

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

BARBRA CLAIR as the assignee of Donna Kemp and **MIRTHA CLAROS-ALMENDRAS**

On their behalf and on behalf of two classes of similarly situated persons

Named Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER (“NATIONSTAR”) as the Successor by merger to Seterus, Inc., *et al.*

Defendants

Case No. 441428-V

**THIRD AMENDED CLASS ACTION COMPLAINT
&
REQUEST FOR JURY TRIAL**

Plaintiffs Barbra Clair (“Clair”), the transferee and current owner and assignee of the interests in this action previously pursued by Donna Kemp (“Kemp”), and Mirtha Claros-Almendras (“Claros”)(collectively “Named Plaintiffs”), through their undersigned counsel files this Third Amended Class Action Complaint (“TAC”) pursuant to MD. RULE 2-214(a) and MD. RULE 2-231¹ as authorized by the Court in an Order granting Claros’ motion to intervene, on their individual behalf and on behalf of two classes of similar persons against Defendants Nationstar Mortgage LLC d/b/a Mr. Cooper (“Nationstar”) as the successor by merger to Seterus, Inc.

¹ In this pleading Named Plaintiffs will cite to the current version of MD. RULE 2-231 for the convenience of the Court and the parties. The rule was changed during the course of this litigation by eliminating certain provisions not relevant or applicable to this action.

(“Seterus”) and Federal National Mortgage Association (“Fannie Mae”)²(collectively “Defendants”), and says in support:

I. INTRODUCTION

1. As part of its uniform and standard practice, Seterus knowingly improperly assessed certain loan charges against the mortgage loan accounts of Kemp and Claros and the putative class members they represent as part of its regular and routine mortgage servicing practices in the State of Maryland on behalf of Fannie Mae.
2. Specifically, Seterus charged and imposed upon Kemp’s, Claros’, and the putative class members’ mortgage accounts owned by Fannie Mae inspection fees which Maryland law (which constitutes unlawful usury) and its licensing agency, the Office of the Commissioner of Financial Regulation (“OCFR”), expressly prohibits and has informed Seterus that it had no right to charge any Maryland such fees and the fees were usurious. Former Assistant Attorney General Brian Patrick Weeks notified Seterus of Maryland’s prohibition of this practice on March 10, 2014 in written correspondence which was received by Seterus’ former corporate officer(s) in charge of its property preservation practices.
3. As a result, Seterus’ actions have unlawfully infected Kemp’s, Claros’ and the putative class members’ mortgage accounts by wrongfully demanding and assessing costs it is not entitled to collect and OCFR has instructed it has no right to access or impose.

² The claims against Fannie Mae asserted herein are currently on interlocutory appeal to the Court of Special Appeals (Case No. 1013 (Sept. 2022 Term)) and will not proceed unless the Court’s order (entered on July 29, 2022) is reversed in whole or in part by the appellate court(s). The identification of the claims and related facts here are simply to preserve the claims if the appeal is successful.

4. Since these unlawful fees are included in pay off demands (on behalf of Fannie Mae) and periodic statements sent by Seterus, the payoff demands and periodic statements sent by Seterus to Kemp, Claros, and the putative class members are not accurate.
5. Maryland law specifically provides that “a lender may not impose a lender's inspection fee in connection with a loan secured by residential real property.” COM. LAW § 12-121(b). *See also Taylor v. Friedman*, 344 Md. 572, 584 (1997)(“For the foregoing reasons we conclude that the legislative history does not so clearly demonstrate a purpose to limit the prohibition of § 12–121 to closing costs as to override the plain language of the statute”). In this case as the assignee of maker of the loans of the Named Plaintiff and putative class members, Fannie Mae is now the lender and maker of the loans and Seterus is its authorized agent to act on its behalf.
6. Both of Maryland’s appellate courts have reversed this Court’s previous erroneous factual and legal conclusions and held the claims asserted herein are validly applied to Nationstar as the successor to Seterus and Fannie Mae. *See e.g. Nationstar Mortg. LLC v. Kemp*, 476 Md. 149 (2021)(“*Kemp II*”); *Kemp v. Nationstar Mortg. Ass'n*, 248 Md. App. 1 (2020)(“*Kemp I*”).
7. Under Maryland law the inspection fees charged by Seterus to the mortgage accounts of Named Plaintiff’s and the putative class members’ constitute “interest” as that term is defined in COM. LAW § 12-101(e) and therefore also constitutes “usury” as that term is defined in COM. LAW § 12-101(k).
8. Over the course of the former and current administration, OCFR’s analysis of the core issue has not wavered and supports the position advanced by Kemp and Claros in this action (i.e. that Fannie Mae as the successor assignee stands in the shoes of its assignor(s) and

Seterus/Nationstar as Fannie Mae's authorized agent may not impose inspection fees pursuant to COM. LAW § 12-121) as evidence as follows:

- a. OCFR issued an Industry Advisory on January 7, 2014 informing its licensees, including Seterus, that it was not permitted to impose inspection fees on mortgage borrowers. A true and correct copy of the notice is publicly available at <https://www.dllr.state.md.us/finance/advisories/advisory-nonjudicialevictions.pdf>.
- b. The above Industry Advisory was delivered to Seterus by former Assistant Attorney General Brian Patrick Weeks on March 10, 2014 in written correspondence that Seterus received and distributed to corporate officer(s) or employees in charge of its property preservation practices.
- c. On April 20, 2017 the OCFR issued a Summary Cease and Desist Order to Ocwen Loan Servicing LLC ("Ocwen") and its affiliates on various issues including Ocwen's unfair and deceptive practice, like the practices of Seterus subject to this action, which improperly assessed inspection fees against the accounts of borrowers in violation of COM. LAW § 12-121, including accounts of borrowers owned by GSE's including Fannie Mae. *See* Ocwen C&D Order at ¶¶ 79-83. Ocwen recently agreed, on February 23, 2018, to a resolution of the OCFR C&D Order and agreed to reimburse borrowers for the improper assessment and collection of inspection fees by: (i) cash refunds for fees paid, (ii) crediting accounts where the fee was assessed but not paid, and (iii) refunding interest incurred when Ocwen capitalized the illegal inspection fees onto borrowers' accounts as part of a modification that increased the unpaid principal balance. *See* Ocwen Settlement

Agreement at ¶ 26 (available at <https://www.dllr.state.md.us/finance/consumers/pdf/ocwencd.pdf>).

9. Finally, as a licensed, Maryland mortgage servicer/lender Seterus (and now Nationstar) knowingly agreed to “a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan.” MD. CODE REGS. 09.03.06.20.
10. Nationstar as the successor by merger to Seterus and Fannie Mae have proximately caused damages and losses to the class members by assessing and demanding sums from Kemp, Claros, and the putative class members which are not lawfully due. Finally, Clair as Kemp’s assignee, Claros, and the putative class members are also entitled to statutory damages under Maryland law.

II. THE PARTIES

11. Clair is the legal assignee of all the claims originally asserted by Kemp in this action individually and on behalf of the putative class members and is a resident of Anne Arundel County, Maryland. Kemp was a resident of Glen Burnie, Maryland in Anne Arundel County. Kemp’s loan subject to these proceedings is a consumer loan. It is a loan primarily for personal, family or household purposes.
12. Claros is a resident of Prince George’s County, Maryland and has been from the inception of this case a member of this action’s putative classes and was granted her absolute right to intervene in this case by Order of the Court to protect her interests and the interests of others like her subjected to the unlawful usury and mortgage servicing practices of

Nationstar as the successor by merger to Seterus. Claros' loan subject to these proceedings is a consumer loan. It is a loan primarily for personal, family or household purposes.

13. Seterus was a wholly-owned subsidiary of Kyanite Services, Inc., which is a wholly owned subsidiary of Pixel Acquisition Corp., which is, in turn, wholly owned by International Business Machines Corporation (NYSE: IBM). Seterus was a licensed mortgage lender/servicer throughout the State of Maryland by the OCFR (License No. 19876). As part of its business for its only client Fannie Mae, Seterus authorized its agents to conduct collection activities in every Maryland County, including Montgomery County, which include collection by litigation in this Court. During prior appeals of this matter in *Kemp I* and *Kemp II*, Nationstar merged with Seterus is not longer the properly named party to this action as a result of the Order and mandates of the Court of Special Appeals and Court of Appeals. Nationstar is also a licensed mortgage lender/servicer (License No. 2119).
14. Fannie Mae is the owner of Kemp's and the putative class members' loans during the relevant class periods and it hired Seterus to act as its authorized collector each of these loans during the relevant class periods discussed *infra*. Evidence of Fannie's Mae' acquisition of Kemp's loan is recorded in the land records for Anne Arundel County Maryland in an Assignment of Deed of Trust (Book 30075, Page 124) where it acquired "all interest secured thereby [the associated Deed of Trust to Kemp's loan], all liens, and any rights due or become due" from Kemp.
15. Evidence of Fannie's Mae' acquisition of Claros' loan is recorded in the land records for Prince George's Maryland in an Assignment of Deed of Trust (Book 34221, Page 336) where it acquired "all beneficial interest under [the Claros Deed of Trust]...together with

the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue” from Claros.

16. Maryland law recognizes that mortgage assignees like Fannie Mae step into the shoes of the assignors. Maryland law recognizes that mortgage assignees like Fannie Mae step into the shoes of the assignors. *See e.g.* REAL PROP. § 2-103; *Kemp I*; *Kemp II*, *Thompkins v. Mountaineer Investments, LLC*, 439 Md. 118, 139 (2014). Fannie Mae, as the assignee of those who originally made the loans, stands in their shoes and is therefore the maker of the named Plaintiffs’ loans and the loans of the putative class members under Maryland law. Fannie Mae requires that Seterus and Nationstar service its agreements with Kemp, Claros, and the putative class members in accordance with Maryland law and is responsible for the acts of its authorized servicer Seterus and Nationstar as the successor by merger to Seterus. Finally, it is widely recognized that Fannie Mae routinely acquires loans from others who extend loans on its behalf and in accordance with its guidelines. In fact, it publishes forms, guidelines, and more for persons to use when arranging sales of loans to Fannie Mae and publishes the same on its website: <https://www.fanniemae.com/singlefamily/originating-underwriting>.

17. Not named as parties to this action Seterus utilized the services of ServiceLink Field Services, LLC (“ServiceLink”) and Safeguard Properties LLC (“Safeguard”) to perform the visual, property inspections on behalf of Fannie Mae that are subject to this action. Nationstar as the successor by merger to Seterus has access to all of the records of Servicelink and Safeguard that are subject to this action as part of its own business records and it knows those records identify all names and addresses of the putative class members

and fees imposed and/or collected by Seterus in violation of Maryland law for the visual inspections of Kemp's, Claros', and the homes of the putative class members.

III. JURISDICTION AND VENUE

18. Declaratory and injunctive relief are available pursuant to CTS. & JUD. PROC. § 3-401, *et seq.*, and MD. RULE 2-231(c)(2).
19. This Court has equitable jurisdiction over the claims asserted herein. 9 M.L.E. Equity § 2.
20. This Court has jurisdiction of this matter pursuant to MD. RULE 2-231 in order to facilitate management of multiple similar claims. Maryland law does not permit class actions to be maintained in the District Court of Maryland.
21. Venue in this Court is proper in that the Defendants transact business within Montgomery County in relation to Montgomery County residents as part of its debt collection/mortgage servicing practices and includes conduct complained of occurred in Montgomery County, Maryland.

IV. FACTS RELATED TO KEMP & DEFENDANTS

22. Until March 1, 2019 Seterus acted as the mortgage servicer and collector for Kemp's mortgage loan which is owned by Fannie Mae. As of March 1, 2020 Nationstar became Fannie Mae's authorized servicer and collector of Kemp's mortgage loan as the successor by merger of Seterus.
23. In 2017 Kemp fell behind on her mortgage payments due to unexpected and necessary repairs to her home and property where she lives with her daughter.

24. On April 10, 2017, Seterus declared Kemp's mortgage loan to be default and if she did not "cure the default on or before May 15, 2017 may result in acceleration of the sums secured by the mortgage and may result in the sale of the premises."
25. On or about July 14, 2017, Kemp wrote to Seterus pursuant to 12 U.S.C. § 2605 and COM. LAW § 13-316 requesting certain information. Included in this notice, Kemp also notified Seterus that it had failed to send her monthly or periodic statements. Seterus is required to send monthly statements to Kemp pursuant to COM. LAW § 12-106(c).
26. Seterus received that correspondence by certified mail on July 18, 2017 at 8:24AM at the address it designated to Kemp and other borrowers to receive such correspondence.
27. On or about July 24, 2017 Seterus provided an incomplete response to Kemp's July 14, 2017 correspondence. However, in that incomplete response, Seterus did disclose to Kemp for the first time that it had charged her Fannie Mae mortgage loan account with certain property preservation charges from August 26, 2016 through July 24, 2017.
28. In response to and in reliance to the July 24, 2017 disclosure by Seterus that it was charging and assessing and imposing upon her account with property preservation charges (of which she did not have any prior knowledge), Kemp again wrote Seterus pursuant to 12 U.S.C. § 2605 and COM. LAW § 13-316 on or about September 6, 2017 to request information about the property preservation charges assessed to her account as well as other issues which included an accounting of what Seterus claimed was due on her mortgage loan. Seterus received this request from Kemp on September 21, 2017 and confirmed this fact to Kemp in writing on September 26, 2017.

29. On September 26, 2017, Seterus responded to Kemp's second inquiry again and stated its standard and uniform practice with all Maryland borrowers related to the property preservation charges:

The authority to charge fees such as property inspection fees or legal fees is contained in the Deed of Trust under Covenants 9 and 14 which both contain provisions for the imposition of fees in the event the loan is in contractual default. Enclosed is a copy of the Deed of Trust for your reference.

Due to the continued contractual delinquency of the loan, Seterus exercised its right under the terms of the signed Deed of Trust to protect the loan owner's interest in the property. Property inspections are ordered when a loan is more than 45 days contractually delinquent, and every 30 days if the contractual delinquency continues. These were drive-by inspections to see if the property was occupied and in good repair. The fee for this service was billed to Seterus by an outside contractor and then assessed to the loan. As of the date of this letter Seterus has assessed the loan 12 \$15.00 property inspection fees totaling \$180.00. These fees are considered valid.

30. Seterus' September 26, 2017 response failed to disclose and acknowledge to Kemp that the terms and conditions of her contract with Fannie Mae (which is a standard Fannie Mae contract) are subject to Maryland law. Kemp's Deed of Trust states clearly and unambiguously as follows, "Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law." Deed of Trust at ¶ 14. The term "Applicable Law" "means all controlling applicable...state...statutes...as well as all applicable final, non-appealable judicial opinions." *Id.* at ¶ J.

31. On September 25, 2017, Seterus on behalf of Fannie Mae and in response to her request described in ¶ 25 "for a payoff total" on her loan also claimed and represented to Kemp that she owed \$180 in property inspection fees that she was required to pay related to any payoff the loan.

32. Seterus intended for Kemp to rely upon its claims made in its September 25, 2017, September 26, 2017, and July 24, 2017 communications to her on behalf of Fannie Mae.

33. The demand and claim for property inspection costs to Kemp was not accurate as these fees are not permitted under Maryland law. COM. LAW § 12-121(b); *Taylor*, 344 Md. at 584; *Kemp I*; and *Kemp II*. In addition, the demands and claims for property inspection costs by Seterus on behalf of Fannie Mae were not justified by Kemp's Deed of Trust which expressly excluded such fees from her loan and were otherwise not authorized under Maryland law.
34. In May 2017 and July 2017 Seterus denied Kemp for any loss mitigation assistance. However, it also wrote to Kemp in a letter dated July 20, 2017 and offered her a "Trial Period Plan offer...for a Fannie Mae Loan Modification." The trial plan called for Kemp to make three trial payments to it on behalf of Fannie Mae on or before September 1, October 1, and November 1, 2017.
35. In reliance on Seterus' offer on behalf of Fannie Mae, Kemp accepted the Trial Period Plan offer and timely made the trial period payments.
36. Following receipt of Kemp's November 2017 TPP payment, on November 8, 2017 Seterus on behalf of Fannie Mae offered, in writing, Kemp a final Loan Modification Agreement to permanently modify her loan. In the November 8, 2017 offer of a Final Loan Modification Seterus represented that "unpaid interest, real estate taxes, insurance premiums, and certain assessments" would be added to the mortgage balance owed from Kemp. The only expressly stated fees and costs that Seterus represented it would not capitalize and would waive were the late fees it alleged to be due and owing from Kemp. So, only the late fees were waived.
37. In reliance that Seterus and Fannie Mae were only offering her a modification that included sums each was lawfully entitled to charge her, Kemp agreed to the proposed Final Loan

Modification Agreement and timely returned the agreement to it. This belief by Kemp was reasonable since no reasonable person would believe that either Seterus or Fannie Mae would charge borrowers fees which are expressly prohibited under Maryland law. Upon receipt of her timely accepted Loan Modification Agreement, Seterus on behalf of Fannie Mae also countersigned the agreement and returned a copy of the countersigned agreement to Kemp.

38. Further demonstrating her reasonable reliance, Kemp made years of modified payments as required by the Loan Modification Agreement to Seterus and then Nationstar.
39. The Loan Modification Agreement capitalized the property inspection fees claimed due by Seterus on behalf of Fannie Mae which means that Kemp has (i) paid the fees directly by her payments to Seterus; (ii) had the fees capitalized to her mortgage account with Fannie Mae by Seterus but has not paid them in full since the loan is not yet paid off, and/or (iii) paid incurred extra interest due on her loan now and over the remaining lifetime of her loan as a result of Seterus capitalizing the illegal inspection fees onto her account as part of a modification that increased the unpaid principal balance due on her loan.
40. After nearly five years of litigation Nationstar admitted on November 17, 2022 in correspondence it authorized its counsel to send to Kemp that it had reduced the balance of Kemp's loan in a sum it believes "represents the amount of property inspection fees assessed to the [Kemp] loan when it was serviced by Seterus" in violation of Maryland's usury law. The reduction did not address the interest associated with the property inspection fees.
41. Kemp continued to make her modified, mortgage payments on time even though Seterus and then Nationstar refused to send her monthly periodic statements and to identify to her

what escrow payment is due from her and how it is applying her payments. Kemp's loan remains unsatisfied.

42. Kemp assigned all interest in her individual and putative class claims to Clair and Clair now stands in Kemp's shoes related to the claims and legal interests asserted in this action originally by Kemp.

43. As a result of Seterus' knowingly improperly assessing property preservation charges against Kemp's mortgage account with Fannie Mae, Seterus has demanded she pay \$180 in fees that are not permitted under Maryland law. COM. LAW § 12-121(b); *Taylor*, 344 Md. at 584; *Kemp I*; and *Kemp II*. According to the November 22, 2022 letter the amount of the inspection fees imposed were \$210.

44. All persons, including licensed mortgage lender/servicers in the State of Maryland like Seterus and Nationstar, are expected to know the law. Imposing, charging, and collecting unlawful fees to borrowers' accounts held by Fannie Mae is unreasonable and Nationstar as the successor by merger to Seterus should not be permitted retain the profits from such activities.

45. The Court of Appeals in 2005 recognized that a real estate professional who had no direct communication with a borrower nevertheless had a duty to a consumer under the Maryland Consumer Protection Act and Maryland common law to make a "reasonable investigation" of the true facts in the real estate transaction on which the borrower (and other parties) would rely in order to complete the transaction. *Hoffman v. Stamper*, 385 Md. 1, 867 A.2d 276 (2005). This duty of care applies to Fannie Mae, Seterus, and Nationstar as their work involves secured, consumer mortgage loans subject to Maryland laws including COM. LAW § 12-121. Fannie Mae also knows as a matter of law that it obtains no greater rights in the

loans it acquires than what its assignors had to give it. Its assignors were subject to COM. LAW § 12-121 and so too is Fannie Mae by accepting the assignments to it by the makers of the loan.

46. Pursuant to 12 U.S.C.A. § 2605(k)(1)(C)(E), Nationstar and Seterus have duties to the Named Plaintiffs and the putative class members to (i) take appropriate steps to avoid foreclosure as part of their standard servicer's duties and (ii) comply with any other obligation(s) found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of 12 U.S.C.A. § 2605. Pursuant to 12 C.F.R. § 1024.38(b)(1)(i), neither Seterus nor Nationstar are required to “[p]rovide accurate and timely disclosures to a borrower as required by [12 C.F.R. § 1024.38] or other applicable law.” Pursuant to 12 C.F.R. § 1024.35(b)(5), neither Seterus nor Nationstar are permitted to “impos[e]... a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.” It is unreasonable and a violation of its duties for Seterus and Nationstar as the successor by merger to Seterus (or otherwise) to demand inaccurate sums due to Fannie Mae in the form of inspection fees which are barred by COM. LAW § 12-121 and they have no right to collect any sums from the Named Plaintiffs and Class members which is unlawful, illegal usury.

47. The Maryland Mortgage Fraud Protection Act, MD. CODE ANN., REAL PROP. § 7-401, *et seq.*, establishes a statutory duty upon Fannie Mae, Nationstar, and Seterus to disclose to mortgage borrowers and homeowners, like the Named Plaintiffs and the putative class members in this action, to disclose material information with respect to the mortgage lending process which includes those fees and costs which they are permitted to charge borrowers. *Newsom v. Brock & Scott, PLLC*, 253 Md. App. 181 (2021).

48. In this case, Nationstar as the successor by merger to Seterus and Fannie Mae have duties to disclose to the Named Plaintiffs and the putative class members that they were barred by Maryland law from charging property inspection fees and costs to their accounts but instead Seterus and Fannie Mae excluded and concealed this knowledge known to them from the Named Plaintiffs and the putative class members to maximize their profits. Further, since March 1, 2019 Nationstar has elected to further conceal from Kemp, Claros, and the putative class members that it knew the fees were illegally imposed and/or collected by Seterus.

49. Fannie Mae's knowledge is also represented by the standard and uniform Fannie Mae Deed of Trust securing Fannie Mae's interest in the homes and properties of the Named Plaintiffs and putative Class Members, to which it claims to be the assignee standing in the shoes of the maker of the loan, which provides clearly and unambiguously as follows, "Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law." Deed of Trust at ¶ 14. The term "Applicable Law" "means all controlling applicable...state...statutes...as well as all applicable final, non-appealable judicial opinions." *Id.* at ¶ J.

V. FACTS RELATED TO CLAROS

50. Claros purchased the real property known as 1280 Patriot Lane in Bowie, Maryland (20716)("Claros Property") on or about September 10, 2007.

51. To acquire the Claros Property, Claros borrowed the sum of approximately \$251,750 from American Sterling Bank as evidenced by a Fannie Mae Deed of trust filed in the land records of Prince George's County, Maryland (Book 28660. Page 721)("Claros Loan").

52. Claros' Deed of Trust states clearly and unambiguously as follows, "Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law." Deed of Trust at ¶ 14. The term "Applicable Law" "means all controlling applicable...state...statutes...as well as all applicable final, non-appealable judicial opinions." *Id.* at ¶ J.
53. Upon information and belief based on its standard and usual practices, Fannie Mae acquired its interest in the Claros Loan shortly after September 10, 2007. However, it did not confirm this fact to Claros until correspondence by it to her dated October 30, 2012.
54. Like Kemp, Seterus also modified Claros' residential mortgage loan as the agent and collector for Fannie Mae (on May 21, 2013) which is recorded in the Maryland land records for Prince George's County (Book 35523, Page 590)("Claros Modification"). The only fees expressly waived by the Claros Modification by Seterus and Fannie Mae as of the effective date of the Claros Modification were late fees.
55. Seterus acted as the authorized servicer and collector of the Claros Loan on behalf of Fannie Mae from October 1, 2012 to March 1, 2019 when Nationstar acquired the servicing rights of the Claros Loan from Seterus as a result of its merger.
56. At all times relevant and material to this action, Claros has been identified to the Defendants as a member of the putative State law Class and Usury Class defined below since the commencement of this action nearly five years ago.
57. In correspondence dated April 26, 2018 after the commencement of this action and while it was claiming to the Federal Court that its practices were legal (when they were not), Seterus admitted to Claros for the first time that it had imposed and intended to seek to collect from her property inspection fees on multiple dates including February 16, 2017,

January 20, 2017, December 23, 2016, October 25, 2016, September 21, 2016, August 19, 2016, July 14, 2016, June 17, 2016, July 24, 2015, July 16, 2015, and June 19, 2015.

58. In later written correspondence from Nationstar to Claros dated March 22, 2019 while this action was still pending, Nationstar confirmed the facts asserted above and identified another illegal and improper property inspection fee imposed by Seterus before its merger with Nationstar. Nationstar admitted this additional fee was imposed by Seterus on March 3, 2017 onto the Claros Loan.

59. The mortgage servicing and collection of the Claros Loan transferred from Nationstar to Rushmore Loan Services LLC (“Rushmore”) on or about November 2, 2020 while this matter was proceeding on appeal. Nationstar did not disclose to Rushmore that Claros was a member of putative classes herein challenging its conduct as a successor by merger to Seterus or that pursuant to Seterus’ customary and standard practice that certain property inspection fees had been improperly and illegally imposed onto the Claros Loan as described *supra*. Nationstar’s knowing and intentional silence imposed the improper fees again onto the Claros Loan in violation of its lawful duties described *supra*.

60. The Claros Loan is not satisfied.

VI. CLASS ALLEGATIONS

61. This action is properly brought on behalf of a **State Law Class** under MD. RULE 2-231 (and specifically MD. RULE 2-231(c)(2)(3)). Named Plaintiffs propose the **State Law Class** be defined as follows:

Those persons in the State of Maryland for whom Nationstar as the successor by merger to Seterus acted as a mortgage servicer on behalf of Fannie Mae, from December 19, 2014 through February 28, 2019 and charged their mortgage loan accounts with property inspection fees and

costs.

62. This action is also properly brought on behalf of a **Usury Class** under MD. RULE 2-231 (and specifically MD. RULE 2-231(c)(2)(3)). Named Plaintiffs propose the **Usury Class** be defined as follows:

Those persons in the State of Maryland (i) for whom Nationstar as the successor by merger to Seterus has acted as a mortgage servicer on behalf of Fannie Mae and imposed upon their mortgage loan accounts property inspection fees and costs and (ii) the mortgage loan accounts had not been satisfied on or before June 18, 2017.

63. The members of the **State Law Class** and **Usury Class** are capable of being identified without difficult managerial or administrative problems. Nationstar has the successor to Seterus tracks all information about correspondence sent to borrowers electronically and can identify categories of borrowers and categories of fees including property inspection fees from its electronic systems and the electronic systems previously utilized by Seterus before its merger with Nationstar. Both Nationstar and Seterus are required by law and regulation to have such electronic information available with just five days. *See* 12 U.S.C.A. § 2605(k)(E); 12 C.F.R. §§ 1024.38(a), 1024.38(b)(1)(i), 1024.38(b)(1)(iv), and 1024.38(c)(2)(i)(iv); Md. Code Regs. 09.03.06.05. In addition, Fannie Mae also tracks certain records related to borrowers electronically and can identify categories of borrowers from its electronic systems. Fannie Mae also requires Nationstar as Seterus' successor by merger and also Seterus previously (and each utilizes) standard forms and procedures related to the assessment of property preservation expenses.

64. The **State Law Class** and **Usury Class** members are sufficiently numerous that individual joinder of all members is impractical and Nationstar and Fannie Mae have stipulated to this

fact. *See* Stipulation (entered by the Court on January 7, 2022). According to public records, Seterus reported to the Office of the Commissioner of Financial Regulation that it is the servicer for hundreds of mortgage loans throughout the State of Maryland in the last three years preceding the commencement of this action and according to its stated policy and practice charges all delinquent borrowers property inspection fees on a monthly or more frequent basis as shown by the Claros Loan.

65. There are questions of law and fact common to the **State Law Class** and **Usury Class** which predominate over any questions affecting only individual members of the **State Law Class** and **Usury Class** and, in fact, the wrongs alleged against Nationstar as the successor by merger to Seterus by the **State Law Class** and **Usury Class** members and the remedies sought by **State Law Class** and **Usury Class** members against Nationstar as the successor by merger to Seterus are identical, the only difference being the exact monetary sum to which each **State Law Class** and **Usury Class** member is entitled to receive from Nationstar as the successor by merger to Seterus and/or Fannie Mae.

66. The common issues related to the **State Law Class** members include, but are certainly not limited to:

- a. Whether Seterus was entitled to assess or demand property preservation and/or inspection fees on the mortgage loan accounts of the **State Law Class**;
- b. Whether this Court may declare that the practices and policies of Nationstar as the successor by merger to Seterus concerning the assessment of property preservation fees against the mortgage loan accounts of the **State Law Class** members violate COM. LAW § 12-121(b), *Taylor v. Friedman*, 344 Md. 572, 584 (1997), *Kemp I*, and *Kemp II*.

- c. Whether Nationstar as the successor by merger to Seterus threatened or took actions against the **State Law Class** members, including actions under the color of law or which were otherwise unfair and deceptive, that it had no right to take under state law;
 - d. Whether Nationstar as the successor by merger to Seterus intended to defraud the **State Law Class** members by knowingly misrepresenting that it was entitled to assess property preservation fees against the mortgage accounts of the **State Law Class** members;
 - e. Do the inspection fees charges Nationstar as the successor by merger to Seterus on behalf of Fannie Mae on the Named Plaintiff's and **State Law Class** members' accounts constitute "interest" as that term is defined in COM. LAW § 12-101(e) and therefore also constitute "usury" as that term is defined in COM. LAW § 12-101(k); and
 - f. Whether Nationstar as the successor by merger to Seterus should be ordered to disgorge money and profits that it has wrongfully collected or added to the mortgage loan accounts based upon the improper assessment of property preservation and/or inspection costs on the mortgage loan accounts of the **State Law Class** members since such fees are not permitted in Maryland.
67. The common issues related to the **Usury Class** members include, but are certainly not limited to:
- a. Whether Nationstar as the successor by merger to Seterus was entitled to demand property preservation and/or inspection fees on the mortgage loan accounts of the

Usury Class including but not limited to adding such fees to the loan balances of modified loans;

- b. Whether Nationstar as the successor by merger to Seterus was entitled to demand property preservation and/or inspection fees on the mortgage loan accounts of the **Usury Class** on behalf of Fannie Mae;
 - c. Whether this Court may declare that Nationstar's, as the successor by merger to Seterus, practices and policies concerning the assessment of property preservation fees against the mortgage loan accounts of the **Usury Class** members violate COM. LAW § 12-121(b), *Taylor v. Friedman*, 344 Md. 572, 584 (1997), *Kemp I*, and *Kemp II*;
 - d. Did the inspection fees charges by Nationstar as the successor by merger to Seterus on behalf of Fannie Mae on the Named Plaintiff's and **Usury Class** members' accounts constitute "interest" as that term is defined in COM. LAW § 12-101(e) and therefore also constitute "usury" as that term is defined in COM. LAW § 12-101(k); and
 - e. Whether Nationstar as the successor by merger to Seterus and/or Fannie Mae are liable for statutory damages pursuant to **Usury Class** members pursuant to COM. LAW § 12-121(a)(1)(ii) for each instance in which Seterus has imposed upon the **Usury Class** members including each fee added by Seterus onto any modification arranged by it on behalf of Fannie Mae.
68. Named Plaintiff's legal and equitable claims are typical and the same or identical for each of the member of the **State Law Class** and **Usury Class** and will be based on the same legal and factual theories identified *supra*.

69. Nationstar as the successor by merger to Seterus and Fannie Mae's defenses (which defenses are denied) would be typical and the same or identical for each of the member of the **State Law Class** and **Usury Class** and will be based on the same legal and factual theories.
70. The Named Plaintiffs will also fairly and adequately represent and protect the interests of the **State Law Class** and **Usury Class** members. Named Plaintiffs have retained counsel experienced in consumer class actions including actions involving unlawful collection and mortgage servicing practices. Named Plaintiffs do not have any interests which might cause them not to vigorously prosecute this action or are otherwise averse to the interests of the members of the **State Law Class** and **Usury Class**.
71. Certification of the **State Law Class** and **Usury Class** under MD. RULE 2-231(c)(2) for the injunctive and declaratory relief sought and under MD. RULE 2-231(c)(3) for the damage claims in that common questions predominate over any individual questions and a class action is superior for the fair and efficient adjudication of this controversy. A class action will cause (i) and orderly and expeditious administration of claims by the **State Law Class** and **Usury Class** members, (ii) economies of time, effort and expenses and (iii) foster a uniformity of decisions.
72. The only individual questions concern the identification of the **State Law Class** and **Usury Class** members who are entitled to any sums and profits that Nationstar as the successor by merger to Seterus is ordered to disgorge as the fruit of its unlawful activities or share in any statutory and actual damages permitted by law against Nationstar and/or Fannie Mae. This information can be determined by a ministerial examination of the Defendants'

business records or other sources, which are admissible as an exception to the hearsay rule and as a statement by a party.

73. Named Plaintiffs' claims are typical of the claims of the **State Law Class** and **Usury Class** members.
74. Named Plaintiffs will fairly and adequately protect the interests of all **State Law Class** and **Usury Class** members in the prosecution of this action. The Named Plaintiffs are similarly situated with, and has suffered similar injuries as, the members of the **State Law Class** and **Usury Class** they seek to represent. The Named Plaintiffs (i) feel that the Defendants have acted wrongfully and illegally as demonstrated by the appellate decisions in *Kemp I* and *Kemp II*, (ii) wish to obtain redress of the wronged, and (iii) want Defendants stopped from enriching themselves by harvesting fees from borrowers in Maryland which are illegal fees or otherwise perpetrating similar wrongs on others.
75. The **State Law Class** and **Usury Class** members have suffered damages, losses, and harm similar those sustained by the Named Plaintiffs and described above.

COUNT I

(Individual and Class Declaratory Judgment and Injunctive Related to the Named Plaintiffs' and State Law Class Members' Mortgage Accounts against Nationstar as the successor by merger to Seterus and Fannie Mae)

76. Named Plaintiffs incorporate the foregoing allegations.
77. Named Plaintiffs seek a declaration on their individual behalf and on behalf of the **State Law Class** members that the Defendants Seterus and Fannie Mae are not entitled to charge and/or collect lender's inspection fees in connection with the loans of the **State Law Class**

members and Named Plaintiffs which are secured by residential real property. COM. LAW § 12-121(b). *See also Taylor v. Friedman*, 344 Md. 572, 584 (1997).

78. Defendants Seterus and Fannie Mae should also be enjoined from attempting to charge, demanding and/or collecting lender's inspection fees, and/or collecting interest on lender inspection fees capitalized by a modification, in connection with the loans of the **State Law Class** members and Named Plaintiffs which are secured by residential real property.

79. Alternatively, Named Plaintiffs seeks a declaration that Defendants Nationstar as the successor by merger to Seterus and Fannie Mae are not entitled to the assistance of any Maryland court to enforce any claim lender's inspection fees in connection with the loans of the **State Law Class** members and Named Plaintiffs which are secured by residential real property.

80. WHEREFORE, Named Plaintiffs and **State Law Class** pray that this Court:

a. Certify this case as a class action with the Named Plaintiffs as class representatives and their attorneys as class counsel on behalf of the **State Law Class** members described herein;

b. Order and enter a declaratory judgment that Defendants Nationstar as the successor by merger to Seterus and Fannie Mae are not entitled to demand, charge and/or collect lender's inspection fees in connection with the loans of the **State Law Class** members and Named Plaintiffs which are secured by residential real property.

c. Order appropriate injunctive relief against Defendants Nationstar as the successor by merger to Seterus and Fannie Mae to prevent further violations of law or providing benefits to each from their illegal

assessments of inspection fees upon the Named Plaintiffs and **State Law Class** members, including a preliminary and permanent injunction;

d. Order the Defendant Nationstar as the successor by merger to Seterus to disgorge all inspection costs and fees it has collected or capitalized upon the loans of the Named Plaintiffs and **State Law Class** members along with prejudgment interest on any amounts awarded to **State Law Class** as well as the extra interest **State Law Class** members will pay offer the lives of their mortgage loans;

e. Alternatively, Order and enter a declaratory judgment that Defendants Nationstar as the successor by merger to Seterus and Fannie Mae are not entitled to the assistance of any Maryland court to enforce any claim lender's inspection fees in connection with the loans of the **State Law Class** members and Named Plaintiffs which are secured by residential real property;

f. Award reasonable attorney's fees, litigation expenses and costs;

g. Order appropriate declaratory relief; and

h. Provide such other or further relief as the Court deems appropriate.

COUNT II

(Individual and Class Claim for Unjust Enrichment on behalf of the State Law Class and Named Plaintiffs Against Nationstar as the successor by merger to Seterus)

81. Named Plaintiffs incorporate the foregoing allegations. This claim for common law unjust enrichment is brought by Named Plaintiffs on behalf of the **State Law Class** against Defendant Nationstar as the successor by merger to Seterus only.
82. Defendant Nationstar as the successor by merger to Seterus was not entitled to receive any benefit (including profits) or payments from the Named Plaintiffs and **State Law Class** members because of any so-called property inspection fees or preservation fees assessed to or capitalized to the accounts of the Named Plaintiffs and the **State Law Class** members. Notwithstanding this prohibition, Seterus knowingly and willfully received and demanded benefits from its illegal and improper assessment and collection of such fees which is a crime under Maryland law. COM. LAW § 12-122.
83. Maryland law recognizes that a claim for unjust enrichment is permitted in instances like this one where even though a claim may be covered by a contract between the parties where (i) one party breaches the contract (by charging sums now lawfully charged), (ii) the contract does not fully address a subject matter such as one party's illegal, criminal activity or (iii) there is evidence of fraud or bad faith when a party acts contrary to the law. *Cty. Comm'rs of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 100 (2000).
84. At all times relevant and material to this action in the three years before the commencement of this action, Nationstar as the successor by merger to Seterus has known or should have known that it was not permitted to claim it was entitled to access or collect inspection fees from the Named Plaintiffs and the **State Law Class** members since the class is clearly stated on this point and its own regulator has so instructed it.
85. Due to its knowledge, as described above, Nationstar as the successor by merger to Seterus had an appreciation that it was not entitled to receive the benefits it was collecting from the

Named Plaintiffs and **State Law Class** members that flow from the property inspection fees it assessed on their accounts and sought reimbursement from Fannie Mae for the expense.

86. The acceptance and retention by Nationstar as the successor by merger to Seterus of any sums received as a result of the illegal property inspection fees charged by it against the Named Plaintiffs' and **State Law Class** member accounts under such circumstances is inequitable since Seterus did not have the legal right to even demand or collect such payments in the first instance in the manner it sought to collect them—this conclusion is just and proper even though Seterus might have otherwise collected the alleged fees in any other state since Maryland has for nearly two decades not permitted the assessment of such fees and Seterus was notified more than three years ago by its regulator that it was not entitled to charge such fees.
87. The amounts accepted and charged by Nationstar as the successor by merger to Seterus and also capitalized into the mortgage accounts by loan modifications offered to accepted by the Named Plaintiffs and the **State Law Class** members are liquidated amounts.

WHEREFORE, Named Plaintiffs and **State Law Class** members pray that this Court:

- a. Certify this case as a class action with the Named Plaintiffs as class representatives and their attorneys as class counsel on behalf of the **State Law Class** members described herein;
- b. Grant a money judgment and order Defendant Nationstar as the successor by merger to Seterus to disgorge and pay to the **State Law**

Class members all amounts it has collected from the State Law Class members and the benefits it has realized as a result of collecting illegal fees in a sum in excess of \$75,000.00;

c. Award prejudgment interest on the amounts collected by Defendant Nationstar as the successor by merger to Seterus;

d. Award reasonable attorney's fees, litigation expenses and costs to the extent allowed by law; and

e. Provide such other or further relief as the Court deems appropriate.

COUNT III

(Individual and Class Claim pursuant to the Maryland Consumer Debt Collection Practices Act, COM. LAW, § 14-201, *et seq.* ("MCDCA") and the Maryland Consumer Protection Act, COM. LAW, § 14-201, *et seq.* ("MCPA") on behalf of the State Law Class members and the Named Plaintiffs Against Nationstar as the successor by merger to Seterus Only)

88. Named Plaintiffs incorporate the foregoing allegations. This claim for state statutory claims under the MCPA and MCDCA is brought by Named Plaintiffs on behalf of the **State Law Class** against the Defendant Nationstar as the successor by merger to Seterus only.

89. Defendant Nationstar as the successor by merger to Seterus is engaged in the business of collecting consumer debts secured by real property; before its merger with nationstar, this was also Seterus' entire business on behalf of its only client Fannie Mae. In furtherance of that business Nationstar as the successor by merger to Seterus claimed, directly and indirectly, that it was entitled to impose, assess, charge, and collect from the Named

Plaintiffs and the **State Law Class** members property inspection fees or preservation fees related to the **State Law Class** members' secured mortgage loans.

90. Defendant Nationstar as the successor by merger to Seterus knowingly claimed the right to such fees under the color of law based upon recorded instruments in the public records when it knew it had no right to do so.
91. The actions of Nationstar, as the successor by merger to Seterus, as a debt collector violated COM.LAW § 14-202(8) which prohibits a debt collector from making any “[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.”
92. The actions of Nationstar, as the successor by merger to Seterus, to claim that Named Plaintiffs and the State Law Class members owed sums for property inspection fees or preservation fees also violates COM.LAW § 14-202(8) when the Defendants know such fees are unlawful in Maryland.
93. The demands by Nationstar, as the successor by merger to Seterus, for the improper inspection fees related to the Named Plaintiff's and State Law Class members' loans secured by real property concern “real or personal property, services, money, or credit for personal, family, or household purposes.” COM.LAW § 201(b).
94. The actions of Nationstar, as the successor by merger to Seterus, in violation of the MCDCA also constitute a *per se* violation of the MCPA pursuant to COM. LAW § 13-301(14)(iii).
95. Named Plaintiffs have been damaged as described above. The **State Law Class** members have suffered similar damages.

WHEREFORE, Named Plaintiffs and **State Law Class** Members pray that this Court:

- a. Certify this case as a class action with the Named Plaintiffs as class representatives and their attorneys as class counsel on behalf of the **State Law Class** members described herein;
- b. Grant a money judgment in favor of the Named Plaintiffs and the **State Law Class** members and against Nationstar, as the successor by merger to Seterus, for violations of the MCDCA, as described herein, in such amount as to be determined at trial and for purposes of a sum certain directly related to improper assessment of inspection fees and costs by Seterus against the Named Plaintiffs and State Law Class members' mortgage loan accounts, subject to further discovery as to the size of the class, the amount sought on behalf of the class is in excess of \$75,000.00;
- c. Award reasonable attorney's fees, litigation expenses and costs pursuant to COM. LAW § 13-408; and
- d. Provide such other or further relief as the Court deems appropriate.

COUNT IV

(Individual and Class Claim pursuant to COM. LAW § 12-121(a)(1)(ii) on behalf of the Usury Class members and the Named Plaintiffs Against Nationstar, as the successor by merger to Seterus, and Fannie Mae)

96. Named Plaintiffs incorporate the foregoing allegations. This claim for state statutory damages pursuant to COM. LAW § 12-121(a)(1)(ii) is brought by Named Plaintiffs on behalf of the **Usury Class** against the Defendants Seterus and Fannie Mae.
97. The OCFR has determined, under its authority as Maryland's regulator implementing Maryland mortgage lender laws, that mortgage servicers like Nationstar, as the successor by merger to Seterus, may not violate COM. LAW § 12-121(b). This was confirmed in *Kemp I* and *Kemp II*.

98. As the owner and assignee of the Named Plaintiffs' and State Class members' loans, Fannie Mae stands or stood in the shoes of its assignor(s) (or their predecessors) who made the loans to the Named Plaintiff and **Usury Class** members and had no greater rights as the assignee than the assignors (including those who made the loans). Fannie Mae is therefore the maker of the Named Plaintiff's and the **Usury Class** members' by accepting the assignment of the loans and related deeds of trust. *See also Kemp I and Kemp II.*
99. COM. LAW § 12-121(b) prohibits a lender and its servicer collector, like Fannie Mae and Nationstar as the successor by merger to Seterus in this action, from imposing property inspection fees on the Named Plaintiffs and State Law Class members after the origination of the subject loans. COM. LAW § 12-121(b) does not exempt Fannie Mae or Nationstar from its express prohibition.
100. Neither Nationstar, as the successor by merger to Seterus, nor Fannie Mae were entitled to require any charge to the mortgage loan accounts of the Named Plaintiffs and **Usury Class** members related to property inspections unrelated to the construction to a new home or repairs, alterations, or other work required by them but they did so anyway.
101. At all times relevant and material to this action, Seterus, Nationstar, and Fannie Mae have known or should have known that they were not permitted to require the imposition of unauthorized inspection fees to the mortgage accounts of the Named Plaintiffs and the **Usury Class** members since all persons are expected to know the law.
102. COM. LAW § 12-114(a)(1)(ii) provides that the Defendants shall forfeit to borrowers like the Named Plaintiffs and **Usury Class** Members the sum of \$500 for any violation of the subtitle including COM. LAW § 12-121(b).

103. The Named Plaintiffs and the members of the **Usury Class** Members are entitled to the sum of \$500 for each instance in which Nationstar, as the successor by merger to Seterus, has imposed inspection fees on behalf of Fannie Mae against the mortgage loan accounts of the Named Plaintiffs and the **Usury Class** Members pursuant to COM. LAW § 12-121(b) whether the Named Plaintiffs or **Usury Class** members paid the assessment or not.

WHEREFORE, Named Plaintiffs and **Usury Class** members pray that this Court:

- a. Certify this case as a class action with the Named Plaintiffs as class representatives and their attorneys as class counsel on behalf of the **Usury Class** members described herein;
- b. Grant a money judgment and order Defendants Nationstar, as the successor by merger to Seterus, and Fannie Mae to forfeit and pay to the Named Plaintiffs and the **Usury Class** members \$500 for each instance in which they have imposed an inspection fee or cost to their mortgage loan accounts and in a total sum in excess of \$75,000.00;
- c. Award prejudgment interest to the Named Plaintiffs and **Usury Class** members on the statutory damages they are entitled to receive;
- d. Award reasonable attorney's fees, litigation expenses and costs to the extent allowed by law; and
- e. Provide such other or further relief as the Court deems appropriate.

[signatures on next page]

Respectfully submitted,

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*Attorneys for the Named Plaintiffs and
Putative Class Members*

REQUEST FOR JURY TRIAL

Named Plaintiffs on their behalf and on behalf of others similarly situated, do hereby request a jury trial on all the claims asserted herein.

/s/Phillip R. Robinson
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RULE 20-201 CERTIFICATION

I hereby certify that this filing does not contain any restricted information.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and attached Request for Jury Trial was sent to all counsel and parties of record through the Court's MDEC system on this ____ day of December 2022 including:

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