

No. _____
6th Circuit 18-1529

IN THE
Supreme Court of the United States

LIN ROUNTREE,
PETITIONER,
v.

NATIONSTAR MORTGAGE, LLC.
AND FEDERAL NATIONAL MORTGAGE
ASSOCIATION

RESPONDENTS.

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT ERRED IN GRANTING RESPONDENTS MOTION TO DISMISS WHEN THE RESPONDENTS FAILED TO COMPLY WITH THE DISTRICT COURT'S ORDER TO MEDIATE?

2. WHETHER THE DISTRICT COURT ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION WHEN RESPONDENTS FAILED TO COMPLY WITH THE DISTRICT COURT'S ORDER TO MEDIATE?

PARTIES TO THE PROCEEDING

LIN ROUNTREE,

PETITIONER

NATIONSTAR MORTGAGE, LLC.
AND FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

RESPONDENTS

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit and the opinion of the United States District Court for the Eastern District of Michigan were unpublished opinions.

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit, affirming the appeal from the District Court's ruling finding that the Petitioners failed to state a claim for which relief can be granted, was handed down on March 28, 2018. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

See Arguments below.

STATEMENT

IN THE STATE CIRCUIT COURT, PETITIONERS FILED A COMPLAINT FOR QUIET TITLE AND INJUNCTION REQUEST TO TOLL THE RUNNING OF THE REDEMPTION PERIOD AND OTHER RELIEF. THE ACTION WAS REMOVED TO FEDERAL COURT BASED UPON DIVERSITY OF CITIZENSHIP.

The Petitioner appealed to the Sixth Circuit Court of Appeals which affirmed the Federal District Court opinion.

REASONS FOR GRANTING THE PETITION

The subject matter of this action is situated in Oakland County, State of Michigan more fully described as follows:

PARCEL A PART OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 36, TOWN 1 NORTH, RANGE 9 EAST, CITY OF FARMINGTON HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE CENTERLINE OF SHIAWASSE ROAD (6 FEET WIDE) LOCATED SOUTH 02 DEGREES 47 MINUTES 04 SECONDS EAST 367.16 ALONG THE WEST LINE OF SAID SECTION AND SOUTH 70 DEGREES 07 MINUTES 12 SECONDS EAST 1137.24 FEET AND SOUTH 70 DEGREES 07 MINUTES 12 SECONDS EAST 280.30 FEET ALONG THE CENTERLINE OF SHIAWASSE ROAD (66 FEET WIDE) AND SOUTH 03 DEGREES 04 MINUTES 31 SECONDS EAST 296.26 FEET ALONG THE WEST LINE OF WHITTINGTON AVENUE (25 FEET WIDE) PER RICHLAND GARDENS SUBDIVISION,

AS RECORDED IN LIBER 19 OF PLATS,
PAGE 29 OAKLAND COUNTY RECORDS,
FROM THE NORTHWEST CORNER OF
SAID SECTION; THENCE CONTINUING
SOUTH 03 DEGREES 04 MINUTES 31
SECONDS CAST 65:00 FEET; THENCE
SOUTH 86 DEGREES 59 MINUTES 14
SECONDS WEST 258.10 FEET; THENCE
ALONG A LINE 258.10 FEET WEST OF
AND PARALLEL TO THE WEST LINE OF
SAID WHITTINGTON AVENUE NORTH 03
DEGREES 04 MINUTES 31 SECONDS
WEST 65 FEET; THENCE NORTH 86
DEGREES 59 MINUTES 14 SECONDS EAST
258.10 FEET TO THE POINT OF
BEGINNING. SUBJECT TO EASEMENTS,
RESTRICTIONS AND RIGHTS OF WAY.

**More Commonly Known as 21817
Whittington, Farmington Hills, MI 48336**

Petitioner claims as interest in the above-described property as follows: Fee Simple Absolute by way of an executed Warranty Deed. (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 33-43) Respondent, Fannie Mae claims an interest in the same property as follows: Sheriff's Deed. (Notice of Removal, Complaint Exhibit, R. 1-2, Page ID# 36-44) The Petitioner purchased the subject property in 2006, and the Petitioner is currently residing in the subject property with his wife and family. (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 33-34)

On October 20, 2006, the Petitioner obtained a Mortgage on the subject property from Flagstar Bank (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 45-56) On July 25, 2011, Nationstar assigned its interest to Respondent, Nationstar Mortgage LLC ("Nationstar"). (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 56) Because of Petitioner's financial situation, on October 13, 2015, Petitioner was offered to apply for a Loan Modification by the Respondent, Nationstar. (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 58-75) On October 22, 2015, Petitioner signed and returned the Loan Modification Application to Respondent, Nationstar. After several phone calls Respondent, Nationstar confirmed that they received the Petitioner Loan Modification Application. Because of an apparent glitch in Respondent, Nationstar's internal system in January 2016, Petitioner was informed by Respondent, Nationstar to submit updated financial information.

Petitioner submitted the updated financial information to the Respondent, Nationstar. On February 16, 2016, Respondent, Nationstar informed Petitioner that a new Loan Modification Application needed to be processed. On February 21, 2016, Petitioner completed and forwarded the new Loan Modification Application to the Respondent, Nationstar for review. (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 77-84) In July 2016, because of another internal problem and timing issue with the Respondent, Nationstar, Respondent, Nationstar offered Petitioner another Loan Modification Application. Petitioner made the three payments (April, May and June 2016) under the TPP. However,

Respondent, Nationstar refused to accept the last payment.

Petitioner was then informed by the Respondent, Nationstar to apply for yet another Loan Modification. Petitioner then applied for the third Loan Modification and in August 2016, Petitioner was told that the Loan Modification was denied (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 86-89) In September 2016, Petitioner was then informed by Respondent, Nationstar to apply for a Hamp Loan Modification. (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 91-101) In October 2016, Petitioner was informed by Respondent, Nationstar that the Hamp Loan Modification was denied.

In November 2016, Petitioner was informed by Respondent, Nationstar to contact Fannie Mae to work out another Loan Modification. In January 2017, Petitioner was told that a new program was available however Respondent, Nationstar refused to go along with the new program and foreclosed against the Petitioner.

On February 21, 2017, without knowledge of the Petitioner the subject property was sold at Sheriff's Sale. ((Notice of Removal Complaint Exhibit R. 1-2, Page ID# 36-43) Respondent, Fannie Mae purchased the subject property at the Sheriff's Sale. (Notice of Removal Complaint Exhibit R. 1-2, Page ID# 36-43)

On August 16, 2017, Petitioner filed a Motion for Temporary Restraining Order and for Preliminary Injunction to Stay and Toll the Expiration of the Redemption Period. (Motion for Temporary Restraining Order, R. 11, Page ID# 123-140) On August 17, 2017, the District Court entered an Order

requiring Respondents to file a response to Petitioner Motion for Temporary Restraining Order and for Preliminary Injunction to Stay and Toll the Expiration of the Redemption Period. (Order Requiring Response to Motion for TRO, R. 12, Page ID#224) On August 18, 2017, Respondents filed a response to Petitioner's Motion for Temporary Restraining Order and for Preliminary Injunction to Stay and Toll the Expiration of the Redemption Period. (Response to Motion for Temporary Restraining Order, R. 13, Page ID# 225-253) On August 21, 2017, Petitioner filed a Reply to Respondents' Response to Petitioner's Motion for Temporary Restraining Order and for Preliminary Injunction to Stay and Toll the Expiration of the Redemption Period. (Reply to Response R. 14, Page ID# 283-293) Also on August 21, 2017, the District Court entered an Opinion and Order granting Petitioner's Motion for Temporary Restraining Order. (Opinion and Order Granting Motion, R. 15, Page ID#317-322)

On August 24, 2017, Respondents filed a Motion to Dismiss Petitioner's Complaint. (Motion to Dismiss, R. 16, Page ID# 323-351) On August 28, 2017, the District Court entered an Order to Mediate and Extend the Expiration of the Redemption Period until 11:59 PM on September 11, 2017. (Order to Mediate R. 17 Page ID # 374-376) Pursuant to the District Court's Order to Mediate the Parties' Attorneys did in fact proceed with mediation and settlement discussions on September 1, 2017, with Judge Richard Hathaway. To date the mediation and settlement discussions have **not** completed. Moreover, Petitioner never received the amount to **redeem** the subject property nor a

counteroffer from the Respondents as was discussed in the Mediation before Judge Hathaway.

On September 7, 2017, Petitioner filed an Answer to Respondents' Motion to Dismiss Petitioner's Complaint and a **Request to Extend the Expiration of the Redemption Period and Continuation of the Arbitration** Be Granted. (Response to Motion to Dismiss, R. 18, Page ID# 377-403) On September 11, 2017, the District Court issued an Order and Opinion dismissing Petitioner's Complaint. (Opinion and Order, R. 19, Page ID# 488-496) For the reasons stated below the Order of the District Court for the Eastern District of Michigan should be reversed and this matter should be remanded for Mediation.

ARGUMENT

1. THE DISTRICT COURT ERRED IN GRANTING RESPONDENTS' MOTION TO DISMISS WHEN THE RESPONDENTS FAILED TO COMPLY WITH THE COURT'S ORDER TO MEDIATE.

On August 28, 2017, the District Court ordered in pertinent part as follows:

"IT IS FURTHER ORDERED that the case is **REFERRED** to retired judge Richard Hathaway¹ for mediation and settlement discussions. The parties are **ORDERED** to proceed in compliance with Local Rule 16.4. The mediation and settlement discussions shall occur no later than **September 1, 2017**. The parties shall contact Judge Hathaway and provide him with a copy of this order as soon as practicable and **NOTIFY** the Court of the date of the mediation session once it is scheduled. Judge Hathaway shall determine the breakdown of costs to be borne by the parties.

Judge Hathaway shall **NOTIFY** the Court within seven days of completion of mediation, stating only the "date of completion, who participated, whether settlement was reached, and whether further alternative dispute resolution proceedings are contemplated." E.D. Mich. L.R. 16.4(e)(6). If a settlement is reached, the parties shall **NOTIFY** the Court immediately upon completion of mediation and

SUBMIT a proposed order of dismissal within 21 days. *Id.* at 16.4(e)(7). If a settlement is not reached, the parties shall **NOTIFY** the Court within seven days of the completion of mediation.”

Pursuant to the District Court’s Order to Mediate the Parties’ Attorneys did in fact proceed with mediation and settlement discussions on September 1, 2017, with Judge Richard Hathaway. To date the mediation and settlement discussions have **not** completed. Moreover, Petitioner never received the amount to **redeem** the subject property nor a counteroffer from the Respondents as was discussed in the Mediation before Judge Hathaway.

Pursuant to the District Court Order, on September 7, 2017, Petitioner filed an Answer to Respondents’ Motion to Dismiss Petitioner’s Complaint and a **Request to Extend the Expiration of the Redemption Period and Continuation of the Arbitration** Be Granted. (Response to Motion to Dismiss, R. 18, Page ID# 377-403) On September 11, 2017, the District Court issued an Order and Opinion dismissing Petitioner’s Complaint (Opinion and Order, R. 19, Page ID# 488-496) The District Court addressed the merits of the case. However, the District Court did not address the outcome of the Mediation in which there was never a completion as was required by the Order of Mediation in that:

1. Judge Hathaway shall **NOTIFY** the Court within seven days of completion of mediation.
2. If a settlement is reached, the parties shall **NOTIFY** the Court immediately upon completion of mediation and **SUBMIT** a

proposed order of dismissal within 21 days. *Id.* at 16.4(e)(7).

3. If a settlement is not reached, the parties shall **NOTIFY** the Court within seven days of the completion of mediation.

None of the above occurred because during and after Mediation Petitioner never received the amount to **redeem** the subject property nor a counteroffer from the Respondents as was discussed in the Mediation before Judge Hathaway.

In ruling on a motion to dismiss, the Court may consider the complaint as well as (1) documents referenced in the pleadings and central to Petitioner's claims, (2) **matters of which a court may properly take notice**, (3) public documents, and (4) letter decisions of government agencies which are appended to the motion. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 127 S.Ct. 2499, 2509 (2007)

In the case at bar, on August 28, 2017, the Lower Court entered an Order to Mediate and Extend the Expiration of the Redemption Period until 11:59 PM on September 11, 2017. (Order to Mediate R. 17 Page ID # 374-376) Pursuant to the Court Order the Parties' Attorneys did in fact proceed with mediation and settlement discussions on September 1, 2017, with Judge Richard Hathaway.

To date the mediation and settlement discussions have **not** completed. Moreover, Petitioner never received the amount to **redeem** the subject property nor a counteroffer from the Respondents as was discussed in the arbitration before Judge Hathaway. On September 11, 2017, this Honorable

Court issued an Order and Opinion dismissing Petitioner's Complaint.

Thus, pursuant to Tellabs above the District Court erred in failing to consider its August 28, 2017, Order of Mediation in granting Respondents' Motion to Dismiss when the Respondents failed to comply with the District Court's August 28, 2017, Order of Mediation.

2. THE DISTRICT COURT ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION WHEN THE RESPONDENTS FAILED TO COMPLY WITH THE DISTRICT COURT'S ORDER TO MEDIATE.

After the District Court on September 11, 2017, issued an Order and Opinion dismissing Petitioner's Complaint, Petitioner filed a Motion for Reconsideration on September 25, 2017. (Motion for Reconsideration, R. 21, Page ID# 498-506) On April 9, 2018, the District Court issued an Order Denying Petitioner's Motion For Reconsideration. (Order Denying Motion for Reconsideration, R. 25 Page ID # 680-682) The District Court ordered in pertinent part stated as follows:

"...Since both parties averred that an amicable solution through settlement might be possible, the Court also ordered them to mediate within the next four days. ECF 17.

Evidently the parties timely mediated but did not reach a settlement then or within the next few days, and Petitioner suggested that it was unlikely

they could reach one prior to the expiration of the redemption period. ECF 18, Pg ID 387. No party moved for the extension of the TRO and the Court chose not to extend it sua sponte for several reasons:

- (1) By law, the TRO could not go on indefinitely merely to allow for open-ended settlement discussions;
- (2) The parties had not been able to negotiate a settlement for the five months that the case had been active on two courts' dockets;
- (3) The Court finally had adequate briefing before it, allowing it to resolve the only motion then before it: a motion to dismiss."

However, this is in contradiction with the District Court's August 28, 2017, Mediation Order which states as follow:

"IT IS FURTHER ORDERED that the case is **REFERRED** to retired judge Richard Hathaway¹ for mediation and settlement discussions. The parties are **ORDERED** to proceed in compliance with Local Rule 16.4. The mediation and settlement discussions shall occur no later than **September 1, 2017**. The parties shall contact Judge Hathaway and provide him with a copy of this order as soon as practicable and **NOTIFY** the Court of the date of the mediation session once it is scheduled. Judge Hathaway shall determine the breakdown of costs to be borne by the parties.

Judge Hathaway shall **NOTIFY** the Court within seven days of completion of mediation, stating only the "date of completion, who participated, whether settlement was reached, and whether further alternative dispute resolution proceedings are

contemplated." E.D. Mich. L.R. 16.4(e)(6). If a settlement is reached, the parties shall **NOTIFY** the Court immediately upon completion of mediation and **SUBMIT** a proposed order of dismissal within 21 days. *Id.* at 16.4(e)(7). If a settlement is not reached, the parties shall **NOTIFY** the Court within seven days of the completion of mediation."

Pursuant to the District Court's Order to Mediate the Parties' Attorneys did in fact proceed with mediation and settlement discussions on September 1, 2017, with Judge Richard Hathaway. To date the mediation and settlement discussions have **not** completed. Moreover, Petitioner never received the amount to **redeem** the subject property nor a counter offer from the Respondents as was discussed in the Mediation before Judge Hathaway.

Pursuant to the District Court Order, on September 7, 2017, Petitioner filed an Answer to Respondents' Motion to Dismiss Petitioner's Complaint and a **Request to Extend the Expiration of the Redemption Period and Continuation of the Arbitration** Be Granted. (Response to Motion to Dismiss, R. 18, Page ID# 377-403) On September 11, 2017, the District Court issued an Order and Opinion dismissing Petitioner's Complaint. (Opinion and Order, R. 19, Page ID# 488-496) The District Court addressed the merits of the case. However, the District Court did not address the outcome of the Mediation in which there was never a completion as was required by the Order of Mediation in that:

1. Judge Hathaway shall **NOTIFY** the Court within seven days of completion of mediation.

2. If a settlement is reached, the parties shall **NOTIFY** the Court immediately upon completion of mediation and **SUBMIT** a proposed order of dismissal within 21 days. *Id.* at 16.4(e)(7).
3. If a settlement is not reached, the parties shall **NOTIFY** the Court within seven days of the completion of mediation.

None of the above occurred because during and after Mediation Petitioner never received the amount to **redeem** the subject property nor a counteroffer from the Respondents as was discussed in the mediation before Judge Hathaway.

Local Rule 7.1(h) governs motions for reconsideration, stating that they must be filed within 14 days after entry of the judgment or order. E.D. Mich. L.R. 7.1(h)(1). “The court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication.” E.D. Mich. L.R. 7.1(h)(3). The same subsection further states, “[t]he movant must not only demonstrate a palpable defect by which the court and the parties . . . have been misled but also show that correcting the defect will result in a different disposition of the case.” *Id.* A defect is palpable when it is “obvious, clear, unmistakable, manifest, or plain.” *Chrysler Realty Co., LLC v. Design Forum Architects, Inc.*, 544 F. Supp. 2d 609, 618 (E.D. Mich. 2008).

In the case at bar, on August 28, 2017, the Lower Court entered an Order to Mediate and Extend the Expiration of the Redemption Period until 11:59 PM on September 11, 2017. (Order to Mediate R. 17

Page ID # 374-376) Pursuant to the Court Order the Parties' Attorneys did in fact proceed with mediation and settlement discussions on September 1, 2017, with Judge Richard Hathaway.

To date the mediation and settlement discussions have **not** completed. Moreover, Petitioner never received the amount to **redeem** the subject property nor a counteroffer from the Respondents as was discussed in the arbitration before Judge Hathaway. On September 11, 2017, the District Court issued an Order and Opinion dismissing Petitioner's Complaint.

The District Court apparently did not have the full benefit of the fact that mediation and settlement discussions had **not** completed nor had Judge Hathaway notified the Court within the seven days of completion of mediation, stating the "date of completion, who participated, whether settlement was reached, and whether further alternative dispute resolution proceedings are contemplated.

The District Court's lack of the full benefit of the fact that mediation and settlement discussions had **not** completed nor had Judge Hathaway notified the Court within seven days of completion of mediation or the lack thereof was a palpable defect. If the District Court had the full benefit of the fact that mediation and settlement discussions had **not** completed nor had Judge Hathaway notified the Court within seven days of completion of mediation it would have resulted in a different disposition of the case.

Moreover, it is extremely unlikely that the Respondents would attempt to settle the case in light

of the District Court's September 11, 2017, Order and Opinion dismissing The District Court's Complaint.

V. CONCLUSION

For the above and foregoing reasons, Petitioner respectfully requests the issuance of a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

DARWYN P. FAIR & ASSOCIATES

/s/Darwyn P. Fair

DARWYN P. FAIR (P31266)

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Dated: June 24, 2019

APPENDIX

United States Court of Appeal For the Sixth Circuit Order Motion for Reconsideration	18a-18d
United States Court of Appeal For the Sixth Circuit Order and Opinion	19a-19e
United States District Court Eastern District of Michigan Order Denying Motion for Reconsideration	20a-20d
United States District Court Eastern District of Michigan Opinion and Order Granting Defendants Motion to Dismiss	21a-21j
United States District Court Eastern District of Michigan Judgment of Dismissal	22a
United States District Court Eastern District of Michigan Order to Mediate	23a-23c

UNITED STATES COURT OF APPEALS FOR THE
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540 POTTER STEWART U.S.
COURTHOUSE CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
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Filed: April 30, 2019

Mr. Darwyn Prentiss Fair Law Office
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Detroit, MI 48226

Re: Case No. 18-1529, *Lin Rountree v. Nationstar
Mortgage, LLC, et al* Originating Case No. 2:17-cv-
11902

Dear Counsel:

The Court issued the enclosed Order today in this
case.

Sincerely yours,

s/Monica M. Page
Case Manager
Direct Dial No. 513-564-7021

cc: Ms. Jong-Ju Chang
Mr. David M. Dell
Mr. David J. Weaver
Ms. Jill Margaret Wheaton
Enclosure

Case No. 18-1529

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

LIN ROUNTREE

Plaintiff - Appellant

v.

NATIONSTAR MORTGAGE, LLC; FEDERAL
NATIONAL MORTGAGE ASSOCIATION

Defendants - Appellees

Upon consideration of the petition for rehearing filed
by the appellant,

It is **ORDERED** that the petition for rehearing be,
and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Issued: April 30, 2019

UNITED STATES COURT OF APPEALS FOR THE
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540 POTTER STEWART U.S.
COURTHOUSE CINCINNATI, OHIO 45202-3988

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Filed: March 14, 2019

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Ann Arbor, MI 48104

Re: Case No. 18-1529, *Lin Rountree v. Nationstar
Mortgage, LLC, et al*
Originating Case No. : 2:17-cv-11902

Dear Counsel,

The Court issued the enclosed opinion today in this
case.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

cc: Mr. David J. Weaver
Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

File Name: 19a0121n.06

Case No. 18-1529

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

FILED

Mar 14, 2019

DEBORAH S. HUNT, Clerk

LIN ROUNTREE,

Plaintiff-Appellant,

v.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE
EASTERN DISTRICT
OF MICHIGAN

NATIONSTAR MORTGAGE, LLC;) FEDERAL
NATIONAL MORTGAGE) ASSOCIATION.,

Defendant-Appellee.

BEFORE: BATCHELDER, SUTTON, DONALD,
Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge.
The district court ordered the parties in the underlying

case to engage in mediation. Before mediation completed or a settlement was reached, the district court granted the defendants' motion to dismiss the complaint. The plaintiff now appeals, arguing only that the district court erred by dismissing the case prior to the completion of court-ordered mediation. Had the district court known that mediation was not complete, the outcome would have been different, according to the plaintiff. We disagree, as his position has no basis in the law or the facts. The district court was well within its authority to grant the pending motion to dismiss while the parties were engaged in negotiating a settlement; moreover, the district court made clear it was aware of the status of the ongoing mediation proceedings when it granted the motion to dismiss. Accordingly, we **AFFIRM**.

I. BACKGROUND

Plaintiff Lin Rountree filed a complaint against Defendants Nationstar Mortgage LLC and Federal National Mortgage Association on or about May 16, 2017,¹ in the Circuit Court for the County of Oakland, Michigan. Defendants removed the case to federal district court on June 15. Two months later, Plaintiff filed a motion for a temporary restraining order. The district court granted Plaintiff's request, and also ordered Defendants to answer or otherwise respond to the complaint. Defendants complied, filing a motion to dismiss the complaint on August 24.

¹ All dates refer to the year 2017 unless otherwise noted.

Four days later, and after holding a hearing on the pending temporary restraining order, the district court entered an order requiring the parties to mediate. Nowhere in that order did the district court state that it would hold the briefing or a ruling on the motion to dismiss in abeyance pending resolution of mediation. To the contrary, the district court explained that it would be considering the briefing on the motion to dismiss as mediation continued:

Defendants' motion to dismiss is currently pending, and Plaintiff's response is not due until after the current expiration of the [temporary restraining order]. The briefing will assist the Court in determining Plaintiff's likelihood to succeed on the merits. In light of the necessary briefing and the parties' seeming willingness to seek a practical and cost-efficient resolution, the Court will briefly extend the [temporary restraining order] and, in the meantime, order the parties to mediate

Plaintiff filed his response to the motion to dismiss on September 7. Four days later— while the mediation process was still ongoing—the district court granted the motion to dismiss the complaint for failure to state a claim and entered judgment in favor of Defendants.

Plaintiff filed a timely motion for reconsideration of the order on the motion to dismiss, requesting the district court to reconsider its ruling because the parties had not completed their mediation and settlement negotiations. Plaintiff did not raise a single substantive issue with the order on the motion to dismiss; instead, according to Plaintiff, the case would have been disposed of “different[ly]” had the district court known that the mediation and settlement discussions were continuing. Plaintiff also complained

that granting the motion to dismiss made it “extremely unlikely that Defendants will attempt to settle the case.” The district court denied the motion for reconsideration, noting that it had “granted the motion to dismiss for the reasons stated in its opinion and with full awareness that the parties had commenced settlement and that the parties were allegedly still ‘in mediation and settlement discussions with the Court-appointed Mediator.’ [citing Plaintiff’s briefing from the motion to dismiss].” Plaintiff filed a timely appeal.

II. ANALYSIS

On appeal, Plaintiff’s only contention is that the district court erred by granting the motion to dismiss (and denying his motion for reconsideration) while mediation and settlement discussions were ongoing. This request boils down to the district court’s management of its docket. “The court of appeals will not interfere with the trial court’s control of its docket except upon the clear showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant.” *Jones v. Northcoast Behavioral Healthcare Sys.*, 84 F. App’x 597, 599, 2003 WL 23140062 (6th Cir. 2003) (citing *In re Air Crash Disaster*, 86 F.3d 498, 516 (6th Cir. 1996)). Plaintiff has not made this showing. First, he has *never* argued that the substantive ruling on the motion to dismiss was incorrect. *See* Reply Br. at 5 (refusing to respond to Appellee’s arguments on the merits of the motion to dismiss). As such, he has not demonstrated that the district court’s ruling resulted in any actual or substantial prejudice. Second, Plaintiff points to no authority demonstrating that court-ordered mediation in any way prevents the district court from ruling on a

pending motion to dismiss.² To the extent Plaintiff argues that the district court made an error because it was not aware that mediation had not yet concluded, this contention was flatly rejected by the district court in its ruling on the motion to reconsider. Last, the district court was clear that it would be considering the motion to dismiss while mediation was ongoing, and Plaintiff made no request to stay the briefing on that motion. Plaintiff has not made the necessary showing required to find error with the district court's management of its docket.

III. CONCLUSION

For the aforementioned reasons, we **AFFIRM** the district court.

² Indeed, across the entirety of Plaintiff's briefing before this Court, he cites only five cases, each of which concerns the merits of a motion to dismiss, not the district court's authority to manage its docket.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIN ROUNTREE,

Plaintiff,

Case No. 2:17-cv-11902

v.

HONORABLE STEPHEN J. MURPHY, III

NATIONSTAR MORTGAGE LLC and FEDERAL
NATIONAL MORTGAGE ASSOCIATION,

Defendants.

_____ /

**ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION**

The Court has already dismissed the Complaint in this case and entered judgment. Plaintiff, however, has filed a motion for reconsideration under Local Rule 7.1. The Court finds no reason to reconsider its prior opinion and will deny the motion.

LEGAL STANDARD

Local Rule 7.1 governs motions for reconsideration, and the grounds for reconsideration are narrow. "The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect

will result in a different disposition of the case." E.D. Mich. LR 7.1(h)(3). A palpable defect is an error that is obvious, clear, unmistakable, manifest, or plain. *Fleck v. Titan Tire Corp.*, 177 F. Supp. 2d 605, 624 (E.D. Mich. 2001).

DISCUSSION

Plaintiff Lin Rountree brought this suit in an attempt to stave off pending foreclosure proceedings. The parties repeatedly stipulated to extensions of time for Defendants to answer or otherwise respond to the Complaint. ECF 5, 9, 10. And then, two days before Defendants' filing deadline, Plaintiff filed a motion for a temporary restraining order. In light of the stakes at play and the paucity of briefing before it, the Court ordered expedited briefing on the TRO and scheduled a hearing. ECF 12. The hearing was held, and that same day the Court entered an order that extended the TRO only as long as was necessary for the motion to dismiss to be fully briefed. Since both parties averred that an amicable solution through settlement might be possible, the Court also ordered them to mediate within the next four days. ECF 17.

Evidently the parties timely mediated but did not reach a settlement then or within the next few days, and Plaintiff suggested that it was unlikely they could reach one prior to the expiration of the redemption period. ECF 18, PgID 387. No party moved for the extension of the TRO and the Court chose not to extend it sua sponte for several reasons:

- (1) By law, the TRO could not go on indefinitely merely to allow for open-ended settlement discussions;

- (2) The parties had not been able to negotiate a settlement for the five months that the case had been active on two courts' dockets;
- (3) The Court finally had adequate briefing before it, allowing it to resolve the only motion then before it: a motion to dismiss.

The Court granted the motion to dismiss for the reasons stated in its opinion and with full awareness that the parties had commenced settlement and that the parties were allegedly³ still "in mediation and settlement discussions with the Court-appointed Mediator." ECF 18, PgID 391. The Court was not misled and finds no palpable error in need of correction.

ORDER

WHEREFORE, it is hereby **ORDERED** that Plaintiff's motion for reconsideration

[21] is **DENIED**.

SO ORDERED.

³ The parties had already demonstrated that their perceptions of the status of settlement talks sometimes varied. Plaintiff suggested that the initial stipulations were to allow for settlement talks; Defendants disagreed. *See* ECF 13, PgID 252. And at the hearing, Defendants noted that the extra time was specifically necessary because the attorneys on the case had changed.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 9, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 9, 2018, by electronic and/or ordinary mail.

s/David P. Parker
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIN ROUNTREE,

Plaintiff,

Case No. 2:17-cv-11902

v.

HONORABLE STEPHEN J. MURPHY, III

NATIONSTAR MORTGAGE LLC and FEDERAL
NATIONAL MORTGAGE ASSOCIATION,

Defendants.

_____ /

**OPINION AND ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS AND
DISMISSING THE CASE**

Plaintiff resides at 21817 Whittington, Farmington Hills, MI (the Property). Defendant Nationstar owns the mortgage on the Property and Defendant Federal National Mortgage Association (Fannie Mae) holds a sheriff's deed on the Property. Plaintiff filed an eight- count complaint and Defendants now move to dismiss it. A temporary restraining order (TRO) is currently in place but will expire on the same day that the Court will issue this Order. For the reasons below, the Court will not further extend the TRO, but will instead grant the motion and dismiss the case.

BACKGROUND

Plaintiff purchased the Property in 2006 and obtained a warranty deed and a mortgage on the home. ECF 1-2; PgID 33–34. Apparently Plaintiff ran into financial difficulties and by October 2015 he was behind on two mortgage payments. ECF 18, PgID

392. Nationstar allegedly invited Plaintiff to apply for a loan modification, and on October 13, 2015, Nationstar sent him a letter that informed him he was "eligible for a Loan Modification Agreement, which [would] permanently change the terms of [his] mortgage." ECF 1-2, PgID 58. The letter stated that if Plaintiff "complied with the terms of the required Trial Period Plan," Nationstar would modify his mortgage and might "waive all prior late charges that remain unpaid." *Id.* The letter instructed Plaintiff to sign and return two copies of an attached agreement by October 23, 2015 and to "[m]ake all remaining trial period payments on or before the dates they are due." *Id.* Plaintiff claims he returned the signed agreements on October 22, 2015 and that Nationstar confirmed receipt over the phone.

Plaintiff avers there was a "glitch" in Nationstar's system, so around January 2016, Nationstar told him to submit updated financial information, which he claims he did. ECF 1810, PgID 474. But on February 16, 2016, Nationstar sent him another document that differed from the documents purportedly sent in October 2015. The February documents included a "Borrower Assistance Form" that directed the borrower to provide verifying financial documents "to be considered for available solutions." ECF 1-2, PgID 77. Unlike the copies of the October documents provided to the Court, the February documents are completed, signed, and dated February 21, 2016. *Id.* at 77–84.

At that point, Plaintiff's version of the timeline becomes slightly unclear. From the Response brief and the affidavit upon which it relies, it seems that Plaintiff was "accepted in the Trial Payment Program ("TPP")" following his submission of the completed February documents, made three payments under the TPP that corresponded to October, November, and December 2015.⁴ ECF 18, PgID 393. Nationstar⁵ then directed Plaintiff to make a fourth payment and Plaintiff complied, but Nationstar rejected the payment. *Id.* Nationstar also "failed to execute the Loan Modification Agreement" and discussions about modifying the loan began in August 2016. *Id.*

What is crystal clear is that on August 12, 2016, Nationstar sent Plaintiff a letter. It informed Plaintiff that Nationstar was unable to grant his request for assistance and specifically listed three programs for which he had been declined. ECF 1-2, PgID 86. The letter also listed possible alternatives Plaintiff might be able to pursue, including reinstatement. *Id.* Plaintiff claims he "attempted in good faith to implement the Loan Modification Agreement and reinstate the loan" but has been unsuccessful. ECF 18, PgID 393.

Nationstar finally foreclosed on Plaintiff's home in January 2017 and Defendant Fannie Mae purchased the home at a sheriff's sale the next month. ECF 1-2, PgID 36–43. The redemption period would have ended

⁴ It seems the payments were actually made in April, May and June 2016. *Cf.* ECF 18- 10, PgID 475.

⁵ The briefing refers exclusively to "Flagstar" from this point on.

on August 21, 2017, but the Court stayed the expiration date. ECF 15, 17.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The Court may only grant a 12(b)(6) motion to dismiss if the allegations are not "sufficient 'to raise a right to relief above the speculative level,' and to 'state a claim to relief that is plausible on its face.'" *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). In evaluating the motion, the Court presumes the truth of all well-pled factual assertions. *Bishop v. Lucent Techs. Inc.*, 520 F.3d 516, 519 (6th Cir. 2008). Moreover, the Court must draw every reasonable inference in favor of the non-moving party. *Dubay v. Wells*, 506 F.3d 422, 427 (6th Cir. 2007). But a "pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555).

DISCUSSION

Count One — Quiet Title

Plaintiff asserts that Defendants knew he was trying to enter into a loan modification agreement, but they intentionally acted to preclude him from doing so. ECF 1-2, PgID 16–17. Consequently, the Property is currently in Fannie Mae's name. *Id.* In response, Defendants emphasize that quieting title is a remedy,

not a stand-alone cause of action and further, Plaintiff has failed to satisfy the statutory prerequisites to quiet title. ECF 16, PgID 335–36.

Michigan law permits "any person . . . who claims any right in, title to, equitable title to, interest in, or right to possession of land" to bring a quiet-title action "against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff[.]" Mich. Comp. Laws § 600.2932(1). To succeed, a plaintiff must allege "(a) the interest the plaintiff claims in the premises; (b) the interest the defendant claims in the premises; and (c) the facts establishing the superiority of the plaintiff's claim." Mich. Ct. Rule 3.411(B)(2).

Plaintiff claims an interest in the land, but the claim is unfounded. Even taking every assertion of the complaint as true, Plaintiff has asserted that he entered into a contractual obligation, defaulted on that obligation, and has tried, unsuccessfully, to renegotiate the terms. These facts do not make his interest in the property "superior" to Fannie Mae's, even if Nationstar's actions were improper. *See Yuille v. Am. Home Mortg. Servs., Inc.*, 483 F. App'x 132, 135 (6th Cir. 2012) (citing *Richards v. Tibaldi*, 272 Mich. App. 522, 537 (2006)). Accordingly, Plaintiff's quiet-title count fails.

Counts Two and Three — Breach of Agreements and Specific Performance

The second and third counts concern an alleged contract. To state a breach of contract, claim under Michigan law, a plaintiff must establish five elements: "1) parties competent to contract, 2) a proper subject matter, 3) a legal consideration, 4) mutuality of agreement, and 5) mutuality of obligation." *In re*

Brown, 342 F.3d 620, 628 (6th Cir. 2003) (citing *Thomas v. Leja*, 187 Mich. App. 418, 422 (1991)). Specific performance on a contract is an extraordinary remedy, rather than a cause of action itself. In any event, to succeed in a breach of agreement claim, or in securing an order for specific performance, Plaintiff must first plead the existence of a contract.

According to the Complaint, Plaintiff was "offered to apply for a Loan Modification" and he was "damaged as a result of Defendant(s) refusal to provide a permanent modification." ECF 1-2, PgID 17–18. But Plaintiff has not pointed to any consideration, mutuality of agreement, or mutuality of obligation to support a contractual arrangement. In short, Plaintiff has not shown that Defendants had any contractual obligation to reinstate his loan. And the written documents provided to the Court do not reveal an agreement, either. In sum, Plaintiff has failed to plead the existence of a contract that is plausible on its face. His breach-of-agreement and specific-performance counts fail.

Counts Four and Five — Promissory and Equitable Estoppel

Plaintiff claims Nationstar made negligent, and perhaps intentional, representations that it would "properly assess Plaintiff's eligibility for a HAMP or other modification" but never did. ECF 1-2, PgID 19–20. He avers that Nationstar knew he would rely on its representation and could reasonably foresee that he would suffer damages—damages that he estimates to be \$50,000. ECF 1-2, PgID 20–21. Although not clear from

the Complaint,⁶ Plaintiff seems to argue that Nationstar's representations included indicating it would not proceed with a sheriff's sale. Accordingly, Plaintiff argues Nationstar is estopped from enforcing that sale.

Michigan's statute of frauds restricts actions premised on promises by financial institutions. When a plaintiff brings an action against a financial institution to enforce a promise or commitment to lend money, extend or modify the repayment of a loan, waive a provision of a loan, or "make any other financial accommodation," the promise or commitment must be "in writing and signed with an authorized signature by the financial institution[.]" Mich. Comp. Laws § 566.132. An agreement to delay a sheriff's sale is an agreement to make a "financial accommodation." *Etts v. Deutsche Bank Nat'l Tr. Co.*, 126 F. Supp. 3d 889, 902 (E.D. Mich. 2015).

Plaintiff has neither presented nor alleged the existence of a written promise or commitment by Nationstar to modify his loan or otherwise forbear from a sheriff's sale. The February documents are not signed by Nationstar and the October documents are not signed by any party. *See* ECF 1-2, 58–75, 77–84. His promissory and equitable estoppel counts fail.

⁶ Count Four is titled "Promissory Estoppel" but functionally describes negligent and intentional misrepresentation. Count Five is titled "Equitable Estoppel," but under Michigan law, "equitable estoppel is not a cause of action unto itself; it is available only as a defense." *Casey v. Auto Owners Ins. Co.*, 273 Mich. App. 388, 399 (2006).

Count Six — Wrongful Foreclosure by Advertisement

Plaintiff claims that the Property was wrongfully foreclosed upon because Defendants "knew or should have known that Plaintiff was attempting to enter into a Loan Modification" and nevertheless took actions "designed to preclude" Plaintiff from entering into a loan modification agreement. ECF 1-2, PgID 23. Specifically, Plaintiff accuses Nationstar of engaging in "dual tracking"—the practice of stringing a borrower along with the promise of modifying his loan, while simultaneously proceeding through the foreclosure process. According to Plaintiff, the allegation of dual tracking is "[t]he heart of the dispute[.]" ECF 18, PgID 397.

There are four prerequisites to foreclose by advertisement:

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage or, if an action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in the action or proceeding has been returned unsatisfied, in whole or in part.
- (c) The mortgage containing the power of sale has been properly recorded.
- (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the

indebtedness secured by the mortgage or the servicing agent of the mortgage.

Mich. Comp. Laws § 600.3204. Plaintiff does not allege that any of these requirements were unmet, but rather, makes a general contention that dual tracking occurred. But "[c]ourts in this District have repeatedly held . . . that dual-tracking allegations do not constitute allegations of irregularities in the foreclosure process" because "each process is separate." *Buttermore v. Nationstar Mortg. LLC*, No. 16-14267, 2017 WL 2306446, at *7 (E.D. Mich. May 26, 2017). Plaintiff has not alleged a facially plausible claim of wrongful foreclosure.

Count Seven — Breach of Duty of Good Faith and Fair Dealing

Plaintiff also alleges that Nationstar breached a duty of good faith and fair dealing. Plaintiff claims that on October 13, 2015, he "was offered to apply for a Loan Modification" by Nationstar, and that he "accepted the offer and met the conditions" yet "Nationstar either failed or refused to provide [him] a permanent Loan Modification." ECF 1-2, PgID 24. Consequently, "Defendants unfairly interfered with Plaintiff's right to receive the benefits of the TPP and permanent Loan Modification." *Id.*

"Michigan does not recognize a claim for breach of an implied covenant of good faith and fair dealing[.]" *Belle Isle Grill Corp. v. City of Detroit*, 256 Mich. App. 463, 476 (2003); *see also Wypych v. Deutsche Bank Nat'l Tr. Co.*, No. 16-CV-13836, 2017 WL 1315721, at

*7 (E.D. Mich. Apr. 10, 2017) (dismissing a similar claim in a foreclosure challenge). Plaintiff's count therefore fails.

Count Eight — Injunction and Other Relief

Plaintiff's final count merely seeks a permanent injunction as a remedy for the allegations in the preceding counts. Each of the other counts, however, has failed to state a claim for which relief may be granted. An injunction would therefore be inappropriate, and the Court will not further extend the TRO.

ORDER

WHEREFORE, it is hereby **ORDERED** that Defendant's Motion to Dismiss [16] is

GRANTED.

IT IS FURTHER ORDERED that the case is **DISMISSED WITH PREJUDICE**.

SO ORDERED

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: September 11, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 11, 2017, by electronic and/or ordinary mail.

s/Keisha Jackson for
David Parker
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIN ROUNTREE,

Plaintiff,

Case No. 2:17-cv-11902

v.

HONORABLE STEPHEN J. MURPHY, III

NATIONSTAR MORTGAGE LLC and FEDERAL
NATIONAL MORTGAGE ASSOCIATION,

Defendants.

_____ /

JUDGMENT

IT IS ORDERED AND ADJUDGED that pursuant to this
Court's order dated September 11, 2017, the case is
DISMISSED WITH PREJUDICE

DAVID J. WEAVER
CLERK OF THE COURT

BY: s/D. Parker

APPROVED:

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document
was served upon the parties and/or counsel of record on
September 11, 2017, by electronic and/or ordinary
mail.

s/David P. Parker
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIN ROUNTREE,

Plaintiff,

Case No. 2:17-cv-11902

v.

HONORABLE STEPHEN J. MURPHY, III

NATIONSTAR MORTGAGE LLC and FEDERAL
NATIONAL MORTGAGE ASSOCIATION,

Defendants.

_____ /

ORDER TO MEDIATE

A temporary restraining order is currently in effect which tolls the redemption period on Plaintiff's property. The Court held a hearing to determine whether the TRO should be extended, converted into a permanent injunction, or dissolved. Plaintiff is principally interested in remaining in his home, whether through a loan modification or repurchase of the property. Although Defendants are opposed to any further tolling of the redemption period, counsel indicated at the hearing that an arrangement with Nationstar, Fannie Mae, or both, might be possible through further negotiations.

Defendants' motion to dismiss is currently pending, and Plaintiff's response is not due until after the current expiration of the TRO. The briefing will assist the Court in determining Plaintiff's likelihood to succeed on the merits. In light of the necessary

briefing and the parties' seeming willingness to seek a practical and cost-efficient resolution, the Court will briefly extend the TRO and, in the meantime, order the parties to mediate.

ORDER

WHEREFORE, it is hereby **ORDERED** that the temporary restraining order currently in effect is **EXTENDED** and the expiration of the redemption period is **TOLLED** until 11:59 p.m. on **September 11, 2017**.

IT IS FURTHER ORDERED that Plaintiff shall file his response to Defendants' Motion to Dismiss [16] on or before **September 7, 2017**.

IT IS FURTHER ORDERED that the case is **REFERRED** to retired judge Richard Hathaway⁷ for mediation and settlement discussions. The parties are **ORDERED** to proceed in compliance with Local Rule 16.4. The mediation and settlement discussions shall occur no later than **September 1, 2017**. The parties shall contact Judge Hathaway and provide him with a copy of this order as soon as practicable and **NOTIFY** the Court of the date of the mediation session once it is scheduled. Judge Hathaway shall determine the breakdown of costs to be borne by the parties.

Judge Hathaway shall **NOTIFY** the Court within seven days of completion of mediation, stating only the "date of completion, who participated, whether settlement was reached, and whether further alternative dispute resolution proceedings are

⁷ Judge Hathaway can be reached at (313) 530-8960 or rickjudge@yahoo.com.

contemplated." E.D. Mich. L.R. 16.4(e)(6). If a settlement is reached, the parties shall **NOTIFY** the Court immediately upon completion of mediation and **SUBMIT** a proposed order of dismissal within 21 days. *Id.* at 16.4(e)(7). If a settlement is not reached, the parties shall **NOTIFY** the Court within seven days of the completion of mediation.

SO ORDERED

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
UNITED STATES DISTRICT JUDGE

Dated: August 28, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 28, 2017, by electronic and/or ordinary mail.

s/David P. Parker
Case Manager

