

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARGARET C. RENFROE,

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC,

Defendant.

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Case No. 14-314

JURY TRIAL DEMANDED

AMENDED COMPLAINT

NOW COMES Plaintiff Margaret Renfroe and as her Amended Complaint against Nationstar Mortgage, LLC (“Nationstar”) avers as follows:

PRELIMINARY STATEMENT

This action arises from Nationstar’s servicing of Plaintiff’s home mortgage loan. Specifically, Nationstar has failed to properly credit Plaintiff’s mortgage payments and has failed to comply with federal law by failing to investigate and correct its servicing error and provide certain requested information. Plaintiff seeks damages and attorneys fees for multiple violations of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 *et seq.* (“RESPA”) and the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* (“TILA”). Plaintiff also seek damages for breach of the mortgage and note.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question).
2. Venue is proper here because the events giving rise to Plaintiff’s cause of action occurred in this district.

THE PARTIES

3. Plaintiff is an adult resident of Mobile County, Alabama.

4. Defendant, Nationstar Mortgage, LLC (“Nationstar”) is a corporation formed in the State of Delaware, with its principal place of business in Texas.

FACTUAL ALLEGATIONS

5. Margaret Renfroe is a retired bank manager. She served as the Private Banking Manager for Regions Bank and retired after 42 years of service. She lives at 109 Glenwood Street in Mobile. This has been her home for 14 years.

6. In May 2006, Mrs. Renfroe refinanced her existing mortgage with Wilmington Finance, Inc. The amount of the loan is \$139,4000 and it was financed with a fixed rate of 7.75 percent for a 30-year term. Monthly principal and interest payments are \$998.68.

7. After closing, servicing of the loan was transferred by the lender to MorEquity, Inc. Upon information and belief, Mrs. Renfroe’s mortgage was sold, without her knowledge, into a securitized pool. Several years into the loan, servicing was transferred again to Nationstar.

8. After Nationstar began servicing the loan, the monthly payments inexplicably increased by around \$100. Mrs. Renfroe called Nationstar about this but was never given an explanation as to why the payments increased. Mrs. Renfroe is exempt from paying property taxes. She suspected that Nationstar may be paying taxes in error on her behalf and charging her for that through escrow and that the tax payments might explain the increase. However, she could not get a confirmation of that from Nationstar.

9. In September 2013, Mrs. Renfroe refinanced her mortgage through Regions Bank and Nationstar was paid the sums it demanded under the mortgage.

10. Around the time she refinanced the mortgage, Mrs. Renfroe was informed by someone helping her with the loan that Nationstar may have been miscalculating the principal and interest payments and using an incorrect amortization schedule.

11. On June 17, 2014, Mrs. Renfroe sent Nationstar a letter seeking an explanation of why her payments increased and explaining her belief that the payments were not calculated properly. Here is the text of that letter:

I am writing because I have reason to believe that servicing errors have been committed in the servicing of the above-referenced mortgage loan.

First, when you assumed the servicing of my loan, which I believe was sometime in 2011, you increased my monthly payments by \$100.00. I've contacted your company several times in an attempt to get some explanation as to why my payments increased but was never provided one. As I have repeatedly explained to your representatives, I am exempt from property taxes in my county and I believe that you were charging me escrow for tax payments which were never due. This may explain the \$100.00 increase or it may not. In any event, I am writing to request that you investigate this matter and provide me a detailed explanation as to why my payments increased. I'm also requesting additional information as set forth below.

Furthermore, it came to my attention when this loan was refinanced in September 2013 that the payments you were collecting from me were calculated based on an amortization schedule for a 40-year term loan. I'm attaching a copy of my original Truth and Lending Statement and note, both of which reflect a 30-years mortgage. I believe that you applied the wrong amortization formula when calculating my payments and this caused me to pay more interest than I had originally bargained for. I believe that this resulted in a larger payoff that I had to pay when I refinanced the loan last September than what would otherwise have been the case. I'm requesting that you also investigate this aspect of my loan and refund me any interest or fees which were wrongfully collected.

In addition to your investigation and correction of the errors identified above, please provide the following information:

- Complete payment history of the loan showing how each payment was applied and identifying all fees and other charges collected in connection with my loan from its inception until it was paid off in September 2013;
- A complete history of all disbursements made by you from my escrow account and all monies collected by you for escrow;
- A detailed explanation of each payment increase and the reasons for the increase;
- A list of each and every payment for taxes you made from the my escrow account, giving the date and amount of each payment. Also identify each and every refund you received in connection to a tax payment.

- State whether you believe that there has been a lapse of homeowner's insurance, state the dates of each alleged lapse and state the date you claim you notified me of the lapse, if any;
- Description of how my payments were calculated from the beginning of the loan to when it was paid, including explanation of how the payments were amortized;
- Detailed explanation of how the pay-off amount you provided in connection with the refinance of the loan was calculated and an itemized breakdown of that figure;
- State whether you have ever calculated my payments based on a maturity date other than June 1, 2036. If so, state when such calculation started and how many payments you collected from me based on that calculation.
- State the date you first became the servicer of the loan; and
- Identify the owner of the loan at the time it was paid in full.

Please send the requested information and documents to me at the above address. I look forward to receiving your response.

Sincerely,

Margaret Renfroe

12. On June 26, 2014, Nationstar responded to Mrs. Renfroe's QWR, but failed to provide any explanation of payment calculation or amortization; and failed to specifically answer Mrs. Renfroe's questions. Nationstar also failed to provide the specifically requested information. Instead, Nationstar provided boilerplate statements and objections which do not apply to Mrs. Renfroe's letter, provided information and documents not requested and without explanation, stated the general conclusion that it did nothing wrong in servicing the account.

13. Nationstar's letter predominately consists of boilerplate language and which has no relevance to Mrs. Renfroe's specific dispute. Nationstar stated that the information requested "does not pertain directly to the servicing of the loan, does not identify any specific servicing errors, and/or is considered proprietary and confidential. Therefore, this information is considered outside of the

scope of information that must be provided.” That statement mischaracterizes Renfroe’s request and could not be based on any reasonable interpretation of her letter. Each of the items of information requested by Mrs. Renfroe relates directly to the servicing of her loan. Moreover, Renfroe’s letter unambiguously states her belief that Nationstar is improperly calculated her payments.

14. In response to Renfroe’s request, Nationstar provided a copy of the note, the mortgage and a copy of the most recent statement. basic loan documents, regardless of whether they were requested or are relevant to the specific request. These documents include a copy of the promissory note and mortgage and a most recent statement. Again, Mrs. Renfroe did not ask for these documents. Nationstar’s practice is to provide theses readily available documents in response to a QWR, regardless of the individual requests made in the QWR.

15. Nationstar engages in a pattern and practice of improperly responding to notices and requests from borrowers provided pursuant to RESPA Section 2605. Part of this practice is to use the standardize form-based response letter, like the one used to respond to Renfroe’s request, which contains boilerplate objections that are not tailored to the specificity of the individual request. It is also Nationstar’s practice is to provide basic loan documents, regardless of whether they were requested or are relevant to the specific request. These documents include a copy of the promissory note and mortgage.

16. On at least five separate occasions, including Mrs. Renfroe’s case, Nationstar has used the same generic form letters to respond to qualified written requests and notices of servicing errors. These form letter were sent borrowers in Birmingham, Alabama; Mobile Alabama and Lexington, Maryland. In each situation, Nationstar’s form and generic response failed to address the specific issues addressed in the borrower’s letter and violated RESPA Section 2605(e). Upon

information and belief, Nationstar's practice of providing form, generic and non-responsive letters in response to qualified written requests extends well beyond these five cases.

17. Nationstar failed to provide the information actually requested. Mrs. Renfroe requested a "complete" payment history but was provided a history covering only the time the loan was serviced by Nationstar. Although Nationstar states in its letter that this information is "not available," it is difficult to imagine that Nationstar would assume servicing an existing loan with no information as to the prior payment history. Upon information and belief, Nationstar as a matter of course only provides payment history in response to the such request covering the period of time in which it serviced the loan. Nationstar also failed to provide the escrow history requested and an explanation of whether it was charging Renfroe for property taxes. Nor did Nationstar provide an explanation of how payments were calculated and which amortization schedule was used. All of this information is directly related to Renfroe's dispute.

18. Most importantly, Nationstar took no reasonable measures to correct the error identified in Mrs. Renfroe's letter. Nationstar states in its response that "[u]pon receipt of this correspondence, the above-mentioned loan and related documents were reviewed and found to comply with all state and federal guidelines that regulate them. As such, the above-mentioned loan account will continue to be serviced appropriate to its status." This is boilerplate language used by Nationstar in response to an NOE, regardless of the individual circumstances and it has no bearing on Mrs. Renfroe's particular situation. In fact, the loan can not "continue to be serviced" because she paid it off in September 2013.

19. Since its June 26th response, Nationstar has failed to provide any further information to Mrs. Renfroe and has failed to issue any refund.

20. Among its other obligations under Section 2605(e), Nationstar was required to make any “appropriate corrections” to the account. In this case, this required, at a minimum, an investigation of Renfroe’s claim that her loan was incorrectly amortized and that she was overcharged for escrow and a refund all payments which were wrongfully collected. Because the payoff amount Renfroe was required to pay was calculated on the wrong amortization schedule and included other unlawful charges, including money wrongfully collected for taxes she did not owe, she was owed a refund after notice of the error. She was not provided any such refund and has been damaged as a result. She also incurred expenses in sending the qualified written request which, because of Nationstar’s inaction, has been for naught. This also constitutes damages suffered as a result of Nationstar’s failure to comply with its Section 2605(e) duties.

COUNT I
(VIOLATIONS OF RESPA)

21. Plaintiff realleges and incorporates each of the preceding paragraphs as if fully set out herein.

22. Section 6(d) of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2605(e), grants borrowers the right to submit a “qualified written request” (“QWR”) to the loan servicer requesting information and documents pertaining to the servicing of her loan. That provision also grants borrowers the right to submit a notice of servicing error (“NOE”), identifying perceived errors committed by the servicer. 12 U.S.C. § 2605(e).

23. A QWR and NOE must sufficiently identify the borrower, the account and the perceived servicing error. Id.

24. Recognizing the prevalence of servicing errors and the damage they can cause American families if not corrected, the federal Consumer Finance Protection Bureau recently exercised its authority under RESPA and clarified the borrower's rights to have errors corrected. 12 C.F.R. § 1024.35.

25. Under Section 2605(e) and the implementing regulations ("Reg. X"), including the recent amendments thereto which servicers must take the following actions upon receipt of a QWR and/or NOE:

- Provide a written acknowledgment of the correspondence within five days of the servicer's receipt of the QWR;

- Within 30 days conduct a reasonable investigation of the errors identified in the borrower's notice and make all appropriate corrections to the account and provide a the borrower with written explanation of the corrections made, the effective date of the correction and contact information for further assistance;

- If, after reasonable investigation, the servicer determines that no error was committed, it must, within 30 days of receipt of the notice, provide the borrower with a written explanation of reasons for its determination, a statement of the borrower's right to request documents relied on by the servicer in reaching its determination and contact information for further assistance; either the reason for the servicer's belief that the account is being serviced correctly or a description of the changes made; and

- If a servicer determines that it is not required to comply with these requirements then it must, within five days after receipt, provide written notice to the borrower setting forth the reasons for such determination.

26. In addition to these requirements, RESPA was amended in 2010 to add additional "servicer prohibitions." 12 U.S.C. § 2605(k). Under these prohibitions, a servicer may not:

- Obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. 12 U.S.C. § 2605(k)(A);

- Charge fees for responding to valid qualified written requests or notices of servicing errors. 12 U.S.C. § 2605(k)(B);

-Fail to take timely action to respond to a borrower's notice of servicing error relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties. 12 U.S.C. § 2605(k)(C);

-Fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan. 12 U.S.C. § 2605(k)(D); or

-Fail to comply with any other obligation imposed under the implementing regulations. 12 U.S.C. § 2605(k)(E)

12 U.S.C.A. § 2605(k)

27. Plaintiff's mortgage is a "federally related mortgage loan" within the meaning of 12 U.S.C. § 2602(1).

28. Defendant is a "servicer" with respect to Mrs. Renfroe's loan as that term is defined in 12 U.S.C. § 2605(i)(2).

29. Plaintiff's June 1, 2014 letter and supporting documents constitute a "qualified written request" and a "notice of servicing error" within the meaning of 12 U.S.C. § 2605(e) and Reg X.

30. Nationstar has violated 12 U.S.C. § 2605(e) by failing to respond to Plaintiff's QWR and NOE as required under that section and Reg. X. Specifically, Nationstar failed to conduct any reasonable investigation of the errors described in Plaintiff's letter and failed to refund monies wrongfully collected.

31. Nationstar has also violated 12 U.S.C. § 2605(k) in at least the following ways:

-Failing to take timely action to respond to Plaintiff's notice of servicing error; and

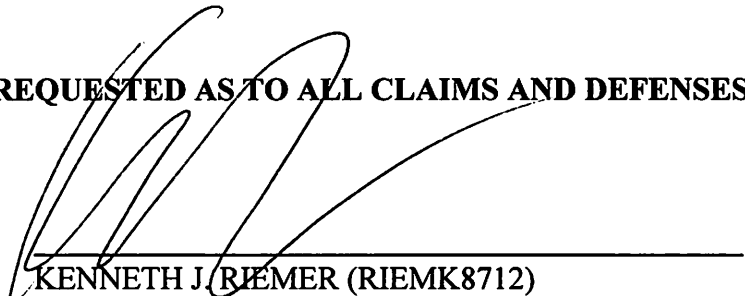
-Failing to comply with the requirements set out in Reg regarding responding to a QWR and a NOE.

32. Plaintiff has suffered actual damages as a proximate result of Nationstar's failure to comply with Section 2605(e).

WHEREFORE, Plaintiff requests that this Court enter a judgment against Nationstar for violation of the RESPA, awarding the following relief:

- a. Statutory and actual damages as provided in 12 U.S.C. § 2605(f);
- b. Reasonable attorney's fees, and costs expended in this proceeding; and
- c. Such other and further relief as the Court may deem just and proper.

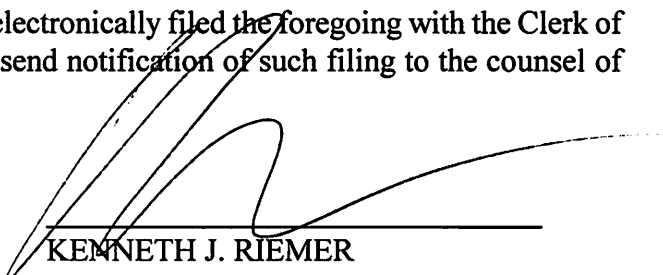
TRIAL BY JURY IS HEREBY REQUESTED AS TO ALL CLAIMS AND DEFENSES ASSERTED HEREIN



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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2014 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record.



KENNETH J. RIEMER