

No. 3 : 13 CV - 783 - M

U.S. DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

TAMARA HARRIS, Individually and
On Behalf of all those Similarly Situated
2606 Masemure Court
Louisville, KY 40220-2330

PLAINTIFF

VS.

CLASS ACTION COMPLAINT

CITIMORTGAGE, INC.

DEFENDANTS

Serve: CitiMortgage, Inc.
c/o CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

RUST CONSULTING, INC.

Serve: Corporation Service Company
380 Jackson Street, #700
St. Paul, MN 55101

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Comes the Plaintiff, Tamara Harris, individually and on behalf of all others similarly situated, upon personal knowledge as to her own acts, and upon information and belief, and for her Complaint states as follows:

NATURE OF ACTION

1. CitiMortgage, Inc. ("CitiMortgage") has admitted to wrongfully filing foreclosure actions from January 1, 2009–December 31, 2010 against people across the country who, at the time CitiMortgage filed foreclosure actions, were protected from such actions by bankruptcy stays ordered by federal bankruptcy judges. *See* "Independent Foreclosure Review Payment Agreement Details", Row 4 at **Exhibit 1**.
2. Plaintiff is one of these people.
3. As a result of a variety of wrongful and unlawful conduct committed by Defendant, including (but certainly not limited to) the violations of bankruptcy stay protection, in 2013, CitiMortgage entered into an agreement with the Office of Comptroller

Currency (“OCC”) to pay money to those people it identified as victims of the various abuses.

4. Under the settlement, CitiMortgage paid the people it wrongfully foreclosed upon while they were protected by federal bankruptcy law varying amounts depending upon whether the property owner had a foreclosure that was either a) completed, b) rescinded, or c) “in process.” *See* “Independent Foreclosure Review Payment Agreement Details” at **Exhibit 1**.
5. Additionally, property owners who requested a review received more than borrowers who did not. **Exhibit 1**.
6. Property owners who requested a review whose foreclosures were “completed” received \$62,500, while others received \$7,500. **Exhibit 1**.
7. Property owners who did not request a review, but whose foreclosures were “completed” received \$31,250, while others received \$3,750. **Exhibit 1**.
8. Plaintiff requested a review and CitiMortgage completed her foreclosure in 2009. The sale of Plaintiff’s home occurred on May 29, 2009 and a new deed was delivered to the new owner on July 20, 2009. *See* Case History at **Exhibit 2**.
9. Even after wrongfully foreclosing on Plaintiff, CitiMortgage negligently reported inaccurate information regarding the status of Ms. Harris’s foreclosure to its paying agent, Rust Consulting, Inc. (“Rust”).
10. Upon information and belief, CitiMortgage reported to Rust that Plaintiff’s foreclosure was “in process” rather than “completed”.
11. As a result, Ms. Harris received only \$7,500 to compensate her for CitiMortgage’s wrongful and unlawful conduct; because CitiMortgage completed her foreclosure, she is instead entitled to \$62,500.
12. This is a class action brought by Plaintiff individually and on behalf of all persons against whom who CitiMortgage, Inc. first wrongfully filed foreclosure actions while the Plaintiff and putative class members were protected by federal bankruptcy law and

then, years later, classified incorrectly by CitiMortgage as having an “In process” foreclosure when, in fact, their foreclosure had been completed.

13. Plaintiff and members of the Class are victims of Defendant’s negligence and gross negligence during its participation in the Independent Foreclosure Review program.
14. In the alternative, Rust Consulting, Inc., acted negligently when it paid Plaintiff and other class members \$55,000 less than the amount to which they were entitled under the payment matrix.
15. The Defendants’ mismanagement has injured the Plaintiff and the Class by misclassifying the status of her foreclosure, resulting in a payment \$55,000 less than she was due under the terms of the Independent Foreclosure Review program. In this class action, Plaintiff and members of the Class seek recovery of all damages caused by the Defendants’ negligence and gross negligence, and punitive damages.

JURISDICTION AND VENUE

16. The Plaintiff herself, and on behalf of the proposed Class, allege claims under the common law of the Commonwealth of Kentucky.
17. The amount in controversy exceeds the minimum jurisdictional requirement.
18. Plaintiff asserts no federal causes of action.

THE PARTIES

19. Plaintiff Tamara Harris is a resident of Jefferson County, Kentucky.
20. Defendant CitiMortgage, Inc., is a corporation incorporated under the laws of New York. Its principal office is located at 1000 Technology Dr., MS 140, O’Fallon, MO 63304.
21. Defendant CitiMortgage, Inc. is a subsidiary of CitiGroup, Inc., (hereinafter “CitiGroup”) a corporation which is also incorporated under the laws of New York.
22. Defendant Rust Consulting, Inc. is a corporation incorporated under the laws of Minnesota. Its principal office is located at 3232 McKinney Ave., Dallas, TX 75204.

STATEMENT OF FACTS

The Independent Foreclosure Review

23. In response to rampant foreclosure abuses, the Office of the Comptroller of the Currency (hereinafter “OCC”) entered into an agreement with foreclosing banks, including CitiGroup, called the Independent Foreclosure Review.
24. Under the Independent Foreclosure Review, the participating banks agreed to review their individual residential foreclosure actions, including pending or completed foreclosures from January 1, 2009 to December 31, 2010, to determine whether, among other things, these foreclosures were initiated lawfully according to applicable laws and contract terms. *See Exhibit 3* Consent Order, Art. VII.
25. After said Review, CitiGroup was to submit to the OCC a plan to “remediate financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies” identified in their review. *See id.*
26. Thereafter, pursuant to this plan, CitiGroup provided names of borrowers whose foreclosures fell within the scope of practices deemed abuses by the OCC. CitiGroup divided these “In-Scope Borrowers” into several different categories within a matrix, depending on the specific wrongful practice and the status of the foreclosure at the time.
27. The placement within the matrix determined what payment an In-Scope Borrower would receive.

The Foreclosure Settlement

28. Plaintiff Tamara Harris entered into a Chapter 13 bankruptcy in 2006.
29. While Plaintiff was current on her Chapter 13 bankruptcy plan, her house was protected by bankruptcy.
30. Defendant foreclosed on Plaintiff’s house while Plaintiff was current on her Chapter 13 bankruptcy plan.
31. This foreclosure was completed in August 2009.

32. On April 12, 2013, Defendant's "paying agent", Rust Consulting, Inc. sent Plaintiff a letter. Enclosed with the letter was a check for \$7,500. *See Exhibit 4.*
33. This letter stated that Plaintiff received this money "based on the stage of your foreclosure process and other considerations related to your foreclosure." **Exhibit 4.**
34. According to the matrix, this was the amount provided to borrowers whose house was subject to a foreclosure either "in process" or subject to a "rescission."
35. For a completed foreclosure under such circumstances, the amount provided was \$62,500.
36. The Plaintiff called Defendant CitiMortgage and asked if she would receive the remaining \$55,000 of the payment she was due. Defendant advised that its records showed that her foreclosure was still pending. CitiMortgage told her that "rescinded" meant that the foreclosure had been dismissed, and that she was still "in process." The Plaintiff disputed that with the Defendant and the Defendant thereafter said that on "another screen" its records showed that her foreclosure had indeed completed in August 2009.
37. Defendant CitiMortgage, Inc. told her to seek other help because it could do nothing about the error; payments were handled by its payment agent, Rusk Consulting, LLC ("Rusk")
38. Plaintiff called Defendant Rusk who advised that it relied on the information provided to it by Defendant CitiMortgage and only handled the payout. Rusk referred her back to Defendant.
39. Thereafter, Plaintiff sought legal counsel.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this class action against the Defendants pursuant to FRCP 23(b)(1) and 23(b)(3), on behalf of all persons who were wrongfully foreclosed upon by CitiMortgage while protected by federal bankruptcy law and then wrongfully

classified by CitiMortgage as having an “in process” or “rescinded” foreclosure when their foreclosure had been completed.

41. The members of the Class are so numerous that joinder of all members is impracticable. The exact number of class members is unknown to Plaintiff at the present time. However, according to the matrix, there are 22,449 In-Scope Borrowers listed as having “pending” or “rescinded” foreclosures.
42. Despite the numerical size, the identities of the Class members can be ascertained. Plaintiff is one of potentially 22,449 In-Scope Borrowers whose foreclosure the Defendant misrepresented as “pending” or “rescinded”. 22,448 potentially similarly situated persons are known to the Defendant and can be ascertained through discovery of Defendant’s records and files.
43. Plaintiff is a member of a subclass of injured individuals who received \$55,000 less than what they should have received because a) they requested a review from CitiMortgage and b) either CitiMortgage or Rust Consulting misclassified their loan status during the Independent Foreclosure Review process.
44. A second subclass exists of individuals who received \$27,500 less than what they should have received because a) they did not request review and b) CitiMortgage or Rust Consulting misclassified their loan status during the Independent Foreclosure Review process.
45. Plaintiff will fairly and adequately represent the interests of the Class and subclasses. Plaintiff is committed to vigorously prosecuting this action and has retained competent counsel to prosecute this matter. Plaintiff is a member of the Class and has no interests antagonistic to or in conflict with other Class members. Plaintiff’s attorneys have experience prosecuting class actions and will adequately represent the Class in this question.
46. This action raises questions of law and fact which are common to the Class members, including, but not limited to the following:

- a. Whether Defendant CitiMortgage breached its duty to maintain accurate and timely records of its borrowers;
 - b. Whether Defendant CitiMortgage breached its duty to provide accurate and timely records of its borrowers to third parties who request this information; and
 - c. Whether Defendant Rust Consulting breached its duty to process payments made under the Independent Foreclosure Review settlement accurately.
47. The claims or defenses of the represented party are typical of the claims or defenses of the Class. Plaintiff was harmed by the Defendants' negligence and gross negligence. Plaintiff has the same interests as the other Class members in prosecuting those claims against the Defendants. Plaintiff and all the members of the Class sustained damages as a result of the Defendants' negligent and grossly negligent conduct.
48. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Common issues predominate. Furthermore, the expense and burden of individual litigation make it extraordinarily difficult for Class members to redress the wrongs done to them individually.
49. Defendants have or had access to address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

COUNT ONE: NEGLIGENCE

50. The Plaintiff incorporates all above allegations as though set forth herein.
51. The Defendant CitiMortgage is under a duty to keep up-to-date records and provide accurate information about its customers to third parties who lawfully request it.
52. The Defendant CitiMortgage breached this duty by failing to exercise reasonable care in the maintenance and disclosure of its customer records.
53. The Defendant CitiMortgage failed to exercise reasonable care in the maintenance and disclosure of its customer records with wanton disregard for the property of its customers.

54. Because the Defendant CitiMortgage breached its duty, the Plaintiff was damaged. Specifically, because of the Defendant's failure to keep and provide accurate records of its transactions with its customers, the Plaintiff and other class members received substantially smaller payments than they should have received under the Independent Foreclosure Review settlement.

COUNT TWO: NEGLIGENCE

55. The Plaintiff incorporates all above allegations as though completely set forth herein.

56. At all times material hereto, Defendant Rust Consulting, Inc. was an agent of Defendant CitiMortgage, Inc.

57. As paying agent of Defendant CitiMortgage, Rust Consulting, Inc. had a duty to process payments under the payment matrix accurately based upon the prescribed factors articulated in the Independent Foreclosure Review settlement and the payment matrix.

58. The Defendant Rust Consulting, Inc. breached this duty by failing to exercise reasonable care in the administration and payment of funds according to the settlement matrix.

59. In breaching its duty, the Defendant Rust Consulting acted with wanton disregard for the property of the class.

60. Because of the Defendant Rust Consulting's breach of its duty, the Plaintiff was damaged. Specifically, because of the Defendant's failure to administer the settlement accurately, the Plaintiff and other class members received substantially smaller payments than they should have received under the Independent Foreclosure Review settlement.

JURY DEMAND

Plaintiff hereby demands a jury trial on all claims to which she is entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, on behalf of herself and all others similarly situated, pray for an Order and Judgment certifying the Class and appointing Plaintiff as class representative and granting the following relief:

1. Payment to Plaintiff and the members of the Class of the difference between what they were paid through the Independent Foreclosure Review process and what Defendants should have paid but for their negligence;
2. That the Plaintiff and all others so similarly situated be awarded judgment against the Defendants for punitive damages for the conduct of the Defendants alleged herein;
3. For pre- and post-judgment interest;
4. For their attorneys' fees;
5. A jury trial; and

Any and all other relief to which the Plaintiff and all others so similarly so situated may be entitled.

Respectfully Submitted,

/s/Ben Carter

Ben Carter

BEN CARTER LAW PLLC

312 South Fourth Street, Sixth Floor

Louisville, KY 40202

(502) 509-3231

ben@bencarterlaw.com

Brian Cook

BAHE COOK CANTLEY & NEFZGER PLC

Marion E. Taylor Building

312 South Fourth Street, 6th Floor

Louisville, KY 40202

(502) 587-2002

brian@bccnlaw.com

Counsel for Plaintiff