

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.:
502017CA000532XXXXMBAB

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE, SUCCESSOR IN INTEREST
TO BANK OF AMERICA, NATIONAL
ASSOCIATION, AS TRUSTEE,
SUCCESSOR BY MERGER TO LASALLE
BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2006-MLN-1,

Plaintiff,

vs.

PETER A. COLOMBO, etc., et. ux., et al.,

Defendant and
Plaintiff-in-Counterclaim,

vs.

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE, SUCCESSOR IN INTEREST
TO BANK OF AMERICA, NATIONAL
ASSOCIATION, AS TRUSTEE,
SUCCESSOR BY MERGER TO LASALLE
BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST,
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2006-MLN-1, and
NATIONSTAR MORTGAGE LLC,

Defendants-in-Counterclaim. /

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff/Counter-Defendant U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, Successor by Merger to LaSalle Bank National Association, as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-MLN-1, and Third-Party Defendant Nationstar Mortgage LLC d/b/a Mr. Cooper (collectively, “Counter-Defendants”) appeal to the Fourth District Court of Appeal the Order of this Court rendered July 24, 2025, Granting in Part Counter Plaintiff Peter A. Colombo’s Amended Motion for Class Certification and Denying Class Certification as to Attorneys’ Fees Class (“Order”), a copy of which is attached as Exhibit A. The nature of the Order being appealed is a non-final order certifying a class and three subclasses. *See* Fla. R. App. P. 9.030(b)(1)(B); 9.130(a)(3)(C)(vi).

Dated: August 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by E-Mail on August 22, 2025, to the following:

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**NATIONSTAR MORTGAGE LLC AND U.S. BANK'S
NOTICE OF APPEAL**

EXHIBIT A

**Order Granting in Part Counter Plaintiff Peter A. Colombo's
Amended Motion for Class Certification and Denying Class Certification
as to Attorneys' Fees Class**

U.S. Bank National Association, as Trustee, et al. v. Peter A. Colombo, et al.
**In the Circuit Court, Fifteenth Judicial Circuit, In and For Palm Beach County, Florida
Case No. 2017-CA-000532**

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA,

CASE NO.: 2017- 000532 AK

US BANK TRUST N.A. AS TRUSTEE SUCCESSOR
IN INTEREST TO BANK OF AMERICA, NATIONAL
ASSOCIATION AS TRUSTEE, SUCCESSOR BY
MERGER TO LASALLE BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTOR TRUST, MORTGAGE LOAN
ASSET-BACKED CERTIFICATE SERIES 2006-MLN1-1,

Plaintiff,

vs.

PETER A. COLOMBO, etc., et. ux., et al.,

Defendant and Plaintiff-in-Counterclaim

vs.

US BANK TRUST N.A. AS TRUSTEE SUCCESSOR
IN INTEREST TO BANK OF AMERICA, NATIONAL
ASSOCIATION AS TRUSTEE, SUCCESSOR BY
MERGER TO LASALLE BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTOR TRUST, MORTGAGE LOAN
ASSET-BACKED CERTIFICATE SERIES 2006-MLN1 -1,
and NATIONSTAR MORTGAGE, LLC,

Defendants-in-Counterclaim.

**ORDER GRANTING IN PART COUNTER PLAINTIFF PETER A. COLOMBO'S
AMENDED MOTION FOR CLASS CERTIFICATION AND DENYING CLASS
CERTIFICATION AS TO ATTORNEYS' FEES CLASS**

This matter came before the Court on the Defendant Counter-Plaintiff, PETER A. COLOMBO'S ("Counter-Plaintiff" or "Colombo") Amended Motion for Class Certification filed on December 14, 2024. (D.E. #454). The Court conducted a multi-day evidentiary hearing on May 5, 2025 to May 7, 2025. The Court, having reviewed the motion, the Counter Defendant US BANK TRUST N.A. AS TRUSTEE SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE

BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTOR TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATE SERIES 2006-MLN1-1's (Counter-Defendant US Bank") and Defendant in Counterclaim NATIONSTAR MORTGAGE, LLC, now known as "MR. COOPER's (Collectively "Nationstar") Response, Colombo's Reply and other legal memoranda, along with relevant case law, and the evidence presented at the hearing, finds as follows:

LEGAL AND FACTUAL BACKGROUND

To certify a class, a trial court must engage in a rigorous analysis to determine whether the class representative and putative class members meet the requirements for class certification promulgated in Rule 1.220. Florida Rules of Civil Procedure. *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91, 105 (Fla. 2011). The focus is not on the merits of the case but on the prerequisites for class certification required by Rule 1.220(a) and (b). However, a trial court may consider evidence on the merits of the case as it applies to the class certification requirements, if the evidence is consequential to the court's consideration of whether to certify a class. *Sosa*, 73 So.3d at 105. Finally, trial courts should resolve any doubts in favor of certification.

Colombo seeks class certification on behalf of borrowers whose properties are or were in foreclosure, and whose mortgages were or are serviced by Nationstar since May 29, 2013, and who received mortgage account statements ("MAS") for which Nationstar attempted to collect as part of the entire outstanding debt necessary to satisfy the mortgage, alleged improper charges in violation of both the Florida Deceptive Unfair Trade Practices Act ("FDUTPA"), sections 501.201 et seq. and the Florida Consumer Collection Practices Act ("FCCPA"), sections 559.55 et seq. Colombo also contends that Nationstar breached the provisions of the mortgage and loan agreement by violating the mortgage Para. 14 because it failed to follow "Applicable Law" as

defined in the mortgage Pg.2 Definition (I).

The specific charges Colombo challenges include the following:

- a. Fees charged to borrowers in foreclosure for service of process on individuals identified only as unknown spouses and unknown tenants, which Nationstar demanded the borrowers pay.
- b. Attorneys' fees and costs for legal work Nationstar or its principal incurred in prosecuting a prior foreclosure when it did not prevail in the prior foreclosure;
- c. Property maintenance expenses where no property maintenance was performed;
- d. Property inspection charges when the inspector did not inspect the mortgaged properties.

For class certification purposes, the Court's primary focus is to determine whether US Bank and Nationstar acted in the same manner towards other putative class members in attempting to collect the above referenced charges, as it did toward Colombo. It is therefore significant that the US Bank/Nationstar designated corporate representatives, Mr. Alan Blunt (See 05/06/2025 hearing transcript p. 8, l. 2 - p. 10, l. 12, p. 149 l. 24 - p. 150 l. 22, hereinafter "05/06/2025 Tr. p__"), and Mr. AJ Loll (Please note that the court reporter transcribed the name of the witness "AJ Loll" as "AJ Lowell." See 05/05/2025 Tr. p. 64 l. 18 - p. 65 l. 25. ¹), testified that Nationstar's actions toward Colombo were in accordance with Nationstar's standard policies and practices; the MAS forms and disclosures are based on a template which is automatically populated; and, Nationstar treated Colombo in the servicing of his mortgage, in the same manner as any other

¹ The Court allowed the parties to read the witness deposition transcripts into the record and that the Court reporter need not type the sections read. Accordingly when the hearing transcript shows that the deposition was read but not transcribed, Colombo will refer to the page and line of each witnesses' deposition transcript that the parties agreed to read into the record. See: 05/05/2025 Tr. p. 65 l.2-25. The parties also agreed that the Court could read the Loll Deposition Vol II outside of the courtroom. 05/05/2025 Tr. p. 68 l.7-25.

borrower. (Loll Dep. 36-40, 66-67, Blunt Dep. 33-46, 122-125, See 05/06/2025 Tr. p. 21 l. 4- p. 22 l. 15, p. 28 l. 1, p. 62 l. 3 - p. 63 l. 2, p. 160 l. 4-l. 23, Colombo Exh #33-36). The parties stipulated to the admission of both sides' exhibits. (See 05/05/2025 tr. p. 59 l.3 - p. 60 l. 13, DE#469 04/24/2025.) This MAS includes the same debt collection language found in all of the MASs sent to Colombo. (05/06/2025 Tr. p. 21 l. 4 - p. p. 29 l. 5, Blunt Dep. 43-45, Colombo Exh #18, #19, #33-#36). The preparation and distribution of the MASs sent to borrowers was done by Nationstar. (05/06/2025 Tr. p. 28 l. 16- p. 29 l. 16, Blunt Dep. p. 44-46).

Furthermore, it is irrelevant that Colombo may not have paid the fees while some of the putative class members paid them or were the subject of a foreclosure judgment or settlement by modification or short sale. *Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier*, 965 So. 2d 1228, 1232 (Fla. 1st DCA 2007) holds that these statutory causes of action were triggered by the transmission of the reinstatement letter seeking illegitimate costs, not by the ultimate outcome of any foreclosure proceedings. Further, in an Order Granting Litalien's Amended Motion for Class Certification in the similar case of *HSBC Bank v. L'Italien* Case No.: 17-3860, recently affirmed by the Fourth District Court of Appeal *per curium*, Judge Harper found that OCWEN's MAS containing the alleged improper charges triggered the causes of action of unfair debt collection and unfair trade practices, and adding these charges to L'ITALIEN's mortgage payment debt, and threatening to report her lack of payment to credit bureaus, establishes L'ITALIEN's standing to bring her counterclaim. (D.E. 293, pg. 12).

Judge Harper citing *Law Offices of David J. Stern, P.A. v. Banner*, 50 So.3d 1221 (Fla. 4th DCA 2010) and *Law Offices of David J. Stern, P.A. v. Hewitt*, 106 So.3d 489 (Fla. 4th DCA 2013) further rejected the argument that pending foreclosure cases, or cases which have gone to foreclosure judgment, and cases that have settled pursuant to a reinstatement or payoff, precludes

certifying this class of borrowers because it would interfere with pending foreclosure litigation and overturn prior foreclosure judgments and settlements. However, in accordance with *Banner*, the Court limits the recovery to those who lost their homes by final judgment of foreclosure and sale, to the statutory damages allowed under the FCCPA and injunctive relief under the FCCPA and FDUTPA. That same rationale applies here. Accordingly, the status of the various foreclosure cases for the putative class members relates only to the remedy available and is not an objection to establishing a class.

FACTS OF THE CASE

The parties do not dispute the material facts. In September 2008, LaSalle Bank, N.A., as Trustee, etc., which has since been acquired by US Bank (See Loll Dep. p. 250, 05/06/2025, Tr p. 88 l. 13-20), brought a foreclosure action against Colombo styled LaSalle Bank, N.A., as Trustee for the MLNI Trust Series 2006- MLNI vs. Peter A. & Lori Colombo ², MERS, Seminole Lakes HOA, Unknown Tenant #1 and Unknown Tenant #2, Case No. 502008CA029465 AW. (Hereafter "Case #1"). (See Case #1 Complaint, Nationstar Exh. # 4, Colombo Exh. #6, #13). The Clerk issued six summonses, and the process server attempted to serve the six defendants including unknown potential defendants, identified as Unknown Tenant #1 and Unknown Tenant #2. (See: Colombo Exh. #7, #8, #13, Case #1 Complaint, DE #8-13, #16-21, Stipulation Regarding Service of Process 05/05/2025 Tr. p. 57 l. 1-11, DE#456 01/15/2025, Reconciliation Stipulation 05/05/2025 Tr p. 58, l. 1-17, DE#470, 04/24/2025). The process server, charged US Bank, through its attorneys, \$390.00 to serve or attempt to serve the defendants, including \$45.00 each for the two "Unknown Tenants." (See: Colombo Exh. #8, #20, US Bank Exh. 27 a), 27 b), 27 c),

² Lori Colombo died between Case #1 and Case #2. See: Case #2 February 20, 2017 Suggestion of Death DE#19.

Stipulation on Service of Process, 05/05/2025 Tr. p. 57 l.1-11, DE#456 01/15/2025).

In November 2013, the Court dismissed Case #1 for lack of prosecution. (Colombo Exh. #10, Case #1, DE #63 05/06/2025 Tr p.83 l. 16-23). In October 2014 the Court entered an Agreed Order Awarding Fees and Costs in favor of Colombo. (Colombo Exh. #12, 05/06/2025; Tr p.83 l. 24 – p 84 l.7.). Neither the Bank nor any other servicer or lender was awarded any attorney's fees or costs in Case #1. (Colombo Exh. 13; 05/06/2025 Tr p.85 l. 24 - p. 86 l. 4.) The orders dismissing the case and awarding Colombo fees were not appealed and the clerk administratively closed Case #1. (Colombo Exh. 13. 05/06/2025 Tr p.87 l. 17 – p. 88 l.12.).

Despite the fact that Case #1 was dismissed on the Bank's failure to prosecute the matter, it boarded these Case #1 costs and attorney fees to Colombo's mortgage account as recoverable from Colombo. (See 05/06/2025 Tr. p. 136 l. 22, p. 137 l. 16, Loll Dep. p. 236 - 237, Reconciliation Stipulation, 05/05/2025 Tr p. 58, 1-17, DE#470, 04/24/2025 Excel Spreadsheet, 05/06/2025 Tr. p. 140 l.8-15, Mr. Blunt: " Yes it... if it is not recoverable, it wouldn't be on here" p. 140 l.14-15.).³

In January 2017, US Bank brought this foreclosure action against Colombo ("Case #2") after Nationstar sent Colombo a new notice to accelerate. (Colombo Exh. #16, Case #2 DE#5, Nationstar Exh. #15, #16). This Case #2 foreclosure while based on the same note and mortgage as the Case #1 foreclosure, has a different case style, a different case number, and alleges a different date of default than Case #1. Compare Case #1 Complaint, Nationstar Exh. # 4, Colombo Exh. #6, Style, Case No., Date of Default Para. 16 June 1, 2008, to Case #2 DE#5, Style, Case No., Date of

³ Bank of America serviced the loan up to July 12, 2013 when servicing was transferred to Nationstar more than 1 year before the Court awarded fees and costs to Colombo in Case #1, on October 17, 2014. See Loll Dep. 62-63, Ex. #32, Colombo Exh. #5.

Default Para. 5 February 01, 2012. 05/06/2025 Tr p.88 l. 13-p. 90 l.14.).

On February 14, 2017, Nationstar on behalf of US Bank sent Colombo a MAS, listing, among other charges "Legal Fees" paid by the lender of \$5,068.00, \$761.00 for property inspection fees, and \$600.00 for "Maintenance". (Colombo Exh. #18; 05/06/2025 Tr p. 91 l. 21-p.92 l.10.).

This MAS, as did all Nationstar MASs, contained the following language:

"Nationstar is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose..."

See: Colombo Exh. #18, #19, 05/06/2025 Tr p. 56 l. 25-p. 57 l. 9, p. 158 l. 2 - 9.

Nationstar and US Bank admit the \$5,068.00 in "Legal Fees" included the legal fees incurred by US Bank when it lost Case #1, and the service of process charges for the Case #1, including the \$45.00 for service on two "Unknown Tenants". (05/06/2025 Tr p.30 l. 19 p. 34 l. 7; Blunt Dep. 55-57, 60-65, Stipulation Regarding Service of Process, 05/05 Tr. p. 57 l.1-11, DE#456 01/15/2025, Stipulation Regarding Invoice Reconciliation Spreadsheet 05/05 Tr p. 58, l. 1-17, DE#470, 04/24/2025, Excel Spread Sheet). They also admitted the \$761.00 "Property Inspection" charge included charges when an inspector retained by US Bank could not access and did not inspect the mortgaged property. Finally, they also admitted the \$600.00 "Maintenance" charge was not for maintenance. In fact there was no maintenance done on or to the property. See 05/06/2025 Tr. p. 156 l. 14 - l. 25. The \$600.00 charge was in fact a fee to register the property then in foreclosure with the Town of Royal Palm Beach. See 05/06/2025 Tr. p. 157 l. 1 - l. 5, Blunt Dep. 126-127.

In response to the February 2017 MAS Colombo through counsel e-mailed Nationstar and US Bank's counsel, objecting to these charges as neither necessary, nor reasonable, nor authorized under the mortgage or note and demanded they remove the charges from Colombo's account. (See: Colombo Exh. #68-#72. 05/06/2025 Tr p. 91 l. 9-p.97 l.16.). Nationstar, through its agent, refused

to remove the charges claiming that the Bank is entitled to those fees. See: Colombo Exh. #68-#72.
05/06/2025 Tr p. 93 l. 23-p.97 l.16.).

Nationstar continued to send Colombo MASs demanding that he pay the same charges for Case #1 attorney's fees and service of process on unknown parties, and charges for inspections, and maintenance as follows:

- a. 02/14/2017 MAS (Colombo Exh #18):
 - i. Legal Fees - \$5,068.00;
 - ii. Property Inspections - \$761.00
 - iii. Maintenance - \$600.00
- b. 04/13/2017 MAS (Nationstar Exh #31 g):
 - i. Legal Fees - \$9,6768.70;
 - ii. Property Inspections - \$791.00
 - iii. Maintenance - \$825.00
- c. 08/15/2017 MAS (Colombo Exh #35, Nationstar Exh. 31 h):
 - i. Legal Fees - \$10,321.70;
 - ii. Property Inspections - \$836.00
 - iii. Maintenance - \$825.00
- d. 11/14/2017 MAS (Colombo Exh #36, Nationstar Exh. 32 c):
 - i. Acceleration Amount Due of \$434,670.72, which included the challenged expenses;
 - ii. Legal Fees - \$10,321.70;
 - iii. Property Inspections - \$881.00
 - iv. Maintenance - \$825.00.
- e. 12/13/2017 MAS (Colombo Exh #44):

- i. Acceleration Amount Due \$438,670.97, which included the pg 3 lender paid expenses.
- ii. Legal Fees - \$10,321.70;
- iii. Property Inspections - \$896.00;
- iv. Maintenance - \$825.00.

**NATIONSTAR AND US BANK'S CONDUCT WAS COMMON
AMONG PUTATIVE CLASS MEMBERS**

For class certification purposes, the Court's primary focus is to determine whether Nationstar acted in the same manner towards other putative class members in attempting to collect the above referenced charges, as it did toward Colombo. It is therefore significant that Nationstar's designated corporate representative, Mr. Alan Blunt, testified that Nationstar's actions toward Colombo were in accordance with Nationstar's standard policies and practices, and implemented through the Nationstar foreclosure department. (05/06/2025 Tr p. 21 l. 13-p.22 l.15, p. 27 l. 11-p. 28 l. 1, p. 91 l. 9-p.97 l.16; Blunt 43-46, 124-125). Additionally, Mr. Blunt testified that Nationstar treated Mr. Colombo in the servicing of his mortgage, in the same manner as any other borrower. (05/06/2025 Tr p. 21 l. 13-p.22 l.15, Blunt 124), and the same information that's provided to Mr. Colombo is the same type of information that's provided to borrowers in the state of Florida for which Nationstar is the servicer. (05/06/2025 Tr p. 22 l. 5- 1.15, p. 28 l. 2-15, Blunt 38-39). Mr. Blunt further explained that Nationstar utilized a template for the MASs sent to borrowers throughout Florida, (05/06/2025 Tr p. 21 l. 4 -1.12, p. 61 l.12- 1. 22, Blunt 37-39, 44-45). Nationstar sends the borrower information to a vendor to populates the MAS information, who then sends the completed MASs to the borrowers, which all included the same debt collection language found in the Nationstar and Mr. Cooper MASs sent to Colombo (05/06/2025 Tr p. 28 l. 16-p.29 l.16, Blunt 37 39, 44 45, Colombo Exh #18), Nationstar Exh #31 g), Colombo Exh #35, Colombo Exh

#36,Colombo Exh #44).

SERVICE OF PROCESS FEES

As discussed above, it is undisputed that Nationstar charged Colombo service of process fees incurred in Case #1 for attempted service on two unknown persons. If the borrower does not pay the charges, Nationstar adds the charges to the borrower's foreclosure debt. (05/06/2025 Tr p. 128 l. 6-12, Blunt Dep. 55-57, 60-65, 67, 78-80, 82-85, 91-92, 95-97, Stipulation Regarding Service of Process Tr p. 57, 1-11, DE#456 01/15/2025, Reconciliation Spreadsheet 05/05 Tr p. 58, 1-17, DE#470, 04/24/2025 Excel Spread Sheet, Colombo Exh #18), Nationstar Exh #31 g), Colombo Exh #35, Colombo Exh #36,Colombo Exh #44). Colombo argues that service of process on an unknown tenant or an unknown spouse is not valid service when the actual tenant or spouse is not named in the Complaint. He claims class certification is appropriate as to this issue because Nationstar has admitted it acts uniformly in charging these fees to borrowers. Nationstar argues that class certification is not appropriate because the claims related to the service of process for unknown persons would require difficult individual determinations of whether a spouse existed or a tenant lived at the property.

Colombo argues the issuing of subpoenas to unknown persons is a legal nullity regardless of whether a spouse exists or tenant actually resides at the property. See *Gilliam v. Smart*, 809 So.2d 905, 907 (Fla. 1st DCA 2002); *Grantham v. Blount, Inc.*, 683 So.2d 538 (Fla. 2d DCA 1996); *Leibman v. Miami-Dade County Code Compliance Office*, 54 So.3d 1043 (Fla. 3d DCA 2011); *Unknown Person in Possession of the Subject Property v. MTDLQ Investors, L.P.*, 217 So.3d 1193 (Fla.3d DCA 2017).

The primary issue the Court considers is whether Nationstar acted in the same manner towards other putative class members in attempting to collect a debt. Colombo's claims regarding

these improper service of process fees justifies class certification because they arise from Nationstar's common practice and course of conduct as to all borrowers. This conclusion is required by *Banner* and *Hewitt*. In both of those cases, the Fourth District affirmed class certifications where the plaintiffs made identical claims regarding service of process to unknown persons. The Fourth District also recently affirmed an order granting class certification in *L'Italien*, where the class definition as to service of process mirrors that at issue here. ⁴

Nationstar essentially claims that its poor record keeping with regard to its practice of including service of process fees in the MAS category of legal fees makes this subclass unascertainable. But in so arguing, Nationstar does not deny that it has records or access to records of its service of process charges. Nationstar affirms that it can:

...Run reports to show legal fees on a matter, but determining for which parties the service of process fees relate would require a comparison of the law firm invoices and/or invoices from the service of process vendor to the service documents in a particular case. To determine whether any such categories were included as a party in the complaint and subject to service of process (much less the outcome of that service of process, the number of attempted service, and fee for original or subsequent attempted service), would require a loan-by-loan review as such information is simply not tracked in Nationstar's systems.

Nationstar at its Response Para. 24, pg. 22, and p. 59

This approach does not focus on the adequacy of the class definition itself, which is the definition of ascertainability. This argument focuses on the potential difficulty of identifying class

⁴ *L'Italien* service of process class order pg. 21: All persons in the State of Florida whose mortgage contracts have been or are being serviced by OCWEN acting on behalf of HSBC Bank and for other note or mortgage holders from February 15, 2014, until the present, where OCWEN attempted to collect through the mortgage account statements the following:
a) Amounts for service of process for unknown spouse(s) and/or unknown tenant(s) in possession of subject property or any such reference to unknown spouses or tenants such as "John Doe" or "Jane Doe".

members. Ascertainability should not bar certification in this instance. The class is defined in clear and objective terms that make it easy for the court and class members to identify themselves as belonging within the class. And, as pointed out above, the Fourth District recently affirmed a similar service of process class definition in *L'Italien*, which is in accord with the holdings in *Banner* and *Hewitt*. Moreover, cost sharing is an available remedy, if necessary.

The fact that this class is defined in clear and objective terms sufficiently satisfies the implied ascertainability requirement. The Court's recognition of this ascertainable issue is consistent with the holdings of Florida and Federal courts, that unwieldy and inadequate records cannot be used as an excuse to fail to produce or identify vital information. In *Coastal Physician Services v Ortiz*, 728 So. 2d 324, 326-327, (Fla. 4th DCA 1998) a class action case alleging violations of the FCCPA, the court overruled objections to produce over 400,000 medical invoices that were sent to Florida residents, and explained that, "[t]he information sought by respondent is the very information that is needed to determine whether a class action can be maintained", to ascertain the size and membership of the class. Similarly, the failure of Nationstar's record keeping system to retrieve vital information, in order to identify borrowers who would be members of the classes, should not be used to frustrate the putative classes' ability to have the classes certified. This would only encourage inadequate record keeping systems and create an unrecognized immunity from class action litigation. Again, cost sharing measures are available should they be necessary and appropriate.

Nationstar's charge for service of process on unknown parties is alleged to be a deceptive or unfair practice and is an issue common to an ascertainable subset of putative class members. As a result, this is an issue appropriate for class certification.

CHARGING A PROPERTY MAINTENANCE EXPENSE WHEN

NO MAINTENANCE OCCURRED

The 02/14/2017 MAS sent to Colombo includes a Maintenance fee of \$600.00. The 04/13/2017, 08/15/2017, 11/14/2017, and 12/13/2017 MAS, include a Maintenance fee of \$825.00. Nationstar agreed that no maintenance was performed on the property and that the fee was for a property registration fee paid by Nationstar to Royal Palm Beach for property in foreclosure. See 05/06/2025 Tr p. 156 l. 14- p.157 l.12, Blunt Dep. 126-127. Colombo maintains that referring to this charge as a property maintenance expense, when, in fact, it was a registration cost, is a deceptive act and unfair practice.

The terms deceptive act and unfair practices are not defined in FDUTPA, but the Act incorporates the standards of federal law and requires FDUTPA's terms to be construed liberally. See Fla. Stat. 501.202 (rule of construction); see also 501.204(2) (Great weight should be given to interpretation of unfair competition under federal law.). Florida cases define a deceptive practice as one that is likely to mislead a consumer. See *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. 2d DCA 2006) (quoting *Davis v. Powertel, Inc.*, 776 So.2d 971, 974 (Fla. 1st DCA 2000)). A deceptive act is an objective standard, so proof of any subjective reliance is unnecessary for purposes of FDUTPA. See *State Office of the Atty Gen. v. Commerce Comm. Leasing, LLC*, 946 So.2d 1253, 1258 (Fla. 1st DCA 2007); *Office of Atty Gen., Dept of Legal Affairs v. Wyndham Int'l, Inc.*, 869 So.2d 592, 598 (Fla. 1st DCA 2004).

For class certification purposes, whether Nationstar's charge of a property maintenance expense when no maintenance occurred is a deceptive or unfair practice is an issue common to all putative class members, which in itself can result in liability under FDUTPA. As a result, this is an issue appropriate for class certification. Significant to this issue, Colombo's proposed class

definition as to maintenance is similar to *L'Italien* recently affirmed by the Fourth District.⁵ There, as here, Ocwen charged *L'Italien* a maintenance fee when the fee was a registration fee paid to West Palm Beach for purportedly vacant or abandoned properties. Judge Harper found: For class certification purposes, whether OCWEN's charge of a property maintenance expense when no maintenance occurred is a deceptive or unfair practice is an issue common to all putative class members, which in itself can result in liability under FDUTPA. The Court likewise finds here the maintenance issue is appropriate for class certification.

FEES FOR PROPERTY INSPECTIONS NOT PERFORMED

Nationstar's Response (Para. 19) concedes that Colombo's property is located in a gated, limited access community in Royal Palm Beach Florida. 05/06/2025 Tr p. 102, l. 19- p 104 l.3, AJ Loll Dep. 101-103, Colombo Exhibits 59-64. It is undisputed that Nationstar charged Mr. Colombo for inspections from 07/2013 through March 2017. See Colombo Exhibits 59-64. Nationstar charged Colombo in the MASs for 49 home inspection from July 2013 through March 2017. See Colombo Exhibits 59-64. The reports from those inspections indicate that the inspector actually inspected Colombo's property five times. The inspection reports indicate that in the other 44, the inspector did not inspect Colombo's property because they were not allowed into Colombo's gated community.

Nationstar has a vendor that hires the individual entity or inspector to actually do the

⁵ *L'Italien* maintenance class order pg. 21: "All persons in the State of Florida whose mortgage contracts have been or are being serviced by OCWEN acting on behalf of HSBC Bank and for other note or mortgage holders from February 15, 2014, until the present, where OCWEN attempted to collect through the mortgage account statements the following: c) Amounts for property maintenance where neither OCWEN nor anyone on OCWEN's behalf provided any maintenance on the property or the amount of a registration fee for properties located in West Palm Beach, Florida from 2014 to 2020 where the property owner never vacated or abandoned the property

inspections of properties for which it services mortgages. Once a property inspection is performed, the vendor sends Nationstar an invoice. The vendor may send a written report or put the inspection report on a shared website. 05/06/2025 Tr p. 122, l. 3- p 125 l.14, AJ Loll Dep. 86-87. Inspections on defaulted loans like Colombo are done automatically every 25-35 days. AJ Loll Dep. 89-90. The fee is generally \$15.00, sometimes \$12.00. AJ Loll Dep. 94, 98-99.

Nationstar's expert, Mr. Horoho, testified that he examined the Nationstar electronic data that showed 21.6 million "illogical" property inspection reports exist (Horoho Deposition (Hereinafter "Horoho") 23 l. 1-14, 05/07/2025 Tr. p. 62 l. 20 - p. 64 l. 5) and there were 4.2 million reports where the inspector could not access the property (Horoho p. 26 l. 11-14, 05/07/2025 Tr p. 66 l. 25- p. 67 l. 25). While he did not determine how many of the fees for those reports were passed on to the borrower because Nationstar did not ask him to do this task, he testified it is possible to determine which fees for inspections not performed were passed on to the borrower. (Horoho p. 27 l. 3-20, 05/07/2025 Tr p. 67 l. 10 - p. 68 l.6 .). He could design a program to make this determination (Horoho p. 37 l. 11-21, 05/07/2025 Tr p 102 l. 23 - p. 103 l. 24.), or he could do a "sample based" file review (Horoho p. 39 l. 4-12. 05/07/2025 Tr pp 102 l. 23 p. 103 l. 24.), which would take 6-8 weeks (Horoho p. 41 l. 2-20., p. 42 l. 5-16., p. 54 l. 4-10). The number of sample files to review is between 100 and 999. (Horoho Dep. p. 46 l. 6-17, p. 51 l. 11-15.).

While this is a merits issue, not a class certification issue, Nationstar relies on paragraph 7 of its standard mortgage contract which it claims allows it to pass through fees for attempted inspections. However, Colombo responds that provision only allows pass through charges for inspections of the **mortgaged property**, not attempted inspections:

Lender or its agent may make **reasonable entries upon and inspections of the Property**.
Colombo mortgage pg. 8 of 16, Para. 7. (emphasis added).

The Court finds here the inspection issue is appropriate for class certification.⁶

**CHARGING BORROWERS' ATTORNEYS FEES AND COSTS INCURRED
BY NATIONSTAR/ US BANK FOR A PRIOR UNSUCCESSFUL FORECLOSURE**

Colombo objects to Attorney's Fees and Title Costs incurred when Nationstar lost the first Colombo foreclosure. Nationstar imposes a merits argument by relying on the mortgage clauses, Para. 9, 14, 19 and 22 to justify passing through these attorney fees and title costs to Colombo. Again, the issue for this Court at this stage is whether Nationstar passed those fees and costs on to Colombo and like situated borrowers. Nationstar is in effect arguing a merits and damages issue, as to whether the mortgage allows those fees to be passed on, not a class certification issue. Nationstar's Response Par. 27, pg 23 first merits argument relies on the mortgage Para. 9(c) to pass through its lost Case #1 foreclosure fees and costs. The merits argument, alone, is not sufficient to avoid class certification if certification is otherwise warranted.

However, the Court finds the Colombo's claim fails in this regard for class certification purposes as it fails the commonality requirement and is largely unascertainable. What constitutes "unsuccessful" is not defined in Colombo's class definition. However, during the Hearing, Colombo offered to clarify that the relevant prior foreclosure actions are where (i) the foreclosure was either involuntarily or voluntarily dismissed, (ii) for a reason other than settlement, loss mitigation, or agreement of the parties. HR Tr. Day 3 at 210:16-211:12. Despite this attempt to hone the class, the issues with identifying these actions remains insurmountable. The high degree

⁶ The inspectors may have charged Nationstar for the attempted inspections at Colombo Exh. List #56. Mortgage Contracting Services, Inc. Property Inspection Invoices 10/2013-1/2014 Loll Depo Exh. #34 (no access inspections with photos of guard house); Exh. List #57. Solutionstar Field Services LLC Property Inspection Invoices 2/2014 - 9/2014 Loll Depo Exh #35 (no access inspections with photos of guard house), but the trial will determine whether the mortgage allows Nationstar to pass these charges to the borrower.

of specificity required to articulate an identifiable “class” – as evidenced in the narrowed definition—illustrates the lack of commonality across the putative class.

More specifically, Colombo’s counsel – Mr. Bonifiglio – testified that determining how a case resolved (i.e., whether it was dismissed for a reason other than settlement, loss mitigation, or agreement of the parties), as well as whether the borrower recovered fees as a result of such dismissal, can only be determined by a review of the court docket and pleadings in the case. *See* Bonifiglio Tr. 78:3-14, 79:1-20, 80:4-23, 83:2-10, 92:3-13, 93:15-25, 94:1-2. This is necessarily a loan-by-loan, case-by-case, and even pleading-by-pleading review. A manual review of court files is an onerous, time-consuming task. *See* Bonifiglio Tr. 44:6-20, 59:14-18; Kairalla Tr. 29:17-25, 30:1-25, 31:1-14. Such manual review is compounded by the fact that there is not a queriable list of foreclosure actions that can be created as Nationstar does not maintain the case number (much less the identify of the court where the foreclosure was filed) within its servicing systems. HR Tr. Day 2 at 134:9-212; HR Tr. Day 3 at 71:3-9. To determine the case numbers affiliated with any loan’s particular foreclosure(s) requires pulling scanned documents, or searching public records. HR Tr. Day 2 at 134:13-17; HR Tr. Day 3 at 77:5-78:2.

Finally, and most significantly, ascertaining the reason a case was dismissed or whether the bank prevailed is too subjective an endeavor to support class certification. For instance, a reason for a dismissal may not be contained within the file or filings, or may be ambiguous. A case may have been dismissed for one of the excluded reasons but it was inadequately documented in the files or record. Some cases may have been dismissed for a combination of reasons. In some cases, fees can be capitalized or waived. Nationstar thoroughly outlined the various paths a case could have taken at the class certification hearing. Finally, it is not enough to know the reason a case may have been dismissed, but then it must be determined whether the fees were later sought,

which adds another matrix of possibilities. There are innumerable scenarios and too many judgment calls required to ascertain this class in a principled way, and the commonality and typicality of the issues are, therefore, too expansive to litigate as a class.

As a result, the Court finds the proposed class is not suitable for class certification. However, this does not preclude Colombo or any other borrower from proceeding on the claim individually.

THE NOTICE AND CURE MORTGAGE CLAUSE DOES NOT BAR CERTIFICATION

Nationstar argues that Colombo's written objections to these charges does not comply with the Mortgage Notice and Cure clause. This is a merits defense, not a defense to class certification. Additionally, the record shows Mr. Colombo provided Nationstar with pre-suit notice and an opportunity to cure. See: Colombo Exh. #68-#72. 05/05/2025 Tr p. 91 l. 9-p.97 l.16.). Whether the letter was in substantial compliance and whether Nationstar was prejudiced are questions of fact for the finder of fact and need not be reached at this juncture. *See generally, Cordero v. FIGA*, 354 So. 3d 1150, 1153 (Fla. 2d DCA 2023) (questions of sufficiency and prejudice of notice are questions of fact); *Royal Typewriter Co. v. Xerographic Supp. Co.*, 719 F. 2d 1092, 1102 (11th Cir. 1983) (where a party give some notice "the issues of timeliness and sufficiency are questions of fact.") The provision of the notice letter, generally, is sufficient to avoid dismissal at this point.

THE LEGAL AND FACTUAL AUTHORITY SUPPORTING CLASS CERTIFICATION

Based on the evidence and legal authorities presented at the hearing, and the record before the Court, as well as the analysis of Fla. R. Civ. P. 1.220, the Court finds that Colombo has met the requirements for class certification, and Colombo's motion is granted for the reasons stated below.

To obtain class certification, Colombo had to satisfy the elements required by Fla. R. Civ. P. 1.220. *Sosa*, 73 So.3d at 106. As delineated by Rule 1.220(a), the four elements a party must

satisfy to obtain class certification are:

- (1) the members of the class are so numerous that separate joinder of each member is impractical [*numerosity*],
- (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class [*commonality*],
- (3) the claim or defense of the representative party is typical of the claim or defense of each party of the class [*typicality*],
- (4) the representative party can fairly and adequately protect and represent the interest of each member of the class [*adequacy*].

(Emphasis added); see also *Sosa*, 73 So.3d at 106. In addition to satisfying Rule 1.220(a), Colombo must also satisfy Rule 1.220(b)(2) to obtain injunctive relief and Rule 1.220(b)(3) for money damages. First, regarding Rule 1.220(a), the Court has determined the following:

A. Numerosity

The parties stipulated that Rule 1.220(a)'s numerosity requirement has been met. (See Stipulation on Numerosity, 05/05 Tr. p. 57 1.12-24, DE#457 01/15/2025). Nationstar stipulated that it will not argue against numerosity: "**and stipulates with Colombo to the same [numerosity] for the class claims raised as to property inspection fees, maintenance fees, attorneys' fees and service of process fees.**" (D.E. 457) (emphasis supplied).⁷ By stipulating, Nationstar acknowledged that the number of proposed class members for each proposed class are so numerous as to make joinder of all the putative class members and their claims impractical. The stipulation also establishes the number of putative class members is not based on "mere speculation," given that it is undisputed Nationstar is the party in the position to know the pool of potential class

⁷ At the conclusion of the class certification hearing, the Court took additional argument on the numerosity stipulation and asked for additional briefing on the subject, which the parties supplied timely. See DE # 479 dated 06/06/2025

members.

In *Landmark American Insurance Company v. Pin-Pon Corporation*, 267 So. 3d 411, 412-413 (Fla. 4th DCA 2019), the court held "when a case is tried upon stipulated facts the stipulation is binding not only upon the parties but also upon the trial and appellate courts and further that no other or different facts will be presumed to exist." Citing *Troup v. Bird*, 53 So. 2d 717, 721 (Fla. 1951) (emphasis supplied). Therefore, the numerosity stipulation removed the necessity to prove that there are enough borrowers who were charged attorney's fees, property inspection fees, service of process fees, and maintenance fees, similar to Colombo, and "no other or different facts will be presumed to exist." *Id.*

It is also important that the initial stipulation on numerosity entered on May 17, 2019, came about as an agreed resolution to Colombo's motion to compel answers to interrogatories regarding numerosity. (D.E. 187). That stipulation is entitled "Stipulation Regarding Motion to Compel Nationstar to Answer Interrogatories. Nationstar objected, based on relevancy and burdensomeness, to Colombo's interrogatories asking Nationstar to list the number of borrowers who were charged attorneys' fees following unsuccessful foreclosure actions, and for property inspection fees where no property inspection took place because the inspector could not gain access to the gated community. (See Nationstar's Responses and Objections to Colombo's Second Set of Interrogatories, 7,8,9, and 10 pp. 7-9) (D.E. 145). Colombo then proceeded with his motion to compel, which resulted in the numerosity stipulation that eliminated the need for Colombo to proceed further with discovery on the issue.

On April 15, 2024, following the decisions in *Colombo v. RAS*, 341 So. 3d 1126 (Fla. 4th DCA 2022) and *Daniels v. Select Portfolio*, 34 F.4th 1260 (11th Cir. 2022), the Court granted Colombo leave to amend, whereupon Colombo filed his Fourth Amended Counterclaim. (D.E.

433), dropping the RAS law firm and focusing on Nationstar's mortgage account statements (MAS), as a debt collection communication sent to borrowers like Colombo, that included improper charges in violation of the Florida Consumer Collections Practices Act (FCCPA), Florida's Deceptive and Unfair Trade Practices Act (FDUPTA), and in breach of the mortgage contract.

Of significance, and attached to Colombo's Numerosity Memo, is Colombo's and Nationstar's counsel's email exchange. On December 9, 2024, Mr. Bonfiglio indicated to Nationstar's counsel that if Nationstar is not going to stipulate to numerosity, then Colombo will "[n]eed to do some discovery on the issue". On December 11, 2024, Nationstar's counsel emailed back that Nationstar would stipulate to numerosity, "for the claims raised as to property inspection fees, maintenance fees, attorneys' fees and service of process fees." (see attached Exhibit 24). This exchange resulted in a formal stipulation filed on January 15, 2025, (D.E. 457), which was read to the Court during the class certification hearing.

As pointed out above, the Fourth District Court per curium affirmed the *L'Italien*, class certification order. Ocwen like Nationstar, entered a similar stipulation regarding numerosity that was read to the Court and admitted into evidence. (See Exhibit 36 D.E. 155 to Colombo Numerosity Memo). In the Order granting class certification, Judge Harper found, "The parties stipulated, and the Court agrees, that Rule 1.220(a)'s numerosity requirement has been met (See *L'Italien* D.E 1178. p.13)

Accordingly, the legal effect of the numerosity stipulation agreed to in the present case, established the number of putative class members is not based on "mere speculation," and there are sufficient number of borrowers who were charged the same allegedly improper charges, similar to Colombo, including attorneys' fees, property inspection fees, service of process fees, and

maintenance fees, to satisfy the numerosity requirement of Rule 1.220(a). Most importantly, no other or different facts relating to the numerosity requirement are presumed to exist. See *Landmark American Ins. Co.*, 267 So. 3d at 412-413.

Considering the binding stipulation conclusively established and satisfied the numerosity requirement for class certification of all subclasses, it was neither necessary nor appropriate of Nationstar to challenge any suggestion or implication that an insufficient number of putative class members shared common claims with Colombo.

B. Commonality

The primary concern in evaluating commonality is whether Colombo's claims arise from the same practice or course of conduct that give rise to the claims of the class members, and whether the claims are based on the same legal theory. *Sosa*, 73 So.3d at 110. As the Florida Supreme Court has noted, the threshold for commonality is not high, and neither mere factual differences between class members, nor individual damage inquiries will preclude class certification. *Id.* at 107. Here, the evidence demonstrates that Nationstar's actions towards Colombo were in accordance with Nationstar's policies and procedures. The Court also relies on the decisions in *Banner*, *Hewitt*, *Cole*, and Judge Harpers Class Certification Order in L'Italien, recently affirmed by the Fourth District, where certification of similar classes of borrowers challenging some of the same alleged improper acts in violation of the FCCPA and FDUTPA were affirmed. Therefore, the Court finds Colombo's claims and the claims of the putative class members relating to these alleged improper charges, all arise from the same practices, policies, and course of conduct, with the exception of the attorney's fees class. Additionally, the same legal theories are applicable since the Court will need to determine whether Nationstar's policies and practices violate the FCCPA and FDUTPA. Thus, the commonality requirement of Rule 1.220(a)

is satisfied.

C. Typicality

Colombo and the putative class members have also satisfied the typicality requirement, with the exception of the attorney's fees class. The typicality requirement is satisfied when there is a strong similarity in the legal theories upon which the claims of the class representative and the class members are based, and when the claims of the class representative and the class members are not antagonistic to one another. *Sosa*, 73 So.3d at 114-115. The Florida Supreme Court has pointed out that the test for typicality is not demanding and that typicality may be satisfied despite substantial factual differences. *Id.* Here, Colombo and the class members challenge the same alleged improper charges contained in the MASs which Nationstar utilizes as a debt collection communication.

There is a strong similarity in the legal theories asserted here. As was pointed out in *Sosa*, *Sosa*'s claim and the putative class members' claims were based on the same legal theory B a violation of sections 627.840 and 627.835. See *Sosa* at 115. Similarly, Colombo's claim, and the claims of the putative class are based on the same legal theories B violations of the FCCPA and FDUTPA. Also, Nationstar did not present persuasive argument or evidence that Colombo's claims were antagonistic to the claims of the putative class. Thus, the typicality requirement is satisfied.

D. Adequacy

The Court also finds that Colombo and its counsel satisfy the adequacy requirement of Rule 1.220(a). A trial court's inquiry concerning whether the adequacy requirement is satisfied contains two prongs. *Sosa*, 73 So.3d at 115. The first prong concerns the qualifications, experience and ability of class counsel to conduct the litigation. *Id.* The second prong pertains to whether the

class representative's interests are antagonistic to the interests of the class members. *Id.* Here, Nationstar has not presented argument against the experience and qualifications of class counsel, and the Court sees no reason to find they are inadequate. Also, Nationstar did not present persuasive argument or evidence that Colombo's claims were antagonistic to the claims of any class members. Colombo testified he is willing and able to take an active role as a class representative. He has hired competent counsel to advocate on his behalf and on behalf of all class members. Finally, the Court is satisfied that Colombo understands his duties as class representative. See 05/05/2025 Tr. p. 49-51.

The main objection to Colombo as expressed in Nationstar's Response (pg. 69) is that Colombo does not fully understand his duties as class representative or take them seriously. However, based on the evidence, (Tr. p 49-52), and the established case law, the challenges are insufficient, as a matter of law, because they do not relate directly to the class claims at issue nor result in harm to the interests of the members of the class. The case law is clear that [o]nly when attacks on the credibility of the representative party are so sharp as to jeopardize the interests of absent class members should such attacks render a putative class representative inadequate. *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 431 (6th Cir. 2012). Courts have recognized that th[is] standard is extremely difficult to satisfy. *Peterson v. Alaska Commons Sys. Grp., Inc.*, 328 F.R.D. 255, 273-74 & n.107 (D. Alaska 2018). Here, Nationstar's challenge to Colombo's 05/05 Tr p. 49-52 testimony regarding whether he knew the precise basis for his claims and that the suit is lawyer-driven is not a substantial issue. Nationstar relies on for its argument are unpersuasive and not relevant to the instant case. *H&J Paving of Florida, Inc. v. Nextel, Inc.*, 849 So.2d 1099 (Fla. 3d DCA 2003); *Dairyland Ins. Co. v. Mancotte*, 418 So.2d 479 (Fla. 4th DCA 1982). Therefore, Nationstar's challenge to Colombo's adequacy as a class representative is denied.

COLOMBO HAS SATISFIED RULE 1.220(b)(2) FOR THE THREE CLASSES

INDICATED ABOVE

The evidence introduced at the hearing also supports the requirement for injunctive relief under Rule 1.220(b)(2) for the above indicated classes (excluding the attorneys' fee class). Injunctive relief is appropriate under Rule 1.220(b)(2) where "the party opposing the class has acted or refused to act on grounds generally applicable to all members of the class." *Id.* The evidence presented demonstrates that Nationstar has acted on grounds generally applicable to all the members of the putative class regarding the complained of charges contained in the MASs. The majority of class members seek injunctive relief. In *Tampa Service Co. v. Hartigan*, 966 So.2d 465 (Fla. 4th DCA 2007), the court held that certification of the class under both sections Rule 1.220(b)(2) and (b)(3) is permitted where the plaintiffs sought both monetary damages and injunctive relief. See also *Bill Stroop Roofing, Inc. v. Metropolitan Dade County*, 788 So.2d 365 (Fla. 3d DCA 2001); *Broward County v. Mattel*, 397 So.2d 457 (Fla. 4th DCA 1981)(a class action was affirmed where the plaintiff sought to recover excess occupational license fees paid, and to preclude Broward County's revenue collector from collecting such excess fees in the future).

Here, the Court has found that Colombo meets the requirements of Rule 1.220(b)(2) for all but the attorneys' fee class. If Colombo prevails, injunctive relief would require Nationstar to reduce the putative class members' debt by an amount that the court finds is in violation of the FCCPA or FDUTPA and would require Nationstar to end its practices going forward.

COLOMBO HAS SATISFIED RULE 1.220(b)(3) FOR THE THREE CLASSES

INDICATED ABOVE

Colombo has also satisfied the requirements of Rule 1.220(b)(3) for monetary damages for the above indicated classes (excluding the attorneys' fee class). Rule 1.220(b)(3) would apply to

those class members who paid the alleged improper charges and would be entitled to a refund. Monetary damages would also include the statutory damages under the FCCPA. See Fla. Stat. ' 559.77(2). Rule 1.220(b)(3) requires Colombo to establish that common questions of law and fact predominate over individual class member claims. *Sosa*, 73 So. 3d at 111. However, it is not the burden of Colombo to illustrate that all questions of fact or law are common. *Id.* at 112. Rather, Colombo must only demonstrate that some questions are common, and that they predominate over individual questions. *Id.* Florida courts have held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way. *Id.* at 111. The testimony of Nationstar's corporate representatives, and Nationstar's counsel, indicates that there are common questions which predominate. These common questions all center on Nationstar's course of conduct and standard practices of attempting to collect the alleged improper charges and whether the attempts to collect these charges violate FCCPA and FDUTPA and are in breach of the standard mortgage contract. The Court is also persuaded by the language in *Banner* which upheld the requirements of Rule 1.220(b)(2) and Rule 1.2220(b)(3). 50 So.3d at 1222. The Court finds that the nature and elements of Colombo's claim, and the class members' claims primarily involve issues focusing on Nationstar's acts, and not those of the class members. The Florida Supreme Court has also indicated that a class representative establishes predominance by demonstrating a reasonable methodology for generalized proof of class-wide impact. *Sosa*, 73 So. 3d at 112. The Court is satisfied that the information available for Colombo to establish the class members who would be entitled to damages and injunctive relief, are accessible through the records of Nationstar.

Finally, the Supreme Court in *Sosa* indicated that a class representative can also establish predominance if, by proving its case, it would necessarily prove the cases of the other class members. 73 So. 3d at 112. If Colombo establishes that the alleged improper charges violate the

FCCPA, FDUTPA and breached the standard mortgage contract, then Colombo would have proven his case and the case of the other class members. The Court also finds that Colombo and the putative class members satisfy Rule 1.220(b)(3)'s superiority requirement, because the Court finds that given the amount in controversy of these claims, a class action is the most manageable and efficient way to resolve the claims of Colombo and each class member. See Fla. R. Civ. P. 1.220(b)(3); *Sosa*, 73 So. 3d at 116.

CONCLUSION

In the instant case, the Court finds that the common issues justifying class certification center on the same alleged improper charges, the same policies and practices of Nationstar, and the same alleged violations of the same statutes and standard mortgage contract provisions. Therefore, the Court grants the motion for class certification and certifies the following class:

All persons in the State of Florida whose mortgage contracts have been or are being serviced by Nationstar acting on behalf of US Bank and for other note or mortgage holders from since May 29, 2013, until the present, where Nationstar collected or attempted to collect through the mortgage account statements the following:

- a. Amounts for service of process for unknown spouse(s) and/or unknown tenant(s) in possession of subject property or any such reference to unknown spouses or tenants such as John Doe or Jane Doe.
- b. Amounts for property maintenance where neither Nationstar nor anyone on Nationstar's behalf provided any maintenance on the property and when the fee was in fact a fee to register the property in default with a governmental unit or subunit.
- c. Amounts attributable to fees to inspect the mortgaged property when the inspector did not inspect the mortgaged property.

The Court further finds that the attorneys' fee "class" should not be certified.

Accordingly, it is hereby.

ORDERED that Counter-Plaintiff, Peter A. Colombo's Amended Motion for Class

Certification filed on August 1, 2023. (D.E. 298) is GRANTED in part, DENIED in part as reflect in this Order.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.



502017CA000532XXXMB 07/24/2025
James Sherman
Judge

Hon. James Sherman, Judge
Date

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