UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

TALENA COLBERT, on behalf of herself and all others similarly situated, Plaintiff, vs. NEWREZ LLC d/b/a SHELLPOINT MORTGAGE SERVICING, Defendants.	NO. 2:26-cv-00255-GAM

AMENDED COMPLAINT – CLASS ACTION

I. INTRODUCTION

1. Plaintiff Talena Colbert ("Plaintiff" or "Ms. Colbert") brings this action against NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Shellpoint"), one of the nation's largest mortgage servicers for its actions in seeking to collect long ago-waived interest and fees on dormant second-mortgage obligations that it retroactively assessed without legal basis or notice.

2. This action concerns a residue of the predatory mortgage epidemic that preceded the economic collapse of 2008. One feature of this period of irresponsible and abusive mortgage lending, fueled by Wall Street's seemingly unlimited appetite for purchasing and securitizing mortgage debt of any quality, was the prevalence of high-rate secondary mortgage loans. Among the more pernicious examples of such loans were the second mortgages that were a part of so-called "piggyback," or "80/20" transactions, where a purchase-money mortgage for 80% of the purchase price would be accompanied by a second mortgage loan taking the place of a

downpayment that the borrow could not afford.[1] As property values plummeted, many such secondary liens were left underwater. The note holders and servicers frequently abandoned servicing efforts and charged off the debts. In the decades that followed, however, often after these obligations disappeared from billing notices and credit reports, profit-seeking debt collectors seeking to take advantage of rising property values, have acquired these dormant debts and shocked homeowners with threats of foreclosure coming from unknown companies. Consumer advocates have labeled this troubling phenomenon of long-abandoned predatory mortgages seemingly rising from the dead as constituting the "zombie second mortgage" crisis.[2]

3. This case presents a particularly egregious version of a "zombie" mortgage collection scheme that was hatched by Defendant's predecessor in interest, a mortgage servicer named Specialized Loan Servicing, or "SLS." During the eleven years between 2015-2024, SLS purchased the servicing rights to dormant second mortgage obligations, generally long after the loans had been written off, and both monthly billing and credit reporting having been abandoned. In an effort to maximize its future profits, SLS began rewriting the history of those loans, as if they had been actively serviced during those dormant periods, including by retroactively assessing interest and fees that the prior servicer had waived. Often SLS did this without any timely notice to homeowners, instead emerging with frightening payment demands with tens of thousands of dollars of interest assessed for the first time, leveraged with notices of intent to foreclose.

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[1] *See* Consumer Financial Protection Bureau ("CFPB"), Advisory Opinion re: 12 C.F.R. Part 1006 (2023), https://files.consumerfinance.gov/f/documents/cfpb_regulation-f-time-barreddebtadvisory-opinion_2023-04.pdf (describing "piggyback" transactions).

[2] *See, e.g.,* National Consumer Law Center, "Fact Sheet: Protecting Homeowners from Zombie Second Mortgages," February 20, 2025, at https://www.nclc.org/resources/fact-sheet-protecting-homeowners-from-zombie-second-mortgages/.

4. In 2023, Defendant's parent company, Rithm Capital Corp., purchased SLS, including all of the servicing assets involved in this action. Preceding the closing of this purchase in October 2024, Rithm Capital engaged in substantial due diligence which would have revealed the zombie mortgage scheme that made up a substantial part of SLS's business strategy. Despite that knowledge, Rithm completed the purchase and merged SLS into its mortgage servicing subsidiary, NewRez, LLC. NewRez, in turn, assigned the servicing of the SLS zombie mortgages to its wholly owned d/b/a division, Shellpoint Mortgage Servicing.

5. After roughly eleven years during which Plaintiff heard nothing about her second mortgage obligation, SLS, and later the Defendant, demanded payment of interest and fees that had never previously been assessed, accompanying those demands with a threat of foreclosure. Plaintiff seeks damages and declaratory relief, under state and federal consumer protection law, on behalf of herself and behalf of other similarly situated Pennsylvania homeowners.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d), and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a). Declaratory relief is available pursuant to 28 U.S.C. §§ 2201(a), 2202 and 42 Pa.C.S. § 7532.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because the acts and transactions that establish this Complaint occurred in this District and it is where both Ms. Colbert and the defendant reside.

III. PARTIES

8. Plaintiff Talena Colbert ("Ms. Colbert") is the owner and resident of 724 Atwood Rd., Philadelphia PA 19151 ("the Property").

9. Defendant NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Shellpoint") is a limited liability company incorporated in Delaware with a principal place of business located at 1100 Virginia Drive, Suite 125, Fort Washington, PA 19034.

10. Shellpoint is the successor-in-interest to Specialized Loan Servicing, LLC ("SLS") by virtue of the acquisition of SLS by Shellpoint's parent company, Rithm Capital, and the merger of SLS with NewRez, LLC, effective May 1, 2024. Defendant Newrez, LLC d/b/a Shellpoint is referred to herein as Shellpoint and/or SLS interchangeably for the purposes of liability.

IV. THE FACTS ALLEGED

Mortgage Loan Servicing and Periodic Statements

11. The standard practice in the mortgage servicing industry is for servicers to provide information to borrowers about the status of their loan accounts on a regular basis, and to increase the frequency of communications when a loan is in default.

12. These requirements had been long-standing in the industry, but in the wake of the 2008 foreclosure crisis, legislators and regulators expanded and codified these obligations ensuring that homeowners are not improperly and unjustly deprived of their wealth and their homes without notice.

13. The major insurers of home mortgages, including the Government Sponsored Enterprises (Fannie Mae and Freddie Mac), the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), and the Rural Housing Service ("RHS"), regularly publish guidelines for their servicers. These servicing guidelines direct mortgage servicers to provide information to borrowers about the status of their loans on a regular basis, and particularly when a loan is in default. These guidelines apply to the majority of residential mortgages in the United

States and set an industry standard for continuity of contact with borrowers that mortgage servicers routinely follow.

14. The industry practice that servicers regularly provide borrowers with material information about their loans has been reinforced by a body of federal and state laws created to ensure that borrowers are kept informed about the status of their mortgage loans. Pursuant to such laws, borrowers must receive notices of changes in interest rates, shortages or surpluses in escrow accounts, default or acceleration of the loan, the availability of loss mitigation, and periodic statements about the status of the account.

15. The Truth in Lending Act ("TILA") requires that mortgage borrowers be provided with a periodic statement for each billing cycle, 15 U.S.C. § 1638(f) and 12 C.F.R. § 1026.41, the only exception being for loans that have been charged off, meaning the servicer will cease charging any additional fees or interest on the account. 12 C.F.R. §1026.41(6). Moreover, servicers are expressly prohibited from retroactively assessing fees or interest on the account for the period of time during which the account was charged off. 12 C.F.R. § 1026.41(e)(6)(ii)(B).

16. Loans that have defaulted are subject to the same rule and standard practice: if interest will continue to accrue the servicer must continue to send periodic statements. Indeed, the Consumer Financial Protection Bureau ("CFPB") has cautioned that at times of default are "precisely when a consumer most needs the periodic statement" to "document fees and charges to the consumer," so that "as long as such charges may be assessed, the consumer is entitled to receive a periodic statement." [3]

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[3] 12 C.F.R. Part 1026 (CFPB Official Interpretations), https://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-tila.pdf (last visited Oct. 2, 2024).

17. When a servicer suspends communications for long periods of time, a borrower cannot make reasonable, informed decisions about how to meet ongoing payment obligations. A servicer's protracted disappearance leaves the borrower without materially significant information about the loan account, including: the identity of the current servicer; the amount of the next installment payment coming due; where to send the payment; when the payment is due; the extent of accumulated arrearages, including accrued and unpaid interest and any default-related charges; and the consequences of any current default, including whether acceleration or foreclosure are imminent.

18. While a mortgage loan is in default, a servicer's abandonment of communication significantly impairs a borrower's ability to make informed decisions about how to cure the default and resume scheduled payments, including whether and how to request loss mitigation assistance, such as a payment plan, loan modification, or other foreclosure alternative and whether to seek a refinance of the obligation, particularly in the case of a second mortgage.

19. A servicer's long-term abandonment of communication, particularly when the servicer is also no longer engaging in credit reporting, leads borrowers to likely confusion about what, if any, payment obligation is connected to the mortgage lien.

SLS's Acquisition and Improper Handling of Zombie Second Mortgages

20. This case arises from the recent wave of attempts to collect "zombie" second mortgages, which were predominantly originated during the years leading up to the foreclosure crisis of 2008.

21. The CFPB has explained the problem of zombie second mortgages:

> Leading up to the 2008 financial crisis, many lenders originated mortgages to consumers without considering their ability to repay the loans. … One common piggyback mortgage product, known as an 80/20 loan, involved a first lien loan for 80 percent of the value of the home and a second lien loan for the remaining 20 percent of the valuation. … [In the event of default,] the second mortgage holder

> only receives proceeds from the foreclosure sale if there are any funds left after paying off the first mortgage. As a result, many second mortgage holders of piggyback loans, recognizing that a foreclosure would not generate enough money to cover even the first mortgage, charged their defaulted loans off as uncollectible and ceased communicating with the borrowers. … Many borrowers, having not received any notices or periodic statements for years, concluded that their second mortgages had been modified along with the first mortgage, discharged in bankruptcy, or forgiven. In recent years, as home prices have increased and borrowers have paid down their first mortgages, after years of silence, some borrowers are hearing from companies that claim to own or have the right to collect on their long-dormant second mortgages. These companies often demand the outstanding balance on the second mortgage, plus fees and interest, and threaten to foreclose if the borrower does not or cannot pay.[4]

22. Notwithstanding the above-described industry rules and practices industry practices, a mortgage servicer named Specialized Loan Servicing, or “SLS”, engaged in a business strategy of (a) acquiring the servicing rights to second mortgages that had been charged off by prior servicers, and (b) not communicating with the respective homeowners about their loans, including not providing the periodic statements that would advise them they owed money, how much they owed, or how to make payments.

23. Indeed, SLS would, as a matter of common practice, not even notify the homeowners when they acquired the servicing rights of their second mortgages, as required by federal law. *See* 12 U.S.C. § 2605(b); 12 C.F.R. § 1024.33 (mandatory notice of mortgage servicing transfers).

24. In addition to not communicating with homeowners about these debts—and not even introducing itself as the new servicer in charge of collection, SLS also had a business strategy and common practice of (a) revising and altering the history of these accounts as if they had never been written off, and assessing interest retroactively for prior years during which such

[4] Consumer Financial Protection Bureau, Advisory Opinion re: 12 C.F.R. Part 1006 (2023), https://files.consumerfinance.gov/f/documents/cfpb_regulation-f-time-barreddebtadvisory-opinion_2023-04.pdf.

interest had been waived and never previously assessed, and (b) then surfacing with collection threats demanding this interest and other fees, emphasized with threats of foreclosure.

25. Around October 2023, Rithm Capital Corp. agreed to purchase SLS, completing the acquisition around April 2024, merging SLS into its mortgage servicer subsidiary NewRez LLC, and subsequently placing the servicing of SLS's "zombie second mortgage" portfolio with its Shellpoint division.

Facts Pertaining to Plaintiff Colbert

26. Plaintiff Colbert has lived in her Philadelphia home ("the Property") since she bought it in February 2007. The Property is a modest row home in the Overbrook section of Philadelphia.

27. Ms. Colbert was a first-time homebuyer who bought the Property at the peak of the housing bubble, at the inflated price of $149,900. At that time, no property on the block had ever sold for more than $93,000.

28. The entire purchase price of the Property was financed by First Franklin Financial Corporation ("First Franklin") without any downpayment being required. Using the "piggyback" model, the price was split between two mortgages: a first, purchase-money mortgage of $119,920.00, and a second mortgage of $29,980 that was essentially financing a phantom downpayment. A copy of the Note secured by the second mortgage is attached hereto as Exhibit A.

29. Ms. Colbert did not realize until the closing that she was getting two mortgages and that the second mortgage component was a high-rate balloon loan. The broker who had arranged the financing and in whose office the closing occurred, assured her that she could refinance out of the balloon in the future, but this assurance was misleading because the Property was underwater from the start and remained so for years after the closing in that the total mortgage debt far exceeded the fair market value of the Property.

30. The servicing of the purchase-money mortgage transferred several times, during which time she was getting no information from any mortgage servicer regarding the second mortgage loan.

31. Sometime around 2009, when lenders were encouraged through the federal HAMP program to provide loan modifications to homeowners, she got a loan modification on the first mortgage that lowered her rate and enabled her to keep her obligation current.

32. As to the second mortgage obligation, because of the absence of any collection communication, Ms. Colbert believes it was charged off around the same time as that modification, whether by First Franklin or by a subsequent servicer.

33. During the period of mass loan modifications encouraged by the Federal Government, many holders of the "20" portion of 80/20 transactions charged off these secondary mortgages as effectively uncollectible. By charging the loans off, lenders were able to account for the debts as losses in their financial statements and tax filings, as well as disclaim legal responsibility for providing ongoing statements to the borrower.

34. Based on a complete lack of communication about the second mortgage and its absence from Ms. Colbert's credit reports, and her diligent payment of her mortgage obligation under the loan modification agreement, she did not understand what, if any, obligation was connected to the second mortgage lien on the Property.

35. The first time after 2009 that Plaintiff heard anything about the second mortgage obligation was when she got a payment demand from SLS in 2020. She suspected this demand was a scam after she confirmed that the second mortgage debt was still not on her credit report.

36. Plaintiff's recollection is that even after initial contact in 2020, SLS did not send regular, periodic mortgage statements like she has always gotten for her primary mortgage obligation.

37. On April 2, 2023, SLS sent Plaintiff a "Notice of Default and Notice of Intent to Foreclose" ("the Pre-Foreclosure Notice"). In this communication, SLS alleged that there were $51,712.48 in "arrears" currently due on the second mortgage obligation, and threatened to foreclose unless this amount was paid within 33 days. A copy of the Pre-Foreclosure Notice is attached hereto as Exhibit B.

38. The Pre-Foreclosure Notice provided no explanation for how the $51,712.48 was calculated, nor did it provide any breakdown between principal and interest. It wasn't until eight months later that Plaintiff was informed that the entire amount claimed as "arrears" in that Notice was for alleged interest accruals that Plaintiff supposedly owed in addition to the principal of the loan.

39. On December 11, 2023, SLS filed a foreclosure Complaint, which was docketed as *First Franklin Mortgage Loan Trust et al. v Colbert*, Philadelphia Court of Common Pleas case number 231201211 ("the Foreclosure"). The Foreclosure Complaint claimed that mortgage payments were due and unpaid since August 1, 2009, and that Ms. Colbert owed $29,611.56 in principal and $52,201.28 in interest at 12.3% from 07/01/09 to 10/31/23, for a total of $81,812.84.

40. At the time that SLS acquired Plaintiff's loan, the loan was a defaulted, charged-off obligation on which no interest was being accrued, with a balance of less than $30,000. Pursuant to the above-described business practice, however, SLS rewrote the history of the account, ignoring the 2009 default and assessing interest at the original note rate as if the loan

had been running interest monthly for all the years after which the account had been charged off and no monthly statements were being sent to Plaintiff.

41. Plaintiff began getting sporadic collection notices from SLS in 2020 but SLS was not sending her the monthly statements required by TILA, nor did it send her the notice of servicing transfer required by 12 U.S.C. § 2605 and 12 C.F.R.§ 1026.33, *i.e*., another federal mortgage servicing rule that SLS ignored, at the time it became her servicer.

42. As of this date, Plaintiff is continuing to defend the foreclosure now being prosecuted by Defendant Shellpoint, with the assistance of Community Legal Services (CLS).

43. Through counsel, on July 24, 2024, Ms. Colbert sent Defendant a written inquiry that requested, inter alia, information about her loan and requested that Defendant remove from her account the wrongly assessed interest charges. A copy of the written inquiry is attached as Exhibit C.

44. On October 9, 2024 Defendant sent a reply to that written inquiry. A copy, without enclosures, is attached as Exhibit D. Defendant did not remove the erroneous interest, nor did provide any information regarding the interest it was demanding.

45. As a result of Defendant's conduct, Ms. Colbert has experienced emotional distress and economic losses.

46. As a result of the unjustified charges, the debt that Defendants claim Ms. Colbert owes has increased by over $50,000, reducing her equity in the Property by that amount.

47. Ms. Colbert suffered shock and fear as a result of this conduct by Defendant. She reasonably feared losing her home because she could not afford to pay the huge amount claimed by Defendant.

48. Defendant's unfair, misleading and unconscionable collection demands have caused her to suffer from anxiety that is serious enough to lead her to seek help from a therapist for several months.

49. The fear caused by Defendant's conduct in seeking to collect inaccurate, inflated amounts from Ms. Colbert, including the pursuit of a foreclosure, have twice sent her to the emergency room with chest pains, and caused her bills for a cardiologist, neurologist, and various MRIs and echocardiograms, before her symptoms were determined to be stress-related. These medical visits have resulted in hundreds of dollars of charges for copays.

50. On information and belief, Defendant's conduct has significantly damaged countless other consumers, who have lost significant equity in their homes and have similarly emotional harm because of the unfair and unconscionable collection practices employed by Defendant.

V. CLASS ALLEGATIONS

51. Under Federal Rule of Civil Procedure 23, Plaintiff brings this action for herself and on behalf of the following class of which she is a member:

> All Pennsylvania consumers: (1) with a secondary mortgage serviced by SLS prior to Shellpoint's acquisition of the servicing rights to the loan; (2) which SLS acquired after the loan was in default and (3) to whom SLS or Shellpoint sent any communication since April 3, 2022 that demanded interest and fees that SLS had retroactively assessed for prior periods during which the previous servicer had not assessed such interest and fees.

52. Plaintiff further brings this action on behalf of the following subclasses, being a member of each:

> FDCPA Subclass: All members of the class who, at any time after December 15, 2024, were sent any communication by Defendant that demanded payment of any of the interest and fees that SLS had retroactively assessed.

RESPA Subclass: All members of the class who sent written correspondence to Defendant in which they requested information about the amount of interest being demanded or requested that Defendant correct the amount of interest it was claiming that they owed.

53. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, Plaintiff alleges that the class members are so numerous that joinder of all is impractical. Upon information and belief, SLS serviced—and Shellpoint now services—thousands of secondary mortgage loans and subjects all of them to the same procedures for the assessment of interest, transmittal of monthly billing statements, and procedures for calculating the amount due in form acceleration notices. The class members' names and addresses are identifiable through Shellpoint's internal business records, and they may be notified of this litigation by published or mailed notice.

54. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all putative class members, and there are no factual or legal issues that differ between the putative class members. These questions predominate over the questions affecting only individual class members. The principal issues include: (1) whether SLS, in fact, as a matter of systemic practice, did retroactively assess interest on defaulted second mortgage accounts for periods during which prior servicers were not communicating with borrowers and not accruing interest; (2) whether the borrower communication practices of SLS and Defendant with regard to retroactively assessed charges constituted "unfair or unconscionable" or "false and misleading" collection practices that violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692f and§1692e; (3) whether SLS and Shellpoint have engaged in a pattern or practice of responding to borrowers' written inquiries in a legally defective manner, in violation of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605(e) and Regulation X, 12 C.F.R. §§ 1024.35 and 36; (4) the size of

Defendant's net worth, for purposes of determining the amount of statutory damages under 15 U.S.C. §1692k and 12 U.S.C. §2605(f).

55. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each putative class member. She is also entitled to relief under the same causes of action as the other putative class members. All claims are based on the same facts and legal theories.

56. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate representative of the putative class because her interests coincide with, and are not antagonistic to, the interests of the class members that she seeks to represent. Plaintiff has retained counsel competent and experienced in consumer class-action litigation, and they intend to continue to prosecute the action vigorously. Plaintiff and her counsel will fairly and adequately protect the putative class members' interests. Neither Plaintiff nor her counsel have any interests that might cause them to not vigorously pursue this action.

57. **Superiority. Fed. R. Civ. P. 23(b)(3)**. Questions of law and fact common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be almost impossible for class members to effectively redress the wrongs done to them in individual litigation. Even if the putative class members could afford individual litigation, it would be an unnecessary burden on the courts. Individualized litigation also presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by Defendant's conduct. By contrast, the class-action device will result in substantial benefits to the

litigants and the Court by allowing the Court to resolve several individual claims based on a single set of proof in a case.

VI. CLAIMS FOR RELIEF

Count I
Pennsylvania UTPCPL and FCEUA, 73 P.S. §201-9.1, 73 P.S. §2270.1 *et seq.*
(On Behalf of Plaintiff and the Class)

58. Plaintiff incorporates all previous allegations by reference.

59. Defendant Shellpoint is a "debt collector" under the Fair Credit Extension and Uniformity Act ("FCEUA"), 73 P.S. §2270.1 *et seq*., because it is a person conducting business within this Commonwealth that collects debts alleged to be owed a creditor or assignee of a creditor. 73 P.S.. § 2270.3.

60. Defendant Shellpoint is also a "debt collector" under the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*., because it uses instrumentalities of interstate commerce to operate a business whose principal purpose is the collection of debts. 15 U.S.C. § 1692a(6).

61. Plaintiff and the members of the Class are "consumers" under the FCEUA because they are natural persons who are alleged to have incurred a debt in this Commonwealth. 73 P.S.. § 2270.3.

62. Plaintiff and the members of the Class are "consumers" under the FDCPA because they are natural persons obligated or allegedly obligated to pay any debt. 15 U.S.C. § 1692a(3).

63. Under Pennsylvania law it is an "unfair or deceptive collection act or practice" for any debt collector to violate a provision of the FDCPA. 73 P.S. § 2270.4(a).

64. It is a violation of the FDCPA for a debt collector to engage in any "unfair or unconscionable means" in collecting or attempting to collect a debt. 15 U.S.C. § 1692f.

65. For a debt collector to hide its identity from the obligated consumer and abandon communication regarding the amounts allegedly due, and then to surface with demands for interest accruals that had been retroactively assessed covering periods when interest was not being accrued and no periodic statements were being sent is an unfair and conscionable debt collection practice.

66. It is also a violation of the FDCPA for a debt collector to use any "false or misleading" means in collecting or attempting to collect a debt, 15 U.S.C. § 1692e, including, specifically, providing false or misleading information about the amount of the debt owed, 15 U.S.C. § 1692e(2)(A).

67. The communications sent by Defendant to Plaintiff and to the members of the Class—both itself and as successor in interest to SLS—including the Pre-Foreclosure Notices and any recent periodic mortgage statements violated the FDCPA by providing false and misleading information about the amount owed, and as a part of an unfair and unconscionable means of enforcing zombie second mortgage obligations.

68. Under Pennsylvania law, "unfair or deceptive collection acts or practices" are enforceable under 73 P.S. §201-9.1. See 73 P.S. §2270.5(a).

69. These acts or practices by Defendant caused ascertainable losses of money or property including the loss of equity in the homes of Plaintiff and of members of the Class, and the additional economic harm suffered by Plaintiff Colbert.

70. On account of these losses, Plaintiff and the members of the Class are entitled to treble damages, costs and reasonable attorney's fees, as well as declaratory relief that the retroactively assessed interest is not due and owing. 73 P.S. §201-9.2.

Count II
VIOLATIONS OF THE FDCPA
(On Behalf of Plaintiff and the FDCPA Subclass)

71. Plaintiff incorporates all previous allegations by this reference.

72. Pursuant to 15 U.S.C. § 1692k, Plaintiff and the members of the FDCPA Subclass are entitled to actual damages, including not only their loss of equity but their noneconomic loss, as well as (a) statutory damages of up to $500,000 and (b) costs and reasonable attorney's fees.

Count III
VIOLATIONS OF RESPA, 12 U.S.C. § 2605(e) and 12 C.F.R. § 1024
(On Behalf of Plaintiff and the RESPA Subclass)

73. Plaintiff incorporates all previous allegations by this reference.

74. The second mortgages of Plaintiff and the members of the Class that are being serviced by Defendant are "federally related mortgage loans" within the meaning of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2602(1).

75. RESPA imposes certain requirements and obligations on servicers of federally related mortgage loans, 12 U.S.C. § 2605, and these requirements are enforceable by borrowers, 12 U.S.C. § 2605(f).

76. Defendant Shellpoint is the servicer of the second mortgage within the meaning of 12 U.S.C. § 2605(i)(2).

77. Plaintiff and the members of the Class are "borrowers" within the meaning of 12 U.S.C. § 2605.

78. Under 12 U.S.C. 2605(e), a borrower may submit to its servicer a qualified written request ("QWR") identifying an error in the servicing of the loan ("Notice of Error") or a Request for Information regarding the mortgage. *See* 12 C.F.R. §§ 1024.35, 1024.36.

79. The written inquiry sent to Defendant by Plaintiff's counsel on July 24, 2024 was a Notice of Error and Request for Information under those provisions.

80. Within thirty business days of the receipt of a Notice of Error or Request for Information, the servicer must conduct a reasonable investigation and provide a response. If the servicer determines that an error occurred, the servicer must correct the error identified by the borrower and provide a written notification of the correction. If, pursuant to a reasonable investigation, the servicer determines that no error occurred, the servicer must notify the borrower in writing and provide a statement of the reasons for this determination. *See* 12 C.F.R. § 1024.35(e)(1)(i).

81. Despite this obligation, Defendant never removed the interest it had wrongfully assessed retroactively on Plaintiff's loan covering the past periods during which no periodic statements were being sent or during which the prior servicer had waived the interest, nor did it provide any information about these charges.

82. As a result of Defendant's failures to correct these errors or conduct reasonable investigations into them, Ms. Colbert has suffered additional emotional distress including anxiety and despair aggravated by Defendant's intransigence.

83. Defendant's failure to comply with its obligations under RESPA with regard to Plaintiff is part of a nationwide pattern or practice of noncompliance with regard to borrower inquiries about zombie second mortgage accounts. By way of example of this pattern and practice, Plaintiff cites Defendant's similar handling of inquiries by borrowers Mariel Castellon of Virginia and Liz Chavez and Chris Donabedian of California.

84. Defendant is liable to Plaintiff and to members of the RESPA Subclass in an amount up to $1 million, plus attorneys' fees and costs, pursuant to 12 U.S.C. § 2605(f).

VII. PRAYER FOR RELIEF

For the reasons alleged, Plaintiff and class members seek the following relief:

A. An order certifying the proposed classes pursuant to Fed. R. Civ. P. 23;

B. A declaration that retroactively assessed interest and fees waived by prior holders of the debts are not enforceable against Plaintiff and class members;

C. An award of actual damages for both economic and non-economic harm suffered by Plaintiff and class members in an amount to be determined at trial;

D. An award of trebled actual economic damages, 73 P.S. § 201-9.2;

E. An award of statutory damages under FDCPA for Plaintiff and members of the FDCPA Subclass, 15 U.S.C. § 1692k(a)(2);

F. An award of statutory damages under RESPA for Plaintiff and members of the RESPA Subclass, 12 U.S.C. § 2605(f)(2);

G. An award of reasonable attorney fees and costs, and;

H. Such additional relief deemed appropriate by the Court.

Respectfully submitted,

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