURT_Foreclosure-Appeal-of-Judgment\ USPS-certitified-receipts-PAID.pdf
LOCATION: C:\CriticalFiles\CURRENT_Post2010\Veronica Williams\Legal_Prepaid\Case_LittonLoan\COURT_Foreclosure-Appeal-of-Judgment\ USPS-certitified-receipts-RECVD.pdf

ATTACHMENT I cont'd.

Proof of Delivery of Appeals: DOCKET No. ESSEX-L-004753-13 & Docket No. ESSEX-F – 000839-13

APPEAL OF CIVIL CASE ♦ L – 004753-13 ♦ Mailing & Shipping Receipts

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South Orange, NJ 07079
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04/26/16 03:41 PM

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001 038101 (017) T1 $ 11.97
Coil Binding QTY 3
Reg Unit Price $ 3.99
002 010371 (002) 400000103716 T1 $ 0.59
Envelope 12x9
003 010371 (002) 400000103716 T1 $ 0.59
Envelope 12x9
004 500110 (002) 666641209965 T1 $ 1.69
#6 Brn Hefty Bub Env
005 000008 (022) TD $ 10.09
Priority Mail
Tracking# 9405510200882002743491
006 001040 (001) TD $ 9.11
Ground Commercial
Tracking# 1ZY440110302177340
007 001045 (001) TD $ 11.99
Ground Residential
Tracking# 1ZY440110368844611

SubTotal $ 46.03
Sales Tax (T1) $ 1.04
Total $ 47.07

Debit Card $ 47.07

Receipt ID 821853133417228880S7 009 Items
CSH: Bruce Tran: 6522 Reg: 002

Sale

**********3300
Debit Entry Method: Swiped
Acct Type: Checking

Trace:00000014 Appr Code:144027
Retrieval #:MI0045403145 Batch #:

Amount $ 47.07
Merchant Total $ 47.07

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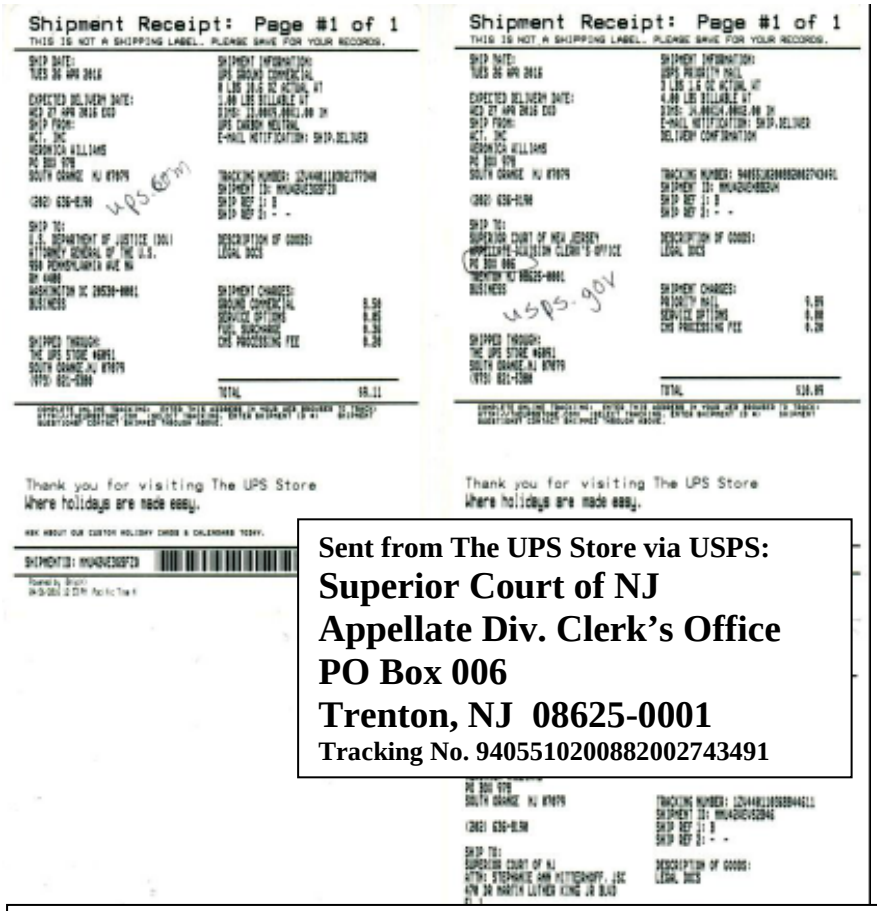

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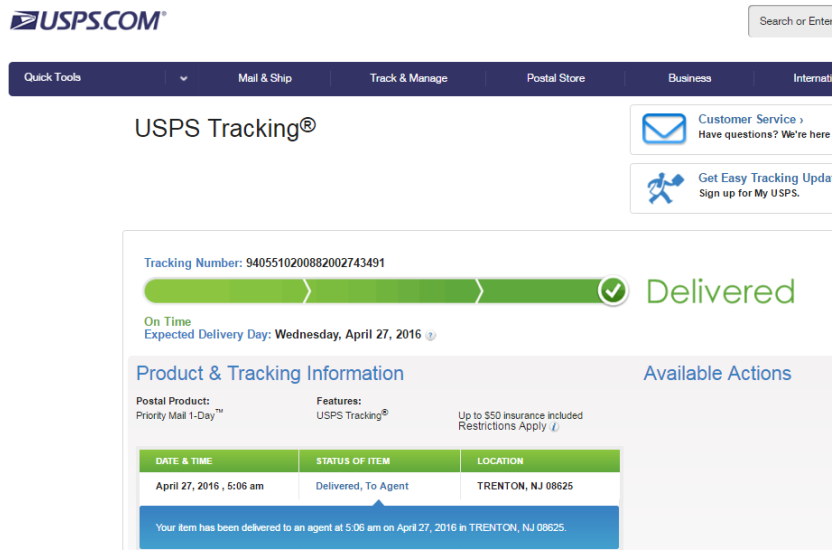
Appellate Div. Clerk's Office
PO Box 006
Trenton, NJ 08625-0001
Tracking No. 9405510200882002743491

Delivered to Agent of Superior Court of NJ on April 27, 2016 at 5:06 am



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On Time
Expected Delivery Day: Wednesday, April 27, 2016

Product & Tracking Information

Available Actions

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Features: USPS Tracking®

Up to $50 insurance included
Restrictions Apply

DATE & TIME	STATUS OF ITEM	LOCATION
April 27, 2016 , 5:06 am	Delivered, To Agent	TRENTON, NJ 08625

Your item has been delivered to an agent at 5:06 am on April 27, 2016 in TRENTON, NJ 08625.

https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9405510200882002743491

EXHIBIT J

STEVEN K. EISENBERG, ESQUIRE 009221995
JACQUELINE F. MCNALLY, ESQUIRE 02042005
DAVID M. LAMBROPOULOS, ESQUIRE 040322006
OLIVER AYON, ESQUIRE 047532011
MICHAEL J. REILLY, ESQUIRE 042522012
MICHAEL I. GOUDA, ESQUIRE 001052012
LUCAS M. ANDERSON, ESQUIRE 014342011
STERN & EISENBERG, PC
1040 N. KINGS HIGHWAY, SUITE 407
CHERRY HILL, NEW JERSEY 08034
TELEPHONE: (609) 397-9200
FACSIMILE: (856) 667-1456
ATTORNEYS FOR PLAINTIFF
FILE #117.7900

FILED
FEB 6 2014
Hon. Harriet F. Klein, J.S.C.

HSBC Bank USA, National Asscociation, as Trustee for Fremont Home Loan Trust 2006-C, Mortgage-Backed Certificates, Series 2006-C Plaintiff v. Veronica Williams; et als. Defendant(s)	IN THE SUPERIOR COURT OF NEW JERSEY **ESSEX COUNTY** **CHANCERY DIVISION** Docket No.: F-839-13 ORDER GRANTING SUMMARY JUDGMENT AND STRIKING ANSWER

THIS MATTER having been opened to the Court by Stern & Eisenberg, PC (David Lambropoulos, Esq., appearing) counsel for Plaintiff, upon notice to Defendant Veronica Williams, Denbeaux & Denbeaux, attorneys for Defendant (Nicholas Stratton, Esq., appearing) for an Order granting summary judgment for the relief demanded in the Complaint and striking Defendant's Answer; and the Court having considered the moving papers and any opposition papers thereto, if any; and for good cause shown: and for the reasons set forth on the record on this date,

IT IS on the 6th day of February, 2014, ORDERED as follows:

1. Plaintiff's Motion for Summary Judgment is GRANTED.

2. The Contesting Answer filed by Defendant, Veronica Williams, is hereby STRICKEN. This is without prejudice to Defendant's pursuit of the Law Division action under Docket No. L-4753-13.

3. Default judgment is hereby entered against Veronica Williams and this action is hereby remanded to jurisdiction of the Office of Foreclosure to proceed as uncontested, although Defendant shall be entitled to all notices.

4. Plaintiff shall, within Seven (7) days after receipt of this Order by its counsel, serve a copy of this Order upon all counsel of record by ordinary mail.

Honorable Harriet F. Klein, J. Ch.
(RET. /ON RECALL)

X Opposed

___ Unopposed

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VERONICA A. WILLIAMS **Plaintiffs,** **v.** **LITTON LOAN SERVICING; HSBC BANK USA, N.A.; GOLDMAN SACHS MORTGAGE COMPANY; FREMONT HOME LOAN TRUST 2006-C MORTGAGE-BACKED CERTIFICATES, SERIES 2006-C; OCWEN LOAN SERVICING LLC; STERN & EISENBERG, PC; AND OCWEN FINANCIAL CORPORATION,** **Defendants.**	**Case No.: 2:16-cv-05301-ES-JAD** **ORDER DISMISSING PLAINTIFF'S COMPLAINT**

THIS MATTER having been opened to the Court by Duane Morris LLP, counsel for Defendants, Litton Loan Servicing, HSBC Bank USA, N.A., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs Mortgage Company; and Ocwen Loan Servicing LLC, and Ocwen Financial Corporation (collectively, "***Defendants***"), for entry of an order dismissing Plaintiff Veronica A. Williams' Complaint (the "***Motion***"), and for other such relief as the Court deems equitable and just;

AND the Court having read and considered the pleadings herein, and any opposition papers filed in connection with the aforesaid application, and having heard the arguments of all parties;

AND for the reasons set forth on the record before the Court, and for good cause otherwise having been shown;

IT IS on this _____ day of _____, 2017 **ORDERED:**

1. Defendants' Motion is **GRANTED**;
2. The Complaint is dismissed against Defendants, with prejudice; and
3. A copy of this Order shall be served on all parties within seven (7) days of its receipt by counsel.

_____
Hon. Esther Salas, U.S.D.J.

___ Opposed

___ Unopposed

CERTIFICATION OF SERVICE

I certify that on December 20, 2016, I served copies of the foregoing Notice of Motion to Dismiss Complaint via the ECF system, and to all non-registered ECF users via email and U.S. First Class Mail upon the following:

Veronica A. Williams
P.O. Box 978
South Orange, NJ 07079-0978
stopfraud@vawilliams.com
Plaintiff Pro Se

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: December 20, 2016

/s/ Stuart I. Seiden
STUART I. SEIDEN