

Number \_\_\_\_\_

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In the  
Supreme Court of the United States

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DARRELL BERRY; CONSTANCE LAFAYETTE

Petitioners,

v.

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, "MERS"; DOES 1 through 100 "inclusive", et al.

Respondents.

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*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit*

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## Appendix for Writ of Certiorari

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Darrell Berry and Constance Lafayette,  
8338 Greenmoss Drive,  
Baton Rouge, LA 70806  
(Phone): 225.610.8633  
Petitioner Pro Se

Number \_\_\_\_\_

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In the  
Supreme Court of the United States

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DARRELL BERRY; CONSTANCE LAFAYETTE

Petitioners,

v.

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELETRONIC REGISTRATION SYSTEM, "MERS"; DOES 1 through 100 "inclusive", et al.

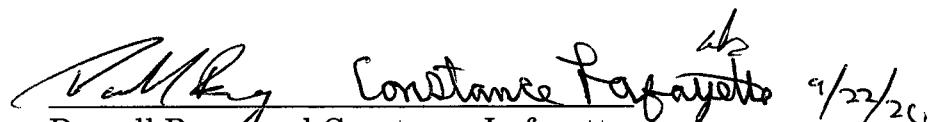
Respondents.

*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit*

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## Appendix for Writ of Certiorari

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Darrell Berry and Constance Lafayette,  
8338 Greenmoss Drive,  
Baton Rouge, LA 70806  
(Phone): 225.610.8633  
Petitioner Pro Se

## Appendix

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***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

**LYLE W. CAYCE**  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

June 25, 2020

Mr. Michael L. McConnell  
Middle District of Louisiana, Baton Rouge  
United States District Court  
777 Florida Street  
Room 139  
Baton Rouge, LA 70801

No. 19-30610      Darrell Berry, et al v. Loancity, et al  
USDC No. 3:18-CV-888

Dear Mr. McConnell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

*Christina Rachal*

By: Christina C. Rachal, Deputy Clerk

cc w/encl:

Mr. Darrell Berry  
Ms. Constance Lafayette  
Mr. Christopher D. Meyer  
Mr. Benjamin G. Torian  
Ms. Lindsay Meador Young

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 19-30610

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A True Copy  
Certified order issued Jun 25, 2020

*Jyle W. Cayce*

Clerk, U.S. Court of Appeals, Fifth Circuit

DARRELL BERRY; CONSTANCE LAFAYETTE,

Plaintiffs - Appellants

v.

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, "MERS"; DOES 1-100, "inclusive",

Defendants - Appellees

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Appeals from the United States District Court for the  
Middle District of Louisiana

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CLERK'S OFFICE:

Under 5<sup>th</sup> CIR. R. 42.3, the appeal is dismissed as of June 25, 2020, for want of prosecution. The appellants failed to timely file their brief and record excerpts.

LYLE W. CAYCE  
Clerk of the United States Court  
of Appeals for the Fifth Circuit

*Christina Rachal*

By: \_\_\_\_\_  
Christina C. Rachal, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

**United States Court of Appeals**  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

**LYLE W. CAYCE**  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

July 21, 2020

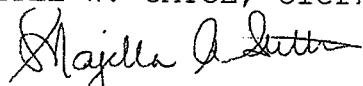
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-30610      Darrell Berry, et al v. Loancity, et al  
USDC No. 3:18-CV-888

The court has denied appellant's motion to reinstate the appeal.

Sincerely,

LYLE W. CAYCE, Clerk



By:  
Majella A. Sutton, Deputy Clerk  
504-310-7680

Mr. Darrell Berry  
Ms. Constance Lafayette  
Mr. Christopher D. Meyer  
Mr. Benjamin G. Torian  
Ms. Lindsay Meador Young

***United States Court of Appeals***

**FIFTH CIRCUIT  
OFFICE OF THE CLERK**

**LYLE W. CAYCE  
CLERK**

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

August 20, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

The court has denied the appellants' motion to reopen the appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Majella A. Suttor

By: Majella A. Sutton, Deputy Clerk  
504-310-7680

Mr. Darrell Berry  
Ms. Constance Lafayette  
Mr. Christopher D. Meyer  
Mr. Benjamin G. Torian  
Ms. Lindsay Meador Young

2020 Case Number 19-30610  
United States Court of Appeals, Fifth Circuit.

DARRELL BERRY; CONSTANCE LAFAYETTE

Plaintiff - Appellants  
v.

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, "MERS"; DOES 1 through 100 "inclusive", et al.

Defendants - Appellees.

No. 19-30610

On Appeal from the United States District Court of the Middle District of Louisiana,

USDC No. 3:18-CV-888

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## The Record of Excerpts

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Respectfully submitted this 7<sup>th</sup> Day of August 2020.

/s/Darrell Berry and /s/ Constance Lafayette

Darrell Berry, and Constance Lafayette  
Pro Se/Appellant  
Address: 8338 Greenmoss Drive  
Baton Rouge, Louisiana 70806  
Telephone: 225-610-8633

**The Record Excerpts**  
**19-30610**

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**1.Cover Letter  
ROA Citations may not be correct**

Case Number 19-30836

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In the United States Court of Appeals,  
For the Fifth Circuit.

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DARRELL BERRY; CONSTANCE LAFAYETTE

PlaintiffS - Appellants

v.

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION,  
"Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS  
CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELETRONIC REGISTRATION  
SYSTEM, "MERS"; DOES 1 through 100 "inclusive", et al.

Defendants - Appellees

**NOTICE: CORRECT ROA CITATIONS NEVER PROVIDED AND DOCUMENTS ARE**  
**MISSING FROM THE OFFICIAL RECORD PROVIDED**

COME NOW, Pro Se Litigants Darrell Berry and Constance Lafayette Plaintiffs/Appellants providing notice that the Official Record with correct pagination still has not been provided to date. According the first and second CD provided, the ROA Citations were never listed in the bottom right hand corner of all pages. Please note Pro Se Litigants did the best we could with the Record provided to us. If the ROA Citations do not line up with what the Middle District Court and the Fifth Circuit Court of Appeals has on file it is probably because we were not provided with same ROA Citations. **Therefore, Plaintiffs/Appellants request leave to correct ROA citations if the Court finds the ROA numbers do not coincide.**

Again the only document with all of the ROA pagination is the Docket which indicates the numbers should have been generated on all pages. **Additionally, Document item number 9 is listed as page 1006 (See Docket). Since it is so early in the pagination process all of the subsequent page numbers may be incorrect.**

**Additionally Plaintiffs noticed there are documents missing from the CD.**  
Specifically, the following document numbered items listed on the Middle District Docket sheet are missing:

32	34	43	59	77	92
33	42	48	75	83	

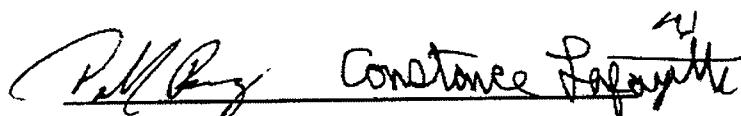
Also there are date entries but no documents for signed Orders, Motions and Notices. The date entries are:

10/15/2018	07/03/2019	12/13/2019	01/06/2020	01/10/2020
03/07/2019	07/29/2019	12/16/2019	01/07/2020	01/13/2020
03/19/2019	09/18/2019	12/17/2019	01/10/2020	01/22/2020
04/15/2019	11/07/2019	12/20/2019	01/10/2020	02/06/2020

Appellants are still confused why there were so many barriers to getting a complete correct copy of the official record with proper pagination after numerous requests. This has hindered the filing of the Appellate Brief.

So Appellants did calculations to come up with the proper ROA citations subtracting one volume from another to try and come up with the correct page number. Also please note all of the items in the Record Excerpts were printed from CD 2 as the Court can see the ROA Citations are not there.

Respectfully submitted, August 4, 2020.



Darrell Berry and Constance Lafayette, Pro Se  
Address: 8338 Greenmoss Drive  
Baton Rouge, Louisiana 70806  
Telephone: 225-610-8633

APPEAL, ATTENTION

**U.S. District Court  
Middle District of Louisiana (Baton Rouge)  
CIVIL DOCKET FOR CASE #: 3:18-cv-00888-JWD-SDJ**

Berry et al v. Loancity et al

Assigned to: Judge John W. deGravelles

Referred to: Magistrate Judge Scott D. Johnson

Demand: \$100,000

Case in other court: 5th Circuit, 19-30610

Cause: 28:1332 Diversity-Other Contract

Date Filed: 10/05/2018

Jury Demand: Plaintiff

Nature of Suit: 190 Contract; Other

Jurisdiction: Diversity

**Plaintiff**

**Darrell Berry**

represented by **Darrell Berry**  
8338 Greenmoss Drive  
Baton Rouge, LA 70806  
225-610-8633  
PRO SE

**Plaintiff**

**Constance Lafayette**

represented by **Constance Lafayette**  
8338 Greenmoss Drive  
Baton Rouge, LA 70806  
PRO SE

V.

**Defendant**

**Wells Fargo Bank, N.A.**

represented by **Kasee Sparks Heisterhagen**  
DOJ-USAO  
63 South Royal St.  
Suite 600  
Mobile, AL 36602  
251-415-7186  
Email: ksparks@burr.com  
**TERMINATED: 03/19/2019**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Christopher Daniel Meyer**  
Burr & Forman LLP  
190 E. Capitol Street  
Suite M-100  
Jackson, MS 39201  
601-355-3434  
Fax: 601-355-5150  
Email: cmeyer@burr.com  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Federal Home Loan Mortgage  
Corporation**  
*"Freddie Mac" as trustee for securitized trust*

represented by **Lindsay Meador Young**  
Galloway, Johnson, Tompkins, Burr & Smith  
328 Settlers Trace Blvd.  
Lafayette, LA 70508  
337-735-1760  
Fax: 337-993-0933  
Email: lmeador@gallowaylawfirm.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Benjamin Givens Torian**  
Galloway, Johnson, Tompkins, Burr & Smith  
328 Settlers Trace Blvd.  
Lafayette, LA 70508  
(337) 735-1760  
Email: btorian@gallowaylawfirm.com  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Loancity**

**Defendant**

**Freddie Mac Multiclass Certificates  
Series 3113 Trust**  
**TERMINATED: 09/18/2019**

represented by **Lindsay Meador Young**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Benjamin Givens Torian**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Mortgage Electronic Registration System  
"MERS"**

represented by **Lindsay Meador Young**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Benjamin Givens Torian**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Does 1-100**  
*"inclusive"*

**Defendant**

**John Doe 1**

Defendant**John Doe 2***Sponsor of the Freddie Mac Multiclass  
Certificates, Series 3113 Trust*

Date Filed	#	Docket Text
10/05/2018	<u>1 (p.14)</u>	JOINT NOTICE OF REMOVAL from Parish of East Baton Rouge. Case Number 672792. (Filing fee \$ 400 receipt number ALAMDC-1842932), filed by Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.14)</u> Attachment Civil Cover Sheet, # <u>2 (p.92)</u> Attachment State Court Documents, # <u>3 (p.95)</u> Attachment Certificate of Service)(Heisterhagen, Kasee) Modified on 10/5/2018 to flatten a document (KAH). Modified on 10/9/2018 to edit text and add party (LLH). Modified on 10/24/2018 to substitute removal as per Order # 8 (LLH). (Entered: 10/05/2018)
10/12/2018	<u>2 (p.92)</u>	MOTION to Enroll Benjamin G. Torian as Additional Attorney by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1 (p.14)</u> Proposed Pleading; Order)(Meador, Lindsay) (Entered: 10/12/2018)
10/12/2018	<u>3 (p.95)</u>	MOTION to Substitute Notice of Removal by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System, Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.14)</u> Proposed Order)(Heisterhagen, Kasee) (Entered: 10/12/2018)
10/12/2018	<u>4 (p.106)</u>	MOTION to Dismiss for Failure to State a Claim by Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.14)</u> Memorandum in Support)(Heisterhagen, Kasee) (Entered: 10/12/2018)
10/12/2018	<u>5 (p.128)</u>	MOTION to Dismiss for Failure to State a Claim by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1 (p.14)</u> Memorandum in Support, # <u>2 (p.92)</u> Exhibit)(Meador, Lindsay) (Entered: 10/12/2018)
10/15/2018	?	MOTION(S) REFERRED: <u>3 (p.95)</u> MOTION to Substitute Notice of Removal , <u>2 (p.92)</u> MOTION to Enroll Benjamin G. Torian as Additional Attorney . This motion is now pending before the USMJ. (KAH) (Entered: 10/15/2018)
10/15/2018	6	NOTICE of Briefing Schedule on <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim and <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim : Opposition to the motion shall be filed within 21 days from the filing of the motion and shall not exceed 10 pages excluding attachments. The mover may file a reply brief within 14 days of the filing of the opposition and shall be limited to a total of 5 pages. No motion for leave will be required. Sur-Reply briefs will be permitted only with leave of Court for extraordinary reasons supported by sufficient facts. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 10/15/2018)
10/19/2018	7	ORDER granting <u>2 (p.92)</u> Motion to Enroll as Co-Counsel. Added attorney Benjamin Givens Torian as co-counsel for Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust and Mortgage Electronic Registration System. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 10/19/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF

Date Filed	#	Docket Text
		document associated with this entry.) (JSL) (Entered: 10/19/2018)
10/19/2018	8	ORDER granting <u>3 (p.95)</u> MOTION to Substitute Notice of Removal filed by Mortgage Electronic Registration System, Wells Fargo Bank, N.A., Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust. The Joint Notice of Removal (R. Doc. 1) shall be substituted with the Corrected Joint Notice of Removal (R. Doc. 3). Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 10/19/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 10/19/2018)
10/22/2018	<u>9</u> <u>(p.1006)</u>	Supplemental Exhibit(s) to <u>1 (p.14)</u> Notice of Removal, by Wells Fargo Bank, N.A.. (Heisterhagen, Kasee) Modified on 10/22/2018 to edit the text (NLT). (Entered: 10/22/2018)
10/25/2018	<u>10</u> <u>(p.169)</u>	MOTION for Verified Emergency Petition for Temporary Restraining Order and/or Preliminary Injunction and Declaratory Relief by Darrell Berry. (Attachments: # <u>1 (p.14)</u> Proposed Pleading.) (EDC) (Entered: 10/25/2018)
10/25/2018	<u>11</u> <u>(p.182)</u>	MOTION for Extension of Time to File Response to <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim . <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim by Darrell Berry. (EDC) (Entered: 10/25/2018)
10/26/2018	12	ORDER granting <u>11 (p.182)</u> Motion for Extension of Time to File Response to <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim and <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim . Opposition to motions shall be filed by 12/3/2018 and any replies are due by 12/14/2018. Signed by Judge John W. deGravelles on 10/26/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 10/26/2018)
10/26/2018	<u>13</u> <u>(p.185)</u>	NOTICE of Service for Motion for Extension of Time to Answer Motion to Remove and Dismiss Plaintiffs' case as well as Preliminary Injunction by Darrell Berry. (EDC) (Entered: 10/30/2018)
11/01/2018	<u>14</u> <u>(p.187)</u>	SUGGESTION OF BANKRUPTCY Upon the Record as to Darrell Berry and Constance Lafayette Berry by Wells Fargo Bank, N.A.. (Heisterhagen, Kasee) (Entered: 11/01/2018)
11/05/2018	15	NOTICE of Briefing Schedule on SUGGESTION OF BANKRUPTCY (Doc. 14): The parties shall file simultaneous briefs within 7 days, not to exceed 5 pages, describing the impact of the Bankruptcy on the proceedings. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 11/05/2018)
11/05/2018	?	Set/Reset Deadlines: Brief due by 11/13/2018. (LLH) (Entered: 11/07/2018)
11/13/2018	<u>16</u> <u>(p.189)</u>	Brief regarding <u>14 (p.187)</u> Suggestion of Bankruptcy . (Heisterhagen, Kasee) (Entered: 11/13/2018)
11/13/2018	<u>17</u> <u>(p.191)</u>	Brief regarding <i>Defendants Suggestion of Bankruptcy</i> . (Medor, Lindsay) (Entered: 11/13/2018)
12/03/2018	<u>18</u> <u>(p.194)</u>	MEMORANDUM in Opposition to <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry, Constance Lafayette. (EDC) (Entered: 12/04/2018)

Date Filed	#	Docket Text
12/07/2018	<u>19</u> (p.200)	Amended MEMORANDUM in Opposition to <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim, <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 12/11/2018)
12/14/2018	20 ?	STRICKEN FROM THE RECORD REPLY to <u>18 (p.194)</u> Memorandum in Opposition to Motion, <u>19 (p.200)</u> Memorandum in Opposition to Motion, <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) Modified on 12/17/2018 to remove the document as it has been stricken in accordance with record document 23 (NLT). (Entered: 12/14/2018)
12/14/2018	21 ?	NOTICE OF NON-COMPLIANCE with LR 7(g) as to 20 Reply to Response to Motion. REQUIRED CORRECTION: A combined Motion for Leave to Exceed the Page Limits and Motion to Strike the Incorrect Pleading must be filed within 24 hours of this notice. Otherwise, the original filing may be stricken by the Court without further notice. (NLT) (Entered: 12/14/2018)
12/14/2018	<u>22</u> (p.227)	MOTION for Leave to File Excess Pages and Strike Previously Filed Reply by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1</u> (p.14) Memorandum in Support, # <u>2</u> (p.92) Proposed Pleading; # <u>3</u> (p.95) Proposed Pleading;)(Meador, Lindsay) (Entered: 12/14/2018)
12/17/2018	<u>23</u> (p.241)	ORDER granting <u>22 (p.227)</u> MOTION for Leave to File Excess Pages and Strike Previously Filed Reply. Signed by Judge John W. deGravelles on 12/17/2018. (NLT) (Entered: 12/17/2018)
12/17/2018	<u>24</u> (p.242)	REPLY to <u>19 (p.200)</u> Amended Memorandum in Opposition and <u>18 (p.194)</u> Memorandum in Opposition to <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (NLT) (Entered: 12/17/2018)
01/02/2019	<u>25</u> (p.250)	REPLY to <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim, <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 01/03/2019)
01/18/2019	<u>26</u> (p.301)	REQUEST for Judicial Notice by Darrell Berry. (EDC) (Entered: 01/22/2019)
01/18/2019	<u>27</u> (p.306)	AMENDED REPLY to <u>4 (p.106)</u> MOTION to Dismiss for Failure to State a Claim, <u>5 (p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Attachment)(EDC) (Entered: 01/22/2019)
03/06/2019	28 ?	Notice to Counsel: Status Conference set for 4/11/2019 at 11:30 AM in chambers before Judge John W. deGravelles.  Evidence, in electronic format, shall be provided in accordance with Local Rule 79 and Administrative Procedures.  (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 03/06/2019)

Date Filed	#	Docket Text
03/07/2019	29 (p.409)	MOTION to Enroll Christopher D. Meyer as Additional Attorney by Wells Fargo Bank, N.A.. (Attachments: # <a href="#">1</a> (p.14) Proposed Pleading; Proposed Order)(Heisterhagen, Kasee) (Entered: 03/07/2019)
03/07/2019	?	MOTION(S) REFERRED: <a href="#">29</a> (p.409) MOTION to Enroll Christopher D. Meyer as Additional Attorney . This motion is now pending before the USMJ. (KAH) (Entered: 03/07/2019)
03/13/2019	30 ?	ORDER granting <a href="#">29</a> (p.409) Motion to Enroll Additional Counsel of Record. Attorney Christopher Daniel Meyer added as additional counsel of record for Wells Fargo Bank, N.A. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 3/13/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 03/13/2019)
03/19/2019	31 (p.413)	MOTION for Kasee Heisterhagen to Withdraw as Attorney by Wells Fargo Bank, N.A.. (Attachments: # <a href="#">1</a> (p.14) Proposed Pleading; Proposed Order)(Heisterhagen, Kasee) (Entered: 03/19/2019)
03/19/2019	?	MOTION(S) REFERRED: <a href="#">31</a> (p.413) MOTION for Kasee Heisterhagen to Withdraw as Attorney . This motion is now pending before the USMJ. (SGO) (Entered: 03/19/2019)
03/19/2019	32 ?	ORDER granting <a href="#">31</a> (p.413) Motion to Withdraw Attorney Kasee S. Heisterhagen as counsel for Wells Fargo Bank, N.A. Christopher D. Meyer of the law firm Burt &Forman, LLP will continue as counsel for Wells Fargo Bank, N.A. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 3/19/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 03/19/2019)
04/10/2019	?	Notice to Counsel: Status conference set for April 11, 2019 at 11:30 a.m. is canceled. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 04/10/2019)
04/11/2019	34 ?	ORDER: Plaintiffs seek a temporary restraining order and other injunctive release to prevent Defendants "from selling, attempting to sell, or causing to be sold" Plaintiffs' property. (Doc. 10 at 78.) Plaintiffs' motion was filed on October 25, 2018. (Id.) Plaintiffs alleged that the foreclosure was to take place on October 31, 2018. However, Defendants have indicated in briefing that there is no such threat of foreclosure. Specifically, Defendants have asserted: "Plaintiffs have not alleged that Wells Fargo has invoked foreclosure proceedings against the Plaintiffs property, so Plaintiffs are not facing any substantial threat of irreparable harm at the hands of Wells Fargo." (Doc. 4-1 at 15; see also Doc. 5-1 at 16 (arguing same for other Defendants).) Given this conflict and the time since Plaintiffs filed their TRO, the parties are hereby given until 12:00 p.m. on Thursday, April 18, 2019, to file into the record short briefs (not to exceed 5 pages) describing the status of the alleged foreclosure action. with supporting evidence. Signed by Judge John W. deGravelles on 04/11/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 04/11/2019)
04/11/2019	35 (p.416)	NOTICE of Pro Se E-Service and E-Notice Consent Form by Darrell Berry (EDC) (Entered: 04/11/2019)
04/12/2019		

Date Filed	#	Docket Text
	<u>36</u> (p.417)	NOTICE of Status of the Foreclosure Action by Darrell Berry (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 04/15/2019)
→ 04/15/2019	?	Set/Reset Deadlines (Court Use Only) (SGO) (Entered: 04/15/2019)
04/17/2019	<u>37</u> (p.435)	Response to 34 Court's Order Regarding Foreclosure filed by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Exhibit A - Assignment)(Meyer, Christopher) Modified on 4/17/2019 to edit text. (EDC). (Entered: 04/17/2019)
04/23/2019	<u>38</u> (p.441)	ORDER denying <u>10</u> (p.169) Motion for Temporary Restraining Order and for Preliminary Injunction. Signed by Judge John W. deGravelles on 4/23/2019. (SWE) (Entered: 04/23/2019)
07/03/2019	<u>39</u> (p.443)	RULING AND ORDER granting <u>4</u> (p.106) Motion to Dismiss for Failure to State a Claim. Plaintiffs' claims against Defendant Wells Fargo are DISMISSED WITH PREJUDICE. Signed by Judge John W. deGravelles on 07/03/2019. (KDC) (Entered: 07/03/2019)
07/03/2019	<u>40</u> (p.463)	ORDER: All dispositive motions in this matter are referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), FRCP 72(b), and LR 72(b). The United States Magistrate Judge shall prepare findings of fact, conclusions of law and a report and recommendation which shall be submitted to undersigned for review. FURTHER, in all non-dispositive motions, the United States Magistrate Judge shall be authorized to rule on such motions as provided in 28 U.S.C. § 636, FRCP. 72(a), and LR 72(b). FURTHER ORDERED that if a hearing is required on any motion referred to the United States Magistrate Judge, the United States Magistrate Judge shall be authorized to conduct whatever hearings which may be necessary to decide the pending motion. FURTHER ORDERED that all pending pre-trial matters shall be conducted by the Magistrate Judge, including a preliminary pre-trial conference. Signed by Judge John W. deGravelles on 07/03/2019. (NLT) (Entered: 07/03/2019)
→ 07/03/2019	?	MOTION(S) REFERRED: <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim . This motion is now pending before the USMJ. (NLT) (Entered: 07/03/2019)
07/18/2019	<u>41</u> (p.465)	MOTION for Extension of Time to Respond to the Court's Ruling by Darrell Berry. (EDC) (Entered: 07/19/2019)
→ 07/26/2019	<u>42</u> ?	MOTION for Leave to File Amended Complaint and Memorandum of Law in Support by Darrell Berry. (Attachments: # <u>1</u> (p.14) Order, # <u>2</u> (p.92) Exhibit)(EDC) Modified on 7/30/2019 to un-terminate motion per JWD chambers (SWE). (Entered: 07/29/2019)
→ 07/29/2019	?	MOTION(S) REFERRED: <u>42</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support. This motion is now pending before the USMJ. (EDC) (Entered: 07/29/2019)
→ 07/29/2019	<u>43</u> ?	ORDER granting <u>41</u> (p.465) MOTION for Extension of Time until 8/5/2019 to Respond to the Court's Ruling filed by Darrell Berry. Signed by Judge John W. deGravelles on 07/29/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) Modified on 7/30/2019 to edit the docket text per chambers (SWE). (Entered: 07/29/2019)
07/29/2019	<u>44</u>	MOTION to Reconsider <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State

Date Filed	#	Docket Text
	<u>(p.469)</u>	a Claim by Darrell Berry. (Attachments: # <u>1</u> <u>(p.14)</u> Exhibit)(EDC) (Entered: 07/30/2019)
08/01/2019	<u>45</u> <u>(p.504)</u>	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>39</u> <u>(p.443)</u> Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry, Constance Lafayette. (Attachments: # <u>1</u> <u>(p.14)</u> Order)(EDC) (Entered: 08/01/2019)
08/07/2019	<u>46</u> <u>(p.507)</u>	RESPONSE and Memorandum of Law in Opposition to <u>44</u> <u>(p.469)</u> MOTION for Reconsideration of <u>39</u> <u>(p.443)</u> Order on Motion to Dismiss for Failure to State a Claim filed by Wells Fargo Bank, N.A.. (Meyer, Christopher) Modified on 8/8/2019 to edit the docket text (SWE). (Entered: 08/07/2019)
08/19/2019	<u>47</u> <u>(p.513)</u>	Response to <u>46</u> <u>(p.507)</u> Response in Opposition to <u>44</u> <u>(p.469)</u> MOTION for Reconsideration of <u>39</u> <u>(p.443)</u> Order on Motion to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> <u>(p.14)</u> Affidavit)(EDC) (Entered: 08/19/2019)
08/30/2019	<u>48</u> <u>?</u>	ORDER denying <u>42</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support filed by Darrell Berry. Plaintiff has failed to provide a proposed Amended Complaint for the Court's consideration. Plaintiff may seek leave to amend, if applicable, after the district judge rules on the pending motion to dismiss [R. Doc. 5]. Defendant may also address any possible amendments in the context of an objection to a report and recommendation issued on such motion identifying deficiencies in the current complaint. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 8/30/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard) (Entered: 08/30/2019)
08/30/2019	<u>49</u> <u>(p.525)</u>	REPORT AND RECOMMENDATIONS regarding <u>5</u> <u>(p.128)</u> MOTION to Dismiss for Failure to State a Claim filed by Mortgage Electronic Registration System, Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust. It is the recommendation of the Magistrate Judge that Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System's Motion to Dismiss (Doc. 5) be GRANTED, and Plaintiffs' claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System be DISMISSED WITH PREJUDICE. Objections to R&R due by 9/13/2019. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 8/30/2019. (KAH) (Entered: 08/30/2019)
08/30/2019	<u>50</u> <u>(p.544)</u>	Unopposed MOTION for Leave to File Surreply in Opposition to Plaintiffs' <u>44</u> <u>(p.469)</u> Motion to Reconsider by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> <u>(p.14)</u> Exhibit A - Proposed Surreply, # <u>2</u> <u>(p.92)</u> Proposed Pleading; Proposed Order)(Meyer, Christopher) Modified on 9/3/2019 to add docket entry relationship (SWE). (Entered: 08/30/2019)
09/04/2019	<u>51</u> <u>(p.552)</u>	ORDER granting <u>50</u> <u>(p.544)</u> Unopposed MOTION for Leave to File Surreply in Opposition to Plaintiffs' Motion to Reconsider filed by Wells Fargo Bank, N.A.. Signed by Judge John W. deGravelles on 9/4/2019. (SWE) (Entered: 09/04/2019)
09/04/2019	<u>52</u> <u>(p.553)</u>	SURREPLY IN OPPOSITION to <u>44</u> <u>(p.469)</u> MOTION for Reconsideration of <u>39</u> <u>(p.443)</u> Order on Motion to Dismiss for Failure to State a Claim filed by Wells Fargo Bank, N.A. (SWE) (Entered: 09/04/2019)

Date Filed	#	Docket Text
09/16/2019	<u>53</u> (p.557)	MOTION for Leave to File Sur-Reply by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading; # <u>2</u> (p.92) Order)(EDC) (Entered: 09/17/2019)
09/16/2019	<u>54</u> (p.574)	Final Ruling and Order/Motion to Reconsider of <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (Attachments: # <u>1</u> (p.14) Order)(EDC) (Entered: 09/17/2019)
09/16/2019	<u>55</u> (p.596)	MOTION for Leave to File Amended Complaint and Memorandum of Law in Support by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading; # <u>2</u> (p.92) Exhibit, # <u>3</u> (p.95) Attachment, # <u>4</u> (p.106) Order)(EDC) Modified on 9/23/2019 in accordance with record document 59.(EDC). (Entered: 09/17/2019)
09/16/2019	<u>56</u> (p.608)	REQUEST for Judicial Notice by Darrell Berry. (EDC) (Entered: 09/17/2019)
09/16/2019	<u>57</u> (p.613)	AFFIDAVIT/Affirmation in Opposition to <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (EDC) (Entered: 09/17/2019)
09/17/2019	<u>58</u> (p.616)	OPINION Adopting <u>49</u> (p.525) Report and Recommendation of the U.S. Magistrate Judge; granting <u>5</u> (p.128) Motion to Dismiss for Failure to State a Claim. Plaintiff's claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System are DISMISSED WITH PREJUDICE. Signed by Judge John W. deGravelles on 9/17/2019. (EDC) Modified on 9/18/2019 to edit text. (EDC). (Entered: 09/17/2019)
09/18/2019	?	MOTION(S) REFERRED: <u>55</u> (p.596) MOTION for Leave to File Amended Complaint and Memorandum of Law in Support. This motion is now pending before the USMJ. (EDC) (Entered: 09/18/2019)
09/19/2019	?	ORDER denying <u>55</u> (p.596) MOTION for Leave to File Amended Complaint and Memorandum of Law in Support filed by Darrell Berry. The district judge has dismissed plaintiffs' claims with prejudice. (R. Docs. 39 and 58). The Court will not allow the claims to be revived by way of amended complaint. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 9/19/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard) (Entered: 09/19/2019)
09/19/2019	<u>60</u> (p.617)	ORDER TO SHOW CAUSE: Plaintiffs shall show cause within 14 days, in writing, why their claims asserted against defendant LoanCity should not be dismissed because of their failure to serve this defendant within the time allowed by Fed. R. Civ. P. Rule 4(m). Show Cause Response due by 9/28/2019. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 9/19/2019. (KAH) (Entered: 09/19/2019)
09/27/2019	<u>61</u> (p.619)	RESPONSE TO ORDER TO SHOW CAUSE regarding <u>60</u> (p.617) Order to Show Cause. (Attachments: # <u>1</u> (p.14) Order, # <u>2</u> (p.92) Exhibit)(EDC) (Entered: 09/30/2019)
10/04/2019	<u>62</u> (p.626)	NOTICE OF APPEAL of <u>58</u> (p.616) OPINION Adopting Report and Recommendation, Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry, Constance Lafayette. (SWE) (Entered: 10/07/2019)
10/22/2019	<u>63</u> (p.630)	TRANSCRIPT REQUEST by Darrell Berry, Constance Lafayette for Transcript to Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836.. (Attachments: # <u>1</u> (p.14) Exhibit A, # <u>2</u>

Date Filed	#	Docket Text
		(p.92) Proposed Order)(KMW) Modified on 10/23/2019 to edit docket text (KMW). Modified on 10/24/2019 and form forwarded to the Court Reporter and DQA via email. (KMW) (Entered: 10/23/2019)
10/22/2019	<u>64</u> (p.646)	TRANSCRIPT REQUEST by Darrell Berry, Constance Lafayette for Transcript to Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836.. (Attachments: # <u>1</u> (p.14) Exhibit A, # <u>2</u> (p.92) Proposed Order)(KMW) Modified on 10/23/2019 to edit the docket text (KMW). Modified on 10/24/2019 and form forwarded to the Court Reporter and DQA via email. (KMW) (Entered: 10/23/2019)
10/30/2019	<u>65</u> (p.662)	TRANSCRIPT REQUEST by Darrell Berry for dates 8/1/2019, 10/4/2019, and 10/25/2018. re <u>62</u> (p.626) Notice of Appeal, <u>45</u> (p.504) Notice of Appeal (KMW) Modified on 10/31/2019 to edit the docket text (KMW). (Entered: 10/31/2019)
10/30/2019	<u>66</u> (p.663)	AFFIDAVIT/Affirmation Transmittal of Information to the Fifth Circuit Court of Appeals by Darrell Berry. (KMW) (Entered: 10/31/2019)
10/30/2019	<u>67</u> (p.668)	Amendment to the Request for Transcript to the Fifth Circuit Court of Appeals and Confirmation all Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836 by Darrell Berry. (Attachments: # <u>1</u> (p.14) Attachment, # <u>2</u> (p.92) Proposed Order)(KMW) (Entered: 10/31/2019)
11/06/2019	<u>68</u> (p.682)	RULING and ORDER granting <u>53</u> (p.557) Motion for Leave to File Sur-Reply; granting in part and denying in part <u>44</u> (p.469) Motion for Reconsideration. The motion is GRANTED in part and Plaintiffs shall be given thirty (30) days in which to amend the operative complaint to attempt to state a viable claim against Wells Fargo. In all other respects, Plaintiff's motion is DENIED. Signed by Judge John W. deGravelles on 11/6/2019. (EDC) (Entered: 11/06/2019)
11/06/2019	<u>69</u> (p.688)	Sur-Reply in Opposition to <u>52</u> (p.553) Reply to Response to Motion to Reconsider filed by Darrell Berry. (EDC) (Entered: 11/06/2019)
11/06/2019	?	Set Deadlines: Amended Pleadings due by 12/6/2019. (EDC) (Entered: 11/06/2019)
11/07/2019	<u>70</u> (p.701)	ORDER For the reasons given in the Court's <u>68</u> (p.682) Ruling and Order on MTR I, the Final Ruling and Oder (sic) for <u>54</u> (p.574) Motion to Reconsider is GRANTED IN PART AND DENIED IN PART. Plaintiff's <u>67</u> (p.668) Amendment to the Request for Transcript to the Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836 (sic) is REFERRED to the Magistrate Judge. Signed by Judge John W. deGravelles on 11/7/2019. (SWE) (Entered: 11/07/2019)
11/07/2019	?	MOTION(S) REFERRED: <u>67</u> (p.668) MOTION to Amend <u>64</u> (p.646) Request, <u>63</u> (p.630) Request,. This motion is now pending before the USMJ. (SWE) (Entered: 11/07/2019)
12/05/2019	<u>71</u> (p.703)	AMENDED PETITION against All Defendants, filed by Darrell Berry, Constance Lafayette.(EDC) (Entered: 12/06/2019)
12/05/2019	<u>72</u> (p.735)	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>68</u> (p.682) Order on Ruling and Order by Darrell Berry. (EDC) (Main Document 72 replaced on 2/5/2020) (EDC). Modified on 2/5/2020 to include missing page.(EDC). (Entered: 12/06/2019)

Date Filed	#	Docket Text
12/05/2019	<u>73</u> (p.739)	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>68</u> (p.682) Ruling and Order by Darrell Berry. (EDC) (Entered: 12/06/2019)
12/13/2019	<u>74</u> (p.743)	MOTION for Extension of Time to File Answer to <u>71</u> (p.703) Amended Complaint by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Proposed Pleading; Exhibit A - Proposed Order)(Meyer, Christopher) (Entered: 12/13/2019)
12/13/2019	?	MOTION(S) REFERRED: <u>74</u> (p.743) MOTION for Extension of Time to File Answer to <u>71</u> (p.703) Amended Complaint . This motion is now pending before the USMJ. (EDC) (Entered: 12/13/2019)
12/16/2019	<u>75</u> ?	ORDER granting <u>74</u> (p.743) Motion for Extension of Time to Respond to Amended Complaint. Defendant Wells Fargo Bank, N.A. is granted an extension of 21 days, or until 1/9/2020, to answer or otherwise plead. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/16/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 12/16/2019)
12/17/2019	<u>76</u> (p.747)	MOTION for Extension of Time to Respond to <u>71</u> (p.703) Amended Complaint by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1</u> (p.14) Exhibit A - Proposed Order)(Meador, Lindsay) Modified on 12/17/2019 to edit the text (SWE). (Entered: 12/17/2019)
12/17/2019	?	MOTION(S) REFERRED: <u>76</u> (p.747) MOTION for Extension of Time to Respond to <u>71</u> (p.703) Amended Complaint . This motion is now pending before the USMJ. (SWE) (Entered: 12/17/2019)
12/20/2019	<u>77</u> ?	ORDER granting <u>76</u> (p.747) Motion for Extension of Time to Respond to Amended Complaint. Defendants Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, and Mortgage Electronic Registration System are granted an extension of time, until 1/9/2019, to answer or otherwise plead. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/20/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 12/20/2019)
12/31/2019	<u>78</u> (p.751)	AMENDED Petition with Exhibits A-O against Does 1-100, Federal Home Loan Mortgage Corporation, Loancity, Mortgage Electronic Registration System, Wells Fargo Bank, N.A., John Doe 1, and John Doe 2 filed by Darrell Berry, Constance Lafayette. (Attachments: # <u>1</u> (p.14) Exhibit)(KMW) Modified on 1/7/2020 to edit the docket text (KMW). (Entered: 01/02/2020)
01/03/2020	<u>79</u> (p.895)	MOTION to Dismiss Pursuant to FRCP 12(b)(6) by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) (Entered: 01/03/2020)
01/03/2020	<u>80</u> (p.898)	MOTION to Proceed on Appeal in forma pauperis by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading; # <u>2</u> (p.92) Exhibit)(KAH) (Entered: 01/06/2020)
01/03/2020	<u>81</u> (p.903)	AMENDED Petition with Exhibits E1, F, O on Pages 7, 14, 16, 19 and 31 against, Does 1-100, Federal Home Loan Mortgage Corporation, Loancity, Mortgage Electronic Registration System, Wells Fargo Bank, N.A., John Doe 1, and John Doe 2 filed by Darrell Berry.(KAH) Modified on 1/7/2020 to edit text (LLH). (Entered:

Date Filed	#	Docket Text
		01/06/2020)
01/06/2020	?	MOTION(S) REFERRED: <u>79 (p.895)</u> MOTION to Dismiss Pursuant to FRCP 12(b)(6). This motion is now pending before the USMJ. (KMW) (Entered: 01/06/2020)
01/06/2020	<u>82</u> (p.910)	MEMORANDUM in Support of <u>79 (p.895)</u> MOTION to Dismiss Pursuant to FRCP 12(b)(6) filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) (Entered: 01/06/2020)
01/07/2020	?	ORDER REFERRING MOTION to USMJ: <u>80 (p.898)</u> MOTION for Leave to Appeal in forma pauperis filed by Darrell Berry. Signed by Judge John W. deGravelles on 01/07/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 01/07/2020)
01/09/2020	<u>84</u> (p.915)	MOTION to Dismiss for Failure to State a Claim by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Memorandum in Support, # <u>2</u> (p.92) Exhibit A - Mortgage, # <u>3</u> (p.95) Exhibit B - Note, # <u>4</u> (p.106) Exhibit C - Assignment)(Meyer, Christopher) (Entered: 01/09/2020)
01/10/2020	?	MOTION(S) REFERRED: <u>84 (p.915)</u> MOTION to Dismiss for Failure to State a Claim . This motion is now pending before the USMJ. (KAH) (Entered: 01/10/2020)
01/10/2020	<u>85</u> (p.959)	MOTION to Dismiss Pursuant to Rule 12(B)(6) by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1</u> (p.14) Memorandum in Support)(Young, Lindsay) (Entered: 01/10/2020)
01/10/2020	?	MOTION(S) REFERRED: <u>85 (p.959)</u> MOTION to Dismiss Pursuant to Rule 12(B)(6). This motion is now pending before the USMJ. (SWE) (Entered: 01/10/2020)
01/13/2020	<u>86</u> (p.967)	Notice of Substitution re: Motion to Dismiss Pursuant to 12(B)(6) (Doc. 85) by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1</u> (p.14) Exhibit A, # <u>2</u> (p.92) Exhibit B, # <u>3</u> (p.95) Exhibit C)(Young, Lindsay) Modified on 1/13/2020 to edit text. (EDC). (Entered: 01/13/2020)
01/13/2020	?	MOTION(S) REFERRED: <u>86 (p.967)</u> MOTION to Substitute Motion to Dismiss Pursuant to 12(B)(6) (Doc. 85) . This motion is now pending before the USMJ. (EDC) (Entered: 01/13/2020)
01/13/2020	<u>87</u> (p.977)	Reply to <u>85 (p.959)</u> MOTION to Dismiss Pursuant to Rule 12(B)(6) filed by Darrell Berry, Constance Lafayette. (KMW) (Entered: 01/14/2020)
01/17/2020	<u>88</u> (p.988)	MOTION for Leave to File Sur-Reply in Opposition to Defendant's Memorandum in Support of Motion to Dismiss and Motion for Extension of Time by Darrell Berry, Constance Lafayette. (Attachments: # <u>1</u> (p.14) Exhibit A, # <u>2</u> (p.92) Proposed Order)(KMW) (Entered: 01/21/2020)
01/22/2020	?	MOTION(S) REFERRED: <u>88 (p.988)</u> MOTION for Leave to File Sur-Reply in Opposition to Defendant's Memorandum in Support of Motion to Dismiss and Motion for Extension of Time. This motion is now pending before the USMJ. (KMW) (Entered: 01/22/2020)

Date Filed	#	Docket Text
01/31/2020	<u>89</u> (p.995)	NOTICE of Correction to Fifth Circuit Court of Appeals' Official Caption by Darrell Berry. (EDC) (Entered: 01/31/2020)
02/05/2020	<u>90</u> (p.998)	MOTION for Leave to File Sur-Reply in Opposition to Defendants' Memorandum of Law in Support of Motion to Dismiss and Motion for an Extension of Time by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Order)(KMW) (Entered: 02/06/2020)
02/05/2020	<u>91</u> (p.1002)	NOTICE of Correction to Fifth Circuit Court of Appeals' Transmittal of Complete Document 72 (Page 2 of 4 Signature Page) by Darrell Berry (KMW) (Entered: 02/06/2020)
02/06/2020	?	MOTION(S) REFERRED: <u>90</u> (p.998) MOTION for Leave to File Sur-Reply in Opposition to Defendants' Memorandum of Law in Support of Motion to Dismiss and Motion for an Extension of Time. This motion is now pending before the USMJ. (KMW) (Entered: 02/06/2020)
02/19/2020	?	NOTICE: Pursuant to General Order 2020-03, this case is reassigned to Magistrate Judge Scott D. Johnson (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(NLT) (Entered: 02/19/2020)
03/26/2020	<u>93</u> (p.1005)	ORDER granting <u>80</u> (p.898) Motion for Leave to Appeal in forma pauperis. Signed by Magistrate Judge Scott D. Johnson on 03/25/2020. (LT) (Entered: 03/26/2020)
04/08/2020	?	USCA Case Number 19-30610 for <u>62</u> (p.626) Notice of Appeal filed by Darrell Berry, Constance Lafayette. (SWE) (Entered: 04/08/2020)

Case #: 3:18-cv-00888-JWD-SDJ

This is the finalized Official Record  
Sent to the USCA 5<sup>th</sup> Circuit + Respondents  
as of August 2020.

19-30610 is designated for September 17, 2019 order  
corrections never sent of complete Official Record

**July 3, 2019 Order – Wells Fargo**

**August 1, 2019 – Appeal Notice**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA  
**DARRELL BERRY, ET AL.** CIVIL ACTION  
VERSUS NO. 18-888-JWD-RLB  
**LOANCITY, ET AL.**

**RULING AND ORDER**

This matter comes before the Court on *Wells Fargo Bank, N.A.'s Motion to Dismiss* (Doc. 4) filed by Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"). Plaintiffs Darrell Berry and Constance Lafayette (collectively "Plaintiffs") oppose the motion. (Doc. 19.) Defendant has not filed a reply. Oral argument is not necessary. The Court has carefully considered the law, facts in the record, and arguments and submissions of the parties and is prepared to rule. For the following reasons, Defendant's motion is granted, and Plaintiffs' claims against Defendant Wells Fargo are dismissed with prejudice.

**I. Relevant Factual Background**

Plaintiffs filed suit in state court on August 20, 2018, asserting a variety of claims against LoanCity, Wells Fargo, Federal Home Loan Mortgage Corporation ("Freddie Mac"), Freddie Mac Multiclass Certificates, Series 3113 Trust, Mortgage Electronic Registration System ("MERS"), and Does 1–100. (*Plaintiffs' Original Complaint for Damages and Other Relief* ("Petition" or "Pet.") ¶¶ 4–11, Doc 1-2 at 51–52.) Specifically, Plaintiffs claims are for: (1) lack of standing/wrongful foreclosure; (2) unconscionable contract; (3) breach of contract against LoanCity/MERS; (4) breach of fiduciary duty; (5) quiet title; (6) slander of title; (7) injunctive relief; and (8) declaratory relief. (*Id.* ¶¶ 38–94, Doc. 1-2 at 56–62.) Defendants removed the case

to federal court and now seek to dismiss Plaintiffs' claims for lack of standing and failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).<sup>1</sup>

According to the *Petition*, on December 27, 2005, Plaintiffs executed a negotiable promissory note for real property located at 8338 Greenmoss Drive, Baton Rouge, Louisiana 70806. (*Pet.* ¶¶ 3, 27, Doc. 1-2 at 51, 55.) The promissory note was secured by a mortgage in the amount of \$184,000. (*Id.* ¶ 27, Doc. 1-2 at 55.) The "Original Lender" of the note and mortgage was LoanCity, and MERS served as nominee. (*Id.* ¶¶ 4, 9, Doc. 1-2 at 51–52.) The December 27, 2005 negotiable promissory note and mortgage were recorded on January 4, 2006. (*Id.* ¶ 28, Doc. 1-2 at 55.)

Plaintiffs then allege, upon information and belief, that the promissory note was "sold, transferred, assigned and securitized into the Freddie Mac Multiclass Certificates, Series 3113 with an issue date of February 27, 2006." (*Id.* ¶ 29, Doc. 1-2 at 56.) After this assignment, MERS did not record any assignment of the Deed of Trust in the Parish of East Baton Rouge Recorder's Office. (*Id.* ¶ 31, Doc. 1-2 at 56.) Then, on November 13, 2012, MERS, as nominee for LoanCity, attempted to assign the mortgage to Wells Fargo. (*Id.* ¶¶ 32–33, Doc. 1-2 at 56.) The November 13, 2012 assignment occurred about seven years after the loan originated.<sup>2</sup> (*Id.* ¶ 35, Doc. 1-2 at 56.)

Plaintiffs assert that Defendant Wells Fargo lacks authority to enforce the mortgage due to an improper securitization and subsequent assignment. (*Pet.* ¶ 21, Doc. 1-2 at 54.) Plaintiffs believe that "Defendants participated in a transactional scheme whereby a purported Tangible Note is converted/exchanged for a Payment Intangible asset to provide an alternative investment

<sup>1</sup> As will be explored below, while Wells Fargo does not specifically name "standing" as a ground for dismissing the *Petition*, the cases Wells Fargo relies upon for this position are all rooted in that doctrine.

<sup>2</sup> Since the *Petition* was filed, Wells Fargo has assigned the note to a third party. (Doc. 37.) This later assignment, however, is not at issue.

offering via Special Deposit to certificate or bond holders[.]" (*Id.* ¶ 15, Doc. 1-2 at 53.)

Ultimately, Plaintiffs believe that LoanCity "unlawfully purported to assign, transfer, or convey its interest in Plaintiffs' Note[.]" and thus Wells Fargo does not have a colorable claim on the mortgage. (*Id.* ¶¶ 18, 22, Doc. 1-2 at 53, 55.)

## II. Relevant Standard

### A. Rule 12(b)(1) Standard

Concerning the standard for Rule 12(b)(1) motions, the Fifth Circuit has explained:

Motions filed under Rule 12(b)(1) . . . allow a party to challenge the subject matter jurisdiction of the district court to hear a case. Fed. R. Civ. P. 12(b)(1). Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996).

The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *McDaniel v. United States*, 899 F. Supp. 305, 307 (E.D. Tex. 1995). Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980).

When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits. *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977) (per curiam). . . .

In examining a Rule 12(b)(1) motion, the district court is empowered to consider matters of fact which may be in dispute. *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981). Ultimately, a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998).

*Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

### B. Rule 12(b)(6) Standard

In *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 135 S. Ct. 346, 190 L. Ed. 2d 309 (2014), the Supreme Court explained that “[f]ederal pleading rules call for a ‘short and plain statement of the claim showing that the pleader is entitled to relief,’ Fed. R. Civ. P. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.” *Id.*, 135 S. Ct. at 346–47 (citation omitted).

Interpreting Rule 8(a), the Fifth Circuit has explained:

The complaint (1) on its face (2) must contain enough factual matter (taken as true) (3) to raise a reasonable hope or expectation (4) that discovery will reveal relevant evidence of each element of a claim. “Asking for [such] plausible grounds to infer [the element of a claim] *does not impose a probability requirement* at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal [that the elements of the claim existed].”

*Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 257 (5th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (emphasis in *Lormand*)).

Applying the above case law, the Western District of Louisiana has stated:

Therefore, while the court is not to give the “assumption of truth” to conclusions, factual allegations remain so entitled. Once those factual allegations are identified, drawing on the court’s judicial experience and common sense, the analysis is whether those facts, which need not be detailed or specific, allow “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” [*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)]; *Twombly*, [550] U.S. at 556, 127 S. Ct. at 1965. This analysis is not substantively different from that set forth in *Lormand, supra*, nor does this jurisprudence foreclose the option that discovery must be undertaken in order to raise relevant information to support an element of the claim. The standard, under the specific language of Fed. R. Civ. P. 8(a)(2), remains that the defendant be given adequate notice of the claim and the grounds upon which it is based. The standard is met by the “reasonable inference” the court must make that, with or without discovery, the facts set forth a plausible claim for relief under a particular theory of law provided that there is a “reasonable expectation” that “discovery will reveal relevant evidence of each element of the claim.” *Lormand*, 565 F.3d at 257; *Twombly*, [550] U.S. at 556, 127 S. Ct. at 1965.

*Diamond Servs. Corp. v. Oceanografia, S.A. De C.V.*, 2011 WL 938785, at \*3 (W.D. La. Feb. 9, 2011) (citation omitted).

More recently, in *Thompson v. City of Waco, Tex.*, 764 F.3d 500 (5th Cir. 2014), the Fifth Circuit summarized the standard for a Rule 12(b)(6) motion:

We accept all well-pleaded facts as true and view all facts in the light most favorable to the plaintiff . . . To survive dismissal, a plaintiff must plead enough facts to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Our task, then, is to determine whether the plaintiff state a legally cognizable claim that is plausible, not to evaluate the plaintiff's likelihood of success.

*Id.* at 502–03 (citations and internal quotations omitted).

### C. Pro Se Litigants

As an initial matter, the Court acknowledges that the *Petition* was filed *pro se*. (*Pet.*, Doc. 1-2 at 51, 63.) Pleadings filed *pro se* are held to less stringent standards than those drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). Further, a court must liberally construe a *pro se* complaint, taking all well-pleaded allegations as true. *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993) (per curiam).

Nevertheless, Plaintiffs are advised that, “a *pro se* litigant is not exempt . . . from compliance with the relevant rules of procedural and substantive law.” *NCO Financial Systems, Inc. v. Harper-Horsley*, No. 07-4247, 2008 WL 2277843, at \*3 (E.D. La. May 29, 2008). As such, a *pro se* plaintiff’s complaint “must set forth facts giving rise to a claim on which relief may be granted.” *Johnson*, 999 F.2d at 100.

### III. Discussion

#### A. Parties' Arguments and Summary of the Ruling

Defendant Wells Fargo has moved to dismiss Plaintiffs' claims on two grounds. First, Defendant argues that federal courts have rejected Plaintiffs' securitization and pooling argument and such challenges to the assignment of a mortgage. While Wells Fargo does not specifically say it is requesting dismissal for lack of standing, the cases it relies upon all dismiss similar complaints on this basis. Second, Wells Fargo contends that Plaintiffs have failed to state a viable claim against them as servicer of the assigned mortgage.

In response, Plaintiffs quote the Federal Rules of Civil Procedure and argue they have pled enough facts to put Defendant on notice that they could recover, given adequate discovery. However, Plaintiffs fail to address any arguments made by Wells Fargo in its supporting brief.

Having carefully considered the law, the facts in the record, and the arguments of the parties, the Court will grant Wells Fargo's motion on three grounds. First, because Plaintiffs failed to respond to any of Wells Fargo's arguments, they have waived any opposition. Second, the Court finds that Plaintiffs lack standing to challenge the assignment of the mortgage to Wells Fargo. And third, the Court concludes that all of Plaintiffs' claims (which depend on Plaintiffs' attacks to the securitization process and the allegedly improper assignments of the Note and/or Deed of Trust) fail as a matter of law.

#### B. Waiver

As a preliminary matter, Plaintiffs did not respond to the substance of any of Defendant's arguments in their opposition to the instant motion. As a matter of law, Plaintiffs have thereby waived any opposition. *See JMBC, LLC v. Bd. of Commerce & Indus.*, 336 F. Supp. 3d 620, 634 (M.D. La. 2018) ("The Fifth Circuit makes it clear that when a party does not address an issue in

his brief to the district court, that failure constitutes a waiver on appeal. By analogy, failure to brief an argument in the district court waives that argument in that court.” (citations and internal quotations omitted)). Thus, on this ground alone, Plaintiffs’ claims could be dismissed.

### C. Standing

But, even if the Court were to consider the allegations of the Amended Opposition as being an opposition to the instant motion, the Court would reject these arguments. In short, Plaintiffs lack standing to challenge the assignment to Wells Fargo.

#### 1. Applicable Law

“The standing doctrine is a threshold inquiry to adjudication, which defines and limits the role of the judiciary.” *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 570 F. Supp. 2d 851, 853 (E.D. La. 2008) (citing *McClure v. Ashcroft*, 335 F.3d 404, 408 (5th Cir. 2003)). “It is well settled that unless a plaintiff has standing, a federal district court lacks subject matter jurisdiction to address the merits of the case.” *Id.* “In the absence of standing, there is no ‘case or controversy’ between the plaintiff and defendant which serves as the basis for the exercise of judicial power under Article III of the constitution.” *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 498-99, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). “The key question is whether the plaintiff has ‘alleged such a personal stake in the outcome of the controversy’ as to warrant federal court jurisdiction.” *Id.* (quoting *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L. Ed. 2d 663 (1962)).

“[T]he irreducible constitutional minimum of standing contains three elements.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). “First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical.”

*Id.* (internal citations and quotations omitted). “Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court.” *Id.*, 504 U.S. at 560–61, 112 S. Ct. at 2136 (citations, quotations, and alterations omitted). “Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.*, 504 U.S. at 561, 112 S. Ct. at 2136 (citations and quotations omitted). “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.* (citation omitted).

## 2. Analysis

To the extent Plaintiffs challenge any assignment of the mortgage, such a claim fails as a matter of law for lack of standing. In the context of a mortgage assignment, a mortgagor, or borrower, does not have standing to allege that an assignment between two third parties is invalid. *See Ezell v. Payne*, No. 16-1166, 2017 WL 891768 (W.D. La. Jan. 31, 2017). The Fifth Circuit has held that a borrower, “who is not a party to, or an intended third-party beneficiary of, an agreement that purports to transfer the mortgagor’s note and/or mortgage to another party, does not have standing to bring suit to enforce the terms of the agreement that governs the assignment of the mortgagor’s note.” *Farkas v. GMAC Mortgage, L.L.C.*, 737 F.3d 338, 342 (5th Cir. 2013). Thus, as non-party mortgagors, and without any allegations showing Plaintiffs to be an intended third-party beneficiary, this Court concludes that Plaintiffs lack the requisite standing to contest the validity of the assignment at issue.

## D. Failure to State a Cognizable Claim

In addition to the obstacles described above, Plaintiffs’ allegations also fail to set forth a legally cognizable claim. The Court will first address Plaintiffs’ general assertions regarding the

securitization of the loan and the validity of the assignment and will then discuss each of Plaintiffs' individual claims.

### 1. General Allegations

Plaintiffs' *Petition* is based on legal theories that have been resoundingly rejected by federal courts across the country. Specifically, the bases for Plaintiffs' claims stem from the contention that their mortgage was improperly securitized and/or pooled, making any subsequent assignment to Wells Fargo invalid. However, neither theory has merit. *See, e.g., Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 255 (5th Cir. 2013) (discussing and rejecting the theory that a mortgage was allegedly "split" from the note through securitization, rendering the note unenforceable); *Marban v. PNC Mortg.*, No. 3:12-cv-3952-M, 2013 WL 3356285, at \*10 (N.D. Tex. July 3, 2013) (finding meritless the theory that any securitization of the loan rendered the note and accompanying deed of trust unenforceable and discharged a borrower's obligations under them); *Beebe v. Fed. Nat. Mortg. Ass'n*, No. 2:13-cv-311-JCM-GWF, 2013 WL 3109787, at \*2 (D. Nev. June 18, 2013) ("[t]he securitization argument has been repeatedly rejected . . . because it does not alter or change the legal beneficiary's standing to enforce the deed of trust"); *Henkels v. J.P. Morgan Chase*, No. CV 11-0299-PHX-JAT, 2011 WL 2357874, at \*7 (D. Ariz. June 14, 2011) (rejecting claim "that securitization has had any impact on [plaintiff's] obligations under the loan" and noting that numerous courts have rejected similar claims).

Moreover, the *Petition* and Amended Opposition make little attempt to connect Plaintiffs' claims to specific facts relevant in this particular case. Plaintiffs refer generally to "Defendants" without specifying or delineating which Defendant took which action. Additionally, Plaintiffs

only make three allegations against Wells Fargo in their *Petition*.<sup>3</sup> Further, many of Plaintiffs' allegations are legal conclusions that the Court need not accept as true. *Iqbal*, 556 U.S. at 679.

Plaintiffs' claims are all predicated on that theory that because the Deed of Trust was improperly securitized and/or pooled, Defendants have "failed to perfect any security interest in the Property." (Pet. ¶¶ 18–78, Doc. 1-2 at 53–60.) The Sixth Circuit has noted that district courts "have entertained a spate of civil actions" related to mortgages and securitization of the underlying loans. *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 748 (6th Cir. 2014). The Court described many of these cases as "scattershot affairs, tossing myriad (sometimes contradictory) legal theories at the court to see what sticks." *Thompson*, 773 F.3d at 748. Here, even accepting the allegations as true and liberally construing Plaintiffs' claims, this Court finds that none of the claims "stick."

By way of example, Plaintiffs' claim for wrongful foreclosure alleges that "Defendants . . . do not have the right to foreclose on the Property because [they] . . . cannot prove to the court they have a valid interest as a real party in interest." (Pet. ¶ 39, Doc. 1-2 at 56.) Likewise, Plaintiffs' claim for quiet title alleges that "Defendants are without any legal right whatsoever, and [they] have no estate, title, lien or interest in or to the Real Property." (Id. ¶ 74, Doc. 1-2 at 60.) So, too, is Plaintiffs' injunctive relief claim based on the theory of improper securitization/pooling. (Id. ¶¶ 86, 89 (Plaintiffs' allege "Defendants inability to establish a claim of right to Plaintiffs' Note or Deed of Trust establishes Plaintiffs' claims[.]" and, therefore, "Plaintiffs' are the record title holder of the Property . . ."). Doc. 1-2 at 61.) Because all of

<sup>3</sup> Plaintiffs' three allegations against Wells Fargo are: (1) Wells Fargo "is the Servicer of Plaintiffs' loan" (Pet. ¶ 6, Doc. 1-2 at 51); (2) the "November 13, 2012 Assignment of Mortgage attempts to assign the December 27, 2005 negotiable promissory note to Wells Fargo" (Id. ¶ 33, Doc. 1-2 at 56); and (3) there is no evidence within the November 13, 2012 Assignment of Mortgage that Wells Fargo "has any connection or legal interest to this transaction other than as a servicer." (Id. ¶ 34, Doc. 1-2 at 56.)

Plaintiffs' claims are based on the allegedly invalid securitization of the loan and/or the allegedly invalid assignment of the Note or Deed of Trust, the Court dismisses them for failure to state a viable claim.

## 2. Specific Claims

Again, Plaintiffs must identify a cognizable legal theory under which they bring their claims, and, here, they have not done so. Stripped of the allegations based on discredited legal theories, the Court will now review Plaintiffs' individual claims. As explained below, each of Plaintiffs causes of action will be dismissed.

### a. Lack of Standing/Wrongful Foreclosure

Plaintiffs first bring a claim against Defendants for lack of standing/wrongful foreclosure, contending that no Defendant has standing to foreclose and that no Defendant has the right to foreclose. (Doc. 1-2 ¶¶ 38-40.) However, Plaintiffs fail to allege that Wells Fargo, or any Defendant, has invoked foreclosure proceedings against their property. (*Id.*)

“Although there is no statutory cause of action in Louisiana for wrongful seizure, damages for a wrongful seizure of property have long been available under Louisiana’s tort law.” *Bombet v. Donovan*, No. 13-118-SDD-SCR, 2015 WL 65255, at \*8 (M.D. La. Jan. 5, 2015). However, “[b]ecause liability is tied to the act of unlawfully seizing another’s property, the cause of action arises at the moment of the seizure.” *Id.* (citing *Mariche v. Wells Fargo Bank, N.A.*, No. 11-1191, 2012 WL 1057626, at \*3 (E.D. La. Mar. 28, 2012)).

Here, Plaintiffs’ *Petition* only asserts that Defendants have no perfected rights or interests in their property. (*Pet.* ¶ 39, Doc. 1-2 at 56.) It does not allege that Defendants have taken any action to seize or foreclose on the property. (*Id.*) Thus, because Plaintiffs have not alleged that

Wells Fargo has begun foreclosure proceedings against Plaintiffs' property, this cause of action for lack of standing/wrongful foreclosure fails to state a claim upon which relief can be granted.

**b. Unconscionable Contract**

Plaintiffs' second cause of action alleges an unconscionable contract. As an initial matter, Plaintiffs point to no Louisiana law or federal or state court decision interpreting Louisiana law that has permitted an affirmative claim for "unconscionable contract" (as opposed to the contract defense of unconscionability).

Nonetheless, Louisiana jurisprudence does recognize that certain contractual terms, especially when contained in dense standard forms that are not negotiated, can be unconscionable and thus unenforceable. *See, e.g., Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, 379 F.3d 159 (5th Cir. 2004). But, for this contract defense to be applicable, there would need to be a contract between Plaintiffs and Wells Fargo and allegations stating how that contract is purportedly unconscionable. *See Aetna Fin. Co. of Baton Rouge v. Perkins*, 448 So. 2d 121, 128 (La. Ct. App. 1984) (finding that the loan transactions were not unconscionable when the defendants did not "allege in their pleadings or in brief that the terms of their loans are in violation of law").

Here, Plaintiffs have not alleged any contract negotiations or contract with Wells Fargo. (*Pet. ¶¶ 52-59, Doc. 1-2 at 58-59.*) Plaintiffs only make allegations against LoanCity regarding contract negotiations, and even then, fail to allege that the terms of their loan are allegedly in violation of law. (*Id. ¶¶ 57, 59* (LoanCity failed to clarify the terms of the Mortgage and concealed they were benefitting financially; intended to exploit Plaintiffs' special disadvantage), Doc. 1-2 at 59.)

In sum, even if a cause of action for unconscionable contract exists under Louisiana law, Plaintiffs have not alleged any contract with Wells Fargo and have not stated any allegations regarding unconscionability against it. Therefore, this claim fails.

#### c. Breach of Fiduciary Duty

Plaintiffs next allege Defendant breached a fiduciary duty using elements that are inapplicable under Louisiana law. (*Pet. ¶ 66, Doc. 1-2 at 59.*) Plaintiffs also fail to identify and allege any facts necessary to impose a fiduciary duty upon Wells Fargo.

Under Louisiana law, the “elements of a cause of action for a breach of fiduciary duty . . . are: (1) a breach by a fiduciary of an obligation to another; (2) a knowing collusion or participation in the breach by the fiduciary; and (3) damages suffered by another as a result of the breach.” *Brockman v. Salt Lake Farm P'ship*, 33,938 (La. App. 2 Cir. 10/4/00), 768 So.2d 836, 844. In order “for a fiduciary duty to exist, there must be a fiduciary relationship between the parties.” *Scheffler v. Adams & Reese, LLP*, 06-1774 (La. 2/22/07), 950 So.2d 641, 647.

However, the Louisiana Credit Agreement Statute (“LCAS”) bars any implied fiduciary duty claims absent a written agency or trust agreement. The LCAS states, in the pertinent part:

No financial institution or officer or employee thereof shall be deemed or implied to be acting as a fiduciary, or have a fiduciary obligation or responsibility to its customers or to third parties . . . unless there is a written agency or trust agreement under which the financial institution specifically agrees to act and perform in the capacity of a fiduciary.

La. Rev. Stat. Ann. § 6:1124.

Here, Plaintiffs have not alleged the existence of any written trust agreement with Wells Fargo. Accordingly, this cause of action fails to state a viable claim. *See Hancock Bank of La. v. 3429 H, LLC*, 15-355 (La. App. 5 Cir. 1/13/16), 184 So.3d 274, 280 (“Schmidt did not allege in his reconventional demand that a written credit agreement existed. . . . Accordingly, there can be

no cause of action . . . for a breach of fiduciary duty regarding the promissory note."); *see also Loraso v. JP Morgan Chase Bank, N.A.*, No. 13-4734, 2013 WL 5755638 (E.D. La. Oct. 23, 2013) ("Plaintiffs' failure to allege a written fiduciary agreement is fatal to their claim for breach of fiduciary duty."). Further, even if there were a fiduciary duty, Plaintiffs do not allege any wrongdoing by Wells Fargo. (*See Pet.* ¶¶ 65-70, Doc. 1-2 at 59-60.) As such, this cause of action fails to state a claim and is dismissed.

#### d. Quiet Title

Next, Plaintiffs bring a quiet title claim on the basis that "all Defendants . . . claim some estate, right, title, lien or interest in or to the property adverse to Plaintiffs" "without any right whatsoever" and "these claims constitute a cloud on Plaintiffs' title." (*Pet.* ¶¶ 74, 75, Doc. 1-2 at 60.) Plaintiffs ask the Court to issue a "decree permanently enjoin[ing] Defendants . . . from asserting any adverse claim to Plaintiffs' title to the property." (*Pet.* ¶ 77, Doc. 1-2 at 60.) However, Plaintiffs fail to allege sufficient facts to make out a cloud on their title.

Generally, "[a]n action to remove a cloud from title or to quiet title may be used by a person claiming ownership of immovable property or of a real right against another who has recorded an instrument which operates as a cloud on his title." *Spencer v. James*, 42,168, p. 9 (La. App. 2 Cir. 5/9/07), 955 So. 2d 1287, 1292. "The requirements of the action to quiet title are: 1. Claim of ownership; 2. Existence of clouds; 3. Description of property; and 4. Prayer for cancellation of the clouds." *Harrison v. Alombro*, 341 So. 2d 1165 (La. Ct. App. 1976). All four requirements must be met. *Spencer*, 955 So.2d at 1293 (citations omitted).

Here, Plaintiffs fail to provide sufficient facts to allege that a cloud exists on their title. "Generally, a cloud on title is produced by an invalid instrument or voidable conveyance that is associated with the title, and '[i]t is enough that the invalidity does not appear upon its [(the

instruments')] face[.]' " *Jonalkar v. Wells Fargo Mortg., Inc.*, No. 12-216-BAJ-CN, 2012 WL 5364246, at \*2 (M.D. La. Oct. 31, 2012) (quoting *Graves v. Ashburn*, 215 U.S. 331, 30 S. Ct. 108, 109 (1909)). "Furthermore, a cloud on title may exist when the title is unmerchantable or suggestive of litigation and 'questionable' as to whether there is a clear title." *Parker v. Machen*, 567 So. 2d 739, 743 (La. Ct. App. 1990). However, this Court has held that "theories of securitization, 'splitting the note', and lack of standing are not sufficient factual allegations to support a 'cloud on title.' " *Jonalkar*, 2012 WL 5364246, at \*2. These allegations do not "establish a plausible claim . . . because Plaintiffs conclusively state Defendants lack standing only because there was an assignment of the mortgage to subsequent entities." *Id.*

The same reasoning applies here. Plaintiffs base their claim solely on the alleged improper securitization of their Note. Therefore, this cause of action for quiet title fails to state a claim and is dismissed.

#### e. Slander of Title

Plaintiffs next bring a cause of action for slander of title alleging that Defendant LoanCity acted maliciously in recording the Assignment of the Deed despite never perfecting their rights to the Deed. (*Pet. ¶¶ 82-84, Doc. 1-2 at 61.*) Plaintiffs fail to specify how and which other Defendants, if any, are involved in allegedly slandering their title. Further, Plaintiffs assert conclusory accusations and make no specific allegations against Defendant Wells Fargo. (*Pet. ¶¶ 79-84, Doc. 1-2 at 60-61.*) This fails to provide "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

In addition, Louisiana does not recognize any specific cause of action for "slander of title." *See Todd v. State*, 456 So.2d 1340, 1353 (La. 1983) (explaining that the "jactitory action" was the jurisprudentially-created way to handle "slander of title actions," but that in "1960 with

the adoption of the Louisiana Code of Civil Procedure, the former jactitory action was merged with the former possessory action"). Because Plaintiffs' claim is not a recognized cause of action under Louisiana law, it fails as a matter of law. Further, even if it were recognized, Plaintiffs have not alleged any facts that would sustain a cause of action against Defendant Wells Fargo. As such, this cause of action is dismissed for failure to state a cognizable claim.

#### **f. Injunctive Relief**

Plaintiffs next ask for an injunction preventing any Defendant from foreclosing on their property. (*Pet. ¶¶ 85-90, Doc. 1-2 at 61-62.*) However, this cause of action fails on a number of grounds.

First, after Wells Fargo filed the instant motion, Plaintiffs filed a separate motion for a temporary restraining order. (*Doc. 10.*) Subsequently, the Court ordered the parties to file short briefs advising of the status of the alleged foreclosure action. (*Doc. 34.*) In response, Wells Fargo advised the Court that it had assigned its interest in Plaintiffs' mortgage to a third party. (*Doc. 37, 37-1.*) Thus, "Wells Fargo has no interest in the loan, so it has no plans to foreclose." (*Doc. 37.*) The Court ultimately denied Plaintiffs injunctive relief because they failed to show that "Wells Fargo or any other defendant has initiated or plans to initiate foreclosure proceedings. Consequently, Plaintiffs [had] not demonstrated that they face imminent irreparable harm[.]" (*Doc. 38 at 1-2.*)

Nevertheless, to the extent Plaintiffs still seek injunctive relief from Wells Fargo, they have failed to state a viable claim. In short, Plaintiffs cannot show a substantial likelihood of success on the merits.

"A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." *Munaf v. Green*, 553 U.S. 674, 689-90 (2008) (internal citations and quotations

omitted). At all times, the burden of persuasion remains with the plaintiff as to each of the four elements. Specifically, a plaintiff must establish: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) the injunction will not disserve the public interest. *Ridgely v. Fed. Emergency Mgmt. Agency*, 512 F.3d 727, 734 (5th Cir. 2008). If a plaintiff fails to meet his burden regarding any of the necessary elements, the Court need not address the other elements necessary for granting a preliminary injunction. *See Roho, Inc. v. Marquis*, 902 F.2d 356, 361 (5th Cir. 1990) (declining to address the remaining elements necessary to obtain a preliminary injunction after finding that the plaintiff failed to show a substantial likelihood of success on the merits).

Plaintiffs' requests fail on the very first element. Because the Court has already disposed of all of their claims, they cannot show any likelihood of success on the merits, much less a substantial one. Further, because Plaintiffs failed to meet their burden regarding the first listed necessary element, the Court need not address the other elements. Plaintiffs have failed to satisfy this requirement for injunctive relief, and this claim is dismissed.

#### **g. Declaratory Relief**

In their final cause of action, Plaintiffs request a declaration from the Court that the securitization of the loan extinguished any interest Defendants held in the Property, and therefore Plaintiffs possess free and clear title. (*Pet. ¶ 94, Doc. 1-2 at 62.*) However, in such a situation as this, a request for a declaratory judgment need not be permitted if it adds nothing to the suit. *See Pan-Islamic Corp. v. Exxon Corp.*, 632 F.2d 539, 546 (5th Cir. 1980).

Here, the declarations Plaintiffs seek are entirely derivative of their other claims; that is, their declaratory judgment requests rely on the same arguments that the Court has already

considered and rejected. Furthermore, Plaintiffs seek the same relief through declaratory judgment that they do through their other claims—namely, that the Court invalidate the assignment of the mortgage and find that they hold title to the Property.

Thus, these redundant declaratory judgment claims will not survive a Rule 12(b)(6) motion. *See, e.g., Edwards v. U.S. Bank N.A.*, No. 6:15-cv-02535, 2016 WL 4574585, at \*6 (W.D. La. June 28, 2016) (dismissing cause of action for declaratory relief because it was duplicative of other claims).

In addition, the Fifth Circuit has explained that, when considering a declaratory judgment action, a district court must engage in a three-step inquiry to determine whether to decide or dismiss a complaint for declaratory relief. *Orix Credit All., Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000). “First, the court must determine whether the declaratory action is justiciable.” *Taylor v. City of Baton Rouge*, 39 F. Supp. 3d 807, 817 (M.D. La. 2014) (quoting *Orix*, 212 F.3d at 895). For a declaratory action to be justiciable it must seek to resolve an “actual controversy” rather than an abstract or hypothetical dispute. *Id.* Generally, an actual controversy exists when “a substantial controversy of sufficient immediacy and reality exists between parties having adverse legal interests.” *Orix*, 212 F.3d at 896. Because Plaintiffs have not alleged that there are any rights to declare between them and Wells Fargo as servicer of their mortgage, no “actual controversy” exists.

As the Court has found that all of Plaintiffs claims either fail to state a claim or have been conceded, so there is no longer any basis for Plaintiffs’ claim to declaratory relief. Accordingly, the Court hereby dismisses this claim.

#### D. Leave to Amend

Federal Rules of Civil Procedure 15(a) “requires the trial court to grant leave to amend freely,” and “the language of this rule evinces a bias in favor of granting leave to amend.” *Jones v. Robinson Prop. Grp., LP*, 427 F.3d 987, 994 (5th Cir. 2005) (internal citations omitted). However, “leave to amend is in no way automatic, but the district court must possess a ‘substantial reason’ to deny a party’s request for leave to amend.” *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014) (citing *Jones*, 427 F.3d at 994). The Fifth Circuit further described the district courts’ discretion on a motion to amend as follows:

The district court is entrusted with the discretion to grant or deny a motion to amend and may consider a variety of factors including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . , and futility of the amendment.” *Jones*, 427 F.3d at 994. (citation omitted). “In light of the presumption in favor of allowing pleading amendments, courts of appeals routinely hold that a district court’s failure to provide an adequate explanation to support its denial of leave to amend justifies reversal.” *Mayeaux v. La. Health Serv. & Indent. Co.*, 376 F.3d 420, 426 (5th Cir. 2004) (citation omitted). However, when the justification for the denial is “readily apparent,” a failure to explain “is unfortunate but not fatal to affirmance if the record reflects ample and obvious grounds for denying leave to amend.” (citation and internal quotation marks omitted).

*Id.*, 751 F.3d at 378.

In addition, the Fifth Circuit has made clear that “denying a motion to amend is not an abuse of discretion if allowing an amendment would be futile.” *Id.* (citing *Boggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003)). An amendment would be deemed futile “if it would fail to survive a Rule 12(b)(6) motion.” *Id.*

Here, the Court has substantial reason to deny Plaintiffs leave to amend. The *Petition* in this case appears to be a version of a form complaint available on the internet that has routinely

been dismissed by other U.S. district courts across the country.<sup>4</sup> See, e.g., *Taylor v. Wells Fargo Bank, N.A.*, 85 F. Supp. 3d 63 (D.D.C. 2015); *Lakiesha v. Bank of New York Mellon*, No. 3:15-CV-0901-B, 2015 WL 5934439 (N.D. Tex. Oct. 9, 2015); *Diamond v. Wells Fargo Bank, N.A.*, No. CV-14-00975-PHX-SPL, 2015 WL 9691031 (D. Ariz. June 30, 2015); *Kennedy v. World Sav. Bank, FSB*, No. 14-CV-5516-JSC, 2015 WL 1814634 (N.D. Cal. Apr. 21, 2015); *Dagres v. Countrywide Bank, N.A.*, No. 2:14-CV-1339-CAS, 2014 WL 3417848 (C.D. Cal. July 10, 2014), appeal dismissed (9th Cir. Sept. 25, 2014). Further, Plaintiffs form *Petition* has little to no applicability to Louisiana law and states incorrect elements of causes of action under Louisiana law. As a result, the Court finds that Plaintiffs have acted in bad faith, that any amendment would be futile, and that, consequently, Plaintiffs' claims will be dismissed with prejudice.

#### IV. Conclusion

Accordingly,

**IT IS ORDERED** that *Wells Fargo Bank, N.A.*'s *Motion to Dismiss* (Doc. 4) is **GRANTED**, and Plaintiffs' claims against Defendant Wells Fargo are **DISMISSED WITH PREJUDICE**.

Signed in Baton Rouge, Louisiana, on *July 3, 2019*.



JUDGE JOHN W. deGRAVELLES  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

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<sup>4</sup> See Sample Complaint, available at <http://www.certifiedforensicroloanauditors.com/pdfs/SAMPLECOMPLAINT.pdf>.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

ORDER

**IT IS ORDERED** that all dispositive motions in this matter are referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), Federal Rule of Civil Procedure 72(b), and Local Civil Rule 72(b). The United States Magistrate Judge shall prepare findings of fact, conclusions of law and a report and recommendation which shall be submitted to undersigned for review.

**IT IS FURTHER ORDERED** that in all non-dispositive motions, the United States Magistrate Judge shall be authorized to rule on such motions as provided in 28 U.S.C. § 636, Fed. R. Civ. P. 72(a), and Local Civil Rule 72(b).

**IT IS FURTHER ORDERED** that if a hearing is required on any motion referred to the United States Magistrate Judge, the United States Magistrate Judge shall be authorized to conduct whatever hearings which may be necessary to decide the pending motion.

**IT IS FURTHER ORDERED** that all pending pre-trial matters shall be conducted by the Magistrate Judge, including a preliminary pre-trial conference.

**IT IS FURTHER ORDERED** that parties may file a motion to review a Magistrate Judge's order or an objection to the proposed findings and recommendation of the Magistrate Judge in accordance with Federal Rule of Civil Procedure 72 and Local Civil Rule 72(a).

Signed in Baton Rouge, Louisiana, on July 3, 2019.



JUDGE JOHN W. deGRAVELLES  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED AUG - 1 2019

CLERK

DARRELL BERRY and  
CONSTANCE LAFAYETTE,

Plaintiffs,

vs.

CIVIL ACTION NO.

3:18-cv-00888-JWD-RLB

LOANCITY, WELLS FARGO BANK, N.A.,  
FEDERAL HOME LOAN MORTGAGE  
CORPORATION ("Freddie Mac");  
FREDDIE MAC MULTICLASS  
CERTIFICATES SERIES 3113 TRUST; and  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM ("MERS");  
DOES 1 through 100 inclusive, et al.

Defendants

NOTICE OF INTENT TO FILE WRIT OF FINAL RULING - DEPUTYCLERK - OF COURT  
IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

NOW INTO COURT, through undersigned, comes DARRELL BERRY and CONSTANCE LAFAYETTE, In Proper Person who respectfully requests that this Court take notice of Plaintiff intention to apply to the The Court of Appeal for the First Circuit for the State of Louisiana for formal supervisory writs to review the judgement of the Honorable John W. deGravelles of the Middle District of Louisiana Court, JUDGEMENT RENDERED, on July 3, 2019, by Honorable John W. deGravelles in this case, in Baton Rouge, Louisiana. Ordered that Plaintiff's case be dismissed with prejudice.

The party to the judgment appealed from and the name address of his respective attorney is as follows:

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Respectfully submitted this 25<sup>th</sup> day of July, 2019.



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Plaintiff, *pro se*

FOR THE MIDDLE DISTRICT OF LOUISIANA

**DARRELL BERRY and  
CONSTANCE LAFAYETTE,  
Plaintiffs,**

vs.

**CIVIL ACTION NO.  
3:18-cv-00888-JWD-RLB**

**LOANCITY, WELLS FARGO BANK, N.A.,  
FEDERAL HOME LOAN MORTGAGE  
CORPORATION ('Freddie Mac'); FREDDIE  
MAC MULTICLASS CERTIFICATES SERIES  
3113 TRUST; and MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM ("MERS"); DOES 1  
through 100 inclusive, et al.**

**Defendants.**

**ORDER**

Considering the Foregoing, it is hereby ordered that Plaintiffs application of formal Supervisory writ o Judgment Rendered, on July 3, 2019. Judgement Read and singed on Monday, July 3, 2019 by Honorable John W. deGravelles in this case, be filed in The Court of Appeal for the First Circuit for the State of Louisiana.

On or before the \_\_\_\_\_ day of \_\_\_\_\_, 2019

Whereas the Court has considered Plaintiff's motion and memorandum, THE COURT FINDS that Plaintiffs has demonstrated that good cause exists and justice requires the grant of leave to file the proposed amended complaint.

Therefore, Plaintiffs' Motion is GRANTED.

**SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_ 2019**

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Honorable John W. deGravelles

**November 6, 2019 Order – Wells Fargo**

**December 5, 2019 – Appeal Notice**

## UNITED STATES DISTRICT COURT

## MIDDLE DISTRICT OF LOUISIANA

**DARRELL BERRY, ET AL.****CIVIL ACTION****VERSUS****NO. 18-888-JWD-RLB****LOANCITY, ET AL.****RULING AND ORDER**

This matter comes before the Court on the *Final Ruling and Order (sic) for Civil Action No. 18-888-JWD-RLB Motion to Reconsider* (Doc. 44) (the “*MTR I*”) filed by Plaintiffs Darrell Berry and Constance Lafayette (“Plaintiffs”). In the *MTR I*, Plaintiffs move for the Court to reconsider its *Ruling and Order* (Doc. 39) on *Wells Fargo Bank, N.A.’s Motion to Dismiss* (Doc. 4), which dismissed all of Plaintiffs’ claims with prejudice and denied Plaintiffs leave to amend. Wells Fargo opposes the instant motion. (Doc. 46.) Plaintiffs have filed a reply (Doc. 47), Wells Fargo has filed a surreply (Doc. 52), and Plaintiffs seek leave to file a sur-surreply (Doc. 53), which is hereby granted. Oral argument is not necessary. The Court has carefully considered the law, the facts in the record, and the arguments and submissions of the parties and is prepared to rule. For the following reasons, *MTR I* is granted in part and denied in part.

**I. Standard of Review**

While the Federal Rules of Civil Procedure do not formally recognize the existence of motions for reconsideration (e.g., *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)), courts customarily consider such motions under Rule 60(b) or Rule 59(e). *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991). However, because Plaintiffs move to reconsider an interlocutory order, the motion is controlled by Rule 54(b) of the Federal Rules of Civil Procedure. Under this provision, any order or decision that adjudicates fewer than all the claims may be

revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. Fed. R. Civ. Proc. 54(b).

While the court has broad discretion to decide a Rule 54(b) motion to reconsider and the standard imposed is less exacting, courts consider factors that inform the Rule 59 and Rule 60 analysis. *McClung v. Gautreaux*, No. 11-263, 2011 WL 4062387, at \*1 (M.D. La. Sept. 13, 2011) (Hicks, J.). Specifically, these factors include whether 1) the judgment is based upon a manifest error of fact or law; 2) newly discovered or previously unavailable evidence exists; 3) the initial decision was manifestly unjust; 4) counsel engaged in serious misconduct; and 5) an intervening change in law alters the appropriate outcome. *Livingston Downs Racing Ass'n, Inc v. Jefferson Downs Corp.*, 259 F.Supp.2d 471, 475-76 (M.D. La. 2002).

“ ‘Although courts are concerned with principles of finality and judicial economy, “the ultimate responsibility of the federal courts, at all levels, is to reach the correct judgment under law.” ’ ” *Broyles v. Cantor Fitzgerald & Co*, No. 10-854, 2015 WL 500876, at \*1 (M.D. La. Feb. 5, 2015) (Brady, J.) (quoting *Keys v. Dean Morris, LLP*, 2013 WL 2387768, at \*1 (M.D. La. May 30, 2013) (quoting *Georgia Pacific, LLC v. Heavy Machines, Inc.*, 2010 WL 2026670, at \*2 (M.D. La. May 20, 2010))). “Nevertheless, ‘rulings should only be reconsidered where the moving party has presented substantial reasons for reconsideration.’ ” *Id.* (quoting *Louisiana v. Sprint Communications Co.*, 899 F. Supp. 282, 284 (M.D. La. 1995)).

Ultimately, a motion for reconsideration is an extraordinary remedy and should be used sparingly in the interest of finality and conservation of judicial resources. *Carroll v. Nakatani*, 342 F.3d 943, 945 (9th Cir. 2003). The court should deny a motion for reconsideration when the movant rehashes legal theories and arguments that were raised or could have been raised before the entry of the judgment. See *Templet v. HydroChem Inc.*, 367 F.3d 473, 478-79 (5th Cir. 2004). A motion

for reconsideration does not support old arguments that are reconfigured. *Resolution Trust Corp. v. Holmes*, 846 F. Supp. 1310, 1316, n.18 (S.D. Tex. 1994).

## II. Discussion

### A. Parties' Arguments

Throughout their extensive briefing, Plaintiffs essentially make three main arguments. First, Wells Fargo misrepresented to the Court that it took no foreclosure action against Plaintiffs, as Wells Fargo had, in fact, initiated foreclosure in state court at one time. Second, the underlying promissory note and mortgage have been canceled, and Wells Fargo fraudulently induced Plaintiffs to sign a refinance agreement, despite the fact that the mortgage and note were no longer valid. And third, there are questions of material fact that justify the case proceeding.

Wells Fargo responds that (1) Plaintiffs are regurgitating old arguments; (2) Plaintiffs are focusing on the merits and not the appropriate Rule 12(b)(6) standard; (3) Plaintiffs are “invent[ing] new facts and causes of action after their claims against Wells Fargo were dismissed[,]” as there are new allegations of a different lender and that the Note was canceled “in direct contradiction to the allegations in the Complaint[.]” (Doc. 52 at 2); and (4) there is no “newly discovered evidence,” as the documents submitted by Plaintiffs are several years old.

### B. Analysis

Having carefully considered the matter, the Court will grant the motion in part and deny it in part. As to the latter, the Court agrees with Wells Fargo that Plaintiffs have shown no error in the analysis of the *Ruling and Order* at issue. As the Court recognized in its prior order, Plaintiffs lacked standing and failed to state viable claims against Wells Fargo. Plaintiffs have done nothing to show that any of the Court’s prior rulings on these issues were incorrect, much less substantially so. Because Plaintiffs have shown no manifest error of law or fact making any of these dismissed

claims viable, the Court will affirm dismissal of these prior claims. *See Williams v. E.I. du Pont de Nemours & Co.*, No. CV 14-382-JWD-EWD, 2016 WL 9384349, at \*4 (M.D. La. Mar. 31, 2016) (“Thus, the Court’s decision is neither manifestly unjust nor based upon manifest error of fact or law. The Court refuses to reconsider Plaintiff’s reurged arguments of the cumulative effect of the alleged actions.”); *Broyles*, 2015 WL 500876, at \*1 (“In its Motion to Reconsider, the Funds repeat the same facts it previously asserted in the Second Amended Complaint and oppositions to motions to dismiss. The Funds fail to point this Court’s attention to any newly discovered evidence that may satisfy the high burden for reconsideration.”)

However, the Court also agrees with Wells Fargo that Plaintiffs have raised new issues and potential claims not previously addressed in the Court’s prior *Ruling and Order*. These specifically include the allegations that (1) the promissory note and mortgage and note were cancelled and that Wells Fargo fraudulently induced Plaintiffs to sign a re-finance agreement, and (2) Wells Fargo did in fact foreclose against Plaintiffs in state court, and this state court suit is still pending. The Court recognizes that Plaintiffs could have raised these claims on their original motion to dismiss but failed to do so. Nevertheless, the Court must emphasize again that “[a]lthough courts are concerned with principles of finality and judicial economy, the ultimate responsibility of the federal courts, at all levels, is to reach the correct judgment under law.” *Broyles*, 2015 WL 500876, at \*1 (citations and internal quotations omitted). This is particularly true given the following principles recognized by this Court:

The federal rule policy of deciding cases on the basis of the substantive rights involved rather than on technicalities requires that the plaintiff be given every opportunity to cure a formal defect in the pleading. This is true even when the district judge doubts that the plaintiff will be able to overcome the shortcomings in the initial pleading. Thus, the cases make it clear that leave to amend the complaint should be refused only if it appears to a certainty that the plaintiff cannot state a claim. A district court’s refusal to allow leave to amend is reviewed for abuse of discretion by the court of appeals. A wise judicial practice (and one that is

commonly followed) would be to allow at least one amendment regardless of how unpromising the initial pleading appears because except in unusual circumstances it is unlikely that the district court will be able to determine conclusively on the face of a defective pleading whether the plaintiff actually can state a claim for relief.

*JMCB, LLC v. Bd. of Commerce & Indus.*, 336 F. Supp. 3d 620, 642 (M.D. La. 2018) (quoting 5B Charles A. Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 1357 (3d ed. 2016)).

In sum, while the Court made no error in its prior ruling in dismissing Plaintiffs' claims, given the new allegations raised by Plaintiffs, the Court finds that there is substantial reason in the interest of justice to give them thirty (30) days in which to amend their complaint and state a viable claim.

However, the Court wishes to caution Plaintiffs. They have a habit in this case of filing multiple briefs, including sur-replies and sur-sur-replies. This will no longer be allowed. Absent extraordinary circumstances, for any motion, Plaintiffs will only be allowed to file an original memorandum and a reply, or an opposition, as the case may be.

Similarly, Plaintiffs are being granted an additional opportunity to amend their complaint. But, Plaintiffs must be warned that “‘repeated failures to cure deficiencies by amendments previously allowed’ is a factor to consider when granting or denying leave to amend, as is undue delay.” *Apollo Energy, LLC v. Certain Underwriters at Lloyd's, London*, 387 F. Supp. 3d 663, 679 (M.D. La. 2019) (quoting *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014)). In short, Plaintiffs have been granted a second bite of the apple. They likely will not be given a third.

Lastly, Plaintiffs are again advised that, “a *pro se* litigant is not exempt . . . from compliance with the relevant rules of procedural and substantive law.” *NCO Financial Systems, Inc. v. Harper-Horsley*, No. 07-4247, 2008 WL 2277843, at \*3 (E.D. La. May 29, 2008). This means that Plaintiffs must comply with Rule 11 of the Federal Rules of Civil Procedure. Specifically, by submitting an amended complaint to the Court, Plaintiffs are certifying that, to the best of their

"knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[ ] . . . the claims . . . and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2). The Plaintiffs' initial complaint and many of their submissions came close to or exceeded this line, and the Court cautions the Plaintiffs against doing so again, particularly after being given this warning.

### III. Conclusion

Accordingly,

**IT IS ORDERED** that *Plaintiff's Motion for Leave to File Sur-Reply (Doc. 53)* is **GRANTED**;

**IT IS FURTHER ORDERED** that the *Final Ruling and Order (sic) for Civil Action No. 18-888-JWD-RLB Motion to Reconsider (Doc. 44)* filed by Plaintiffs is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** in Plaintiffs shall be given thirty (30) days in which to amend the operative complaint to attempt to state a viable claim against Wells Fargo.

In all other respects, Plaintiff's motion is **DENIED**.

Signed in Baton Rouge, Louisiana, on November 6, 2019.



JUDGE JOHN W. deGRAVELLES  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED  
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CC  
CLERK

DARRELL BERRY and  
CONSTANCE LAFAYETTE,  
Plaintiffs,

vs.

LOANCITY, WELLS FARGO BANK,  
N.A., FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
(‘Freddie Mac’); FREDDIE MAC  
MULTICLASS CERTIFICATES  
SERIES 3113 TRUST; and  
MORTGAGE ELETTRONIC  
REGISTRATION SYSTEM (“MERS”);  
DOES 1 through 100 inclusive, et al.

CIVIL ACTION NO.

3:18-cv-00888-JWD-RLB

Defendants

NOTICE OF INTENT TO FILE WRIT OF FINAL RULING - DEPUTYCLÉ - OF COURT IN  
THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

NOW INTO COURT, through undersigned, comes Darrell Berry and Constance Lafayette, In Proper Person who respectfully request that this Court take notice of Plaintiff intention to apply to the Court of Appeal for the Fifth Circuit Court of Appeal of the State of Louisiana for formal supervisory writs to review the judgement of the Honorable John W. deGravelles of the Middle District of Louisiana court, Partial Judgement that was Denied in Part, on November 6, 2019, by Honorable John W deGravelles in this case against Wells Fargo in Baton Rouge, Louisiana. Ordered that Plaintiffs case be dismissed with prejudice.

The party to the judgement appealed from and the name address of his respective attorney are as follows:

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Respectfully submitted this 5<sup>th</sup> Day of December, 2019



\_\_\_\_\_  
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SERVICE

Please serve Defendants' Attorneys for Plaintiffs,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY and  
CONSTANCE LAFAYETTE,

Plaintiffs,

vs.

CIVIL ACTION NO.  
3: 18-cv-00888-JWD-RLB

LOANCITY, WELLS FARGO BANK,  
N.A., FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
("Freddie Mac"); FREDDIE MAC  
MULTICLASS CERTIFICATES  
SERIES 3113 TRUST; and  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM  
("MERS"); DOES 1 through 100  
inclusive, et al.

Defendants.

ORDER

CONSIDERING THE FOREGOING, it is hereby ordered that Plaintiffs, Darrell Berry and Constance Lafayette's application for Notice of Appeal of the Final Ruling, READ, RENDERED AND SIGNED BY Honorable John W. deGravelles, in this case on November 6, 2019, be filed in THE FIFTH CIRCUIT COURT OF APPEALS FOR THE STATE OF LOUISIANA

on or before the \_\_\_\_\_ day of \_\_\_\_\_ 2019

Honorable John W. deGravelles

**November 7, 2019 Order  
Freddie Mac, MERS, Freddie Mac  
Multiclass Series 3113**

**December 5, 2019 – Appeal Notice**

## UNITED STATES DISTRICT COURT

## MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

ORDER

This matter comes before the Court on the *Final Ruling and Order (sic) for Civil Action No. 18-888-JWD-RLB Motion to Reconsider (Doc. 54)* (the “*MTR II*”) filed by Plaintiffs Darrell Berry and Constance Lafayette (“Plaintiffs”). The *MTR II* seeks reconsideration of this Court’s *Opinion (Doc. 58)* which adopted the *Magistrate Judge’s Report and Recommendation (Doc. 49)*, which granted the *Motion to Dismiss (Doc. 5)* filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System (collectively, “Defendants”). *MTR II* is unopposed. Having carefully considered the law, the facts in the record, and the arguments and submissions of the parties,

**IT IS ORDERED** that, for the reasons given in the Court’s *Ruling and Order (Doc. 68)* on *MTR I*, the *Final Ruling and Order (sic) for Civil Action No. 18-888-JWD-RLB Motion to Reconsider (Doc. 54)* is **GRANTED IN PART** and **DENIED IN PART**. Plaintiffs have failed to show that the Court made any error in its prior *Opinion (Doc. 58)*. Nevertheless, because Plaintiffs have presented potential new claims, the Court will grant them thirty (30) days in which to amend their complaint to state viable claims against these Defendants. Plaintiffs are again reminded of their obligations under Rule 11 of the Federal Rules of Civil Procedure, as detailed in the Court’s prior *Ruling and Order (Doc. 68 at 5-6)*.

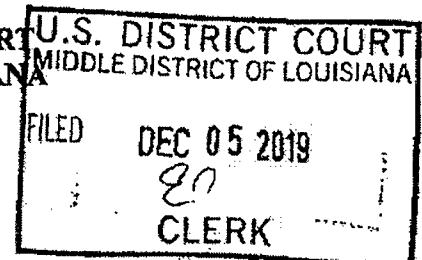
**IT IS FURTHER ORDERD that Plaintiff's Amendment to the Request for Transcript to  
Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant  
Court Case 0:19-pcd-30836 (sic) (Doc. 67) is REFERRED to the Magistrate Judge.**

Signed in Baton Rouge, Louisiana, on November 7, 2019.



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JUDGE JOHN W. deGRAVELLES  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY and  
CONSTANCE LAFAYETTE,  
Plaintiffs,

vs.

LOANCITY, WELLS FARGO BANK,  
N.A., FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
(“Freddie Mac”); FREDDIE MAC  
MULTICLASS CERTIFICATES  
SERIES 3113 TRUST; and  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM (“MERS”);  
DOES 1 through 100 inclusive, et al.

CIVIL ACTION NO.  
3:18-cv-00888-JWD-RLB

**Defendants**

NOTICE OF INTENT TO FILE WRIT OF FINAL RULING - DEPUTYCLE - OF COURT IN  
THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

NOW INTO COURT, through undersigned, comes Darrell Berry and Constance Lafayette, In Proper Person who respectfully request that this Court take notice of Plaintiff intention to apply to the Court of Appeal for the Fifth Circuit Court of Appeal of the State of Louisiana for formal supervisory writs to review the judgement of the Honorable John W. deGravelles of the Middle District of Louisiana court, Partial Judgement that was Denied in Part, on November 7, 2019, by Honorable John W deGravelles in this case against LOANCITY, N.A., FEDERAL HOME LOAN MORTGAGE CORPORATION (“Freddie Mac”); FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; and MORTGAGE ELECTRONIC REGISTRATION SYSTEM (“MERS”); DOES 1 through 100 inclusive, et al., in Baton Rouge, Louisiana. Ordered that Plaintiffs case be dismissed with prejudice.

The party to the judgement appealed from and the name address of his respective attorney are as follows:

Lindsay Leigh Meador & Benjamin Givens Torian  
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Respectfully submitted this 5<sup>th</sup> Day of December, 2019



\_\_\_\_\_  
Darrell Berry, Plaintiff, Pro Se  
Address: 8338 Greenmoss Drive  
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Telephone: 225-610-8633

SERVICE

Please serve Defendants' Attorneys for Plaintiffs,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY and  
CONSTANCE LAFAYETTE,

Plaintiffs,

vs.

CIVIL ACTION NO.  
3: 18-cv-00888-JWD-RLB

LOANCITY, WELLS FARGO BANK,  
N.A., FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
("Freddie Mac"); FREDDIE MAC  
MULTICLASS CERTIFICATES  
SERIES 3113 TRUST; and  
MORTGAGE ELETTRONIC  
REGISTRATION SYSTEM  
("MERS"); DOES 1 through 100  
inclusive, et al.

Defendants.

ORDER

CONSIDERING THE FOREGOING, it is hereby ordered that Plaintiffs, Darrell  
Berry and Constance Lafayette's application for Notice of Appeal of the Final Ruling,

READ, RENDERED AND SIGNED BY Honorable John W. deGravelles, in this  
case on November 7, 2019, be filed in THE FIFTH CIRCUIT COURT OF APPEALS FOR  
THE STATE OF LOUISIANA

on or before the \_\_\_\_\_ day of \_\_\_\_\_ 2019

\_\_\_\_\_  
Honorable John W. deGravelles

**Other orders or rulings sought to be  
reviewed – April 23, 2019**

**Preliminary Injunction dismissed**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY and  
CONSTANCE LAFAYETTE  
VERSUS  
LOANCITY, ET AL.

CIVIL ACTION  
NO. 18-888-JWD-RLB

ORDER

Considering the parties' responses (Docs. 36-37) to the Court's order seeking information about the alleged foreclosure (Doc. 34),

IT IS ORDERED that the Plaintiff's request for a temporary restraining order and injunctive relief (Doc. 10) is DENIED. "To obtain a preliminary injunction [or temporary restraining order], the plaintiff must show" four requirements. *See Western Sur. Co. v. PASI of LA, Inc.*, 334 F. Supp. 3d 764, 789 (M.D. La. 2018) (citation omitted). "[A] preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has 'clearly carried the burden of persuasion' on all four requirements." *Id.* at 789-90 (citation omitted) "Otherwise stated, if a party fails to meet any of the four requirements, the court cannot grant the ... preliminary injunction." *Id.* at 790. One of these four requirements is "that there is a substantial threat that it will suffer irreparable injury if the district court does not grant the injunction." *Id.* at 789. ""Irreparable harm requires a showing that: (1) the harm to Plaintiff[ ] is imminent (2) the injury would be irreparable and (3) that Plaintiff[ ] ha[s] no other adequate legal remedy." *Id.* at 791 (citation omitted). Here, Plaintiffs have not shown that Wells Fargo or any other defendant has initiated or plans to initiate foreclosure

proceedings. Consequently, Plaintiffs have not demonstrated that they face imminent irreparable harm, and their motion is thus denied. If Plaintiffs want to seek injunctive relief against the current holder of his loan, they should file a motion seeking leave of court to amend their complaint to add such holder as a party to the action and then file a new motion for injunctive relief after that party has been added.

Signed in Baton Rouge, Louisiana, on April 23, 2019.



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JUDGE JOHN W. deGRAVELLES  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

**USMG Report and Recommendation -  
August 30, 2019**

**USMJ Bourgeois Dismissed with Prejudice  
Appellants claims against Freddie Mac,  
MERS, et al and denial of motion to amend  
complaint for the first time**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the United States District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have fourteen (14) days after being served with the attached Report to file written objections to the proposed findings of fact, conclusions of law and recommendations therein. Failure to file written objections to the proposed findings, conclusions, and recommendations within 14 days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions of the Magistrate Judge which have been accepted by the District Court.

**ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.**

Signed in Baton Rouge, Louisiana, on August 30, 2019.

  
RICHARD L. BOURGEOIS, JR.  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANADARRELL BERRY, ET AL.  
VERSUS  
LOANCITY, ET AL.CIVIL ACTION  
NO. 18-888-JWD-RLB**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter comes before the Court on the foregoing *Motion to Dismiss* (Doc. 5) filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System (collectively "Defendants"). Plaintiffs Darrell Berry and Constance Lafayette (collectively "Plaintiffs") oppose the motion. (Doc. 19.) Defendants filed a reply. (Doc. 24.) Plaintiffs filed surreply briefs without obtaining leave of court. (Docs. 25, 27.)<sup>1</sup> Oral argument is not necessary. The Court has carefully considered the law, facts in the record, and arguments and submissions of the parties. For the following reasons, it is recommended that Defendants' motion be granted, and Plaintiffs' claims against Defendants be dismissed with prejudice.

**I. Relevant Factual Background**

Plaintiffs filed suit in state court on August 20, 2018, asserting a variety of claims against LoanCity, Wells Fargo Bank, N.A. ("Wells Fargo"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Freddie Mac Multiclass Certificates, Series 3113 Trust, Mortgage Electronic Registration System ("MERS"), and Does 1–100. (*Plaintiffs' Original Complaint for Damages and Other Relief* ("Petition" or "Pet.") ¶¶ 4–11, Doc 1-2 at 51–52.) Specifically, Plaintiffs claims

<sup>1</sup> The district judge's briefing schedule specifically stated that "Sur-Reply briefs will be permitted only with leave of Court for extraordinary reasons supported by sufficient facts." (Doc. 6). The Court finds no basis for granting leave to file sur-reply briefs and will ignore the arguments raised by Plaintiffs in their sur-reply briefs.

are for: (1) lack of standing/wrongful foreclosure; (2) unconscionable contract; (3) breach of contract against LoanCity/MERS; (4) breach of fiduciary duty; (5) quiet title; (6) slander of title; (7) injunctive relief; and (8) declaratory relief. (*Id.* ¶¶ 38-94, Doc. 1-2 at 56-62.) Defendants removed the case to federal court and now seek to dismiss Plaintiffs' claims for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

According to the *Petition*, on December 27, 2005, Plaintiffs executed a negotiable promissory note for real property located at 8338 Greenmoss Drive, Baton Rouge, Louisiana 70806. (*Pet.* ¶¶ 3, 27, Doc. 1-2 at 51, 55.) The promissory note was secured by a mortgage in the amount of \$184,000. (*Id.* ¶ 27, Doc. 1-2 at 55.) The "Original Lender" of the note and mortgage was LoanCity, and MERS served as nominee. (*Id.* ¶¶ 4, 9, Doc. 1-2 at 51-52.) The December 27, 2005 negotiable promissory note and mortgage were recorded on January 4, 2006. (*Id.* ¶ 28, Doc. 1-2 at 55.)

Plaintiffs then allege, upon information and belief, that the promissory note was "sold, transferred, assigned and securitized into the Freddie Mac Multiclass Certificates, Series 3113 with an issue date of February 27, 2006." (*Id.* ¶ 29, Doc. 1-2 at 56.) After this assignment, MERS did not record any assignment of the Deed of Trust in the Parish of East Baton Rouge Recorder's Office. (*Id.* ¶ 31, Doc. 1-2 at 56.) Then, on November 13, 2012, MERS, as nominee for LoanCity, attempted to assign the mortgage to Wells Fargo. (*Id.* ¶¶ 32-33, Doc. 1-2 at 56.) The November 13, 2012 assignment occurred about seven years after the loan originated.<sup>2</sup> (*Id.* ¶ 35, Doc. 1-2 at 56.)

Plaintiffs assert that Defendant Wells Fargo lacks authority to enforce the mortgage due to an improper securitization and subsequent assignment. (*Pet.* ¶ 21, Doc. 1-2 at 54.) Plaintiffs

<sup>2</sup> Since the *Petition* was filed, Wells Fargo has assigned the note to a third party. (Doc. 37.) This later assignment, however, is not at issue.

believe that "Defendants participated in a transactional scheme whereby a purported Tangible Note is converted/exchanged for a Payment Intangible asset to provide an alternative investment offering via Special Deposit to certificate or bond holders[.]" (*Id.* ¶ 15, Doc. 1-2 at 53.) Ultimately, Plaintiffs believe that LoanCity "unlawfully purported to assign, transfer, or convey its interest in Plaintiffs' Note[.]" and thus Defendants do not have a colorable claim on the mortgage. (*Id.* ¶¶ 18, 22, Doc. 1-2 at 53, 55.)

On July 3, 2019, the district judge granted Wells Fargo's Motion to Dismiss and dismissed Plaintiffs' claims against Wells Fargo with prejudice. (Doc. 39.) This Report and Recommendation largely adopts the analysis in that Ruling.

## II. Relevant Standard

### A. Rule 12(b)(6) Standard

In *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 135 S. Ct. 346, 190 L. Ed. 2d 309 (2014), the Supreme Court explained that "[f]ederal pleading rules call for a 'short and plain statement of the claim showing that the pleader is entitled to relief,' Fed. R. Civ. P. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Id.*, 135 S. Ct. at 346–47 (citation omitted).

Interpreting Rule 8(a), the Fifth Circuit has explained:

The complaint (1) on its face (2) must contain enough factual matter (taken as true) (3) to raise a reasonable hope or expectation (4) that discovery will reveal relevant evidence of each element of a claim. "Asking for [such] plausible grounds to infer [the element of a claim] *does not impose a probability requirement* at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal [that the elements of the claim existed]."

*Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 257 (5th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (emphasis in *Lormand*)).

Applying the above case law, the Western District of Louisiana has stated:

Therefore, while the court is not to give the “assumption of truth” to conclusions, factual allegations remain so entitled. Once those factual allegations are identified, drawing on the court’s judicial experience and common sense, the analysis is whether those facts, which need not be detailed or specific, allow “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *[Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)]; *Twombly*, [550] U.S. at 556, 127 S. Ct. at 1965. This analysis is not substantively different from that set forth in *Lormand*, *supra*, nor does this jurisprudence foreclose the option that discovery must be undertaken in order to raise relevant information to support an element of the claim. The standard, under the specific language of Fed. R. Civ. P. 8(a)(2), remains that the defendant be given adequate notice of the claim and the grounds upon which it is based. The standard is met by the “reasonable inference” the court must make that, with or without discovery, the facts set forth a plausible claim for relief under a particular theory of law provided that there is a “reasonable expectation” that “discovery will reveal relevant evidence of each element of the claim.” *Lormand*, 565 F.3d at 257; *Twombly*, [550] U.S. at 556, 127 S. Ct. at 1965.

*Diamond Servs. Corp. v. Oceanografia, S.A. De C.V.*, 2011 WL 938785, at \*3 (W.D. La. Feb. 9, 2011) (citation omitted).

More recently, in *Thompson v. City of Waco, Tex.*, 764 F.3d 500 (5th Cir. 2014), the Fifth Circuit summarized the standard for a Rule 12(b)(6) motion:

We accept all well-pleaded facts as true and view all facts in the light most favorable to the plaintiff . . . To survive dismissal, a plaintiff must plead enough facts to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Our task, then, is to determine whether the plaintiff state a legally cognizable claim that is plausible, not to evaluate the plaintiff’s likelihood of success.

*Id.* at 502–03 (citations and internal quotations omitted).

## B. Pro Se Litigants

As an initial matter, the Court acknowledges that the *Petition* was filed *pro se*. (*Pet.*, Doc. 1-2 at 51, 63.) Pleadings filed *pro se* are held to less stringent standards than those drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

Further, a court must liberally construe a *pro se* complaint, taking all well-pleaded allegations as true. *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993) (per curiam).

Nevertheless, Plaintiffs are advised that, “a *pro se* litigant is not exempt . . . from compliance with the relevant rules of procedural and substantive law.” *NCO Financial Systems, Inc. v. Harper-Horsley*, No. 07-4247, 2008 WL 2277843, at \*3 (E.D. La. May 29, 2008). As such, a *pro se* plaintiff’s complaint “must set forth facts giving rise to a claim on which relief may be granted.” *Johnson*, 999 F.2d at 100.

### **III. Discussion**

#### **A. Parties’ Arguments**

Defendants have moved to dismiss Plaintiffs’ claims on two grounds. First, Defendants argue that federal courts have rejected Plaintiffs’ securitization and pooling argument and such challenges to the assignment of a mortgage. Second, Defendants contend that Plaintiffs have failed to state viable claims against them.

In response, Plaintiffs quote the Federal Rules of Civil Procedure and argue they have pled enough facts to put Defendants on notice that they could recover, given adequate discovery. However, Plaintiffs fail to address any arguments made by Defendants in its supporting brief.

In reply, Defendants reiterate their initial arguments and add that to the extent Plaintiffs are seeking to raise a claim of “fraud” through their opposition, such a claim does not appear in the Complaint and does not otherwise meet the pleading standards for fraud under Rule 9(b) of the Federal Rules of Civil Procedure.

#### **B. Waiver**

As a preliminary matter, Plaintiffs did not respond to the substance of any of Defendant’s arguments in their opposition to the instant motion. As a matter of law, Plaintiffs have thereby waived any opposition. *See JMBC, LLC v. Bd. of Commerce & Indus.*, 336 F. Supp. 3d 620, 634

(M.D. La. 2018) (“The Fifth Circuit makes it clear that when a party does not address an issue in his brief to the district court, that failure constitutes a waiver on appeal. By analogy, failure to brief an argument in the district court waives that argument in that court.” (citations and internal quotations omitted)). Thus, on this ground alone, Plaintiffs’ claims are subject to dismissal.

### **C. Failure to State a Cognizable Claim**

In addition to the obstacles described above, Plaintiffs’ allegations also fail to set forth a legally cognizable claim. The Court will first address Plaintiffs’ general assertions regarding the securitization of the loan and the validity of the assignment and will then discuss each of Plaintiffs’ individual claims.

#### **1. General Allegations**

Plaintiffs’ *Petition* is based on legal theories that have been resoundingly rejected by federal courts across the country. Specifically, the bases for Plaintiffs’ claims stem from the contention that their mortgage was improperly securitized and/or pooled, making any subsequent assignment invalid. However, neither theory has merit. *See, e.g., Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 255 (5th Cir. 2013) (discussing and rejecting the theory that a mortgage was allegedly “split” from the note through securitization, rendering the note unenforceable); *Marban v. PNC Mortg.*, No. 3:12-cv-3952-M, 2013 WL 3356285, at \*10 (N.D. Tex. July 3, 2013) (finding meritless the theory that any securitization of the loan rendered the note and accompanying deed of trust unenforceable and discharged a borrower’s obligations under them); *Beebe v. Fed. Nat. Mortg. Ass’n*, No. 2:13-cv-311-JCM-GWF, 2013 WL 3109787, at \*2 (D. Nev. June 18, 2013) (“[t]he securitization argument has been repeatedly rejected . . . because it does not alter or change the legal beneficiary’s standing to enforce the deed of trust”); *Henkels v. J.P. Morgan Chase*, No. CV 11-0299-PHX-JAT, 2011 WL 2357874, at \*7 (D. Ariz. June 14, 2011) (rejecting claim “that securitization has had any impact on

[plaintiff's] obligations under the loan" and noting that numerous courts have rejected similar claims).

Moreover, the *Petition* and Amended Opposition make little attempt to connect Plaintiffs' claims to specific facts relevant in this particular case. Plaintiffs refer generally to "Defendants" without specifying or delineating which Defendant took which action. Further, many of Plaintiffs' allegations are legal conclusions that the Court need not accept as true. *Iqbal*, 556 U.S. at 679.

Plaintiffs' claims are all predicated on that theory that because the Deed of Trust was improperly securitized and/or pooled, Defendants have "failed to perfect any security interest in the Property." (Pet. ¶¶ 18–78, Doc. 1-2 at 53–60.) The Sixth Circuit has noted that district courts "have entertained a spate of civil actions" related to mortgages and securitization of the underlying loans. *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 748 (6th Cir. 2014). The Court described many of these cases as "scattershot affairs, tossing myriad (sometimes contradictory) legal theories at the court to see what sticks." *Thompson*, 773 F.3d at 748. Here, even accepting the allegations as true and liberally construing Plaintiffs' claims, this Court finds that none of the claims "stick."

By way of example, Plaintiffs' claim for wrongful foreclosure alleges that "Defendants . . . do not have the right to foreclose on the Property because [they] . . . cannot prove to the court they have a valid interest as a real party in interest." (Pet. ¶ 39, Doc. 1-2 at 56.) Likewise, Plaintiffs' claim for quiet title alleges that "Defendants are without any legal right whatsoever, and [they] have no estate, title, lien or interest in or to the Real Property." (Id. ¶ 74, Doc. 1-2 at 60.) So, too, is Plaintiffs' injunctive relief claim based on the theory of improper securitization / pooling. (Id. ¶¶ 86, 89 (Plaintiffs' allege "Defendants inability to establish a claim of right to Plaintiffs' Note or Deed of Trust establishes Plaintiffs' claims[,]") and, therefore, "Plaintiffs' are

the record title holder of the Property . . .”), Doc. 1-2 at 61.) Because all of Plaintiffs’ claims are based on the flawed allegation of an invalid securitization of the loan and/or the allegedly invalid assignment of the Note or Deed of Trust, the Court dismisses them for failure to state a viable claim.

## 2. Specific Claims

Again, Plaintiffs must identify a cognizable legal theory under which they bring their claims, and, here, they have not done so. Stripped of the allegations based on discredited legal theories, the Court will now review Plaintiffs’ individual claims. As explained below, each of Plaintiffs’ causes of action will be dismissed.

### a. Lack of Standing/Wrongful Foreclosure

Plaintiffs first bring a claim against Defendants for lack of standing/wrongful foreclosure, contending that no Defendant has standing to foreclose and that no Defendant has the right to foreclose. (Doc. 1-2 ¶¶ 38-40.) However, Plaintiffs fail to allege that any Defendant has invoked foreclosure proceedings against their property. (*Id.*)

“Although there is no statutory cause of action in Louisiana for wrongful seizure, damages for a wrongful seizure of property have long been available under Louisiana’s tort law.” *Bombet v. Donovan*, No. 13-118-SDD-SCR, 2015 WL 65255, at \*8 (M.D. La. Jan. 5, 2015). However, “[b]ecause liability is tied to the act of unlawfully seizing another’s property, the cause of action arises at the moment of the seizure.” *Id.* (citing *Mariche v. Wells Fargo Bank, N.A.*, No. 11-1191, 2012 WL 1057626, at \*3 (E.D. La. Mar. 28, 2012)).

Here, Plaintiffs’ *Petition* only asserts that Defendants have no perfected rights or interests in their property. (*Pet.* ¶ 39, Doc. 1-2 at 56.) It does not allege that Defendants have taken any action to seize or foreclose on the property. (*Id.*) Thus, because Plaintiffs have not alleged that any Defendant has begun foreclosure proceedings against Plaintiffs’ property, this cause of

action for lack of standing/wrongful foreclosure fails to state a claim upon which relief can be granted.

**b. Unconscionable Contract**

Plaintiffs' second cause of action alleges an unconscionable contract. As an initial matter, Plaintiffs point to no Louisiana law or federal or state court decision interpreting Louisiana law that has permitted an affirmative claim for "unconscionable contract" (as opposed to the contract defense of unconscionability).

Nonetheless, Louisiana jurisprudence does recognize that certain contractual terms, especially when contained in dense standard forms that are not negotiated, can be unconscionable and thus unenforceable. *See, e.g., Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, 379 F.3d 159 (5th Cir. 2004). But, for this contract defense to be applicable, there would need to be a contract between Plaintiffs and a Defendant and allegations stating how that contract is purportedly unconscionable. *See Aetna Fin. Co. of Baton Rouge v. Perkins*, 448 So. 2d 121, 128 (La. Ct. App. 1984) (finding that the loan transactions were not unconscionable when the defendants did not "allege in their pleadings or in brief that the terms of their loans are in violation of law").

Here, Plaintiffs have not alleged any contract negotiations or contract with Defendants. (*Pet. ¶¶ 52-59, Doc. 1-2 at 58-59.*) Plaintiffs only make allegations against LoanCity regarding contract negotiations, and even then, fail to allege that the terms of their loan are allegedly in violation of law. (*Id. ¶¶ 57, 59* (LoanCity failed to clarify the terms of the Mortgage and concealed they were benefitting financially; intended to exploit Plaintiffs' special disadvantage), Doc. 1-2 at 59.)

In sum, even if a cause of action for unconscionable contract exists under Louisiana law, Plaintiffs have identified any contract with a Defendant and has not stated any allegations regarding unconscionability against any Defendant. Therefore, this claim fails.

#### c. Breach of Contract

Plaintiffs' third cause of action is for breach of contract with respect solely to LoanCity and MERS. Plaintiff appears to allege that LoanCity and MERS violated Paragraph 23 of the Deed of Trust, pursuant to which they were "obligated to satisfy, release and reconvey the beneficial security interest in Plaintiffs' pledged Deed of Trust upon payment of all sums associated with the release premium to [LoanCity] for Accommodated Party services rendered." (Pet. ¶¶ 60-64, Doc. 1-2 at 59).

"The essential elements of a breach of contract claim are (1) the obligor's undertaking an obligation to perform, (2) the obligor failed to perform the obligation (the breach), and (3) the failure to perform resulted in damages to the obligee." *Denham Homes, L.L.C. v. Teche Fed. Bank*, 2014-1576 (La. App. 1 Cir. 9/18/15), 182 So. 3d 108, 119.

Defendants have submitted a copy of the mortgage. (See Doc. 5-2.) To the extent the Court considers this document for the purposes of the instant cause of action, it may treat the instant motion as one for summary judgment under Rule 56. See Fed. R. Civ. P. 12(d). Paragraph 23 of the mortgage does not contain the obligation asserted by Plaintiffs in the Complaint. While Plaintiffs have been provided an opportunity to be heard, they have failed to identify the source of any specific obligations to perform by MERS with respect to the breach of contract claim. Therefore, given the vague and conclusory allegations in the Complaint, this cause of action for breach of contract fails to state a claim upon which relief can be granted. To the extent the Court considers summary judgment evidence, there is no genuine dispute as to any material fact and Defendants are entitled to judgment as a matter of law.

#### d. Breach of Fiduciary Duty

Plaintiffs next allege Defendant breached a fiduciary duty using elements that are inapplicable under Louisiana law. (*Pet. ¶ 66, Doc. 1-2 at 59.*) Plaintiffs also fail to identify and allege any facts necessary to impose a fiduciary duty upon any Defendant.

Under Louisiana law, the “elements of a cause of action for a breach of fiduciary duty . . . are: (1) a breach by a fiduciary of an obligation to another; (2) a knowing collusion or participation in the breach by the fiduciary; and (3) damages suffered by another as a result of the breach.” *Brockman v. Salt Lake Farm P'ship*, 33,938 (La. App. 2 Cir. 10/4/00), 768 So.2d 836, 844. In order “for a fiduciary duty to exist, there must be a fiduciary relationship between the parties.” *Scheffler v. Adams & Reese, LLP*, 06-1774 (La. 2/22/07), 950 So.2d 641, 647.

However, the Louisiana Credit Agreement Statute (“LCAS”) bars any implied fiduciary duty claims absent a written agency or trust agreement. The LCAS states, in the pertinent part:

No financial institution or officer or employee thereof shall be deemed or implied to be acting as a fiduciary, or have a fiduciary obligation or responsibility to its customers or to third parties . . . unless there is a written agency or trust agreement under which the financial institution specifically agrees to act and perform in the capacity of a fiduciary.

La. Rev. Stat. Ann. § 6:1124.

Here, Plaintiffs have not alleged the existence of any written trust agreement with any Defendant. Accordingly, this cause of action fails to state a viable claim. *See Hancock Bank of La. v. 3429 H, LLC*, 15-355 (La. App. 5 Cir. 1/13/16), 184 So. 3d 274, 280 (“Schmidt did not allege in his reconventional demand that a written credit agreement existed. . . . Accordingly, there can be no cause of action . . . for a breach of fiduciary duty regarding the promissory note.”); *see also Loraso v. JP Morgan Chase Bank, N.A.*, No. 13-4734, 2013 WL 5755638 (E.D. La. Oct. 23, 2013) (“Plaintiffs’ failure to allege a written fiduciary agreement is fatal to their claim for breach of fiduciary duty.”). Further, even if there were a fiduciary duty, Plaintiffs do

not allege any wrongdoing by any Defendant. (See Pet. ¶¶ 65-70, Doc. 1-2 at 59-60.) As such, this cause of action fails to state a claim upon which relief can be granted.

e. Quiet Title

Next, Plaintiffs bring a quiet title claim on the basis that “all Defendants . . . claim some estate, right, title, lien or interest in or to the property adverse to Plaintiffs” “without any right whatsoever” and “these claims constitute a cloud on Plaintiffs’ title.” (Pet. ¶¶ 74, 75, Doc. 1-2 at 60.) Plaintiffs ask the Court to issue a “decree permanently enjoin[ing] Defendants . . . from asserting any adverse claim to Plaintiffs’ title to the property.” (Pet. ¶ 77, Doc. 1-2 at 60.) However, Plaintiffs fail to allege sufficient facts to make out a cloud on their title.

Generally, “[a]n action to remove a cloud from title or to quiet title may be used by a person claiming ownership of immovable property or of a real right against another who has recorded an instrument which operates as a cloud on his title.” *Spencer v. James*, 42,168, p. 9 (La. App. 2 Cir. 5/9/07), 955 So. 2d 1287, 1292. “The requirements of the action to quiet title are: 1. Claim of ownership; 2. Existence of clouds; 3. Description of property; and 4. Prayer for cancellation of the clouds.” *Harrison v. Alombra*, 341 So. 2d 1165 (La. Ct. App. 1976). All four requirements must be met. *Spencer*, 955 So. 2d at 1293 (citations omitted).

Here, Plaintiffs fail to provide sufficient facts to allege that a cloud exists on their title. “Generally, a cloud on title is produced by an invalid instrument or voidable conveyance that is associated with the title, and ‘[i]t is enough that the invalidity does not appear upon its [(the instruments')] face[.]’” *Jonalkar v. Wells Fargo Mortg., Inc.*, No. 12-216-BAJ-CN, 2012 WL 5364246, at \*2 (M.D. La. Oct. 31, 2012) (quoting *Graves v. Ashburn*, 215 U.S. 331, 30 S. Ct. 108, 109 (1909)). “Furthermore, a cloud on title may exist when the title is unmerchantable or suggestive of litigation and ‘questionable’ as to whether there is a clear title.” *Parker v. Machen*, 567 So. 2d 739, 743 (La. Ct. App. 1990). However, this Court has held that “theories of

securitization, ‘splitting the note’, and lack of standing are not sufficient factual allegations to support a ‘cloud on title.’” *Jonalkar*, 2012 WL 5364246, at \*2. These allegations do not “establish a plausible claim . . . because Plaintiffs conclusively state Defendants lack standing only because there was an assignment of the mortgage to subsequent entities.” *Id.*

The same reasoning applies here. Plaintiffs base their claim solely on the alleged improper securitization of their Note. Therefore, this cause of action for quiet title fails to state a claim upon which relief can be granted.

#### **f. Slander of Title**

Plaintiffs next bring a cause of action for slander of title alleging that Defendant LoanCity acted maliciously in recording the Assignment of the Deed despite never perfecting their rights to the Deed. (*Pet.* ¶¶ 82-84, Doc. 1-2 at 61.) Plaintiffs fail to specify how and which other Defendants, if any, are involved in allegedly slandering their title. Further, Plaintiffs assert conclusory accusations and make no specific allegations against any Defendant. (*Pet.* ¶¶ 79-84, Doc. 1-2 at 60-61.) This fails to provide “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.

In addition, Louisiana does not recognize any specific cause of action for “slander of title.” *See Todd v. State*, 456 So.2d 1340, 1353 (La. 1983) (explaining that the “jactitory action” was the jurisprudentially-created way to handle “slander of title actions,” but that in “1960 with the adoption of the Louisiana Code of Civil Procedure, the former jactitory action was merged with the former possessory action”). Because Plaintiffs’ claim is not a recognized cause of action under Louisiana law, it fails as a matter of law. Further, even if it were recognized, Plaintiffs have not alleged any facts that would sustain a cause of action against any Defendant. As such, this cause of action fails to state a claim upon which relief can be granted.

### g. Injunctive Relief

Plaintiffs next ask for an injunction preventing any Defendant from foreclosing on their property. (*Pet. ¶¶ 85-90, Doc. 1-2 at 61-62.*) However, this cause of action fails on a number of grounds.

First, after Defendants filed the instant motion, Plaintiffs filed a separate motion for a temporary restraining order. (*Doc. 10.*) Subsequently, the Court ordered the parties to file short briefs advising of the status of the alleged foreclosure action. (*Doc. 34.*) In response, Wells Fargo advised the Court that it had assigned its interest in Plaintiffs' mortgage to a third party. (*Doc. 37, 37-1.*) Thus, "Wells Fargo has no interest in the loan, so it has no plans to foreclose." (*Doc. 37.*) The Court ultimately denied Plaintiffs injunctive relief because they failed to show that "Wells Fargo or any other defendant has initiated or plans to initiate foreclosure proceedings. Consequently, Plaintiffs [had] not demonstrated that they face imminent irreparable harm[.]" (*Doc. 38 at 1-2.*)

Nevertheless, to the extent Plaintiffs still seek injunctive relief from Defendants, they have failed to state a viable claim. In short, Plaintiffs cannot show a substantial likelihood of success on the merits.

"A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." *Munaf v. Green*, 553 U.S. 674, 689-90 (2008) (internal citations and quotations omitted). At all times, the burden of persuasion remains with the plaintiff as to each of the four elements. Specifically, a plaintiff must establish: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) the injunction will not disserve the public interest. *Ridgely v. Fed. Emergency Mgmt. Agency*, 512 F.3d 727, 734 (5th Cir. 2008). If a plaintiff fails to meet his burden regarding

any of the necessary elements, the Court need not address the other elements necessary for granting a preliminary injunction. *See Roho, Inc. v. Marquis*, 902 F.2d 356, 361 (5th Cir. 1990) (declining to address the remaining elements necessary to obtain a preliminary injunction after finding that the plaintiff failed to show a substantial likelihood of success on the merits).

Plaintiffs' requests fail on the very first element. Because the Court has already disposed of all of their claims, they cannot show any likelihood of success on the merits, much less a substantial one. Further, because Plaintiffs failed to meet their burden regarding the first listed necessary element, the Court need not address the other elements. Plaintiffs have failed to satisfy this requirement for injunctive relief.

#### **h. Declaratory Relief**

In their final cause of action, Plaintiffs request a declaration from the Court that the securitization of the loan extinguished any interest Defendants held in the Property, and therefore Plaintiffs possess free and clear title. (*Pet. ¶ 94, Doc. 1-2 at 62.*) However, in such a situation as this, a request for a declaratory judgment need not be permitted if it adds nothing to the suit. *See Pan-Islamic Corp. v. Exxon Corp.*, 632 F.2d 539, 546 (5th Cir. 1980).

Here, the declarations Plaintiffs seek are entirely derivative of their other claims; that is, their declaratory judgment requests rely on the same arguments that the Court has already considered and rejected. Furthermore, Plaintiffs seek the same relief through declaratory judgment that they do through their other claims—namely, that the Court invalidate the assignment of the mortgage and find that they hold title to the Property.

Thus, these redundant declaratory judgment claims will not survive a Rule 12(b)(6) motion. *See, e.g., Edwards v. U.S. Bank N.A.*, No. 6:15-cv-02535, 2016 WL 4574585, at \*6 (W.D. La. June 28, 2016) (dismissing cause of action for declaratory relief because it was duplicative of other claims).

In addition, the Fifth Circuit has explained that, when considering a declaratory judgment action, a district court must engage in a three-step inquiry to determine whether to decide or dismiss a complaint for declaratory relief. *Orix Credit All., Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000). “First, the court must determine whether the declaratory action is justiciable.” *Taylor v. City of Baton Rouge*, 39 F. Supp. 3d 807, 817 (M.D. La. 2014) (quoting *Orix*, 212 F.3d at 895). For a declaratory action to be justiciable it must seek to resolve an “actual controversy” rather than an abstract or hypothetical dispute. *Id.* Generally, an actual controversy exists when “a substantial controversy of sufficient immediacy and reality exists between parties having adverse legal interests.” *Orix*, 212 F.3d at 896. Because Plaintiffs have not alleged that there are any rights to declare between them and Wells Fargo as servicer of their mortgage, no “actual controversy” exists.

As the Court has found that all of Plaintiffs claims either fail to state a claim or have been conceded, there is no longer any basis for Plaintiffs’ claim to declaratory relief. Accordingly, this cause of action fails to state a claim upon which relief can be granted.

#### **D. Leave to Amend**

Federal Rules of Civil Procedure 15(a) “requires the trial court to grant leave to amend freely,” and “the language of this rule evinces a bias in favor of granting leave to amend.” *Jones v. Robinson Prop. Grp., LP*, 427 F.3d 987, 994 (5th Cir. 2005) (internal citations omitted). However, “leave to amend is in no way automatic, but the district court must possess a ‘substantial reason’ to deny a party’s request for leave to amend.” *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014) (citing *Jones*, 427 F.3d at 994). The Fifth Circuit further described the district courts’ discretion on a motion to amend as follows:

The district court is entrusted with the discretion to grant or deny a motion to amend and may consider a variety of factors including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by

amendments previously allowed, undue prejudice to the opposing party . . . , and futility of the amendment.” *Jones*, 427 F.3d at 994. (citation omitted). “In light of the presumption in favor of allowing pleading amendments, courts of appeals routinely hold that a district court’s failure to provide an adequate explanation to support its denial of leave to amend justifies reversal.” *Mayeaux v. La. Health Serv. & Indent. Co.*, 376 F.3d 420, 426 (5th Cir. 2004) (citation omitted). However, when the justification for the denial is “readily apparent,” a failure to explain “is unfortunate but not fatal to affirmance if the record reflects ample and obvious grounds for denying leave to amend.” (citation and internal quotation marks omitted).

*Id.*, 751 F.3d at 378.

In addition, the Fifth Circuit has made clear that “denying a motion to amend is not an abuse of discretion if allowing an amendment would be futile.” *Id.* (citing *Boggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003)). An amendment would be deemed futile “if it would fail to survive a Rule 12(b)(6) motion.” *Id.*

Here, the Court has substantial reason to deny Plaintiffs leave to amend. The *Petition* in this case appears to be a version of a form complaint available on the internet that has routinely been dismissed by other U.S. district courts across the country.<sup>3</sup> See, e.g., *Taylor v. Wells Fargo Bank, N.A.*, 85 F. Supp. 3d 63 (D.D.C. 2015); *Lakiesha v. Bank of New York Mellon*, No. 3:15-CV-0901-B, 2015 WL 5934439 (N.D. Tex. Oct. 9, 2015); *Diamond v. Wells Fargo Bank, N.A.*, No. CV-14-00975-PHX-SPL, 2015 WL 9691031 (D. Ariz. June 30, 2015); *Kennedy v. World Sav. Bank, FSB*, No. 14-CV-5516-JSC, 2015 WL 1814634 (N.D. Cal. Apr. 21, 2015); *Dagres v. Countrywide Bank, N.A.*, No. 2:14-CV-1339-CAS, 2014 WL 3417848 (C.D. Cal. July 10, 2014), *appeal dismissed* (9th Cir. Sept. 25, 2014). Further, Plaintiffs’ form *Petition* has little to no applicability to Louisiana law and states incorrect elements of causes of action under Louisiana law. As a result, the Court finds that Plaintiffs have acted in bad faith, that any amendment

<sup>3</sup> See Sample Complaint, available at <http://www.certifiedforensicloanauditors.com/pdfs/SAMPLECOMPLAINT.pdf>.

## 6. Certificate of Service

## SERVICE

I hereby certify that on the 5th day of August, 2020, the undersigned sent a true and correct copy of the foregoing Appellants Brief and I served a copy of the foregoing document by US Mail, postage prepaid to the following:

Lindsay Leigh Meador & Benjamin Givens Torian  
GALLOWAY JOHNSON TON/WKINS  
BURR & SMITH  
328 Settlers Trace Blvd.  
Lafayette, Louisiana 70508  
Telephone: (337)735-1760  
Facsimile: (337)993-0933  
lmeador@gallowaylawfirm.com

Christopher Daniel Meyer  
BURR & FORMAN LLP  
190 East Capitol Street  
Suite M- 100  
Jackson, MS 39201  
(601)355-3434  
Telephone: (601)355-3434  
Email: cmeyer@burr.com

## **Relevant Parts of Any Written Exhibit Chart - Chain of Title Broken**

## Chain of Title Forever Broken

Proper Chain of Title Needed to Foreclose	But this is what the evidence shows	Wells Fargo shows this Chain of Title
<p>Equifirst to ↓ LoanCity to ↓ The Trust (Trustee, Depositor) to ↓ Wells Fargo</p> <p>This did not happen</p>	<p>Equifirst Never Assigned To LOANCITY</p> <p><b>Chain is Broken</b></p> <p>LoanCity (refinanced mortgage/note in 2005 w/o purchasing original note) ↓ Equifirst States Note Paid 2006 ↓ <b>Chain is Broken</b></p> <p>The Trust in 2006 (received &amp; securitized bogus note from LoanCity and violates PSA by: 1) accepting the unenforceable note 2) failing to file Certificates with SEC or the State and Federal Government and 3) creating a private label trust which violates New York Law for REMICs</p> <p>The Trust does not assign any rights to Wells Fargo</p> <p><b>Chain is Broken Again</b></p>	<p>Equifirst Never Assigned To LOANCITY</p> <p><b>Chain is Broken</b></p> <p>LoanCity (refinanced mortgage/note in 2005 w/o purchasing original note) ↓ Equifirst Note Paid 2006 <b>Chain is Broken</b></p> <p>LoanCity dissolves 2008 ↓ MERS transfers LoanCity note to Wells Fargo without permission from LoanCity 2012</p> <p><b>Chain is Broken Again</b></p> <p>MERS/Wells Fargo did not pull note from the Freddie Mac Trust</p> <p><b>Chain is Broken Again</b></p> <p>Wells Fargo to ↓ SLS although Wells Fargo had no rights to transfer the note</p>
<p><b>True Chain of Title supported by evidence</b></p> <p>Equifirst to ↓ The Berrys 2006</p>		

## **Relevant Parts of Any Written Exhibit Affidavit of Fraud/Forgery**

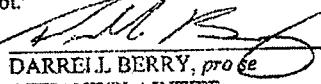
EAST BATON ROUGE PARISH C-672792  
Filed Aug 20, 2018 1:59 PM  
25  
Deputy Clerk of Court

AFFIDAVIT OF FRAUD/FORGERY

STATE OF LOUISIANA §  
§  
PARISH OF EAST BATON ROUGE §

Before me, the undersigned notary, on this day personally appeared DARRELL BERRY, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. "My name is DARRELL BERRY. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am the true and lawful owners of the property located at 8338 Greenmoss Drive, Baton Rouge, Louisiana 70806.
3. As such, and contrary to the claims by Defendants, or the Clerk of the East Baton Rouge Parish, the documents filed in the East Baton Rouge Parish, Louisiana Records, upon knowledge, information and belief, the documents have been falsified/forged/manipulated. Said documents are the product of fraudulent and/or illegal acts, and we dispute the validity/legitimacy of said documents, including, but not limited to the document showing it is a Security Deed, and the "Scrivener's Affidavit", and any and all documents in the Record, as said documents are either products of fraud, or forgery, and/or the documents that led the Defendants to come to a conclusion not consistent with Plaintiffs' claims, were the product of fraud and/or forgery, and there is a great likelihood, that the documents were obtained by illegal/criminal acts."
4. "Further Affiant sayeth not."

  
DARRELL BERRY, pro se  
AFFIANT/PLAINTIFF

Sworn to and Subscribed before me, by DARRELL BERRY, who personally appeared before me.

Dated the 16<sup>th</sup> day of August, 2018.

  
NOTARY PUBLIC, STATE OF LOUISIANA  
#377800  
THE AD 2018

[SEAL]

My Commission Expires: Indefinite

## **Relevant Parts of Any Written Exhibit**

**The Original Lender Equifirst Mortgage  
and Note Cancelled – Chain of Title  
forever broken Appellants own the home**

Appendix  
D 93

M

ARTG 792 NM 11808

LOAN NO.: 0006772644

Prepared by: Sherry Robinson  
Household Mortgage Services  
577 Lamont Road  
P.O. Box 1247  
Elmhurst, IL 60126

**AFFIDAVIT OF LOST NOTE AND AUTHORIZATION TO CANCEL MORTGAGE  
PURSUANT TO R. S. 9:5168**

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE PARISH

Before me, the undersigned Notary, personally came and appeared: Robert Senda, who being duly sworn did depose say that: He is the Vice President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. or that he is personally the last holder of that certain promissory note for sum of \$176,310.00, drawn by CONSTANCE LAFAYETTE BERRY AND DARRELL BARRY payable to EQUIFIRST CORPORATION, which note was dated 10/31/2002 and parphed for identification with an act of mortgage executed before N/A, Notary Public, which mortgage is recorded in the records of EAST BATON ROUGE PARISH at MOB 641 folio 11406, or Instrument # N/A and is secured by the following described property: Lot B, B-1, C, D B-1-A D-1 of Square N/A in District . Affiant further deposed that he (or the corporation that he represents) was the last holder in due course of said note and that said note is lost and cannot be located by affiant after due and diligent search for same.

Affiant did further depose that on the 10/31/2002 makers of said note or their agents did pay said note and mortgage in full and that nothing remains due on same and that affiant does hereby authorize the Recorder of Mortgages for EAST BATON ROUGE PARISH to cancel the inscription of that mortgage above described and recorded in MOB 641 folio 11406, or Instrument # N/A. The affiant has not sold, transferred, or assigned the note to any other person or entity. Affiant does hereby agree to indemnify any person or entity as a consequence of canceling the aforesaid mortgage or vendor's lien pursuant to this affidavit which is executed under the provisions of R. S. 9:5168. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

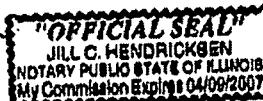
WITNESSES:

Robert Senda

Robert Senda  
Lag Holder, or Holders of Note

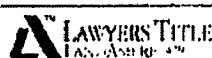
Sworn to and subscribed before me,  
Notary, this January, 18 2006

Jill C. Hendrickson  
Notary Public



Appendix  
D 94

Issued by: Lawyers Title Insurance Corporation  
Baton Rouge, Louisiana  
Tel: (225) 767-4001



Lawyers Title Insurance Corporation

CASE NO.
38403/rb

POLICY NO.
135-02-337999

## LOAN POLICY

Schedule A – Paragraph 5  
Legal Description Continued

ONE (1) CERTAIN LOT OR PARCEL OF GROUND, together with all the buildings and improvements thereon, and all the rights, ways and privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in the Parish of East Baton Rouge, State of Louisiana, being designated as LOT D-1 of the Joe Roppolo, et al Tract located in Sections 69, 68 and 71, T78, R1E, G.L.D. on the official map of said tract on file and of record in the office of the Clerk and Recorder for said parish and state, record in the office of the Clerk and Recorder for said parish and state, revised August 4, 1980, to show the resubdivision of Lot B to create Lots B-1, C and D to form Lots B-1-A and B-1, said Lot D-1 measuring One Hundred (100') feet front on Greennosa Drive by a depth of One Hundred Fifty-Two (152') feet between equal and parallel lines and being subject to a fifteen (15') foot utility servitude across the rear, all as more fully shown on the official recorded map and map revisions.

Page 93

ALTA Loan  
(Amalgam)

Page 1 of 1

ORIGINAL

This Policy is invalid unless cover sheet and Schedules A and B are attached

2

CANCELLATION OF ENCUMBRANCE

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

By virtue of the attached AT 11 DAVID

MORTGAGE recorded as original 6041 of  
bundle 11406 of the records of this office, is hereby cancelled.

Baton Rouge, Louisiana, this 1st day of February, 2006.

\*also index

Darrell M. Berry - mr

DOUG WELBORN  
Clerk and Recorder

By: DW Deputy Clerk and Recorder

ORIG 792 Bndl 11808

FILED AND RECORDED  
EAST BATON ROUGE PARISH, LA.

2006 FEB 09 AM 10:07:51  
FIL BX FOLIO  
DOUG WELBORN

CLERK OF COURT & RECORDER

CERTIFIED TRUE COPY

BY

DEPUTY CLERK & RECORDER

CERTIFIED  
TRUE COPY

MAR 07 2018

DEPUTY CLERK OF COURT

Page 94

## **Relevant Parts of Any Written Exhibit**

**MERS 2012 Assignment from LoanCity  
to Wells Fargo revives a Dead Company**



**Relevant Parts of Any Written Exhibit**

**LoanCity is no longer in business 2008**

# Exhibit A

00915095

1601525

FILED <sup>9</sup>

in the office of the Secretary of State  
of the State of California

JUN 3 2008

  
CERTIFICATE OF ELECTION  
TO WIND UP AND DISSOLVE  
OF  
LOANCITY,  
A CALIFORNIA CORPORATION  
CA Corp. Code § 1901

The undersigned, Richard Stankoullis, and Nick Labao, do hereby certify that they are now, and during all times mentioned herein have been, the duly elected and acting President and Chief Executive Officer, and Treasurer and Vice President of Finance, respectively, of Loancity, a California corporation (the "Corporation"), and they do hereby further certify and state:

(1) The Corporation has elected to wind up and dissolve.

(2) The election was made by the vote of shareholders holding 6,605,771 shares of Common Stock, 12,465,798 shares of Series C Preferred Stock, 10,002,844 shares of Series D-1 Preferred Stock and 21,217,238 shares of Series D-2 Preferred Stock of the Corporation, representing at least fifty percent (50%) of the voting power of the Corporation.

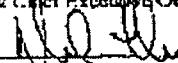
IN WITNESS WHEREOF, the undersigned have executed this certificate this 16 day of May, 2008.

  
Richard Stankoullis,  
President & Chief Executive Officer

  
Nick Labao,  
Treasurer & Vice President of Finance

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct and of our own knowledge and that this certificate was executed on May 16, 2008 in San Jose, California.

  
Richard Stankoullis,  
President & Chief Executive Officer

  
Nick Labao,  
Treasurer & Vice President of Finance

(00915095.DUD v.1)

## **Relevant Parts of Any Written Exhibit**

**Freddie Mac did not register Certificates  
with SEC Violation of Pooling and  
Servicing Agreement and New York Law  
for Real Estate Investment Conduits  
(Freddie Mac Multiclass Series 3113)**



Certified Forensic Loan Auditors

PROSPECTUS SUPPLEMENT

Offering Circular Supplement  
(To Offering Circular  
Dated June 1, 2003)

\$1,269,772,238

**Freddie Mac**  
Multiclass Certificates, Series 3113



**Offered Classes:** REMIC Classes shown below and MACR Classes shown on *Appendix A*  
**Offering Terms:** The underwriter named below is offering the Classes in negotiated transactions at varying  
 prices; we have agreed to purchase all of PN  
**Closing Date:** February 27, 2006

REMIC Class	Original Balance	Principal Type(1)	Class Coupon	Interest Type(1)	CUSIP Number	Final Payment Date
<b>Group 1</b>						
EO	\$ 20,199,928	SUP	0.0%	PO	31396HDA4	February 15, 2036
GF	40,715,235	SUP	(1)	FLT	31396HDG1	August 15, 2033
QA	179,272,912	PAC	3.0	FIX	31396HB39	November 15, 2025
QB	63,491,397	PAC	3.0	FIX	31396HE47	February 15, 2029
QC	64,237,008	PAC	3.0	FIX	31396HE54	October 15, 2031
QD	79,389,132	PAC	3.0	FIX	31396HE62	June 15, 2034
QE	60,288,657	PAC	3.0	FIX	31396HE70	February 15, 2036
SP	16,286,094	SUP	(2)	INV/S	31396HEA3	August 15, 2033
ST	40,715,235	NTL (SUP)	(2)	INV/IO	31396HBB1	August 15, 2033
VE	50,999,637	ADV/SUP	6.0	FIX	31396HEC9	November 15, 2017
ZB	50,000,000	SUP	6.0	FIX/Z	31396HEH8	February 15, 2036
<b>Group 2</b>						
GA	142,960,000	SEQ	5.5	FIX	31396HDB2	May 15, 2032
GD	17,040,000	SEQ	5.5	FIX	31396HDE6	August 15, 2033
GG	10,000,000	SEQ/RTL	5.5	FIX	31396HDD9	February 15, 2036
VG	8,596,289	ADV/SEQ	5.5	FIX	31396HED7	January 15, 2017
VH	10,903,711	SEQ	5.5	FIX	31396HEB5	April 15, 2025
ZG	10,500,000	SEQ	5.5	FIX/Z	31396HEJ4	February 15, 2036
<b>Group 3</b>						
LG	81,856,329	SEQ	5.0	FIX	31396HDS5	April 15, 2016
LM	38,143,671	SEQ	5.0	FIX	31396HDT3	March 15, 2019
LY	30,000,000	SEQ	5.0	FIX	31396HDX4	February 15, 2021
<b>Group 4</b>						
LB	20,604,448	SUP	6.0	FIX	31396HIDR7	April 15, 2032
LP	9,828,639	PAC II	6.0	FIX	31396HDU0	February 15, 2036
LV	46,403,665	SUP	6.0	FIX	31396HDW6	October 15, 2021
LZ	30,000,000	SUP	6.0	FIX/Z	31396HDY2	February 15, 2036
PN	143,163,248	PAC I	6.0	FIX	31396HB21	February 15, 2036
<b>Group 5</b>						
WA	28,968,000	SEQ	4.5	FIX	31396HEF2	September 15, 2024
WB	4,328,452	SEQ	4.5	FIX	31396HEGO	February 15, 2026
<b>Group 6</b>						
DE	10,000,000	TAC	3.0	FIX	31396HD89	February 15, 2026
DJ	1,341,623	SUP	3.5	FIX	31396HD97	February 15, 2026
OJ	134,163	SUP	0.0	PO	31396HDZ0	February 15, 2026
<b>Residual</b>						
R	0	NPR	0.0	NPR	31396HE88	February 15, 2036
RS	0	NPR	0.0	NPR	31396HE96	February 15, 2036

(1) See *Appendix II* to the Offering Circular and *Payments — Categories of Classes*.(2) See *Term Sheet — Interest*.

The Certificates may not be suitable investments for you. You should not purchase Certificates unless you have carefully considered and are able to bear the associated prepayment, interest rate, yield and market risks of investing in them. *Certain Risk Considerations* on page S-2 highlights some of these risks.

You should purchase Certificates only if you have read and understood this Supplement, the attached Offering Circular and the documents listed under *Available Information*.

We guarantee principal and interest payments on the Certificates. These payments are not guaranteed by and are not debts or obligations of the United States or any federal agency or instrumentality other than Freddie Mac. The Certificates are not tax-exempt. Because of applicable securities law exemptions, we have not registered the Certificates with any federal or state securities commission. No securities commission has reviewed this Supplement.

**MORGAN STANLEY**

January 17, 2006

Page 100

4649,56982ed

## **Relevant Parts of Any Written Exhibit**

**Freddie Mac PSA violation, no members  
SEC Violation of Pooling and Servicing  
Agreement and New York Law for Real  
Estate Investment Conduit  
(Freddie Mac Multiclass Series 3113)**



### **Certified Forensic Loan Auditors**

FHR 3113 UZ / CUSIP 31396HDY2 Yield 4.234/4.234  
 As of 09 Jul Prepay 23/PSA VAL 14.12 Collateral 100.0% EGLINC 0% BVAL  
 99 Documents - Structured Finance Notes  
 FHR 3113 TRUODDIE PAC  
 Underwriter  
 Lead Manager Morgan Stanley

### Original Services

Trustee  
Freddie Mac

**Paying Agent**

**Originator/Seller**

Deal%

## Asset Manager

### Swap Counterparty

### INSURER

## Deals

1 2 9722 8600 Brazil 5511 2395 9000 Europe 44 20 7930 2500 Germany 49 69 9204 1210 Hong Kong 85 3201 8100 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2010 Microsoft Corp. SN 4559411 EDT CMT-4-00 H453-0497-0 10-Jul-2010 10-12-49

**COLLATERAL SECTION PERTAINING TO TRUST**

Page 102

## **Relevant Parts of Any Written Exhibit**

**Lis Pendens**  
**Appellees did not rescind the**  
**Foreclosure Sale on October 31, 2018**  
**although Lis Pendens was filed**

**EAST BATON ROUGE PARISH C-672792**  
 Filed Aug 20, 2018 1:59 PM  
 25  
 Deputy Clerk of Court

STATE OF LOUISIANA  
 19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE  
 CASE NO.: 672792 DIVISION: " 25 "

DARRELL BERRY, *pro se*,  
 and  
 CONSTANCE LAFAYETTE, *pro se*,

vs.

LOANCITY;  
 WELLS FARGO BANK, N.A.;  
 FEDERAL HOME LOAN MORTGAGE CORPORATION (Freddie Mac) as trustee for  
 securitized trust; FREDDIE MAC MULTICLASS CERTIFICATES, SERIES 3113 TRUST;  
 MORTGAGE ELECTRONIC REGISTRATION SYSTEM, ("MERS");  
 DOES 1 through 100 inclusive, *et al.*

**LIS PENDENS**

PLEASE TAKE NOTICE that this action was commenced in the above-named court by  
 the above entitled Plaintiffs against the above entitled Defendants, and are now pending.  
 The Plaintiffs allege a real property claim affecting real property located at 8338 Greenmoss  
 Drive, Baton Rouge, Louisiana 70806.

One (1) CERTAIN PARCEL OF GROUND, together with all the buildings and  
 improvements thereon, and all the rights, ways, and privileges, servitudes,  
 appurtenances and advantages thereunto belonging or in anywise appertaining,  
 situated in the Parish of East Baton Rouge, State of Louisiana, being designated as  
 LOT D-1 of the Joe Roppolo, et al Tract located in Section 69, 68 and 71, T7S,  
 R1E, G.L.D. on the official map of said tract on file and of record in the office of  
 the Clerk and Recorder for said parish and state, revised August 4, 1980, to show  
 the resubdivision of Lot B to create Lots B-1, C and D to form Lots B-1-A and D-  
 1 measuring One Hundred (100) feet front on Greenmoss Drive by a depth of One  
 Hundred Fifty-Two (152) feet between equal and parallel lines and being subject  
 to a fifteen (15) foot utility servitude across the rear, all as more fully shown on the  
 official recorded map and map revisions; subject to restrictions, servitudes, rights-  
 of-way and outstanding mineral rights of record affecting the property.

Dated: 16<sup>th</sup> day of August, 2018.

  
 DARRELL BERRY, *pro se*

## Relevant Parts of Any Written Exhibit

Wells Fargo Foreclosure Activity with  
payments made from  
April 2017 to October 2018

**DEAN MORRIS, L.L.C.**  
ATTORNEYS AT LAW

JOHN C. MORRIS, III<sup>\*</sup>  
CANDACE A. COURTEAU<sup>\*</sup>  
EMILY K. COURTEAU<sup>\*</sup>  
MICHAEL A. JEDYNAK<sup>\*</sup>  
JASON R. SMITH<sup>\*</sup>  
ASHLEY E. MORRIS<sup>\*</sup>  
LOGAN MASSEY<sup>\*</sup>  
\* Admitted in Louisiana  
\* Admitted in Mississippi

**LOUISIANA DIVISION**  
1505 North 19<sup>th</sup> Street, Monroe, LA 71201  
Phone: 318.388.1440 Facsimile: 318.322.0887

OF COUNSEL:  
WOOD T. SPARKS  
GEORGE B. DEAN, JR.

**MISSISSIPPI DIVISION**  
2309 Oliver Road, Monroe, LA 71201  
855 S. Pear Orchard Rd, Ste 404 Bldg 400,  
Ridgeland, MS 39157  
Phone: 318.330.9020 Facsimile: 318.340.7600

April 6, 2017

Honorable J. Douglas Welborn  
East Baton Rouge Parish Clerk of Court  
22 St. Louis Street  
Baton Rouge, LA 70802

Re: Wells Fargo Bank, N.A.  
VS. Darrell Kendrick Berry and Constance Lafayette Berry  
DM File No. F17-1266

Dear Mr. Welborn:

I am enclosing the original and 3 copies of a Petition to Enforce Security Interest by Executory Process in the captioned matter. Please have the order for executory process issued, file the petition and request the Sheriff to complete service of the writ, with all exhibits, upon the defendant(s), returning to us a conformed copy of the petition showing the filing information. We also need the date(s) of service. I have enclosed a self-addressed, stamped envelope for your convenience.

Please provide a receipt to our office for the filing fees in this matter.

Our check in the amount of \$731.00 is enclosed as an advanced deposit toward costs. Also, please find enclosed our check of \$1,000.00 for the Sheriff. If you have any questions, please contact the foreclosure department at this office.

Yours Truly,

DEAN MORRIS, L.L.C.

BY: C. Monteau

DEAN MORRIS, L.L.C.

- George B. Dean, Jr. (# 04764)
- John C. Morris, III (# 01987)
- Candace A. Courteau (# 26245)
- Michael Jedyak (# 01993)
- Jason R. Smith (# 34981)
- Ashley E. Morris (# 35928)
- Logan Massey (# 36900)

Counsel for Plaintiff

REC'D C.P.

APR 17 2017

REC'D C.P.

APR 11 2017

EBR-053361

dm  
Enclosures

COST OK \$

APR 26 2017  
Dolan  
DEPUTY CLERK OF COURT

DEAN MORRIS, L.L.C.  
ATTORNEYS AT LAW

JOHN C. MORRIS, III <sup>1</sup>  
CANDACE A. COURTEAU <sup>1</sup>  
EMILY K. COURTEAU <sup>1</sup>  
JASON R. SMITH <sup>1</sup>  
ASHLEY E. MORRIS <sup>1</sup>  
LOGAN MASSEY <sup>1</sup>  
KATHY MASON <sup>1</sup>

<sup>1</sup> Admitted in Louisiana  
Admitted in Mississippi

LOUISIANA DIVISION  
1505 North 19<sup>th</sup> Street, Monroe, LA 71201

Phone: 318.388.1440 Facsimile: 318.322.0887 APR 27 2017

OF COUNSEL:  
WOOD T. SPARKS  
GEORGE B. DEAN, JR.  
CODY GIBSON

MISSISSIPPI DIVISION  
2309 Oliver Road, Monroe, LA 71201  
855 S. Pear Orchard Rd, Ste 404 Bldg 400,  
Ridgeland, MS 39157  
Phone: 318.330.9020 Facsimile: 318.340.7600

POSTED

April 24, 2017

Honorable J. Welborn  
East Baton Rouge Parish Clerk Of Court  
P.O. Box 1991  
Baton Rouge, LA 70821

Re: Wells Fargo Bank, N.A.  
Vs. Darrell Kendrick Berry And Constance Lafayette Berry  
Suit No. C656991 SEC 22  
Our File No. F17-1266

Dear Honorable J. Welborn:

Please do not issue the writ of seizure and sale for the above referenced suit due to the suit is being placed on hold/dismissed.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

*John Delrio*

Joseph Delrio  
Foreclosure Specialist  
318-398-3389 - Direct Line  
318-330-8032 - Direct Fax  
jdelrio@creditorlawyers.com

EBR4142732

FILED EAST BATON ROUGE PARISH LA  
APR 26 2011 FILED 2:53 PM  
CLERK EAST BATON ROUGE PARISH CLERK OF COURT  
JOSEPH DELRIO

JOHN C. MORRIS, III<sup>†</sup>  
CANDACE A. COURTEAU<sup>†</sup>  
EMILY K. COURTEAU<sup>†</sup>  
JASON R. SMITH<sup>†</sup>  
ASHLEY E. MORRIS<sup>†</sup>  
LOGAN MASSEY<sup>†</sup>  
CANDACE MIERS BOWEN<sup>†</sup>  
ELIZABETH CROWELL<sup>†</sup>  
KIMBERLY D. MACKEY<sup>†</sup>  
JOHN DANIEL STEPHEN<sup>†</sup>

<sup>†</sup> Admitted in Louisiana  
<sup>†</sup> Admitted in Mississippi

**DEAN MORRIS, L.L.C.**  
ATTORNEYS AT LAW

**LOUISIANA DIVISION**  
1505 North 19<sup>th</sup> Street, Monroe, LA 71201  
Phone: 318.388.1440 Facsimile: 318.322.0887

**MISSISSIPPI DIVISION**  
2309 Oliver Road, Monroe, LA 71201  
855 S. Pear Orchard Rd, Ste 404 Bldg 400,  
Ridgeland, MS 39157  
Phone: 318.330.9020 Facsimile: 318.340.7600

April 2, 2018

**POSTED** OF COUNSEL:  
WOOD T. SPARKS<sup>†</sup>  
GEORGE B. DEAN, JR.<sup>†</sup>  
CODY GIBSON<sup>†</sup>

APR 10 2018

*AC*

**RECEIVED**

APR 13 2018

DEPUTY CLERK OF COURT

Honorable J. Douglas Welborn  
East Baton Rouge Parish Clerk Of Court  
19th Judicial District  
P.O. Box 1991  
Baton Rouge, LA 70821

Re: Wells Fargo Bank, N.A.  
Vs. No. C656991 SEC 22  
Darrell Kendrick Berry And Constance Lafayette Berry  
DM File No.: F17-1266

Dear Mr. Welborn:

Please issue the Writ of Seizure and Sale to the Sheriff of East Baton Rouge Parish, Louisiana, directing him to seize and sell the property described in paragraph 10 of plaintiff's petition at Sheriff's sale.

If you have any questions, please contact me. Thank you for your assistance.

Sincerely,

**DEAN MORRIS, L.L.C.**

*Brandy White*  
BRANDY WHITE

EBR46R7430

REC'D C.P.

REC'D C.P.

APR 05 2018

APR 10 2018

85<sup>00</sup>

**NOTICE OF SEIZURE**  
**SHERIFF'S OFFICE**

**M**

Suit No: (17) 656991  
Ser No / Dep Cde: 8/999

WELLS FARGO BANK, N.A.  
VS  
DARRELL KENDRICK BERRY AND CONSTANCE  
LAFAYETTE BERRY

Baton Rouge, LA  
19th Judicial District  
Parish of East Baton Rouge  
State of Louisiana

ORIG: 698 BNDL: 12895  
6/19/2018 11:01:33 AM

FILED AND RECORDED  
EAST BATON ROUGE PARISH, LA  
DOUG WELBORN  
CLERK OF COURT AND RECORDER

TO: CONSTANCE LAFAYETTE BERRY  
8938 GREENMOSS DRIVE  
BATON ROUGE, LA 70806

Notice is hereby given that on April 24, 2018, I seized the following described immovable property, to wit:

ONE (1) CERTAIN PARCEL OF GROUND, together with all the buildings and improvements thereon, and all the rights, ways, and privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in the Parish of East Baton Rouge, State of Louisiana, being designated as LOT D-1 of the Joe Rappolo, et al Tract located in Section 69, 68 and 71, T7S, R1E, G.L.D. on the official map of said tract on file and of record in the office of the Clerk and Recorder for said parish and state, revised August 4, 1980, to show the resubdivision of Lot B to create Lots B-1, C and D to form Lots B-1-A and D-1 measuring One Hundred (100) feet front on (greenmoss Drive by a depth of One Hundred Fifty-Two (152) feet between equal and parallel lines and being subject to a fifteen (15) foot utility servitude across the rear, all as more fully shown on the official recorded map and map revisions; subject to restrictions, servitudes, rights-of-way and outstanding mineral rights of record affecting the property.

RECORDED COPY



**DOUG WELBORN  
CLERK OF COURT**

**PART OF EAST BATON ROUGE**

### Suit Accounting Dept.

P.O. Box 1991  
Baton Rouge, LA 70821-1991  
Tel: (225) 389-3982  
Fax: (225) 389-3392  
[www.ebrclerkofcourt.org](http://www.ebrclerkofcourt.org)

**FAX RECEIPT**

NUMBER C056991 SECTION 22  
WELLS FARGO BANK NA  
VS  
DARRELL KENDRICK BERRY ET AL

Date: 03-APR-2018

To: CANDACE A COURTEAU  
DEAN MORRIS  
PO BOX 2867  
MONROE LA 71207-2867

Item(s) Received: LETTER ISSUE WRIT

Total Amount Due (includes all applicable fees below) \$ 114.00

POSTED  
APR 11 2018  
AB

17-1264  
COSTOK Amt. 114 <sup>00</sup>  
APR 09 2018  
BY 359374 / CJ  
DY CLERK OF COURT

The Clerk of Court's office has received, by facsimile transmission dated 04-03-18, documents in the above referenced case. In accordance with R.S. 13:850 (B), within seven days, exclusive of holidays, the party filing the document shall forward to the clerk the original signed document, applicable fees and a transmission fee. The fax transmission fee is also required of forma pauperis filings and filing by state/political subdivisions.

Applicable fees are established in accordance with law as follows:

13:850(B)(3) A transmission fee of five dollars  
13:841(A)(2)(a) First page of each pleading, six dollars  
13:841(A)(2)(b) Each subsequent page, four dollars  
13:841(A)(2)(c) Paper exhibits, attachments, transcripts and depositions – per page, two dollars  
13:841(A)(4)(b) Issuing document without notice of service, fifteen dollars (Receipt generation fee)

NO FURTHER ACTION WILL BE TAKEN REGARDING THIS DOCUMENT  
UNTIL ALL FEES ARE RECEIVED IN THIS OFFICE.

**SERVICE/SUBPOENA REQUESTS WILL NOT BE ISSUED FROM FAX FILING.**  
**SERVICE WILL BE ISSUED AS A RESULT OF THE FILING OF THE ORIGINAL DOCUMENTS.**

IF MAILING ORIGINAL DOCUMENT(S), PLEASE ATTACH THIS RECEIPT TO THE DOCUMENT(S) TO BE FILED.  
IF FILING THE ORIGINAL DOCUMENTS IN PERSON, PLEASE NOTIFY THE FILING CLERK OF THE PREVIOUS FAX FILING.

DeWayne Johnson  
Deputy Clerk of Court for  
Doug Welborn, Clerk of Court

\$249 - LTR/FAX REC'D



EBR4711597

JOHN C. MORRIS, III  
CANDACE A. COURTEAU  
EMILY K. COURTEAU<sup>†</sup>  
JASON R. SMITH<sup>†</sup>  
ASHLEY E. MORRIS<sup>†</sup>  
LOGAN MASSEY<sup>†</sup>  
CANDACE MIER BOWEN<sup>†</sup>  
ELIZABETH CROWELL<sup>†</sup>  
KIMBERLY D. MACKEY<sup>†</sup>  
JOHN DANIEL STEPHENS<sup>†</sup>

<sup>†</sup> Admitted in Louisiana  
\* Admitted in Mississippi

**DEAN MORRIS, L.L.C.**  
ATTORNEYS AT LAW

**LOUISIANA DIVISION**  
1505 North 19<sup>th</sup> Street, Monroe, LA 71201  
Phone: 318.388.1440 Facsimile: 318.322.0887

**MISSISSIPPI DIVISION**  
2309 Oliver Road, Monroe, LA 71201  
855 S. Pear Orchard Rd, Ste 404 Bldg 400,  
Ridgeland, MS 39157  
Phone: 318.330.9020 Facsimile: 318.340.7600

OP COUNSEL:  
WOOD T. SPARKS<sup>†</sup>  
GEORGE B. DEAN, JR.<sup>†</sup>  
CODY GIBSON

April 11, 2018

Honorable J. Douglas Welborn  
East Baton Rouge Parish Clerk Of Court  
19th Judicial District  
P.O. Box 1991  
Baton Rouge, LA 70821

POSTED  
APR 24 2018  
[Signature]

Re: Wells Fargo Bank, N.A.  
Vs. No. C656991 SEC 22  
Darrell Kendrick Berry And Constance Lafayette Berry  
DM File No.: F17-1266

Dear Mr. Welborn:

Enclosed please find an original and two copies of an Ex Parte Motion to Substitute Party Plaintiff. Once the original has been filed, please conform one of the copies and return to me in the self-addressed envelope enclosed.

Also enclosed is our firm check in the amount of \$170.00 made payable to the East Baton Rouge Parish Clerk representing filing fees. [REDACTED]

Should you have any questions, please do not hesitate to contact me.

Sincerely,

*Brandy White*  
Brandy White  
Foreclosure Specialist

REC'D C.P.

EBR4718600  
[REDACTED]

Enclosures

APR 24 2018

REC'D C.P.  
MAY 09 2018

1127  
served w/ pink [REDACTED] "Writ" Note

WCSB mailed 5/17/18/PM

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

OPINION

After independently reviewing the entire record in this case and for the reasons set forth in the Magistrate Judge's Report dated August 30, 2019, to which an objection was filed, (Doc.54),

IT IS ORDERED that Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System's Motion to Dismiss (Doc. 5) is GRANTED, and Plaintiffs' claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System are DISMISSED WITH PREJUDICE.

Signed in Baton Rouge, Louisiana, on September 17, 2019.



JUDGE JOHN W. deGRAVELLES  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

July 16, 2020

Mr. Darrell Berry  
8338 Greenmoss Drive  
Baton Rouge, LA 70806

Ms. Constance Lafayette  
8338 Greenmoss Drive  
Baton Rouge, LA 70806

No. 19-30610      Darrell Berry, et al v. Loancity, et al  
USDC No. 3:18-CV-888

No. 19-30836      Darrell Berry, et al v. Loancity, et al  
USDC No. 3:18-CV-888

Dear Mr. Berry, Ms. Lafayette,

In response to your "Request for Court Documents and Appeal Clarification" please be advised as follows.

Requests for copies of the records on appeal should be directed to the clerk of the district court. By copy of this letter, I am asking the clerk to forward you a copy of the paginated record for each of these cases. You should review the records for accuracy.

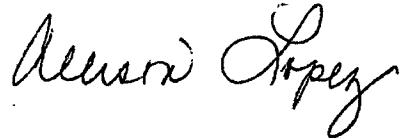
To clarify which appeals are included under each of your cases in this court, see below.

19-30610 includes the notices of appeal filed in the district court on August 1, 2019 (doc. 45) and December 5, 2019 (docs. 72 and 73). These appeals were dismissed on June 25, 2020 for failure to file a brief and record excerpts.

19-30836 includes the notice of appeal filed in the district court on October 4, 2019 (doc. 62). Your appellants' brief is presently due for filing by August 5, 2020.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Allison G. Lopez, Deputy Clerk  
504-310-7702

cc: Mr. Michael L. McConnell



Darrell Berry <workingprose@gmail.com>

---

## 19-30610 Reinstatement Motion Deficiencies Cured

13 messages

**Darrell Berry** <workingprose@gmail.com>

Fri, Aug 7, 2020 at 10:24 PM

To: pro\_se@ca5.uscourts.gov  
Bcc: DarrellBerry24@yahoo.com

We were informed that we could email the brief to this address as long as it is filed before or on the date due. According to Rule 5th Cir. R. 27.1.6 we are allowed to request the Clerk to reinstate the case if we 1. Cure the Deficiency which caused the dismissal (See attachments) and 2) the motion for reinstatement is made within 45 days after dismissal in which this request meets that timeframe.

Attached are the:

1. Motion to Reinstate and Motion to File Brief Out of Time
2. Appellant Brief for 19-30610, and
3. Record Excerpts.

Please let me know if additional information is needed.

Darrell Berry  
8338 Greenmoss Dr.  
Baton Rouge, LA 70806  
225-610-8633

**19-30610 Record of Experts.pdf**

**19-30610 Reinstate Brief Out of Time.pdf**

---

**19-31610 Appellant Brief 8-7-2020.pdf**  
244K

---

**Majella Sutton** <Majella\_Sutton@ca5.uscourts.gov>  
To: "workingprose@gmail.com" <workingprose@gmail.com>

Mon, Aug 10, 2020 at 8:50 AM

Good morning,

Mr. Berry,

You must sign the brief and a motion to reinstate the appeal is required.

Very Respectfully,  
Majella A. Sutton  
(504) 310-7680

**From:** CA5 Pro Se <pro\_se@ca5.uscourts.gov>  
**Sent:** Monday, August 10, 2020 7:54 AM  
**To:** Majella Sutton <Majella\_Sutton@ca5.uscourts.gov>  
**Subject:** FW: 19-30610 Reinstate Motion Deficiencies Cured

From pro se mailbox.

Respectfully,

*Connie Caluda Brown*

Case Manager

Louisiana/Mississippi/Agency Divisions of the  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place, Suite 115  
New Orleans, LA 70130  
Connie\_Brown@ca5.uscourts.gov  
504-310-7671  
(Working Hours: Monday – Friday 7:30 a.m. to 4:30 p.m. with lunch from  
12:00 p.m. to 1:00 p.m.)

[Quoted text hidden]

---

Darrell Berry <workingprose@gmail.com>  
To: DarrellBerry24@yahoo.com

Mon, Aug 10, 2020 at 9:01 AM

[Quoted text hidden]

---

Darrell Berry <workingprose@gmail.com>  
To: Majella Sutton <Majella\_Sutton@ca5.uscourts.gov>

Mon, Aug 10, 2020 at 10:45 AM

Can he send only the signature pages?

[Quoted text hidden]

---

**Majella Sutton** <Majella\_Sutton@ca5.uscourts.gov>  
To: Darrell Berry <workingprose@gmail.com>

Mon, Aug 10, 2020 at 11:03 AM

Email me the complete copy of the brief.

Along with a motion to reopen.

Very Respectfully,

Majella A. Sutton

(504) 310-7680

[Quoted text hidden]

---

**Darrell Berry** <workingprose@gmail.com>  
To: DarrellBerry24@yahoo.com

Mon, Aug 10, 2020 at 11:27 AM

----- Forwarded message -----

From: **Majella Sutton** <Majella\_Sutton@ca5.uscourts.gov>  
[Quoted text hidden]  
[Quoted text hidden]

---

**Darrell Berry** <workingprose@gmail.com>  
To: Majella Sutton <Majella\_Sutton@ca5.uscourts.gov>  
Bcc: DarrellBerry24@yahoo.com

Sun, Aug 23, 2020 at 1:39 PM

Please find attached the signed  
1. Brief and  
2. Motion to Reopen.

Thank you for your help.

Darrell Berry  
8338 Greenmoss Dr.  
Baton Rouge, LA 70806  
225-610-8633  
[Quoted text hidden]

---

**2 attachments**

19-30610 Reinstate  
1570K

---

**2 attachments**

 **19-30610**  
1570K

 **BRWACD564B972D2\_0000002599.pdf**  
7475K

---

**darrellberry24@yahoo.com** <darrellberry24@yahoo.com>  
To: workingprose@gmail.com

Tue, Aug 11, 2020 at 1:50 PM

----- Forwarded Message -----

From: Darrell Berry <workingprose@gmail.com> To: "pro\_se@ca5.uscourts.gov"  
<pro\_se@ca5.uscourts.gov> Sent: Saturday, August 8, 2020, 03:24:51 AM UTC Subject: 19-30610  
Reinstatement Motion Deficiencies Cured

We were informed that we could email the brief to this address as long as it is filed before or on the date due. According to Rule 5th Cir. R. 27.1.6 we are allowed to request the Clerk to reinstate the case if we 1. Cure the Deficiency which caused the dismissal (See attachments) and 2) the motion for reinstatement is made within 45 days after dismissal in which this request meets that timeframe.

Attached are the: 1. Motion to Reinstate and Motion to File Brief Out of Time2. Appellant Brief for 19-30610, and3. Record Excerpts.

Please let me know if additional information is needed.

Darrell Berry8338 Greenmoss Dr.Baton Rouge, LA 70806225-610-8633 19-30610 Record of  
Experts.pdf 19-30610 Reinstate Brief Out of Time.pdf

---

 **19-31610 Appellant Brief 8-7-2020.pdf**  
244K

---

**Darrell Berry** <workingprose@gmail.com>  
To: pro\_se@ca5.uscourts.gov

Tue, Aug 11, 2020 at 2:26 PM

Please confirm the receipt of the items required to cure the deficiencies.

On Friday, August 7, 2020 the following items were emailed to pro\_se@ca5uscourts.gov

1. Motion to Reinstate,
2. Appellant Brief
3. Record of Excerpts

Attached again are the three documents required to cure the Default. Please confirm the information has been received.

 **19-30610 - Record Excerpt .pdf**

Darrell Berry  
8338 Greenmoss Dr.  
Baton Rouge, LA 70806  
225-610-863

[Quoted text hidden]

---

**2 attachments**

 **19-30610 Reinstate.pdf**  
1570K

 **19-30610 Appellant Brief.pdf**  
7475K

---

**Darrell Berry** <workingprose@gmail.com>  
To: Majella Sutton <Majella\_Sutton@ca5.uscourts.gov>

Tue, Aug 11, 2020 at 2:28 PM

Here is a copy for your reference.

[Quoted text hidden]

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**2 attachments**

 **19-30610 Reinstate.pdf**  
1570K

 **19-30610 Appellant Brief.pdf**  
7475K

APPEAL, ATTENTION

**U.S. District Court**  
**Middle District of Louisiana (Baton Rouge)**  
**CIVIL DOCKET FOR CASE #: 3:18-cv-00888-JWD-SDJ**

Berry et al v. Loancity et al  
Assigned to: Judge John W. deGravelles  
Referred to: Magistrate Judge Scott D. Johnson  
Demand: \$100,000  
Case in other court: 5th Circuit, 19-30836  
Cause: 28:1332 Diversity-Other Contract

Date Filed: 10/05/2018  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

**Plaintiff**

**Darrell Berry**

represented by **Darrell Berry**  
8338 Greenmoss Drive  
Baton Rouge, LA 70806  
225-610-8633  
PRO SE

**Plaintiff**

**Constance Lafayette**

represented by **Constance Lafayette**  
8338 Greenmoss Drive  
Baton Rouge, LA 70806  
PRO SE

V.

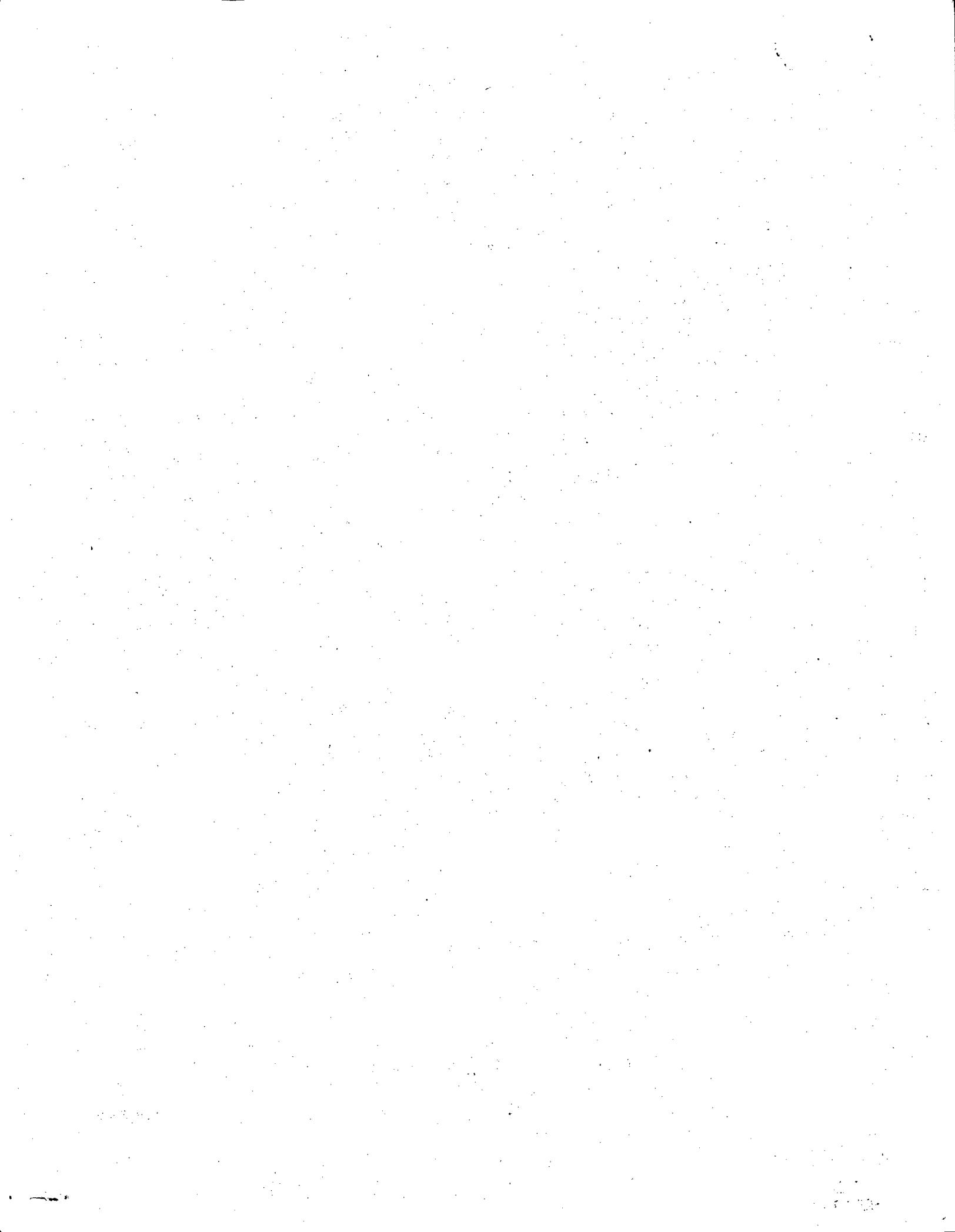
**Defendant**

**Wells Fargo Bank, N.A.**

represented by **Kasee Sparks Heisterhagen**  
DOJ-USAO  
63 South Royal St.  
Suite 600  
Mobile, AL 36602  
251-415-7186  
Email: ksparks@burr.com  
*TERMINATED: 03/19/2019*  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Christopher Daniel Meyer**  
Burr & Forman LLP  
190 E. Capitol Street  
Suite M-100  
Jackson, MS 39201  
601-355-3434  
Fax: 601-355-5150  
Email: cmeyer@burr.com  
**ATTORNEY TO BE NOTICED**

19-30836.1



**Defendant**

**Federal Home Loan Mortgage  
Corporation**  
*"Freddie Mac" as trustee for securitized trust*

represented by **Lindsay Meador Young**  
Galloway, Johnson, Tompkins, Burr & Smith  
328 Settlers Trace Blvd.  
Lafayette, LA 70508  
337-735-1760  
Fax: 337-993-0933  
Email: lmeador@gallowaylawfirm.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Loancity**

**Defendant**

**Freddie Mac Multiclass Certificates  
Series 3113 Trust**  
*TERMINATED: 09/18/2019*

represented by **Lindsay Meador Young**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Benjamin Givens Torian**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Mortgage Electronic Registration System  
"MERS"**

represented by **Lindsay Meador Young**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Benjamin Givens Torian**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Does 1-100**  
*"inclusive"*

**Defendant**

**John Doe 1**

**Defendant**

**John Doe 2**

*Sponsor of the Freddie Mac Multiclass  
Certificates, Series 3113 Trust*

Date Filed	#	Docket Text
10/05/2018	<a href="#"><u>1 (p.14)</u></a>	JOINT NOTICE OF REMOVAL from Parish of East Baton Rouge, Case Number 672792. (Filing fee \$ 400 receipt number ALAMDC-1842932), filed by Wells Fargo Bank, N.A.. (Attachments: # <a href="#"><u>1 (p.14)</u></a> Attachment Civil Cover Sheet, # <a href="#"><u>2 (p.92)</u></a> Attachment State Court Documents, # <a href="#"><u>3 (p.95)</u></a> Attachment Certificate of Service)(Heisterhagen, Kasee) Modified on 10/5/2018 to flatten a document (KAH). Modified on 10/9/2018 to edit text and add party (LLH). Modified on 10/24/2018 to substitute removal as per Order # 8 (LLH). (Entered: 10/05/2018)
10/12/2018	<a href="#"><u>2 (p.92)</u></a>	MOTION to Enroll Benjamin G. Torian as Additional Attorney by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <a href="#"><u>1 (p.14)</u></a> Proposed Pleading; Order)(Meador, Lindsay) (Entered: 10/12/2018)
10/12/2018	<a href="#"><u>3 (p.95)</u></a>	MOTION to Substitute Notice of Removal by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System, Wells Fargo Bank, N.A.. (Attachments: # <a href="#"><u>1 (p.14)</u></a> Proposed Order)(Heisterhagen, Kasee) (Entered: 10/12/2018)
10/12/2018	<a href="#"><u>4 (p.106)</u></a>	MOTION to Dismiss for Failure to State a Claim by Wells Fargo Bank, N.A.. (Attachments: # <a href="#"><u>1 (p.14)</u></a> Memorandum in Support)(Heisterhagen, Kasee) (Entered: 10/12/2018)
10/12/2018	<a href="#"><u>5 (p.128)</u></a>	MOTION to Dismiss for Failure to State a Claim by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <a href="#"><u>1 (p.14)</u></a> Memorandum in Support, # <a href="#"><u>2 (p.92)</u></a> Exhibit)(Meador, Lindsay) (Entered: 10/12/2018)
10/15/2018		MOTION(S) REFERRED: <a href="#"><u>3 (p.95)</u></a> MOTION to Substitute Notice of Removal , <a href="#"><u>2 (p.92)</u></a> MOTION to Enroll Benjamin G. Torian as Additional Attorney . This motion is now pending before the USMJ. (KAH) (Entered: 10/15/2018)
10/15/2018	6	NOTICE of Briefing Schedule on <a href="#"><u>5 (p.128)</u></a> MOTION to Dismiss for Failure to State a Claim and <a href="#"><u>4 (p.106)</u></a> MOTION to Dismiss for Failure to State a Claim : Opposition to the motion shall be filed within 21 days from the filing of the motion and shall not exceed 10 pages excluding attachments. The mover may file a reply brief within 14 days of the filing of the opposition and shall be limited to a total of 5 pages. No motion for leave will be required. Sur-Reply briefs will be permitted only with leave of Court for extraordinary reasons supported by sufficient facts. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 10/15/2018)
10/19/2018	7	ORDER granting <a href="#"><u>2 (p.92)</u></a> Motion to Enroll as Co-Counsel. Added attorney Benjamin Givens Torian as co-counsel for Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust and Mortgage Electronic Registration System. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 10/19/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF

Date Filed	#	Docket Text
		document associated with this entry.) (JSL) (Entered: 10/19/2018)
10/19/2018	8	ORDER granting <u>3</u> (p.95) MOTION to Substitute Notice of Removal filed by Mortgage Electronic Registration System, Wells Fargo Bank, N.A., Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust. The Joint Notice of Removal (R. Doc. 1) shall be substituted with the Corrected Joint Notice of Removal (R. Doc. 3). Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 10/19/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 10/19/2018)
10/22/2018	9 (p.1006)	Supplemental Exhibit(s) to <u>1</u> (p.14) Notice of Removal, by Wells Fargo Bank, N.A.. (Heisterhagen, Kasee) Modified on 10/22/2018 to edit the text (NLT). (Entered: 10/22/2018)
10/25/2018	10 (p.169)	MOTION for Verified Emergency Petition for Temporary Restraining Order and/or Preliminary Injunction and Declaratory Relief by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading;)(EDC) (Entered: 10/25/2018)
10/25/2018	11 (p.182)	MOTION for Extension of Time to File Response to <u>4</u> (p.106) MOTION to Dismiss for Failure to State a Claim , <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim by Darrell Berry. (EDC) (Entered: 10/25/2018)
10/26/2018	12	ORDER granting <u>11</u> (p.182) Motion for Extension of Time to File Response to <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim and <u>4</u> (p.106) MOTION to Dismiss for Failure to State a Claim . Opposition to motions shall be filed by 12/3/2018 and any replies are due by 12/14/2018. Signed by Judge John W. deGravelles on 10/26/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 10/26/2018)
10/26/2018	13 (p.185)	NOTICE of Service for Motion for Extension of Time to Answer Motion to Remove and Dismiss Plaintiffs' case as well as Preliminary Injunction by Darrell Berry. (EDC) (Entered: 10/30/2018)
11/01/2018	14 (p.187)	SUGGESTION OF BANKRUPTCY Upon the Record as to Darrell Berry and Constance Lafayette Berry by Wells Fargo Bank, N.A.. (Heisterhagen, Kasee) (Entered: 11/01/2018)
11/05/2018	15	NOTICE of Briefing Schedule on SUGGESTION OF BANKRUPTCY (Doc. 14): The parties shall file simultaneous briefs within 7 days, not to exceed 5 pages, describing the impact of the Bankruptcy on the proceedings. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 11/05/2018)
11/05/2018		Set/Reset Deadlines: Brief due by 11/13/2018. (LLH) (Entered: 11/07/2018)
11/13/2018	16 (p.189)	Brief regarding <u>14</u> (p.187) Suggestion of Bankruptcy . (Heisterhagen, Kasee) (Entered: 11/13/2018)
11/13/2018	17 (p.191)	Brief regarding <i>Defendants Suggestion of Bankruptcy</i> . (Meador, Lindsay) (Entered: 11/13/2018)
12/03/2018	18 (p.194)	MEMORANDUM in Opposition to <u>4</u> (p.106) MOTION to Dismiss for Failure to State a Claim <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry, Constance Lafayette. (EDC) (Entered: 12/04/2018)

Date Filed	#	Docket Text
12/07/2018	<u>19</u> (p.200)	Amended MEMORANDUM in Opposition to <u>4</u> (p.106) MOTION to Dismiss for Failure to State a Claim, <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 12/11/2018)
12/14/2018	20	STRICKEN FROM THE RECORD REPLY to <u>18</u> (p.194) Memorandum in Opposition to Motion, <u>19</u> (p.200) Memorandum in Opposition to Motion, <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) Modified on 12/17/2018 to remove the document as it has been stricken in accordance with record document 23 (NLT). (Entered: 12/14/2018)
12/14/2018	21	NOTICE OF NON-COMPLIANCE with LR 7(g) as to 20 Reply to Response to Motion., REQUIRED CORRECTION: A combined Motion for Leave to Exceed the Page Limits and Motion to Strike the Incorrect Pleading must be filed within 24 hours of this notice. Otherwise, the original filing may be stricken by the Court without further notice. (NLT) (Entered: 12/14/2018)
12/14/2018	<u>22</u> (p.227)	MOTION for Leave to File Excess Pages <i>and Strike Previously Filed Reply</i> by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1</u> (p.14) Memorandum in Support, # <u>2</u> (p.92) Proposed Pleading, # <u>3</u> (p.95) Proposed Pleading;)(Meador, Lindsay) (Entered: 12/14/2018)
12/17/2018	<u>23</u> (p.241)	ORDER granting <u>22</u> (p.227) MOTION for Leave to File Excess Pages and Strike Previously Filed Reply. Signed by Judge John W. deGravelles on 12/17/2018. (NLT) (Entered: 12/17/2018)
12/17/2018	<u>24</u> (p.242)	REPLY to <u>19</u> (p.200) Amended Memorandum in Opposition and <u>18</u> (p.194) Memorandum in Opposition to <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (NLT) (Entered: 12/17/2018)
01/02/2019	<u>25</u> (p.250)	REPLY to <u>4</u> (p.106) MOTION to Dismiss for Failure to State a Claim, <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 01/03/2019)
01/18/2019	<u>26</u> (p.301)	REQUEST for Judicial Notice by Darrell Berry. (EDC) (Entered: 01/22/2019)
01/18/2019	<u>27</u> (p.306)	AMENDED REPLY to <u>4</u> (p.106) MOTION to Dismiss for Failure to State a Claim , <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Attachment)(EDC) (Entered: 01/22/2019)
03/06/2019	28	<p>Notice to Counsel: Status Conference set for 4/11/2019 at 11:30 AM in chambers before Judge John W. deGravelles.</p> <p>Evidence, in electronic format, shall be provided in accordance with Local Rule 79 and Administrative Procedures.</p> <p>(This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 03/06/2019)</p>

Date Filed	#	Docket Text
03/07/2019	<u>29</u> (p.409)	MOTION to Enroll Christopher D. Meyer as Additional Attorney by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Proposed Pleading; Proposed Order)(Heisterhagen, Kasee) (Entered: 03/07/2019)
03/07/2019		MOTION(S) REFERRED: <u>29</u> (p.409) MOTION to Enroll Christopher D. Meyer as Additional Attorney . This motion is now pending before the USMJ. (KAH) (Entered: 03/07/2019)
03/13/2019	30	ORDER granting <u>29</u> (p.409) Motion to Enroll Additional Counsel of Record. Attorney Christopher Daniel Meyer added as additional counsel of record for Wells Fargo Bank, N.A. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 3/13/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 03/13/2019)
03/19/2019	<u>31</u> (p.413)	MOTION for Kasee Heisterhagen to Withdraw as Attorney by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Proposed Pleading; Proposed Order)(Heisterhagen, Kasee) (Entered: 03/19/2019)
03/19/2019		MOTION(S) REFERRED: <u>31</u> (p.413) MOTION for Kasee Heisterhagen to Withdraw as Attorney . This motion is now pending before the USMJ. (SGO) (Entered: 03/19/2019)
03/19/2019	32	ORDER granting <u>31</u> (p.413) Motion to Withdraw Attorney Kasee S. Heisterhagen as counsel for Wells Fargo Bank, N.A. Christopher D. Meyer of the law firm Burr & Forman, LLP will continue as counsel for Wells Fargo Bank, N.A. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 3/19/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 03/19/2019)
04/10/2019	33	Notice to Counsel: Status conference set for April 11, 2019 at 11:30 a.m. is canceled. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 04/10/2019)
04/11/2019	34	ORDER: Plaintiffs seek a temporary restraining order and other injunctive release to prevent Defendants "from selling, attempting to sell, or causing to be sold" Plaintiffs' property. (Doc. 10 at 78.) Plaintiffs' motion was filed on October 25, 2018. (Id.) Plaintiffs alleged that the foreclosure was to take place on October 31, 2018. However, Defendants have indicated in briefing that there is no such threat of foreclosure. Specifically, Defendants have asserted: "Plaintiffs have not alleged that Wells Fargo has invoked foreclosure proceedings against the Plaintiffs property, so Plaintiffs are not facing any substantial threat of irreparable harm at the hands of Wells Fargo." (Doc. 4-1 at 15; see also Doc. 5-1 at 16 (arguing same for other Defendants).) Given this conflict and the time since Plaintiffs filed their TRO, the parties are hereby given until 12:00 p.m. on Thursday, April 18, 2019, to file into the record short briefs (not to exceed 5 pages) describing the status of the alleged foreclosure action, with supporting evidence. Signed by Judge John W. deGravelles on 04/11/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 04/11/2019)
04/11/2019	<u>35</u> (p.416)	NOTICE of Pro Se E-Service and E-Notice Consent Form by Darrell Berry (EDC) (Entered: 04/11/2019)
04/12/2019		

Date Filed	#	Docket Text
	<u>36</u> (p.417)	NOTICE of Status of the Foreclosure Action by Darrell Berry (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 04/15/2019)
04/15/2019		Set/Reset Deadlines (Court Use Only) (SGO) (Entered: 04/15/2019)
04/17/2019	<u>37</u> (p.435)	Response to 34 Court's Order Regarding Foreclosure filed by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Exhibit A - Assignment)(Meyer, Christopher) Modified on 4/17/2019 to edit text. (EDC). (Entered: 04/17/2019)
04/23/2019	<u>38</u> (p.441)	ORDER denying <u>10</u> (p.169) Motion for Temporary Restraining Order and for Preliminary Injunction. Signed by Judge John W. deGravelles on 4/23/2019. (SWE) (Entered: 04/23/2019)
07/03/2019	<u>39</u> (p.443)	RULING AND ORDER granting <u>4</u> (p.106) Motion to Dismiss for Failure to State a Claim. Plaintiffs' claims against Defendant Wells Fargo are DISMISSED WITH PREJUDICE. Signed by Judge John W. deGravelles on 07/03/2019. (KDC) (Entered: 07/03/2019)
07/03/2019	<u>40</u> (p.463)	ORDER: All dispositive motions in this matter are referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), FRCP 72(b), and LR 72(b). The United States Magistrate Judge shall prepare findings of fact, conclusions of law and a report and recommendation which shall be submitted to undersigned for review. FURTHER, in all non-dispositive motions, the United States Magistrate Judge shall be authorized to rule on such motions as provided in 28 U.S.C. § 636, FRCP. 72(a), and LR 72(b). FURTHER ORDERED that if a hearing is required on any motion referred to the United States Magistrate Judge, the United States Magistrate Judge shall be authorized to conduct whatever hearings which may be necessary to decide the pending motion. FURTHER ORDERED that all pending pre-trial matters shall be conducted by the Magistrate Judge, including a preliminary pre-trial conference. Signed by Judge John W. deGravelles on 07/03/2019. (NLT) (Entered: 07/03/2019)
07/03/2019		MOTION(S) REFERRED: <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim . This motion is now pending before the USMJ. (NLT) (Entered: 07/03/2019)
07/18/2019	<u>41</u> (p.465)	MOTION for Extension of Time to Respond to the Court's Ruling by Darrell Berry. (EDC) (Entered: 07/19/2019)
07/26/2019	<u>42</u>	MOTION for Leave to File Amended Complaint and Memorandum of Law in Support by Darrell Berry. (Attachments: # <u>1</u> (p.14) Order, # <u>2</u> (p.92) Exhibit)(EDC) Modified on 7/30/2019 to un-terminate motion per JWD chambers (SWE). (Entered: 07/29/2019)
07/29/2019		MOTION(S) REFERRED: <u>42</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support. This motion is now pending before the USMJ. (EDC) (Entered: 07/29/2019)
07/29/2019	<u>43</u>	ORDER granting <u>41</u> (p.465) MOTION for Extension of Time until 8/5/2019 to Respond to the Court's Ruling filed by Darrell Berry. Signed by Judge John W. deGravelles on 07/29/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) Modified on 7/30/2019 to edit the docket text per chambers (SWE). (Entered: 07/29/2019)
07/29/2019	<u>44</u>	MOTION to Reconsider <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State

Date Filed	#	Docket Text
	<u>46</u> (p.469)	a Claim by Darrell Berry. (Attachments: # <u>1</u> (p.14) Exhibit)(EDC) (Entered: 07/30/2019)
08/01/2019	<u>45</u> (p.504)	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry, Constance Lafayette. (Attachments: # <u>1</u> (p.14) Order)(EDC) (Entered: 08/01/2019)
08/07/2019	<u>46</u> (p.507)	RESPONSE and Memorandum of Law in Opposition to <u>44</u> (p.469) MOTION for Reconsideration of <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim filed by Wells Fargo Bank, N.A.. (Meyer, Christopher) Modified on 8/8/2019 to edit the docket text (SWE). (Entered: 08/07/2019)
08/19/2019	<u>47</u> (p.513)	Response to <u>46</u> (p.507) Response in Opposition to <u>44</u> (p.469) MOTION for Reconsideration of <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.14) Affidavit)(EDC) (Entered: 08/19/2019)
08/30/2019	48	ORDER denying <u>42</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support filed by Darrell Berry. Plaintiff has failed to provide a proposed Amended Complaint for the Court's consideration. Plaintiff may seek leave to amend, if applicable, after the district judge rules on the pending motion to dismiss [R. Doc. 5]. Defendant may also address any possible amendments in the context of an objection to a report and recommendation issued on such motion identifying deficiencies in the current complaint. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 8/30/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard) (Entered: 08/30/2019)
08/30/2019	<u>49</u> (p.525)	REPORT AND RECOMMENDATIONS regarding <u>5</u> (p.128) MOTION to Dismiss for Failure to State a Claim filed by Mortgage Electronic Registration System, Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust. It is the recommendation of the Magistrate Judge that Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System's Motion to Dismiss (Doc. 5) be GRANTED, and Plaintiffs' claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System be DISMISSED WITH PREJUDICE. Objections to R&R due by 9/13/2019. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 8/30/2019. (KAH) (Entered: 08/30/2019)
08/30/2019	<u>50</u> (p.544)	Unopposed MOTION for Leave to File Surreply in Opposition to Plaintiffs' <u>44</u> (p.469) Motion to Reconsider by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Exhibit A - Proposed Surreply, # <u>2</u> (p.92) Proposed Pleading; Proposed Order)(Meyer, Christopher) Modified on 9/3/2019 to add docket entry relationship (SWE). (Entered: 08/30/2019)
09/04/2019	<u>51</u> (p.552)	ORDER granting <u>50</u> (p.544) Unopposed MOTION for Leave to File Surreply in Opposition to Plaintiffs' Motion to Reconsider filed by Wells Fargo Bank, N.A.. Signed by Judge John W. deGravelles on 9/4/2019. (SWE) (Entered: 09/04/2019)
09/04/2019	<u>52</u> (p.553)	SURREPLY IN OPPOSITION to <u>44</u> (p.469) MOTION for Reconsideration of <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim filed by Wells Fargo Bank, N.A. (SWE) (Entered: 09/04/2019)

Date Filed	#	Docket Text
09/16/2019	<u>53</u> (p.557)	MOTION for Leave to File to File Sur-Reply by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading, # <u>2</u> (p.92) Order)(EDC) (Entered: 09/17/2019)
09/16/2019	<u>54</u> (p.574)	Final Ruling and Order/Motion to Reconsider of <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (Attachments: # <u>1</u> (p.14) Order)(EDC) (Entered: 09/17/2019)
09/16/2019	<u>55</u> (p.596)	MOTION for Leave to File Amended Complaint and Memorandum of Law in Support by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading, # <u>2</u> (p.92) Exhibit, # <u>3</u> (p.95) Attachment, # <u>4</u> (p.106) Order)(EDC) Modified on 9/23/2019 in accordance with record document 59.(EDC). (Entered: 09/17/2019)
09/16/2019	<u>56</u> (p.608)	REQUEST for Judicial Notice by Darrell Berry. (EDC) (Entered: 09/17/2019)
09/16/2019	<u>57</u> (p.613)	AFFIDAVIT/Affirmation in Opposition to <u>39</u> (p.443) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (EDC) (Entered: 09/17/2019)
09/17/2019	<u>58</u> (p.616)	OPINION Adopting <u>49</u> (p.525) Report and Recommendation of the U.S. Magistrate Judge; granting <u>5</u> (p.128) Motion to Dismiss for Failure to State a Claim. Plaintiff's claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System are DISMISSED WITH PREJUDICE. Signed by Judge John W. deGravelles on 9/17/2019. (EDC) Modified on 9/18/2019 to edit text. (EDC). (Entered: 09/17/2019)
09/18/2019		MOTION(S) REFERRED: <u>55</u> (p.596) MOTION for Leave to File Amended Complaint and Memorandum of Law in Support. This motion is now pending before the USMJ. (EDC) (Entered: 09/18/2019)
09/19/2019	<u>59</u>	ORDER denying <u>55</u> (p.596) MOTION for Leave to File Amended Complaint and Memorandum of Law in Support filed by Darrell Berry. The district judge has dismissed plaintiffs' claims with prejudice. (R. Docs. 39 and 58). The Court will not allow the claims to be revived by way of amended complaint. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 9/19/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard) (Entered: 09/19/2019)
09/19/2019	<u>60</u> (p.617)	ORDER TO SHOW CAUSE: Plaintiffs shall show cause within 14 days, in writing, why their claims asserted against defendant LoanCity should not be dismissed because of their failure to serve this defendant within the time allowed by Fed. R. Civ. P. Rule 4(m). Show Cause Response due by 9/28/2019. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 9/19/2019. (KAH) (Entered: 09/19/2019)
09/27/2019	<u>61</u> (p.619)	RESPONSE TO ORDER TO SHOW CAUSE regarding <u>60</u> (p.617) Order to Show Cause. (Attachments: # <u>1</u> (p.14) Order, # <u>2</u> (p.92) Exhibit)(EDC) (Entered: 09/30/2019)
10/04/2019	<u>62</u> (p.626)	NOTICE OF APPEAL of <u>58</u> (p.616) OPINION Adopting Report and Recommendation, Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry, Constance Lafayette. (SWE) (Entered: 10/07/2019)
10/22/2019	<u>63</u> (p.630)	TRANSCRIPT REQUEST by Darrell Berry, Constance Lafayette for Transcript to Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836.. (Attachments: # <u>1</u> (p.14) Exhibit A, # <u>2</u>

Date Filed	#	Docket Text
		(p.92) Proposed Order)(KMW) Modified on 10/23/2019 to edit docket text (KMW). Modified on 10/24/2019 and form forwarded to the Court Reporter and DQA via email. (KMW) (Entered: 10/23/2019)
10/22/2019	<u>64</u> (p.646)	TRANSCRIPT REQUEST by Darrell Berry, Constance Lafayette for Transcript to Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836.. (Attachments: # <u>1</u> (p.14) Exhibit A, # <u>2</u> (p.92) Proposed Order)(KMW) Modified on 10/23/2019 to edit the docket text (KMW). Modified on 10/24/2019 and form forwarded to the Court Reporter and DQA via email. (KMW) (Entered: 10/23/2019)
10/30/2019	<u>65</u> (p.662)	TRANSCRIPT REQUEST by Darrell Berry for dates 8/1/2019, 10/4/2019, and 10/25/2018, re <u>62</u> (p.626) Notice of Appeal, <u>45</u> (p.504) Notice of Appeal (KMW) Modified on 10/31/2019 to edit the docket text (KMW). (Entered: 10/31/2019)
10/30/2019	<u>66</u> (p.663)	AFFIDAVIT/Affirmation Transmittal of Information to the Fifth Circuit Court of Appeals by Darrell Berry. (KMW) (Entered: 10/31/2019)
10/30/2019	<u>67</u> (p.668)	Amendment to the Request for Transcript to the Fifth Circuit Court of Appeals and Confirmation all Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836 by Darrell Berry. (Attachments: # <u>1</u> (p.14) Attachment, # <u>2</u> (p.92) Proposed Order)(KMW) (Entered: 10/31/2019)
11/06/2019	<u>68</u> (p.682)	RULING and ORDER granting <u>53</u> (p.557) Motion for Leave to File Sur-Reply; granting in part and denying in part <u>44</u> (p.469) Motion for Reconsideration. The motion is GRANTED in part and Plaintiffs shall be given thirty (30) days in which to amend the operative complaint to attempt to state a viable claim against Wells Fargo. In all other respects, Plaintiff's motion is DENIED. Signed by Judge John W. deGravelles on 11/6/2019. (EDC) (Entered: 11/06/2019)
11/06/2019	<u>69</u> (p.688)	Sur-Reply in Opposition to <u>52</u> (p.553) Reply to Response to Motion to Reconsider filed by Darrell Berry. (EDC) (Entered: 11/06/2019)
11/06/2019		Set Deadlines: Amended Pleadings due by 12/6/2019. (EDC) (Entered: 11/06/2019)
11/07/2019	<u>70</u> (p.701)	ORDER For the reasons given in the Court's <u>68</u> (p.682) Ruling and Order on MTR I, the Final Ruling and Oder (sic) for <u>54</u> (p.574) Motion to Reconsider is GRANTED IN PART AND DENIED IN PART. Plaintiff's <u>67</u> (p.668) Amendment to the Request for Transcript to the Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836 (sic) is REFERRED to the Magistrate Judge. Signed by Judge John W. deGravelles on 11/7/2019. (SWE) (Entered: 11/07/2019)
11/07/2019		MOTION(S) REFERRED: <u>67</u> (p.668) MOTION to Amend <u>64</u> (p.646) Request, <u>63</u> (p.630) Request,. This motion is now pending before the USMJ. (SWE) (Entered: 11/07/2019)
12/05/2019	<u>71</u> (p.703)	AMENDED PETITION against All Defendants, filed by Darrell Berry, Constance Lafayette.(EDC) (Entered: 12/06/2019)
12/05/2019	<u>72</u> (p.735)	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>68</u> (p.682) Order on Ruling and Order by Darrell Berry. (EDC) (Main Document 72 replaced on 2/5/2020) (EDC). Modified on 2/5/2020 to include missing page.(EDC). (Entered: 12/06/2019)

Date Filed	#	Docket Text
12/05/2019	<u>73</u> (p.739)	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>68</u> (p.682) Ruling and Order by Darrell Berry. (EDC) (Entered: 12/06/2019)
12/13/2019	<u>74</u> (p.743)	MOTION for Extension of Time to File Answer to <u>71</u> (p.703) Amended Complaint by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.14) Proposed Pleading; Exhibit A - Proposed Order)(Meyer, Christopher) (Entered: 12/13/2019)
12/13/2019		MOTION(S) REFERRED: <u>74</u> (p.743) MOTION for Extension of Time to File Answer to <u>71</u> (p.703) Amended Complaint . This motion is now pending before the USMJ. (EDC) (Entered: 12/13/2019)
12/16/2019	75	ORDER granting <u>74</u> (p.743) Motion for Extension of Time to Respond to Amended Complaint. Defendant Wells Fargo Bank, N.A. is granted an extension of 21 days, or until 1/9/2020, to answer or otherwise plead. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/16/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 12/16/2019)
12/17/2019	<u>76</u> (p.747)	MOTION for Extension of Time to Respond to <u>71</u> (p.703) Amended Complaint by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1</u> (p.14) Exhibit A - Proposed Order)(Medor, Lindsay) Modified on 12/17/2019 to edit the text (SWE). (Entered: 12/17/2019)
12/17/2019		MOTION(S) REFERRED: <u>76</u> (p.747) MOTION for Extension of Time to Respond to <u>71</u> (p.703) Amended Complaint . This motion is now pending before the USMJ. (SWE) (Entered: 12/17/2019)
12/20/2019	77	ORDER granting <u>76</u> (p.747) Motion for Extension of Time to Respond to Amended Complaint. Defendants Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, and Mortgage Electronic Registration System are granted an extension of time, until 1/9/2019, to answer or otherwise plead. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/20/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 12/20/2019)
12/31/2019	<u>78</u> (p.751)	AMENDED Petition with Exhibits A-O against Does 1-100, Federal Home Loan Mortgage Corporation, Loancity, Mortgage Electronic Registration System, Wells Fargo Bank, N.A., John Doe 1, and John Doe 2 filed by Darrell Berry, Constance Lafayette. (Attachments: # <u>1</u> (p.14) Exhibit)(KMW) Modified on 1/7/2020 to edit the docket text (KMW). (Entered: 01/02/2020)
01/03/2020	<u>79</u> (p.895)	MOTION to Dismiss <i>Pursuant to FRCP 12(b)(6)</i> by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Medor, Lindsay) (Entered: 01/03/2020)
01/03/2020	<u>80</u> (p.898)	MOTION to Proceed on Appeal in forma pauperis by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Pleading; # <u>2</u> (p.92) Exhibit)(KAH) (Entered: 01/06/2020)
01/03/2020	<u>81</u> (p.903)	AMENDED Petition with Exhibits E1, F, 0 on Pages 7, 14, 16, 19 and 31 against, Does 1-100, Federal Home Loan Mortgage Corporation, Loancity, Mortgage Electronic Registration System, Wells Fargo Bank, N.A., John Doe 1, and John Doe 2 filed by Darrell Berry.(KAH) Modified on 1/7/2020 to edit text (LLH). (Entered:

Date Filed	#	Docket Text
		01/06/2020)
01/06/2020		MOTION(S) REFERRED: <a href="#">79 (p.895)</a> MOTION to Dismiss Pursuant to FRCP 12(b)(6). This motion is now pending before the USMJ. (KMW) (Entered: 01/06/2020)
01/06/2020	<a href="#">82</a> (p.910)	MEMORANDUM in Support of <a href="#">79 (p.895)</a> MOTION to Dismiss Pursuant to FRCP 12(b)(6) filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Medor, Lindsay) (Entered: 01/06/2020)
01/07/2020	83	ORDER REFERRING MOTION to USMJ: <a href="#">80 (p.898)</a> MOTION for Leave to Appeal in forma pauperis filed by Darrell Berry. Signed by Judge John W. deGravelles on 01/07/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 01/07/2020)
01/09/2020	<a href="#">84</a> (p.915)	MOTION to Dismiss for Failure to State a Claim by Wells Fargo Bank, N.A.. (Attachments: # <a href="#">1 (p.14)</a> Memorandum in Support, # <a href="#">2 (p.92)</a> Exhibit A - Mortgage, # <a href="#">3 (p.95)</a> Exhibit B - Note, # <a href="#">4 (p.106)</a> Exhibit C - Assignment)(Meyer, Christopher) (Entered: 01/09/2020)
01/10/2020		MOTION(S) REFERRED: <a href="#">84 (p.915)</a> MOTION to Dismiss for Failure to State a Claim . This motion is now pending before the USMJ. (KAH) (Entered: 01/10/2020)
01/10/2020	<a href="#">85</a> (p.959)	MOTION to Dismiss Pursuant to Rule 12(B)(6) by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <a href="#">1 (p.14)</a> Memorandum in Support)(Young, Lindsay) (Entered: 01/10/2020)
01/10/2020		MOTION(S) REFERRED: <a href="#">85 (p.959)</a> MOTION to Dismiss Pursuant to Rule 12(B)(6). This motion is now pending before the USMJ. (SWE) (Entered: 01/10/2020)
01/13/2020	<a href="#">86</a> (p.967)	Notice of Substitution re: Motion to Dismiss Pursuant to 12(B)(6) (Doc. 85) by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <a href="#">1 (p.14)</a> Exhibit A, # <a href="#">2 (p.92)</a> Exhibit B, # <a href="#">3 (p.95)</a> Exhibit C)(Young, Lindsay) Modified on 1/13/2020 to edit text. (EDC). (Entered: 01/13/2020)
01/13/2020		MOTION(S) REFERRED: <a href="#">86 (p.967)</a> MOTION to Substitute Motion to Dismiss Pursuant to 12(B)(6) (Doc. 85) . This motion is now pending before the USMJ. (EDC) (Entered: 01/13/2020)
01/13/2020	<a href="#">87</a> (p.977)	Reply to <a href="#">85 (p.959)</a> MOTION to Dismiss Pursuant to Rule 12(B)(6) filed by Darrell Berry, Constance Lafayette. (KMW) (Entered: 01/14/2020)
01/17/2020	<a href="#">88</a> (p.988)	MOTION for Leave to File Sur-Reply in Opposition to Defendant's Memorandum in Support of Motion to Dismiss and Motion for Extension of Time by Darrell Berry, Constance Lafayette. (Attachments: # <a href="#">1 (p.14)</a> Exhibit A, # <a href="#">2 (p.92)</a> Proposed Order)(KMW) (Entered: 01/21/2020)
01/22/2020		MOTION(S) REFERRED: <a href="#">88 (p.988)</a> MOTION for Leave to File Sur-Reply in Opposition to Defendant's Memorandum in Support of Motion to Dismiss and Motion for Extension of Time. This motion is now pending before the USMJ. (KMW) (Entered: 01/22/2020)

Date Filed		Docket Text
01/31/2020	<u>89</u> (p.995)	NOTICE of Correction to Fifth Circuit Court of Appeals' Official Caption by Darrell Berry. (EDC) (Entered: 01/31/2020)
02/05/2020	<u>90</u> (p.998)	MOTION for Leave to File Sur-Reply in Opposition to Defendants' Memorandum of Law in Support of Motion to Dismiss and Motion for an Extension of Time by Darrell Berry. (Attachments: # <u>1</u> (p.14) Proposed Order)(KMW) (Entered: 02/06/2020)
02/05/2020	<u>91</u> (p.1002)	NOTICE of Correction to Fifth Circuit Court of Appeals' Transmittal of Complete Document 72 (Page 2 of 4 Signature Page) by Darrell Berry (KMW) (Entered: 02/06/2020)
02/06/2020		MOTION(S) REFERRED: <u>90</u> (p.998) MOTION for Leave to File Sur-Reply in Opposition to Defendants' Memorandum of Law in Support of Motion to Dismiss and Motion for an Extension of Time. This motion is now pending before the USMJ. (KMW) (Entered: 02/06/2020)
02/19/2020	92	NOTICE: Pursuant to General Order 2020-03, this case is reassigned to Magistrate Judge Scott D. Johnson (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(NLT) (Entered: 02/19/2020)
03/26/2020	<u>93</u> (p.1005)	ORDER granting <u>80</u> (p.898) Motion for Leave to Appeal in forma pauperis. Signed by Magistrate Judge Scott D. Johnson on 03/25/2020. (LT) (Entered: 03/26/2020)
04/08/2020	94	USCA Case Number 19-30610 for <u>45</u> (p.504) NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL filed by Darrell Berry, Constance Lafayette. (SWE) Modified on 4/8/2020 to edit text(SWE). (Entered: 04/08/2020)
04/08/2020	95	USCA Case Number 19-30836 for <u>62</u> (p.626) Notice of Appeal filed by Darrell Berry, Constance Lafayette. (SWE) (Entered: 04/08/2020)

Case #: 3:18-cv-00888-JWD-SDJ

19-30836 is designated for  
September 17, 2019 Order

19-30610 is for July 3, 2019 order

This is the finalized Official Record sent to the  
USCA 5th Circuit and to Respondents as of August 2020