

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

CASE NO.:
502017CA000532XXXXMBAB

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,
ROBERTSON, ANSCHUTZ & SCHNEID, P.L.

Defendants-in-Counterclaim.

**PLAINTIFF/COUNTERDEFENDANT U.S. BANK N.A.'S
ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT
PETER A. COLOMBO'S FOURTH AMENDED COUNTERCLAIM**

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 (“U.S. Bank”), by and through its undersigned counsel, answers Defendant Peter A. Colombo’s (“Colombo”) Fourth Amended Counterclaim (“Counterclaim”) as follows. Any allegations not expressly admitted herein are denied.

49. U.S. Bank states that paragraph 49 of the Counterclaim is a characterization of Colombo’s claim and the relief sought, to which no response is required. To the extent a response is required, U.S. Bank denies that Colombo has stated a cause of action or is entitled to the relief sought.

50. U.S. Bank is without sufficient knowledge or information to admit or deny the allegations in paragraph 50 of the Counterclaim at this time and, therefore, denies the allegations.

51. U.S. Bank admits that it is a national banking association, acting in its federally regulated capacity as trustee for the named trust (“Trust”). U.S. Bank states that the trust creation documents speak for themselves and U.S. Bank denies any allegations of paragraph 51 of the Counterclaim inconsistent therewith.

52. U.S. Bank states that paragraph 52 does not appear to be directed to U.S. Bank and, therefore, no response to paragraph 52 is required by U.S. Bank. To the extent Colombo contends a response is required, U.S. Bank states that it is without sufficient knowledge or information to admit or deny the allegations in paragraph 52 of the Counterclaim and, therefore, denies the allegations.

53. U.S. Bank states that paragraph 53 of the Counterclaim is a legal conclusion, to which no response is required. To the extent a response is required, U.S. Bank denies the allegations.

GENERAL ALLEGATIONS - INTRODUCTORY

54. U.S. Bank incorporates by reference its responses to paragraphs 49 through 53 of the Counterclaim as though fully restated therein.

55. U.S. Bank admits that Mr. Colombo is the title owner and mortgagor of the property subject to this action to foreclose and this Fourth Amended Counterclaim. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 55 of the Counterclaim.

56. U.S. Bank states that paragraph 56 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 56 of the Counterclaim to the extent inconsistent therewith.

57. U.S. Bank admits that Nationstar Mortgage LLC d/b/a Mr. Cooper (“Nationstar”) is the loan servicer of the Colombo loan and was the loan servicer when the complaint in the instant action was filed. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 57 of the Counterclaim.

58. U.S. Bank states that paragraph 58 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 58 of the Counterclaim to the extent inconsistent therewith.

59. U.S. Bank denies the allegations and legal conclusions in paragraph 59 of the Counterclaim.

60. U.S. Bank denies the allegations and legal conclusion in paragraph 60 of the Counterclaim.

61. U.S. Bank denies the allegations and legal conclusions in paragraph 61 of the Counterclaim.

62. U.S. Bank states that paragraph 62 of the Counterclaim is a characterization of Colombo's claim and the relief sought, to which no response is required. To the extent a response is required, U.S. Bank denies that Colombo has stated a cause of action or is entitled to the relief sought.

63. U.S. Bank denies the allegations and legal conclusions in paragraph 63 of the Counterclaim.

64. U.S. Bank denies the allegations and legal conclusions in paragraph 64 of the Counterclaim.

65. U.S. Bank denies the allegations and legal conclusions in paragraph 65 of the Counterclaim.

66. U.S. Bank denies the allegations and legal conclusions in paragraph 66 of the Counterclaim.

67. U.S. Bank states that paragraph 67 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 67 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 67 of the Counterclaim.

68. U.S. Bank states that paragraph 68 of the Counterclaim refers to a document which speaks for itself, and U.S. Bank denies any allegations in paragraph 68 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 68 of the Counterclaim.

69. U.S. Bank states that paragraph 69 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 69 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 69 of the Counterclaim.

70. U.S. Bank states that paragraph 70 of the Counterclaim refers to a document which speaks for itself, and U.S. Bank denies any allegations in paragraph 70 of the Counterclaim to the extent inconsistent therewith. U.S. Bank further states that paragraphs 9, 14, and 19 of the mortgage also govern fees that can be charged a borrower under the terms of the loan. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 70 of the Counterclaim.

71. U.S. Bank denies the allegations and legal conclusions in paragraph 71 of the Counterclaim.

72. U.S. Bank is without sufficient knowledge or information to admit or deny the allegations in paragraph 72 of the Counterclaim at this time and, therefore, denies the allegations.

**SPECIFIC FACTS AS TO COLOMBO INDIVIDUALLY
AND AS PUTATIVE CLASS REPRESENTATIVE**

73. U.S. Bank is without sufficient knowledge or information to admit or deny the allegations in paragraph 73 of the Counterclaim at this time and, therefore, denies the allegations.

74. U.S. Bank admits that on May 9, 2006, Peter A. Colombo and Lori Colombo executed a mortgage in favor of Mortgage Lenders Network USA, Inc. (“Mortgage”). U.S. Bank admits that the proceeds of the Mortgage were used to purchase the property located at 114 Cayo Costa Court, Royal Palm Beach, Florida 33411 (“Property”). U.S. Bank denies any remaining allegations and legal conclusions in paragraph 74 of the Counterclaim.

75. U.S. Bank states that paragraph 75 of the Counterclaim refers to a document which speak for itself, and U.S. Bank denies any allegations in paragraph 75 of the Counterclaim to the

extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 75 of the Counterclaim.

76. U.S. Bank admits that a foreclosure action styled *LaSalle Bank, N.A., as Trustee for the MLMI Trust Series 2006-MLNI v. Peter A. Colombo, et al.*, was filed in the Circuit Court for Palm Beach County, Florida as Case No. 502008CA029465 (“Case #1”). U.S. Bank denies any remaining allegations and legal conclusions in paragraph 76 of the Counterclaim.

77. U.S. Bank admits that Colombo purports to attach as Exhibit #2 to the Counterclaim, a copy of the Order Dismissing Case for Lack of Prosecution dated and filed on November 15, 2013 in Case #1 but, U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 77 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 77 of the Counterclaim.

78. U.S. Bank admits that the Order on Plaintiff’s Motion to Vacate Order of Dismissal for Lack of Prosecution Entered November 15, 2013 was entered on January 15, 2014 in Case #1. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 78 of the Counterclaim. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 78 of the Counterclaim.

79. U.S. Bank admits that Colombo purports to attach as Exhibit #3 to the Counterclaim, a copy of the Agreed Order Awarding Attorney Fees and Costs Incurred by the Colombos to the Law Office of James A. Bonfiglio dated October 17, 2014, and filed on October 20, 2014, in Case #1 but, U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 79 of the Counterclaim to the extent inconsistent therewith.

U.S. Bank denies any remaining allegations and legal conclusions in paragraph 79 of the Counterclaim.

80. U.S. Bank admits that Colombo purports to attach as Exhibit #4 to the Counterclaim, a copy of correspondence sent by Nationstar addressed to Colombo but, U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 80 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 80 of the Counterclaim.

81. U.S. Bank admits the allegations in paragraph 81 of the Counterclaim.

82. U.S. Bank admits that Colombo purports to attach as Exhibit #5 to the Counterclaim, a copy of the Mortgage Loan Statement dated February 14, 2017, but U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 82 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies the remaining allegations and legal conclusions in paragraph 82 of the Counterclaim.

83. U.S. Bank denies the allegations and legal conclusions in paragraph 83 of the Complaint and demands strict proof thereof.

84. U.S. Bank admits that Colombo purports to attach as Exhibit #5 to the Counterclaim, a copy of the Mortgage Loan Statement dated February 14, 2017, but U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 84 of the Counterclaim to the extent inconsistent therewith. U.S. Bank admits that Colombo purports to attach as Exhibit #6 to the Counterclaim, a copy of the Mortgage Loan Statement dated August 15, 2017, but U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 84 of the Counterclaim to the extent inconsistent therewith. U.S. Bank admits that Colombo purports to attach as Exhibit #7 to the Counterclaim, a copy of the Mortgage

Loan Statement dated November 14, 2017, but U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 84 of the Counterclaim to the extent inconsistent therewith. U.S. Bank admits that Colombo purports to attach as Exhibit #8 to the Counterclaim, a copy of the Mortgage Loan Statement dated December 13, 2017, but U.S. Bank states that this document speaks for itself, and U.S. Bank denies any allegations in paragraph 84 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies the remaining allegations and legal conclusions in paragraph 84 of the Counterclaim.

85. U.S. Bank denies the allegations and legal conclusions in paragraph 85 of the Counterclaim.

86. U.S. Bank denies the allegations and legal conclusions in paragraph 86 of the Counterclaim.

87. U.S. Bank states that paragraph 87 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 87 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 87 of the Counterclaim.

88. U.S. Bank states that paragraph 88 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 88 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 88 of the Counterclaim.

89. U.S. Bank states that paragraph 89 of the Counterclaim refers to documents which speak for themselves, and U.S. Bank denies any allegations in paragraph 89 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies the remaining allegations and legal conclusions in paragraph 89 of the Counterclaim.

90. U.S. Bank denies the allegations and legal conclusions in paragraph 90 of the Counterclaim.

91. U.S. Bank states that paragraph 91 of the Counterclaim refers to documents, specifically the Note and Mortgage, which speak for themselves, and U.S. Bank denies any allegations in paragraph 91 of the Counterclaim to the extent inconsistent therewith. U.S. Bank further states that paragraph 91 of the Counterclaim purports to quote portions of Fla. Stat. § 57.105, which speaks for itself. U.S. Bank denies any allegations in paragraph 91 of the Counterclaim inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 91 of the Counterclaim.

92. U.S. Bank states that paragraph 92 of the Counterclaim refers to documents, specifically the Fannie Mae and Freddie Mac standard form mortgages, which speak for themselves, and U.S. Bank denies any allegations in paragraph 92 of the Counterclaim to the extent inconsistent therewith. U.S. Bank admits that the Fannie Mae and Freddie Mac standard form mortgages entitles the mortgagee to attorneys' fees and costs when the borrower defaults and the mortgagee prevails in the action to foreclose on the mortgage. U.S. Bank denies the remaining allegations and legal conclusions in paragraph 92 of the Counterclaim.

93. U.S. Bank denies the allegations and legal conclusions in paragraph 93 of the Counterclaim.

94. U.S. Bank denies the allegations and legal conclusions in paragraph 94 of the Counterclaim.

CLASS ALLEGATIONS

95. U.S. Bank incorporates by reference its responses to paragraphs 49 through 53 and 55 through 94 of the Counterclaim as though fully restated herein.

96. U.S. Bank admits that Colombo purports to bring a claim on behalf of the class of persons as stated in paragraph 96 of the Counterclaim, but U.S. Bank denies that Colombo and the putative class members are entitled to the damages claimed or relief sought in the Counterclaim and further denies that this action is proper for class certification or treatment.

97. U.S. Bank admits that on May 17, 2019, only Nationstar, and not U.S. Bank, entered into a Stipulation Regarding Motion to Compel Nationstar to Answer Interrogatories and stipulated that it would not object to certification of the proposed class on the basis that the number of putative members fails to meet the numerosity requirement, but U.S. Bank denies that Colombo and the putative class members are entitled to the damages claimed or relief sought in the Colombo and further denies that this action is proper for class certification or treatment.

98. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. U.S. Bank further denies class certification is proper. Any remaining allegations and legal conclusions in paragraph 98 of the Counterclaim are denied.

99. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. U.S. Bank further denies class certification is proper. Any remaining allegations and legal conclusions in paragraph 99 of the Counterclaim are denied.

100. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. U.S. Bank further denies class certification is proper. Any remaining allegations and legal conclusions in paragraph 100 of the Counterclaim are denied.

101. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. U.S. Bank further denies class certification is proper. Any remaining allegations and legal conclusions in paragraph 101 of the Counterclaim are denied.

102. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. U.S. Bank further denies class certification is proper. Any remaining allegations and legal conclusions in paragraph 102 of the Counterclaim are denied.

103. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. U.S. Bank further denies class certification is proper. Any remaining allegations and legal conclusions in paragraph 103 of the Counterclaim are denied.

**FIRST CLAIM FOR RELIEF VIOLATIONS OF
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
AGAINST THE MLMI TRUST AND NATIONSTAR NOW KNOWN AS MR. COOPER**

104. U.S. Bank incorporates by reference its response to paragraphs 49 through 53, 55 through 94, and 96 through 103 of the Counterclaim as though fully restated herein.

105. U.S. Bank admits that it is engaged in commerce in the State of Florida. U.S. Bank states that Colombo's legal conclusion that is subject to the provisions contained in Fla. Stat. § 501.201 *et seq.* is a legal conclusion to which no response is required. To the extent a response is required, it denies the allegation. U.S. Bank further states that it is not subject to the provisions of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") pursuant to Fla. Stat. § 501.212(4)(c), and, therefore, denies any allegations that it is subject to FDUTPA. U.S. Bank denies the remaining allegations and legal conclusions in paragraph 105 of the Counterclaim.

106. U.S. Bank admits that Colombo and the putative class purport to bring a claim under the FDUTPA, but U.S. Bank denies that Colombo and the putative class have stated a cause of action or are entitled to the relief sought or damages claimed in the Counterclaim.

107. U.S. Bank admits that Colombo is a "consumer" as defined by Fla. Stat. § 501.203(7). U.S. Bank denies the remaining allegations and legal conclusions in paragraph 107 of the Counterclaim.

108. U.S. Bank states that Colombo purports to reference the FDUTPA, which speaks for itself. U.S. Bank denies any allegations and legal conclusions in paragraph 108 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 108 of the Counterclaim.

109. U.S. Bank states that Colombo purports to reference the FDUTPA, which speaks for itself. U.S. Bank denies any allegations and legal conclusions in paragraph 109 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 109 of the Counterclaim.

110. U.S. Bank states that Colombo purports to reference the FDUTPA, which speaks for itself. U.S. Bank denies any allegations and legal conclusions in paragraph 110 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 110 of the Counterclaim.

111. U.S. Bank denies the allegations and legal conclusions in paragraph 111 of the Counterclaim.

112. U.S. Bank denies the allegations and legal conclusions in paragraph 112 of the Counterclaim.

113. U.S. Bank denies the allegations and legal conclusions in paragraph 113 of the Counterclaim.

114. U.S. Bank denies the allegations and legal conclusions in paragraph 114 of the Counterclaim.

115. U.S. Bank denies the allegations and legal conclusions in paragraph 115 of the Counterclaim.

116. U.S. Bank denies the allegations and legal conclusions in paragraph 116 of the Counterclaim.

117. U.S. Bank denies the allegations and legal conclusions in paragraph 117 of the Counterclaim.

118. U.S. Bank denies the allegations and legal conclusions in paragraph 118 of the Counterclaim.

119. U.S. Bank denies that Colombo and the putative class are entitled to the relief sought in the Counterclaim. Any remaining allegations and legal conclusions in paragraph 119 of the Counterclaim are denied.

U.S. Bank denies the allegations and legal conclusions of the Wherefore Clause following Count I of the Counterclaim, and further denies that Colombo and the putative class have stated a cause of action or are entitled to the relief sought or damages claimed in the Counterclaim.

**SECOND CLAIM FOR RELIEF VIOLATION
OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT
AGAINST THE MLMI TRUST AND NATIONSTAR NOW KNOWN AS MR. COOPER**

120. U.S. Bank incorporates by reference its response to paragraphs 49 through 53, 55 through 94, and 96 through 103 of the Counterclaim as though fully restated herein.

121. U.S. Bank admits that Colombo and the putative class purport to bring a claim under the Florida Consumer Collection Practices Act Fla. Stat. § 559.72 (“FCCPA”), but U.S. Bank denies that Colombo and the putative class have stated a cause of action or are entitled to the relief sought or damages claimed in the Counterclaim.

122. U.S. Bank admits that in the course of its business as a federally regulated financial institution it uses instrumentalities of interstate commerce. U.S. Bank denies the remaining allegations and legal conclusions in paragraph 122 of the Counterclaim.

123. U.S. Bank states that paragraph 123 of the Counterclaim purports to quote portions of Fla. Stat. § 559.72(9), which speaks for itself. U.S. Bank denies any allegations in paragraph 123 of the Counterclaim inconsistent therewith.

124. U.S. Bank denies that it is a “debt collector” as defined in Fla. Stat. §559.55(7). U.S. Bank is without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 124 of the Counterclaim at this time and, therefore, denies the allegations.

125. U.S. Bank admits that the amount due and owing by Colombo on his loan account and in accordance with the terms of the Note and Mortgage is a consumer debt as defined by Fla. Stat. § 559.55(1). U.S. Bank is without sufficient knowledge or information to admit or deny the remaining allegations related to the putative class in paragraph 125 of the Counterclaim at this time and, therefore, denies the allegations.

126. U.S. Bank denies the allegations and legal conclusions in paragraph 126 of the Counterclaim.

127. U.S. Bank denies the allegations and legal conclusions in paragraph 127 of the Counterclaim.

128. U.S. Bank denies the allegations and legal conclusions in paragraph 128 of the Counterclaim.

129. U.S. Bank denies the allegations and legal conclusions in paragraph 129 of the Counterclaim.

130. U.S. Bank denies the allegations and legal conclusions in paragraph 130 of the Counterclaim.

131. U.S. Bank denies the allegations and legal conclusions in paragraph 131 of the Counterclaim.

132. U.S. Bank denies the allegations and legal conclusions in paragraph 132 of the Counterclaim.

133. U.S. Bank denies the allegations and legal conclusions in paragraph 133 of the Counterclaim.

134. U.S. Bank denies the allegations and legal conclusions in paragraph 134 of the Counterclaim.

U.S. Bank denies the allegations and legal conclusions of the Wherefore Clause following Count II of the Counterclaim, and further denies that Colombo and the putative class have stated a cause of action or are entitled to the relief sought or damages claimed in the Counterclaim.

**THIRD CLAIM FOR RELIEF-BREACH OF THE
MORTGAGE AND/OR BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING AGAINST MLMI TRUST AND NATIONSTAR**

135. U.S. Bank incorporates by reference its response to paragraphs 49 through 53, 55 through 94, and 96 through 103 of the Counterclaim as though fully restated herein.

136. U.S. Bank admits that Colombo purports to bring a cause of action for breach of contract and/or breach of the covenant of good faith and fair dealing claim on his behalf and that of the putative class, but U.S. Bank denies that Colombo and the putative class have stated a cause of action or are entitled to the relief sought or damages claimed in the Counterclaim.

137. U.S. Bank admits the allegations in paragraph 137 of the Counterclaim.

138. U.S. Bank states that Colombo refers to the mortgage attached to the Complaint in this action, which speaks for itself. U.S. Bank denies any allegations in paragraph 138 of the Counterclaim to the extent inconsistent therewith. As it relates to the allegations regarding the mortgages for the members of the putative class, U.S. Bank is without sufficient knowledge or

information to admit or deny the remaining allegations related to the putative class in paragraph 138 of the Counterclaim at this time and, therefore, denies the allegations.

139. U.S. Bank states that Colombo refers to a document, which speaks for itself. U.S. Bank denies any allegations in paragraph 139 of the Counterclaim to the extent inconsistent therewith. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 139 of the Counterclaim.

140. Paragraph 140 of the Counterclaim states a legal conclusion, to which no response is required. To the extent a response is required, U.S. Bank admits that Nationstar is bound by the contractual provisions of the mortgage at issue in this matter. U.S. Bank denies any remaining allegations and legal conclusions in paragraph 140 of the Counterclaim.

141. U.S. Bank denies the allegations and legal conclusions in paragraph 141 of the Counterclaim.

142. U.S. Bank denies the allegations and legal conclusions in paragraph 142 of the Counterclaim.

143. U.S. Bank denies the allegations and legal conclusions in paragraph 143 of the Counterclaim.

144. U.S. Bank denies the allegations and legal conclusions in paragraph 144 of the Counterclaim.

145. U.S. Bank denies the allegations and legal conclusions in paragraph 145 of the Counterclaim.

146. U.S. Bank denies the allegations and legal conclusions in paragraph 146 of the Counterclaim.

147. U.S. Bank denies the allegations and legal conclusions in paragraph 147 of the Counterclaim.

148. U.S. Bank denies the allegations and legal conclusions in paragraph 148 of the Counterclaim.

149. U.S. Bank states that paragraph 149 is a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank denies the allegations and legal conclusions in paragraph 149 of the Counterclaim.

150. U.S. Bank states that paragraph 150 is a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank denies the allegations and legal conclusions in paragraph 150 of the Counterclaim.

151. U.S. Bank states that paragraph 151 is a legal conclusion to which no response is required. To the extent a response is required, U.S. Bank denies the allegations and legal conclusions in paragraph 151 of the Counterclaim.

152. U.S. Bank denies the allegations and legal conclusions in paragraph 152 of the Counterclaim, including subparts a. and b.

U.S. Bank denies the allegations and legal conclusions of the Wherefore Clause following Count III of the Counterclaim, and further denies that Colombo and the putative class have stated a cause of action or are entitled to the relief sought or damages claimed in the Counterclaim.

GENERAL DENIAL

Any allegations not specifically admitted herein are denied.

SEPARATE DEFENSES

U.S. Bank states the following defenses or avoidances to Colombo's Fourth Amended Counterclaim without assuming the burden of proof of any such defense that would otherwise rest

on Colombo, and reserving the right to amend and/or supplement its responses to Colombo's allegations, as well as these avoidances and defenses, as additional information is obtained through the discovery process or otherwise.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

Colombo and the putative class members have failed to state a cause of action for which relief can be granted because Colombo and the putative class members have failed to state a prima facie case of, or cause of action for, any cognizable claim under Florida law against U.S. Bank.

SECOND AFFIRMATIVE DEFENSE

(Compliance with Applicable Law and Loan Documents)

U.S. Bank conducted itself in conformity with applicable laws and regulations, including those governing banking entities; and U.S. Bank was and is entitled to fairly and lawfully exercise rights under the mortgage loan documents, including but not limited to the promissory note, mortgage, and the real property that are the subject of this action.

THIRD AFFIRMATIVE DEFENSE

(Litigation Privilege)

The Counterclaim is barred in whole or in part to the extent it relies on actions taken or not taken by U.S. Bank in anticipation of filing, or during the course of, any action to foreclose on the promissory note and mortgage executed by Colombo or the putative class members.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Counterclaim is barred, in whole or in part, or subject to reduction by the doctrine of "unclean hands" because Colombo's and the putative class members' causes of action, if any, would not have accrued absent their failure to pay their mortgage.

FIFTH AFFIRMATIVE DEFENSE
(Lack of Standing)

Colombo has suffered no damages resulting from any conduct on the part of U.S. Bank as, among other things, because Colombo has not paid any of the charges that he is disputing and, therefore has suffered no harm. Accordingly, Colombo's claim is not ripe and he lacks standing to bring these claims.

SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

To the extent that Colombo and the putative class members have suffered any damages, which U.S. Bank expressly denies, their failure to mitigate these damages bars recovery.

SEVENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

Colombo's and the putative class members' claims are barred in whole or in part by the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE
(Terms of Mortgage)

Colombo and the putative class members were parties to one or more written agreements with their lenders, including the Note and Mortgage. U.S. Bank asserts that the terms of such written agreements act as a bar to Colombo's and the putative class members' claims.

NINTH AFFIRMATIVE DEFENSE
(Causation)

Colombo's and the putative class members' damages, if any, were caused by the acts or omissions of an individual or entity over whom or which U.S. Bank exercised no control. Any purported damage Colombo and the putative class members may have sustained is the result of their failure to pay their Mortgage, not any conduct of U.S. Bank. To the extent additional individuals or entities are discovered through the discovery process, U.S. Bank reserves the right

to amend its Answer to include these individuals and entities who may have contributed to Colombo's and the putative class members' purported damages.

TENTH AFFIRMATIVE DEFENSE
(Good Faith)

U.S. Bank states that at all times relevant hereto it conducted itself in good faith.

ELEVENTH AFFIRMATIVE DEFENSE
(Setoff)

Colombo's and the putative class members' claims may be barred by setoff for the amounts owed and outstanding to U.S. Bank.

TWELFTH AFFIRMATIVE DEFENSE
(Failure of Conditions Precedent)

Colombo's and the putative class members' claims are or may be barred by their failure to satisfy all contractual conditions precedent to filing this action against U.S. Bank. Specifically, Paragraph 20 of the standard Fannie Mae mortgage instrument at issue in this lawsuit requires that borrower provide lender with a pre-suit notice of dispute prior to filing a lawsuit. Colombo and the class members failed to give U.S. Bank the pre-suit notice required under this provision.

THIRTEENTH AFFIRMATIVE DEFENSE
(Modification)

Colombo's or the putative class member's claims may be barred to the extent they modified the terms of the mortgage instrument at issue.

FOURTEENTH AFFIRMATIVE DEFENSE
(Ratification)

Colombo's or the putative class member's claims are or may be barred to the extent they ratified or waived U.S. Bank's assessment of the fees that are at issue in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

(Voluntary Payment)

Colombo's or the putative class member's claims are or may be barred to the extent that they made voluntary payments to U.S. Bank with full knowledge of the facts and circumstances surrounding the payments made.

SIXTEENTH AFFIRMATIVE DEFENSE

(Non-Performance of Contractual Obligations)

Any purported breach of the Mortgage by U.S. Bank is excused by Colombo's or the putative class members' prior non-performance of their own contractual obligations, including but not limited to, their payment defaults.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Settlement)

Colombo or the putative class members' claims may be barred to the extent they settled any claims related to the loan documents or U.S. Bank's assessment of the fees that are at issue in this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Fla. Stat. § 501.212(4)(c))

Colombo or the putative class members' FDUTPA claims are or may be barred because U.S. Bank is not subject to the provisions of FDUTP because it is a federally regulated bank and, in accordance with Fla. Stat. § 501.212(4)(c), FDUTPA does not apply to "Banks, credit unions, and savings and loan associations regulated by federal agencies."

WHEREFORE, having fully responded to each and every allegation in Colombo's Fourth Amended Counterclaim, U.S. Bank respectfully prays as follows:

- (a) That the Fourth Amended Counterclaim be dismissed with prejudice;
- (b) That U.S. Bank be awarded its reasonable attorneys' fees and all costs of this action be cast against Colombo; and

(c) That this Court grant such other and further relief as it deems just and proper.

Dated: May 15, 2024

Respectfully Submitted,

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By /s/ Jason R. Bowyer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by E-Mail on May 15, 2024 to the following:

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