ORIG

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

PETER SANFORD LUNDSTEDT - PETITIONER

vs.

DEUTSCHE BANK, JPMORGAN CHASE, AND SPS, INC. – RESPONDENT'S

PLAINTIFF/APPELLANTS' VERIFICATION OF MOTION TO PROCEED IN FORMA PAUPERIS TO THE U.S. SUPREME COURT WASHINGTON, D.C.

Peter S. Lundstedt
PO Box 305
Stonington, CT 06378-0305
203-733-0311
plundstedt@gmail.com

PLAINTIFF/APPELLANTS' VERIFICATION OF MOTION TO PROCEED IN FORMA PAUPERIS TO THE U.S. SUPREME COURT WASHINGTON, D.C.

BEFORE ME personally appeared Peter Sanford Lundstedt who, being by me first duly sworn and identified in accordance with Connecticut law, deposes and states under penalties of perjury:

1. My name is Peter Sanford Lundstedt, Plaintiff herein.

2. I have read and understood the attached foregoing Motion to Proceed In Forma Pauperis filed herein, and each fact alleged therein is true and correct of my own personal firsthand knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

Peter S. Lundstedt, Plaintiff/Affiant

SWORN TO and subscribed before me this 27 day of December 2021.

Notary Public
My commission expires:

JULIANNE NAUGHTON
NOTARY PUBLIC
My Commission Expires Nov. 30, 2025

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

PETER SANFORD LUNDSTEDT - PETITIONER

vs.

DEUTSCHE BANK, JPMORGAN CHASE, AND SPS, INC. – RESPONDENT'S

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Peter S. Lundstedt
PO Box 305
Stonington, CT 06378-0305
203-733-0311
plundstedt@gmail.com

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

FACTS

Plaintiff/Appellant Peter Sanford Lundstedt motions the court for leave to PROCEED IN FORMA PAUPERIS for the following reasons:

1. Pro se Plaintiff/Appellant Peter Lundstedt is a 70% disabled U.S. Veteran with multiple service-connected fractures in his back and degenerative disk disease along with shoulder arthritis where he must have a total shoulder replacement and has extreme sciatica and radiating pain down his left side and needs to put ice on it every night.
2. Appellant Lundstedt must take 5 VA prescription medication for PTSD, heart, and skin ailments caused by the totality of inflictions of emotional, physical, and financial distresses which is the core subject of this case. See **Exhibit A**.
3. Plaintiff/Appellant Lundstedt asks the court to allow him to take leave to Proceed In Forma Pauperis just as other courts have recently declared Plaintiff/ Appellant Lundstedt indigent and granted him leave to file In Forma Pauperis. See **Exhibit B**.
4. Deutsche Bank, Chase, and SPS, Inc. had 100% control over Plaintiff/Lundstedts' net

worth which they could foresee. They had a duty to correct and issue a suitable replacement Note and Security Instrument installment contract mortgage loan.

5. Plaintiff/Appellant Lundstedt could no longer work because all his energy and resources were spent on defending himself against an unreasonable wrongful foreclosure on neither of the legally prohibited Note and Security Instrument Installment Loan Contract's.
6. Because of that, Plaintiff/ Appellant lost everything he had over the next nine years, his house, his business, and his social standing in his community. The totality of circumstances of wrongful suing and wrongful mailing and wrongful servicing behavior inflicted by Deutsche Bank, Chase, and SPS, Inc. caused the weight of debilitating emotional distress so heavy that he had to give up everything just to survive ending up having to live off VA disability and Social Security while living in a motel day to day and being homeless for the past six years and counting.
7. Here, the totality of inflictions of negligent emotional, physical, and financial distresses, inflicted by Deutsche Bank as the wrongful contract's owner, and Chase and SPS, Inc. as Deutsche Bank's wrongful loan servicers, have rendered the once top producer and vice president at four companies and president of his own company indigent.

HISTORY

8. WaMu Issued the original canceled Note and Security Instrument Installment Contract and Deutsche Bank did Issue a materially modified Note and Security Instrument Installment Contract, and *that* Note canceled the original WaMu Issued Note and Security Instrument.
9. Deutsche Bank then improperly served the Plaintiff/Appellant with an incomplete complaint on **neither** Terms and Provisions of the *original* canceled Note and Security Instrument Installment Contract OR the *materially modified* Note and Security Instrument Installment Contract Terms and Provisions Issued by Deutsche Bank who should have attached both as required to disclose what Terms and Provisions they were suing on and to prove who owned the Note.
10. Here, Deutsche Bank concealed, suppressed, and omitted both contracts from the service on the Plaintiff/Appellant in state court. Deutsche Bank also concealed, suppressed, and omitted both contracts so that the court could not compare the two.
11. Deutsche Bank et al. filed neither Security Instrument because they did not want the state court to compare either. The pro se Plaintiff/Appellant had no idea what was happening or what to do until he made new

discoveries that showed that the state complaint was defective.

12. Plaintiff/Appellant Lundstedt has spent all his time and money for the past ten years fighting a wrongful foreclosure by a foreign bank who issued him a fraudulent Note and Security Instrument installment contract on his house and then sued him on a canceled contract.

    Because of that, he lost his business and his place in society. So removed from life that his credit score went down to 4, four. That is how recluse the defendants made him. In other words, he literally lost everything. This profoundly prejudiced Plaintiff/Appellant Lundstedt because they did not treat him equally before the law. See **Appendix P**.

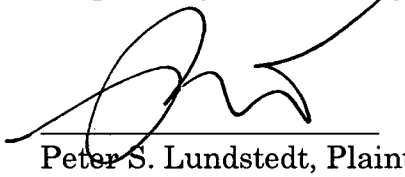
13. After receiving the first decision from the appellate panel, Plaintiff/Appellant Lundstedt filed an objection and thought he had a right to object on the actual mandate and filed 90 days from then.

14. Plaintiff/Appellant Lundstedt was declared indigent by a state court who relieved him of his court and service fee's as well as several times related to the instant case.

Plaintiff/Appellant Lundstedt asks the court to allow him to take leave to Proceed In Forma Pauperis just as other courts have recently declared Plaintiff/ Appellant Lundstedt indigent and granted him leave to file In Forma

Pauperis. See Exhibit B.I declare under penalty of perjury that the foregoing is true and correct. Executed on December 23, 2021.

THE PLAINTIFF/APPELLANT
Respectfully submitted by



Peter S. Lundstedt, Plaintiff
20 Broad Street, Box 305
Stonington, CT 06378
203-733-0311
plundstedtd@gmail.com

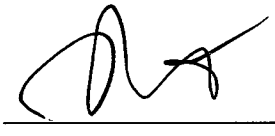
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed to all appearing parties and mailed/ electronically mailed to the below on 12-30-2021 as follows:

Halloran & Sage LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103

ZEK
35 Mason St.
Greenwich, CT 06830

THE PLAINTIFF
Respectfully submitted,



Peter S. Lundstedt,
Plaintiff
20 Broad Street, Box 305
Stonington, CT 06378
203-733-0311
plundstedt@gmail.com

LUNDSTEDT V. DEUTSCHE BANK, CHASE & SBI, INC.
2ND CIR. 16-2575-CV
CONN. 3:13-1423-JAM

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, PETER S. LUNDSTEDT, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ —	$ 0	$ —
Self-employment	$ 0	$	$ 0	$
Income from real property (such as rental income)	$ 0	$	$ 0	$
Interest and dividends	$ 0	$	$ 0	$
Gifts	$ 0	$	$ 0	$
Alimony	$ 0	$	$ 0	$
Child Support	$ 0	$	$ 0	$
Retirement (such as social security, pensions, annuities, insurance)	$ ~~1600~~ 1657	$	$ 1600	$
Disability (such as social security, insurance payments)	$ 1400	$	$ 1400	$
Unemployment payments	$ 0	$	$ 0	$
Public-assistance (such as welfare)	$ 0	$	$ 0	$
Other (specify):	$	$	$	$
Total monthly income:	$ ~~3057~~ 3057	$	$ ~~3000~~ 3057	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE/SELF	—	—	$ 0
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer none	Address	Dates of Employment	Gross monthly pay
CAN'T AFFORD TO GET MARRIED.			$
			$
			$

4. How much cash do you and your spouse have? $ 200.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	$ 200.00	$
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value _____

☐ Other real estate
Value _____

☑ Motor Vehicle #1
Year, make & model 1992 Sedan Deville
Value 0

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☑ Other assets
Description NONE MOSTLY
Value $100

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
~	$ 0	$ —
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
None		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No	$ 1200	$
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$
Home maintenance (repairs and upkeep)	$ 0	$
Food	$ 600	$
Clothing	$ 100	$
Laundry and dry-cleaning	$ 20	$
Medical and dental expenses	$ 61	$

	You	Your spouse
Transportation (not including motor vehicle payments)	$ ~~80~~ 300	$
Recreation, entertainment, newspapers, magazines, etc.	$ 20	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$
Life	$ 0	$
Health	$ 61	$
Motor Vehicle	$ 54	$
Other:	$ 0	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify):	$ 0	$
Installment payments		
Motor Vehicle	$ 0	$
Credit card(s)	$ 0	$
Department store(s)	$ 0	$
Other:	$ 0	$
Alimony, maintenance, and support paid to others	$ 0	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$
Other (specify): old CAR PARTS + SERVICE 500 STORAGE 71	$ 591	$
Total monthly expenses:	$ ~~1200~~ 2771	$

ABOUT $3048.00

APPLICATION FOR WAIVER OF FEES/ PAYMENT OF COSTS - CIVIL, HOUSING, SMALL CLAIMS, AND APPELLATE

JD-CV-120 Rev. 1-19
C.G.S. §§ 52-259, 52-259b, 52-259c
P.B. §§ 8-2, 63-6

Instructions to person asking for the waiver (applicant)

1. *Fill out Application. For help, see Help Text for Application for Waiver of Fees/Payment of Costs - Civil, Housing, Small Claims, and Appellate (form JD-CV-120H).*
2. *Sign the form under oath in front of a clerk, a notary, or an attorney.*
3. *Bring this form to the court where your case will be filed or is/was pending.*
4. *If this application for fees payable to the court or for costs of service of process is denied, you may ask for a hearing in the Request for Hearing on Denied Application section on page 2.*

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

Note: This form will be put in the case file, which may be available to be viewed by the public.

Application

To: The Superior Court

Name of case *(Plaintiff v. Defendant)*	Docket number *(If applicable)*
PETER S. LUNDSTEDT V. DEUTSCHE BANK SECURITIES ET AL.	

☒ Judicial District ☐ Housing Session — Address of court: NEW LONDON CIVIL COURT, CT 06320

Name of applicant *(Last, first, middle initial)*	Address of applicant *(Number, street, town, state and zip)*	Telephone *(Area code first)*
LUNDSTEDT, PETER S.	20 BROAD ST. BOX 305 STONINGTON CT	2037330311

Type of proceeding:

☒ Civil case ☐ Small claims case ☐ Housing *(Landlord-Tenant case)*
☐ Appellate matter (Supreme or Appellate Court) ☐ Other *(Specify)*: _____

Fee Waiver/Payment of costs

I ask that the court order that I do not have to pay fees or to order the State to pay the costs below. *(Check all that apply)*

☒ Entry fee ☒ Filing fee ☒ Costs of service of process *(Delivery of papers)* ☐ Appellate filing fee (Supreme or Appellate Court)
☐ Cost of the transcript for appeal ☒ Other fee *(Specify)*: N/A

Grounds for Appeal

(Complete if requesting waiver of Appellate filing fee (Supreme or Appellate Court) and/or payment of cost of the transcript for appeal.)

The grounds on which I propose to appeal are: _____

Financial Affidavit

1. Dependents

Total number of dependents *(Do not count yourself)*: 0

2. Monthly Income

A. Gross monthly income from all sources *(Money you get in one month from work and other sources, before taxes)*	3131
B. Net monthly income *(after taxes)* from employment	3131
C. Income from sources other than employment *(For example, TFA, Social Security, etc.)*	+ 1657
List sources of other income: _____	=
Total Monthly Income (B+C) =	3131

3. Monthly Expenses

A. Rent/Mortgage	1284.75
B. Real Estate Taxes	
C. Utilities *(Telephone, heat, electric, water, gas, etc.)*	
D. Food	600
E. Clothing	100
F. Insurance Premiums *(Medical/dental, auto, life, home)*	54
G. Medical/Dental	
H. Transportation *(Bus, gasoline, etc.)*	300
I. Child Care	
J. Other *(Specify)*: _____	
Total Monthly Expenses =	3048.75

4. Assets

	Estimated Value *(Current worth)*	Loan Balance *(Amount owed)*	Equity *(Estimated Value minus Loan Balance)*
A. Real Estate		0	Real Estate: 0
B. Motor Vehicles	0	0	Motor Vehicle: 0
C. Other Personal Property *(For example, jewelry, furniture, etc.)*	100		Other Property: 100
D. Savings Account Balance *(Total of all accounts)*			Savings:
E. Checking Account Balance *(Total of all accounts)*			Checking: 32
F. Cash			Cash:
G. Other Assets *(Specify)*: _____			Other Assets:
Total Assets =			132.00

5. Liabilities/Debts *(For example, credit card balances, loans, etc. Do not include mortgage or loan balances that are listed under "Assets".)*

Type of Debt	Amount Owed	Monthly Payment
0	0	0
Total Liabilities =	0	0

FILED
NOV 10 2021
SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

Name of case *(Plaintiff v. Defendant)*	Docket number *(If applicable)*
LUNDSTEDT V. DEUTSCHE BANK ETAL.	

6. If you claim zero Total Monthly Income in number 2 above or zero Total Monthly Expenses in number 3 above, explain how you are supported:

ALL MY INCOME COMES FROM VA DISABILITY AN SOCIAL SEC.

- Notice -

Any false statement made by you under oath which you do not believe to be true and which is intended to mislead a public servant in the performance of his or her official function may be punishable by a fine and/or imprisonment.

I certify that the information on this application is true and accurate to the best of my knowledge and that I can, if asked, document all income, expenses, and liabilities listed on this application.

Signed *(Applicant)*		Print name of person signing at left	Date signed
		PETRA LUNDSTEDT	11/10/21
Subscribed and sworn to before me:	On *(Date)* 11/10/21	Signed *(Notary Public, Commissioner of the Superior Court, Assistant Clerk)*	

Order

Having reviewed the application, the court finds as follows:

☑ 1. The applicant is indigent and unable to pay the following fees which are waived:
- ☑ Entry fee ☐ Filing fee ☐ Appellate filing fee (Supreme or Appellate Court)
- ☐ Other fee *(Specify)*_____

☑ 2. The applicant is indigent and unable to pay the cost of service. A state marshal's fee not to exceed $ STAT. RATE shall be paid by the state.

☐ 3. The applicant is indigent and unable to pay the cost of the transcript for appeal, which shall be paid by the State in accordance with Practice Book Section 63-6.

☐ 4. The applicant is indigent but able to pay fees, costs of service, and the cost of the transcript for appeal, and the application is denied.

☐ 5. The applicant is not indigent and the application is denied.

☐ 6. Denied: the applicant has repeatedly filed actions with respect to the same or similar matters, such filings establish an extended pattern of frivolous filings that have been without merit, the application sought is in connection with an action before the court that is consistent with the applicant's previous pattern of frivolous filings, and the granting of such application would constitute a flagrant misuse of Judicial Branch resources.

☐ 7. Denied. Other *(Specify)*: _____

By the Court *(Print or type name of Judge)*	On *(Date)*	Signed *(Judge, Clerk)*	Date signed
CALMYER T	11/16/21	/S/	11/16/21

Request For Hearing On Denied Application *(Fees payable to the court or costs of service of process)*

This section should be filled out only if the court has checked #4, 5, 6 or 7 above and denied the application.

☐ I request a court hearing on my application. ▶ _____ 11/10/21

Signed *(Applicant)* Date signed

Hearing

Hearing to be held on *(Date)*	Location
At *(Time)*	Signed *(Clerk)*

Name of case *(Plaintiff v. Defendant)*	Docket number *(If applicable)*
LUNDSTEDT V. DEUTSCHE BANK ET AL.	

Order After Hearing

Having reviewed the application, the court finds as follows:

☐ 1. The applicant is indigent and unable to pay the following fees which are waived:
☐ Entry fee ☐ Filing fee ☐ Appellate filing fee (Supreme or Appellate Court)
☐ Other fee *(Specify)*_____

☐ 2. The applicant is indigent and unable to pay the cost of service. A state marshal's fee not to exceed $ _____ shall be paid by the state.

☐ 3. The applicant is indigent and unable to pay the cost of the transcript for appeal, which shall be paid by the State in accordance with Practice Book Section 63-6.

☐ 4. The applicant is indigent but able to pay fees, costs of service, and the cost of the transcript for appeal, and the application is denied.

☐ 5. The applicant is not indigent and the application is denied.

☐ 6. Denied: the applicant has repeatedly filed actions with respect to the same or similar matters, such filings establish an extended pattern of frivolous filings that have been without merit, the application sought is in connection with an action before the court that is consistent with the applicant's previous pattern of frivolous filings, and the granting of such application would constitute a flagrant misuse of Judicial Branch resources.

☐ 7. Denied. Other *(Specify)*: _____

By the Court *(Print or type name of Judge)*	On *(Date)*	Signed *(Judge, Clerk)*	Date signed

ADA NOTICE

The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at *www.jud.ct.gov/ADA*.

No. _____

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PLAINTIFF/APPELLANTS' VERIFICATION OF HIS PETITION TO THE U.S. SUPREME COURT WASHINGTON, D.C.

BEFORE ME personally appeared Peter Sanford Lundstedt who, being by me first duly sworn and identified in accordance with Connecticut law, deposes and states under penalties of perjury:

1. My name is Peter Sanford Lundstedt, Plaintiff herein.

2. I have read and understood the attached foregoing petition filed herein, and each fact alleged therein is true and correct of my own personal firsthand knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

Peter S. Lundstedt, Plaintiff/Affiant

SWORN TO and subscribed before me this 21 day of December 2021.

Notary Public
My commission expires:

JULIANNE NAUGHTON
NOTARY PUBLIC
My Commission Expires Nov. 30, 2025

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

PETER SANFORD LUNDSTEDT - PETITIONER

vs.

DEUTSCHE BANK, JPMORGAN CHASE, AND SPS, INC. – RESPONDENT'S

ON A PETITION OF WRIT OF CERTIORARI TO

THE UNITED STATES APPEALS COURT, SECOND CIRCUIT

Peter S. Lundstedt
PO Box 305
Stonington, CT 06378-0305
203-733-0311
plundstedt@gmail.com

QUESTIONS PRESENTED FOR REVIEW
RULE 14.1(A)[1] and [2]

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[1] The Issue of this footnote is to Notice to the Court that: I am Plaintiff Lundstedt. As pro se Plaintiff, I am entitled to liberal reading and interpretation of my pleadings; See: *"Pro se pleadings should be held to "less stringent standards" than those drafted by attorneys, "however in-artfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the Plaintiff can prove no set of facts in support of his claim that would entitle him to relief."* ***Haines v. Kerner,*** 404 U.S. 520 (1971), **US Supreme Court.** ***Estelle, Corrections Director, Et Al. V. Gamble*** 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). ***Platsky v. C.I.A.*** 953 F.2d. 25, that: "court errs if court dismisses the pro se litigant (Aggrieved Plaintiff/Appellant is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings."

[2] **Summary:** The state court never had subject matter jurisdiction because the contract was not served on the court or Plaintiff/Appellant. **Plaintiff/Appellant Lundstedt asks this court to order a proper jury trial on all defendants Deutsche Bank and SPS, Inc., including Chase.** Each of the defendant's, Deutsche Bank, Chase, and SPS, Inc., had a ***duty*** to Plaintiff/Appellant Lundstedt after he told them to stop injuring him from their combined duration of over ten years of wrongful suing, concealing core contract documents, and that each could ***foresee*** or should have foreseen injury being inflicted upon Plaintiff/Appellant Lundstedt under the theory of the totality of circumstances. This is the only legal theory that can explain the ***totality of all*** ruining causative emotional, physical, and financial distress injuries and damages inflicted for a duration of over ten years, year after year, and that Deutsche Bank, SPS, Inc. and Chase are each liable and caused injury.

Plaintiff/Appellant asks the court to add Deutsche Bank and its loan servicer SPS, Inc. back into the case so that a

jury can properly dismiss or not dismiss them rather than the judge. The jury ruled that Plaintiff/Appellant Lundstedt suffered negligent infliction of emotional distress to such a level as to cause physical illness, but from what? The jury did not believe that JPMorgan Chase was the only one liable for Plaintiff/Appellant Lundstedts' NIED. See jury question Number Two in **Appendix O**. Deutsche Bank got money back after selling Plaintiff/ Appellants' house ***by conversion*** on 1-2-2017. Because of ***the duration*** of over ten years of wrongful foreclosures, wrongful loan servicing (see **Appendix P** for allegations on Chase for five years), and wrongful mailings, the totality of inflictions of emotional, physical, and financial distresses caused by Deutsche Bank as Note owner, JPMorgan Chase Bank as Deutsche Bank loan servicer one from 2008-2013, and SPS, Inc. Deutsche Bank loan servicer two from 5-1-2013 – 2018, Plaintiff/Appellant Peter Sanford Lundstedt was professionally, economically and personally devastated, sole small businessman whose only skills to make a reasonable living are as an "equity" portfolio manager. Plaintiff/Appellant Lundstedts' entire world was abruptly turned upside down, and his emotional, physical, and financial life changed forever for the worse over a duration of ten years (since 2008) because of ***the totality of circumstances*** of the *totality of negligent inflictions of emotional, physical, and financial distresses* ***caused by*** Deutsche Bank, SPS, Inc., and Chase's prohibited business practices and behavior including: **1.** the improper service of complaint with no Contract, Terms, or Provisions attached. **2.** Wrongful foreclosure suing, making the 9-16-2013 judgment of strict foreclosure void ab inito because there were no Terms and Provisions served on Plaintiff/Appellant Lundstedt. **3.**The Complaint only referred to a WaMu Issue Note and Security Instrument 9-25-2006 transaction whose Terms and Provisions were voided, nulled, and canceled forever by the hidden concealed materially modified Deutsche Bank Issued Contract/Note with a transaction date of 5-1-2008. **3.** The conversion of Plaintiff/Appellant Lundstedts' residence by use of

the invalid judgment. **4.** Deutsche Bank et al. pushed Plaintiff/Appellant Lundstedt, a sole portfolio management proprietor, out of business and out of society. See his credit score which hit a low of four (4). **5.** During the five years, 2008-2013, of suing Plaintiff Lundstedt on the previously discharged WaMu Issued Note and Security Instrument transaction, Deutsche Bank et al., (or even no Terms and Provisions since no contract was served on Plaintiff), knowingly continued a course of conduct of misrepresenting that fact to the court and the town land records that there was another more recent Deutsche Bank Issued Contract/Note that had not been canceled, but that was also invalid since the Terms and Provisions were outrageous, unsuitable, and unreasonable. In fact, Deutsche Bank did not serve Plaintiff/Appellant Lundstedt with either Note and Security Instrument Installment Contract Mortgage Loan document, which was not attached to the 12-18-2008 improperly served complaint. **Because they did not tell the court, this severely prejudiced Plaintiff/Appellant Lundstedt** while at the same time created a state of perpetual continuing course of conduct that kept Plaintiffs' causes of action tolled. **6.** As a result of the prohibited Notes and the wrongful suing and wrongful loan servicing Plaintiff/Appellant Lundstedt was permanently, severely and grievously, rendered him ill, sore, immobile, disabled and suffered severe nervous shock, mental anguish, severe emotional distress, and great physical pain leaving him confined to a bed and was prevented from engaging in his usual occupation for a long period of time. Since his injuries are of a permanent nature, he will continue to suffer similar damages in the future. **7.** Because of the unreasonable duration of the totality of circumstances, Plaintiff/Appellant Lundstedt suffered a loss of enjoyment for life. **8.** Deutsche Bank et al. routinely sent Plaintiff/Appellant Lundstedt misleading statements, correspondence, and mail on the Deutsche Bank Issued Contract Note and Security Instrument that the court had not seen. **9.** Deutsche Bank led the court to believe that the canceled WaMu Issued Contract/Note was valid and enforceable which it was not.

10. Deutsche Bank, et al. disallowed Plaintiff Lundstedt from challenging the concealed, non-filed, non-canceled Deutsche Bank Issued Contract/Note, (or even no Terms and Provisions since no contract was ever served on Plaintiff). Look at the Terms and Provisions in the Deutsche Bank Issued Contract/Note in **Appl. Dkt. No. 72-5** with the Terms and Provisions in the canceled WaMu Issued Contract/Note in **Appl. Dkt. No. 72-6**.

Both Terms and Provisions were Prohibited under Conn's Predatory Loan Public Act, CGS Pa.1-34(2)(5)(8)(9), CUTPA, and the FDCPA, inter alta Plaintiff/Appellant challenges the district Courts dismissal of his Fair Debt Collection Practices Act complaint, which charges defendant with false representations and unfair practices in seeking payment on an already settled debt, (i.e., the canceled WaMu Issued Note). 15 U.S.C. §§ 1692e(2), (10), 1692f(l), or no debt since no terms or provisions were served Plaintiff/Appellant or the court or the Town Hall or the Trust. Plaintiff argues the district court erred in concluding that he could not state a claim because Chase did not own the Note and Security Instrument. However, it was Deutsche Bank who owned the Note and because of that, Chase was collecting on a Note it did not own which violates the FDCPA.

The court erred and ***critogenically*** injured Plaintiff/Appellant Lundstedt from that delay. J Am Acad Psychiatry and the Law 1999; 27:203-211, Gutheil TG, Bursztajn H, Brodsky B, Strasburger LH. Preventing "critogenic" harms: minimizing emotional injury from civil litigant. Journal of Psychiatry and Law; 28: 5-19, 2000. The symptoms of which were caused by the duration of Deutsche Bank et al.'s false suing, false mailing, and concealment of the Note that Deutsche Bank Issued with materially modified but unsuitable Terms while suing on **neither** Terms to avoid liability from either. **Critogenic injury**: "Critogenic (law-caused) harm" the "intrinsic and often inescapable harms caused by the litigation process itself. The term "litigation-response syndrome" shows a correlation has been documented between litigation, stress, injury and symptomatic complaints. http://jaapl.org/content/jaapl/27/2/203.full.pdf

INTRODUCTION

Plaintiff/Appellant Peter Sanford Lundstedt filed an amended complaint ***Lundstedt v. Deutsche Bank*** [Note owner and Trustee], ***JPMorgan Chase Bank*** [Deutsche Bank's first loan servicer from 2008-2013], and ***SPS, Inc.*** [Deutsche Bank's second loan servicer from 2013-2018], 3:13-cv-1423-JAM, 2013, at **Dist. Dkt. No. 88** in 2014 with a demand for a jury trial printed in bold type on the caption page.

The court below attempted to downplay the negative effects of nearly all the Defendant's violations by improperly dismissing Deutsche Bank and SPS, Inc. on 6- 2 -2016. The judge, (not the jury), dismissed two of the defendant's, Deutsche Bank and its second loan servicer SPS, Inc. without a waiver from pro se Plaintiff/Appellant Lundstedt who had already declared his 7th Amendment right to a jury trial on ***all*** defendant's, not just Chase, and timely objected.

The Seventh Amendment (1791) to the Constitution of the United States, **part of the Bill of Rights**, provides for the preservation of the constitutional right of trial by jury as directed in the enabling act (act of June 19, 1934, 48 Stat. 1064, U.S.C., Title 28, §723c [see 2072]), and it and the next rule make definite provision for claim and waiver of jury trial.

However, there is an uneven circuit split as to whether Rule 41 of the Federal Rules of Civil Procedure permits dismissal of a single party in a multiparty case. *Voluntary* dismissal is generally

addressed by Rule 41(a) of the Federal Rules of Civil Procedure and, in practice, tends to be a perfunctory, one-page filing.

For example, **The Sixth Circuit** interprets the scope of an "action" narrowly to mean only dismissal of the "entire controversy," not a single party. ***Mullins v. C.R. Bard, Inc.,*** No. 0:19-CV-85-JMH-EBA, 2020 WL 4288400, at *1 (E.D. Ky. July 27, 2020) (citing ***Philip Carey Mfg. Co. v. Taylor***, 286 F.2d 782, 785 (6th Cir. 1961)). **The Second Circuit** has also followed this approach. See ***Baksh v. Captain***, No. 99-CV-1806 (ILG), 2000 WL 33177209, at *2 (E.D.N.Y. Dec. 11, 2000) (discussing ***Harvey Aluminum, Inc. v. Am. Cyanamid Co.***, 203 F.2d 105 (2d Cir.), cert. denied, 345 U.S. 1964 (1953)).

Other circuits do not hold to a "literal" reading of the word "action" in Rule 41. See ***Van Leeuwen v. Bank of Am., N.A.,*** 304 F.R.D. 691, 693 (D. Utah 2015) (collecting cases) for example. The rule permits ***a plaintiff,*** [not the defendant's, such as in the instant case], to dismiss fewer than all of the named defendants" because it "is consistent with... Rule 41(a)(1)," which was "designed to permit a disengagement of the parties at the behest ***of the plaintiff,*** **[Not the defendant's]**, in the early stages of a suit, before the defendant has expended time and effort" in case preparation. Id. See also Wright & Miller, Federal Practice and Procedure: Civil 2d §2362 (describing this interpretation as "the sounder view" with "the weight of judicial authority").

[Here, Plaintiff/ Appellant Lundstedt never dismissed Deutsche Bank or SPS, Inc. Nor did he sign a waiver of his right to have the jury be the trier of fact on all the defendant's. By not doing so the district judge prejudiced Plaintiff/Appellant Lundstedt. When it comes to finding the courage of enforcing the law for individuals the district and appellate court's appeared to be paper tigers because they cannot give the real reason they keep dismissing these causes of action.]

FUTHERMORE, AFTER TEN YEARS I STILL DO NOT KNOW WHY I AM WRONG. WHY CAN'T YOU TELL ME I AM WRONG. I WILL MAKE IT EASY FOR YOU. Deutsche Bank, JPMorgan Chase, and SPS, Inc. never had jurisdiction in the state court. That means the state court judgment is invalid without jurisdiction and that means all the evidence in the federal court that Chase submitted at federal trial had no jurisdictional admittance. See: "Court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings." **BPlatsky v. C.I.A.** 953 F.2d. 25 (The aggrieved Plaintiff is a pro se litigant)].

Question 1: Plaintiff/Appellant Lundstedt was deprived of his 7th and 14th Amendment Rights to have a jury decide his allegations against defendant's Deutsche Bank, SPS, Inc., and Chase, where the judge prematurely dismissed Deutsche Bank and SPS, Inc. before a jury could see the allegations against Deutsche Bank and SPS, Inc.

Was the trial judge in effect conducting a bench trial on Deutsche Bank and SPS, Inc. and a jury trial on Chase, and was Plaintiff/Appellant Lundstedt entitled to have all defendants tried by a jury and should Deutsche Bank and SPS, Inc. been dismissed by the jury rather than the judge? This also violated Plaintiff/Appellant Lundstedts' 14th Amendment right to due process.

Is a Plaintiff/Appellant [Lundstedt] entitled to a federal jury trial on "all" defendants, Deutsche Bank SPS, Inc., and Chase, not just one of the defendants, Chase, chosen by the district judge?

Question 2: Appendix N shows the Deutsche Bank complaint with a description of a contract Note but with NO actual Note attached to show the Connecticut Court which Note they were suing on, the canceled WaMu Issued Note or the Materially Modified Deutsche Bank Note.

Deutsche Bank argued that Plaintiff/Appellant Lundstedt was required to rebut this fact. However, they knew they were misfiling the complaint without the contracts *attached* which nullifies the rebuttal rule since they were in possession of both Notes. This was done to hide both contract Notes so that the court would not ask any questions when Deutsche Bank knew there were two prohibited Notes that represented their ownership.

Did Deutsche Bank et al., as the Note's owner and Trustee, 1. improperly serve their 12-18-2008 complaint of strict foreclosure on Plaintiff/Appellant

Lundstedt when they did so without the *canceled* transaction WaMu Issued Note and Security Instrument contract Terms and Provisions *attached* and 2. Nor did Deutsche Bank et al. attach the *concealed* Deutsche Bank Issued Materially Modified Note and Security Instrument contract Terms and Provisions as proof of Deutsche Bank's ownership of any Note? See the actual Deutsche Bank Complaint showing a reference to a canceled Note, BUT NOT THE PHYSICAL NOTES in **Appendix N.**

Question 3: Should Plaintiff Lundstedt be permitted to retry his case for the totality of all inflictions of emotional, physical, and financial distresses inflicted by the totality of the defendants for the totality of the duration of inflictions over the period that each defendant separately and together as it was intended by the trial court records?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Pursuant to Supreme Court Rule 14.1(b)(iii), pro se Petitioner states that it is not aware of any proceedings directly related to the case in this Court.

United States Court of Appeals, Second Circuit Case ***Lundstedt v. Deutsche Bank, JPMorgan Chase, and SPS, Inc.*** 18-2575-CV.

United States District, District of Connecticut, Case ***Lundstedt v. Deutsche Bank, JPMorgan Chase, and SPS, Inc.*** 3:13-cv-1423-JAM

Connecticut Superior Court Case ***Deutsche Bank v. Lundstedt***, FST-08-5009697-S.

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APPENDIX B - Second Decision The second opinion of the United States Court of Appeals 2nd Circuit summary order Mandate is unpublished and appears in Appendix B and is reported at Case 18-2575, **Doc.** Document 292, 08/11/2021, 3154709. See Appellants' 8-22-2021 *re*-objection **Appl. Dkt. No. 293**.

APPENDIX C - The United States Court of Appeal 2nd Circuits' panel denial of a written opinion to be signed by all judges at Appl. Dkt. No. 291.

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APPENDIX E - The Jury's Judgment on only 1/3 of the Defendant's. The Judgment of the United States District Court Jury, District of Connecticut.

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APPENDIX M - Packer v. SN Servic Corp. United States District Court District of Connecticut Feb 7,

2008, Memorandum of Decision on Mr. Packer's Negligent Infliction of Emotional Distress Claim. Argument.

APPENDIX N - The 12-18-2008 Deutsche Bank complaint referred to a contract for $1 million Issued by defunct WaMu that was canceled by Deutsche Bank but did not include Terms and Provisions from either Note and Security Instrument.

They mention a Note but provide no proof of the Note, Terms, or Provisions in order to omit any Terms or Provisions so that the court would not be able to see it. Deutsche Bank references page numbers in the Town Hall Records but there is no record of the Note Deutsche Bank Issued Plaintiff/Appellant Lundstedt on 5-1-2008. Furthermore, Deutsche Bank never updated the Town Land Records or the Long Beach Mortgage Loan Trust 10/2006 under their trusteeship to reflect the Deutsche Bank Issued Note transaction of 5-1-2008.

APPENDIX O – The jury even believed that JPMorgan Chase was not the only factor in the totality of circumstances as to who inflicted what and over what duration. The jury sent a question to the judge asking "Is this related to JPMorgan only? Or in general?"

APPENDIX P – Deutsche Bank servicer number one was JPMorgan Chase Bank. Chases own mortgage expert employee and deposition witness Affidavit that Chase modified other clients loans but failed to do so with Plaintiff/Appellant Lundstedt.

APPENDIX Q - VA Doctors letter to district trial and magistrate judges showing causation and proof of service.

TABLE OF AUTHORITIES CITED CASES

STATUTES AND RULES

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[3] **7th Amendment** (1791) to the Constitution of the United States, part of the Bill of Rights, that formally established the rules governing civil trials. This rule provides for the preservation of the constitutional right of trial by jury as directed in the enabling act (act of June 19, 1934, 48 Stat. 1064, U.S.C., Title 28, §723c [see 2072]).

[4] No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws U.S. Const. Amend. X1V, §1

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[5] **Rule 38.** Right to a Jury Trial; Demand. **(a) Right Preserved.** The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate. (b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and (2) filing the demand with Rule 5(d). **(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable.** If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury. **(d) Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent. (e) Admiralty and Maritime Claims. These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h). Notes (As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

[6] **Rule 39. Trial by Jury or by the Court -(a) When A Demand Is Made.** When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless: (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial. *[WHY THEN DID PLAINTIFF/APPELLANT LOSE HIS RIGHT TO A JURY TRIAL ON DEUTSCHE BANK AND SPS, INC.?]*

OTHER

[7] **Rule 41(a)** specifically refers to dismissal of an action as this term is used throughout the Federal Rules. Unless the entire controversy is to be dismissed, Rule 41(a) should not be used to dismiss by less than all plaintiffs.

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The first opinion of the United States Court of Appeals **2nd Circuit** summary order denial is unpublished without a date to the petition and appears in **Appendix A** with Plaintiff/Appellants' objection.

The second opinion of the United States Court of **Appeals 2nd Circuit** summary order Mandate is unpublished and appears in **Appendix B** with Plaintiff/Appellants' objection and is reported at Case 18-2575, **Document 292**, 08/11/2021, 3154709.

The United States Court of Appeal **2nd Circuits'** panel **denial of a written opinion** to be signed by all judges at **Appl. Dkt. No. 291** is in **Appendix C.**

The 6-2-2016 opinion of the United States **District Court**, District of Connecticut, on dismissal of Deutsche Bank and SPS, Inc. and Plaintiff/ Appellants' objection appears in **Appendix D.**

The Judgment of the United States **District Court**, District of Connecticut is at **Appendix E.**

The **Order** Denying a timely filed petition for rehearing by **the United States Court of Appeals 2nd Circuit** appears in **Appendix F.**

The United States Court of Appeals **2nd Circuits' Panel denial** of appellants' motions for instructions on how his pleadings were deficient and how to repair them appears in **Appendix G. See** Plaintiff/Appellants' Objections to Summary Order,

Memorandum of Law, Case 18-2575, **Document 261-2**, 05/03/2021, 3091985, appears in **Appendix J.**

Motion for written opinion as to the panel's decision in denying plaintiff appellants' appeal. Case 18-2575, **Document 287-2**, 07/27/2021, 3145709, Page1 of 7 **Appendix K.**

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). A court of appeals "shall" have jurisdiction over a final decision of a district court. 28 U.S.C. § 1291. Petitioner filed a timely appeal from an order dismissing his case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved are the **7th and 14th** [8] **Amendments** to the United States Constitution which are set forth in **Appendix H.**

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[8] This so-called Reconstruction Amendment prohibited the states from depriving any person of "life, liberty, or property, without due process of law" and from denying anyone within a state's jurisdiction equal protection under the law. However, in its ***Plessy v. Ferguson*** decision (1896), the U.S. Supreme Court ruled that "separate but equal" facilities for African Americans did not violate the Fourteenth Amendment, ignoring evidence that the facilities for Black people were inferior to those intended for whites. *Plaintiff/Appellant Lundstedt did not receive equal protection within Connecticut's jurisdiction.*

RULE 38. RIGHT TO A JURY TRIAL; DEMAND

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served, and

(2) filing the demand in accordance with Rule 5(d).

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

RULE 39. TRIAL BY JURY OR BY THE COURT

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. **The trial on all issues so demanded must be by jury unless:** (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

RULE 41. DISMISSAL OF ACTIONS

(a) VOLUNTARY DISMISSAL.

(1) ***By the Plaintiff***. [NOT THE DFEFENDANT.}

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

STATEMENT OF THE CASE

Plaintiff Lundstedts' entire world was abruptly turned upside down, and his emotional, physical, and financial life changed forever for the worse over a duration of 15 years (since 2008) because of the totality of circumstances of the totality of negligent inflictions of emotional, physical, and financial distresses caused by Deutsche Bank, SPS, Inc., and Chase by each is prohibited business practices and behavior.[9]

The federal trial court acted as the trier of fact on two of the defendant's, Deutsche Bank and SPS Inc., while a jury was the trier of fact on only one of the third defendant, Chase Bank of JPMorgan Chase Bank. This violated Plaintiff/Appellants' 7th and 14th amendments to the Constitution of the United States of America.

Plaintiff/Appellant Lundstedt alleged that all three defendant's are liable for damages and injuries caused by delay and concealment of facts core to the case and its contract Notes that are core to the case, including damages and injuries from two fraudulent Note and Security Instrument residential loan installment

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[9] As a result of the prohibited Notes and the wrongful suing and wrongful loan servicing Plaintiff/Appellant Lundstedt was permanently, severely, and grievously, rendered him ill, sore, immobile, disabled and suffered severe nervous shock, mental anguish, severe emotional distress, and great physical pain leaving him confined to a bed and was prevented from engaging in his usual occupation for a long period of time. Since his injuries are of a permanent nature, he will continue to suffer similar damages in the future. 6. Because of the unreasonable duration of the totality of circumstances, Plaintiff/Appellant suffered a loss of enjoyment for life.

contracts Issued by WaMu in a transaction dated 9-25-2006, but which was canceled and replaced by Deutsche Bank who Issued Plaintiff/Appellant Lundstedt another contract Note in a transaction dated 5-1-2008 with dramatically different Terms and Provisions but which they did not sue on.

However, neither Deutsche Bank nor Chase nor SPS, Inc. ever served or re-served either contract with their 12-18-2008 complaint of strict foreclosure.

You may think it is just a foreclosure case and not a big deal, but it destroyed Plaintiff/Appellant Lundstedts' entire world as well as others in his position with bad contracts and left him effectively homeless since 8-2-2015 leaving him destitute and indigent.

What is even more shocking is that Deutsche Bank, Chase, and SPS, Inc. had a duty to protect Plaintiff/Appellant Lundstedt from illegal business practices and could foresee or should have foreseen that their actions were destroying Plaintiff/Appellant Lundstedt even after he told them to stop repeatedly.

By omitting and concealing both contracts and by not serving ether on Plaintiff/Appellant Lundstedt or the court, or the town land records (the Public), Deutsche Bank as Note owner and Chase and SPS, Inc. as Deutsche Bank's loan servicers, prejudiced and permanently and unreasonably injured Plaintiff/Appellant Lundstedt after he told them of their procedural errors and omissions.

Plaintiff/Appellant Lundstedt did state a valid cause of action when he wrote in black and white in the instant case, which was granted by the trial court by the way under Plaintiff/Appellant Lundstedts' Cause of Action Number Two, Negligent Infliction of Emotional Distress, were he states: "That **all of the**

Defendant's knew or should have known of the alleged fraudulent loan and Plaintiff Lundstedts' past and current injuries." ***Lundstedt v. Deutsche Bank, JPMorgan Chase, and SPS Inc.,*** Dist. Court Conn. 2013, **Dkt. No. 88**, Pages 11-12, Para No. 7.

Why would the contracts and Deutsche Bank and SPS, Inc. be dismissed if the trial judge made the canceled WaMu Issued contract Note the centerpiece of the case? See the trial judges 6-2-2016 order where his first sentence says: **"This case arises out of a mortgage loan** [Note and Security Instrument installment contract] issued to pro se plaintiff Peter Lundstedt in 2006 [this was the transaction by WaMu];" ***Lundstedt v. Deutsche Bank, et al.,*** 3:13-cv-01423-JAM Doc. 137 06/02/2016 Page 1 in **Appendix D**.

The 12-18-2008 complaint referred to a contract for $1 million Issued by defunct WaMu that was canceled by Deutsche Bank. See **Appendix N.**

Since both old and new contracts were prohibited and defective, Deutsche Bank simply did not want copies of either contract so the state trial court would not be able to rule on either contract Note which they said was a valid servicing and court filing because pro se Plaintiff/Appellant Lundstedt did not rebut missing documents, which Deutsche Bank knew they had but were actively concealing.

Furthermore, each defendant had a duty to Plaintiff/Appellant Lundstedt to tell the truth and each could foresee that not doing so would cause injury and damages to Plaintiff/Appellant Lundstedt and his business and ability to work.

In the end, the state court issued a judgment of strict foreclosure on neither, the cancel voided WaMu Issued installment contract Note and Security

Instrument, or the Deutsche Bank Issued materially modified installment contract Note and Security Instrument, both of which were never served on Plaintiff/Appellant Lundstedt.

Several days after the invalid state judgment of strict foreclosure, Plaintiff/Appellant Lundstedt filed suit on Deutsche Bank and its two loan servicers, SPS, Inc. and Chase, for years of negligent infliction of emotional distress caused by the wrongful collection on invalid Note and Security Instrument's causing the judgment to be void ab inito which tarnished the reputation of the court when it was discovered.

After Deutsche Bank et al. acquired the invalid judgment, it used it in the *conversion* of transferring Plaintiff/Appellant Lundstedts' residential home into their name on 1-2-2017.

Other Relevant Questions:

Question: If the Jury was instructed to only consider NIED from Chase phone calls, AND it ruled that:
1. Plaintiff Lundstedt did suffer extreme physically debilitating emotional distress in NIED Element Two for only Chase calls, AND
2. Chase was not liable for emotional distress from Chase phone calls in NIED Element one for only Chase calls, AND
3. Chase did not cause Plaintiff emotional distress that was debilitating in NIED Element three?

Here, the instant district court judge dismissed Deutsche Bank and its loan servicer SPS, Inc. in violation of Plaintiff/Appellant Lundstedts' Seventh Amendment right to a jury trial to include <u>all</u> the defendant's.

Plaintiff/Appellant Lundstedt demanded, under his 7th Amendment right, that a jury be the trier of fact on all defendant's, Deutsche Bank, SPS Inc., and Chase, not just Chase. What the court basically said was that Plaintiff/ Appellant Lundstedt had a right to a jury trial on Chase but not on Deutsche Bank or SPS Inc.

Plaintiff/Appellant Lundstedt argues that the trial court did not have the right to dismiss any of the defendant's, only the jury had the right to be the trier of fact. That is why he asked for a jury in the first place. Here the judge took it upon himself to be the trier of fact in dismissing Deutsche Bank and SPS, Inc. without Plaintiff/Appellant Lundstedts' waiver. See **Appendix I**, Rule 38(d). Right to a Jury Trial; Demand, waiver.

In the 7-18-2018 instant trial ***Lundstedt v. Deutsche Bank, et al.,*** the jury even sent a question to the judge asking **"Is this related to JPMorgan only? Or in general?"** Here, since there were only two other defendants, it seems evident that the jury had questions about Deutsche Bank and SPS, Inc. showing they would have wanted to consider the totality of circumstances to include Deutsche Bank and SPS, Inc. See **Appendix O.**

REASONS FOR GRANING THE WRIT

1. THIS COURT SHOULD GRANT REVIEW TO DISAVOW THE DISTRICT COURT JUDGE-MADE SEVENTH AMENDMENT CONSTITUTIONAL RIGHTS CIRCUMVENTION.

1. Importance. Cases of substantial legal significance such as a clarification of a rule of partial dismissal, clarification of a rule of service of papers, of evidence or an administrative procedure such as in this case is important enough to merit this court's review.

2. Potential impact on thousands of People and Corporations. In this case the federal courts flagrantly disregarded the rules of a right to a jury trial on all defendant's, of partial dismissal, and of proper service of documents that must accompany a complaint for accepted legal doctrine. If Connecticut and federal courts continue to ignore or disregard the Equal Protection Clause law, especially in Pro Se cases, then an inordinate number of people will be impacted.

Plaintiff/Appellant Lundstedt is not receiving Equal Protection under the laws of the Constitution and Bill of Rights. Equal Protection definition: A phrase in the Fourteenth Amendment to the United States Constitution requiring that states guarantee the same right, privileges, and protections to all citizens. The Equal Protection Clause requires states to treat their citizens equally, and advocates have used it to combat discriminatory laws, policies, and governments. The Equal Protection Clause is part of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction" the equal protection of the laws."

Review is Warranted Because Potential impact on a large number of people and corporations.

In ***Puckett v. Cox***, 456 F. 2d 233 (1972) (6th Cir. USCA) it was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in ***Conley v. Gibson***.

Conley v. Gibson, 355 U.S. 41 at 48 (1957) "Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Rule 8(f) FRCP holds that all pleadings shall be construed to do substantial justice.

Elmore v. McCammon (1986) 640 F. Supp. 905 "... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

Haines v. Kerner, 404 U.S. 519 (1972) "Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient"... "which we hold to less stringent standards than formal pleadings drafted by lawyers.

B.Platsky v. CIA, 953 F.2d 25,26 28 (2nd Cir. 1991), "Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings."

United States v. Sciuto, 521 F.2d 842, 845 (7th Cir., 1976), "The right to a tribunal free from bias or

prejudice is based, not on section 144 [of Title 28 U.S.C.], but on the Due Process Clause."

State v. Sutton, 63 Minn. 147 65 NW 262 30 LRA 630 AM ST 459, Retaliation under color of law. It is a crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution.

Boyd v. U.S. 116 US 616, 635, (1885), "It is the duty of the courts to be watchful for the CONSTITUTIONAL RIGHTS of the Citizen, against any stealthy encroachments thereon."

The Second Circuit lower court mandate may be erroneous because the simply DID NOT have a firm hand on the facts. The judge just didn't get it.

The Connecticut District lower court may be erroneous because the judge did not consider Plaintiff/Appellant Lundstedts' 7th Amendment right to a jury trial on Deutsche Bank and its loan servicer SPS, Inc., not a jury trial just on NIED from a small number of phone calls by Deutsche Bank's first loan servicer Chase Bank of JPMorgan Chase were the totality of inflictions of negligent infliction of emotional distresses were cause by ten years of wrongful suing Plaintiff/Appellant Lundstedt, a 70% disabled Veteran, on a canceled original WaMu issued Note and Security Instrument while they concealed and omitted the materially modified Deutsche Bank issued Note and Security Instrument. [10]

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[10] **Deutsche Bank, JPMorgan Chase, and SPS, Inc.'s VIOLATIONS OF THE CFPA – 1.** Sections 1031 and

1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531 and 5536(a)(1)(B), prohibit covered persons from engaging "in any unfair, deceptive, or abusive act or practice." An act or practice is unfair under the CFPA if "the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and "such substantial injury is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c). There is no countervailing benefit to competition or consumers from Defendant's failure to honor its contractual obligations with regard to the transferred loans it received. **2.** An act or practice is unfair under the CFPA if "the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and "such substantial injury is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. §§ 5531(c). There is no countervailing benefit to competition or consumers from Defendant's unilateral increases in monthly payments. **3.** A representation, omission or practice is deceptive under the CFPA when it is likely to deceive a consumer acting reasonably under the circumstances, and where the representation, omission or practice is material. Defendant's representations were deceptive in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B). Defendant's promises were likely to mislead borrowers, who were entitled to reasonably rely on their servicer's written representations. **4.** Borrowers were entitled to reasonably rely on the express representations of their servicer. Defendant's false statements regarding borrowers' obligations were deceptive in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Deutsche Bank, Chase Bank, and SPS, Inc. controlled all of Plaintiff/Appellant Lundstedts' net worth, his house, where Plaintiff/Appellant Lundstedt had to divert all of his time and money away from his business which dwindled to nothing where Plaintiff/Appellant Lundstedt was earning over $260,000 per year in the prior ten years before the wrongful suing to no more than $12,500 per year for the next ten years.

Deutsche Bank, Chase, and SPS, Inc. knew they were concealing the contract from the court and the public and they knew they were misrepresenting which they could have told the court in 2008 saving Plaintiff/Appellant Lundstedt ten years of hardship and personal destruction from the *duration* and the totality each of the defendant's combined infliction of emotional, physical, and financial distresses not just Chases' robocalls for the first 5 years.

Furthermore, the jury did not even see the wrongful suing by Deutsche Bank and its servicers Chase and SPS, Inc. on any Note by not serving any contract of any Note and Security Instrument installment contract mortgage loan attached to their 12-18-2008 complaint to show the Plaintiff/Appellant and the state court proof of Deutsche Bank's ownership.

The national importance of backing the 7th Amendment right to a jury trial on all of the defendant's, not a bench trial on some of the defendant's and a watered down jury trial on only one of the defendant's who caused only part of the totality of circumstances that injured and damaged

Plaintiff/Appellant Lundstedt over a duration of ten years, and they still have not disclosed to the court or the town that they knew they were suing on invalid expired papers as proof of ownership of the contract.

Millions of people suffer from the abuse by mortgage bank and mortgage servicing mills that routinely ignore the suitability of their customers in the name of fees and commissions. Neither did the district judge focus on the basic law of emotional distress which is duty and foreseeability.

The jury in the instant case did not decide if Chase had a duty and if they could foresee injuries to Plaintiff/Appellant Lundstedt, where they did rule that Plaintiff/ Appellant Lundstedt did suffer emotional distress of such magnitude that it caused physical illness.

The decision of the 2nd Circuit conflicts with other Circuits invoking the supervision responsibilities of the US Supreme Court. [11]

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[11] For example, **The Sixth Circuit** interprets the scope of an "action" narrowly to mean only dismissal of the "entire controversy," not a single party. Mullins v. C.R. Bard, Inc., No. 0:19-CV-85-JMH-EBA, 2020 WL 4288400, at *1 (E.D. Ky. July 27, 2020) (citing Philip Carey Mfg. Co. v. Taylor, 286 F.2d 782, 785 (6th Cir. 1961)). **The Second Circuit** has also followed this approach. See ***Baksh v. Captain***, No. 99-CV-1806 (ILG), 2000 WL 33177209, at *2 (E.D.N.Y. Dec. 11, 2000) (discussing ***Harvey Aluminum, Inc. v. Am. Cyanamid Co.***, 203 F.2d 105 (2d Cir.), cert. denied, 345 U.S. 1964 (1953)). Other circuits do not hold to a "literal" reading of the word "action" in Rule 41. See ***Van Leeuwen v. Bank of Am., N.A.***, 304 F.R.D. 691, 693 (D. Utah 2015) (collecting cases) for example.

The importance of this case is significant, not only to the Plaintiff/Appellant Lundstedt, but to others similarly situated.

Furthermore, the district court judge's ruling and reasoning on negligent infliction of emotional distress and its duration conflicted with the previous judge who sat in the same seat. See ***Parker v. SLN Loan Servicing Corporation*** in **Appendix K.** [12]

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[12] See: The instant trial court differs from previous rulings by Mark R. Kravitz, United States District Judge, Dated at New Haven, Connecticut: June 11, 2008: "RULING CLARIFYING ISSUES FOR TRIAL. **1.** Negligent Infliction of Emotional Distress: a. Subject to whatever the Court may decide in response to a timely filed motion for judgment as a matter of law based upon the statute of limitations, Mr. Packer can seek to prove liability and damages for his negligent infliction of emotional distress claim by putting forward evidence relating to the following alleged wrongdoings by the SN Defendants: **1)** failure to timely file a notice of assignment of the mortgages and notes; **2)** failure to timely record assignment of the mortgages and notes; **3)** improper interest and debt computations; and **4)** untimely payoff letters, on the Elm Street property. CUTPA: Plaintiffs can seek to prove a CUTPA violation based only on the two alleged wrongdoings for which they can show ascertainable losses: **1)** the allegedly erroneous calculations of interest due under § 49-10a; and **2)** the documented lost sales opportunities regarding the Elm Street property. Accordingly, evidence of the SN Defendants' liability under CUTPA will be limited to the SN Defendants' failure to provide payoff letters as to the Elm Street property and failure to properly calculate interest under Connecticut General Statute § 49-10a."

ILLUSTRATION i

WHAT ARE THE DIFFERENT STANDARDS OF REVIEW?[2]

There are six basic standards of review which span a continuum of no deference to the lower court (de novo) to complete deference to the lower court (no review). The standard of review applied will generally be based on the type of ruling up on appeal and the decisionmaker below. The table below summarizes where the main standards of review fall on the deference continuum, and some of the areas where each standard of review may apply.[3] The sections that follow provide an overview of each standard.

Deference Continuum	No Deference	Minimal Deference	Some Deference	More Deference	More Deference	Complete Deference
Standard of Review	De novo	Clearly erroneous	Reasonableness/ Substantial Evidence	Arbitrary and capricious	Abuse of discretion	No review
When it Applies	Question of law	Question of fact	Jury decision	Informal agency decision	Discretionary decision	Some agency actions
			Formal agency decision			Decision to not prosecute

From **ILLUSTRATION i** above, it seems obvious that the instant Jury's decisions did not have enough information to make an intelligent decision on Elements 1 and 3. The district court was not reasonable because, after reviewing the right side of the 7-18-2018 *Trial Evidence Log* at ***Lundstedt v. Deutsche Bank, et al***.,3:13-cv-1423-JAM at **Dist. Dkt. No. 351** and comparing it to the Respondents list on the left side, and then comparing it to Appl. Dkt. No. 72-4 Exhibits, which the Jury did not see.

Standard of Review

As for the 2nd Circuits summary order, "A party seeking summary disposition bears the heavy burden

of establishing that the merits of his case are so clear that expedited action is justified." ***Taxpayers Watchdog, Inc. v. Stanley***, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

"Before summarily affirming a district court's ruling, "this court must conclude that no benefit will be gained from further briefing and argument of the issues presented." Id. at 297-98. Because the appellant's right to proceed is "so clear," the merits of the case must be "given the fullest consideration necessary to a just determination." ***Sills v. Bureau of Prisons***, 761 F.2d 792, 793-94 (D.C. Cir. 1985). Here, the Commission has plainly failed to meet its "heavy burden" of demonstrating that summary affirmance is "so clear" as to be warranted. See USCA Case #18-5239 Dkt. No.1754782, 10/11/2018.

CONCLUSION

Plaintiff/Appellant Peter Sanford Lundstedt alleges that the district judge wrongly dismissed Deutsche Bank and SPS, Inc. on 6-2-2016 before a jury had a chance to decide the question of the totality of Note owner and Trustee Deutsche Bank and their loan servicer SPS, Inc. and their loan servicer Chase, of JPMorgan Chase, and that this violated his Seventh Amendment Right to a jury trial of all defendants.

Plaintiff/Appellant Lundstedt, a pro se 70% Disabled American Veteran who has broken vertebra and PTSD, (see Appendix H), asks the court if he is entitled to a new trial so that a jury can evaluate **the**

totality of all the defendant's, i.e. Deutsche Bank, JPMorgan Chase, and SPS, Inc.'s **totality of Negligent Infliction of Emotional Distresses**, behaviors, actions and inactions that Plaintiff/ Appellant Lundstedt claims caused damages and injury to his person and inability to effectively operate his business.

Plaintiff/Appellant Lundstedt alleges that the district court decided to, in effect, conduct a bench trial on Deutsche Bank and SPS, Inc. dismissing them on 6-2-2016 and then conducted a jury trial on just Chase without his waiver while ignoring the specifics of his complaint.

Plaintiff/Appellant Lundstedt was denied his right to a jury trial on the totality if defendant's on the liability under the totality of inflictions theory of emotional, physical, and financial distress damages and injuries under the totality of circumstances theory that all defendants were liable for the totality of all of their inflictions of emotional, physical, and financial distress injuries and damages.

The Terms and Provisions of the 9-25-2006 WaMu Issued Note and Security Instrument Installment Contract Transaction were inside the four corners of that void, null and forever canceled Contract/Note and were invalidated by the ***Deutsche Bank Issued Note and Security Instrument installment contract*** *transaction. See* **Clause 6** and **Clause 14** in **Appl. Dkt. No. 72-5.**

Plaintiff/Appellant Lundstedt specifically demanded that a jury be the trier of fact of all his allegations

against ALL defendant's ("the totality of defendant's") for his 7-18-2018 federal trial.

Other Relevant Questions

Question: Was the trial judge in effect conducting a bench trial on Deutsche Bank and SPS, Inc. and a jury trial on Chase?

Question: Was Plaintiff Lundstedt entitled to a jury trial on all defendants, Deutsche Bank SPS, Inc., AND Chase, not just the defendants chosen by the judge?

Question: If the Jury was instructed to only consider NIED from Chase phone calls, AND it ruled that: 1. Plaintiff Lundstedt did suffer extreme physically debilitating emotional distress in NIED Element Two for only Chase calls, AND 2. Chase was not liable for emotional distress from Chase phone calls in NIED Element one for only Chase calls, AND 3. Chase did not cause Plaintiff emotional distress that was debilitating in NIED Element three?

Question: Should Plaintiff Lundstedt be permitted to retry his case for the totality of all inflictions of emotional, physical, and financial distresses inflicted by the totality of the defendants for the totality of the duration of inflictions over the period that each defendant separately and together as it was intended by the trial court records?

Question: If the jury was permitted to only consider the question of emotional distress caused by Chase robo calls, isn't it odd that the trial court to allow over 30 confusing irrelevant exhibits when Plaintiff

Lundstedt was allowed to file no exhibits at all? See Trial Exhibit List at Dist. Court Dkt No. 351?

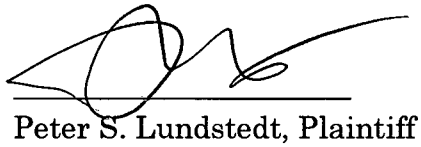
See "This Court has long recognized that "all evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other side to have contradicted." ***Boone v. Lightner***, 319 U.S. 561, 570 (1943) (citation omitted); 2 McCormick on Evidence § 343. The Federal Circuit recognizes this principle as well. See ***Barrett***, 466 F.3d at 1042."

Because he specifically asked the district court for a jury trial and since he referred to all defendant's, Plaintiff/Appellant Lundstedt asks the Court to allow a jury to decide if Deutsche Bank and SPS, Inc. should be dismissed rather than an overreaching district judge?

Failure to allow affirmative recovery under these circumstances would be tantamount to this Court condoning Defendant's harmful procedural habits.

I declare under penalty of lying under oath that the foregoing is true and correct.

THE PLAINTIFF/APPELLANT
Respectfully submitted,



Peter S. Lundstedt, Plaintiff [13] December 21, 2021
20 Broad Street, Box 305
Stonington, CT 06378
203-733-0311
plundstedtd@gmail.com

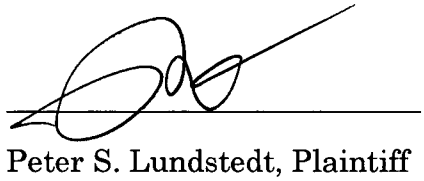
[13] The Issue of this footnote is to Notice to the Court that: I am Plaintiff Lundstedt. As pro se Plaintiff, I am entitled to liberal reading and interpretation of my pleadings; See ***Haines v. Kerner***, 404 U.S. 520 (1971), US Supreme Court, that: "pro se pleadings should be held to "less stringent standards" than those drafted by attorneys, "however in-artfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the Plaintiff can prove no set of facts in support of his claim that would entitle him to relief." ***Estelle, Corrections Director, Et Al. V. Gamble*** 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). ***Platsky v. C.I.A.*** 953 F.2d. 25, that - "court errs if court dismisses the pro se litigant (Aggrieved Defendant is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings."

CERTIFICATE OF COMPLIANCE

Peter Sanford Lundstedt
Petitioner
v.
Deutsche Bank, Select Portfolio Services, and JPMorgan Chase
Respondent's

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 8821 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).
Executed on December 21, 2021.

THE PLAINTIFF/APPELLANT
Respectfully submitted,



Peter S. Lundstedt, Plaintiff
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CERTIFICATE OF SERVICE

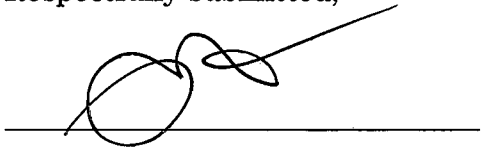
This is to certify that a copy of the foregoing was mailed to all appearing parties and mailed/electronically mailed to the below on 12-21-2021 as follows:

Halloran & Sage LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103

ZEK
35 Mason St.
Greenwich, CT 06830

THE PLAINTIFF/APPELLANT

Respectfully submitted,



Peter S. Lundstedt, Plaintiff/Appellant
20 Broad Street, Box 305
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APPENDIX A

18-2575
Lundstedt v. Deutsche Bank National Trust

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 9th day of April, two thousand twenty-one.

Present: ROSEMARY S. POOLER,
RICHARD J. SULLIVAN,
MICHAEL H. PARK,
Circuit Judges.

PETER LUNDSTEDT,

Plaintiffs-Appellants,

v. 18-2575-cv

JP MORGAN CHASE BANK, N.A., JPMCB, AS THE OWNER OF WAMU AN LONG BEACH MORTGAGE LOAN TRUST, DEUTSCHE BANK NATIONAL TRUST COMPANY, SELECT PORTFOLIO SERVICES, INC., SPS, FKA FAIRBANKS CAPITOL 2004,

Defendants-Appellees.[1]

Appearing for Appellant: Peter Lundstedt, pro se, Greenwich, CT.

Appearing for Appellee JP Morgan Chase Bank, N.A.: Brian D. Rich, Halloran & Sage LLP, Hartford, CT.

[1] The Clerk of Court is directed to amend the caption as above.

Appearing for Appellees Deutsche Bank National Trust Company and Select Portfolio Services, Inc.: Pierre-Yves Kolakowski, Zeichner Ellman & Krause LLP, Stamford, CT.

Appeal from the United States District Court for the District of Connecticut (Meyer, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

Peter Lundstedt, proceeding pro se, appeals the district court's judgment in favor of defendants Deutsche Bank National Trust Company ("Deutsche Bank"), Select Portfolio Servicing, Inc. ("SPS"), and JP Morgan Chase Bank ("Chase") on his claims for fraud, negligent infliction of emotional distress ("NIED"), and violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, and other federal statutes in connection with a mortgage loan following a foreclosure in state court. The district court granted in part the defendants' motions to dismiss and for summary judgment and entered judgment in favor of the defendants after a jury returned a verdict in favor of Chase on the remaining NIED claim; it also denied Lundstedt's post-judgment motion for a new trial. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

I. Waiver and Abandonment of Claims

While we "liberally construe pleadings and briefs submitted by pro se litigants, reading such submissions to raise the strongest arguments they suggest," *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017) (internal quotation marks and citation omitted), pro se appellants must still comply with Federal Rule of Appellate Procedure 28(a), which "requires appellants in their briefs to provide the court with a clear statement of the issues on appeal." *Moates v. Barkley*, 147 F.3d 207, 209 (2d Cir. 1998) (citing Fed. R. App. P. 28(a)). We "normally will not[] decide issues that a party fails to raise in his or her appellate brief." *Id.* (citation omitted); *see also LoSacco v. City of Middletown*, 71 F.3d 88, 93 (2d Cir. 1995) ("[W]e need not manufacture claims of error for an appellant proceeding *pro se*"); *Booking v. Gen. Star Mgmt. Co.*, 254 F.3d 414, 418 (2d Cir. 2001) ("The courts of appeals generally do not consider arguments raised for the first time in reply briefs"). We thus consider only the claims dismissed pursuant to Federal Rule of Civil Procedure 56 and the FDCPA claim against Chase dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). We decline to consider the remaining claims as Lundstedt failed to challenge them in his opening brief.

Lundstedt primarily argues that the district court erred in dismissing his NIED claim against Deutsche Bank and SPS premised on an allegation that he became emotionally distressed when they attempted to enforce what he alleged was a void or unenforceable agreement. While Lundstedt's initial complaint could be liberally construed to raise such a claim, the district court did not dismiss it; Lundstedt abandoned it by filing a Third Amended Complaint (the "TAC") that premised his NIED claim on his receipt of repeated telephone calls from Chase. *See Dluhos v. Floating & Abandoned Vessel, Known as "New York,"* 162 F.3d 63, 68 (2d Cir. 1998) ("[I]t is well established that an amended complaint ordinarily supersedes the original, and renders it of

no legal effect.") (internal quotation marks and citation omitted). Although Lundstedt filed his complaints pro se, nothing in the TAC indicated an intent to incorporate causes of action from prior complaints. Accordingly, we also decline to address this claim on appeal.

Lundstedt also argues that the district court erred when it failed to instruct the jury that the subject of the phone calls—the note—was invalid. "[A] party who fails to object to a jury instruction at trial ordinarily waives consideration of any claim relating to that charge on appeal." *Girden v. Sandals Int'l*, 262 F.3d 195, 202 (2d Cir. 2001) (citing Fed. R. Civ. P. 51). Lundstedt's attorney agreed to an instruction that the validity of the note was not in issue.[2] We find no error.

II. FDCPA Claim

"We review *de novo* a district court's dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002) (citation omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted).

The district court liberally construed plaintiff's TAC to include a cause of action under the FDCPA. In relevant part, the FDCPA prohibits "debt collector[s]" from engaging "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt[,]" including by "engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." 15 U.S.C. § 1692d(5). Accordingly, to state a claim under this section, a plaintiff must allege that the defendant is a "debt collector" within the meaning of the FDCPA—in essence, that the defendant is in the business of collecting debts owed to another. *See id.*; 15 U.S.C. § 1692a(6) (defining a "debt collector," as relevant here, "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another"); *see also Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 235 (2d Cir. 1998) ("As a general matter, creditors are not subject to the FDCPA."). The district court did not err in concluding that the TAC failed to state an FDCPA claim against Chase because regardless of the evidence presented at later stages of the litigation, the TAC did not plausibly allege that Chase was a debt collector.

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[2] To the extent that Lundstedt argues that the attorney who represented him at trial was ineffective, this argument fails: "except when faced with the prospect of imprisonment, a litigant has no legal right to counsel in civil cases"—and, by extension, no right to effective counsel. *Guggenheim Capital, LLC v. Birnbaum*, 722 F.3d 444, 453 (2d Cir. 2013).[3] We construe Lundstedt's final stay status update letter to this Court as an amended notice of appeal conferring jurisdiction to review the district court's disposition of Lundstedt's post-judgment motions. *See Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256 (2d Cir. 1995) (Court "construe[s] notices of appeal liberally, taking the parties' intentions into account"); *Smith v. Barry*, 502 U.S. 244, 248 (1992) ("informal brief" filed in a circuit court could suffice as a notice of appeal); *see also* Fed. R. App. P. 4(d).

III. Discovery and Evidentiary Rulings

We generally review discovery and evidentiary rulings for abuse of discretion. *Jackson v. Fed. Express*, 766 F.3d 189, 198 (2d Cir. 2014) (discovery); *Boyce v. Soundview Tech. Grp., Inc.*, 464 F.3d 376, 385 (2d Cir. 2006) (evidentiary rulings). Scheduling matters are also reviewed for abuse of discretion. *Grochowski v. Phoenix Constr.*, 318 F.3d 80, 86 (2d Cir. 2003). Where a party seeking review on appeal failed to make an objection in the district court, those evidentiary rulings are reviewed for plain error. *Caruolo v. John Crane, Inc.*, 226 F.3d 46, 55 (2d Cir. 2000).

A district court abuses its discretion in a discovery ruling "only when the discovery is so limited as to affect a party's substantial rights." *In re Agent Orange Prod. Liab. Litig.*, 517 F.3d 76, 103 (2d Cir. 2008) (internal quotation marks and citation omitted); *see also Wood v. F.B.I.*, 432 F.3d 78, 84 (2d Cir. 2005) (recognizing district court's "broad discretion to manage pre-trial discovery"). Moreover, "[a] schedule may only be modified for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Here, the district court did not abuse its discretion in declining to reopen discovery for the disclosure of an expert witness because the request came more than a year after the close of discovery, nearly two years after the deadline for such disclosures, and less than two months prior to trial. Although he was pro se, Lundstedt had ample time to identify and disclose an expert witness during the discovery period, which ended three and a half years after he initiated this lawsuit.

Under Federal Rule of Evidence 403, a district court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "We afford great deference to the district court's balancing under Rule 403," and will overrule the decision only if it was "arbitrary and irrational." *United States v. Desposito*, 704 F.3d 221, 234 (2d Cir. 2013). Here, the issue before the jury was whether Chase was liable for NIED based on its phone calls to Lundstedt. The district court's exclusion of evidence supporting Lundstedt's belief that the notes and foreclosure action discussed in those calls were invalid or illegal was not "arbitrary and irrational." *Id.* Because the validity of the notes and foreclosure were not directly at issue in the trial, we agree that the probative value of such evidence was substantially outweighed by the risk of confusing the issues and misleading the jury. *See* Fed. R. Evid. 403.

Finally, Lundstedt did not object to the admission of Chase's exhibits at trial, and he has not shown that their admission was plain error. *See Caruolo*, 226 F.3d at 55 (admission of evidence is plain error if the ruling "resulted in a miscarriage of justice or is an obvious instance of misapplied law") (internal quotation marks and alterations omitted). Lundstedt's appellate argument is that these exhibits were improper because they included "parol evidence" or otherwise misrepresented which note was being discussed and whether the notes were valid. As discussed above, the validity of the notes was not in issue at trial, so the admission of Chase's evidence suggesting their validity would not have affected the trial's outcome. The parol

evidence rule is a principle of contract interpretation and is not relevant here because the jury was not instructed to interpret a contract. *See Parol-Evidence Rule,* Black's Law Dictionary (11th ed. 2019) (recognizing that "a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing.").

IV. Jury Verdict and Rule 59(a) Motion[3]

We review the denial of a motion for a new trial under Fed. R. Civ. P. 59(a) for abuse of discretion. *ING Global v. United Parcel Serv. Oasis Supply Corp.*, 757 F.3d 92, 97 (2d Cir. 2014). A new trial is warranted "only if the verdict is (1) seriously erroneous or (2) a miscarriage of justice." *Id.* at 99 (internal quotation marks omitted). When considering a Rule 59(a) motion based on the sufficiency of the evidence, this Court's "cases teach that a high degree of deference is accorded to the jury's evaluation of witness credibility, and that jury verdicts should be disturbed with great infrequency." *Id.* at 97–98 (internal quotation marks and alterations omitted). The district court did not abuse its discretion in denying a new trial here: the jury was not required to credit Lundstedt's testimony that his emotional distress was caused by Chase's telephone calls, particularly after hearing evidence that Lundstedt was experiencing a number of difficulties independent of the calls at around the same time.

Lundstedt also moves in this Court to supplement the record. Because the proffered documents would not affect our decision to affirm the judgment, the motion is DENIED. *See* Fed. R. App. P. 10(e)(2). We have considered the remainder of Lundstedt's arguments and find them to be without merit. Accordingly, the order of the district court hereby is AFFIRMED, and Lundstedt's motion to supplement the record is DENIED. Each side shall bear its own costs.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

[3] We construe Lundstedt's final stay status update letter to this Court as an amended notice of appeal conferring jurisdiction to review the district court's disposition of Lundstedt's post-judgment motions. *See Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256 (2d Cir. 1995) (Court "construe[s] notices of appeal liberally, taking the parties' intentions into account"); *Smith v. Barry*, 502 U.S. 244, 248 (1992) ("informal brief" filed in a circuit court could suffice as a notice of appeal); *see also* Fed. R. App. P. 4(d).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 9th day of April, two thousand twenty-one.

Present: ROSEMARY S. POOLER,
RICHARD J. SULLIVAN,
MICHAEL H. PARK,
Circuit Judges.

PETER LUNDSTEDT,

Plaintiffs-Appellants,

v. 18-2575-cv

JP MORGAN CHASE BANK, N.A., JPMCB, AS THE OWNER OF WAMU AN LONG BEACH MORTGAGE LOAN TRUST, DEUTSCHE BANK NATIONAL TRUST COMPANY, SELECT PORTFOLIO SERVICES, INC., SPS, FKA FAIRBANKS CAPITOL 2004,

Defendants-Appellees.[1]

Appearing for Appellant: Peter Lundstedt, pro se, Greenwich, CT.

Appearing for Appellee JP Morgan Chase Bank, N.A.: Brian D. Rich, Halloran & Sage LLP, Hartford, CT.

[1] The Clerk of Court is directed to amend the caption as above.

Appearing for Appellees Deutsche Bank National Trust Company and Select Portfolio Services, Inc.: Pierre-Yves Kolakowski, Zeichner Ellman & Krause LLP, Stamford, CT.

Appeal from the United States District Court for the District of Connecticut (Meyer, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED.**

Peter Lundstedt, proceeding pro se, appeals the district court's judgment in favor of defendants Deutsche Bank National Trust Company ("Deutsche Bank"), Select Portfolio Servicing, Inc. ("SPS"), and JP Morgan Chase Bank ("Chase") on his claims for fraud, negligent infliction of emotional distress ("NIED"), and violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, and other federal statutes in connection with a mortgage loan following a foreclosure in state court. The district court granted in part the defendants' motions to dismiss and for summary judgment and entered judgment in favor of the defendants after a jury returned a verdict in favor of Chase on the remaining NIED claim; it also denied Lundstedt's post-judgment motion for a new trial. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

I. Waiver and Abandonment of Claims

While we "liberally construe pleadings and briefs submitted by pro se litigants, reading such submissions to raise the strongest arguments they suggest," *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017) (internal quotation marks and citation omitted), pro se appellants must still comply with Federal Rule of Appellate Procedure 28(a), which "requires appellants in their briefs to provide the court with a clear statement of the issues on appeal." *Moates v. Barkley*, 147 F.3d 207, 209 (2d Cir. 1998) (citing Fed. R. App. P. 28(a)). We "normally will not[] decide issues that a party fails to raise in his or her appellate brief." *Id.* (citation omitted); *see also LoSacco v. City of Middletown*, 71 F.3d 88, 93 (2d Cir. 1995) ("[W]e need not manufacture claims of error for an appellant proceeding *pro se*"); *Booking v. Gen. Star Mgmt. Co.*, 254 F.3d 414, 418 (2d Cir. 2001) ("The courts of appeals generally do not consider arguments raised for the first time in reply briefs"). We thus consider only the claims dismissed pursuant to Federal Rule of Civil Procedure 56 and the FDCPA claim against Chase dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). We decline to consider the remaining claims as Lundstedt failed to challenge them in his opening brief.

Lundstedt primarily argues that the district court erred in dismissing his NIED claim against Deutsche Bank and SPS premised on an allegation that he became emotionally distressed when they attempted to enforce what he alleged was a void or unenforceable agreement. While Lundstedt's initial complaint could be liberally construed to raise such a claim, the district court did not dismiss it; Lundstedt abandoned it by filing a Third Amended Complaint (the "TAC") that premised his NIED claim on his receipt of repeated telephone calls from Chase. *See Dluhos v. Floating & Abandoned Vessel, Known as "New York,"* 162 F.3d 63, 68 (2d Cir. 1998) ("[I]t is well established that an amended complaint ordinarily supersedes the original, and renders it of

no legal effect.") (internal quotation marks and citation omitted). Although Lundstedt filed his complaints pro se, nothing in the TAC indicated an intent to incorporate causes of action from prior complaints. Accordingly, we also decline to address this claim on appeal.

Lundstedt also argues that the district court erred when it failed to instruct the jury that the subject of the phone calls—the note—was invalid. "[A] party who fails to object to a jury instruction at trial ordinarily waives consideration of any claim relating to that charge on appeal." *Girden v. Sandals Int'l*, 262 F.3d 195, 202 (2d Cir. 2001) (citing Fed. R. Civ. P. 51). Lundstedt's attorney agreed to an instruction that the validity of the note was not in issue.[2] We find no error.

II. FDCPA Claim

"We review *de novo* a district court's dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002) (citation omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted).

The district court liberally construed plaintiff's TAC to include a cause of action under the FDCPA. In relevant part, the FDCPA prohibits "debt collector[s]" from engaging "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt[,]" including by "engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." 15 U.S.C. § 1692d(5). Accordingly, to state a claim under this section, a plaintiff must allege that the defendant is a "debt collector" within the meaning of the FDCPA—in essence, that the defendant is in the business of collecting debts owed to another. *See id.*; 15 U.S.C. § 1692a(6) (defining a "debt collector," as relevant here, "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another"); *see also Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 235 (2d Cir. 1998) ("As a general matter, creditors are not subject to the FDCPA."). The district court did not err in concluding that the TAC failed to state an FDCPA claim against Chase because regardless of the evidence presented at later stages of the litigation, the TAC did not plausibly allege that Chase was a debt collector.

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[2] To the extent that Lundstedt argues that the attorney who represented him at trial was ineffective, this argument fails: "except when faced with the prospect of imprisonment, a litigant has no legal right to counsel in civil cases"—and, by extension, no right to effective counsel. *Guggenheim Capital, LLC v. Birnbaum*, 722 F.3d 444, 453 (2d Cir. 2013).[3] We construe Lundstedt's final stay status update letter to this Court as an amended notice of appeal conferring jurisdiction to review the district court's disposition of Lundstedt's post-judgment motions. *See Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256 (2d Cir. 1995) (Court "construe[s] notices of appeal liberally, taking the parties' intentions into account"); *Smith v. Barry*, 502 U.S. 244, 248 (1992) ("informal brief" filed in a circuit court could suffice as a notice of appeal); *see also* Fed. R. App. P. 4(d).

III. Discovery and Evidentiary Rulings

We generally review discovery and evidentiary rulings for abuse of discretion. *Jackson v. Fed. Express*, 766 F.3d 189, 198 (2d Cir. 2014) (discovery); *Boyce v. Soundview Tech. Grp., Inc.*, 464 F.3d 376, 385 (2d Cir. 2006) (evidentiary rulings). Scheduling matters are also reviewed for abuse of discretion. *Grochowski v. Phoenix Constr.*, 318 F.3d 80, 86 (2d Cir. 2003). Where a party seeking review on appeal failed to make an objection in the district court, those evidentiary rulings are reviewed for plain error. *Caruolo v. John Crane, Inc.*, 226 F.3d 46, 55 (2d Cir. 2000).

A district court abuses its discretion in a discovery ruling "only when the discovery is so limited as to affect a party's substantial rights." *In re Agent Orange Prod. Liab. Litig.*, 517 F.3d 76, 103 (2d Cir. 2008) (internal quotation marks and citation omitted); *see also Wood v. F.B.I.*, 432 F.3d 78, 84 (2d Cir. 2005) (recognizing district court's "broad discretion to manage pre-trial discovery"). Moreover, "[a] schedule may only be modified for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Here, the district court did not abuse its discretion in declining to reopen discovery for the disclosure of an expert witness because the request came more than a year after the close of discovery, nearly two years after the deadline for such disclosures, and less than two months prior to trial. Although he was pro se, Lundstedt had ample time to identify and disclose an expert witness during the discovery period, which ended three and a half years after he initiated this lawsuit.

Under Federal Rule of Evidence 403, a district court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "We afford great deference to the district court's balancing under Rule 403," and will overrule the decision only if it was "arbitrary and irrational." *United States v. Desposito*, 704 F.3d 221, 234 (2d Cir. 2013). Here, the issue before the jury was whether Chase was liable for NIED based on its phone calls to Lundstedt. The district court's exclusion of evidence supporting Lundstedt's belief that the notes and foreclosure action discussed in those calls were invalid or illegal was not "arbitrary and irrational." *Id.* Because the validity of the notes and foreclosure were not directly at issue in the trial, we agree that the probative value of such evidence was substantially outweighed by the risk of confusing the issues and misleading the jury. *See* Fed. R. Evid. 403.

Finally, Lundstedt did not object to the admission of Chase's exhibits at trial, and he has not shown that their admission was plain error. *See Caruolo*, 226 F.3d at 55 (admission of evidence is plain error if the ruling "resulted in a miscarriage of justice or is an obvious instance of misapplied law") (internal quotation marks and alterations omitted). Lundstedt's appellate argument is that these exhibits were improper because they included "parol evidence" or otherwise misrepresented which note was being discussed and whether the notes were valid. As discussed above, the validity of the notes was not in issue at trial, so the admission of Chase's evidence suggesting their validity would not have affected the trial's outcome. The parol

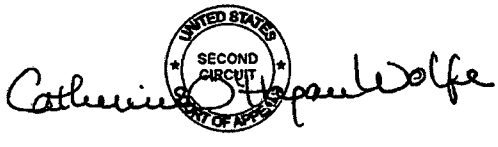
evidence rule is a principle of contract interpretation and is not relevant here because the jury was not instructed to interpret a contract. *See Parol-Evidence Rule,* Black's Law Dictionary (11th ed. 2019) (recognizing that "a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing.").

IV. Jury Verdict and Rule 59(a) Motion[3]

We review the denial of a motion for a new trial under Fed. R. Civ. P. 59(a) for abuse of discretion. *ING Global v. United Parcel Serv. Oasis Supply Corp.*, 757 F.3d 92, 97 (2d Cir. 2014). A new trial is warranted "only if the verdict is (1) seriously erroneous or (2) a miscarriage of justice." *Id.* at 99 (internal quotation marks omitted). When considering a Rule 59(a) motion based on the sufficiency of the evidence, this Court's "cases teach that a high degree of deference is accorded to the jury's evaluation of witness credibility, and that jury verdicts should be disturbed with great infrequency." *Id.* at 97–98 (internal quotation marks and alterations omitted). The district court did not abuse its discretion in denying a new trial here: the jury was not required to credit Lundstedt's testimony that his emotional distress was caused by Chase's telephone calls, particularly after hearing evidence that Lundstedt was experiencing a number of difficulties independent of the calls at around the same time.

Lundstedt also moves in this Court to supplement the record. Because the proffered documents would not affect our decision to affirm the judgment, the motion is DENIED. *See* Fed. R. App. P. 10(e)(2). We have considered the remainder of Lundstedt's arguments and find them to be without merit. Accordingly, the order of the district court hereby is AFFIRMED, and Lundstedt's motion to supplement the record is DENIED. Each side shall bear its own costs.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



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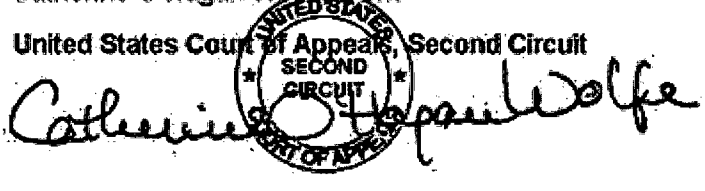


[3] We construe Lundstedt's final stay status update letter to this Court as an amended notice of appeal conferring jurisdiction to review the district court's disposition of Lundstedt's post-judgment motions. *See Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256 (2d Cir. 1995) (Court "construe[s] notices of appeal liberally, taking the parties' intentions into account"); *Smith v. Barry*, 502 U.S. 244, 248 (1992) ("informal brief" filed in a circuit court could suffice as a notice of appeal); *see also* Fed. R. App. P. 4(d).

APPENDIX C

CASE LAW RELEVENT TO THE TOTALITY OF CIRCUMSTANCES

Also see case law that applies to Plaintiff/Appellant Lundstedts' instant case:

1. "If a debtor defaults on an obligation payable in installments, when does the statute of limitations on installments due in the future begin to run? Surprisingly, this important commercial question has not been answered in Connecticut since 1787. It must now be addressed in this case," ***Cadle Co. v. Prodoti,*** 716 A.2d 965 (Conn. 1998);
2. "Holding that summary judgment was inappropriate because the plaintiff said he told the caller to "stop calling," and the caller said the plaintiff never said such a thing," ***Osorio v. State Farm Bank***, 746 F.3d 1242 (11th Cir., 2014);
3. "Holding courts must thoroughly analyze unopposed motions for summary judgment," ***Maryland v. Universal Elections, Inc.,*** 729 F.3d 370, 376–77 (4th Cir.2013);
4. Duration increases negligent infliction of emotional distress injury. "Denying motion for reconsideration where "[t]he Court cannot identify any discussion of this issue in Plaintiffs' Memorandum. . . noting that "[i]t is well settled that a failure to brief an issue is grounds to deem the claim abandoned," ***Packer v. SN Servicing Corp.,*** WL 2410409 (D. Conn, 6-11-2008);

5. "Congress intended petitioner to bear the burden of proving the duress defense by a *preponderance* of the evidence. Pp. 5–15, 413 F. 3d 520, affirmed," ***Dixon v. United States,*** 548 U.S. 1, 9 (2006);
6. "Noting that "all else being equal, the burden is better placed on the party with easier access to relevant information" ***Nat'l Commc'ns Ass'n Inc. v. AT&T Corp.***, 238 F.3d 124, 130 (2d Cir. 2001);
7. "In an action brought under 42 U.S.C. 1983 against a public official whose position might entitle him to qualified immunity, the plaintiff is not required to allege that the defendant acted in bad faith in order to state a claim for relief, but the burden is on the defendant to plead good faith as an affirmative defense. By 1983's plain terms, the plaintiff is required to make only two allegations in order to state a cause of action under the statute: (1) that some person deprived him of a federal right, and (2) that such person acted under color of state or territorial law. This allocation of the burden of pleading is supported by the nature of the qualified-immunity defense, since whether such immunity has been established depends on facts peculiarly within the defendant's knowledge and control, the applicable test focusing not only on whether he has an objectively reasonable basis for his belief that his conduct was lawful but also on whether he has a subjective belief. Pp. 638-641, 602 F.2d 1018, reversed and remanded." ***Gomez v. Toledo***, 446 U.S. 635, 64041 (1980);

8. "The FDCPA governs the behavior of debt collectors and is designed "to eliminate abusive debt collection practices." 15 U.S.C. § 1692(e). As a remedial statute, "the FDCPA must be broadly construed in order to give full effect to [this purpose]." ***Caprio v. Healthcare Revenue Recovery Grp., LLC***, 709 F.3d 142, 148 (3d Cir. 2013) (citations omitted);
9. "The FDCPA expressly authorizes "a *private cause of action against debt collectors* who fail to comply with [its requirements]." L***esher v. Law Offices of Mitchell N. Kay, PC,*** 650 F.3d 993, 996-97 (3d Cir. 2011) (citing 15 U.S.C. § 1692k(d));" ***Hoover v. Monarch Recovery Mgmt., Inc.,*** 888 F. Supp. 2d 589, 596 (E.D. Pa. 2012);
10. "Holding that the burden to prove an exception to liability under another statute lies with the defendant and relying on interpretations of the TCPA holding that consent is an exception to liability for which the defendant bears the burden of proof," ***Evankavitch v. Green Tree Servicing, LLC*** (3rd Cir., 2015);
11. "ORDER (memorandum filed previously as separate docket entry). Defendant CMC's Motion to Bifurcate Discovery, or in the alternative, to Stay Proceedings (Doc. 23) is DENIED IN ITS ENTIRETY. The discovery deadline in this case is extended to December 29, 2014, and the *deadline for Plaintiff's Motion for Class Certification is extended* to January 12, 2015. Signed by Magistrate Judge Thomas M. Blewitt on 9/15/14.(ms)," ***Hartley Culp v.***

Credit Mgmt. Co., No. 140282, 2014 WL 4630852, at *2 (M.D. Pa. Sept. 15, 2014);

12. "Holding that because lender had not exercised its optional right to accelerate until it filed its foreclosure complaint, the statute of limitations had not yet run," ***Locke v. State Farm Fire & Cas. Co.***, 509 So. 2d 1375 (Fla. 1st DCA 1987, "Holding that statute of limitations began to run when optional acceleration clause was invoked." ***Monte v. Tipton,*** 612 So. 2d 714 (Fla. 2d DCA 1993);

13. "Holding that a trial court has inherent authority to vacate its own void judgments," ***Patton v. Diemer***, 35 Ohio St. 3d 68; 518 N.E.2d 941; 1988):

14. "Plaintiff's motion is denied without prejudice with leave to renew within sixty (60) days of this decision and order, it plaintiff submits: (1) documents demonstrating plaintiff INDYMAC's ownership interest in the subject mortgage and note prior to the commencement of this action on 3- 24-2008. (2) an affidavit by Erica A. Johnson-Seck, Vice President of plaintiff INDYMAC, explaining: her employment history for the past three years; and, why a conflict of interest does not exist in how she acted as Vice President of the assignee, INDYMAC, in this action, and as Vice President of both the instant assignor MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. [MERS] and Deutsche Bank in another case before me, ***Deutsche Bank v Maraj,*** 18 Misc 3d 1123 (A) (Sup Ct, Kings County 2008). (3) an affidavit

by Laura Hescott, Vice President of MERS, who assigned the instant mortgage and note to plaintiff INDYMAC on March 26, 2008, but previously, on February 18, 2008, executed an affidavit as Vice President of INDYMAC in another case before me, ***Indymac Bank, FSB v Boyd***, 22 Misc 3d 1113 (A) [Sup Ct, Kings County 2009], explaining: her employment history for the past three years; and, why a conflict of interest does not exist in how at she acted as the assignor of the instant mortgage and note to INDYMAC, as Vice President of MERS, and as Vice President of the instant assignee, INDYMAC, in Boyd. (4) an affidavit from an officer of INDYMAC's successor in interest [The Office of Thrift Supervision closed INDYMAC on July 11, 2008 and the Federal Deposit Insurance Corporation, as conservator, transferred most of INDYMAC'S assets to a new entity, INDYMAC FEDERAL BANK, F.S.B.] explaining whether INDYMAC was aware of the conflict of interest of both Ms. Johnson-Seck and Ms. Hescott, and if MERS acted in good faith and loyalty to INDYMAC; and (5) an affidavit or affirmation identifying whether the instant mortgage loan, pursuant to L 2008, ch 472, § 3-a is a subprime home loan as defined in Real Property and Actions Proceedings Law § 1304 or is a high-cost home loan as defined in Banking Law § 6-l." ***Indymac Bank v. Bethley***, 880 N.Y.S.2d 873 (2009);

15. "The Fair Debt Collection Practices Act prohibits "debt collector[s]" from making false or

misleading representations and from engaging in various abusive and unfair practices.

The Act says, for example, that ***a "debt collector" may not falsely represent "the character, amount, or legal status of any debt,"*** **§1692e(2)(A);** and may not use various "unfair or unconscionable means to collect or attempt to collect" a consumer debt, **§1692f.** Among other things, the Act sets out rules that a debt collector must follow for bringing "[l]egal actions," **§1692i.** The Act imposes upon "debt collector[s]" who violate its provisions (specifically described) "[c]ivil liability" to those whom they, e.g., harass, mislead, or treat unfairly. **§1692k.** The Act also authorizes the Federal Trade Commission to enforce its provisions. **§1692l(a).** The Act's definition of the term "debt collector" includes a person "who regularly collects or attempts to collect, directly or indirectly, debts owed [to] . . . another." **§1692a(6).** And, it limits "debt" to consumer debt, i.e., debts "**arising out of - transaction[s]**" that "are primarily for personal, family, or household purposes." **§1692a(5).**" ***Heintz v. Jenkins***, 514 U.S. 291; 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995), and FDCPA Title 15 U.S.C. sub section 1692;

16. "Congress enacted TILA to provide inter alia for disclosure of the terms of consumer credit transactions, see 15 U.S.C. §§ 1601, 1631(a), including transactions involving the acquisition of real estate **or a security interest therein.** 15 U.S.C. § 1603(3); ***Bissette v. Colonial***

Mortgage Co., 340 F.Supp. 1191 (D.D.C.1972), rev'd on other grounds 477 F.2d 1245 (D.C.Cir.1973). Congress intended TILA to aid unsophisticated consumers and to prevent creditors from misleading consumers as to the actual cost of financing. See ***Mourning v. Family Publications Service, Inc.,*** 411 U.S. 356, 363-69, 93 S.Ct. 1652, 1657-60, 36 L.Ed.2d 318 (1973); ***Thomka v. A.Z. Chevrolet, Inc.,*** 619 F.2d 246, 248 (3d Cir. 1980). "Exercise of the right to rescind under § 1635(a) results in the consumer's discharge of liability for any finance or other charges, and **any security interest which has been taken becomes void**. 15 U.S.C. § 1635®), Because TILA is remedial in nature, it is to be liberally construed in favor of the customer. See e.g., Bizier v. Globe Financial Services, Inc., 654 F.2d 1 (1st Cir. 1981); N.C. Freed Co., Inc. v. Board of Governors of Federal Reserve System, 473 F.2d 1210 (2d Cir.1973). The Act achieves its remedial goals by a system of strict liability in favor of consumers when the mandated disclosures have not been made. 15 U.S.C. § 1640(a). Thus, a creditor who fails to comply with the Act in any respect is liable to the consumer under the statute's civil liability provisions regardless of the nature of the violation or the creditor's intent. ***Thomka,*** supra, 619 F.2d at 249-50. A single violation of the Act gives rise to full liability for statutory damages. Under authority granted it by the statute, 15 U.S.C. § 1604, the Federal Reserve Board has promulgated regulations known as

Regulation Z to carry out the statute's provisions. 12 C.F.R. § 226.1 et seq. As I stated above, once a violation of the Act is established, strict liability attaches." ***Laubach v. Fidelity Consumer Discount Co.,*** 686 F.Supp. 504 (E.D. Pa. 1988);

17. "The TILA is a federal statute that provides terms and conditions for the regulation of consumer credit. **The congressional purpose of the Act is "to assure a meaningful disclosure of credit terms** so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." **15 U.S.C. § 1601**. Congress enacted the TILA to prevent the unsophisticated consumer from being misled as to the cost of financing. See ***Mourning v. Family Publications Service, Inc.***, 411 U.S. 356, 363-69, 93 S. Ct. 1652, 1657-61, 36 L. Ed. 2d 318 (1973); ***Griggs v. Provident Consumer Discount Co.,*** 680 F.2d 927, 930 (3d Cir. 1982), rev'd on other grounds, 459 U.S. 56, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982); ***Thomka v. A.Z. Chevrolet, Inc.,*** 619 F.2d 246, 248 (3d Cir.1980). To accomplish its purpose, the TILA mandates that creditors make certain disclosures. The TILA provides for enforcement of these disclosure requirements through "`a system of strict liability in favor of consumers who have secured financing when [the] standard[s] [are] not met.'" ***Griggs,*** 680 F.2d at 930 (quoting ***Thomka,*** 619 F.2d at 248). Under the TILA, the Federal Reserve Board has the

authority to promulgate regulations to carry out the disclosure *986 requirements. 15 U.S.C. § 1604. Pursuant to this authority, the Board has issued a series of regulations referred to as **Regulation Z. 12 C.F.R. §§ 226.1 et seq.** ...(c). Disclosure requirements for consumer loans are governed by **15 U.S.C. § 1639**; 12 C.F.R. § 226.8(b), (d). A violator of the disclosure requirements is held to a standard of strict liability. Therefore, **a plaintiff need not show that the creditor in fact deceived him by making substandard disclosures.** See ***Dzadovsky v. Lyons Ford Sales, Inc.,*** 593 F.2d 538, 539 (3d Cir.1979) (per curiam),"

18. "Additionally, a**n affidavit that is "essentially conclusory and lacking in specific facts," is inadequate to shift the burden to the non-movant.** ***Drexel v. Union Prescription Centers, Inc.,*** 582 F.2d 781, 789-90 (3d Cir.1978). Fidelity's affidavit sets forth no admissible evidence to show that Fidelity did not intend to have a security interest in debtor's Buick. Fidelity's affidavit was submitted by an officer of the company who did not state that he has any personal knowledge of the transaction. The affiant's affidavit only states a conclusion that his company did nothing wrong. For the reasons stated above, I will reverse the entry of summary judgment for Fidelity and remand this case to the Bankruptcy Court for further proceedings consistent with this opinion.[3]," ***Solis v. Fidelity Consumer Discount Co.,*** 58 B.R. 983 (Pa. 1986);

19. "This action arises in connection with the interpretation of the Consumer Credit Protection Act, **15 U.S.C. § 1601** et seq. (1976) (amended 1980), Federal Reserve Board Regulation Z, 12 C.F.R. Part 226 (1981) and the **Connecticut Truth-in-Lending Act, Conn.Gen.Stat. § 36-393** et seq. (1969) (amended 1983), Revised **Regulation Z, 12 C.F.R. Part 226** (1981), promulgated by the Federal Reserve Board, governs this issue as the Connecticut Truth-In-Lending Act specifically requires compliance with these federal standards pursuant to **Conn.Gen.Stat. Section 36-393b**. The content of truth in lending disclosures is governed by Revised **Regulation Z, Section 226.18** (1981) which requires the creditor to disclose certain information. One required disclosure is an itemization of the amount financed. **Section 226.18(c) (1)** requires "[a] separate written itemization of the amount financed, including: ... (iii) [a]ny amounts paid to other persons by the *137 creditor on the consumer's behalf. The creditor shall identify those persons." Plaintiff alleges that defendant was also required to disclose this information separately pursuant to **Section 226.18(o)** as a security interest charge. This section requires disclosing "[t]he disclosures required by **§ 226.4(e)** in order to exclude from the finance charge certain fees prescribed by law...." **Section 226.4(e)** of **Regulation Z provides** that: "[i]f itemized and disclosed, the following charges may be excluded

from the finance charge: (1) [t]axes and fees prescribed by law that actually are ... paid to public officials for ... perfecting a security interest." According to the Official Staff Interpretations, examples of charges excludable from the finance charge under section **226.4(e) (1)** include: "[c]harges for filing or recording security agreements. ..." **12 C.F.R. Part 226, Supp. 1 at 684** (1985). It is also noted that "[t]he various charges described in **§ 226.4(e) (1)** may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. Finally, defendant charges that liability cannot rest on such a hyper technical violation. However, this Court strictly construes the subject laws and regulations. ***Luczak v. General Motors Acceptance Corp.,*** 494 F. Supp. 210, 215 (W.D.N.Y. 1980); ***Grey v. European Health Spas, Inc.,*** 428 F. Supp. 841, 847 (D.Conn.1977). Based on the finding of a violation, summary judgment for the plaintiff is appropriate. Accordingly, plaintiff's motion for summary judgment is GRANTED and defendant's motion for summary judgment is DENIED. So ordered," ***Lewis v. Dodge***, 620 F.Supp. 135, 138 (D. Conn. 1985); "Motion for Summary Judgment be, and it is hereby, granted, on all issues except the fact-dominated issue of the exercise of the Court's equitable discretion to determine if the rescission, on the facts of the case, should be conditioned upon return of the loan proceeds by the Defendants, which latter issue remains for adjudication."

New Maine Nat. Bank v. Gendron, 780 F.Supp. 52 (1992);

20. "TILA isa remedial statute, and, hence, is liberally construed in favor of borrowers. The remedial objectives of TILA are achieved by imposing a system of strict liability infavor of consumers when mandated disclosures have not been made. Thus, liability will flow from even minute deviations from the requirements of the statute and the regulations promulgated under it. Woolfolk v. Van Ru Credit Corp.,783 F.Supp. 724 (1990) There was no dispute as to the material facts that established that the debt collector violated the FDCPA. The court granted the debtors' motion for summary judgment and held that (1) under 15U.S.C.§1692(e), a debt collector could not use any false, deceptive, or misleading representation or means in connection with the collection of any debt; Unfair Debt Collection Practices Act. Jenkins v. Landmark Mortg. Corp. of Virginia, 696 F.Supp. 1089 (W.D. Va. 1988)," ***Dixon v. S & S Loan Service of Waycross, Inc.***, 754 F.Supp. 1567 (1990).

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PETER LUNDSTEDT,
Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, *Trustee for Long Beach Mortgage Loan Trust, et al.*,
Defendants.

No. 3:13-cv-001423 (JAM)

RULING GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS

This case arises out of a mortgage loan issued to *pro se* plaintiff Peter Lundstedt in 2006. Plaintiff alleges that he was lied to about his credit score and that he was fraudulently induced to sign a high-interest mortgage loan when he should have been eligible for a mortgage loan on more favorable terms. He also alleges that, after he defaulted on the loan, he received "hundreds if not thousands" of phone calls from defendants in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. I will dismiss all of plaintiff's claims except for his claims under the TCPA and for negligent infliction of emotional distress against defendant J.P. Morgan Chase Bank ("Chase").

BACKGROUND

Plaintiff Peter Lundstedt, a disabled veteran, signed a subprime mortgage contract in September 2006, apparently with Washington Mutual ("WaMu") as the originator. Plaintiff alleges that WaMu lied to him about his credit score, telling him it was 100 points below the real score, and therefore induced him to sign a mortgage loan with a very high interest rate. He sought to confirm his credit score at the time with credit reporting agencies such as Equifax, and he then informed WaMu that the score told to him was incorrect. WaMu responded that it had its

own credit assessment, and did not accept plaintiff's arguments. He then accepted the loan offer from WaMu.

Some defendants, seemingly including Deutsche Bank National Trust Company ("Deutsch Bank") and Select Portfolio Serving Inc. ("Select"), then packaged plaintiff's mortgage loan into an allegedly "fraudulently created SEC-regulated security instrument." Doc. #88 at 3. Plaintiff defaulted on the loan in November 2007. In 2009 at the latest, plaintiff notified defendants that he believed he had been defrauded when he signed the mortgage loan agreement. *See* Doc. #89 at 20. Following plaintiff's default, WaMu allegedly began making numerous phone calls to plaintiff seeking to collect on the debt.

During the financial crisis of 2008, WaMu failed and was taken into receivership by the Federal Deposit Insurance Corporation ("FDIC"). The FDIC then sold substantially all of WaMu's assets and liabilities to defendant Chase.[1] Having acquired plaintiff's mortgage, Chase then allegedly began making similar calls to plaintiff. Plaintiff contends that, while most of these calls were to his residence, some were to his cell phone. He also stated at oral argument that "you could tell it was a computer [calling him] because you would be waiting and waiting and waiting, you know. And then somebody would come on." Doc. #89 at 24. He also alleges that, as defendants knew, he had "past and current injuries" that made him more susceptible to harm as a result of these calls, and that they resulted "in illness and bodily harm, where plaintiff [cannot] sleep, has frequent nightmares, [cannot] engage in personal or emotional or physical relationships, [and] has debilitating depression and anxiety resulting in isolation from Plaintiff's community because of the Defendant's actions." Doc. #88 at 12.

[1] Though plaintiff does not allege any facts regarding WaMu's failure and subsequent receivership by the FDIC, the Court "may judicially take notice [of] a fact that is not subject to reasonable dispute because it: . . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The facts surrounding WaMu's collapse cannot be reasonably disputed. *See* "Status of Washington Mutual Bank Receivership," The Federal Deposit Insurance Corporation, https://www.fdic.gov/bank/individual/failed/wamu_settlement.html (accessed May 31, 2016).

Plaintiff filed this lawsuit in September 2013. He alleges six different claims, including that defendants committed "breach of contract fraud" (Count One); that defendants negligently inflicted emotional distress (Count Two); that defendants violated the TCPA (Count Three); that defendants violated the Bank Secrecy Act (Count Five); and that defendants violated the Financial Institutions Reform, Recovery and Enforcement Act (Count Six).[2] Defendants have moved to dismiss plaintiff's complaint in its entirety. Docs. #92, #93.

DISCUSSION

The principles governing this Court's consideration of a Rule 12(b)(6) motion are well established. First, the Court must accept as true all factual matter alleged in a complaint and draw all reasonable inferences in a plaintiff's favor. *See Johnson v. Priceline.com, Inc.*, 711 F.3d 271, 275 (2d Cir. 2013). But "'[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In addition, a *pro se* plaintiff's complaint should be construed liberally and interpreted to raise the strongest arguments that its wording suggests. *See, e.g.*, *Nielsen v. Rabin*, 746 F.3d 58, 63 (2d Cir. 2014); *Hogan v. Fischer*, 738 F.3d 509, 515 (2d Cir. 2013).

Count One - "Breach of Contract Fraud"

Plaintiff alleges that the defendant lender "outrageously lied to Plaintiff at the contract's origination (called Mortgage Loan Origination Fraud)." Doc. #65 at 9, ¶ 3. From plaintiff's statements at oral argument, it appears that this defendant lender was WaMu. As plaintiff does not allege any contractual obligation that any defendant breached, I construe this as a claim of fraud. But this claim is barred by Connecticut's three-year statute of limitations for tort claims,

[2] Plaintiff also alleges in Count Four that Chase is WaMu's successor-in-interest, and is therefore liable for WaMu's conduct.

Conn. Gen. Stat. § 52-577. Even if I were to accept plaintiff's argument that the cause of action did not accrue until plaintiff discovered the fraud in March 2009, plaintiff filed this case in September 2013, well beyond the three-year statutory period.

Plaintiff contends that the litigation stay during defendant WaMu's bankruptcy proceeding, which was ongoing from September 28, 2008 through March 19, 2012, would have tolled the statute of limitations, pursuant to 11 U.S.C. § 108(c), which extends certain filing deadlines for civil actions against debtors. Doc. #103 at 16. But the Second Circuit has discounted this argument. In *Aslanidis v. U.S. Lines, Inc.*, 7 F.3d 1067 (2d Cir. 1993), the court concluded that "§ 108(c) does not provide for tolling of any externally imposed time bars, such as those found in . . . statutes of limitations" and that the bankruptcy statute "only calls for applicable time deadlines to be extended for 30 days after notice of the termination of a bankruptcy stay, if any such deadline would have fallen on an earlier date." *Id.* at 1073; *see also In re Parmalat Sec. Litig.*, 493 F. Supp. 2d 723, 732 n. 51 (S.D.N.Y. 2007). Because plaintiff claims that the bankruptcy stay ended on March 19, 2012, plaintiff would have had to file his claim by April 18, 2012. Instead, he waited 17 more months before filing, and therefore his action here is not made timely by the fact of any bankruptcy stay. *See Franco v. Bradlees, Inc.*, 2005 WL 2338889, at *3 (D. Conn. 2005) (applying *Aslandis* rule to Connecticut's statute of limitations).

A court may permit equitable tolling of a filing deadline "where the claimant has actively pursued his judicial remedies by filing a defective pleading or where he has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990). Seeking to qualify on this basis for equitable tolling, plaintiff points to an emailed motion for an extension of time that he filed with the Connecticut Appellate Court. Doc. #103 at 8, 50. But plaintiff's email does not qualify as a "defective

pleading" sufficient to trigger such tolling, even when viewed liberally in light of plaintiff's *pro se* status, because it does not satisfy the basic pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. *See, e.g.*, *Molnar v. Legal Sea Foods, Inc.*, 473 F. Supp. 2d 428, 430 (S.D.N.Y. 2007) (letter to court's *pro se* office inquiring how to "further pursue" discrimination claim was not a "defective pleading" sufficient to toll the statute of limitations); *Dimakos v. New York Police Dep't*, 2006 WL 3437417, at *2 (E.D.N.Y. 2006) (letter to DOJ from plaintiff inquiring how plaintiff could get his job back with the NYPD was not a "defective pleading" sufficient to toll the statute of limitations).

Absent concrete evidence, I further decline to toll the filing deadline based on plaintiff's unsupported contentions that his failure to timely file was due to health impairments. *See* Doc. #103 at 17. Accordingly, I dismiss Count One as to all defendants because it was not timely filed and is barred by the statute of limitations.

Count Two - Negligent Infliction of Emotional Distress

Plaintiff further contends that defendants negligently inflicted emotional distress upon him by making "hundreds, if not thousands of phone calls" following his default. Doc. #88 at 11. He alleges that, because of these phone calls, he cannot "sleep, has frequent nightmares, [cannot] engage in personal or emotional or physical relationships, [and] has debilitating depression and anxiety resulting in isolation." *Id.* at 12. In Connecticut, to establish negligent infliction of emotional distress, a plaintiff must show that "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Packer v. SN Servicing Corp.*, 2008 WL 359411, at *12 (D. Conn. 2008); *Carrol v. Allstate Ins. Co.*, 262 Conn. 433, 444 (2003).

Plaintiff contends that he suffered physical and psychological injuries as a result of his service in the military, and that defendants nonetheless engaged in harassing debt collection practices that would foreseeably exacerbate these injuries and cause plaintiff significant distress. As a preliminary matter, plaintiff conceded at oral argument that only Chase and its predecessor, WaMu, actually called him. Though he argues that the other defendants were also "in on it," Doc. #89 at 23, he does not plausibly allege that either Deutsche Bank or Select facilitated or were even aware of these multitudinous phone calls. Insofar as plaintiff claims that these defendants are liable because they failed to stop Chase from initiating the calls, his argument must also fail. A party is generally under no duty to act to protect another party from harm. *See Doe v. Saint Francis Hosp. and Medical Center*, 309 Conn. 146, 175 (2013); Restatement (Second) Torts § 314. Plaintiff has not pointed to any exceptions to this general rule. The emotional distress claim will therefore be dismissed against Deutsche Bank and Select.

Plaintiff does allege, however, that Chase and WaMu actually made many of the calls. Plaintiff contends that Chase, having purchased the assets of WaMu, is its successor-in-interest and therefore liable for WaMu's wrongdoing as well as its own. But when a bank fails and is taken into receivership by the FDIC, a plaintiff must exhaust his administrative remedies under the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"), 12 U.S.C. § 1821 *et seq.*, before bringing a lawsuit asserting a right to any of its assets. *See* 12 U.S.C. § 1821(d)(13)(D); *McCarthy v. F.D.I.C.*, 348 F.3d 1075, 1077 (9th Cir. 2003). WaMu failed in 2008, and was taken into receivership by the FDIC. Even if the FDIC sells the failed bank's assets, the FIRREA procedure still applies. *See Aber-Shukofsky v. JPMorgan Chase & Co.*, 755 F. Supp. 2d 441, 446-50 (E.D.N.Y. 2010) (plaintiff could not sue Chase for the wrongdoing of WaMu before WaMu's failure without exhausting administrative remedies under FIRREA). Plaintiff has not exhausted these administrative remedies, and I will therefore dismiss his claims

against Chase to the extent he seeks to establish liability against Chase for any of WaMu's wrongdoing. Since plaintiff styles his "successor-in-interest" argument as a separate claim in Count Four, I will also dismiss that count for the same reason.

Chase may still be liable for any telephone calls that it made independent of WaMu. Plaintiff alleges that Chase engaged in an unreasonable, abusive practice of calling him repeatedly. Incorporating plaintiff's allegations at oral argument for clarification, he further alleges that he informed Chase of his existing infirmities and that the calls had damaging psychological effects. Chase relies on *Wilson v. Jefferson*, 98 Conn. App. 147, 163 (2006), to argue that its alleged conduct was not unreasonable. In that case, the appellate court affirmed a directed verdict that a defendant's "use of the legal process to enforce her rights as landlord, without more, does not constitute unreasonable conduct." *Id.* Plaintiff's allegations, however, extend beyond the mere use of legal process, and at least suggest an unreasonable, abusive course of conduct. At this stage, I cannot conclude, as a matter of law, that making hundreds or thousands of debt-collection phone calls could not lead to an unreasonable risk of serious distress.

Chase contends that, even if its conduct produced an unreasonable risk of emotional distress to plaintiff, such distress was not foreseeable. Whether the harm was foreseeable often turns on a defendant's knowledge. Plaintiff alleges that he informed Chase of his vulnerabilities and the effects the calls were having on him. The question is "would the ordinary [person] in the defendant's position, *knowing what he knew or should have known* anticipate that harm of the general nature of that suffered was likely to result." *Vendrella v. Astriab Family Ltd. Partnership*, 311 Conn. 301, 335-336 (2014) (emphasis added). While it may be an unusual plaintiff who would suffer severe distress as a result of these phone calls, plaintiff here has alleged that Chase had enough information that it should have known him to be vulnerable.

Therefore, I will allow plaintiff's negligent infliction of emotional distress claim to proceed against Chase.[3]

Count Three - Telephone Consumer Protection Act

Plaintiff's third cause of action is for violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq*. Specifically, plaintiff alleges violation of § 227(b)(1)(A)(iii), which prohibits use of an automatic telephone dialing system ("ATDS") to call a mobile device without express consent of the called party.[4] The statute provides a private right of action to recover damages for violations of the statute. 47 U.S.C. § 227(b)(3).

Plaintiff did not plead in his complaint either that he was called on a cellular phone or that defendants used an ATDS. Instead, simply alleging that defendants used an ATDS, he makes a "threadbare recital" of the statutory element. *Iqbal*, 556 U.S. at 678; *Baranski v. NCO Fin. Sys., Inc.*, 2014 WL 1155304, at *6 (E.D.N.Y. 2014). Normally, this would be fatal to his TCPA claim. *See McCabe v. Caribbean Cruise Line, Inc.*, 2014 WL 3014874, at *4 (E.D.N.Y. 2014); *Barankski*, 2014 WL 1155304, at *6.

Plaintiff did state at oral argument, however, that "you could tell it was a computer because you would be waiting and waiting and waiting . . . . [a]nd then somebody would come on." Doc. #89 at 24. He also stated that some of the calls went to his cell phone. *Id.* In light of the liberal pleading standard that I must apply in favor of a *pro se* litigant, it is proper for me to

[3] To the extent that the complaint could be liberally construed to assert an additional cause of action under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, this claim also lacks merit. "It is well established that the FDCPA applies only to persons who collect the debts of others and does not apply to those who collect their own debts." *Caires v. JP Morgan Chase Bank, N.A.*, 880 F. Supp. 2d 288, 306 (D. Conn. 2012) (collecting cases); *see also* 15 U.S.C. § 1692a(6) (defining the term "debt collector" within the FDCPA to mean persons who are involved in the collection of "debts owed or due or asserted to be owed or due *another*." (emphasis added)). The allegations of the third amended complaint demonstrate that plaintiff entered into a loan contract, rendering any of the defendants as plaintiff's creditors, and that Chase arguably took action to enforce the terms of its own loan agreement. Doc. #88 at 8, 11–12. Therefore Chase, as a creditor collecting its own debt, is not liable under the FDCPA. *See Book v. Mortgage Electronic Registration Sys.*, 608 F. Supp. 2d 277, 284 (D. Conn. 2009).

[4] Plaintiff includes allegations that the volume of the phone calls was abusive and oppressive. Any allegation regarding the volume of phone calls and the harm resulting therefrom has been analyzed under Count Two. The TCPA does not offer a remedy for plaintiff's allegations of excessive phone calls.

consider these statements in assessing the sufficiency of plaintiff's allegations. *See Terio v. Carlin*, 2010 WL 4117434, at *1 n.1 (S.D.N.Y. 2010) (considering the *pro se* plaintiff's statements at oral argument in determining the meaning of the pleading); *see also Platsky v. C.I.A.*, 953 F.2d 26, 28 (2d Cir. 1991) (*pro se* plaintiff should have been given leave to amend "inartfully pleaded" generalized allegations where his statements at oral argument made clear he had in mind "definite acts by which the defendants allegedly caused him harm"). In his response to the motions to dismiss, plaintiff also stated that the person on the other end of the line would say, "We can't help [calling repeatedly] because it's automatic." Doc. #103 at 3; *see also Flowers v. Ercole*, 2009 WL 2986738, at *16 (S.D.N.Y. 2009) (considering factual statements made by *pro se* plaintiff in a memorandum of law as part of the record). These allegations raise a plausible inference that Chase was using an ATDS to call plaintiff on his cell phone. Plaintiff again concedes, however, that Deutsche Bank and Select did not actually make the calls, and does not allege facts suggesting the calls were in anyway made at their direction. *Cf. Baltimore-Washington Tel. Co. v. Hot Leads Co., LLC*, 584 F. Supp. 2d 736, 746 (D. Md. 2008) (holding that the TCPA does not provide for aiding and abetting liability). I will therefore dismiss the TCPA claims against Deutsche Bank and Select.

Plaintiff brings his TCPA claim against Chase both for calls Chase allegedly made to him and prior calls made by WaMu. For the same reasons that he cannot bring a successor-in-interest claim against Chase for WaMu's negligent infliction of emotional distress, he also cannot bring one for WaMu's violations of the TCPA. Plaintiff's TCPA claim for actions actually taken by Chase, however, will survive.

Count Five - Violation of Bank Secrecy Act

Plaintiff further contends that defendants violated the Bank Secrecy Act ("BSA"), 31 U.S.C. §§ 5318(g) and 5322(a), by failing to file Suspicious Activity Reports based on plaintiff's

complaints. The BSA does not, however, create a private right of action. *See Hanninen v. Fedoravitch*, 583 F. Supp. 2d 322, 326-327 (D. Conn. 2008). Courts have also refused to create a duty of care predicated on the BSA's statutory requirements. *See In re Agape Litigation*, 681 F. Supp. 2d 352, 360 (E.D.N.Y. 2010). Because plaintiff has no right of action under the BSA, I will dismiss Count Five.

Count Six - Violation of Financial Institutions Reform, Recovery and Enforcement Act

Lastly, plaintiff contends that defendants have violated FIRREA. Defendants move to dismiss this count on the grounds that FIRREA does not provide plaintiff with a private right of action. I agree.

Only two provisions of FIRREA expressly grant a private right of action. *See Mosseri v. FDIC*, 2001 WL 1478809, at *4 (S.D.N.Y. 2001). These provisions create causes of actions for the enforcement of lower-income occupancy requirements, and for claims arising from discrimination against whistleblowers, respectively. *See* 12 U.S.C. § 1441a(c)(11)(B); 12 U.S.C. § 1441a(q). Plaintiff appears to argue that 12 U.S.C. §§ 1833a and 4201 provide him a private right of action for fraud. *See* Doc. #103 at 35. He is mistaken. Section 1833a does create civil liability for fraud, but the statute's plain text clarifies that "[a] civil action to recover a civil penalty under this section *shall be commenced by the Attorney General.*" 12 U.S.C. § 1833a(e) (emphasis added). Plaintiff is also correct that § 4201(a) provides that "[a]ny person may file a declaration of a violation giving rise to an action for civil penalties under section 1833a of this title." He ignores, however, § 4201(b), which clarifies that this declaration must first be filed with the Attorney General, rather than first filed as a lawsuit in federal court. These provisions do not explicitly permit plaintiff to bring his claims under FIRREA. Further, since the statutory text clearly contradicts plaintiff's claim to a private right of action, I also cannot conclude that these statutes create an implied right of action. I will therefore dismiss Count Six.

CONCLUSION

Plaintiff's fraud claim is barred by the statute of limitations, and he has no private right of action to bring claims under either the BSA or FIRREA. He has otherwise alleged no basis for liability for either Deutsche Bank or Select. On the other hand, the complaint does state plausible grounds for relief against Chase for negligent infliction of emotional distress and for violations of the TCPA.

Accordingly, the motion to dismiss of Deutsche Bank and Select (Doc. #92) is GRANTED. Deutsche Bank and Select shall be terminated as defendants. Chase's motion to dismiss (Doc. #93) is GRANTED as to Counts One, Four, Five and Six, but DENIED as to Counts Two and Three. Plaintiff's various pending motions (Docs. #111, #116, #119, #120, #121, #126, #132, and #136) are DENIED as moot because they either would not affect my ruling on this motion, or I will otherwise grant the relief requested. The stay of discovery, Doc. #75, is hereby VACATED, and the parties shall meet and confer and file a Rule 26(f) report by June 23, 2016.

It is so ordered.

Dated at New Haven this 2nd day of June 2016.

/s/ *Jeffrey Alker Meyer*
Jeffrey Alker Meyer
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PETER LUNDSTEDT, *Plaintiff,*	:	
v.	:	No: 3:13-cv-01423(JAM)
DEUTSCHE BANK NATIONAL TRUST COMPANY, JP MORGAN CHASE, SELECT PORTFOLIO SVC INC, DEUTSCHE BANK, JP MORGAN CHASE BANK, WASHINGTON MUTUAL, LONG BEACH MORTGAGE LOAN TRUST, *Defendants.*	:	

JUDGMENT

This cause came on for trial before a jury and the Honorable Jeffrey A. Meyer, United States District Judge. After deliberation, the jury returned a verdict in favor of the defendant JP Morgan Chase Bank on July 18, 2018.

On October 9, 2014, defendants Deutsche Bank National Trust Company and Select Portfolio Svc Inc., filed a motion to dismiss amended complaint (Doc. #92). Judge Jeffrey Alker Meyer, having considered the full record of the case, entered an Order on June 2, 2016 granted the motions to dismiss (Doc. #92) filed by defendants Deutsche Bank National Trust Company, and Select Portfolio Svc Inc.

Therefore, it is ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of defendants Deutsche Bank National Trust Company, Select Portfolio Svc Inc., JP Morgan Chase, JP Morgan Chase Bank against Peter Lundstedt. The case is closed.

Dated at New Haven, Connecticut, this 25th day of July, 2018.

ROBIN D. TABORA, Clerk

By /s/ Yelena Gutierrez
Deputy
Clerk

Entered on Docket July 25, 2018

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of July, two thousand twenty-one.

Peter Lundstedt,

Plaintiff - Appellant,

v.

JP Morgan Chase Bank, N.A., JPMCB, as the Owner of WAMU an Long Beach Mortgage Loan Trust, Deutsche Bank National Trust Company, Select Portfolio Services, Inc., SPS, FKA Fairbanks Capitol 2004,

Defendants - Appellees.

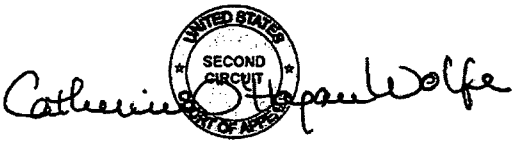
ORDER

Docket No: 18-2575

Appellant, Peter Lundstedt, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of August, two thousand twenty-one.

Before: Rosemary S. Pooler,
Richard J. Sullivan,
Michael H. Park,
Circuit Judge.

Peter Lundstedt,

Plaintiff - Appellant,

v.

JP Morgan Chase Bank, N.A., JPMCB, as the Owner of WAMU an Long Beach Mortgage Loan Trust, Deutsche Bank National Trust Company, Select Portfolio Services, Inc., SPS, FKA Fairbanks Capitol 2004,

Defendants - Appellees.

ORDER

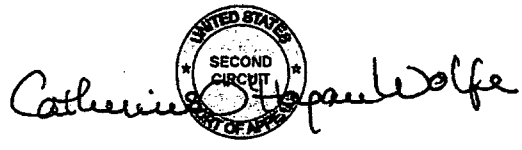
Docket No. 18-2575

Appellant moves for instructions on how his pleadings are deficient and on how to repair them. Separately, Appellant moves the Court to issue a written opinion.

IT IS HEREBY ORDERED that the motions are DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



Additional material from this filing is available in the Clerk's Office.