

Number \_\_\_\_\_

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# In the Supreme Court of the United States

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DARRELL BERRY; CONSTANCE LAFAYETTE

Petitioners

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

Respondents

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

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## Petitioners' Appendix for Writ of Certiorari Volume 1 Pages 1-75

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

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## Appendix A

**Consolidated Cases 20-30670 and 21 -30060**

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# **In the United States Court of Appeals, For the Fifth Circuit**

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**No. 20-30670**

Consolidated with

**No. 21-30060**

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**Darrell Berry; Constance Lafayette,**

**Plaintiffs - Appellants**

**v.**

**Wells Fargo Bank, N.A.; Federal Home Loan Mortgage Corporation, "Freddie Mac" As Trustee For Securitized Trust; Loancity; Freddie Mac Multiclass Certificates Series 3113 Trust; Mortgage Electronic Registration System, "MERS"; Does 1-100, "Inclusive"; John Doe 1; John Doe 2, Sponsor Of The Freddie Mac Multiclass Certificates, Series 3113 Trust,**

**Defendants - Appellees**

**Consolidated Cases 20-30670 and 21 -30060**

On Appeal from the United States District Court

for the

Middle District of Louisiana

**Case No. 3:18-CV-888**

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## **Appellant Record of Excerpts**

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

**The Record Excerpts**  
**Consolidate Cases 20-30670 and 21-30060**

Please note many of the Optional Content documents were filed multiple times since the inception of the case. Doc 78 was stricken from the record which succinctly included all Exhibits in the Amended Petition. M.D. La., was made aware of the Exhibits existence and importance.

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23. Wells Fargo Notice of Removal Civil Cover Sheet	ROA.21-30060.30	
24. Bankruptcy Misconduct USA vs BOA, Wells Fargo et al.; Bankruptcy Related Misconduct Berrys were forced to file bankruptcy because the court offered no protection from foreclosure	ROA.21-30060.1147-1148	126
25. Freddie Mac and the Trust violating SEC and UCC Regulations making the Trust instrument invalid SEC files Security Fraud charges against Freddie Macs' Executives Freddie Mac did not register certificates with Federal or State Securities Commission Freddie Mac Multiclass Series 3113 has no Member of Security Bond which violates PSA as voids instruments	ROA.21-30060.1075-1076 ROA.21-30060.280, 282 ROA.21-30060.282, 1070	129
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APPEAL, ATTENTION, CLOSED

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

Berry et al v. Loancity et al  
Assigned to: Judge John W. deGravelles  
Referred to: Magistrate Judge Scott D. Johnson  
Demand: \$100,000

Case in other court: 5th Circuit, 19-30836  
5th Circuit, 20-30670  
5th Circuit, 21-30060

Cause: 28:1332 Diversity-Other Contract

**Plaintiff**

**Darrell Berry**

Date Filed: 10/05/2018  
Date Terminated: 01/14/2021  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

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

**Plaintiff**

**Constance Lafayette**

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

V.

**Defendant**

**Wells Fargo Bank, N.A.**  
*TERMINATED: 09/25/2020*

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

**Christopher Daniel Meyer**  
Burr & Forman LLP  
190 E. Capitol Street  
Suite M-100  
Jackson, MS 39201  
601-355-3434  
Fax: 601-355-5150

Email: cmeyer@burr.com  
ATTORNEY TO BE NOTICED

Defendant

**Federal Home Loan Mortgage Corporation**  
"Freddie Mac" as trustee for securitized trust  
TERMINATED: 09/25/2020

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

**Benjamin Givens Torian**  
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Lafayette, LA 70508  
337-900-1062  
Fax: 337-900-1063  
Email: btorian@gallowaylawfirm.com  
**ATTORNEY TO BE NOTICED**

Defendant

**Loancity**  
TERMINATED: 01/13/2021

Defendant

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

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

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

Defendant

**Mortgage Electronic Registration System "MERS"**  
TERMINATED: 09/25/2020

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

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

Defendant

Does 1-100

*"inclusive"*Defendant

John Doe 1

Defendant

John Doe 2

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

Date Filed	#	Docket Text
10/05/2018	<u>1 (p.22)</u>	JOINT NOTICE OF REMOVAL from Parish of East Baton Rouge, Case Number 672792. (Filing fee \$ 400 receipt number ALAMDC-1842932), filed by Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.22)</u> Attachment Civil Cover Sheet, # <u>2 (p.100)</u> Attachment State Court Documents, # <u>3 (p.103)</u> Attachment Certificate of Service)(Heisterhagen, Kasee) Modified on 10/5/2018 to flatten a document (KAH). Modified on 10/9/2018 to edit text and add party (LLH). Modified on 10/24/2018 to substitute removal as per Order # 8 (LLH). (Entered: 10/05/2018)
10/12/2018	<u>2 (p.100)</u>	MOTION to Enroll Benjamin G. Torian as Additional Attorney by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1 (p.22)</u> Proposed Pleading; Order)(Medor, Lindsay) (Entered: 10/12/2018)
10/12/2018	<u>3 (p.103)</u>	MOTION to Substitute Notice of Removal by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System, Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.22)</u> Proposed Order)(Heisterhagen, Kasee) (Entered: 10/12/2018)
10/12/2018	<u>4 (p.114)</u>	MOTION to Dismiss for Failure to State a Claim by Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.22)</u> Memorandum in Support)(Heisterhagen, Kasee) (Entered: 10/12/2018)
10/12/2018	<u>5 (p.136)</u>	MOTION to Dismiss for Failure to State a Claim by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1 (p.22)</u> Memorandum in Support, # <u>2 (p.100)</u> Exhibit)(Medor, Lindsay) (Entered: 10/12/2018)
10/15/2018		MOTION(S) REFERRED: <u>3 (p.103)</u> MOTION to Substitute Notice of Removal , <u>2 (p.100)</u> MOTION to Enroll Benjamin G. Torian as Additional Attorney . This motion is now pending before the USMJ. (KAH) (Entered: 10/15/2018)
10/15/2018	6	NOTICE of Briefing Schedule on <u>5 (p.136)</u> MOTION to Dismiss for Failure to State a Claim and <u>4 (p.114)</u> MOTION to Dismiss for Failure to State a Claim ; Opposition to the motion shall be filed within 21 days from the filing of the motion and shall not exceed 10 pages excluding

		attachments. The mover may file a reply brief within 14 days of the filing of the opposition and shall be limited to a total of 5 pages. No motion for leave will be required. Sur-Reply briefs will be permitted only with leave of Court for extraordinary reasons supported by sufficient facts. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 10/15/2018)
10/19/2018	7	ORDER granting <u>2 (p.100)</u> Motion to Enroll as Co-Counsel. Added attorney Benjamin Givens Torian as co-counsel for Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust and Mortgage Electronic Registration System. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 10/19/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 10/19/2018)
10/19/2018	8	ORDER granting <u>3 (p.103)</u> MOTION to Substitute Notice of Removal filed by Mortgage Electronic Registration System, Wells Fargo Bank, N.A., Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust. The Joint Notice of Removal (R. Doc. 1) shall be substituted with the Corrected Joint Notice of Removal (R. Doc. 3). Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 10/19/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 10/19/2018)
10/22/2018	<u>9 (p.177)</u>	Supplemental Exhibit(s) to <u>1 (p.22)</u> Notice of Removal, by Wells Fargo Bank, N.A.. (Heisterhagen, Kasee) Modified on 10/22/2018 to edit the text (NLT). (Entered: 10/22/2018)
10/25/2018	<u>10 (p.180)</u>	MOTION for Verified Emergency Petition for Temporary Restraining Order and/or Preliminary Injunction and Declaratory Relief by Darrell Berry. (Attachments: # <u>1 (p.22)</u> Proposed Pleading;) (EDC) (Entered: 10/25/2018)
10/25/2018	<u>11 (p.193)</u>	MOTION for Extension of Time to File Response to <u>4 (p.114)</u> MOTION to Dismiss for Failure to State a Claim , <u>5 (p.136)</u> MOTION to Dismiss for Failure to State a Claim by Darrell Berry. (EDC) (Entered: 10/25/2018)
10/26/2018	12	ORDER granting <u>11 (p.193)</u> Motion for Extension of Time to File Response to <u>5 (p.136)</u> MOTION to Dismiss for Failure to State a Claim and <u>4 (p.114)</u> MOTION to Dismiss for Failure to State a Claim . Opposition to motions shall be filed by 12/3/2018 and any replies are due by 12/14/2018. Signed by Judge John W. deGravelles on 10/26/2018. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 10/26/2018)
10/26/2018	<u>13 (p.196)</u>	NOTICE of Service for Motion for Extension of Time to Answer Motion to Remove and Dismiss Plaintiffs' case as well as Preliminary Injunction by Darrell Berry. (EDC) (Entered: 10/30/2018)
11/01/2018	<u>14 (p.198)</u>	SUGGESTION OF BANKRUPTCY Upon the Record as to Darrell Berry and Constance Lafayette Berry by Wells Fargo Bank, N.A..

		(Heisterhagen, Kasee) (Entered: 11/01/2018)
11/05/2018	15	NOTICE of Briefing Schedule on SUGGESTION OF BANKRUPTCY (Doc. 14): The parties shall file simultaneous briefs within 7 days, not to exceed 5 pages, describing the impact of the Bankruptcy on the proceedings. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 11/05/2018)
11/05/2018		Set/Reset Deadlines: Brief due by 11/13/2018. (LLH) (Entered: 11/07/2018)
11/13/2018	<u>16 (p.200)</u>	Brief regarding <u>14 (p.198)</u> Suggestion of Bankruptcy . (Heisterhagen, Kasee) (Entered: 11/13/2018)
11/13/2018	<u>17 (p.202)</u>	Brief regarding <i>Defendants Suggestion of Bankruptcy</i> . (Meador, Lindsay) (Entered: 11/13/2018)
12/03/2018	<u>18 (p.205)</u>	MEMORANDUM in Opposition to <u>4 (p.114)</u> MOTION to Dismiss for Failure to State a Claim <u>5 (p.136)</u> MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry, Constance Lafayette. (EDC) (Entered: 12/04/2018)
12/07/2018	<u>19 (p.211)</u>	Amended MEMORANDUM in Opposition to <u>4 (p.114)</u> MOTION to Dismiss for Failure to State a Claim, <u>5 (p.136)</u> MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1 (p.22)</u> Exhibit)(EDC) (Entered: 12/11/2018)
12/14/2018	20	STRICKEN FROM THE RECORD REPLY to <u>18 (p.205)</u> Memorandum in Opposition to Motion, <u>19 (p.211)</u> Memorandum in Opposition to Motion, <u>5 (p.136)</u> MOTION to Dismiss for Failure to State a Claim filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) Modified on 12/17/2018 to remove the document as it has been stricken in accordance with record document 23 (NLT). (Entered: 12/14/2018)
12/14/2018	21	NOTICE OF NON-COMPLIANCE with LR 7(g) as to 20 Reply to Response to Motion,. REQUIRED CORRECTION: A combined Motion for Leave to Exceed the Page Limits and Motion to Strike the Incorrect Pleading must filed within 24 hours of this notice. Otherwise, the original filing may be stricken by the Court without further notice. (NLT) (Entered: 12/14/2018)
12/14/2018	<u>22 (p.238)</u>	MOTION for Leave to File Excess Pages <i>and Strike Previously Filed Reply</i> by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1 (p.22)</u> Memorandum in Support, # <u>2 (p.100)</u> Proposed Pleading; , # <u>3 (p.103)</u> Proposed Pleading;)(Meador, Lindsay) (Entered: 12/14/2018)
12/17/2018	<u>23 (p.252)</u>	ORDER granting <u>22 (p.238)</u> MOTION for Leave to File Excess Pages and Strike Previously Filed Reply. Signed by Judge John W. deGravelles on 12/17/2018. (NLT) (Entered: 12/17/2018)
12/17/2018	<u>24 (p.253)</u>	

		REPLY to <u>19</u> (p.211) Amended Memorandum in Opposition and <u>18</u> (p.205) Memorandum in Opposition to <u>5</u> (p.136) MOTION to Dismiss for Failure to State a Claim filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (NLT) (Entered: 12/17/2018)
01/02/2019	<u>25</u> (p.261)	REPLY to <u>4</u> (p.114) MOTION to Dismiss for Failure to State a Claim, <u>5</u> (p.136) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.22) Exhibit)(EDC) (Entered: 01/03/2019)
01/18/2019	<u>26</u> (p.312)	REQUEST for Judicial Notice by Darrell Berry. (EDC) (Entered: 01/22/2019)
01/18/2019	<u>27</u> (p.317)	AMENDED REPLY to <u>4</u> (p.114) MOTION to Dismiss for Failure to State a Claim, <u>5</u> (p.136) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.22) Attachment)(EDC) (Entered: 01/22/2019)
03/06/2019	28	<p>Notice to Counsel: Status Conference set for 4/11/2019 at 11:30 AM in chambers before Judge John W. deGravelles.</p> <p>Evidence, in electronic format, shall be provided in accordance with Local Rule 79 and Administrative Procedures.</p> <p>(This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 03/06/2019)</p>
03/07/2019	<u>29</u> (p.420)	MOTION to Enroll Christopher D. Meyer as Additional Attorney by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.22) Proposed Pleading; Proposed Order)(Heisterhagen, Kasee) (Entered: 03/07/2019)
03/07/2019		MOTION(S) REFERRED: <u>29</u> (p.420) MOTION to Enroll Christopher D. Meyer as Additional Attorney . This motion is now pending before the USMJ. (KAH) (Entered: 03/07/2019)
03/13/2019	30	ORDER granting <u>29</u> (p.420) Motion to Enroll Additional Counsel of Record. Attorney Christopher Daniel Meyer added as additional counsel of record for Wells Fargo Bank, N.A. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 3/13/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 03/13/2019)
03/19/2019	<u>31</u> (p.424)	MOTION for Kasee Heisterhagen to Withdraw as Attorney by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.22) Proposed Pleading; Proposed Order)(Heisterhagen, Kasee) (Entered: 03/19/2019)
03/19/2019		MOTION(S) REFERRED: <u>31</u> (p.424) MOTION for Kasee Heisterhagen to Withdraw as Attorney . This motion is now pending before the USMJ. (SGO) (Entered: 03/19/2019)
03/19/2019	32	ORDER granting <u>31</u> (p.424) Motion to Withdraw Attorney Kasee S. Heisterhagen as counsel for Wells Fargo Bank, N.A. Christopher D. Meyer of the law firm Burr & Forman, LLP will continue as counsel for Wells Fargo Bank, N.A. Signed by Magistrate Judge Richard L.

		Bourgeois, Jr. on 3/19/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (JSL) (Entered: 03/19/2019)
04/10/2019	33	Notice to Counsel: Status conference set for April 11, 2019 at 11:30 a.m. is canceled. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) (Entered: 04/10/2019)
04/11/2019	34	ORDER: Plaintiffs seek a temporary restraining order and other injunctive release to prevent Defendants "from selling, attempting to sell, or causing to be sold" Plaintiffs' property. (Doc. 10 at 78.) Plaintiffs' motion was filed on October 25, 2018. (Id.) Plaintiffs alleged that the foreclosure was to take place on October 31, 2018. However, Defendants have indicated in briefing that there is no such threat of foreclosure. Specifically, Defendants have asserted: "Plaintiffs have not alleged that Wells Fargo has invoked foreclosure proceedings against the Plaintiffs property, so Plaintiffs are not facing any substantial threat of irreparable harm at the hands of Wells Fargo." (Doc. 4-1 at 15; see also Doc. 5-1 at 16 (arguing same for other Defendants).) Given this conflict and the time since Plaintiffs filed their TRO, the parties are hereby given until 12:00 p.m. on Thursday, April 18, 2019, to file into the record short briefs (not to exceed 5 pages) describing the status of the alleged foreclosure action, with supporting evidence. Signed by Judge John W. deGravelles on 04/11/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 04/11/2019)
04/11/2019	<u>35 (p.427)</u>	NOTICE of Pro Se E-Service and E-Notice Consent Form by Darrell Berry (EDC) (Entered: 04/11/2019)
04/12/2019	<u>36 (p.428)</u>	NOTICE of Status of the Foreclosure Action by Darrell Berry (Attachments: # <u>1</u> (p.22) Exhibit)(EDC) (Entered: 04/15/2019)
04/15/2019		Set/Reset Deadlines (Court Use Only) (SGO) (Entered: 04/15/2019)
04/17/2019	<u>37 (p.446)</u>	Response to 34 Court's Order Regarding Foreclosure filed by Wells Fargo Bank, N.A.. (Attachments: # <u>1</u> (p.22) Exhibit A - Assignment)(Meyer, Christopher) Modified on 4/17/2019 to edit text. (EDC). (Entered: 04/17/2019)
04/23/2019	<u>38 (p.452)</u>	ORDER denying <u>10 (p.180)</u> Motion for Temporary Restraining Order and for Preliminary Injunction. Signed by Judge John W. deGravelles on 4/23/2019. (SWE) (Entered: 04/23/2019)
07/03/2019	<u>39 (p.454)</u>	RULING AND ORDER granting <u>4 (p.114)</u> Motion to Dismiss for Failure to State a Claim. Plaintiffs' claims against Defendant Wells Fargo are DISMISSED WITH PREJUDICE. Signed by Judge John W. deGravelles on 07/03/2019. (KDC) (Entered: 07/03/2019)
07/03/2019	<u>40 (p.474)</u>	ORDER: All dispositive motions in this matter are referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), FRCP 72(b), and LER 72(b). The United States Magistrate Judge shall prepare findings of fact, conclusions of law and a report and recommendation which shall be submitted to undersigned for review. FURTHER, in all non-dispositive motions, the United States

		Magistrate Judge shall be authorized to rule on such motions as provided in 28 U.S.C. § 636, FRCP. 72(a), and LR 72(b). FURTHER ORDERED that if a hearing is required on any motion referred to the United States Magistrate Judge, the United States Magistrate Judge shall be authorized to conduct whatever hearings which may be necessary to decide the pending motion. FURTHER ORDERED that all pending pre-trial matters shall be conducted by the Magistrate Judge, including a preliminary pre-trial conference. Signed by Judge John W. deGravelles on 07/03/2019. (NLT) (Entered: 07/03/2019).
07/03/2019		MOTION(S) REFERRED: <u>5</u> (p.136) MOTION to Dismiss for Failure to State a Claim . This motion is now pending before the USMJ. (NLT) (Entered: 07/03/2019)
07/18/2019	<u>41</u> (p.476)	MOTION for Extension of Time to Respond to the Court's Ruling by Darrell Berry. (EDC) (Entered: 07/19/2019)
07/26/2019	<u>42</u>	MOTION for Leave to File Amended Complaint and Memorandum of Law in Support by Darrell Berry. (Attachments: # <u>1</u> (p.22) Order, # <u>2</u> (p.100) Exhibit)(EDC) Modified on 7/30/2019 to un-terminate motion per JWD chambers (SWE). (Entered: 07/29/2019)
07/29/2019		MOTION(S) REFERRED: <u>42</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support. This motion is now pending before the USMJ. (EDC) (Entered: 07/29/2019)
07/29/2019	<u>43</u>	ORDER granting <u>41</u> (p.476) MOTION for Extension of Time until 8/5/2019 to Respond to the Court's Ruling filed by Darrell Berry. Signed by Judge John W. deGravelles on 07/29/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KDC) Modified on 7/30/2019 to edit the docket text per chambers (SWE). (Entered: 07/29/2019)
07/29/2019	<u>44</u> (p.480)	MOTION to Reconsider <u>39</u> (p.454) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (Attachments: # <u>1</u> (p.22) Exhibit)(EDC) (Entered: 07/30/2019)
08/01/2019	<u>45</u> (p.515)	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <u>39</u> (p.454) Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry, Constance Lafayette. (Attachments: # <u>1</u> (p.22) Order)(EDC) (Entered: 08/01/2019)
08/07/2019	<u>46</u> (p.518)	RESPONSE and Memorandum of Law in Opposition to <u>44</u> (p.480) MOTION for Reconsideration of <u>39</u> (p.454) Order on Motion to Dismiss for Failure to State a Claim filed by Wells Fargo Bank, N.A.. (Meyer, Christopher) Modified on 8/8/2019 to edit the docket text (SWE). (Entered: 08/07/2019)
08/19/2019	<u>47</u> (p.524)	Response to <u>46</u> (p.518) Response in Opposition to <u>44</u> (p.480) MOTION for Reconsideration of <u>39</u> (p.454) Order on Motion to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.22) Affidavit)(EDC) (Entered: 08/19/2019)
08/30/2019	<u>48</u>	ORDER denying <u>42</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support filed by Darrell Berry. Plaintiff has failed to provide a proposed Amended Complaint for the Court's

		consideration. Plaintiff may seek leave to amend, if applicable, after the district judge rules on the pending motion to dismiss [R. Doc. 5]. Defendant may also address any possible amendments in the context of an objection to a report and recommendation issued on such motion identifying deficiencies in the current complaint. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 8/30/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard) (Entered: 08/30/2019)
08/30/2019	<a href="#"><u>49 (p.536)</u></a>	REPORT AND RECOMMENDATIONS regarding <a href="#"><u>5 (p.136)</u></a> MOTION to Dismiss for Failure to State a Claim filed by Mortgage Electronic Registration System, Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust. It is the recommendation of the Magistrate Judge that Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System's Motion to Dismiss (Doc. 5) be GRANTED. and Plaintiffs' claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System be DISMISSED WITH PREJUDICE. Objections to R&R due by 9/13/2019. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 8/30/2019. (KAH) (Entered: 08/30/2019)
08/30/2019	<a href="#"><u>50 (p.555)</u></a>	Unopposed MOTION for Leave to File Surreply in Opposition to Plaintiffs' <a href="#"><u>44 (p.480)</u></a> Motion to Reconsider by Wells Fargo Bank, N.A.. (Attachments: # <a href="#"><u>1 (p.22)</u></a> Exhibit A - Proposed Surreply, # <a href="#"><u>2 (p.100)</u></a> Proposed Pleading; Proposed Order)(Meyer, Christopher) Modified on 9/3/2019 to add docket entry relationship (SWE). (Entered: 08/30/2019)
09/04/2019	<a href="#"><u>51 (p.563)</u></a>	ORDER granting <a href="#"><u>50 (p.555)</u></a> Unopposed MOTION for Leave to File Surreply in Opposition to Plaintiffs' Motion to Reconsider filed by Wells Fargo Bank, N.A.. Signed by Judge John W. deGravelles on 9/4/2019. (SWE) (Entered: 09/04/2019)
09/04/2019	<a href="#"><u>52 (p.564)</u></a>	SURREPLY IN OPPOSITION to <a href="#"><u>44 (p.480)</u></a> MOTION for Reconsideration of <a href="#"><u>39 (p.454)</u></a> Order on Motion to Dismiss for Failure to State a Claim filed by Wells Fargo Bank, N.A. (SWE) (Entered: 09/04/2019)
09/16/2019	<a href="#"><u>53 (p.568)</u></a>	MOTION for Leave to File to File Sur-Reply by Darrell Berry. (Attachments: # <a href="#"><u>1 (p.22)</u></a> Proposed Pleading; # <a href="#"><u>2 (p.100)</u></a> Order)(EDC) (Entered: 09/17/2019)
09/16/2019	<a href="#"><u>54 (p.585)</u></a>	Final Ruling and Order/Motion to Reconsider of <a href="#"><u>39 (p.454)</u></a> Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (Attachments: # <a href="#"><u>1 (p.22)</u></a> Order)(EDC) (Entered: 09/17/2019)
09/16/2019	<a href="#"><u>55 (p.607)</u></a>	MOTION for Leave to File Amended Complaint and Memorandum of Law in Support by Darrell Berry. (Attachments: # <a href="#"><u>1 (p.22)</u></a> Proposed Pleading; # <a href="#"><u>2 (p.100)</u></a> Exhibit, # <a href="#"><u>3 (p.103)</u></a> Attachment, # <a href="#"><u>4 (p.114)</u></a> Order)(EDC) Modified on 9/23/2019 in accordance with record document 59.(EDC). (Entered: 09/17/2019)
09/16/2019	<a href="#"><u>56 (p.619)</u></a>	

		REQUEST for Judicial Notice by Darrell Berry. (EDC) (Entered: 09/17/2019)
09/16/2019	<u>57 (p.624)</u>	AFFIDAVIT/Affirmation in Opposition to <u>39 (p.454)</u> Order on Motion to Dismiss for Failure to State a Claim by Darrell Berry. (EDC) (Entered: 09/17/2019)
09/17/2019	<u>58 (p.627)</u>	OPINION Adopting <u>49 (p.536)</u> Report and Recommendation of the U.S. Magistrate Judge; granting <u>5 (p.136)</u> Motion to Dismiss for Failure to State a Claim. Plaintiff's claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System are DISMISSED WITH PREJUDICE. Signed by Judge John W. deGravelles on 9/17/2019. (EDC) Modified on 9/18/2019 to edit text. (EDC). (Entered: 09/17/2019)
09/18/2019		MOTION(S) REFERRED: <u>55 (p.607)</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support. This motion is now pending before the USMJ. (EDC) (Entered: 09/18/2019)
09/19/2019	59	ORDER denying <u>55 (p.607)</u> MOTION for Leave to File Amended Complaint and Memorandum of Law in Support filed by Darrell Berry. The district judge has dismissed plaintiffs' claims with prejudice. (R. Docs. 39 and 58). The Court will not allow the claims to be revived by way of amended complaint. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 9/19/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (Bourgeois, Richard) (Entered: 09/19/2019)
09/19/2019	<u>60 (p.628)</u>	ORDER TO SHOW CAUSE: Plaintiffs shall show cause within 14 days, in writing, why their claims asserted against defendant LoanCity should not be dismissed because of their failure to serve this defendant within the time allowed by Fed. R. Civ. P. Rule 4(m). Show Cause Response due by 9/28/2019. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 9/19/2019. (KAH) (Entered: 09/19/2019)
09/27/2019	<u>61 (p.630)</u>	RESPONSE TO ORDER TO SHOW CAUSE regarding <u>60 (p.628)</u> Order to Show Cause. (Attachments: # <u>1 (p.22)</u> Order, # <u>2 (p.100)</u> Exhibit)(EDC) (Entered: 09/30/2019)
10/04/2019	<u>62 (p.637)</u>	NOTICE OF APPEAL of <u>58 (p.627)</u> OPINION Adopting Report and Recommendation, Order on Motion to Dismiss for Failure to State a Claim by Darrel Berry, Constance Lafayette. (SWE) (Entered: 10/07/2019)
10/22/2019	<u>63 (p.641)</u>	TRANSCRIPT REQUEST by Darrell Berry, Constance Lafayette for Transcript to Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836.. (Attachments: # <u>1 (p.22)</u> Exhibit A, # <u>2 (p.100)</u> Proposed Order)(KMW) Modified on 10/23/2019 to edit docket text (KMW). Modified on 10/24/2019 and form forwarded to the Court Reporter and DQA via email. (KMW) (Attachment 1 replaced on 7/7/2020 to add exhibits in accordance with record document 105 ) (KMW). (Entered: 10/23/2019)
10/22/2019	<u>64 (p.664)</u>	

		TRANSCRIPT REQUEST by Darrell Berry, Constance Lafayette for Transcript to Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836.. (Attachments: # <u>1</u> (p.22) Exhibit A, # <u>2</u> (p.100) Proposed Order)(KMW) Modified on 10/23/2019 to edit the docket text (KMW). Modified on 10/24/2019 and form forwarded to the Court Reporter and DQA via email. (KMW) (Attachment 1 replaced on 7/7/2020 to add exhibit in accordance with record document 105) (KMW). (Entered: 10/23/2019)
10/30/2019	<u>65</u> (p.687)	TRANSCRIPT REQUEST by Darrell Berry for dates 8/1/2019, 10/4/2019, and 10/25/2018, re <u>62</u> (p.637) Notice of Appeal, <u>45</u> (p.515) Notice of Appeal (KMW) Modified on 10/31/2019 to edit the docket text (KMW). (Entered: 10/31/2019)
10/30/2019	<u>66</u> (p.688)	AFFIDAVIT/Affirmation Transmittal of Information to the Fifth Circuit Court of Appeals by Darrell Berry. (KMW) (Entered: 10/31/2019)
10/30/2019	<u>67</u> (p.693)	Amendment to the Request for Transcript to the Fifth Circuit Court of Appeals and Confirmation all Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836 by Darrell Berry. (Attachments: # <u>1</u> (p.22) Attachment, # <u>2</u> (p.100) Proposed Order)(KMW) (Entered: 10/31/2019)
11/06/2019	<u>68</u> (p.707)	RULING and ORDER granting <u>53</u> (p.568) Motion for Leave to File Sur-Reply; granting in part and denying in part <u>44</u> (p.480) Motion for Reconsideration. The motion is GRANTED in part and Plaintiffs shall be given thirty (30) days in which to amend the operative complaint to attempt to state a viable claim against Wells Fargo. In all other respects, Plaintiff's motion is DENIED. Signed by Judge John W. deGravelles on 11/6/2019. (EDC) (Entered: 11/06/2019)
11/06/2019	<u>69</u> (p.713)	Sur-Reply in Opposition to <u>52</u> (p.564) Reply to Response to Motion to Reconsider filed by Darrell Berry. (EDC) (Entered: 11/06/2019)
11/06/2019		Set Deadlines: Amended Pleadings due by 12/6/2019. (EDC) (Entered: 11/06/2019)
11/07/2019	<u>70</u> (p.726)	ORDER For the reasons given in the Court's <u>68</u> (p.707) Ruling and Order on MTR I, the Final Ruling and Oder (sic) for <u>54</u> (p.585) Motion to Reconsider is GRANTED IN PART AND DENIED IN PART. Plaintiff's <u>67</u> (p.693) Amendment to the Request for Transcript to the Fifth Circuit Court of Appeals and Confirmation All Documents Were Transmitted to Appellant Court Case 0:19-pcd-30836 (sic) is REFERRED to the Magistrate Judge. Signed by Judge John W. deGravelles on 11/7/2019. (SWE) (Entered: 11/07/2019)
11/07/2019		MOTION(S) REFERRED: <u>67</u> (p.693) MOTION to Amend <u>64</u> (p.664) Request, <u>63</u> (p.641) Request,. This motion is now pending before the USMJ. (SWE) (Entered: 11/07/2019)
12/05/2019	<u>71</u> (p.728)	AMENDED PETITION against All Defendants, filed by Darrell Berry, Constance Lafayette.(EDC) (Entered: 12/06/2019)
12/05/2019	<u>72</u> (p.760)	

		NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <a href="#">68 (p.707)</a> Order on Ruling and Order by Darrell Berry. (EDC) (Main Document 72 replaced on 2/5/2020) (EDC). Modified on 2/5/2020 to include missing page.(EDC). (Entered: 12/06/2019)
12/05/2019	<a href="#">73 (p.764)</a>	NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL of <a href="#">68 (p.707)</a> Ruling and Order by Darrell Berry. (EDC) (Entered: 12/06/2019)
12/13/2019	<a href="#">74 (p.768)</a>	MOTION for Extension of Time to File Answer to <a href="#">71 (p.728)</a> Amended Complaint by Wells Fargo Bank, N.A.. (Attachments: # <a href="#">1 (p.22)</a> Proposed Pleading; Exhibit A - Proposed Order)(Meyer, Christopher) (Entered: 12/13/2019)
12/13/2019		MOTION(S) REFERRED: <a href="#">74 (p.768)</a> MOTION for Extension of Time to File Answer to <a href="#">71 (p.728)</a> Amended Complaint . This motion is now pending before the USMJ. (EDC) (Entered: 12/13/2019)
12/16/2019	75	ORDER granting <a href="#">74 (p.768)</a> Motion for Extension of Time to Respond to Amended Complaint. Defendant Wells Fargo Bank, N.A. is granted an extension of 21 days, or until 1/9/2020, to answer or otherwise plead. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/16/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 12/16/2019)
12/17/2019	<a href="#">76 (p.772)</a>	MOTION for Extension of Time to Respond to <a href="#">71 (p.728)</a> Amended Complaint by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <a href="#">1 (p.22)</a> Exhibit A - Proposed Order)(Meador, Lindsay) Modified on 12/17/2019 to edit the text (SWE). (Entered: 12/17/2019)
12/17/2019		MOTION(S) REFERRED: <a href="#">76 (p.772)</a> MOTION for Extension of Time to Respond to <a href="#">71 (p.728)</a> Amended Complaint . This motion is now pending before the USMJ. (SWE) (Entered: 12/17/2019)
12/20/2019	77	ORDER granting <a href="#">76 (p.772)</a> Motion for Extension of Time to Respond to Amended Complaint. Defendants Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, and Mortgage Electronic Registration System are granted an extension of time, until 1/9/2019, to answer or otherwise plead. Signed by Magistrate Judge Richard L. Bourgeois, Jr. on 12/20/2019. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SGO) (Entered: 12/20/2019)
12/31/2019	78	STRICKEN FROM THE RECORD AMENDED Petition with Exhibits A-O against Does 1-100, Federal Home Loan Mortgage Corporation, Loancity, Mortgage Electronic Registration System, Wells Fargo Bank, N.A., John Doe 1, and John Doe 2 filed by Darrell Berry, Constance Lafayette. (Attachments: # 1 Exhibit)(KMW) Modified on 1/7/2020 to edit the docket text (KMW). Modified on 9/25/2020 to remove the document as it has been stricken in accordance with record document 116.(EDC). (Entered: 01/02/2020)

01/03/2020	<u>79 (p.776)</u>	MOTION to Dismiss <i>Pursuant to FRCP 12(b)(6)</i> by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) (Entered: 01/03/2020)
01/03/2020	<u>80 (p.779)</u>	MOTION to Proceed on Appeal in forma pauperis by Darrell Berry. (Attachments: # <u>1 (p.22)</u> Proposed Pleading, # <u>2 (p.100)</u> Exhibit)(KAH) (Entered: 01/06/2020)
01/03/2020	<u>81</u>	STRICKEN FROM THE RECORD AMENDED Petition with Exhibits E1, F, 0 on Pages 7, 14, 16, 19 and 31 against, Does 1-100, Federal Home Loan Mortgage Corporation, Loancity, Mortgage Electronic Registration System, Wells Fargo Bank, N.A., John Doe 1, and John Doe 2 filed by Darrell Berry.(KAH) Modified on 1/7/2020 to edit text (LLH). Modified on 9/25/2020 to remove the document as it has been stricken in accordance with record document 116. (EDC). (Entered: 01/06/2020)
01/06/2020		MOTION(S) REFERRED: <u>79 (p.776)</u> MOTION to Dismiss <i>Pursuant to FRCP 12(b)(6)</i> . This motion is now pending before the USMJ. (KMW) (Entered: 01/06/2020)
01/06/2020	<u>82 (p.784)</u>	MEMORANDUM in Support of <u>79 (p.776)</u> MOTION to Dismiss <i>Pursuant to FRCP 12(b)(6)</i> filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Meador, Lindsay) (Entered: 01/06/2020)
01/07/2020	<u>83</u>	ORDER REFERRING MOTION to USMJ: <u>80 (p.779)</u> MOTION for Leave to Appeal in forma pauperis filed by Darrell Berry. Signed by Judge John W. deGravelles on 01/07/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 01/07/2020)
01/09/2020	<u>84 (p.789)</u>	MOTION to Dismiss for Failure to State a Claim by Wells Fargo Bank, N.A.. (Attachments: # <u>1 (p.22)</u> Memorandum in Support, # <u>2 (p.100)</u> Exhibit A - Mortgage, # <u>3 (p.103)</u> Exhibit B - Note, # <u>4 (p.114)</u> Exhibit C - Assignment)(Meyer, Christopher) (Entered: 01/09/2020)
01/10/2020		MOTION(S) REFERRED: <u>84 (p.789)</u> MOTION to Dismiss for Failure to State a Claim . This motion is now pending before the USMJ. (KAH) (Entered: 01/10/2020)
01/10/2020	<u>85 (p.833)</u>	MOTION to Dismiss <i>Pursuant to Rule 12(B)(6)</i> by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <u>1 (p.22)</u> Memorandum in Support)(Young, Lindsay) (Main Document 85 replaced on 7/6/2020 in accordance with RD 104) (SWE). (Entered: 01/10/2020)
01/10/2020		MOTION(S) REFERRED: <u>85 (p.833)</u> MOTION to Dismiss <i>Pursuant to Rule 12(B)(6)</i> . This motion is now pending before the USMJ. (SWE) (Entered: 01/10/2020)
01/13/2020	<u>86 (p.841)</u>	Notice of Substitution re: Motion to Dismiss Pursuant to 12(B)(6) (Doc. 85) by Federal Home Loan Mortgage Corporation, Freddie Mac

		Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Attachments: # <a href="#">1 (p.22)</a> Exhibit A, # <a href="#">2 (p.100)</a> Exhibit B, # <a href="#">3 (p.103)</a> Exhibit C)(Young, Lindsay) Modified on 1/13/2020 to edit text. (EDC). (Entered: 01/13/2020)
01/13/2020		MOTION(S) REFERRED: <a href="#">86 (p.841)</a> MOTION to Substitute Motion to Dismiss Pursuant to 12(B)(6) (Doc. 85) . This motion is now pending before the USMJ. (EDC) (Entered: 01/13/2020)
01/13/2020	<a href="#">87 (p.851)</a>	Reply to <a href="#">79 (p.776)</a> MOTION to Dismiss Pursuant to Rule 12(B)(6) filed by Darrell Berry, Constance Lafayette. (KMW) Modified on 6/24/2020 to edit the text (KAH). (Entered: 01/14/2020)
01/17/2020	<a href="#">88 (p.862)</a>	MOTION for Leave to File Sur-Reply in Opposition to Defendant's Memorandum in Support of Motion to Dismiss and Motion for Extension of Time by Darrell Berry, Constance Lafayette. (Attachments: # <a href="#">1 (p.22)</a> Exhibit A, # <a href="#">2 (p.100)</a> Proposed Order)(KMW) (Entered: 01/21/2020)
01/22/2020		MOTION(S) REFERRED: <a href="#">88 (p.862)</a> MOTION for Leave to File Sur-Reply in Opposition to Defendant's Memorandum in Support of Motion to Dismiss and Motion for Extension of Time. This motion is now pending before the USMJ. (KMW) (Entered: 01/22/2020)
01/31/2020	<a href="#">89 (p.869)</a>	NOTICE of Correction to Fifth Circuit Court of Appeals' Official Caption by Darrell Berry. (EDC) (Entered: 01/31/2020)
02/05/2020	<a href="#">90 (p.872)</a>	MOTION for Leave to File Sur-Reply in Opposition to Defendants' Memorandum of Law in Support of Motion to Dismiss and Motion for an Extension of Time by Darrell Berry. (Attachments: # <a href="#">1 (p.22)</a> Proposed Order)(KMW) (Entered: 02/06/2020)
02/05/2020	<a href="#">91 (p.876)</a>	NOTICE of Correction to Fifth Circuit Court of Appeals' Transmittal of Complete Document 72 (Page 2 of 4 Signature Page) by Darrell Berry (KMW) (Entered: 02/06/2020)
02/06/2020		MOTION(S) REFERRED: <a href="#">90 (p.872)</a> MOTION for Leave to File Sur-Reply in Opposition to Defendants' Memorandum of Law in Support of Motion to Dismiss and Motion for an Extension of Time. This motion is now pending before the USMJ. (KMW) (Entered: 02/06/2020)
02/19/2020	92	NOTICE: Pursuant to General Order 2020-03, this case is reassigned to Magistrate Judge Scott D. Johnson (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(NLT) (Entered: 02/19/2020)
03/26/2020	<a href="#">93 (p.879)</a>	ORDER granting <a href="#">80 (p.779)</a> Motion for Leave to Appeal in forma pauperis. Signed by Magistrate Judge Scott D. Johnson on 03/25/2020. (LT) (Entered: 03/26/2020)
04/08/2020	94	USCA Case Number 19-30610 for <a href="#">45 (p.515)</a> NOTICE OF INTENT TO FILE WRIT OF FINAL RULING/NOTICE OF APPEAL filed by Darrell Berry, Constance Lafayette. (SWE) Modified on 4/8/2020 to edit text(SWE). (Entered: 04/08/2020)

04/08/2020	95	USCA Case Number 19-30836 for <u>62 (p.637)</u> Notice of Appeal filed by Darrell Berry, Constance Lafayette. (SWE) (Entered: 04/08/2020)
04/09/2020		Record on Appeal #19-30610 Electronically Certified regarding <u>45 (p.515)</u> Notice of Appeal. US Court of Appeals notified of certification. (SWE) (Entered: 04/09/2020)
04/09/2020	96	Electronic Access to the Record on Appeal is now available through the Court of Appeals CM/ECF document filing system. Instructions for accessing the record can be found at <a href="http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads">www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads</a> . Request for paper exhibits in addition to the record on appeal and shipping information should be faxed to the clerks office at 225-389-3501. The clerk of court will retain the responsibility of sending the record to the 5th Circuit upon their request. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SWE) (Entered: 04/09/2020)
04/13/2020		Record on Appeal #19-30836 Electronically Certified regarding <u>62 (p.637)</u> Notice of Appeal. US Court of Appeals notified of certification. (SWE) (Entered: 04/13/2020)
04/13/2020	97	Electronic Access to the Record on Appeal #19-30836 is now available through the Court of Appeals CM/ECF document filing system. Instructions for accessing the record can be found at <a href="http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads">www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads</a> . Request for paper exhibits in addition to the record on appeal and shipping information should be faxed to the clerks office at 225-389-3501. The clerk of court will retain the responsibility of sending the record to the 5th Circuit upon their request. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SWE) (Entered: 04/13/2020)
04/16/2020	98	Electronic Access to the Record on Appeal is now available to Christopher D. Meyer through the Court of Appeals CM/ECF document filing system. Instructions for accessing the record can be found at <a href="http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads">www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads</a> . Request for paper exhibits in addition to the record on appeal and shipping information should be faxed to the clerks office at 225-389-3501. The clerk of court will retain the responsibility of sending the record to the 5th Circuit upon their request. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SWE) (Entered: 04/16/2020)
05/04/2020	<u>99 (p.880)</u>	REQUEST for Record on Appeal by Darrell Berry, Constance Lafayette (KMW) (Entered: 05/06/2020)
05/08/2020	<u>100 (p.883)</u>	Transmitted Record on Appeal to Darrell Berry regarding <u>62 (p.637)</u> Notice of Appeal. (SWE) (Entered: 05/08/2020)
06/03/2020	<u>101 (p.884)</u>	NOTICE of Record on Appeal Received by Darrell Berry (KMW) (Entered: 06/05/2020)
06/26/2020	<u>102 (p.894)</u>	CLERK ORDER dismissing appeal pursuant to 5th Circuit Rule 42 for failure to file appellant's brief and record excerpts. (SWE) (Entered:

		06/26/2020)
07/02/2020	103	ORDER: Plaintiffs' <u>88</u> (p.862) and <u>90</u> (p.872) Motions for Leave to File Sur-Replies in Opposition to Defendants' Motion to Dismiss and Motion for Extension of Time, which both request the same relief, are GRANTED IN PART and DENIED IN PART. While Plaintiffs have styled their Motions as seeking leave to file sur-replies, Plaintiffs actually are asking for leave to file oppositions, which have not yet been filed, and for which Plaintiffs do not need leave of Court. See Local Civil Rule 7(f) of the Local Rules of the United States District Court for the Middle District of Louisiana. As such, to the extent Plaintiffs' Motions seek leave to file sur-replies, they are DENIED AS MOOT. Plaintiffs' request for an extension of time is GRANTED, and Plaintiffs have 21 days from the date of this Order to file oppositions to Defendants' pending Motions to Dismiss (R. Docs. 84 and 85). Signed by Magistrate Judge Scott D. Johnson on 7/2/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KAH) (Entered: 07/02/2020)
07/02/2020	104	ORDER: The <u>86</u> (p.841) Motion to Substitute filed by Defendants Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust, and Mortgage Electronic Registration Systems, Inc. is GRANTED. The Clerk of Court will substitute the correct Motion to Dismiss Pursuant to Rule 12(b)(6) (R. Doc. 86-1) in place of the current Motion to Dismiss Pursuant to Rule 12(b)(6) (R. Doc. 85). Signed by Magistrate Judge Scott D. Johnson on 7/2/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KAH) (Entered: 07/02/2020)
07/06/2020	105	ORDER: Plaintiffs' <u>67</u> (p.693) Amendment to the Request for Transcript to Fifth Circuit is GRANTED, only to the extent that Plaintiffs seek to supplement the Exhibits to their previously-filed Transcript Requests (R. Docs. 63 and 64). The Clerk of Court will add R. Doc. 67-1 to both R. Doc. 63-1 and R. Doc. 64-1. To the extent Plaintiffs' Amendment (R. Doc. 67) seeks any other relief, it is DENIED. Signed by Magistrate Judge Scott D. Johnson on 7/6/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (KAH) (Entered: 07/06/2020)
07/22/2020	<u>106</u> (p.897)	MOTION to Strike by Darrell Berry. (Attachments: # <u>1</u> (p.22) proposed order)(KMW) (Entered: 07/28/2020)
07/22/2020	<u>107</u> (p.901)	MEMORANDUM in Opposition to <u>79</u> (p.776) MOTION to Dismiss Pursuant to FRCP 12(b)(6) filed by Darrell Berry. (Attachments: # <u>1</u> (p.22) Memorandum in Support)(KMW) (Entered: 07/28/2020)
07/22/2020	<u>108</u> (p.921)	MEMORANDUM in Opposition to <u>84</u> (p.789) MOTION to Dismiss for Failure to State a Claim filed by Darrell Berry. (Attachments: # <u>1</u> (p.22) Memorandum in Support)(KMW) (Entered: 07/28/2020)
07/28/2020		MOTION(S) REFERRED: <u>106</u> (p.897) MOTION to Strike. This motion is now pending before the USMJ. (KMW) (Entered: 07/28/2020)
07/29/2020	<u>109</u> (p.945)	

		Transmitted Record on Appeal to Darrell Berry (SWE) (Entered: 07/29/2020)
08/03/2020	<a href="#"><u>110 (p.946)</u></a>	REPLY to <a href="#"><u>84 (p.789)</u></a> MOTION to Dismiss for Failure to State a Claim , <a href="#"><u>108 (p.921)</u></a> Memorandum in Opposition to Motion filed by Wells Fargo Bank, N.A.. (Meyer, Christopher) (Entered: 08/03/2020)
08/11/2020	<a href="#"><u>111 (p.952)</u></a>	RESPONSE in Opposition to <a href="#"><u>106 (p.897)</u></a> MOTION to Strike filed by Wells Fargo Bank, N.A.. (Meyer, Christopher) (Entered: 08/11/2020)
08/11/2020	<a href="#"><u>112 (p.956)</u></a>	REPLY to <a href="#"><u>107 (p.901)</u></a> Memorandum in Opposition to <a href="#"><u>79 (p.776)</u></a> MOTION to Dismiss <i>Pursuant to FRCP 12(b)(6)</i> filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series (Entered: 08/11/2020)
08/13/2020	<a href="#"><u>113 (p.960)</u></a>	NOTICE that Documents are Missing from the Record Provided by Darrell Berry (Attachments: # <a href="#"><u>1 (p.22)</u></a> Attachment)(KMW) (Entered: 08/17/2020)
08/17/2020	<a href="#"><u>114 (p.982)</u></a>	RESPONSE to <a href="#"><u>106 (p.897)</u></a> MOTION to Strike filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Young, Lindsay) Modified on 8/17/2020 to edit the docket text (SWE). (Entered: 08/17/2020)
08/18/2020	<a href="#"><u>115 (p.985)</u></a>	Transmitted Record on Appeal to Darrell Berry regarding <a href="#"><u>62 (p.637)</u></a> Notice of Appeal. (SWE) (Entered: 08/18/2020)
09/25/2020	<a href="#"><u>116 (p.986)</u></a>	RULING AND ORDER: Plaintiffs' 78 Amended Petition with Exhibits A-O and 81 Amended Petition with Exhibits E1, F, O on Pages 7, 14, 16, 19 and 31 be STRICKEN from the record by the Clerk of Court. Granting <a href="#"><u>85 (p.833)</u></a> Motion to Dismiss and Plaintiffs' claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System be DISMISSED WITH PREJUDICE; and <a href="#"><u>84 (p.789)</u></a> Motion to Dismiss for Failure to State a Claim and Plaintiff's claims against Wells Fargo Bank, N.A. be DISMISSED WITH PREJUDICE. Denying as moot <a href="#"><u>79 (p.776)</u></a> Motion to Dismiss. Signed by Judge John W. deGravelles on 9/25/2020. (EDC) (Entered: 09/25/2020)
10/15/2020	<a href="#"><u>117 (p.1006)</u></a>	NOTICE of Judicial Notice by Darrell Berry. (EDC) (Entered: 10/16/2020)
10/15/2020	<a href="#"><u>118 (p.1010)</u></a>	AFFIDAVIT/Plaintiff's Motion to Vacate and Opposition to Ruling and Order Dated September 25, 2020 by Darrell Berry. (EDC) (Entered: 10/16/2020)
10/15/2020	<a href="#"><u>119 (p.1015)</u></a>	Request to Vacate <a href="#"><u>116 (p.986)</u></a> Ruling and Order and Opposition to Ruling and Order Dated September 25, 2020 by Darrell Berry. (Attachments: # <a href="#"><u>1 (p.22)</u></a> Exhibit)(EDC) (Entered: 10/16/2020)
10/23/2020	<a href="#"><u>120 (p.1199)</u></a>	NOTICE OF INTENT TO FILE WRIT FOR APPEAL OF FINAL RULING of <a href="#"><u>116 (p.986)</u></a> Order on Motion to Dismiss, and Request for Oral Argument by Darrell Berry. Constance Lafayette. (Attachments: # <a href="#"><u>1 (p.22)</u></a> Order)(EDC) (Entered: 10/26/2020)

10/23/2020	121	Request for Oral Argument on <a href="#">120 (p.1199)</a> Notice of Appeal by Darrell Berry, Constance Lafayette. (To see image of document, please see Record Document 120). (EDC) (Entered: 10/26/2020)
10/23/2020	<a href="#">122 (p.1203)</a>	MOTION to Proceed on Appeal In forma pauperis in the Fifth Circuit Court of Appeals by Darrell Berry, Constance Lafayette. (Attachments: # <a href="#">1 (p.22)</a> Order)(EDC) (Entered: 10/26/2020)
10/28/2020	123	ORDER REFERRING MOTION to USMJ: <a href="#">122 (p.1203)</a> MOTION for Leave to Appeal in forma pauperis filed by Darrell Berry, Constance Lafayette. Signed by Judge John W. deGravelles on 10/28/2020. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 10/28/2020)
10/30/2020	<a href="#">124 (p.1207)</a>	TRANSCRIPT REQUEST by Darrell Berry for proceedings held on 9/25/2020 re <a href="#">120 (p.1199)</a> Notice of Appeal (KMW) (Entered: 10/30/2020)
11/03/2020	<a href="#">125 (p.1208)</a>	MEMORANDUM in Opposition to <a href="#">119 (p.1015)</a> MOTION to Vacate Ruling and <a href="#">116 (p.986)</a> Order on Motion to Dismiss Order on Motion to Dismiss for Failure to State a Claim, filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, Mortgage Electronic Registration System. (Young, Lindsay) Modified on 11/3/2020 to edit text (ELW). (Entered: 11/03/2020)
11/05/2020	<a href="#">126 (p.1212)</a>	Judicial NOTICE by Darrell Berry (KMW) (Entered: 11/05/2020)
11/05/2020	<a href="#">127 (p.1217)</a>	MOTION to Vacate <a href="#">70 (p.726)</a> Order dated November 7, 2019 Dismissing Plaintiff's Claims Against Federal Home Loan Mortgage Corporation, Freddie Mac Multi-class Certificates Series 311 Trust; and Mortgage Electronic Registration Systems; DOES 1-100 inclusive, et al. by Darrell Berry. (Attachments: # <a href="#">1 (p.22)</a> proposed order)(KMW) Modified on 11/9/2020 to edit the docket text (KMW). (Entered: 11/05/2020)
11/05/2020	<a href="#">128 (p.1242)</a>	MOTION to Vacate <a href="#">68 (p.707)</a> Order Dated November 6, 2019 Dismissing Plaintiff's Claims Against Wells Fargo by Darrell Berry. (Attachments: # <a href="#">1 (p.22)</a> proposed order)(KMW) Modified on 11/9/2020 to edit the docket text (KMW). (Entered: 11/05/2020)
11/16/2020	<a href="#">129 (p.1267)</a>	ORDER granting <a href="#">122 (p.1203)</a> Motion for Leave to Appeal in forma pauperis. Signed by Magistrate Judge Scott D. Johnson on 11/16/2020. (EDC) (Entered: 11/16/2020)
11/18/2020	<a href="#">130 (p.1268)</a>	Corporate Disclosure Statement by Wells Fargo Bank, N.A. identifying Corporate Parent Wells Fargo & Company for Wells Fargo Bank, N.A... (Meyer, Christopher) (Entered: 11/18/2020)
11/18/2020	<a href="#">131 (p.1270)</a>	RESPONSE in Opposition to <a href="#">128 (p.1242)</a> MOTION to Vacate <a href="#">68 (p.707)</a> Order Dated November 6, 2019 Dismissing Plaintiff's Claims Against Wells Fargo filed by Wells Fargo Bank, N.A.. (Meyer, Christopher) (Entered: 11/18/2020)
12/09/2020	<a href="#">132 (p.1275)</a>	Opposition to <a href="#">131 (p.1270)</a> Response in Opposition to <a href="#">128 (p.1242)</a> MOTION to Vacate filed by Darrell Berry. (Attachments: # <a href="#">1 (p.22)</a> proposed order)(KMW) (Entered: 12/14/2020)

12/21/2020	<u>133 (p.1285)</u>	Request for submission of Motion to Strike Wells Fargo Bank, N.A. Disclosure Statement Filed Out of Time by Darrell Berry. (Attachments: # <u>1 (p.22)</u> Proposed Pleading; # <u>2 (p.100)</u> proposed order)(KMW) (Entered: 12/23/2020)
12/23/2020		MOTION(S) REFERRED: <u>133 (p.1285)</u> Request for submission of Motion to Strike Wells Fargo Bank, N.A. Disclosure Statement Filed Out of Time. This motion is now pending before the USMJ. (KMW) (Entered: 12/23/2020)
01/05/2021	<u>134 (p.1293)</u>	ORDER denying <u>119 (p.1015)</u> Motion to Vacate. Signed by Judge John W. deGravelles on 1/5/2021. (EDC) (Entered: 01/05/2021)
01/05/2021	<u>135 (p.1295)</u>	ORDER denying <u>127 (p.1217)</u> Motion to Vacate and <u>128 (p.1242)</u> Motion to Vacate. Future frivolous pleadings by Plaintiffs will result in the imposition of sanctions against them. Signed by Judge John W. deGravelles on 1/5/2021. (EDC) (Entered: 01/05/2021)
01/06/2021	<u>136 (p.1297)</u>	ORDER denying <u>106 (p.897)</u> Motion to Strike. Signed by Magistrate Judge Scott D. Johnson on 1/6/2021. (ELW) (Entered: 01/06/2021)
01/06/2021	<u>137 (p.1301)</u>	ORDER denying <u>133 (p.1285)</u> Request for Submissions of Their Motion to Strike WellsFargo Bank, N.A. Disclosure Statement Filed Out of Time ("Motion to Strike"). Signed by Magistrate Judge Scott D. Johnson on 1/6/2021. (KAH) (Entered: 01/06/2021)
01/12/2021	138	USCA Case Number 20-30670 for <u>120 (p.1199)</u> Notice of Appeal filed by Darrell Berry, Constance Lafayette. (SWE) (Entered: 01/12/2021)
01/13/2021	<u>139 (p.1304)</u>	RULING AND ORDER: Plaintiffs' claims against LoanCity be DISMISSED WITHOUT PREJUDICE for failure to serve under Federal Rule of Civil Procedure 4(m). Signed by Judge John W. deGravelles on 1/13/2021. (LLH) Modified on 1/20/2021 to correct signature date (LLH). (Entered: 01/13/2021)
01/13/2021		Record on Appeal #20-30670 Electronically Certified regarding <u>120 (p.1199)</u> Notice of Appeal. US Court of Appeals notified of certification. (SWE) (Entered: 01/13/2021)
01/13/2021	140	Electronic Access to the Record on Appeal is now available through the Court of Appeals CM/ECF document filing system. Instructions for accessing the record can be found at <a href="http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads">www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads</a> . Request for paper exhibits in addition to the record on appeal and shipping information should be faxed to the clerks office at 225-389-3501. The clerk of court will retain the responsibility of sending the record to the 5th Circuit upon their request. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SWE) (Entered: 01/13/2021)
01/14/2021	<u>141 (p.1309)</u>	JUDGMENT : Is hereby entered in favor of Defendants and against Plaintiffs: (2) that all of Plaintiffs claims against Loancity are DISMISSED WITHOUT PREJUDICE, for failure to serve under Federal Rule of CivilProcedure 4(m); and (3) that all of Plaintiffs claims against all other Defendants are DISMISSED WITH PREJUDICE, for failure to state cognizable claims. Signed by Judge

		John W. deGravelles on 1/14/2021. (ELW) (Entered: 01/14/2021)
01/20/2021	<u>142 (p.1310)</u>	<p><b>GENERAL ORDER:</b> All pleadings and other papers filed under seal in civil and criminal actions shall be maintained under seal for thirty days following final disposition of the action. After that time, all sealed pleadings and other papers shall be placed in the case record unless a District Judge or Magistrate Judge, upon motion and for good cause shown, orders that the pleading or other paper be maintained under seal.</p> <p>The deadline for filing any motions regarding the unsealing of any document shall be within thirty days of the final disposition of any action and shall contain a concise statement of reasons for maintaining the pleading or other paper under seal.</p> <p><b>ATTENTION:</b> If a motion to retain documents under seal is NOT filed, all documents shall be placed in the public case record, unless specifically identified in the attached General Order.</p> <p>Signed by Chief Judge Shelly D. Dick on 7/8/2019. (ELW) (Entered: 01/20/2021)</p>
01/21/2021	143	<p>Electronic Access to the Record on Appeal is now available to Christopher D. Meyer and Lindsay Meador Young through the Court of Appeals CM/ECF document filing system. Instructions for accessing the record can be found at <a href="http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads">www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads</a>. Request for paper exhibits in addition to the record on appeal and shipping information should be faxed to the clerks office at 225-389-3501. The clerk of court will retain the responsibility of sending the record to the 5th Circuit upon their request. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.) (SWE) (Entered: 01/21/2021)</p>
01/21/2021	<u>144 (p.1312)</u>	REQUEST Mailed Copy of the Official Record Required for Appellant Court Case Number 20-30670 by Darrell Berry (KMW) (Entered: 01/22/2021)
01/25/2021	<u>145 (p.1315)</u>	Transmitted Record on Appeal to Darrell Berry regarding <u>120 (p.1199)</u> Notice of Appeal. (SWE) (Entered: 01/25/2021)
01/29/2021	<u>146 (p.1316)</u>	NOTICE of Intent to File Writ for APPEAL of Final Ruling and Order, and Judgment and Request for Oral Argument by Darrell Berry. (KMW) (Additional attachment(s) added on 2/1/2021: # <u>1 (p.22)</u> cover letter) (KMW) (Entered: 02/01/2021)
01/29/2021	<u>147 (p.1321)</u>	MOTION for Leave to Appeal in forma pauperis by Darrell Berry. (Attachments: # <u>1 (p.22)</u> proposed order)(KMW) (Entered: 02/01/2021)
01/29/2021	<u>148 (p.1326)</u>	Request for Clarification by Darrell Berry. (KMW) (Entered: 02/01/2021)
01/29/2021	150	NOTICE OF APPEAL by Darrell Berry. See Record Document 146 for image. (Entered for Statistical Purposes) (KMW) (Entered: 02/02/2021)
02/02/2021	149	

		ORDER REFERRING MOTION to USMJ: <a href="#">147 (p.1321)</a> MOTION for Leave to Appeal in forma pauperis filed by Darrell Berry. Signed by Judge John W. deGravelles on 2/2/2021. (This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry.)(KDC) (Entered: 02/02/2021)
02/03/2021	<a href="#">151 (p.1329)</a>	ORDER granting <a href="#">148 (p.1326)</a> Request for Clarification. A final judgment was entered in this matter on 1/14/2021 (Doc. 141). Signed by Judge John W. deGravelles on 2/2/2021. (SWE) (Entered: 02/03/2021)
02/03/2021	<a href="#">152 (p.1330)</a>	ORDER granting <a href="#">147 (p.1321)</a> Motion to Proceed on Appeal in forma pauperis. Signed by Magistrate Judge Scott D. Johnson on 2/3/2021. (SWE) (Entered: 02/03/2021)
02/04/2021	153	USCA Case Number 21-30060 for 150 Notice of Appeal filed by Darrell Berry. (SWE) (Entered: 02/04/2021)

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

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-SDJ

LOANCITY, ET AL.

RULING AND ORDER

This matter comes before the Court on three Motions to Dismiss (Docs. 79, 84, and 85), two filed by Defendants Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113 Trust, and Mortgage Electronic Registration System (collectively, “Freddie Mac Defendants”) (Docs. 79 and 85) and one filed by Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) (Doc. 84). Plaintiffs Darrell Berry and Constance Lafayette oppose the motions. (Docs. 87, 107, and 108). The Court has carefully considered the law, facts in the record, and arguments and submissions of the parties. For the following reasons, the motions are **GRANTED**, and Plaintiffs’ claims against all Defendants are **DISMISSED WITH PREJUDICE**.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs filed suit in state court on August 20, 2018, asserting a variety of claims against LoanCity, Wells Fargo Bank, N.A. (“Wells Fargo”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), Freddie Mac Multiclass Certificates, Series 3113 Trust, Mortgage Electronic Registration System (“MERS”), and Does 1–100. (Doc 1-2 at 51–52 ¶¶ 4–11). Specifically, Plaintiffs claims are for: (1) lack of standing/wrongful foreclosure; (2) unconscionable contract; (3) breach of contract against LoanCity/MERS; (4) breach of fiduciary duty; (5) quiet title; (6) slander of title; (7) injunctive relief; and (8) declaratory relief. (*Id.* at 56–62 ¶¶ 38–94). Defendants removed the case to federal court on October 15, 2018. (Doc. 1).

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

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

Plaintiffs assert that Defendant Wells Fargo lacks authority to enforce the mortgage due to an improper securitization and subsequent assignment. (*Doc. 1-2 at 54 ¶ 21*). Plaintiffs believe that "Defendants participated in a transactional scheme whereby a purported Tangible Note is converted/exchanged for a Payment Intangible asset to provide an alternative investment offering via Special Deposit to certificate or bond holders[.]" (*Id. at 53 ¶ 15*). Ultimately, Plaintiffs believe that LoanCity "unlawfully purported to assign, transfer, or convey its interest in Plaintiffs' Note[.]" and thus Defendants do not have a colorable claim on the mortgage. (*Id. at 53, 55 ¶¶ 18, 22*).

On October 12, 2018, both Wells Fargo and the Freddie Mac Defendants filed Motions to Dismiss for Failure to State a Claim (Docs. 4 and 5). This Court, on July 3, 2019, granted Wells

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<sup>1</sup> On March 19, 2018, after the Petition was filed, Wells Fargo assigned the note to a third party, Specialized Loan Servicing LLC. (*Doc. 37 at 2*).

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Fargo's Motion, dismissing Plaintiffs' claims against Wells Fargo with prejudice (Doc. 39). Similarly, this Court granted the Motion filed by the Freddie Mac Defendants on September 17, 2019, also dismissing Plaintiffs' claims against the Freddie Mac Defendants with prejudice (Doc. 58).<sup>2</sup> Plaintiffs subsequently appealed these decisions to the Fifth Circuit Court of Appeals.<sup>3</sup> (Docs. 45 and 62).

Plaintiffs also filed Motions for Reconsideration of this Court's dismissals of its claims against Wells Fargo (Doc. 44) and against the Freddie Mac Defendants (Doc. 54), which this Court subsequently granted in part and denied in part (Docs. 68 and 70). With regard to Wells Fargo, this Court found that because Plaintiffs failed to show an error of law or fact in the Court's prior order of dismissal, the dismissal of those prior claims was affirmed. (Doc. 68 at 3-4). This Court also found, however, that Plaintiffs potentially raised new issues and claims not previously addressed, specifically "that (1) the promissory note and mortgage note were cancelled and that Wells Fargo fraudulently induced Plaintiffs to sign a re-finance agreement, and (2) Wells Fargo did in fact foreclose against Plaintiffs in state court, and this state court suit is still pending." (*Id.* at 4). As such, this Court gave Plaintiffs thirty days in which to amend their Petition to attempt to assert a viable claim against Wells Fargo. (*Id.* at 6). Similarly, with regard to the Freddie Mac Defendants, this Court also gave Plaintiffs thirty days to amend their Petition to state a viable claim against the Freddie Mac Defendants, again finding that while Plaintiffs failed to show the Court erred in its opinion granting dismissal, they did present some "potential new claims." (Doc. 70 at 1). In both rulings, this Court cautioned Plaintiffs that they were subject to the obligations of Rule 11 of the Federal Rules of Civil Procedure. (Doc. 68 at 5-6; Doc. 70 at 1).

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<sup>2</sup> This Court's Opinion (Doc. 58) adopted a Report and Recommendation by the Magistrate Judge recommending dismissal (Doc. 49).

<sup>3</sup> One appeal, No. 19-30610, has since been dismissed for failure to prosecute. The other appeal, No. 19-30836, appears to still be pending.

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Within the thirty-day allotment, Plaintiffs filed an Amended Petition on December 5, 2019 (Doc. 71). Plaintiffs subsequently filed a second “Amended Petition with Exhibits A-O” on December 31, 2019 (Doc. 78). The Freddie Mac Defendants then filed their first Motion to Dismiss at issue here (Doc. 79) on January 3, 2020, and, following a third Amended Petition filed by Plaintiffs (Doc. 81), the Freddie Mac Defendants filed their second Motion to Dismiss now before the Court (Doc. 85). Wells Fargo filed a Motion to Dismiss (Doc. 84) as well, which is the subject of this Ruling and Order. Plaintiffs oppose Defendants’ Motions to Dismiss, filing multiple oppositions thereto (Docs. 87, 107, and 108).

## II. LAW AND ANALYSIS

### A. Applicable Law

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

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant can seek dismissal of a complaint, or any part thereof, for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). “To survive a Rule 12(b)(6) 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.” *Shiell v. Jones*, No. 19-848, 2020 WL 2331637, at \*10 (E.D. La. May 11, 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949; 173 L.Ed.2d 868 (2009)) (internal quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949). “The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Shiell*, 2020 WL 2331637, at \* 10 (quoting *Iqbal*, 556 U.S. at 679, 129 S.Ct. at 1949).

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A court must accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff. *Gines v. D.R. Horizon, Inc.*, 699 F.3d 812, 816 (5th Cir. 2012) (quoting *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007)). “Dismissal is appropriate when the complaint on its face shows a bar to relief.” *Shiell*, 2020 WL 2331637, at \* 10 (quoting *Cutrer v. McMillan*, 308 Fed.Appx. 819, 820 (5th Cir. 2009)). “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679, 129 S.Ct. at 1950. A court does not assume the truth of conclusory statements, but rather looks for facts which support the elements of the pleader’s claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 127 S.Ct. 1955, 1966 (2007). In deciding a Rule 12(b)(6) motion to dismiss, a court is generally prohibited from considering information outside the pleadings, but may consider documents outside of the complaint when they are: (1) attached to the motion; (2) referenced in the complaint; and (3) central to the plaintiff’s claims. *Maloney Gaming Mgmt., LLC v. St. Tammany Parish*, 456 Fed.Appx. 336, 340-41 (5th Cir. 2011).

## 2. Pro Se Litigants

The Court continues to acknowledge that Plaintiffs are proceeding in this litigation *pro se*. (Doc. 1-2 at 51, 63.) *Pro se* pleadings are to be held “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596 (1972); see also *SEC v. AMX, Int’l. Inc.*, 7 F.3d 71, 75 (5th Cir. 1993) (recognizing the established rule that this court “must construe [a *pro se* plaintiff’s] allegations and briefs more permissively”). Further, a court must liberally construe a *pro se* complaint, taking all well-pleaded allegations as true. *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993) (per curiam). Nevertheless, “a *pro se* litigant is not exempt . . . from compliance with relevant rules of procedural and substantive law.” NCO

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*Fin. Systems, Inc. v. Harper-Horsley*, No. 07-4247, 2008 WL 2277843, at \*3 (E.D. La. May 29, 2008) (quoting *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981)). As such, a *pro se* plaintiff's complaint "must set forth facts giving rise to a claim on which relief may be granted." *Johnson*, 999 F.2d at 100 (citation omitted).

Additionally, "[a] liberal reading of plaintiff's pleadings is the only special treatment afforded *pro se* plaintiffs by the courts." *Kiper v. Ascension Parish Sch. Bd.*, No. 14-313, 2015 WL 2451998, at \*1 (M.D. La. May 21, 2015) (citing *Callahan v. C.I.R.*, No. 99-0295, 2000 WL 1141607, at \*1 (M.D. La. Apr. 10, 2000)). A "court is not required to search for or try to create causes of actions or find material issues of fact for *pro se* plaintiffs." *Id.* And a *pro se* litigant is not entitled to greater rights than would be a litigant represented by a lawyer." *NCO Fin. Systems*, 2008 WL 2277843, at \*3 (citing *Birl*, 660 F.2d at 593).

## B. Discussion

### 1. Governing Amended Petition

At the outset, the Court notes that in this Court's prior rulings granting in part Plaintiffs' Motions to Reconsider, Plaintiffs were "given thirty (30) days in which to amend the operative complaint" (Doc. 68 at 6; *see Doc. 70 at 1*). Plaintiffs timely filed their first Amended Petition on December 5, 2019 (Doc. 71). Subsequently, Plaintiffs filed two additional Amended Petitions—"Amended Petition with Exhibits A-O" (Doc. 78), filed on December 31, 2019, and "Amended Petition with Exhibits E1, F, 0 on Pages 7, 14, 16, 19 and 31" (Doc. 81), filed on January 3, 2020—both of which were filed outside of the time allotted and without first obtaining the "opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Because Plaintiffs' second and third Amended Petitions were filed without complying with Rule 15 of the Federal Rules of

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Civil Procedure, they will be stricken from the record, and the first Amended Petition (Doc. 71) is the governing Petition in this litigation.<sup>4</sup>

## 2. Failure to State a Cognizable Claim

Despite being given the opportunity to amend their Petition, Plaintiffs' allegations once again fail to set forth a legally cognizable claim against Defendants. The Court will first address Plaintiffs' general assertions regarding the securitization of the loan and the validity of the assignment and will then discuss the new claims Plaintiffs raise against the different Defendants.

### a. General Allegations

As explained in this Court's prior Rulings initially dismissing Plaintiffs' case, Plaintiffs' Petition, and now Amended Petition, are based on legal theories that have been resoundingly rejected by federal courts across the country. The general basis for Plaintiffs' claims has not changed and remains the alleged improper securitization of their mortgage.

Specifically, the bases for Plaintiffs' claims stem from the contention that their mortgage was improperly securitized and/or pooled, making any subsequent assignment invalid. However, neither theory has merit. *See, e.g., Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 255 (5th Cir. 2013) (discussing and rejecting the theory that a mortgage was allegedly "split" from the note through securitization, rendering the note unenforceable); *Marban v. PNC Mortg.*, No. 12-cv-3952-M, 2013 WL 3356285, at \*10 (N.D. Tex. July 3, 2013) (finding meritless the theory that any securitization of the loan rendered the note and accompanying deed of trust unenforceable and discharged a borrower's obligations under them); *Beebe v. Fed. Nat'l Mortg. Ass'n*, No. 13-cv-

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<sup>4</sup> In its Motion to Dismiss, Wells Fargo notes that Plaintiffs' second Amended Petition (Doc. 78) was filed without leave of Court or consent of the other parties in violation of Rule 15. (Doc. 84-1 at 1 n. 1). Wells Fargo states that it is responding to the second Amended Petition (Doc. 78) and requests that, if the Court strikes the second Amended Petition, Wells Fargo be granted leave to respond to the first Amended Petition. (Doc. 84-1 at 1 n. 1). Because Wells Fargo's arguments in its Motion to Dismiss are applicable to the first Amended Petition, the Court will interpret Wells Fargo's Motion to Dismiss as applying to the governing Amended Petition (Doc. 71).

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311-JCM-GWF, 2013 WL 3109787, at \*2 (D. Nev. June 18, 2013) (“[t]he securitization argument has been repeatedly rejected . . . because it does not alter or change the legal beneficiary’s standing to enforce the deed of trust”); *Henkels v. J.P. Morgan Chase*, No. 11-0299-PHX-JAT, 2011 WL 2357874, at \*7 (D. Ariz. June 14, 2011) (rejecting claim “that securitization has had any impact on [plaintiff’s] obligations under the loan” and noting that numerous courts have rejected similar claims).

Plaintiffs’ underlying claims are all predicated on the theory that, because the Deed of Trust, as Plaintiffs’ referred to it in their initial Petition, or the Mortgage, as it is primarily referred to in Plaintiffs’ Amended Petition, was improperly securitized and/or pooled, Defendants have “failed to perfect any security interest in the Real Property.” (Doc. 71 at 14). The Sixth Circuit has noted that district courts “have entertained a spate of civil actions” related to mortgages and securitization of the underlying loans, describing many of these cases as “scattershot affairs, tossing myriad (sometimes contradictory) legal theories at the court to see what sticks.” *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 748 (6th Cir. 2014). Here, even accepting the allegations as true and liberally construing Plaintiffs’ claims, this Court finds that none of the claims “stick.”

By way of example, Plaintiffs’ reurged claim for wrongful foreclosure alleges that “Defendants...have failed to perfect any security interest in the Real Property collateral, or cannot prove to the Court they have a valid interest as a real party in interest to the underlying Mortgage.” (Doc. 71 at 14-15). Likewise, Plaintiffs’ reurged claim for quiet title alleges that “Defendants are without any legal right whatsoever, and [they] have no estate, title, lien or interest in or to the Real Property.” (Doc. 71 at 26). So, too, is Plaintiffs’ reurged claim for slander of title based on the theory of improper securitization/pooling. See Doc. 71 at 27 (“Such instruments remained unrecorded as ‘Secret Leins’ within the collateral file and was never submitted for recordation to

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perfect Defendant's rights to the Accommodated Tangible Note and pledged Mortgage Lien..."). Because all of Plaintiffs' claims remain based on the flawed allegation of an invalid securitization of the loan and/or the allegedly invalid assignment of the Note or Deed of Trust, the Court dismisses them for failure to state a viable claim.

Furthermore, Plaintiffs still lack standing to challenge the assignment of the mortgage to Wells Fargo. As explained in detail in this Court's grant of Wells Fargo's first Motion to Dismiss, "[i]n the context of a mortgage assignment, a mortgagor, or borrower, does not have standing to allege that an assignment between two third parties is invalid." (Doc. 39 at 8) (citing *Ezell v. Payne*, No. 16-1166. 2017 WL 891768 (W.D. La. Jan 31, 2017)). "Thus, as non-party mortgagors, and without any allegations showing Plaintiffs to be an intended third-party beneficiary, this Court concludes that Plaintiffs lack the requisite standing to contest the validity of the assignment at issue." (*Id.*). This remains the case here.

b. Previously-Asserted Claims against Defendants

In their Amended Petition, Plaintiffs assert the exact same eight (8) causes of action against Defendants as they did in their original Petition, all of which were dismissed with prejudice.<sup>5</sup> In granting Plaintiffs' Motion for Reconsideration against Wells Fargo in part, this Court specifically found that "[b]ecause Plaintiffs have shown no manifest error of law or fact making any of these dismissed claims viable, the Court will affirm dismissal of these prior claims." (Doc. 68 at 3-4). The Court made the same finding when granting Plaintiffs' Motion for Reconsideration against the Freddie Mac Defendants, stating "Plaintiffs have failed to show that the Court made any error in its prior *Opinion* (Doc. 58)."  (Doc. 70 at 1). Thus, the Court has previously affirmed its dismissal of those prior allegations and causes of action without leave to amend and will not

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<sup>5</sup> Those causes of action are (1) lack of standing/wrongful disclosure; (2) unconscionable contract; (3) breach of contract; (4) breach of fiduciary duty; (5) quiet title; (6) slander of title; (7) injunctive relief; and (8) declaratory relief.

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against Plaintiffs to begin the process of foreclosure, only that it assigned the loan to SLS and did not know the status of any foreclosure sale.” (*Id.* at 8). Wells Fargo, therefore, claims that its “representation to the Court regarding foreclosure was accurate, and this allegation cannot serve as the basis for any cause of action against Wells Fargo.” (*Id.* at 2-3).

18 U.S.C. § 1623, prohibiting perjury, is a federal criminal statute. *See Smith v. Wilmington Savings Fund Soc'y FSB as Trustee for Stanwich Mortgage Loan, Trust*, No. 18-2065, 2019 WL 2996571, at \*11 (N.D. Tex. June 14, 2019) (citations omitted). “Private citizens do not have the right to bring a private action under a federal criminal statute.” *Id.* (citations omitted). “They cannot enforce federal criminal statutes in a civil action.” *Id.* (citation omitted); *see also Tummel v. Milane*, No. 18-339, 2019 WL 366708, at \*7 (S.D. Tex. Jan. 30, 2019) (finding that “allegations of perjury are not properly before a trial court in a civil proceeding and must take place within the context of a criminal proceeding”). As such, Plaintiffs do not have the right or ability to make a claim against Wells Fargo based on alleged violation of a federal criminal statute.

However, the Court does note that “[s]hould a federal judge develop a reasonable basis for believing that the criminal act of perjury has occurred, then the judge is to refer the matter to the United States Attorney for handling by the executive branch of government.” *Prudhomme v. Russell*, No. 17-1344, 2018 WL 6928918, at \*8 (W.D. La. Dec. 17, 2018) (citing *In re Actos (Pioglitazone) Prods. Liab. Litig.*, No. 12-0064, 2014 WL 2624943, at \*5 (W.D. La. June 11, 2014)). The Court here, though, does not find that Wells Fargo made a false statement warranting action. Wells Fargo simply noted that Plaintiffs had not alleged that it had invoked foreclosure proceedings against Plaintiffs’ property; it did not state it had not instituted foreclosure proceedings. Further, as Wells Fargo points out, the East Baton Rouge Parish Sheriff’s Office issued the Notice of Seizure, not Wells Fargo, which, at that time, had already assigned its interest

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in the note to Specialized. It is reasonable that Wells Fargo, having assigned its interest in the note on Plaintiffs' property to Specialized and, therefore, no longer having an interest in the loan, has no plans to foreclose on Plaintiffs' property. Likewise, Wells Fargo's statement that it is unaware if any other entity has plans to foreclose on Plaintiffs' property also, without additional evidence, does not appear false. Plaintiffs have provided no evidence or indication that Specialized confirmed its plans to continue foreclosure—or not—on Plaintiffs' property with Wells Fargo. As such, this Court does not believe perjury has occurred, and Plaintiffs have failed to assert a valid claim against Wells Fargo.

II. Conveyance of cancelled mortgage

Plaintiffs' second new allegation is that the mortgage and note at issue here previously had been cancelled, meaning subsequent conveyance of same was fraudulent. This is predicated on Plaintiffs' new assertion that, contrary to their allegations in their initial Petition, Equifirst was the original lender, with LoanCity giving a "purported refinance of original note under the Mortgage." (Doc. 71 at 5). Thus, per Plaintiffs, because the Equifirst note was cancelled, the LoanCity loan and all subsequent transfers thereof were fraudulent. (Doc. 71 at 2, 9, 12, 13, 16, 17, 22-23).

In its Motion to Dismiss, Wells Fargo responds to this allegation, arguing that "throughout the Amended Petition, Plaintiffs allege that the note and mortgage at issue are dated December 27, 2005," which is the loan with LoanCity.<sup>7</sup> (Doc. 84-1 at 9). Per Wells Fargo, "Plaintiffs' entire argument is that their mortgage and note have been cancelled by the Affidavit of Lost Note and Authorization to Cancel Mortgage, but this document cancels a mortgage and note from 2002 with Equifirst Corporation, while the mortgage and note here—by Plaintiffs' own admission—are from

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<sup>7</sup> The Court notes that in their Motion to Dismiss, the Freddie Mac Defendants, in response, mistakenly assert that this new allegation by Plaintiffs applies only to Wells Fargo. (Doc. 85-1 at 3). While Plaintiffs' claim is not a valid one, as discussed in detail below, the Freddie Mac Defendants are, indeed, implicated in Plaintiffs' allegations.

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2005 with LoanCity.” (*Id.*). Thus, the Affidavit of Lost Note and Authorization to Cancel Mortgage has no impact on the validity of the 2005 LoanCity mortgage and note. (*Id.*).

The Court notes that with regard to this new allegation that Defendants transferred a cancelled mortgage, Plaintiffs make copious allegations of various types of fraud, again seemingly trying to see what, if anything, will stick. Plaintiffs’ diverse and multiple claims for different types of fraud, all of which are unfounded, suggest to the Court that Plaintiffs are simply making frivolous accusations rather than considered, legitimate arguments. However, in an abundance of caution, the Court will address each type alleged, in turn, below.

#### A. Wire Fraud

Plaintiffs first allege that Wells Fargo committed wire fraud in violation of criminal statute 18 U.S.C. § 1343. Per Plaintiffs, because Wells Fargo “was both the servicer and mortgage holder” of the note and mortgage that Plaintiffs claim were cancelled in 2006, Wells Fargo “conveyed rights to an unenforceable note through an act of assignment to another party a note and mortgage they knew or should have known were canceled.” (Doc. 71 at 6). As such, “[a]ccording to the Plaintiffs beliefs this may have allegedly instituted Wire Fraud according to 18 U.S. Code § 1343.” (*Id.*).

However, like the perjury statute discussed above, 18 U.S.C. § 1343 is a federal criminal statute. *Smith*, 2019 WL 2996571, at \*11 (citations omitted). Once again, “[p]rivate citizens do not have the right to bring a private action under a federal criminal statute” and “cannot enforce federal criminal statutes in a civil action.” *Id.* (citation omitted); *see also Napper v. Anderson, Henley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974) (holding that the Wire Fraud Act, codified in 18 U.S.C. § 1343, is a criminal statute that does not convey a private right

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of action). “Accordingly, any claims under th[is] federal criminal statute[] should be dismissed for failure to state a claim.” *Smith*, 2019 WL 2996571, at \*11.

## B. Mortgage Fraud

In their Amended Petition, Plaintiffs also allege that Defendants, in engaging in a “refinance loan” of Plaintiffs’ cancelled loan and subsequently transferring same, they engaged in mortgage fraud, in violation of La. R.S. § 14:71.3, which is part of the Louisiana Criminal Code. (Doc. 71 at 19-20, 21, 27). “As with violations of federal statutes, a state criminal statute does not, without clear indication of such intent, give rise to a private cause of action.” *Smith*, 2019 WL 2996571, at \*11; *see also Tummel*, 2019 WL 366708, at \*7 (finding same). La. R.S. § 14:71.3 does not give rise to a private cause of action.<sup>8</sup> As such, this claim, too, should be dismissed for failure to state a claim.

## C. Fraudulent Conveyance

Plaintiffs next allege that “MERS by its assignment of instrument from LoanCity to Wells Fargo seemingly committed a fraudulent conveyance thereby committing [sic] LA Rev Stat 22:2021. Wells Fargo [sic] subsequent transfer of assignment should also be deemed as perceived fraudulent conveyance.” (Doc. 71 at 28) (underline in original). However, La. R.S. § 22:2021,<sup>9</sup> which is part of the Louisiana Insurance Code, pertains to fraudulent transfer made “prior to the

<sup>8</sup> According to La. R.S. § 14:71.3: (A) It is unlawful for a person, in connection with residential mortgage lending activity, to knowingly do any of the following: (1) Employ a device, scheme, or artifice with intent to defraud. (2) Make an untrue statement of material fact with intent to defraud. (3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with the closing of a residential mortgage loan when the recipient knows that the proceeds or other funds were paid as a result of a violation of this Section. (B)(1) A person who violates the provisions of this Section shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than one hundred thousand dollars, or both. (2) In addition to the penalties provided in Paragraph (1) of this Subsection, a person convicted under the provisions of this Section shall be ordered to make full restitution to the victim and any other person who has suffered a financial loss as a result of the offense. If a person ordered to make restitution pursuant to this Section is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person’s financial ability....” The omitted section simply defines certain terms in the statute.

<sup>9</sup> Formerly cited as La. R.S. 22:745.1.

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not be given a third." (*Id.*). Indeed, Plaintiffs will not be given a third bite at the apple. Plaintiffs' inability to state a cognizable claim against any Defendant following amendment of their Petition simply bolsters the Court's belief that any amendment would be futile. Consequently, Plaintiffs' claims are subject to dismissal with prejudice.

### III. CONCLUSION

Accordingly,

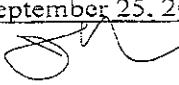
**IT IS ORDERED** that Plaintiffs' "Amended Petition with Exhibits A-O" (Doc. 78) and "Amended Petition with Exhibits E1, F, O on Pages 7, 14, 16, 19 and 31" (Doc. 81) be STRICKEN from the record by the Clerk of Court.

**IT IS FURTHER ORDERED** that the second Motion to Dismiss filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System's (Doc. 85) be GRANTED, and Plaintiffs' claims against Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System be DISMISSED WITH PREJUDICE.

**IT IS FURTHER ORDERED** that the first Motion to Dismiss filed by Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificate Series 3113 Trust and Mortgage Electronic Registration System's (Doc. 79) be DENIED AS MOOT.

**IT IS FURTHER ORDERED** that the Motion to Dismiss filed by Wells Fargo Bank, N.A. (Doc. 84) be GRANTED, and Plaintiff's claims against Wells Fargo Bank, N.A. be DISMISSED WITH PREJUDICE.

Signed in Baton Rouge, Louisiana, on September 25, 2020.

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

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

REC'D OCT 23 2020

PC  
CLERK

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

DARRELL BERRY and  
CONSTANCE LAFAYETTE,  
Plaintiffs,

vs.

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

CIVIL ACTION NO.

3:18-cv-00888-JWD-RLB

Defendants

NOTICE OF INTENT TO FILE WRIT FOR APPEAL OF FINAL RULING -  
DEPUTY CLERK - OF COURT IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF LOUISIANA and  
REQUEST FOR ORAL ARGUMENT

NOW INTO COURT, through undersigned, comes Darrell Berry and Constance Lafayette, In Proper Person who respectfully request that this Court take notice of Plaintiff intention to apply to the Court of Appeal for the Fifth Circuit Court of Appeal of the State of Louisiana for formal supervisory writs to review the judgement of the Honorable John W. deGravelles of the Middle District of Louisiana court, Ruling and Order September 25, 2020 in case number 3:18-cv-00888-JWD-RLB DARRELL BERRY and CONSTANCE LAFAYETTE vs LOANCITY, WELLS FARGO BANK, N.A., FEDERAL HOME LOAN MORTGAGE CORPORATION

21-30060.1199

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("Freddie Mac"); FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; and

MORTGAGE ELECTRONIC

REGISTRATION SYSTEM ("MERS"); DOES 1 through 100 inclusive, et al.

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

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REQUEST FOR ORAL ARGUMENT

Plaintiffs/Appellants seek to have oral argument in this case. The issues that Appellants will raise are particularly complex and novel. For this reason, it is believed that that oral argument would materially aid the Court in reaching a fair and just decision in this case.

Plaintiffs/Appellants request that 30 minutes of oral argument be allocated to each side.

Documents provided by the Defendants gives the appearance of being legally enforceable.

However, upon closer inspection it is discovered that the Defendants case and pleadings focus not on merit of the case but rather carefully contrived technicalities to subvert truth and the watchful eye of the Courts.

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-SDJ

LOANCITY, ET AL.

RULING AND ORDER

On or about August 20, 2018, *pro se* Plaintiffs Darrell Berry and Constance Lafayette (collectively, "Plaintiffs") filed a Complaint against Defendants LoanCity; Wells Fargo Bank, N.A.; Federal Home Loan Mortgage Corporation; Freddie Mac Multiclass Certificates, Series 3113 Trust; Mortgage Electronic Registration System; and Does 1 through 100 in the 19th Judicial Court for the Parish of East Baton Rouge. In their Complaint, Plaintiffs claim that the note and mortgage on certain property they own was improperly assigned and securitized, rendering it unenforceable by any Defendant. For this Complaint, Plaintiffs requested only the following parties be served: Wells Fargo Home Mortgage/Bank, Attorney Candace Courteau, Federal Home Loan Mortgage Corporation, and Mortgage Electronic Registration System.<sup>1</sup> Service on Defendant LoanCity was not requested.

On October 12, 2018, both Wells Fargo Bank, N.A. ("Wells Fargo") alone and Defendants Federal Home Loan Mortgage Corporation; Freddie Mac Multiclass Certificates, Series 3113 Trust; and Mortgage Electronic Registration System (collectively, "Freddie Mac Defendants") together filed Motions to Dismiss for Failure to State a Claim (Docs. 4 and 5). This Court, on July 3, 2019, granted Wells Fargo's Motion, dismissing Plaintiffs' claims against Wells Fargo with prejudice (Doc. 39). Similarly, this Court granted the Motion filed by the Freddie Mac Defendants

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<sup>1</sup> Doc. 1-2 at 64.

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on September 17, 2019, also dismissing Plaintiffs' claims against the Freddie Mac Defendants with prejudice (Doc. 58).<sup>2</sup> Plaintiffs subsequently appealed these decisions to the Fifth Circuit Court of Appeals (Docs. 45 and 62).

Plaintiffs also filed Motions for Reconsideration of this Court's dismissals of its claims against Wells Fargo (Doc. 44) and against the Freddie Mac Defendants (Doc. 54), which this Court subsequently granted in part and denied in part (Docs. 68 and 70). Plaintiffs, in response, filed an Amended Petition on December 5, 2019 (Doc. 71), following which Wells Fargo and the Freddie Mac Defendants again each filed a Motion to Dismiss (Docs. 84 and 85). On September 25, 2020, the Court granted Defendants' Motions to Dismiss, thereby dismissing all claims against these Defendants with prejudice (Doc. 116).<sup>3</sup>

As such, LoanCity is the only remaining Defendant in this case. However, LoanCity has never made an appearance in this case, and there is no evidence of valid service to LoanCity in either the record of this Court or the record from state court prior to removal of the matter to this District. Accordingly, on September 19, 2019, following the initial dismissal of all claims against Wells Fargo and the Freddie Mac Defendants, this Court ordered Plaintiffs to "show cause, in writing, why their claims asserted against defendant LoanCity should not be dismissed because of their failure to serve this defendant within the time allowed by Fed. R. Civ. P. Rule 4(m)" ("Show Cause Order").<sup>4</sup>

Plaintiffs complied with the Show Cause Order, timely filing a written response thereto in which they explain that "LoanCity imploded in March of 2007 and formally dissolved in 2008"<sup>5</sup>

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<sup>2</sup> This Court's Opinion (Doc. 58) adopted a Report and Recommendation by the Magistrate Judge recommending dismissal (Doc. 49).

<sup>3</sup> Subsequent Motions to Vacate the ruling dismissing Plaintiffs' claims against these Defendants were denied on January 5, 2021 (Docs. 134 and 135).

<sup>4</sup> Doc. 60 at 1.

<sup>5</sup> Doc. 61 at 1.

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and attach thereto the Certificate of Election to Wind Up and Dissolve LoanCity, signed in May 2008 and filed with the California Secretary of State on June 3, 2008.<sup>6</sup> Despite this dissolution of LoanCity more than a decade before the instant litigation was filed, Plaintiffs claim they listed LoanCity in their Complaint “to link its purported fraudulent origination of a refinance of a lost note that was then assigned by MERS to WellsFargo [sic] several years after the company imploded.”<sup>7</sup> With regard to their failure to serve LoanCity, Plaintiffs state only that “[a]n issue of service promulgated at State Court level” and “[a]ll existing Defendants were served at State Court level.”<sup>8</sup> Thus, Plaintiffs neither assert that LoanCity was served, nor do they claim they will attempt to serve LoanCity. And in the more than 15 months since this response was filed, no evidence of service to LoanCity, or information regarding same, has been submitted to this Court.

Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Rule 4(m) continues that “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” “Proof of good cause requires ‘at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice.’” *Thrasher v. City of Amarillo*, 709 F.3d 509, 511 (5th Cir. 2013), *citing Winters v. Teledyne Movable Offshore, Inc.*, 776 F.2d 1304, 1306 (5th Cir. 1985). “Additionally, some ‘showing of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in normally required’.” *Id.*, *citing Winters*, 776 F.2d at 1306.

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<sup>6</sup> Doc. 61-2.

<sup>7</sup> Doc. 61 at 1.

<sup>8</sup> Id. at 2.

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Dismissal of all claims against LoanCity is warranted here. Plaintiffs filed this suit over two years ago and, during that time, have not, to the Court's knowledge, even attempted service on LoanCity, despite receiving notice from the Court of this defect over 15 months ago. Further, as stated above, Plaintiffs did not request that their initial Complaint be served on LoanCity and acknowledge that LoanCity is not an existing entity, having dissolved over 10 years before this suit was filed.<sup>9</sup> Plaintiffs, therefore, have failed to show good cause for their failure to effect service on LoanCity.

Moreover, all claims against all other Defendants in this litigation have been dismissed with prejudice. Plaintiffs' failure to serve and thereby prosecute their alleged claims against LoanCity effectively deprives both Wells Fargo and the Freddie Mac Defendants of an opportunity to bring this case to a resolution. As such, LoanCity should be dismissed from this litigation. *See Chandler v. Ryder Truck Rental, Inc.*, No. 18-353, 2019 WL 5616977, at \*2 (M.D. La. Jun. 13, 2019), *report and recommendation adopted*, 2019 WL 5616966 (M.D. La. Jul. 9, 2019) (dismissing claims against two defendants under Rule 4(m) for failing to properly serve them for over 14 months after case was removed from state court); *Juge v. Swift Transp. Co. of Ariz., LLC*, No. 17-368, 2019 WL 3526705, at \*2 (M.D. La. Apr. 23, 2019), *report and recommendation adopted*, 2019 WL 5616964 (M.D. La. Aug. 1, 2019) (dismissing one defendant from case for failure to serve under Fed. R. Civ. P. 4(m), noting that the action "ha[d] been pending for nearly two years," fact discovery and expert disclosure deadlines had passed, and plaintiffs had not requested a summons for the defendant and were "no longer making any efforts to effectuate service").

Accordingly,

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<sup>9</sup> *See Doc. 61-2.*

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IT IS ORDERED that Plaintiffs' claims against LoanCity be DISMISSED WITHOUT PREJUDICE for failure to serve under Federal Rule of Civil Procedure 4(m).

Signed in Baton Rouge, Louisiana, on January 13, 2021.



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

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-SDJ

LOANCITY, ET AL.

JUDGMENT

The Court having dismissed the claims by Plaintiffs Darrell Berry and Constance Lafayette against Defendants Wells Fargo Bank, N.A. (Doc. 116); Federal Home Loan Mortgage Corporation (*id.*); Freddie Mac Multiclass Certificates Series 3113 Trust (*id.*); Mortgage Electronic Registration System (*id.*); and Loancity (Doc. 139),

**IT IS ORDERED, ADJUDGED AND DECREED** that (1) judgment is hereby entered in favor of Defendants and against Plaintiffs; (2) that all of Plaintiffs' claims against Loancity are **DISMISSED WITHOUT PREJUDICE**, for failure to serve under Federal Rule of Civil Procedure 4(m); and (3) that all of Plaintiffs' claims against all other Defendants are **DISMISSED WITH PREJUDICE**, for failure to state cognizable claims.

Signed in Baton Rouge, Louisiana, on January 14, 2021.



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

21-30060.1309

Pet. App.

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

DARRELL BERRY and  
CONSTANCE LAFAYETTE,  
Plaintiffs,

vs.

LOANCITY, WELLS FARGO BANK, CIVIL ACTION NO.  
N.A., FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
("Freddie Mac"); FREDDIE MAC  
MULTICLASS CERTIFICATES  
SERIES 3113 TRUST; and  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM ("MERS");  
DOES 1 through 100 inclusive, et al.

Defendants

NOTICE OF INTENT TO FILE WRIT FOR APPEAL OF FINAL RULING AND  
ORDER, AND JUDGMENT - DEPUTYCLE - OF COURT IN THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA and  
REQUEST FOR ORAL ARGUMENT

NOW INTO COURT, through undersigned, comes Darrell Berry and Constance Lafayette, In Proper Person who received a letter by mail of a Judgement and Ruling and Order on January 19, 2021, respectfully request that this Court take notice of Plaintiff intention to apply to the Court of Appeal for the Fifth Circuit Court of Appeal of the State of Louisiana for formal supervisory writs to review the judgement of the Honorable John W. deGravelles of the Middle District of Louisiana court, Ruling and Order for January 13, 2021 and the Judgement for January 14, 2021 in case number 3:18-cv-00888-JWD-RLB DARRELL BERRY and CONSTANCE

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

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

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#### **REQUEST FOR ORAL ARGUMENT**

Plaintiffs/Appellants seek to have oral argument in this case. The issues that Appellants will raise are particularly complex and novel. For this reason, it is believed that that oral argument would materially aid the Court in reaching a fair and just decision in this case.

Plaintiffs/Appellants request that 30 minutes of oral argument be allocated to each side. Documents provided by the Defendants gives the appearance of being legally enforceable. However, upon closer inspection it is discovered that the Defendants case and pleadings focus

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not on merit of the case but rather carefully contrived technicalities to subvert truth and the  
watchful eye of the Courts.

Respectfully submitted this 26<sup>th</sup> day of January 2021

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SERVICE

Please serve Defendants' Attorneys for Plaintiffs,

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY and  
CONSTANCE LAFAYETTE

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

ORDER

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

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

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

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



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

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

RULING AND ORDER

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

**I. Relevant Factual Background**

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

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

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

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

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

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

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

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

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

## II. Relevant Standard

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### C. Pro Se Litigants

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

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

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III. Discussion

A. Parties' Arguments and Summary of the Ruling

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

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

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

B. Waiver

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

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

### C. Standing

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

#### 1. Applicable Law

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

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

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

## 2. Analysis

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

## D. Failure to State a Cognizable Claim

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

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

### 1. General Allegations

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

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

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

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

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

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

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

2. Specific Claims

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

a. Lack of Standing/Wrongful Foreclosure

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

“Although there is no statutory cause of action in Louisiana for wrongful seizure, damages for a wrongful seizure of property have long been available under Louisiana’s tort law.”

*Bombet v. Donovan*, No. 13-118-SDD-SCR, 2015 WL 65255, at \*8 (M.D. La. Jan. 5, 2015).

However, “[b]ecause liability is tied to the act of unlawfully seizing another’s property, the cause of action arises at the moment of the seizure.” *Id.* (citing *Mariche v. Wells Fargo Bank, N.A.*, No. 11-1191, 2012 WL 1057626, at \*3 (E.D. La. Mar. 28, 2012)).

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

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

b. Unconscionable Contract

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

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

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

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

c. Breach of Fiduciary Duty

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

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

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

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

La. Rev. Stat. Ann. § 6:1124.

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

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

d. Quiet Title

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

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

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

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

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

#### e. Slander of Title

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

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

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

## f. Injunctive Relief

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

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

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

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

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

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

## g. Declaratory Relief

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

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

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

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

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

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

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D. Leave to Amend

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

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

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

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

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

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

#### IV. Conclusion

Accordingly,

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

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



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

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

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

ORDER

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

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

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

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

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

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



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

21-30060.475

ROE 73

Number \_\_\_\_\_

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# In the Supreme Court of the United States

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DARRELL BERRY; CONSTANCE LAFAYETTE

Petitioners

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

Respondents

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

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## Petitioners' Appendix for Writ of Certiorari Volume 2 Pages 76-155

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Pro Se Petitioners  
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(Phone): 225.610.8633

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

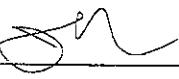
LOANCITY, ET AL.

OPINION

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

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

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

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

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

RULING AND ORDER

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

**I. Standard of Review**

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

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

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

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

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

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

## II. Discussion

### A. Parties' Arguments

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

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

### B. Analysis

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

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

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

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

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

*JMCB, LLC v. Bd. of Commerce & Indus.*, 336 F. Supp. 3d 620, 642 (M.D. La. 2018) (quoting 5B

Charles A. Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 1357 (3d ed. 2016)).

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

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

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

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

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

### III. Conclusion

Accordingly,

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

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

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



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

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

ORDER

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

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

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

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



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

21-30060.727

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

NOTICE

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

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

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

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

  
RICHARD L. BOURGEOIS, JR.  
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DARRELL BERRY, ET AL.

CIVIL ACTION

VERSUS

NO. 18-888-JWD-RLB

LOANCITY, ET AL.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

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

I. Relevant Factual Background

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

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

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

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

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

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

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

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

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

## II. Relevant Standard

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

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

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

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

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

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

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

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

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

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

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

#### **B. Pro Se Litigants**

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

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

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

### III. Discussion

#### A. Parties’ Arguments

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

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

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

#### B. Waiver

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

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

### C. Failure to State a Cognizable Claim

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

#### 1. General Allegations

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

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

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

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

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

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

## 2. Specific Claims

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

### a. Lack of Standing/Wrongful Foreclosure

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

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

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

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

b. Unconscionable Contract

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

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

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

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

c. Breach of Contract

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

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

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

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d. Breach of Fiduciary Duty

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

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

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

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

La. Rev. Stat. Ann. § 6:1124.

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

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

## e. Quiet Title

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

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

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

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

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

f. Slander of Title

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

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

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g. Injunctive Relief

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

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

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

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

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

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

h. Declaratory Relief

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

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

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

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

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

#### D. Leave to Amend

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

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

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

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

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

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

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

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would be futile, and that, consequently, Plaintiffs' claims are subject to dismissal with prejudice.<sup>4</sup>

**IV. Conclusion**

Accordingly,

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

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

  
RICHARD L. BOURGEOIS, JR.  
UNITED STATES MAGISTRATE JUDGE

---

<sup>4</sup> The undersigned has denied a separate motion for leave to amend filed by Plaintiffs (R. Doc. 42) for failure to submit a proposed pleading.

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62. In the course of their conduct, management, and oversight of foreclosures, the Banks violated FHA and MHA foreclosure requirements.

63. In the course of their conduct, management, and oversight of foreclosures in the plaintiff States, the Banks have engaged in a pattern of unfair and deceptive practices.

64. The Banks' failure to follow appropriate foreclosure procedures, and related unfair and deceptive practices include, but are not limited to, the following:

- a. failing to properly identify the foreclosing party;
- b. charging improper fees related to foreclosures;
- c. preparing, executing, notarizing or presenting false and misleading documents, filing false and misleading documents with courts and government agencies, or otherwise using false or misleading documents as part of the foreclosure process (including, but not limited to, affidavits, declarations, certifications, substitutions of trustees, and assignments);
- d. preparing, executing, or filing affidavits in foreclosure proceedings without personal knowledge of the assertions in the affidavits and without review of any information or documentation to verify the assertions in such affidavits. This practice of repeated false attestation of information in affidavits is popularly known as "robo-signing." Where third parties engaged in robo-signing on behalf of the Banks, they did so with the knowledge and approval of the Banks;

21-30060.396

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e. executing and filing affidavits in foreclosure proceedings

that were not properly notarized in accordance with applicable state law;

f. misrepresenting the identity, office, or legal status of the

affiant executing foreclosure-related documents;

g. inappropriately charging servicing, document creation,

recording and other costs and expenses related to foreclosures; and

h. inappropriately dual-tracking foreclosure and loan

modification activities, and failing to communicate with borrowers with

respect to foreclosure activities.

B. The Banks' Origination Misconduct

1. Unfair and Deceptive Origination Practices

65. Under the States' consumer protection laws, the Banks are

prohibited from engaging in unfair or deceptive practices with respect to

consumers.

66. Each of the Banks regularly originates mortgage loans.

67. In the course of their origination of mortgage loans in the Plaintiff

States, the Banks have engaged in a pattern of unfair and deceptive practices.

Among other consequences, these practices caused borrowers in the Plaintiff

States to enter into unaffordable mortgage loans that led to increased foreclosures

in the States.

2. The Direct Endorsement Program

68. The FHA's Direct Endorsement Program is a vital part of its

single-family insured mortgage program. Under the Direct Endorsement

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M

ORIG 792 NBN 11808

LOAN NO.: 0006772644

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

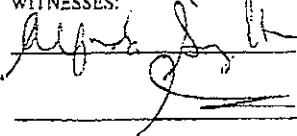
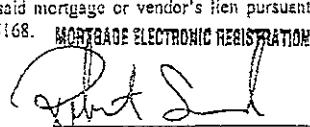
**AFFIDAVIT OF LOST NOTE AND AUTHORIZATION TO CANCEL MORTGAGE  
 PURSUANT TO R. S. 9:5168**

STATE OF LOUISIANA  
 PARISH OF EAST BATON ROUGE PARISH

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

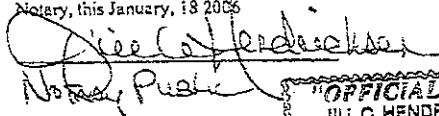
Affiant did further depose that on the 10/31/2002 makers of said note or their agents did pay said note and mortgage in full and that nothing remains due on same and that affiant does hereby authorize the Recorder of Mortgages for EAST BATON ROUGE PARISH to cancel the inscription of that mortgage above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

WITNESSES:

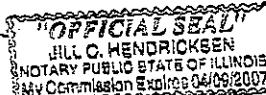



Robert Senda  
 Del Holder, or Holders of Note

Sworn to and subscribed before me,  
 Notary, this January, 18 2008



Nellie C. Hendrickson  
 Notary Public



21-30060.273

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## CANCELLATION OF ENCUMBRANCE

STATE OF LOUISIANA  
 PARISH OF EAST BATON ROUGE

By virtue of the attached AFFIDAVIT

, the inscription of the

MORTGAGE

recorded as original

Lot 11bundle 114106 of the records of this office, is hereby cancelled.Baton Rouge, Louisiana, this 1st day of February, 2006.

Also index

Darrell M. Berry - mfb

DOUG WELBORN  
Clerk and RecorderBy: DW  
Deputy Clerk and Recorder

ORIG 792 Bndl 11808

FILED AND RECORDED  
EAST BATON ROUGE PARISH, LA.2006 FEB 09 AM 10:07:51  
FILED FOLIO

DOUG WELBORN

CLERK OF COURT &amp; RECORDER

CERTIFIED TRUE COPY

BY \_\_\_\_\_

DEPUTY CLERK &amp; RECORDER

CERTIFIED  
TRUE COPY

MAR 07 2018

Deputy Clerk of Court

31-30050-275

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#2011-044

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY  
WASHINGTON, D.C.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

OFFICE OF THRIFT SUPERVISION  
WASHINGTON, D.C.

FEDERAL HOUSING FINANCE AGENCY  
WASHINGTON, D.C.

→  
In the Matter of: ) OCC No. AA-EC-11-20  
MERScorp, Inc., and the )  
Mortgage Electronic Registration Systems, Inc., ) Board of Governors  
Reston, Virginia ) Docket Nos. 11-051-B-SC-1,  
 ) 11-051-B-SC-2  
 ) FDIC-11-194b  
 ) OTS No. 11-040  
 ) FHFA No. EAP-11-01

#### CONSENT ORDER

The Comptroller of the Currency of the United States of America ("Comptroller"), through his national bank examiners and other staff of the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System, Washington, D.C. ("Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the Federal Housing Finance Agency ("FHFA") (collectively

MERS Consent Order

: 21-30060.292

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the "Agencies"), as part of an interagency horizontal review of major residential mortgage servicers and mortgage service providers, have conducted an examination of MERSCORP, Inc. ("MERSCORP"), and of its wholly-owned subsidiary corporation, Mortgage Electronic Registration Systems, Inc., ("MERS"), both of which provide various services to financial institutions related to tracking and registering residential mortgage ownership and servicing, acting as mortgagee of record in the capacity of nominee for lenders, and initiating foreclosure actions. The Agencies have identified certain deficiencies and unsafe or unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal and reputational risks to MERSCORP and MERS, and to the participating Members. Members are institutions that use MERSCORP's and MERS' services and have agreed to abide by MERSCORP's Rules of Membership (the "Rules"). The Members include depository institutions regularly examined by, or subsidiaries or affiliates of depository institutions subject to examination by the OCC, the Board of Governors, the FDIC, the OTS, and other appropriate Federal banking agencies, as defined by subsection 1(b)(1) of the Bank Service Company Act, 12 U.S.C. § 1861(b)(1), and Fannie Mae and Freddie Mac, which are subject to examination by the FHFA, (collectively "Examined Members"). The Agencies have informed MERS and MERSCORP of the findings resulting from the examination. MERS and MERSCORP have begun implementing procedures to remediate the practices addressed in this Order.

MERS and MERSCORP, by and through their duly elected and acting Boards of Directors (collectively the "Boards"), have executed a "Stipulation and Consent to the Issuance of a Consent Order," dated April 13, 2011 ("Stipulation and Consent"), that is accepted by the Agencies. By this Stipulation and Consent, which is incorporated by reference, MERS and MERSCORP have consented to the issuance of this Consent Cease and Desist Order ("Order"),

10/25/2019



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C-656991 M: GENERATE PDF[BACK TO PREVIOUS PAGE](#)

WELLS FARGO BANK NA VS

DARRELL KENDRICK BERRY

ET AL

Date Filed: 04/10/2017

Kind: Civil

Division: 22

Date Last Active: 11/30/2018

Cause: EP-Executionary Process

Suit Status: Active

Judge: KELLEY, TIMOTHY E

## CHRONOLOGICAL HISTORY (54)

PARTIES (3)

ATTORNEYS (3)

MINUTES (8)

Date	Type	Description	Filed By
	All		COURTEAU, CANDACE A
11/02/2018		COVER LETTER	MASSEY, LOGAN
10/25/2018		AFFIDAVIT-CV	MASSEY, LOGAN
10/25/2018		MENNOMITE NTC-CV	MASSEY, LOGAN
10/25/2018		MENNOMITE NTC-CV	MASSEY, LOGAN
10/25/2018		MENNOMITE NTC-CV	MASSEY, LOGAN
10/25/2018		COVER LETTER	MASSEY, LOGAN
10/24/2018		EXHIBIT-CV	COURTEAU, CANDACE A
10/01/2018		CURATORS ANSWER-CV	DOWNING, GEORGE E. JR
10/01/2018		ORD-CIV	DOWNING, GEORGE E. JR
10/01/2018		EXHIBIT-CV	DOWNING, GEORGE E. JR
09/24/2018	Document	LTR DUTY COURT REJECTN-PRO 2295 - DOWNING, GEORGE E., JR.	
09/12/2018		MTN & ORD PAY CURATOR -CIV	MASSEY, LOGAN
08/03/2018	Document	NTC FILING-CIV 2143 - BERRY, DARRELL KENDRICK	
07/18/2018		COVER LETTER	SMITH, JASON R.
07/18/2018		MTN APPOINT CURATOR-CV	SMITH, JASON R.

21-30080.1095

10/25/2018	07/01/18 (Content/Help/helpv7.pdf)	Clerk Connect - East Baton Rouge REC FEE NTC OF SEIZURE	COURTEAU, CANDACE A
07/10/2018		REC FEE NTC OF SEIZURE	COURTEAU, CANDACE A
05/21/2018	Service Return	Intended For: SHERIFF OF EAST BATON ROUGE PARISH Item Served: Served How: Personal Service	
05/21/2018		Document Image - SERVICE INFORMATION	
05/17/2018	Court Event	DOC MINUTE 09:00 AM - Judge: DOC MINUTE - Division: DOC MINUTE	MASSEY,
05/17/2018		Notice of Service	LOGAN
05/07/2018	Document	Signed - MASSEY, LOGAN	
04/26/2018	Court Event	DOC MINUTE 09:00 AM - Judge: DOC MINUTE - Division: DOC MINUTE	MASSEY,
04/24/2018		Letter from Attorney	LOGAN
04/24/2018		Motion to Substitute Party	MASSEY, LOGAN
04/12/2018		Writ of Seizure and Sale	COURTEAU, CANDACE A
04/11/2018	Document	PAYMENT RECEIVED - COURTEAU, CANDACE A	
04/11/2018		Document Image - PAYMENT RECEIVED	
04/10/2018		Letter Requesting Writ	COURTEAU, CANDACE A
04/05/2018		Fax Fee	COURTEAU, CANDACE A
04/04/2018	Court Event	DOC MINUTE 09:00 AM - Judge: DOC MINUTE - Division: DOC MINUTE	COURTEAU, CANDACE A
04/04/2018		Fax Fee	COURTEAU, CANDACE A
04/03/2018	Court Event	DOC MINUTE 09:00 AM - Judge: DOC MINUTE - Division: DOC MINUTE	COURTEAU, CANDACE A
04/27/2017		Letter from Atty/Hold Writ	COURTEAU, CANDACE A
04/25/2017	Document	Signed-Exe Process - COURTEAU, CANDACE A	COURTEAU, CANDACE A
04/25/2017		Letter from Atty/Hold Writ	COURTEAU, CANDACE A
04/25/2017		Note/Out of Parish	COURTEAU, CANDACE A
04/13/2017	Court Event	DOC MINUTE 09:00 AM - Judge: DOC MINUTE - Division: DOC MINUTE	
04/11/2017	Court Event	DOC MINUTE 09:00 AM - Judge: DOC MINUTE - Division: DOC MINUTE	
04/11/2017	Document	Sent to Comm.-Exe Process - Conversion, Image	
04/11/2017		Letter from Attorney	COURTEAU, CANDACE A

21-30060.1096

10/26/2018

 4/11/2017  
((Content/Help/helpv7.pdf))Clerk Connect - East Baton Rouge  
Parish  
Pet/Executionary ProcessCOURTEAU,  
CANDACE A  
COURTEAU,  
CANDACE A

04/11/2017

Petition's Order

04/10/2017 Court Event

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Division: DOC MINUTE

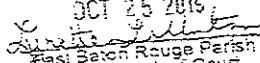
04/10/2017 Court Event

DOC MINUTE 09:00 AM - Judge: DOC MINUTE -  
Division: DOC MINUTE

04/10/2017 Document

PROPERTY DESCRIPTION - Conversion, Image

C.C.

CERTIFIED TRUE AND  
CORRECT COPYOCT 25 2018  
  
East Baton Rouge Parish  
Deputy Clerk of Court



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CORPORATE ASSIGNMENT OF MORTGAGE Page 2 of 2



PREPARED BY: WELLS FARGO BANK, N.A.  
When Recorded Return To: ASSIGNMENT TEAM, WELLS FARGO BANK, N.A. 1000 BLUE GENTIAN RD #200MAC: N9289-018,  
EAGAN, MN 55121-4400  
Recording Requested By: WELLS FARGO BANK, N.A.

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21-30060.451

ROE 112

Case 3:18-cv-00888-JWD-SDJ Document 119-1 10/15/20 Page 56 of 161  
Case 3:18-cv-00888-JWD-SDJ Document 88-1 01/17/20 Page 3 of 3

RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.	RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.
RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.	RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.
RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.	RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.
RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.	RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.
RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.	RENTAL AGREEMENT FOR THE USE OF THE WATERFRONT PROPERTY OF THE BOSTON HARBOUR COMPANY, BOSTON, MASSACHUSETTS.

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116

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

JOHN C. MORRIS, III  
CANDACE A. COURTEAU  
EMILY K. COURTEAU<sup>1</sup>  
MICHAEL A. JEDYMAK<sup>2</sup>  
JASON R. SMITH<sup>3</sup>  
ASHLEY E. MORRIS<sup>4</sup>  
LOGAN MASSEY<sup>5</sup>  
<sup>1</sup> Admitted in Louisiana  
<sup>2</sup> Admitted in Mississippi

**LOUISIANA DIVISION**  
1505 North 19<sup>th</sup> Street, Monroe, LA 71201  
Phone: 318.368.1440 Facsimile: 318.312.0887  
**MISSISSIPPI DIVISION**  
2509 Cherry Road, Monroe, LA 71201  
555 S. Pearl Orchard Rd, Ste 404 Bldg 400,  
Kosciusko, MS 39090  
Phone: 318.360.9010 Facsimile: 318.340.7500

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

April 6, 2017

Honorable J. Douglas Welborn  
East Baton Rouge Parish Clerk of Court  
22 St. Louis Street  
Baton Rouge, LA 70832

Re: Wells Fargo Bank, N.A. ←  
VS. Darrell Kendrick Berry and Constance Lafayette Berry  
DM File No. F:7-1266

Dear Mr. Welborn:

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

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

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

Yours Truly,

DEAN MORRIS, L.L.C.

BY: Charter  
DEAN MORRIS, L.L.C.  
c George B. Dean, Jr. (# 04764)  
c John C. Morris, III (# 01987)  
X Candace A. Courteau (# 26245)  
c Michael Jedymak (# 01993)  
c Jason R. Smith (# 34981)  
c Ashley E. Morris (# 35928)  
c Logan Massey (# 36900)  
Counsel for Plaintiff

REC'D C.R.  
APR 17 2017

19350248  
FBI - BIRMINGHAM  
LABORATORY

dm  
Enclosures

REC'D C.R.  
APR 11 2017

Pet. App.

117

COST OK \$

APR 26 2017  
D. Dean  
DEPUTY CLERK OF COURT

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

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

<sup>1</sup> Admitted in Louisiana  
<sup>2</sup> Admitted in Mississippi

LOUISIANA DIVISION  
1505 North 19<sup>th</sup> Street, Monroe, LA 71201  
Phone: 318.388.1440 Facsimile: 318.322.0887 APR 27 2017

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

POSTED

MISSISSIPPI DIVISION  
3309 Oliver Road, Monroe, LA 71201  
855 S. Pear Orchard Rd, Ste 404 Bldg 400,  
Ridgeland, MS 39157  
Phone: 318.330.9020 Facsimile: 318.340.7600

April 24, 2017

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

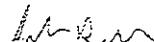
Re: Wells Fargo Bank, N.A.   
vs. Darrell Kendrick Berry And Constance Lafayette Berry  
Suit No. C656991 SEC 22  
Our File No. F17-1266

Dear Honorable J. Welborn:

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

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

Sincerely,



Joseph Delrio  
Foreclosure Specialist  
318-398-3389 - Direct Line  
318-330-8092 - Direct Fax  
jdelrio@creditorlawyers.com

R:

APR



2020 APR 26 PM 2:53  
FILED OR CLERKED  
CLERK EAST BATON ROUGE PARISH CLERK'S OFFICE

Pet. App.

118

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

JOHN C. MORRIS, III  
CANDACE A. COURTHAU  
EMILY K. COURTEAU  
JASON R. SMITH  
ASHLEY E. MORRIS  
LOGAN MASSEY  
CANDACE MEERS BOWEN  
ELIZABETH CROWELL  
KIMBERLY D. MACKEY  
JOHN DANIEL STEPHENS  
† Admitted in Louisiana  
† Admitted in Mississippi

LOUISIANA DIVISION  
1505 North 19th Street, Monroe, LA 71201  
Phone: 318.388.1440 Facsimile: 318.322.0887

RECEIVED  
APR 10 2015  
OF COUNSEL  
WOOD T. SPARKS  
GEORGE B. DEAN, JR.  
CODY GIBSON

MISSISSIPPI DIVISION  
2309 Oliver Road, Monroe, LA 71201  
855 S. Peer Orchard Rd. Ste 404 Bldg 400  
Ridgeland, MS 39157  
Phone: 318.330.9920 Facsimile: 318.340.7600

RECEIVED  
April 2, 2015

APR 10 2015  
DEPUTY CLERK OF COURT

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

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

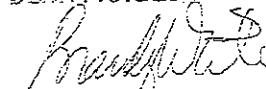
Dear Mr. Weibom:

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

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

Sincerely,

DEAN MORRIS, L.L.C.

  
BRANDY WHITE

EBR4687420

REC'D 8.P.

REC'D 8.P.

APR 10 2015

APR 10 2015

WELBORN



PARISH OF EAST BATON ROUGE

Pet. App.

119

Self Accounting Dept.

P.O. Box 1691  
Baton Rouge, LA 70801-1691  
Tel. (225) 382-3593  
Fax: (225) 389-3392

www.ebrougecourts.org

FAX RECEIPT

Date: 03-APR-2018

NUMBER C696991 SECTION 21  
WELLS FARGO BANK NA  
VS  
DARRELL KENDRICK BERRY ET AL

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

Item(s) Received: LETTER ISSUE WRIT

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

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

Applicable fees are established in accordance with law as follows:

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

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

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

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

Deputy Clerk of Court for  
Doug Welborn, Clerk of Court

5249-LTR/FAX REC'D

EBR471167

ROE 118

21-30060.1102

Pet. App.

120

WJ

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

JOHN C. MORRIS, III  
CANDACE A. COURTEAU  
EMILY K. COURTEAU  
JASON R. SMITH  
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LOUISIANA DIVISION  
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Phone: 318.388.1440 Facsimile: 318.322.0887

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

MISSISSIPPI DIVISION  
2509 Oliver Road, Monroe, LA 71201  
855 S. Pear Orchard Rd, Ste 404 Bldg 400,  
Ridgeland, MS 39157  
Phone: 318.339.9020 Facsimile: 318.349.7600

April 11, 2018

RECD 4/11/18  
APR 24 2018  
PC

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

Re: Wells Fargo Bank, N.A.  
Vs. No. C656991 SEC 22  
Darrell Kendrick Berry And Constance Lafayette Berry  
DM File No.: F17-1256

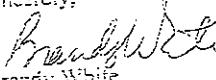
Dear Mr. Welborn:

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

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

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

Sincerely,

  
Brandy White  
Foreclosure Specialist

RECD 4/11/18  
APR 24 2018  
PC

Enclosures

RECD 4/11/18  
APR 24 2018  
PC

RECD 4/11/18  
APR 24 2018  
PC

21-30060.1103

ROE 119

10/25/2019

Pet. App.

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Baton Rouge

≡



/Content/Help/helpv7.p...



BACK TO PREVIOUS PAGE

C-672792

Minute ▾ GENERATE PDF

DARRELL BERRY, ET AL

VS

LOANCITY, ET AL

Date Filed: 08/20/2018

Kind: Civil

Division: 25

Date Last Active: 08/29/2019

Cause: DM-Damages

Suit Status: Active

Judge: FIELDS, WILSON E

CHRONOLOGICAL HISTORY (56)

PARTIES (7)

ATTORNEYS (1)

MINUTES (5)

Date	Type	Description	Filed By
	All		
10/24/2018	Court Event	RULE 09:00 AM - Judge: HON WILSON E FIELDS - Division: SECTION 25	HEISTERHAGEN, KASEE S.
10/11/2018		COVER LETTER	HEISTERHAGEN, KASEE S.
10/11/2018		MTN WITHOUT ORD-CIV	HEISTERHAGEN, KASEE S.
10/11/2018		EXHIBIT-CV	HEISTERHAGEN, KASEE S.
10/09/2018		SERVICE RETURN FEE - EAST BATON ROUGE SHERIFF FORECLOSURE DEPARTMENT	BERRY, DARRELL
10/08/2018	Document	FAX RECEIPT - HEISTERHAGEN, KASEE S.	
10/08/2018	Service Return	Intended For: EAST BATON ROUGE SHERIFF FORECLOSURE DEPARTMENT Item Served: NTC FILING-CIV 2143 Served How: Personal	
10/05/2018		COVER LETTER - Fax Filing	HEISTERHAGEN, KASEE S.
10/05/2018		MTN WITHOUT ORD-CIV - Fax Filing	HEISTERHAGEN, KASEE S.
10/05/2018		EXHIBIT-CV - Fax Filing	HEISTERHAGEN, KASEE S.
10/04/2018	Document	NTC FILING-CIV 2143 - EAST BATON ROUGE SHERIFF FORECLOSURE DEPARTMENT	
10/01/2018	Court Event	DOC MINUTE - Judge: DOC MINUTE - Division: CHAMBER MIN	
09/24/2018	Document	NTC ASSIGNMNT (4501)-19TH 2157 - BERRY, DARRELL	
09/24/2018	Document	NTC ASSIGNMNT (4501)-19TH 2157 - HEISTERHAGEN, KASEE S.	
09/24/2018		LETTER REQUESTING SERVICE	HEISTERHAGEN, KASEE S.

21-30060.1041



Pet. App.

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## Exhibit A

1601585  
D0915095

FILED

In the office of the Secretary of State  
of the State of California

JUN 3 2008

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

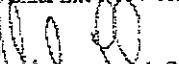
The undersigned, Richard Stachulis, and Nick Lebau, do hereby certify that they are now, and during all times mentioned herein have been, lawfully elected and acting respectively, as President and Chief Executive Officer, and Treasurer and Vice President of Finance, of Loancity, a California corporation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

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

(2) The election was made by the vote of shareholders holding 6,665,771 shares of Common Stock, 12,465,798 shares of Series C Preferred Stock, 10,602,814 shares of Series D-1 Preferred Stock and 21,217,238 shares of Series D-2 Preferred Stock of the Corporation, representing at least fifty percent (50%) of the voting power of the Corporation.

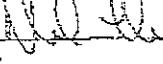
IN WITNESS WHEREOF, the undersigned have executed this certificate this 16 day of May, 2008.

  
Richard Stachulis,  
President & Chief Executive Officer

  
Nick Lebau,  
Treasurer & Vice President of Finance

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

  
Richard Stachulis,  
President & Chief Executive Officer

  
Nick Lebau,  
Treasurer & Vice President of Finance

(00915095.DD0915095)

Pet. App.

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19<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
300 NORTH BLVD  
BATON ROUGE, LA 70801

24TH DAY OF SEPTEMBER, 2018

TO: DARRELL BERRY  
8338 GREENMOSS DRIVE  
BATON ROUGE, LA 70806

DARRELL BERRY, ET AL VS LOANCITY, ET AL

CASE NUMBER: C-672792

JUDGE: HON WILSON E FIELDS

DIVISION: 25 ROOM: 7A

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION FOR THE AFOREMENTIONED CASE  
ON 10/24/2018 AT 09:00 AM FOR RULE.

COMMENTS: TEMPORARY RESTRAINING ORDER, FILED ON BEHALF OF DARRELL BERRY AND  
CONSTANCE LAFAYETTE, APPLICANTS; RE-ASSIGNED FROM SEPTEMBER 6, 2018.

*Deputy Clerk*  
DEPUTY CLERK & SPECIAL ASSISTANT TO  
HON WILSON E FIELDS

NOTIFIED:  
KASEE S. HEISTERHAGEN  
In-Proper-Person

21ST NOTICE OF HEARING 19TH

21-30060.1040

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Darrell Berry and Constance Lafayette

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

pro se

## DEFENDANTS

LoanCity; Wells Fargo Bank, NA; Fed. Home Loan Mortgage Corp;

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Kasee Heisterhagen (for Wells Fargo)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question  
(U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity  
(Indicate Citizenship of Parties in Item 3)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Click here for Nature of Suit Code Descriptions

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC §81	<input type="checkbox"/> 423 Appeal 28 USC §58	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 626 Withdrawal 28 USC §57	<input type="checkbox"/> 425 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 376 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 Antitrust	<input type="checkbox"/> 410 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 420 Copyrights	<input type="checkbox"/> 425 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 440 Deportation	<input type="checkbox"/> 460 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 470 Consumer Credit	<input type="checkbox"/> 480 Telephone Consumer Protection Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 485 Cable Sat TV	<input type="checkbox"/> 490 Securities Commodities Exchange
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 500 Other Statutory Actions	<input type="checkbox"/> 500 Agricultural Acts
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 510 Environmental Matters	<input type="checkbox"/> 520 Freedom of Information Act
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Product Damage Product Liability	<input type="checkbox"/> 560 Arbitration	<input type="checkbox"/> 590 Administrative Procedure Act Review or Appeal of Agency Decision
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 570 Multidistrict Litigation - Transfer	<input type="checkbox"/> 595 Constitutionality of State Statutes
<input type="checkbox"/> 196 Franchise				
<b>REAL PROPERTY</b>				
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
<input type="checkbox"/> 230 Rent Lease & Ejectment		<input type="checkbox"/> 442 Employment		
<input type="checkbox"/> 240 Torts to Land		<input type="checkbox"/> 443 Housing Accommodations		
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 445 Amer. w/ Disabilities - Employment		
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 446 Amer. w/ Disabilities - Other		
		<input type="checkbox"/> 448 Education		
		<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 872 Black Lung (923)	
		<input type="checkbox"/> 449 Voting	<input type="checkbox"/> 863 DIWC DIWW (405(g))	
		<input type="checkbox"/> 450 Employment	<input type="checkbox"/> 864 SSID Title XVI	
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		<input type="checkbox"/> 453 Amer. w/ Disabilities - Other		
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		<input type="checkbox"/> 530 General	<input type="checkbox"/> 874 Title IX	
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			<input type="checkbox"/> 999 Title VII	

## V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from Another District (specify)  6 Multidistrict Litigation - Transfer  8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332Brief description of cause:  
Breach of contract relating to mortgage and foreclosure

CHECK YES only if demanded in complaint.

JURY DEMAND:  Yes  No

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

DEMAND \$

100,000.00

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

10/05/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Kasee Heisterhagen

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IWP

JUDGE

MAG. JUDG 21-30060-30



C. The Banks' Bankruptcy-Related Misconduct

90. In the ordinary course of their businesses, the Banks regularly appear as creditors, or on behalf of creditors, in bankruptcy cases, including bankruptcy cases commenced in this district and over which this Court has original jurisdiction under 28 U.S.C. § 1334, seeking the payment of money from bankruptcy estates and/or prosecuting motions seeking relief from the automatic stay to foreclose on consumer mortgages.

91. The Banks have bankruptcy procedures that are utilized or relied upon by the Banks and their attorneys, contractors, and other agents when the Banks file documents, including proofs of claim and motions seeking relief from the automatic stay in bankruptcy cases. Use of these bankruptcy procedures has resulted in an insufficient level of oversight and safeguards regarding pleadings and documents filed by the Banks or their agents in bankruptcy cases and their conduct during the bankruptcy cases.

92. Use of these bankruptcy procedures has resulted in the filing of signed pleadings and documents in bankruptcy cases as to which the signatory has not conducted a reasonable inquiry into the factual contentions or allegations, as required by applicable law, including Fed. R. Civ. P. 11 and Fed. R. Bankr. P. 9011.

93. Use of these bankruptcy procedures has also resulted in a failure to exercise adequate supervision over the Banks' attorneys, contractors, and other agents in bankruptcy proceedings.

Pet. App.

128

94. As a result of the use of inadequate bankruptcy procedures, the conduct of the Banks or their agents has resulted in, among other things, some or all of the following:

- a. making representations that were inaccurate, misleading, false, or for which the Banks, at the time, did not have a reasonable basis to make, including without limitation representations contained in proofs of claim under 11 U.S.C. § 501, motions for relief from the automatic stay under 11 U.S.C. § 362, or other documents;
- b. filing proofs of claim, motions for relief from stay, or other documents that failed to include documentation required under the Federal Rules of Bankruptcy Procedure, local court rules, local court standing orders, or other applicable rules or law, such as the original or a duplicate of the writing on which the secured claim is based, evidence that the security interest has been perfected, a statement setting forth the terms of and any documentation of a transfer of the claim, or other documentation;
- c. filing lost note affidavits in connection with proofs of claim, motions for relief from stay, or other documents that were inaccurate, misleading, or false, or for which the Banks, at the time, did not have a reasonable basis to make;
- d. filing proofs of claim, motions for relief from stay, or other documents where the Banks sought payment from debtors or bankruptcy estates for amounts that the Banks were not legally entitled to collect, such as seeking principal, interest, fees, escrow amounts, and/or advances that

10/30/2018

#656991

United States Bankruptcy Court  
Middle District of LouisianaPet. App.  
129

## → Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 10/30/2018 at 1:12 PM and filed on 10/30/2018.

**Darrell Kendrick Berry**  
8338 Greenmoss Dr.  
Baton Rouge, LA 70806  
225-510-8633  
SSN / ITIN: xxx-xx-7977

**Constance Lafayette Berry**  
8338 Greenmoss Dr.  
Baton Rouge, LA 70806  
225-341-8833  
SSN / ITIN: xxx-xx-1383



The case was assigned case number 18-11227.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.lamb.uscourts.gov/> or at the Clerk's Office, 707 Florida Street Room 119 Baton Rouge, LA 70801.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Monica M. Menier  
Clerk, U.S. Bankruptcy Court

8/26/2018

SEC charges former Fannie Mae, Freddie Mac executives with fraud - The Washington Post

The Washington Post

Business

Pet. App.

130

## SEC charges former Fannie Mae, Freddie Mac executives with fraud

By David S. Hilzenrath

Zachary A. Goldfarb

, Deputy business editor

December 16, 2011

The SEC charged six former executives of Fannie Mae and Freddie Mac with securities fraud Friday, saying they misled the public about the companies' exposure to subprime loans during the mortgage meltdown.

The executives charged in the civil suits include Daniel H. Mudd, former chief executive of Fannie Mae, and Richard P. Syron, who was chairman and chief executive at Freddie Mac.

The executives are among the most prominent individuals the Securities and Exchange Commission has accused of wrongdoing related to the financial crisis, and the legal action comes at a time when the SEC and the Justice Department are facing criticism for not doing more to hold executives accountable.

The SEC accused the companies of understating their vulnerability to the housing downturn by concealing the amount of risky mortgages on their books, robbing investors of the chance to make informed decisions about whether to stake their money on the firms.

In 2007, when Fannie Mae began reporting its exposure to subprime loans, or loans "made to borrowers with weaker credit histories," it disclosed less than one-tenth of the total volume that met that description, the government said.

Fannie Mae and Freddie Mac, which came to symbolize the housing bubble and its painful aftermath, were taken over by the federal government in September 2008 and have received billions of taxpayer dollars to keep operating.

None of the six defendants agreed to settle with the SEC, and attorneys for some of them issued statements Friday vowing to fight the charges.

The SEC said it was not prosecuting the companies themselves, because they are essentially wards of the government. Both firms entered agreements accepting responsibility for their conduct and promising to help the SEC sue the former executives, the agency said.

ROE 129

21-30060.1075

[https://www.washingtonpost.com/business/economy/six-former-fannie-freddie-execs-charged-with-fraud/2011/12/16/c1QAz4FSvC\\_story.html?utm\\_term=.196](https://www.washingtonpost.com/business/economy/six-former-fannie-freddie-execs-charged-with-fraud/2011/12/16/c1QAz4FSvC_story.html?utm_term=.196)

8/25/2018

SEC charges former Fannie Mae, Freddie Mac executives with fraud - The Washington Post

The repercussions from the case, which was three years in the making, reach beyond the six former executives. The charges cast a harsh new light on the role of the government-chartered companies — which provide funding for mortgage lenders and play a central role in housing finance — as extensions of federal housing policy. The case also reflects poorly on a federal regulatory agency dedicated to overseeing the companies. Then known as the Office of Federal Housing Enterprise Oversight, it was responsible for reviewing the companies' financial disclosures.

A spokeswoman for the agency, now called the Federal Housing Finance Agency, declined to comment.

The SEC said it is trying to force the former executives to pay fines and give up "ill-gotten gains," and to bar them from serving as officers or directors of public companies. The SEC, which polices Wall Street and corporate financial disclosures, does not have the authority to pursue criminal charges or prison sentences.

At a time when anxious investors were focusing on the hazards of subprime loans, Fannie and Freddie made public statements and filed regulatory disclosures sharply understating the extent to which they owned or guaranteed those mortgages, the SEC said.

Fannie and Freddie plunged into the market for what turned out to be toxic loans to avoid being left behind by an increasingly reckless lending industry and in response to government mandates that they assist low-income borrowers.

Even as they were taking on risky loans to increase their market share, the companies and their executives "sought to maintain the illusion that the business involved minimal and manageable credit risk," SEC enforcement director Robert Khuzami said at a news briefing.

The pursuit of high-risk loans contributed to the companies' implosion and to the broader housing debacle.

The misleading statements allegedly began in December 2006 at Fannie Mae and in March 2007 at Freddie Mac and continued until August 2008, the SEC said.

Also charged with various violations were Enrico Dallavecchia, Fannie's former chief risk officer; Thomas A. Lund, former executive vice president of Fannie's single-family mortgage business; Patricia L. Cook, former chief business officer of Freddie Mac; and Donald J. Bisenius, former executive vice president for Freddie's single-family guarantee business.

Fannie allegedly omitted from its subprime disclosures entire categories of risky loans, including one group that had a higher rate of serious delinquency than the loans the company publicly counted as subprime.

ROE 130

21-30060.1076



Pet. App.  
132

Certified Forensic Loan Auditors

PROSPECTUS SUPPLEMENT

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

\$1,269,772,238

**Freddie Mac**  
Multiclass Certificates, Series 3113



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

REMIC Classes	Original Balance	Principal Type(I)	Class Coupon	Interest Type(I)	CUSIP Number	Final Payment Date
<b>Group 1</b>						
EO	\$ 20,199,928	SUP	0.0%	PO	31396HDA4	February 15, 2036
OF	40,715,235	SUP	(2)	FLX	31396HDG1	August 15, 2033
QA	179,272,912	PAC	5.0	FIX	31396HE39	November 15, 2025
QB	63,491,397	PAC	5.0	FIX	31396HE47	February 15, 2029
QC	64,237,008	PAC	5.0	FIX	31396HE54	October 15, 2031
QD	79,589,132	PAC	5.0	FIX	31396HE52	June 15, 2034
QE	60,208,657	PAC	5.0	FIX	31396HE70	February 15, 2036
SE	16,286,094	SUP	(2)	INV/S	31396HEA3	August 15, 2033
ST	40,715,235	NTL(SUP)	(2)	INV/IO	31396HEB1	August 15, 2033
YE	50,999,637	AD/SUP	6.0	FIX	31396HEC9	November 15, 2017
ZE	50,000,000	SUP	6.0	FIX/Z	31396HEH8	February 15, 2036
<b>Group 2</b>						
GA	142,960,000	SEQ	5.5	FIX	31396HDB2	May 15, 2032
GD	17,040,000	SEQ	5.5	FIX	31396HDE6	August 15, 2033
GG	10,000,000	SEQ/RTL	5.5	FIX	31396HDH9	February 15, 2036
VO	8,596,289	AD/SEQ	5.5	FIX	31396HED7	January 15, 2017
VH	10,903,711	SEQ	5.5	FIX	31396HEE5	April 15, 2025
ZG	10,500,000	SEQ	5.5	FIX/Z	31396HEJ4	February 15, 2036
<b>Group 3</b>						
LG	81,856,329	SEQ	5.0	FIX	31396HDSS	April 15, 2016
LM	38,143,671	SEQ	5.0	FIX	31396HDT3	March 15, 2019
LY	30,000,000	SEQ	5.0	FIX	31396HDX4	February 15, 2021
<b>Group 4</b>						
LB	20,604,448	SUP	6.0	FIX	31396HDR7	April 15, 2032
LP	9,828,639	PAC II	6.0	FIX	31396HDUG	February 15, 2036
LV	46,403,665	SUP	6.0	FIX	31396HDW6	October 15, 2021
LZ	30,000,000	SUP	6.0	FIX/Z	31396HDY2	February 15, 2036
PN	143,163,248	PAC I	6.0	FIX	31396HE21	February 15, 2036
<b>Group 5</b>						
WA	28,968,000	SEQ	4.5	FIX	31396HEF2	September 15, 2024
WB	4,328,452	SEQ	4.5	FIX	31396HEGO	February 15, 2026
<b>Group 6</b>						
DE	16,000,000	TAC	5.0	FIX	31396HD89	February 15, 2026
DJ	1,341,625	SUP	5.5	FIX	31396HD97	February 15, 2026
OJ	134,163	SUP	0.0	PO	31396HDZ9	February 15, 2026
<b>Residual</b>						
R	0	NPR	0.0	NPR	31396HE88	February 15, 2036
RS	0	NPR	0.0	NPR	31396HE96	February 15, 2036

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

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

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

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

MORGAN STANLEY

January 17, 2005

CERTIFIED FORENSIC LOAN AUDITORS, LLC COPYRIGHT 2007-2018  
 -All Rights Reserved-

21-30060.280

Page 10



Pet. App.

133

Certified Forensic Loan Auditors

FHR 3113 LZ		CUSIP 31396HDY2	Yield 4.234/4.234
As of 09-Jul	Prepay. 237PSA	VAL 14.12	Collateral: 100.0% FGLNC 6%
95 Documents			BVAL
FHR 3113 FREDDIE MAC			Structured Finance Notes
Underwriter			
Lead Manager	Morgan Stanley		
Original Servicer		Trustee	
		Freddie Mac	
		Paying Agent	
Originator/Seller	Deals	Asset Manager	
		Swap Counterparty	
Insurer	Deals		
61 2 9777, 6500 Brazil 5511 2395 9000 Europe 44 20 17330 7500 Germany 49 69 9204 0210 Hong Kong 85 3201 8900 Singapore 65 6212 1000 U.S. 1 212 319 2000 Copyright 2018 Bloomberg SN 155411 EDT CDT 4:00 H453-3497-0-10-Jul-2018 10:42:49			

### COLLATERAL SECTION PERTAINING TO TRUST

8/26/2018

Jury awards \$5.4 million to couple after finding fraud in foreclosure case - HoustonChronicle.com

Pet. App.

BUSINESS

134

## Jury awards \$5.4 million to couple after finding fraud in foreclosure case

Jury awards couple \$5.4 million in foreclosure case against Wells Fargo and its mortgage servicer

L.M. Sixel

Dec. 9, 2015 Updated: Dec. 10, 2015 11:37 a.m.



David Wolf and his wife, Mary Ellen Wolf, stand on the porch of their West University home, which is at the center of a foreclosure dispute. ( James Nielsen / Houston Chronicle )

Photo: James Nielsen, Staff

David and Mary Ellen Wolf were several payments behind on their home mortgage and knew that foreclosure loomed.

ROE 133

21-30060.1173

1/5

8/26/2018

Jury awards \$5.4 million to couple after finding fraud in foreclosure case - HoustonChronicle.com

Hughes argued that when Wells Fargo retroactively attached the Wolfs' mortgage to a securitized trust that was closed and sold to investors three years earlier, the bank violated a Texas law that prohibits fraudulent real estate filings. The jury agreed, although State District Judge Mike Engelhart hasn't formally entered the verdict, and the bank and mortgage company haven't said whether they'll appeal.

The Wolfs discussed the jury's decision recently under the portico of the residence at the center of the case, a 1950s ranch-style house on Buffalo Speedway.

It's on the market for \$850,000, and neither the couple nor their lawyer knows who legally owns it.

"That's a big question mark," said Hughes. The jury found that neither Wells Fargo nor Carrington owns the mortgage note. But the jury also determined the Wolfs owe \$655,000 on the note they signed in 2006.

Wells Fargo and Carrington declined to comment on the case.

During the trial, Wells Fargo argued the timing of its filings did not make them invalid. Ownership of a deed is created when the promissory note is transferred to a trustee, not when change of ownership is recorded at the county clerk's office, Wells Fargo's lawyers argued in court filings.

The Carrington Trust was created in 2006. Wells Fargo didn't file the Wolfs' transfer documents until 2009.

## *Legal standing?*

Wells Fargo also argued the Wolfs do not have legal standing to contest whether their note and deed of trust were handled correctly under the trusts' pooling and servicing agreements. The mortgage industry has used that argument successfully in foreclosure cases across the country.

A party alleging bank fraud must prove that someone suffered a loss, said David Kwok, assistant professor at the University of Houston Law Center. But homeowners are typically in the background and aren't involved in buying or selling mortgages, transferring documents into trust agreements or creating mortgage-backed securities. The banks, brokers and transfer agents that do that work are the ones who can claim damages.

ROE 134

Pet. App.

136

RETURN COPY

RECEIVED

D520429

TEMPORARY RESTRAINING ORDER

DARRELL BERRY, ET AL  
(Plaintiff)

NUMBER C-672792 25

VS  
LOANCITY, ET AL  
(Defendant)

19<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

TO: WELLS FARGO HOME MORTGAGE/BANK  
CORPORATION SERVICE COMPANY  
501 LOUISIANA AVENUE  
BATON ROUGE, LA 70802

THE COURT HAS ORDERED an injunction that temporarily restrains you from:

\* \* \* \* \* SEE ATTACHED ORDER \* \* \* \* \*

The court's order states why it was granted without prior notice to you and without a hearing.  
If you do these things, you are violating a Court Order and may be subject to penalties.

This Temporary Restraining Order was issued by the Clerk of Court on AUGUST 31, 2018.

SEP 05 2018

made service on the named party through the  
Corporation Services Corporation  
by tendering a copy of this document to  PAULA GLASER  MARY CLAFLIN  
Requesting Party:  JEANNINE SCHUTTE  BERRY, BARKER & CO.  
Parish of East Baton Rouge, Louisiana

*Deputy Clerk of Court for  
Doug Welborn, Clerk of Court*



SERVICE INFORMATION:

Received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, served  
on the above named party as follows:

PERSONAL SERVICE: On the party herein named at \_\_\_\_\_

DOMICILIARY SERVICE: On the within named \_\_\_\_\_, by leaving the same at his domicile  
in this parish in the hands of \_\_\_\_\_, a person of suitable age and discretion residing in the said domicile at \_\_\_\_\_

DUE AND DELIGENT: After diligent search and inquiry, was unable to find the within named \_\_\_\_\_ or  
his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

SERVICE: \$ \_\_\_\_\_  
MILEAGE: \$ \_\_\_\_\_  
TOTAL: \$ \_\_\_\_\_

Deputy Sheriff

TEMPORARY RESTRAINING ORDER-2008

Pet. App.

137

## RETURN COPY

D520080

## CITATION

DARRELL BERRY, ET AL  
(Plaintiff)

VS

LOANCITY, ET AL  
(Defendant)

NUMBER C-672792 SEC. 25

19<sup>th</sup> JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

TO: ATTORNEY CANDACE COURTEAU  
 DEAN MORRIS L.L.P.  
 1505 NORTH 19<sup>th</sup> ST.  
 MONROE, LA 71201

## GREETINGS:

Attached to this citation is a certified copy of the petition\*. The petition tells you what you are being sued for.

You must EITHER do what the petition asks OR, within fifteen (15) days after you have received these documents, you must file an answer or other legal pleading in the office of the Clerk of Court at 300 North Boulevard, Baton Rouge, Louisiana. If you do not do what the petition asks, or if you do not file an answer or legal pleading within fifteen (15) days, a judgment may be rendered against you without further notice.

This citation was issued by the Clerk of Court for East Baton Rouge Parish on AUGUST 31, 2018.



Deputy Clerk of Court for  
 Doug Welborn, Clerk of Court

Requesting Attorney: BERRY, DARRELL

\*The following documents are attached:

PLAINTIFFS' ORIGINAL COMPLAINT FOR DAMAGES AND OTHER RELIEF; VERIFIED EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER AND/ OR PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF; TEMPORARY RESTRAINING ORDER; AFFIDAVIT; LIS PENDENS; EXHIBITS

## SERVICE INFORMATION:

Received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, served on the above named party as follows:

PERSONAL SERVICE: On the party herein named at \_\_\_\_\_

DOMICILIARY SERVICE: On the within named \_\_\_\_\_, by leaving the same at his domicile in this parish in the hands of a person of suitable age and discretion residing in the said domicile at \_\_\_\_\_

SECRETARY OF STATE: By sending same to the within named, by handing same to \_\_\_\_\_

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named \_\_\_\_\_ or his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

SERVICE'S  
 MILEAGES  
 TOTAL: \$ \_\_\_\_\_

Deputy Sheriff  
 Parish of East Baton Rouge

CITATION-2000

OUACOETIA PARISH SHERIFF'S OFFICE  
 DATE: 8/31/18 TIME: 10:15 AM  
 ( ) PER TO: Cari Lewis ( )  
 ( ) PER VIA ( ) DOM ( ) U.T.S.  
 ATTEMPT SERVICE(S):  
 #1 \_\_\_\_\_ TIME: \_\_\_\_\_  
 #2 \_\_\_\_\_ TIME: \_\_\_\_\_  
 #3 \_\_\_\_\_ TIME: \_\_\_\_\_  
 TOTAL MILES/D  
 DEPUTY   
 21-30060.44

State of  
Louisiana  
Secretary of  
State

**COMMERCIAL DIVISION**

225.925.4704

Fax Numbers

225.932.5317 (Admin. Services)  
225.932.5314 (Corporations)  
225.932.5318 (UCC)

Name	Type	City	Status
LOANCITY INC.	Business Corporation (Non-Louisiana)	SAN JOSE	Active

**Previous Names**

LOANCITY.COM, INC. (Changed: 4/8/2005)

**Business:** LOANCITY INC.**Charter Number:** 34835584F**Registration Date:** 9/7/1999**Domicile Address**

C/O LOANCITY.COM  
5671 SANTA TERESA BLVD., SUITE 100  
SAN JOSE, CA 95123

**Mailing Address**

5671 SANTA TERESA BLVD.  
SUITE 100  
SAN JOSE, CA 95123

**Principal Business Office**

5671 SANTA TERESA BLVD., SUITE 100  
SAN JOSE, CA 95123

**Registered Office in Louisiana**

501 LOUISIANA AVENUE  
BATON ROUGE, LA 70802

**Principal Business Establishment in Louisiana**

320 SOMERULOS ST.  
BATON ROUGE, LA 70802-6129

**Status**

**Status:** Active (Voluntary Withdrawal Pending)  
**Qualified:** 9/7/1999  
**Last Report Filed:** 8/30/2006  
**Type:** Business Corporation (Non-Louisiana)

**Registered Agent(s)**

**Agent:** CORPORATION SERVICE COMPANY  
**Address 1:** 501 LOUISIANA AVENUE  
**City, State, Zip:** BATON ROUGE, LA 70802  
**Appointment:** 9/7/1999

[Query](#) [Reports](#) [Utilities](#) [Help](#)**3:18-cv-00888-JWD-SDJ** Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

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

Doc. No.	Event Name	Filed
<u>1</u>	Notice of Removal	10/05/2018
<u>3</u>	Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
<u>4</u>	Motion to Dismiss for Failure to State a Claim	10/12/2018
<u>9</u>	Exhibit(s)	10/22/2018
<u>14</u>	Suggestion of Bankruptcy	11/01/2018
<u>29</u>	Motion to Enroll Additional Attorney	03/07/2019
<u>31</u>	Motion to Withdraw as Attorney	03/19/2019
<u>37</u>	Brief	04/17/2019
<u>46</u>	Response in Opposition to Motion	08/07/2019
<u>50</u>	Motion for Leave to File Document	08/30/2019
<u>52</u>	Reply to Response to Motion	09/04/2019
<u>74</u>	Motion for Extension of Time to File Answer	12/13/2019
<u>84</u>	Motion to Dismiss for Failure to State a Claim	01/09/2020
<u>110</u>	Reply to Response to Motion	08/03/2020
<u>111</u>	Response in Opposition to Motion	08/11/2020

ROE 138

[Query](#) [Reports](#) [Utilities](#) [Help](#)**3:18-cv-00888-JWD-SDJ** Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

## Filer Mortgage Electronic Registration System

Doc. No.	Event Name	Filed
<u>2</u>	Motion to Enroll Additional Attorney	10/12/2018
<u>3</u>	Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
<u>5</u>	Motion to Dismiss for Failure to State a Claim	10/12/2018
<u>20</u>	Reply to Response to Motion	12/14/2018
<u>22</u>	Motion for Leave to File Excess Pages	12/14/2018
<u>24</u>	Reply to Response to Motion	12/17/2018
<u>76</u>	Motion for Extension of Time to File Answer	12/17/2019
<u>79</u>	Motion to Dismiss	01/03/2020
<u>82</u>	Memorandum in Support of Motion	01/06/2020
<u>85</u>	Motion to Dismiss	01/10/2020
<u>86</u>	Motion to Substitute Pleading (In Order to Correct Deficiency)	01/13/2020
<u>112</u>	Reply to Response to Motion	08/11/2020
<u>114</u>	Memorandum in Opposition to Motion	08/17/2020
<u>125</u>	Memorandum in Opposition to Motion	11/03/2020

[Query](#) [Reports](#) [Utilities](#) [Help](#)**3:18-cv-00888-JWD-SDJ** Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

**Filer Federal Home Loan Mortgage Corporation**

Doc. No.	Event Name	Filed
<u>2</u>	<input checked="" type="checkbox"/> Motion to Enroll Additional Attorney	10/12/2018
<u>3</u>	<input checked="" type="checkbox"/> Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
<u>5</u>	<input checked="" type="checkbox"/> Motion to Dismiss for Failure to State a Claim	10/12/2018
20	<input checked="" type="checkbox"/> Reply to Response to Motion	12/14/2018
<u>22</u>	<input checked="" type="checkbox"/> Motion for Leave to File Excess Pages	12/14/2018
<u>24</u>	<input checked="" type="checkbox"/> Reply to Response to Motion	12/17/2018
<u>76</u>	<input checked="" type="checkbox"/> Motion for Extension of Time to File Answer	12/17/2019
<u>79</u>	<input checked="" type="checkbox"/> Motion to Dismiss	01/03/2020
<u>82</u>	<input checked="" type="checkbox"/> Memorandum in Support of Motion	01/06/2020
<u>85</u>	<input checked="" type="checkbox"/> Motion to Dismiss	01/10/2020
<u>86</u>	<input checked="" type="checkbox"/> Motion to Substitute Pleading (In Order to Correct Deficiency)	01/13/2020
<u>112</u>	<input checked="" type="checkbox"/> Reply to Response to Motion	08/11/2020
<u>114</u>	<input checked="" type="checkbox"/> Memorandum in Opposition to Motion	08/17/2020
<u>125</u>	<input checked="" type="checkbox"/> Memorandum in Opposition to Motion	11/03/2020

[Query](#) [Reports](#) [Utilities](#) [Help](#)**3:18-cv-00888-JWD-SDJ** Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

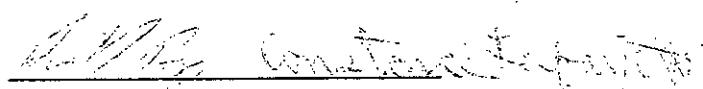
**Filer Freddie Mac Multiclass Certificates Series 3113 Trust**

Doc. No.	Event Name	Filed
<u>2</u>	Motion to Enroll Additional Attorney	10/12/2018
<u>3</u>	Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
<u>5</u>	Motion to Dismiss for Failure to State a Claim	10/12/2018
<u>20</u>	Reply to Response to Motion	12/14/2018
<u>22</u>	Motion for Leave to File Excess Pages	12/14/2018
<u>24</u>	Reply to Response to Motion	12/17/2018
<u>76</u>	Motion for Extension of Time to File Answer	12/17/2019
<u>79</u>	Motion to Dismiss	01/03/2020
<u>82</u>	Memorandum in Support of Motion	01/06/2020
<u>85</u>	Motion to Dismiss	01/10/2020
<u>86</u>	Motion to Substitute Pleading (In Order to Correct Deficiency)	01/13/2020
<u>112</u>	Reply to Response to Motion	08/11/2020
<u>114</u>	Memorandum in Opposition to Motion	08/17/2020
<u>125</u>	Memorandum in Opposition to Motion	11/03/2020

## SERVICE

I hereby certify that on the 30th day of April, 2021, the undersigned sent a true and correct copy of the foregoing Appellants Record of Excerpts and I served a copy of the foregoing document by US Mail, postage prepaid to the following:

Lindsay Leigh Meador & Benjamin Givens Torian GALLOWAY JOHNSON TOMPKINS BURR & SMITH 328 Settlers Trace Blvd Lafayette, Louisiana 70508 Telephone: (337)735-1760 Facsimile: (337)993-0933 lmeador@gallowaylawfirm.com	Christopher Daniel Meyer BURR & FORMAN LLP 190 East Capitol Street Suite M- 100 Jackson, MS 39201 (601)355-3434 Telephone: (601)355-3434 Email: cmeyer@burr.com
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Darrell Berry and Constance Lafayette  
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## Appendix B

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

March 10, 2022

No. 20-30670  
CONSOLIDATED WITH  
No. 21-30060

Lyle W. Cayce  
Clerk

DARRELL BERRY; CONSTANCE LAFAYETTE,

*Plaintiffs—Appellants,*

*versus*

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "FREDDIE MAC" AS TRUSTEE FOR SECURITIZED TRUST; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, "MERS"; DOES 1-100, "INCLUSIVE"; JOHN DOE 1; JOHN DOE 2, SPONSOR OF THE FREDDIE MAC MULTICLASS CERTIFICATES, SERIES 3113 TRUST,

*Defendants—Appellees.*

---

Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:18-CV-888

---

Before SOUTHWICK, HAYNES, and HIGGINSON, *Circuit Judges.*

## PER CURIAM:\*

Proceeding pro se, Appellants Darrell Berry and Constance Lafayette appeal the district court's dismissal of their various claims against Appellees Wells Fargo Bank, N.A. ("Wells Fargo") and Federal Home Loan Mortgage Corporation, Freddie Mac Multiclass Certificates Series 3113, and Mortgage Electronic Registration System (collectively, "Freddie Mac Defendants"). For the following reasons, we AFFIRM.

### I. Factual and Procedural Background

Appellants filed suit in Louisiana state court against LoanCity, Wells Fargo, Federal Home Loan Mortgage Corporation ("Freddie Mac"), Freddie Mac Multiclass Certificates Series 3113, Mortgage Electronic Registration System ("MERS"), and John Does 1-100. Appellants' original petition asserted eight claims: (1) lack of standing/wrongful foreclosure; (2) unconscionable contract; (3) breach of contract against LoanCity and MERS; (4) breach of fiduciary duty; (5) quiet title; (6) slander of title; (7) injunctive relief; and (8) declaratory relief. Defendants-Appellees jointly removed the case to federal court.

Appellants' claims arose after Berry and Lafayette executed a promissory note for a home in Baton Rouge, Louisiana, in 2005, secured by a mortgage in the amount of \$184,000. According to Appellants' original petition, the "Original Lender" of the note and mortgage was LoanCity, and MERS served as nominee. Appellants asserted that the promissory note was "sold, transferred, assigned and securitized into the Freddie Mac Multiclass Certificates, Series 3113 with an issue date of February 27, 2006." Following that assignment, "MERS failed to record any Assignment of Deed of Trust in the Parish of East Baton Rouge Recorder's Office." MERS then

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-30670  
c/w No. 21-30060

“attempt[ed] to assign” the mortgage to Wells Fargo on November 13, 2012. Appellants accordingly asserted that none of the Defendants-Appellees “perfect[ed] any security interest in the Real Property”; thus, they lacked a valid interest in the property and had no “power of sale” or “power to foreclose.”

Wells Fargo and the Freddie Mac Defendants moved to dismiss Appellants’ original petition for failure to state a claim, and the district court granted both motions. Appellants filed motions to reconsider the dismissal of their claims. Concluding that Appellants potentially raised new issues, the district court granted the motions for reconsideration and granted leave for Appellants to file an amended petition.

Appellants asserted the same eight claims against Defendants-Appellees in their amended petition. Though the amended petition was largely duplicative of the original, Appellants elaborated on their claims and asserted two new allegations: that (1) Wells Fargo falsely told the district court that it had not foreclosed on the relevant property; and (2) the mortgage note had been cancelled, making the note an absolute nullity and any subsequent conveyance fraudulent. Defendants-Appellees again moved to dismiss. Concluding that, despite their “second bite of the apple,” Appellants were still unable to assert cognizable claims against Defendants-Appellees, so the district court dismissed Appellants’ amended petition. Appellants filed a motion to vacate the judgment, which the district court denied. Appellants timely appealed both the district court’s dismissal of the original petition and the amended petition. We now consider the consolidated appeals.

## II. Standard of Review

We review a district court’s grant of a Rule 12(b)(6) motion to dismiss de novo. *Hammer v. Equifax Info. Servs., L.L.C.*, 974 F.3d 564, 567 (5th Cir.

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2020). “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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). We “accept as true all of the allegations contained in a complaint,” but that principal does not apply to legal conclusions or “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Id.*

### III. Discussion

Appellants advance eighteen issues on appeal. We recognize Appellants’ pro se status, and thus construe their filings liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). We note, however, that pro se litigants are not “exempt . . . from compliance with relevant rules of procedural and substantive law.” *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. Nov. 1981) (per curiam). With this in mind, we discuss Appellants’ jurisdictional, procedural, and merits arguments, in turn.<sup>1</sup>

#### A. Subject Matter Jurisdiction

Appellants assert multiple arguments challenging jurisdiction. We find these arguments unconvincing and conclude that federal court jurisdiction is proper. Appellants first argue that Defendants-Appellees

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<sup>1</sup> The Freddie Mac Defendants assert that Appellants waived many of the issues on appeal by failing to present them to the district court. However, Appellants raised most of these issues in their motion to vacate the district court judgment. Construing Appellants’ briefing liberally and acknowledging that at least some “[i]ssues may be raised for the first time in post-judgment motions,” *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 n.4 (5th Cir. 1996), we conclude that waiver has not been proven. That said, Appellants’ opening brief fails to specifically address how the district court erred in dismissing many of their claims (including breach of contract, unconscionable contract, and their claims for injunctive and declaratory relief). These claims are thus forfeited on appeal. *See Jefferson Cnty. Health Care Ctrs., Inc. v. Jefferson Par. Gov’t*, 849 F.3d 615, 626 (5th Cir. 2017).

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improperly removed the case to federal court because the district court lacked subject matter jurisdiction. We disagree; removal was proper here. Wells Fargo removed this case based on diversity jurisdiction, and all requirements for diversity jurisdiction were met. *See* 28 U.S.C. § 1332(a)(1). Moreover, the district court had federal question jurisdiction because Freddie Mac is statutorily authorized to remove any case to which it is a party under 12 U.S.C. § 1452(f).<sup>2</sup> *See also* 28 U.S.C. § 1442(a).

Second, Appellants urge that *Younger* abstention prevented the district court from hearing the case. According to Appellants, *Younger* abstention applies because they filed this action in state court to reverse a foreclosure judgment issued in a separate state court proceeding.<sup>3</sup> Thus, per Appellants, removal of this action impermissibly interfered with state court action. But *Younger* abstention is inapplicable in this civil case because there is no relevant ongoing state action. The state court proceeding where the foreclosure judgment was rendered is no longer pending; and this action was removed entirely to federal court. *See Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) (“Absent any pending proceeding in state tribunals,” applying “*Younger* abstention was clearly erroneous.”); *see also Village of DePue v. Exxon Mobile Corp.*, 537 F.3d 775, 783 (7th Cir. 2008) (“Removal under 28

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<sup>2</sup> In their reply, Appellants argue that Defendants-Appellees cannot assert federal question jurisdiction because: (1) “they did not check [the] Federal Question” box on the civil cover sheet submitted with their notice of removal, and (2) “Freddie Mac is not a federal agency.” These arguments are unavailing. As to the first, of course, “a federal court always has jurisdiction to determine its own jurisdiction,” so whatever was indicated on the civil cover sheet is irrelevant. *United States v. Ruiz*, 536 U.S. 622, 628 (2002). As to the second, the Supreme Court has made it clear that Freddie Mac is an agency authorized to remove under 12 U.S.C. § 1452(c) and (f). *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 564 (2017). Therefore, the district court has jurisdiction over cases removed by Freddie Mac, independent of any federal question.

<sup>3</sup> Notably, this state court foreclosure judgment is not in the record on appeal and is only referenced as “Petition’s Order” in a screen shot of the state court docket.

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U.S.C. § 1441 simply does not leave behind a pending state proceeding that would permit *Younger* abstention.”).

Appellants’ third argument—that the *Rooker-Feldman* doctrine precludes federal court jurisdiction—also fails. *Rooker-Feldman* bars a federal district court from modifying or reversing a state court judgment. *Union Planters Bank Nat. Ass’n v. Salih*, 369 F.3d 457, 462 (5th Cir. 2004). Appellants assert that *Rooker-Feldman* applies because this action is a “wrongful foreclosure lawsuit” challenging a previously issued “foreclosure judgment” in state court. But, as the district court noted, Appellants failed to allege that Wells Fargo, or any other party, has foreclosed on their property.<sup>4</sup> So at this juncture, there is no foreclosure to address, rendering the claimed state court ruling inapposite and making *Rooker-Feldman* inapplicable.<sup>5</sup>

### i. Standing and Mootness

The district court held that Appellants lacked standing to challenge the assignment of the relevant loan. We agree. Appellants are neither a party to, nor a third-party beneficiary of, the agreement assigning the mortgage to

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<sup>4</sup> Wells Fargo did initiate foreclosure proceedings in Louisiana state court. But before foreclosing on the property, Wells Fargo assigned the loan to Specialized Loan Servicing, LLC, who is not a party to this lawsuit. Additionally, as aforementioned, the “foreclosure judgment” is not in the record on appeal; and nothing in the record suggests that Appellants currently lack possession of their home. Indeed, the property’s address is listed in the signature block in Appellants’ briefing.

<sup>5</sup> Appellants argue that they were harmed because they were “forc[ed]” to file for bankruptcy to prevent foreclosure and “possible eviction from their home.” Of course, Appellants could have filed for bankruptcy for a variety of reasons, and they have yet to be evicted. This alleged harm is accordingly too attenuated from the “foreclosure judgment” for *Rooker-Feldman* to apply. In any event, a “judgment” allowing (or banning) a foreclosure on a particular date is not necessarily determinative of all future proceedings regarding the mortgage as things can change (e.g., payments made or not, notices given or not, etc.).

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c/w No. 21-30060

another entity. They thus “lack the requisite standing to bring suit to enforce the terms of the [agreement] that govern the assignment of the mortgagor’s note.” *See Farkas v. GMAC Mortg., L.L.C.*, 737 F.3d 338, 342 (5th Cir. 2013). Accordingly, all claims relating to the improper assignment of the loan fail for lack of standing.<sup>6</sup>

We also note that many of Appellants’ claims against Wells Fargo are likely moot. A claim is moot when “the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969). Before Appellants filed their original petition, Wells Fargo assigned the loan to Specialized Loan Servicing, LLC (“SLS”). Therefore, Wells Fargo has no interest in the loan, and no ability to “wrongful[ly] foreclose” or “assert[] an unsecured claim” against the property.<sup>7</sup> However, as the district court noted, Appellants’ original and amended petitions asserted a variety of general claims against “Defendants” without specifying which Defendant took which action. Without the ability to delineate which claims apply to

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<sup>6</sup> This includes Appellants’ claims regarding whether MERS properly assigned the note and mortgage from LoanCity to Wells Fargo in 2012; whether Appellees committed “[f]raud from misrepresentation or from silence”; and, to the extent this claim can be understood, whether the note is “non-negotiable” under the UCC, OCC regulations, and the doctrine of ultra vires.

<sup>7</sup> Appellants assert that Wells Fargo committed perjury “when they stated that they were not going to foreclose” on Appellants’ property. In response, Wells Fargo noted that Appellants’ perjury claim is predicated on a “Notice of Seizure” issued by the East Baton Rouge Parish Sheriff’s Office over a month after Wells Fargo assigned its interest to SLS. We agree with the district court that “[i]t is reasonable that Wells Fargo, having assigned its interest in the note on Plaintiffs’ property to [SLS] and, therefore, no longer having an interest in the loan, has no plans to foreclose on Plaintiffs’ property,” and that the “statement that [Wells Fargo] is unaware if any other entity has plans to foreclose on Plaintiffs’ property also, without additional evidence, does not appear false.” That is especially true considering Appellants have not alleged or indicated that SLS confirmed plans to foreclose on the property or that any foreclosure sale has occurred.

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whom, we proceed with reviewing the district court's analysis and other issues raised on appeal.<sup>8</sup>

### **B. Alleged Procedural Deficiencies**

Appellants argue that the district court committed a myriad of procedural violations. None of these arguments have merit. Appellants first claim that, because LoanCity never made an appearance in the case, the district court failed to uphold its "duty to confirm unanimity was reached" and to ensure that "all parties were served at the onset of the case." But, of course, it was Appellants' duty to properly serve all named parties, and, by Appellants' own admission, they were unable to serve LoanCity because the entity "imploded." Accordingly, the district court properly dismissed LoanCity under Federal Rule of Civil Procedure 4(m). The rule of unanimity, which only applies to properly served defendants, is not implicated. *See Gillis v. Louisiana*, 294 F.3d 755, 759 (5th Cir. 2002).

Appellants next argue that this matter was improperly referred to a magistrate judge without their consent. Upon referral, the district court judge instructed the magistrate judge to prepare "a report and recommendation . . . for review" pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge issued a report and recommendation on the Freddie Mac Defendants' motion to dismiss, which, after reviewing, the district court adopted in full. Consent is not required for a district court to refer a motion to dismiss to a magistrate under § 636(b)(1)(B). *See Newsome v. EEOC*, 301

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<sup>8</sup> Due to the lack of foreclosure and Appellants' apparent possession of their home, we also question the ripeness of many of Appellants' claims. To the extent that the allegations address past harm, however, we will proceed with our analysis.

No. 20-30670  
c/w No. 21-30060

F.3d 227, 230 (5th Cir. 2002) (per curiam). Thus, the referral was not improper.

Third, Appellants assert that the district court was biased towards Appellees because the Freddie Mac Defendants did not file a disclosure statement as required by Federal Rule of Civil Procedure 7.1. The Freddie Mac Defendants concede that they failed to submit a disclosure statement below. However, judicial rulings are rarely a basis for a claim of bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994). In any event, the appropriate remedy for a claim of judicial bias is recusal, which Appellants never sought. Because Appellants failed to advance any argument showing “good cause why [they] did not file an affidavit requesting the trial judge to recuse himself” pursuant to 28 U.S.C. § 144, or “exceptional circumstances why we should consider [the issue] for the first time on appeal,” we refuse to entertain this argument now. *Clay v. Allen*, 242 F.3d 679, 681 (5th Cir. 2001) (per curiam).

Finally,<sup>9</sup> Appellants urge that the district court’s dismissal of their claims was “invalid.” This largely nonsensical argument is predicated on the fact that, despite initially claiming LoanCity was the original lender of the note, Equifirst (an entity that is not a party to this case) was actually the original lender. According to Appellants, the Equifirst note was cancelled

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<sup>9</sup> Appellants assert two additional procedural deficiencies: that (1) they were “denied the right to pursue discovery”; and (2) the district court erred by dismissing Appellants’ claims “in light of Fraud Rule 60(b)(3), (4).” Appellants’ argument regarding the right to discovery was not raised before the district court and is accordingly waived. *See United States v. Bigler*, 817 F.2d 1139, 1140 (5th Cir. 1987). Regarding “Fraud Rule 60(b),” Appellants quote directly from Federal Rule of Civil Procedure 60(b), so we assume arguendo that is what they refer to. Rule 60(b)(3) allows a court to set aside a final judgment for fraud, but Appellants’ argument is based on improper securitization, which, as discussed below, is meritless. We conclude that all other alleged procedural violations raised in Appellants’ opening brief are entirely baseless.

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c/w No. 21-30060

and paid in full,<sup>10</sup> making the district court's order dismissing their claims "invalid" under LA. CIV. CODE ANN. art. 2033. That statute outlines the effect of a contract that "has been declared null by the court," and is entirely inapplicable here. *See id.* In any event, the Equifirst note was from 2002, while the note at issue here was from 2005, so it is irrelevant.

### C. Merits

We now turn to Appellants' remaining issues on appeal. To the extent Appellants' arguments challenge the district court's dismissal of the claims in the original and amended petitions, we agree with the district court's conclusions. To the extent Appellants raise extraneous issues on the merits, we conclude they are unavailing.

Appellants first argue that the district court erred in its conclusion that they lack a private right of action for mortgage fraud. It did not. A criminal statute must "explicitly" indicate that it is providing for a private right of action. *See Chevalier v. L.H. Bossier, Inc.*, 676 So. 2d 1072, 1076 (La. 1996), superseded by statute, LA. STAT. ANN § 1173, as stated in *Leon v. Diversified Concrete, LLC*, 225 F. Supp. 3d 596, 600-01 (E.D. La. 2016). Louisiana's mortgage fraud statute does not authorize such relief. *See* LA. STAT. ANN § 14:71.3.

Appellants also argue that the district court erred "because a faulty securitization process opens homeowners to false claims of enforcement of a

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<sup>10</sup> Appellants attempted to attach an "Affidavit of Lost Note and Authorization to Cancel Mortgage" to its amended petition to support this notion, but it was properly stricken from the record as untimely filed. Assuming arguendo that this document was properly submitted elsewhere in Appellants' pleadings, it does not support Appellants' assertion. Though the document states that a note and mortgage was paid in full, it seemingly refers to a different note than the one at issue here. The note referenced in the affidavit was issued in 2002 for an amount of \$176,310; whereas the note at issue in the original petition was executed in 2005 for an amount of \$184,000.

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c/w No. 21-30060

note.” Per Appellants, the improper securitization eliminates all Appellees’ interest in the note and property. Because “Appellees initiated action to take Appellants’ home in 2018, and have set the conditions for successors to try and do the same,” Appellants assert that they are entitled to quiet title “[t]o prevent a similar future traumatic event.” The district court aptly concluded that the faulty securitization argument has been “resoundingly rejected by federal courts across the country.” *Berry v. LoanCity*, No. 18-888-JWD-RLB, 2019 WL 2870849, at \*5 (M.D. La. July 3, 2019) (holding the theory that improper securitization renders a subsequent assignment invalid meritless and collecting cases). We likewise reject the argument here.

Finally, Appellants assert that their rights under the Louisiana constitution were violated for wrongful seizure and conversion.<sup>11</sup> As discussed above, Appellants are still in possession of their property, meaning no seizure has occurred. This argument is meritless.<sup>12</sup>

AFFIRMED.

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<sup>11</sup> Appellants’ claim under 42 U.S.C. § 1983 is clearly inapplicable. Appellants utterly fail to advance a claim for violation of a federally secured right against an individual acting under color of state law.

<sup>12</sup> We note that, in Louisiana, initiation of foreclosure proceedings *combined with* notices of eviction may be sufficient to create a cognizable claim for wrongful seizure. *See Rayner v. Evangeline Bank & Tr. Co.*, 219 So. 3d 1122, 1124 (La. Ct. App. 2017). But here, Appellants only allege that Wells Fargo initiated foreclosure proceedings. Moreover, a valid claim for wrongful seizure requires that the seizure be caused by an individual or entity owing the plaintiff a duty, and breach of that duty. *See Taylor v. Hancock Bank of La.*, 665 So. 2d 5, 7 (La. Ct. App. 1995). Appellants failed to advance a cognizable claim that any Defendants-Appellees owed them a relevant duty. Thus, without more, we agree with the district court that Appellants have failed to state a claim for wrongful seizure of their property.

Number \_\_\_\_\_

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# In the Supreme Court of the United States

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DARRELL BERRY; CONSTANCE LAFAYETTE

Petitioners,

v.

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

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit  
Consolidated 20-30670 and 21-30060

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## Petitioners' Appendix for Writ of Certiorari Volume 3 Pages 156-207

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

## Appendix C

Pet. App.

157

# United States Court of Appeals for the Fifth Circuit

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No. 20-30670

CONSOLIDATED WITH

No. 21-30060

---

DARRELL BERRY; CONSTANCE LAFAYETTE,

*Plaintiffs—Appellants,*

*versus*

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, "MERS"; DOES 1-100, "inclusive"; JOHN DOE 1; JOHN DOE 2, Sponsor of the Freddie Mac Multiclass Certificates, Series 3113 Trust,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:18-CV-888

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ON PETITION FOR REHEARING EN BANC

Before SOUTHWICK, HAYNES, and HIGGINSON, *Circuit Judges.*

PER CURIAM:

No. 20-30670

Pet. App.  
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Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

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\*Judge James L. Dennis, did not participate in the consideration of the rehearing en banc.

## **Appendix D**

# Exhibit 1

STATE OF LOUISIANA \* PARISH OF EAST BATON ROUGE  
\* 19TH DISTRICT COURT\*

WELLS FARGO BANK, N.A.

FILED: \_\_\_\_\_

VS. NO. \_\_\_\_\_

DARRELL KENDRICK BERRY AND  
CONSTANCE LAFAYETTE BERRY

BY: \_\_\_\_\_  
DEPUTY CLERK

ORDER

Considering plaintiff's petition and the exhibits and finding that plaintiff is entitled hereto,

IT IS ORDERED that a writ of seizure and sale issue commanding the Sheriff to seize and sell the property described above in the petition affected by the mortgage and/or privilege as prayed for and according to the law and from any proceeds thereof to issue payment to Dean Morris, L.L.C., the agents for plaintiff, in the amount owed to plaintiff, to-wit: (a) principal of \$179,747.56 with interest thereon at 5.000% per annum from May 01, 2016, until paid; (b) the following amounts accrued through the filing date: advances of \$4,606.76 for the payment of taxes and insurance, (c) all expenses incurred in enforcing the note and mortgage including reasonable attorney's fees not to exceed \$5,000.00, reserving to plaintiff the right to hereafter seek and prove additional attorney's fees with supporting documentation; (d) if/as applicable, such other or additional amounts and charges advanced pursuant to the note and mortgage and applicable law, which advances will be itemized and proved according to law by verified supplemental and amending petition or affidavit with supporting documentation filed before distribution by the Sheriff of the proceeds of the judicial sale herein; and (e) all law charges, fees and expenses incurred in connection or relating to this proceeding including without limitation sheriff's commission, sheriff's costs, court costs all as permitted by the note or

5324053633

STATE OF LOUISIANA \* PARISH OF EAST BATON ROUGE  
\* 19TH DISTRICT COURT \*

**WELLS FARGO BANK, N.A.**

FILED: \_\_\_\_\_

VS. NO. \_\_\_\_\_

DARRELL KENDRICK BERRY AND  
CONSTANCE LAFAYETTE BERRY

BY: DEPUTY CLERK

mortgage being enforced by this proceeding. Plaintiff reserves plaintiff's right to further enforce the contractual amount of attorney's fees if/as necessary to protect plaintiff's secured claim after a hearing in accordance with law.

Baton Rouge, Louisiana, this 13 day of April, 2017.

EDGE 19TH DISTRICT

**CERTIFIED TRUE AND  
CORRECT COPY**

卷之三

East Seine Rouge Paris  
Deputy Clerk of Court

## Exhibit 2

Pet. App.

164

M

SIN 792 NB 11806

LOAN NO: 5006772544

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

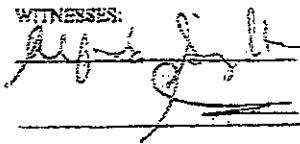
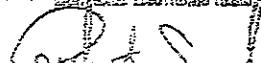
**AFFIDAVIT OF LOST NOTE AND AUTHORIZATION TO CANCEL MORTGAGE  
 PURSUANT TO R.S. 9:168**

STATE OF LOUISIANA  
 PARISH OF EAST BATON ROUGE PARISH

Before me, the undersigned Notary, personally came and appeared: Robert Senda, who being duly sworn did depose say that: He is the Vice President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. or MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. or that he is personally the last holder of the certain promissory note for sum of \$174,310.00, drawn by CONSTANCE LAFAYETTE BERRY AND DARRELL BARRY payable to EQUIFIRST CORPORATION, which note was dated 10/31/2002 and provided for identification with an act of mortgage executed before N/A, Notary Public, which mortgage is recorded in the records of EAST BATON ROUGE PARISH at MOB 641 folio 11406, or instrument # N/A and is secured by the following described property: Lot B, B-1, C, D B-1 A D-1 lot Square N/A in District . Affiant further deposed that he (or the corporation that he represents) was the last holder in due course of said note and that said note is lost and cannot be located by sufficient after due and diligent search for same.

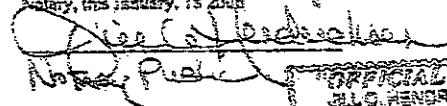
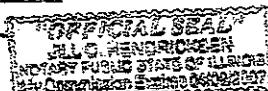
Affiant did further depose that on the 10/31/2002 makers of said note or their agents did pay said note and mortgage in full and that nothing remains due on same and that affiant does hereby authorize the Recorder of Mortgages for EAST BATON ROUGE PARISH to cancel the inscription of that mortgage above described and recorded in MOB 641 folio 11406, or instrument # N/A. The affiant has not sold, transferred, or assigned the note to any other person or entity. Affiant does hereby agree to indemnify any person or entity as a consequence of canceling the aforesaid mortgage or vendor's lien pursuant to this affidavit which is executed under the provisions of R. S. 9:168. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

WITNESSES:

Notary Public

Sworn to and subscribed before me,  
 Notary, this 19 January, 19 2019

Page 5

21-30060.273

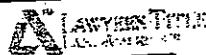
East Baton Rouge Parish Clerk of Court Ctrg/Brnd 792/11808

Pet. App.

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

Lawyers Title Insurance Corporation



SEARCHED  
 38403/28

POLICY NO.  
 135-02-337995

## LOAN POLICY

Schedule A - Paragraph 8  
 Legal Description Continued

ONE (1) CERTAIN LOT OR PARCELS OF GROUND, together with all the buildings and improvements thereon, and all the rights, ways and privileges, servitudes, appurtenances and advantages thereto belonging or in anywise appertaining, situated in the Parish of East Baton Rouge, State of Louisiana, being designated as LOT D-1 of the Joe Rappolo, et al Tract located in Sections 55, 66 and 71, T18, R15, G.S.D. on the official map of said tract on file and of record in the office of the Clerk and Recorder for said parish and state, revised August 4, 1980, to show the resubdivision of Lot B to create lots B-1, C and D to form lots A-1-A and B-1, said lot D-1 measuring One Hundred (100') feet front on Greenmoss Drive by a depth of One Hundred Fifty-Two (152') feet between equal and parallel lines and being subject to a fifteen (15') foot utility servitude across the rear, all as more fully shown on the official recorded map and map revisions.

ALTA Form  
(Amended)

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

Page 1 of 1

Page 6

21-30080.274

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## CANCELLATION OF ENCUMBRANCE

STATE OF LOUISIANA  
 PARISH OF EAST BATON ROUGE

By virtue of the attached,

## AFFIDAVIT

, the inscription of the

MORTGAGE

recorded as original

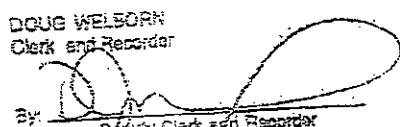
6411

Bundle 11406 of the records of this office, is hereby cancelled.

Baton Rouge, Louisiana, this 1<sup>st</sup> day of February 2016.

Also index

Darrell M. Berry - m/

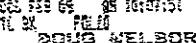
DOUG WELBORN  
Clerk and RecorderBy   
Deputy Clerk and Recorder

Bndl 792 Reg 11808

FILED AND RECORDED

EAST BATON ROUGE PARISH, LA.

2016 REG 66 08 10:37:51

FILED BY 

DOUG WELBORN

CLERK OF COURT &amp; RECORDER

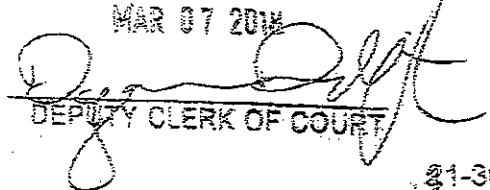
CERTIFIED TRUE COPY

BY

DEPUTY CLERK &amp; RECORDER

CERTIFIED  
TRUE COPY

MAR 07 2016

  
DEPUTY CLERK OF COURT

21-30060-275

## Exhibit 3

Table 1 Broken Chain of Title: No Standing

Proper Chain of Title Needed to Foreclose	But this is what the evidence shows	Wells Fargo shows this Chain of Title
<p>Equifirst to ↓ LoanCity to ↓ The Trust (Trustee, Depositor) to ↓ Wells Fargo</p> <p>This did not happen</p>	<p>Equifirst Never Assigned To LOANCITY  Chain is Broken  LoanCity (<i>refinance</i> d mortgage/note in 2005 w/o purchasing original note) ↓ Equifirst States Note Paid 2006 ↓ Chain is Broken  The Trust in 2006 (received &amp; securitized bogus note from LoanCity and violates PSA by: 1) accepting the unenforceable note 2) failing to file Certificates with SEC or the State and Federal Government and 3) creating a private label trust which violates New York Law for REMICs  The Trust does not assign any rights to Wells Fargo  Chain is Broken Again</p>	<p>Equifirst Never Assigned To LOANCITY  Chain is Broken  LoanCity (<i>refinance</i> d mortgage/note in 2005 w/o purchasing original note) ↓ Equifirst Note Paid 2006  Chain is Broken  LoanCity dissolves 2008 ↓ MERS transfers LoanCity note to Wells Fargo without permission from LoanCity 2012  Chain is Broken Again  MERS/Wells Fargo did not pull note from the Freddie Mac Trust  Chain is Broken Again  Wells Fargo to ↓ SLS 2018 although Wells Fargo had no rights to transfer the note who illegally transferred it to Caliber Home Loans 2018 who illegally transferred it to Fay Servicing 2021</p>
<p>True Chain of Title supported by evidence</p> <p>Equifirst to ↓ The Berrys 2006</p>		

Exhibit 4

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Certified Forensic Loan Auditors

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

\$1,269,772,238

Freddie Mac

Multiclass Certificates, Series 3113



**Offered Classes:** REMIC Classes shown below and MACK Classes shown on Appendix A  
**Offering Terms:** The underwriter named below is offering the Classes in negotiated transactions at varying prices; we have agreed to purchase all of PN  
**Closing Date:** February 27, 2003

NAME	ORIGINAL BALANCE	NOTICE PERIOD	DATE OPENED	TYPE	CLOSE NUMBER	CLOSE DATE
<b>Group 1</b>						
1A	\$ 26,189,528	SUP	007	PO	31366HD46	February 15, 2003
1B	48,772,912	SUP	008	PO	31366HD47	August 15, 2003
1C	19,272,912	PAC	009	PO	31366HD48	November 15, 2003
1D	61,891,527	PAC	010	PO	31366HD49	February 15, 2004
1E	61,371,488	PAC	011	PO	31366HD50	October 15, 2004
1F	79,559,132	PAC	012	PO	31366HD51	June 15, 2005
1G	61,204,667	PAC	013	PO	31366HD52	February 15, 2006
1H	15,286,093	PAC	014	PO	31366HD53	August 15, 2006
1I	45,711,126	MTG (SUP)	015	PO	31366HD54	August 15, 2007
1J	15,999,627	AD/SUP <sup>(1)</sup>	016	PK	31366HD55	November 15, 2007
1K	50,058,036	SUP	017	PK	31366HD56	February 15, 2008
<b>Group 2</b>						
2A	142,960,000	SEQ	018	PK	31366HD57	May 15, 2003
2B	112,860,000	SEQ	019	PK	31366HD58	August 15, 2003
2C	104,000,000	SEQ/RT <sup>(2)</sup>	020	PK	31366HD59	February 15, 2004
2D	8,586,289	AD/SUP <sup>(2)</sup>	021	PK	31366HD60	January 15, 2005
2E	10,928,711	SEQ	022	PK	31366HD61	April 15, 2005
2F	10,500,000	SEQ	023	PK	31366HD62	February 15, 2006
<b>Group 3</b>						
3A	81,624,379	SEQ	024	PK	31366HD63	April 15, 2006
3B	38,145,573	SEQ	025	PK	31366HD64	March 15, 2006
3C	20,000,000	SEQ	026	PK	31366HD65	February 15, 2007
<b>Group 4</b>						
4A	20,552,848	SUP	027	PK	31366HD67	April 15, 2007
4B	9,258,639	PAC	028	PK	31366HD68	February 15, 2008
4C	44,403,559	SUP	029	PK	31366HD69	October 15, 2008
4D	90,356,000	SUP	030	PK	31366HD70	February 15, 2009
4E	163,165,248	PAC <sup>(3)</sup>	031	PK	31366HD71	February 15, 2009
<b>Group 5</b>						
5A	25,366,000	SEQ	032	PK	31366HD72	September 15, 2009
5B	4,528,432	SEQ	033	PK	31366HD73	February 15, 2010
<b>Group 6</b>						
6A	10,000,000	TAC	034	PK	31366HD74	February 15, 2010
6B	1,641,473	SUP	035	PK	31366HD75	February 15, 2010
6C	1,541,473	SEQ	036	PK	31366HD76	February 15, 2010
<b>Excluded</b>						
7A	0	NPR	037	NPR	31366HD77	February 15, 2010
7B	0	NPR	038	NPR	31366HD78	February 15, 2010
7C	0	NPR	039	NPR	31366HD79	February 15, 2010

(1) See Appendix II to the Offering Circular and Payment - Corporate of Classes.

(2) See Form 511 - Index.

The Certificates may not be suitable investments for you. You should not purchase Certificates unless you have carefully considered and are able to bear the associated prepayment, interest rate, yield and market risk of investing in them. **Certain Risk Considerations** on page 5-2 highlights some of these risks.

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

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

MORGAN STANLEY

January 17, 2003

Page 11

## Exhibit 5

Pet. App.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

THE STATE OF ALABAMA,  
501 Washington Avenue  
Montgomery, AL 36130

THE STATE OF ALASKA,  
1031 W. 4<sup>th</sup> Avenue, Ste. 200  
Anchorage, AK 99501

THE STATE OF ARIZONA,  
1275 W. Washington  
Phoenix, AZ 85007

THE STATE OF ARKANSAS,  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201

THE STATE OF CALIFORNIA,  
455 Golden Gate Avenue, Ste. 14500  
San Francisco, CA 94102-7007

THE STATE OF COLORADO,  
1525 Sherman Street - 7<sup>th</sup> Floor  
Denver, Colorado 80203

THE STATE OF CONNECTICUT,  
55 Elm Street, P.O. Box 120  
Hartford, CT 06141-0120

THE STATE OF DELAWARE,  
820 N. French Street  
Wilmington, DE 19801

THE STATE OF FLORIDA,  
3507 E. Frontage Road  
Suite 325  
Tampa, FL 33607

Pet. App.

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THE STATE OF UTAH,  
350 North State Street, #230  
Salt Lake City, UT 84114-2320

THE STATE OF VERMONT,  
109 State Street  
Montpelier, Vermont 05609

THE COMMONWEALTH OF VIRGINIA,  
900 East Main Street  
Richmond, Virginia 23219

THE STATE OF WASHINGTON,  
1250 Pacific Avenue, Suite 105  
PO Box 2317  
Tacoma, WA 98402-4411

THE STATE OF WEST VIRGINIA,  
State Capitol, Room 26E  
Charleston, WV 25305-0220

THE STATE OF WISCONSIN,  
Post Office Box 7857  
Madison, Wisconsin 53707-7857

THE STATE OF WYOMING, and  
123 State Capitol Bldg  
200 W. 24th  
Cheyenne, WY 82002

THE DISTRICT OF COLUMBIA,  
441 Fourth Street, N.W., Suite 600-S  
Washington, DC 20001

Plaintiffs,

v.

BANK OF AMERICA CORPORATION,  
Corporate Center 100  
100 North Tryon Street  
Charlotte, North Carolina 28255

BANK OF AMERICA, N.A.  
100 North Tryon Street

Page 1

21-30060-374

Pet. App.

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1100 Virginia Drive  
Fort Washington, Pennsylvania 19034

ALLY FINANCIAL, INC.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265

GMAC MORTGAGE, LLC,  
1100 Virginia Drive  
Fort Washington, Pennsylvania 19034

GMAC RESIDENTIAL FUNDING CO. LLC  
8400 Normandale Lake Boulevard  
Minneapolis, Minnesota 55437

WELLS FARGO & COMPANY,  
420 Montgomery Street Front  
San Francisco, CA 94104-1205

WELLS FARGO BANK, N.A.,  
One Home Campus  
Des Moines, IA 50328

Defendants.

COMPLAINT

New comes the United States, and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and

Page

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62. In the course of their conduct, management, and oversight of foreclosures, the Banks violated FHA and MHA foreclosure requirements.

63. In the course of their conduct, management, and oversight of foreclosures in the plaintiff States, the Banks have engaged in a pattern of unfair and deceptive practices.

64. The Banks' failure to follow appropriate foreclosure procedures, and related unfair and deceptive practices include, but are not limited to, the following:

- a. failing to properly identify the foreclosing party;
- b. charging improper fees related to foreclosures;
- c. preparing, executing, notarizing or presenting false and misleading documents, filing false and misleading documents with courts and government agencies, or otherwise using false or misleading documents as part of the foreclosure process (including, but not limited to, affidavits, declarations, certifications, substitutions of trustees, and assignments);
- d. preparing, executing, or filing affidavits in foreclosure proceedings without personal knowledge of the assertions in the affidavits and without review of any information or documentation to verify the assertions in such affidavits. This practice of repeated false attestation of information in affidavits is popularly known as "robosigning." Where third parties engaged in robosigning on behalf of the Banks, they did so with the knowledge and approval of the Banks;

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e. executing and filing affidavits in foreclosure proceedings

that were not properly notarized in accordance with applicable state law;

f. misrepresenting the identity, office, or legal status of the

affiant executing foreclosure-related documents;

g. inappropriately charging servicing, document creation,

recording and other costs and expenses related to foreclosures; and

h. inappropriately dual-tracking foreclosure and loan

modification activities, and failing to communicate with borrowers with

respect to foreclosure activities.

**B. The Banks' Origination Misconduct**

**1. Unfair and Deceptive Origination Practices**

65. Under the States' consumer protection laws, the Banks are

prohibited from engaging in unfair or deceptive practices with respect to  
consumers.

66. Each of the Banks regularly originates mortgage loans.

67. In the course of their origination of mortgage loans in the Plaintiff

States, the Banks have engaged in a pattern of unfair and deceptive practices.

Among other consequences, these practices caused borrowers in the Plaintiff  
States to enter into unaffordable mortgage loans that led to increased foreclosures

in the States.

**2. The Direct Endorsement Program**

68. The FHA's Direct Endorsement Program is a vital part of its

single-family insured mortgage program. Under the Direct Endorsement

## Exhibit 6

Pet. App.

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## Exhibit A

00915095

FILED 

Office of the Secretary of State  
of the State of California

JUN 3 2018

1601585  
**CERTIFICATE OF ELECTION  
TO WIND UP AND DISSOLVE  
OF  
LOANCITY,  
A CALIFORNIA CORPORATION  
CA Corp. Code § 1001**

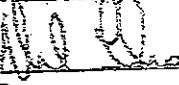
The undersigned, Richard Sankarlis, and Nick Laike, do hereby certify that they are now, and during all times mentioned herein have been, the duly elected and acting President and Chief Executive Officer, and Treasurer and Vice President of Finance, respectively, of Loancity, a California Corporation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

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

(2) The election was made by the vote of shareholders holding 6,616,773 shares of Common Stock, 12,425,798 shares of Series C Preferred Stock, 10,142,344 shares of Series D-1 Preferred Stock and 21,217,358 shares of Series D-2 Preferred Stock of the Corporation, representing at least fifty percent (50%) of the voting power of the Corporation.

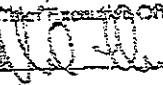
IN WITNESS WHEREOF, the undersigned have executed this certificate this  
16 day of May, 2002.

  
Richard Sankarlis,  
President & Chief Executive Officer

  
Nick Laike,  
Treasurer & Vice President of Finance

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct and of our own knowledge and that this certificate was executed on May 16, 2002 in San Jose, California.

  
Richard Sankarlis,  
President & Chief Executive Officer

  
Nick Laike,  
Treasurer & Vice President of Finance

00915095-1

# Exhibit 7

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## CORPORATE ASSIGNMENT OF MORTGAGE

East Baton Rouge, Louisiana  
"BERRY"

MERS #: 10005801000075055 SIS #: 1-288-675-6377

M

Date of Assignment: November 6th, 2012  
 Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR LOANCITY, ITS  
 SUCCESSORS AND ASSIGNS at BOX 2326 FLINT MI 48501, 1901 E VOORHEES ST STE C, DANVILLE, IL  
 61834  
 Assignee: WELLS FARGO BANK, NA at HOME CAMPUS, DES MOINES, IA 50328  
 Executed By: CARRELL KENDRICK BERRY AND CONSTANCE LAFAYETTE BERRY, HUSBAND AND WIFE To:  
 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR LOANCITY, ITS SUCCESSORS  
 AND ASSIGNS  
 Date of Mortgage: 12/27/2005 Recorded: 01/04/2006 Original: 846 as Bundle: 11786 In the Parish of East Baton  
 Rouge, State of Louisiana.

Property Address: 6335 GREENMOSS DRIVE, BATON ROUGE, LA 70805

Legal: See Exhibit "A" Attached Hereto And By This Reference Made A Part Hereof

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of  
 which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said  
 Mortgage having an original principal sum of \$186,000.00 with interest, secured thereby, with all moneys now owing  
 or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the  
 covenants and provisions therein contained, and the said Assignee, hereby grants and conveys unto the said Assignee,  
 the Assignor's beneficial interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the  
 terms contained in said Mortgage.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR LOANCITY, ITS  
 SUCCESSORS AND ASSIGNS  
 On 11-16-12

By: Angela E. Jenkins  
Dean McDaniel  
 Assistant Secretary

SIS #: 906 28011 12451  
11/13/2012 12:35:23 PM

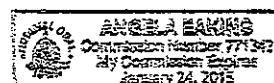
FILED AND RECORDED  
 EAST BATON ROUGE PARISH, LA  
 DEB WELBORN  
 CLERK OF COURT AND RECORDER

STATE OF Iowa  
 COUNTY OF Polk

On 11-16-12 before me, Angela Jenkins, a Notary Public in and for Polk in the  
 State of Iowa, personally appeared Dean McDaniel, Assistant Secretary,  
 personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
 is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
 his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity  
 upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Angela E. Jenkins  
 ANGELA E. JENKINS  
 Notary Public



(This area for notarial seal)

PREPARED BY: WELLS FARGO BANK, N.A.  
 When Recorded: Return To: DEFAULT ASSIGNMENT, WELLS FARGO BANK, N.A. MAC: X5559-018PO BOX 1826,  
 MINNEAPOLIS, MN 55440-9786  
 Recording Requested By: WELLS FARGO BANK, N.A.

2019 RELEASE UNDER E.O. 14176

## Exhibit 8

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85°

AM

NOTICE OF SEIZURE  
SHERIFF'S OFFICE

Suit No: (17) 658991  
Ser No / Dep Cde: 8/399

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

Baton Rouge, LA

19th Judicial District

Parish of East Baton Rouge

State of Louisiana

APRIL 24, 2016 (2017)  
6:00 PM 10/15/20

REASON  
WELL FARGO BANK PARISH, LA  
COURT BUREAU  
CLERK OF COURT AND RECORDED

TO: CONSTANCE LAFAYETTE BERRY  
6338 GREENMOSS DRIVE  
BATON ROUGE, LA 70806

Notice is hereby given that on April 24, 2016, I seized the following described immovable property,  
to wit:

ONE (1) CERTAIN PARCEL OF GROUND, together with all the buildings and improvements thereon, and all  
the rights, ways, and privileges, servitudes, appurtenances and advantages thereto belonging or in  
anywise appertaining, situated in the Parish of East Baton Rouge, State of Louisiana, being designated as  
LOT D-1 of the Joe Kepic, et al Tract located in Section 29, 38 and 71, T75, R1E, G.L.D. on the official  
map of said tract on file and of record in the office of the Clerk and  
Recorder for said parish and state, revised August 4, 1858, to show the redivision of Lot 5 to create  
Lots B-1, C and D to form Lots B-1-A and D-1 measuring One Hundred (100) feet front on Greenmoss Drive  
by a depth of One Hundred Fifty-Two (152) feet between equal and parallel lines and being subject to a  
fifteen (15) foot utility servitude across the rear, all as more fully shown on the official recorded map and  
map revisions; subject to restrictions, servitudes, rights-of-way and outstanding mineral rights of record  
affecting the property.

RECORDED COPY

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21-30060.1101

Exhibit 9

Table 2 Appellees' Untruths

Appellees' Misinformation (A)	Truth (B)
1. LoanCity was the Originator of the Original Note ROA.21-30060.158, 173; ROA.20- 30670.156, 171	<ul style="list-style-type: none"> <li>• Equifirst was the Originator in 2002 and they did not sell the note to LoanCity rather it stated the Original Note and Mortgage were cancelled, not sold,</li> <li>• transferred or assigned and deemed Paid in Full with nothing owing ROA.21-30060.273-275, 330-332, 499-501, 609:1-8, '733:138-142, 1052-1054, 1233:8-11, 1244:2-10, 1244:2-10; ROA.20-30670.271-273, 328-330, 497-499, 607:1-8, 731:138-142, 1050-1052, 1231:8-11, 1242:2-10.</li> </ul>
2. LoanCity Transferred its rights to Wells Fargo 2012 ROA.21-30060.334- 335, 1056-1057; ROA.20-30670.332- 333, 1054-1055	<ul style="list-style-type: none"> <li>• The 2005 LoanCity instruments <i>did not refinance</i> the 2002 Equifirst note/mortgage after it cease to exist ROA.21-30060.23; ROA.20-30670.21</li> <li>• The LoanCity note was allegedly placed in the Freddie Mac Multiclass series 3113 in 2006. ROA.21-30060.282, 739:279-282, 1070; ROA.20-30670.280, 737:279-282, 1068.</li> <li>• An assignment from LoanCity to Wells Fargo could not take place because LoanCity already allegedly transferred their rights to the Freddie Mac Multiclass Series 3113</li> <li>• There was no transfer from Freddie Mac to Wells Fargo</li> </ul>
4. In the Suggestion of Bankruptcy Appellee stated 1) The Berries voluntarily filed for	<ul style="list-style-type: none"> <li>• <i>The Berries were forced to file bankruptcy</i> on October 30, 2013 to stop the sale of their home scheduled the very next day ROA.21-30060.1050; ROA.20-30670.1048.</li> <li>• Wells Fargo filed a civil action of foreclose against Appellants, <i>Wells Fargo N.A. vs Darrell Berry et al C-65699/ SEC 22</i> presided by Judge Timothy Kelley of the 19<sup>th</sup> JDC. ROA.21-30060.1095; ROA.20-30670.1093</li> </ul>

## Truth (B)

Appellees'  
Misinformation (A)

- bankruptcy, 2)
- Automatic stay for bankruptcy should not be granted because “we did not file a civil action against the Berry’s” ROA.21-30060.200:26-27; ROA.20-30670.198:26-27

- The Berry’s filed a counter suit on August 20, 2018 *Darrell Berry et al vs LoanCity, et al.*, C-672792 presided by Judge Wilson Fields of the 19<sup>th</sup> JDC, to challenge the Judgement received in civil action *Wells Fargo vs Darrell Berry et al* C-656991. Appellants were sued by Wells Fargo NOT SLS on behalf of Freddie Mac, Appellants received notice from Wells Fargo NOT SLS. ROA.21-30060.47-94,
  - 1041; ROA.20-30670.45-92, 1039
  - On April 6, 2017 Candace Courteau filed the Petition to *Enforce Security Interest by Executory Process* C-656991 SEC 22 for Wells Fargo NOT SLS ROA.21-30060.1098; ROA.20-30670.1096
  - April 11-13, 2017, Judge Timothy E. Kelley of the 19<sup>th</sup> JDC issued Judgement of Foreclosure in favor of *Wells Fargo Suit No. C-656991 SEC 22 ROA.20-30670.1096*; ROA.20-30670.1094.
  - April 24, 2017 Joseph Delrio requested the Court not to issue the Writ of Seizure for Wells Fargo NOT SLS ROA.21-30060.1099; ROA.20-30670.1097
  - April 2, 2018 Brandy White requested the Sheriff to issue the Writ to seize and sell the property in *Suit No. (17) 656991 SEC 22 ROA.21-30060.1100*; ROA.20-30670.1098
  - April 8, 2018 the Clerk received payment of \$114 from Candace Courteau for Suit No. C-656991 SEC 22 Wells Fargo, N.A. vs *Darrell Berry, et al* not SLS.
  - On April 12, 2018, Wells Fargo NOT SLS paid the fee and obtained updated Writ of Seizure and Sale in 19<sup>th</sup> JDC ROA.21-30060.1090; ROA.20-30670.1088.
  - June 12, 2018 Wells Fargo paid \$85.00 for the Notice of Seizure to be issued by the Sheriff’s Office *Suit No. (17) 656991 SEC 22 ROA.21-30060.1101*; ROA.20-30670.1099
  - On Friday, September 28, 2018 the Morning Advocate showed a foreclosure posting by Wells Fargo not SLS on the subject property to be held on October 31,

Appellees' Misinformation (A)	Truth (B)
<p>2018 ROA.21-30060.1093; ROA.20-30670.1091.</p> <ul style="list-style-type: none"> <li>• The 19<sup>th</sup> JDC scheduled hearing September 6, 2018 and then rescheduled the hearing for October 24, 2018, ROA.21-30060.1040; ROA.20-30670.1038.</li> <li>• Appellants appeared for both hearings the Appellees did not appear in either hearing.<sup>6</sup></li> </ul> <p>5.</p> <p>Status Report concerning the injunction on or about March 19, 2018, Wells Fargo stated they transferred its right to Specialized Loan Servicing ROA.21-30060.450-451; ROA.20-30670.448..</p>	<p>5.</p> <p>Every relative document to the foreclosure is in the name of Wells Fargo not SLS.</p> <ul style="list-style-type: none"> <li>• See Item 3 B above.</li> <li>• The foreclosing proceedings has not been rescinded by Wells Fargo. To date No protection from the M.D. La. was offered.</li> </ul>
	<p>449.</p>

<sup>6</sup> Id 1 p 16

Exhibit 10



19<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
300 NORTH BLVD  
BATON ROUGE, LA 70801

Pet. App.

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24TH DAY OF SEPTEMBER, 2018

TO: DARRELL BERRY  
8338 GREENMOSS DRIVE  
BATON ROUGE, LA 70806

DARRELL BERRY, ET AL VS LOANCITY, ET AL

CASE NUMBER: C-672792

JUDGE: HON WILSON E FIELDS

DIVISION: 25 ROOM: 7A

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION FOR THE AFOREMENTIONED CASE  
ON 10/24/2018 AT 09:00 AM FOR RULE.

COMMENTS: TEMPORARY RESTRAINING ORDER; FILED ON BEHALF OF DARRELL BERRY AND  
CONSTANCE LAFAYETTE, APPLICANTS; RE-ASSIGNED FROM SEPTEMBER 6, 2018.

*Deputy Clerk*  
DEPUTY CLERK & SPECIAL ASSISTANT TO  
HON WILSON E FIELDS

NOTIFIED:  
KASEE S. HEISTERHAGEN  
In-Propri-Person

Exhibit 11

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

U.S. DISTRICT COURT	
MIDDLE DISTRICT OF LOUISIANA	
FILED	OCT 26 2018
EC	
CLERK	

DARRELL BERRY and  
CONSTANCE LAFAYETTE,

Plaintiffs,

vs.

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

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

Defendants.

**MOTION FOR VERIFIED EMERGENCY PETITION FOR TEMPORARY  
RESTRANDING ORDER AND/OR PRELIMINARY INJUNCTION,  
AND DECLARATORY RELIEF**

TO THE HONORABLE, UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF LOUISIANA:

COMES NOW, Plaintiffs DARRELL BERRY and CONSTANCE LAFAYETTE, *pro se*, (hereafter "Plaintiffs") and files *Verified Emergency Petition for Temporary Restraining Order (Stay Order) and/or Preliminary Injunction, and Declaratory Relief*, against the listed Defendants. A temporary restraining order is appropriate to maintain the status quo. Plaintiffs' home will be sold October 31, 2018 and Plaintiffs are subject to eviction actions, without immediate intervention from this Court. Please Set Aside Foreclosure and Decree and Motion because the case has now been moved to The United States District Court For The Middle

## Exhibit 12

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Query Reports Utilities Help

3:18-cv-00888-JWD-SDJ Berry et al v. Loandity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

Filer Wells Fargo Bank, N.A.

Doc. No.	Event Name	Filed
1	Notice of Removal	10/05/2018
3	Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
4	Motion to Dismiss for Failure to State a Claim	10/12/2018
9	Exhibit(s)	10/22/2018
14	Suggestion of Bankruptcy	11/01/2018
29	Motion to Enroll Additional Attorney	03/07/2019
31	Motion to Withdraw as Attorney	03/19/2019
37	Brief	04/17/2019
46	Response in Opposition to Motion	08/07/2019
50	Motion for Leave to File Document	08/30/2019
52	Reply to Response to Motion	09/04/2019
74	Motion for Extension of Time to File Answer	12/13/2019
84	Motion to Dismiss for Failure to State a Claim	01/09/2020
110	Reply to Response to Motion	08/03/2020
111	Response in Opposition to Motion	08/11/2020

[Query](#) [Reports](#) [Utilities](#) [Help](#).

3:18-cv-00888-JWD-SDJ Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

## Filer Mortgage Electronic Registration System

Doc. No.	Event Name	Filed
2	②Motion to Enroll Additional Attorney	10/12/2018
3	③Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
5	③Motion to Dismiss for Failure to State a Claim	10/12/2018
20	②Reply to Response to Motion	12/14/2018
22	③Motion for Leave to File Excess Pages	12/14/2018
24	②Reply to Response to Motion	12/17/2018
76	③Motion for Extension of Time to File Answer	12/17/2019
79	③Motion to Dismiss	01/03/2020
82	③Memorandum in Support of Motion	01/06/2020
85	③Motion to Dismiss	01/10/2020
86	③Motion to Substitute Pleading (In Order to Correct Deficiency)	01/13/2020
112	②Reply to Response to Motion	08/11/2020
114	③Memorandum in Opposition to Motion	08/17/2020
125	③Memorandum in Opposition to Motion	11/03/2020

[Query](#) [Reports](#) [Utilities](#) [Help](#)

3:18-cv-00888-JWD-SDJ Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

**Filer Federal Home Loan Mortgage Corporation**

Doc. No.	Event Name	Filed
2	②Motion to Enroll Additional Attorney	10/12/2018
3	③Motion to Substitute Pleading (In Order to Correct Deficiency)	10/12/2018
5	③Motion to Dismiss for Failure to State a Claim	10/12/2018
20	③Reply to Response to Motion	12/14/2018
22	③Motion for Leave to File Excess Pages	12/14/2018
24	③Reply to Response to Motion	12/17/2018
76	③Motion for Extension of Time to File Answer	12/17/2019
79	③Motion to Dismiss	01/03/2020
82	③Memorandum in Support of Motion	01/06/2020
85	③Motion to Dismiss	01/10/2020
86	③Motion to Substitute Pleading (In Order to Correct Deficiency)	01/13/2020
112	③Reply to Response to Motion	08/11/2020
114	③Memorandum in Opposition to Motion	08/17/2020
125	③Memorandum in Opposition to Motion	11/03/2020

Query Reports Utilities Help

3:18-cv-00888-JWD-SDJ Berry et al v. Loancity et al

John W. deGravelles, presiding

Scott D. Johnson, referral

Date filed: 10/05/2018

Date of last filing: 11/03/2020

**Filer Freddie Mac Multiclass Certificates Series 3113 Trust**

Doc. No.	Event Name	Filed
2	Motion to Enroll Additional Attorney	10/12/2018
3	Motion to Substitute Pleading (in Order to Correct Deficiency)	10/12/2018
5	Motion to Dismiss for Failure to State a Claim	10/12/2018
20	Reply to Response to Motion	12/14/2018
22	Motion for Leave to File Excess Pages	12/14/2018
24	Reply to Response to Motion	12/17/2018
76	Motion for Extension of Time to File Answer	12/17/2019
79	Motion to Dismiss	01/03/2020
82	Memorandum in Support of Motion	01/06/2020
85	Motion to Dismiss	01/10/2020
86	Motion to Substitute Pleading (In Order to Correct Deficiency)	01/13/2020
112	Reply to Response to Motion	08/11/2020
114	Memorandum in Opposition to Motion	08/17/2020
125	Memorandum in Opposition to Motion	11/03/2020

## Exhibit 13

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jurisdiction also exists because this matter is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

**V. ADOPTION AND RESERVATION OF DEFENSES**

15. Nothing in this notice of removal shall be interpreted as a waiver or relinquishment of any of Defendants' rights to assert any defense or affirmative matter, including, but not limited to, the defenses of (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under Fed. R. Civ. P. 12, any state or federal statute, or otherwise.

**VI. PROCEDURAL REQUIREMENTS**

16. This case is a civil action within the meaning of the Acts of Congress relating to the removal of cases.

17. True, correct, and certified copies of "all process, pleadings, and orders" served on the Defendants are attached hereto as Exhibit "A" in conformity with 28 U.S.C. § 1446(a). There are no other process, pleadings, or orders served upon the Defendants to date in this case.

18. This Notice of Removal is filed within the time frame set forth in 28 U.S.C. § 1446, as Wells Fargo was served with process on September 5, 2018.<sup>1</sup>

19. Defendants have heretofore sought no similar relief.

20. The United States District Court for the Middle District of Louisiana is the court embracing the place where this action is pending in state court.

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<sup>1</sup> Upon information and belief, Loancity has not been served in this matter. Thus, there is no requirement that Loancity consent to this removal. See 28 U.S.C. § 1446.

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21. Pursuant to 28 U.S.C. § 1446(d), contemporaneously with the filing of this notice of removal, Defendants have filed a copy of same with the clerk of the 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana, as well as a notice of filing notice of removal. Written notice of the filing of this notice of removal has also been served upon the Plaintiffs.

22. All prerequisites for removal, as set forth in 28 U.S.C. § 1441, have been met.

23. Defendants *reserve* the right to supplement this notice of removal by adding any jurisdictional defenses that may independently support a basis for removal.

24. To the extent remand is sought by Plaintiffs or otherwise visited by this Court, Defendants request the opportunity to brief the issues and submit additional arguments and evidence, and to be heard at oral argument.

**WHEREFORE**, Defendants pray that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana to the United States District Court for the Middle District of Louisiana.

Respectfully submitted this 12th day of October, 2018.

/s/ Kasee S. Heisterhagen

Kasee S. Heisterhagen  
BURR & FORMAN LLP  
11 North Water Street, Suite 22200  
Mobile, Alabama 36602  
Telephone: (251) 344-5151  
Facsimile: (251) 344-9696  
ksparks@burr.com

Attorney for Defendant  
WELLS FARGO BANK, N.A.

## Exhibit 14

RETURN COPY

Pet. App.  
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RECEIVED

DS20429

TEMPORARY RESTRAINING ORDER

DARRELL BERRY, ET AL  
(Plaintiff)

NUMBER C-672792 25

VS

LOANCITY, ET AL  
(Defendant)

19<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

TO: WELLS FARGO HOME MORTGAGE/BANK  
CORPORATION SERVICE COMPANY  
501 LOUISIANA AVENUE  
BATON ROUGE, LA 70802

THE COURT HAS ORDERED an injunction that temporarily restrains you from:

\* \* \* \* \* SEE ATTACHED ORDER \* \* \* \* \*

The court's order states why it was granted without prior notice to you and without a hearing.  
If you do these things, you are violating a Court Order and may be subject to penalties.

This Temporary Restraining Order was issued by the Clerk of Court on AUGUST 31, 2018.

SEP 05 2018



Deputy Clerk of Court for  
Doug Welhorn, Clerk of Court

SERVICE INFORMATION:

Received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, served  
on the above named party as follows:

PERSONAL SERVICE: On the party herein named at \_\_\_\_\_

DOMICILIARY SERVICE: On the within named \_\_\_\_\_ by leaving the same at his domicile  
in this parish in the hands of \_\_\_\_\_ a person of suitable age and discretion residing in the said domicile at \_\_\_\_\_

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named \_\_\_\_\_ or  
his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SERVICE: \$ \_\_\_\_\_  
MILEAGE: \$ \_\_\_\_\_  
TOTAL: \$ \_\_\_\_\_

Deputy Sheriff

**List of Laws to be Considered**

Article III requirement for standing is at the heart of this case although the Respondents, M.D. La., and 5<sup>th</sup> Cir., have falsely characterized the arguments of the Petitioners. Petitioners assert they are the sole owners of the property and no Respondent has standing to make a claim against the property and seeks the Court to provide all redress available as a result of the actions of Respondents, the M.D. La. and the 5<sup>th</sup> Cir.

Article III of the United States Constitution limits the jurisdiction of all federal courts to "cases and controversies". A person with no ownership interest has no constitutional standing because a nonowner cannot establish "injury in fact" traceable to the acts of the opposing party. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). When standing is absent, a district court lacks subject-matter jurisdiction. See *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9<sup>th</sup> Cir. 2008) (a party invoking federal jurisdiction has the burden of establishing that it has satisfied the 'case-or controversy' requirement of Article III of the Constitution; standing is a 'core component' of that requirement.") (internal citations omitted); *Medina v. Clinton*, 86 F.3d 155, 157 (9<sup>th</sup> Cir. 1996) (linking Article III standing with subject-matter jurisdiction of federal courts). And a federal court cannot hypothesize subject matter jurisdiction for the purpose of deciding the merits. *Ruhrgas A. G. V. Marathon Oil*, 526 U.S. 574 (1999).

The constitutional limitations on federal jurisdiction make federal courts "courts of limited jurisdiction," *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365,

*374 (1978)* (jurisdiction lacking), as opposed to state courts, which are generally presumed to have subject matter jurisdiction over a case. The Supreme Court has made it clear that judgments must be vacated for lack of jurisdiction. See e.g., *Caterpillar, Inc. v. Lewis*, *519 U.S. 61, 76-77 (1996)* if, at the end of the day and case, a jurisdictional defect remains uncured, the judgment must be vacated."); See also *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, *456 U.S. 694, 701-03, 102 S. ct. 2099, 2103-05, 72 L. Ed. 2d 492 (1982)*

**The Fifth Amendment** to the United States Constitution provides in relevant part: "No person shall be ... deprived of life, liberty or property without due process of law...."

**The Fourteenth Amendment** to the United States Constitution provides in relevant part: "No state shall ... deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Subject Matter and Supplemental Jurisdiction is also at issue.

28 USC §§. 1251, 1331 et seq. Indeed, the presumption is that states courts enjoy concurrent jurisdiction, and Congress must explicitly or implicitly confine jurisdiction to the federal courts to oust the state courts. See *Gulf Offshore Co. v. Mobil Oil Corp.*, *453 U.S. 473, 477-484 (1981)*; *Tafflin v. Levitt*, *493 U.S. 455 (1990)*; *Yellow Freight System, Inc. v. Donnelly*, *494 U.S. 820 (1990)*.

18 USC §1001 which requires that the false statement, concealment or cover up be "knowingly and willfully" done, which means that "The statement must have been made with an intent to deceive, a design to induce belief in the falsity or to mislead, but 1001 does not require an intent to defraud -- that is, the intent to deprive someone of something by means of deceit." *United States v. Lichenstein*, 610 F.2d 1272, 1276-77 (5th Cir.), cert. denied, 447 U.S. 907 (1980).

#### **Additional Statutes for Review**

**FRCP 7.1** states

- (a) **WHO MUST FILE; CONTENTS.** A nongovernmental corporate party must file 2 copies of a disclosure statement that:
  - (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
  - (2) states that there is no such corporation.
- (b) **TIME TO FILE; SUPPLEMENTAL FILING.** A party must:
  - (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
  - (2) promptly file a supplemental statement if any required information changes.

According to **LA RS 2752** The petition for injunction shall be filed in the court where the executory proceeding is pending, either in the executory proceeding or in

a separate suit. The injunction proceeding to arrest a seizure and sale shall be governed by the provisions of Articles 3601 through 3609 and 3612, except as provided in Article 2753. However, a temporary restraining order shall not issue to arrest the seizure and sale of immovable property, but the defendant may apply for a preliminary injunction in accordance with Article 3602. In the event the defendant does apply for a preliminary injunction the hearing for such shall be held before the sale of the property.

LA RS 2752– Cancellation of mortgage inscription upon presentation of note or affidavit; lost or destroyed note.

28 USC §455 · Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Items (b) (c) may also apply but because disclosure statements were not filed prior to the final order on September 25, 2020 nor has Judge Degravelles made any declarations Petitioners cannot ascertain conflicts. However, it is important to note Judge deGravelles was found by the Wall Street Journal investigation to have ruled in other cases with financial conflicts.

FRCP 10(c) exhibits supersede the pleadings. (c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same

pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

**Federal Rules of Evidence Rule 803 (14). Exceptions to the Rule Against Hearsay**  
The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: (14) Records of Documents That Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:

- (A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
- (B) the record is kept in a public office; and
- (C) a statute authorizes recording documents of that kind in that office.

(15) Statements in Documents That Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

**FRCP 12(b)(6) How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing (b) How to Present**

**Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted

**UCC § 9-203(b) [Enforceability.]** Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party...

**UCC § 3-309** provides that a person who is not in possession of the instrument may still enforce the instrument if the person can prove both the terms of the instrument and the person's right to enforce it.

**UCC § 3-202(2)** An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

**The Race Recording Act** are state statutes that establish the keeping of official county records to track public land ownership. The Acts help settle conflicts of ownership in real property by prioritizing documents of ownership. Race Statute also known as the race to the Courthouse the rule that the document recorded first

wins and will have priority over any later recording. States that follow the Race Recording Statute are Louisiana, Delaware, and North Carolina.

**FRCP 60(b)(3), (4)**

FRCP 60 . Relief from a Judgment or Order (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, thecourt may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; and (4) the judgment is void.

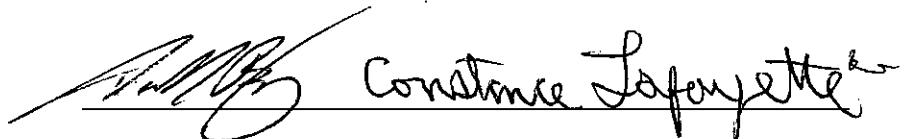
## SERVICE

I hereby certify that on the \_\_\_\_\_ day of November, 2022, the undersigned sent a true and correct copy of the foregoing document by US Mail, postage prepaid to the following:

Lindsay Leigh Meador & Benjamin  
Givens Torian, Kevin Wayne Fouquier,  
II, Charles Williams Montz, Jr.  
GALLOWAY JOHNSON TOMPKINS  
BURR & SMITH  
3861 Ambassador Caffery Parkway  
Lafayette, Louisiana 70503  
Telephone: (337)735-1760  
Facsimile: (337)993-0933  
lmeador@gallowaylawfirm.com

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

Respectfully Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.



Constance Lafayette

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

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