

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling Division**

ELECTRONICALLY
FILED
Jun 04 2021
U.S. DISTRICT COURT
Northern District of WV

MAUREEN VANNEST (f/ka,)
DILORETI), individually and on behalf of)
a class of similarly-situated persons,)

Plaintiff,)

vs.)

NATIONSTAR MORTGAGE LLC, d/b/a)
MR. COOPER,)

Defendant.

Civil Action No. 5:21-CV-86 (Bailey)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. sections 1332, 1441(a) and 1446, Defendant Nationstar Mortgage LLC, d/b/a Mr. Cooper (“Nationstar”) hereby gives notice of the removal of this action from the Circuit Court of Ohio County, West Virginia, to the United States District Court for the Northern District of West Virginia, Wheeling Division. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because Plaintiff Maureen Vannest f/k/a Diloreti (“Vannest”) is a citizen of a State different from Nationstar and because the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. As grounds for removal, Nationstar states as follows:

I. BACKGROUND

1. On April 28, 2021, Vannest filed a Class Action Complaint (the “Complaint”) in the Circuit Court of Ohio County, West Virginia, against Nationstar. The Complaint is captioned *Maureen Vannest (f/k/a Diloreti), individually and on behalf of a class of similarly-situated persons v. Nationstar Mortgage LLC d/b/a Mr. Cooper*, and was assigned Civil Action

No. 21-C-63 (the “State Court Action”). A true and correct copy State court docket, the Complaint and all other documents served upon Nationstar are attached hereto as **Exhibit A**. *See* 28 U.S.C. § 1446(a).

2. Through its registered agent, Nationstar was served with the Complaint on May 7, 2021.

3. The Notice of Removal is timely because it is being filed with the Court within 30 days from the date Nationstar was first apprised of this matter and served with a copy of the Complaint. *See* 28 U.S.C. §§ 1446(b), 1453(b); *Murphy Bros. Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

4. The Complaint asserts claims on behalf of Vannest and a class of similarly-situated individuals under the West Virginia Consumer Credit Protection Act (“WVCCPA”) and for breach of contract under state law, based upon the allegedly improper practice of accepting mortgage payments by telephone or interactive voice recognition and charging a convenience fee therefor to consumers located in West Virginia, who have had their mortgage loans serviced or sub-serviced by Nationstar.

5. Vannest seeks a myriad of relief for herself and purported class members, including civil penalties and attorneys’ fees and costs. *See* Ex. A, Compl. pp. 11-12.

6. Nationstar denies the allegations set forth in the Complaint, denies that Vannest has stated a claim for which relief may be granted, individually or otherwise, and denies that Vannest or any member of the purported class has been damaged in any manner.

7. However, presuming, for jurisdictional purposes only, that Vannest’s claims are valid, the Complaint could have originally been filed in this Court pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(1)-(11) (“CAFA”).

8. Accordingly, removal is proper because this Court has original jurisdiction over this action based on diversity of citizenship pursuant to 28 U.S.C. section 1332(d)(2). *See* 28 U.S.C. § 1441.

II. GROUND FOR REMOVAL

9. This Court has original subject matter jurisdiction over Vannest’s class claims under CAFA.

10. CAFA provides for original jurisdiction in federal court of any claim brought under Federal Rule of Civil Procedure 23 or any similar state statute authorizing a person to represent a class of claimants. *Id.* § 1332(d)(1)(B); *Delebreaux v. Bayview Loan Serv., LLC*, No. 6:09-cv-245, 2011 U.S. Dist. LEXIS 4694, at *9 (S.D.W. Va. Jan. 18, 2011). The purported class must have at least one putative member who is of diverse citizenship to the defendant (“minimal diversity”), 100 or more class members, and claims that in the aggregate exceed \$5,000,000. *Id.* § 1332(d)(2)(A), (d)(5)(B); *Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys.*, 928 F.3d 325, 330 (4th Cir. 2019). A class action filed in state court that satisfies the requirements of section 1332(d) may be removed to federal court. *See* 28 U.S.C. § 1457; *Dominion Energy*, 928 F.3d at 330. Because all of the above elements are satisfied, this Court has original subject matter jurisdiction over this case.

11. Vannest filed the class claims pursuant to the rule 23 of the West Virginia Rules of Civil Procedure, which govern procedure in the courts of the State of West Virginia. Vannest defined the purported class as follows:

All persons (1) with a residential mortgage loan securing a property in West Virginia, (2) serviced or sub-serviced by Nationstar, (3) who paid a fee to Nationstar for making a loan payment by telephone or interactive voice recognition (IVR), during the applicable statute of limitations through the date a class is certified.

Ex. A, Compl. ¶ 34.

12. Vannest seeks damages for purported class members, as outlined above, including a declaration that the conduct is unlawful, actual and compensatory damages, maximum civil penalties, pre- and post-judgment interest, costs and attorney's fees under the WVCCPA.

A. Diversity of Citizenship

13. Minimal diversity exists between the parties, meaning at least one member of the class of plaintiffs—here, Vannest, the only named plaintiff—is a citizen of a state different from any defendant—here, Nationstar, the only named defendant. 28 U.S.C. § 1332(d)(2)(A).

14. Nationstar is a Delaware limited liability company with its principal place of business in Texas. Nationstar is wholly owned by Mr. Cooper Group, Inc., also a Delaware corporation, with its principal place of business in Texas.

15. Under CAFA, a limited liability company is an unincorporated association whose citizenship is that of the State under whose laws it is organized and the State where it has its principal place of business. *Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 704 (4th Cir. 2010).

16. Accordingly, Nationstar is a citizen of both Delaware and Texas.

17. Vannest and every member of the purported class is a resident and citizen of West Virginia. *See* Ex. A, Compl. ¶¶ 7, 34.

18. Accordingly, Vannest and every member of the class is of diverse citizenship to the only defendant; therefore, minimal diversity is met. *See* 28 U.S.C. § 1332(d)(2)(A).

B. Size of Purported Class Exceeds 100 Members

19. Pursuant to CAFA, there must be at least 100 members in a proposed class for the federal court to have original jurisdiction. *See* 28 U.S.C. § 1332(d)(5)(B).

20. Vannest describes the class as class of persons that, in the last four years, have had a loan serviced or subserviced with Nationstar, who made a payment via phone or IVR and paid a convenience fee in connection with making such a payment. *See* Ex. A., Compl. ¶ 34.

21. Vannest states in the Complaint the class consists of “hundreds if not thousands of class members” and contends that “[i]ndividual joinder of these persons is impracticable.” Ex. A, Compl. ¶ 39.

22. Further, Nationstar has identified at least 100 members the purported class. Specifically, upon review of its business records, created and maintained in the ordinary course of business, Nationstar has identified hundreds of mortgage loans secured by property located in West Virginia, on which borrowers made payments by phone or IVR and paid convenience fees in connection therewith.

23. Thus, based on the purported class definition in the Complaint, the 100-member threshold required by CAFA is satisfied.

C. Amount in Controversy Exceeds \$5,000,000

24. This action also satisfies the amount in controversy requirement of 28 U.S.C. § 1332(d)(2).¹

25. Vannest seeks, amongst other things, to recover, for herself and the putative class members, civil penalties under the WVCCPA for each convenience fee Nationstar charged to a customer who elected to pay by phone. *See* Ex. A., Compl. ¶¶ 49, 52, Relief Sought (c).

26. Nationstar reviewed its records from January 1, 2018 through April 6, 2021 for loans secured by property located in West Virginia serviced by Nationstar and identified in

¹ By statute, interest and costs are excluded from the calculation of the jurisdictional amount under CAFA. *See* 28 U.S.C. § 1332(d)(6) (“In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”). All other damages, including punitive damages and attorneys’ fees, are included.

excess of 5,000 instances in which a consumer paid a convenience fee after electing to make a payment by phone. Thus, Nationstar has identified at least 5,000 potential violations of the WVCCPA.

27. The WVCCPA allows for civil penalties of \$1,000 for each violation, which the Court may increase for inflation pursuant to the current consumer price index. W. Va. Code § 46A-5-101(1) (“the consumer has a cause of action to recover: (a) Actual damages and (b) a right in an action to recover from the person violating this chapter a penalty of \$1,000 per violation”); W. Va. Code § 46A-5-106 (“the court may adjust the damages awarded pursuant to section one hundred one of this article to account for inflation from 12:01 a.m. on September 1, 2015 to the time of the award of damages in an amount equal to the consumer price index”). As adjusted for inflation, the current potential civil penalty per violation is approximately \$1,115.

28. At \$1,115 per violation of the WVCCPA, applied to the more than 5,000 instances identified by Nationstar in which a West Virginia borrower paid a convenience fee, the civil penalties alone for these claims total \$5,575,000. This calculation is limited to the instances identified and does not include the “actual damages” Vannest seeks for each violation of the WVCCPA or her attorneys’ fees and costs.

29. As noted above, Vannest requests attorneys’ fees pursuant to W. Va. Code § 46A-5-104. The Court may consider the amount of attorneys’ fees in its jurisdictional amount calculus. *See McGraw v. Discover Fin. Servs., Inc.*, No. 2:05-0215, 2005 U.S. Dist. LEXIS 37111, *19 (S.D. W.Va. July 26, 2005). Vannest’s claims potentially entitle the class, if certified, to recover their reasonable attorneys’ fees and costs pursuant to the fee shifting provision under the WVCCPA. W. Va. Code § 46A-5-104 (“In any claim brought under this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt

collection practice, the court may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the consumer.”). Given the extensive litigation one might reasonably expect in this type of case, including discovery, motions practice, and trial, the Court can presume that the claim for attorneys’ fees will be substantial.

30. Thus, when added together, the potential actual and compensatory damages, potential civil penalties, statutory entitlement to attorneys’ fees, and other incidental and consequential damages certainly exceeds the \$5,000,000 jurisdictional amount. Accordingly, this case qualifies for federal diversity jurisdiction under CAFA and is properly removable.

III. ADDITIONAL REQUIREMENTS FOR REMOVAL

31. Venue is proper in this Court because it is the District and Division embracing the place where the State Court Action is pending pursuant to 28 U.S.C. § 1441(a). This action is being removed from the Ohio County Circuit Court, which lies within the Northern District of West Virginia. *See* 28 U.S.C. §§ 93(a), 1441(a) and 1446(a).

32. Pursuant to 28 U.S.C. § 1446(d), copy of Nationstar’s Notice of Filing of Notice of Removal is being filed contemporaneously with the Clerk of the Circuit Court of Ohio County, West Virginia, a copy of which is attached as **Exhibit B**.

WHEREFORE, Defendant Nationstar Mortgage LLC d/b/a Mr. Cooper respectfully gives notice that this action is hereby removed from the Circuit Court of Ohio County, West Virginia to the United States District Court for the Northern District of West Virginia, Wheeling Division.

Dated: June 4, 2021

Respectfully submitted,

NATIONSTAR MORTGAGE LLC d/b/a
MR. COOPER

By: /s/ Jason E. Manning

Of Counsel

John C. Lynch (WV Bar No. 6627)
Jason E. Manning (WV Bar No. 11277)
Megan E. Burns (WV Bar No. 13290)
Counsel for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2021, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using the CM/ECF system, and I further certify that a true and correct copy of the foregoing Notice of Removal was sent via first class mail, postage prepaid, to the following:

Counsel for Plaintiffs

Jason Causey
Bordas & Bordas, PLLC
1358 National Road
Wheeling, WV 26003

Jonathan Marshall
Patricia Kipnis
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

/s/ Jason E. Manning

Jason E. Manning (WV Bar No. 11277)

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116559545

EXHIBIT A

**21-C-63, MAUREEN VANNEST, FKA DILORETI VS. NATIONSTAR
MORTGAGE, LLC**

WV Circuit - Ohio

Ohio

This case was retrieved on 06/04/2021

Header

Case Number: 21-C-63

Date Filed: 04/28/2021

Date Full Case Retrieved: 06/04/2021

Status: Open

Misc: (56) OTHER-CIVIL; Civil

Summary

Case Type: Civil

Judge: JASON A. CUOMO

Participants

Litigants

DILORETI, MAUREEN

Plaintiff

VANNEST, MAUREEN

Plaintiff

MR. COOPER D/B/A

Defendant

NATIONSTAR MORTGAGE, LLC

Defendant

Attorneys

--- Unassociated Attorneys ---

JASON CAUSEY

21-C-63, MAUREEN VANNEST, FKA DILORETI VS. NATIONSTAR MORTGAGE, LLC

Plaintiff

Proceedings

Date	#	Proceeding Text	Details
04/28/2021		COMPLAINT/MEMO/SUMMONS ID VIA SOS/RECEIPT	
05/07/2021		SOS ACCEPTED SERVICE OF SUMMONS AND COMPLAINT ID TO NATIONSTAR	
		MORTGAGE LLC ON 5/5/21	

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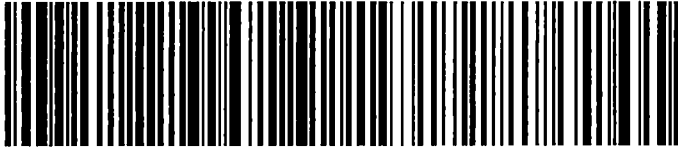
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State of West Virginia
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NATIONSTAR MORTGAGE LLC
Corporation Service Company
209 West Washington Street
Charleston, WV 25302

Control Number: 274416

Defendant: NATIONSTAR MORTGAGE LLC
209 West Washington Street
Charleston, WV 25302 US

Agent: Corporation Service Company

County: Ohio

Civil Action: 21-C-63

Certified Number: 92148901125134100003117029

Service Date: 5/5/2021

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in your name and on your behalf.

*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, **not to the Secretary of State's office.***

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner
Secretary of State

SUMMONS

CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**MAUREEN VANNEST, FKA DILORETI
PLAINTIFF,**

VS.

**CIVIL ACTION NO. 21-C-63
JUDGE: JASON A. CUOMO**

**NATIONSTAR MORTGAGE, LLC
DEFENDANT.**

To the above named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon JASON CAUSEY, plaintiff's attorney, whose address is BORDAS & BORDAS, PLLC, 1358 NATIONAL ROAD, , WHEELING WV, 26003 an answer including any related counterclaim you may have to the complaint filed against you in the above civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.



BRENDA L MILLER
CLERK OF COURT

Dated: April 28, 2021

Please Serve:

**NATIONSTAR MORTGAGE, LLC
C/O CORPORATION SERVICE COMPANY
209 WEST WASHINGTON ST.
CHARLESTON, WV 25302**



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

MAUREEN VANNEST (f/k/a
DILORETI), individually
and on behalf of a class of similarly-
situated persons,

Plaintiff,

v.

Civil Action No. 21-cv-03

NATIONSTAR MORTGAGE, LLC
d/b/a MR. COOPER,

Defendant.

COMPLAINT

Preliminary Statement

1. Plaintiff Maureen Vannest (f/k/a Diloreti) on behalf of herself and all others similarly situated, alleges violations of the West Virginia Consumer Credit and Protection Act (“CCPA”), §46A-2-128(d) and breach of contract against Defendant Nationstar Mortgage, LLC d/b/a Mr. Cooper (“Nationstar”).

2. Nationstar is an industry leading servicer of residential mortgages. But Nationstar impermissibly profits from the homeowners it purports to service by charging and collecting illegal payment processing fees when borrowers make their monthly mortgage payments by telephone (“Pay-to-Pay Transactions”). Nationstar routinely violates West Virginia debt collection law and breaches the uniform terms of borrowers’ mortgages (“Uniform Mortgages”) by charging and collecting these illegal processing fees (“Pay-to-Pay Fees”).

3. Nationstar charges a Pay-to-Pay Fee between \$14 and \$19 each time a customer makes a payment over the phone.



BORDAS
AND
BORDAS
ATTORNEYS, PLLC

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4. As a servicer, Nationstar is supposed to be compensated out of the interest paid on each borrower's monthly payment—not via additional “service” fees that do not reflect the cost to Nationstar of providing such services. Under West Virginia law, Nationstar cannot mark-up the amounts it pays third parties to provide borrowers' services and impose unauthorized charges not explicitly included in the deed of trust to create a profit center for itself. Even if the fee was explicitly included in the deed of trust (which it is not), Nationstar cannot charge it in West Virginia unless express authorized by statute. None of the Pay-to-Pay Fees are permitted by the deed of trust or by statute, and, therefore, Nationstar violates West Virginia law by charging those fees. And, by charging these unauthorized Pay-to-Pay Fees, Nationstar violates its contractual obligations to its borrowers.

5. Despite its uniform contractual obligations to charge only fees explicitly allowed under the mortgage, applicable law, and only those amounts actually disbursed, Nationstar leverages its position of power over homeowners and demands exorbitant Pay-to-Pay Fees. Upon investigation and belief, the actual cost for Nationstar to process online mortgage payment transactions is very low— around 50 cents -- well below the Pay-to-Pay Fees that Nationstar charges West Virginia mortgagors. Nationstar pockets the difference as pure profit.

6. Plaintiff Maureen Vannest paid these Pay-to-Pay Fees, and bring this class action lawsuit individually and on behalf of all similarly situated putative class members to recover the unlawfully charged Pay-to-Pay Fees and to enjoin Nationstar from continuing to charge these unlawful fees.

PARTIES

7. The named Plaintiff, Maureen Vannest, is a West Virginia resident.



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8. Defendant Nationstar Mortgage LLC d/b/a Mr. Cooper is a loan servicer and debt collector that services home loans in West Virginia.

FACTS

The Mortgage Servicing Industry

9. Mortgage lenders rarely service their own loans. In many cases, lenders specialize in the origination of the loan, but they are not equipped to handle the day-to-day administrative tasks that come with a mortgage. Instead of managing these duties in-house, they assign the servicing rights of their loans to a designated servicer—a company that specializes in the actual management and administration of mortgages.

10. A mortgage servicer is a company that, in turn, handles the day-to-day administrative tasks of a mortgage loan, including receiving payments, sending monthly statements and managing escrow accounts.

11. There are two main, assignable rights under a Deed of Trust and Note. There are ownership rights as the lender under the agreement. Separately, there are mortgage servicing rights that entitle the Lender to enforce the Deed of Trust, collect mortgage loan payments, and charge fees allowed by the Note and Deed of Trust.

12. Nationstar is a loan servicer that operates around the country. Nationstar buys mortgage servicing rights and exercises those mortgage servicing rights to collect mortgage payments, charge fees, enforce the Deed of Trust and Note, as well as initiate foreclosure on properties that secure the Deed of Trust and Note. Nationstar exercises these rights where there is a valid assignment that is granted to Nationstar in an asset purchase agreement. Nationstar is a privately-held company and does not disclose the terms of its asset purchase and assignment agreements publicly.



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13. Each time a mortgage borrower whose loan is serviced by Nationstar makes a payment over the phone (“Pay-to-Pay Transaction”), Nationstar charges the borrower a Pay-to-Pay Fee of up to \$19.00 when borrowers make payments over the phone by speaking with a Nationstar customer service representative and a Pay-to-Pay Fee of up to \$14.00 each time a customer makes a payment by the automated phone system.

14. Typically, a loan servicer will use a vendor to process transaction. The usual cost that a servicer like Nationstar pays to process Pay-to-Pay Transactions is \$.50 or less per transaction. Thus, the actual cost to Nationstar to process the Pay-to-Pay Transactions is well below \$14.00 to \$19.00 amounts charged to borrowers, and Nationstar pockets the difference as profit.

15. The Uniform Mortgages of Nationstar’s borrowers do not authorize Nationstar to collect Pay-to-Pay Fees. In fact, the Pay-to-Pay Fees violate borrowers’ mortgages.

16. There is no statute that authorized Nationstar to collect Pay-to-Pay fees.

Named Plaintiff’s Facts

17. On or January 25, 2006, Maureen Vannest, purchased a home in Wheeling, West Virginia, through a loan from Countrywide Home Loans, Inc., secured by a mortgage on the property (the “Deed of Trust”). The Deed of Trust is attached as **Exhibit A**. Plaintiff took out the mortgage loan secured by the property for personal, family, or household uses.

18. During the pendency of her loan, Nationstar acquired the servicing rights to Plaintiff’s loan. As a servicer, Nationstar asserted the right to collect payments and perform services under the Deed of Trust on behalf of the lender. The Deed of Trust provides that the loan servicer possesses a “partial interest in” the Note, which may be transferred. *See Ex. A ¶*

20. The Deed of Trust further provides that “[t]he covenants and agreements of this Security



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Instrument shall bind (except as provided in section 20) and benefit the successors and assigns of Lender.” Ex. A ¶ 13.

19. Nationstar became bound as an assignee to the Deed of Trust at the time it acquired the servicing rights. In order to exercise rights under the Deed of Trust to collect Plaintiffs’ mortgage payments, there must be an assignment of mortgage servicing rights.

20. On November 22, 2019, Plaintiff made a loan payment by phone in the amount of \$439.08 and was charged a Pay to Pay Fee in the amount of \$19.00.

21. Under the terms of the Deed of Trust, collection costs may only be charged in connection with the Plaintiff’s default. Ex. A, ¶ 14.

22. Under the terms of the Deed of Trust, default related fees may only be collected for “any amounts disburse[d]” in connection with a default. Ex. A, ¶ 9.

23. Nationstar did not disburse the entire \$19.00 collected in the Pay-to-Pay transaction to any third party.

24. Nationstar collects the Pay-to-Pay Fees even though it knows that such fees are not authorized under the Deed of Trust and that it therefore has no right to collect them.

25. Like other borrowers whose mortgages are serviced by Nationstar, Plaintiff’s Deed of Trust incorporates standard language from Fannie Mae model mortgages. And like other Fannie Mae mortgages, the Deed of Trust states that the servicer “may not charge fees that are expressly prohibited by this Security Instrument, or by Applicable Law.” Ex. A ¶ 14.

26. “Applicable Law” is defined as “all controlling applicable federal, state and local statutes, regulations, ordinances, and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.” Ex. A at 2, ¶ (J).



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27. The Deed of Trust further states that it is “governed by federal law and the law of the jurisdiction in which the Property is located,” *i.e.*, West Virginia. Ex. A ¶ 16.

28. Charging Pay-to-Pay Fees not authorized by the Deed of Trust violated the law of West Virginia, *i.e.*, the CCPA. *See* 46A-2-128(d).

29. By collecting Pay-to-Pay Fees in violation of “Applicable Law,” *i.e.*, the CCPA, Nationstar breached the uniform covenants of the Deed of Trust.

30. Nationstar collected more than the amount it disbursed to process the Pay-to-Pay Transactions.

31. The above paragraphs are contained in the Uniform Covenants section of the Deed of Trust, Nationstar thus breached its contracts on a class-wide basis.

32. Prior to filing this Complaint, Plaintiff made written pre-suit demands upon Nationstar.

33. Nationstar was given the time required by the CCPA to cure the breaches complained of herein but has failed to do so.

THE PROPOSED CLASS

34. The named Plaintiff brings this action on her own behalf and on behalf of all other similarly situated individuals pursuant to Rule 23 of the West Virginia Rules of Civil Procedure. The class is presently defined as:

All persons (1) with a residential mortgage loan securing a property in West Virginia, (2) serviced or sub-serviced by Nationstar, (3) who paid a fee to Nationstar for making a loan payment by telephone or interactive voice recognition (IVR), during the applicable statutes of limitations through the date a class is certified.



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35. Excluded from the class are the Defendant; any entities in which it has a controlling interest; its agents and employees; and any Judge to whom this action is assigned and any member of such Judge's staff and immediate family.

36. Class members are identifiable through Defendant's records and payment databases.

37. Plaintiff proposes that she serve as the class representative.

38. Plaintiff and the Class have all been harmed by the actions of Defendant.

39. Numerosity is satisfied. There are hundreds if not thousands of class members.

Individual joinder of these persons is impracticable.

40. There are questions of law and fact common to Plaintiff and to the Class, including, but not limited to:

- a. Whether Nationstar assessed Pay-to-Pay Fees on Class members;
- b. Whether Nationstar breached its contracts with borrowers by charging Pay-to-Pay Fees not authorized by their Deed of Trusts;
- c. Whether Nationstar violated the CCPA by charging Pay-to-Pay Fees not authorized by the loan agreement and by statute;
- d. Whether Nationstar's business practices are unlawful;
- e. Whether Nationstar's cost to process Pay-to-Pay Transactions is less than the amount that it collects for Pay-to-Pay Fees;
- f. Whether Plaintiffs and the Class were damaged by Nationstar's conduct;
- g. Whether Plaintiffs and the Class are entitled to actual and/or statutory damages as a result of Nationstar's actions; and
- h. Whether Plaintiff and the Class are entitled to attorney's fees and costs.



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41. Plaintiff's claims are typical of the claims of the Class members. Nationstar charged her a Pay-to-Pay Fee in the same manner as the rest of the Class members. Plaintiff and the Class members entered into uniform covenants in their Deed of Trusts that prohibit Pay-to-Pay charges.

42. Plaintiff is an adequate class representative because her interests do not conflict with the interests of the class members and she will adequately and fairly protect the interests of the class members. Plaintiff has taken actions before filing this complaint, by hiring skilled and experienced counsel, and by making a pre-suit demand on behalf of class members to protect the interests of the class.

43. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of this controversy.

44. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

CLAIMS FOR RELIEF

COUNT I — Illegal Assessment of Pay-to-Pay Fees (Class and individual claim)

45. Plaintiff incorporates the preceding paragraphs by reference.

46. Neither Plaintiff's Note nor Plaintiff's Deed of Trust provide for the assessment of Pay-to-Pay fees.

47. The assessment of a \$14.00 to \$19.00 Pay-to-Pay fee is not expressly authorized by statute.

48. Section 46A-2-128(d) provides that it is unfair or unconscionable to collect or attempt to collect any interest or other charge, fee or expense incidental to the principal obligation



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unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute.

49. Nevertheless, in violation of § 46A-2-128(d), Nationstar regularly and systematically assessed Plaintiff and putative class members speed pay fees.

50. By assessing Plaintiff and the putative class members these unlawful fees, Nationstar caused Plaintiff and the putative class members to suffer damages.

**COUNT II – False Representation of Amount of Claim
(Class and individual claim)**

51. Plaintiff incorporates the preceding paragraphs by reference.

52. By assessing or collecting Pay-to-Pay fees that it had no right to assess—as set forth above—Nationstar misrepresented the amount of a claim in violation of West Virginia Code § 46A-2-127(d).

53. By representing that the existing debt obligation of Plaintiff and putative class members may be increased by the addition of fees or charges when in fact such fees or charges may not legally be added to the existing obligation, Nationstar violated W.V. Code 46A-2-127(g).

54. By assessing Plaintiff and the putative class members these unlawful fees, Nationstar caused Plaintiff and the putative class members to suffer damages.

**COUNT III – Breach of Contract
(Class and individual claim)**

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. Plaintiff and the Class Members entered into contracts with Nationstar. Nationstar breached its contracts with Plaintiff and the Class Members when it charged Pay-to-Pay Fees not agreed to in their Deed of Trusts, specifically prohibited by their Deed of



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Trusts, and in excess of the amounts actually disbursed by Nationstar to pay for the cost of Pay-to-Pay Transactions.

57. Plaintiffs purchased a home subject to the Deed of Trust. *See* Ex. A.

58. At some point, Nationstar was assigned the servicing rights to the loan. As servicer, Nationstar has the right to collect payments and perform services for the borrower on behalf of the lender. The Deed of Trust provides that the loan servicer possesses a “partial interest in” the Note, which may be transferred. *See* Ex. A. ¶ 20. The Deed of Trust further provides that “[t]he covenants and agreements of this Security Instrument shall bind (except as provided in section 20) and benefit the successors and assigns of Lender.” Ex. A ¶ 13. Nationstar thus became bound as an assignee to the Deed of Trust at the time it acquired the servicing rights to the subject mortgage loan.

59. On November 25, 2019, Nationstar charged Plaintiff a \$19.00 Pay-to-Pay Fee for making a payment over the phone.

60. This fee was not authorized by the Deed of Trust.

61. Like other borrowers whose mortgages are serviced by Nationstar, Plaintiffs’ Deed of Trust incorporates standard language from Fannie Mae model mortgages. And like other Fannie Mae mortgages, the Deed of Trust states that the servicer “may not charge fees that are expressly prohibited by this Security Instrument, or by Applicable Law.” Ex. A ¶ 14.

62. The Deed of Trust states that “[t]his Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located,” i.e., West Virginia. Ex. A ¶ 16. It further states that “Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.” *Id.* ¶ 14.



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63. “Applicable Law” is defined as “all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.” Ex. A at 2 ¶ (J).

64. Charging Pay-to-Pay Fees not authorized by the Deed of Trust violated the CCPA, i.e., West Virginia law.

65. By collecting Pay-to-Pay Fees in violation of “Applicable Law,” i.e., the CCPA, Nationstar breached the uniform covenants of the Deed of Trust.

66. Even if the Pay-to-Pay Fees could somehow be construed as a default-related fee under ¶ 9, “Protection of Lender’s Interest in the Property and Rights Under This Security Instrument” section, that section permits only “amounts *disbursed* by lender” to become the debt of the borrower. *See* Ex. A ¶ 9 (emphasis added). By assessing more than the amounts it actually disbursed to the balance of Plaintiffs’ mortgage, Nationstar violated Paragraph 9 of the Deed of Trust.

67. Because the above provisions are contained in the “Uniform Covenants” section of the Deed of Trust, Nationstar has breached its contracts on a class-wide basis.

68. Plaintiff and the members of the Class were damaged by Nationstar’s breach.

RELIEF SOUGHT

WHEREFORE, Plaintiff seeks the following relief for herself and for all class members:

- (a) A declaration that the conduct above is unlawful;
- (b) Actual and compensatory damages;
- (c) A civil penalty for each violation of Chapter 46A, under West Virginia Code §§ 46A-5-101(1) and -106, and all other applicable statutory provisions;



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- (d) Reasonable attorneys' fees and the costs of this action, under West Virginia Code §§ 46A-5-104 and -106(a);
- (e) Pre- and post-judgment interest; and
- (f) All other relief the Court deems appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.

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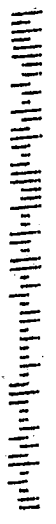
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