

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BRIAN HASTINGS

Plaintiff

v.

OCWEN LOAN SERVICING LLC

Defendant

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Case No.: 1:14-cv-02244-JKB

JURY DEMAND



AMENDED COMPLAINT¹

Plaintiff Brian Hastings (“Hastings”), by his attorneys, Phillip Robinson, Jesse Iliff, and CONSUMER LAW CENTER, LLC, hereby file this Amended Complaint² against Defendant Ocwen Loan Serving, LLC (“Ocwen”) and states as follows:

I. INTRODUCTION

1. The underlying matter involves just one of hundreds of other similar situations across the State where, through no fault of their own, homeowners are wrongfully threatened by knowing and willful mortgage servicing practices which

¹ A comparison copy of the changes made herein are attached as Exhibit 1.

² Pursuant to Fed. R. Civ. P. 15(a)(1)(B) Hastings is permitted “as a matter of course” to amend his original Complaint (“Doc. 2”) without the need for leave of the Court or consent of any other party. The Court has deemed the Defendant’s Notice of Filing of Notice of Removal, filed on July 14, 2014, as Defendant’s Answer. *See* Doc. 10. Therefore, this Amended Complaint is timely filed pursuant to Fed. R. Civ. P. 15(a)(1)(B) within 21 days of Defendant’s original Answer in this action.

misrepresent, misstate, and/or omit the true facts concerning the actual status of a consumer's loan. In these instances, such as the underlying matter involving Ocwen, the servicers place their interest above that of the homeowner and unfairly and deceptively ignore their statutory and contractual duties including those which were agreed to as part of their license to legally operate in the State of Maryland.

2. These practices are compounded when homeowners, like Hastings in this case, try in good faith to resolve the situation in reliance to their obligations but the servicer, i.e Ocwen, fails to act in good faith and intends to ignore the serious and material issues and merely willfully blinds itself to true status of the mortgage loan. After their reasonable efforts to mitigate their resolve their mortgage situations are simply ignored, homeowners like the Plaintiff who have reasonably relied on their obligations and performed their responsibilities are left with no other option but to seek the assistance of the Court.

3. The subject practices involved in this action include: (i) Ocwen's utter failure to timely credit Hastings' on-time and complete mortgage payments since he entered into a prior settlement agreement with it and relied upon Ocwen's promise to honor the settlement agreement; (ii) Ocwen's knowingly false and negative credit reporting of Hastings' loan as in default status to various credit reporting agencies when his mortgage loan was actually current (and so remains that way as of the filing of this Amended Complaint); (iii) Ocwen's improper demand for more monies (and failing to properly account for other monies received) than were actually due and owing with the intent that Hastings rely upon

its unfair and deceptive demands; (iv) Ocwen's inadequate responses to Hastings' inquiries required under federal and state law with the intent that Hastings would rely upon its false and misleading responses; and (v) Ocwen's improper threats of foreclosure, with the intent that Hastings would pay it more sums not contractually due, when Hastings was and has been at all-time relevant in this Complaint current on his mortgage obligation.

4. Had Ocwen performed the basic services required of a licensed Maryland mortgage servicer in timely collecting, posting, and crediting the payments made by Hastings since the prior settlement was reached and agreed to or even had conducted a bona fide investigation when Hastings contacted it, Hastings would not have suffered the damages and losses described herein that are the direct and proximate result of Ocwen's misrepresentations, misstatements, omissions, and unwise unfair and deceptive acts. Further, even after this action was commenced, (i) Ocwen has continued its knowingly false and deceptive pattern by threatening Hastings with force placing insurance on his mortgage account when it knows he is insured and there is no basis for it to access such charges and insurance on his property and mortgage account and (ii) it has continued to omit from its accounting all payments it has received and retained from Hastings.

5. Hastings' proximate damages and losses caused by Ocwen for the acts and omissions described herein include: (i) false and incorrect credit reporting to the major credit bureaus that Hastings was delinquent or in default on his mortgage loan when he was not; (ii) the improper assessment of late fees and other related

charges including, upon information and belief, those related to forced placed insurance, to his mortgage account which are not owed since Hastings has timely made all his payments since the prior settlement and he is fully insured on his home and property; (iii) costs incurred to make bona fide inquiries to Ocwen which it simply ignored; and (iv) significant emotional damages, with physical manifestations such as anxiety, stress, frustration, anger, and fear, for him and his family who are being wrongfully threatened with foreclosure while the loan is current.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C.A. § 1331 since certain of the claims asserted herein arise under the laws of the United States. This Court also has jurisdiction pursuant to 28 U.S.C.A. § 1332 since the amount in controversy exceeds \$75,000 and the parties are citizens of different states. Finally, the Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C.A. § 1367 since those claims are so related to the federal claims asserted herein that they form part of the same case and controversy.

7. Venue is appropriate in this Court pursuant to 28 U.S.C.A. § 1391 because a substantial portion part of the events or omissions giving rise to the claims before the Court occurred in this District. In addition, since this action commenced in the Circuit Court of Baltimore City, Maryland, where Ocwen

regularly conducts business in the State of Maryland, and was removed to this Court by Ocwen, venue in this Court is further appropriate pursuant to 28 U.S.C.A. § 1446.

PARTIES

8. Plaintiff Brian Hastings (“Hastings”) resides at 2923 Goat Hill Road in Bel Air, Maryland 21015 (“Property”).
9. Defendant Ocwen Loan Servicing, LLC (“Ocwen”) is a non-bank, Delaware Corporation licensed as a Maryland mortgage lender (i.e. license number 06-11269). Ocwen became the mortgage servicer for Hastings’ loan on September 1, 2013.
10. Not named as defendant in this action, Onewest Bank, FSB acted as the prior mortgage servicer of Hastings’ loan before Ocwen acquired its interest.
11. Not named as a defendant in this action, Fannie Mae is the owner of Hastings loan. However, by a recorded instrument in the land records for Harford County, Maryland (Liber 10520, Folio 60), Fannie Mae no further “beneficial interest” under the Deed of Trust related to Hastings’ mortgage loan subject to this action was which was conveyed to Ocwen on October 2, 2013. Hastings was not aware of the factual assertions in the recorded assignment until April 26, 2014. However, Fannie Mae still claims to own the Hastings Note as modified by Onewest and Ocwen. This conclusion is based upon a search of the MERS Servicer Id database on August 2, 2014 located at <https://www.mers->

servicerid.org/sis/investor, identifies Fannie Mae as the investor for Hastings' loan.

FACTS

A. THE FORECLOSURE & MORTGAGE CRISIS

12. Over the last six years, Maryland and the United States have been in the midst of a foreclosure crisis. Recent news reports have established that one in ten American homes is at risk of foreclosure. In response to this crisis and the factors that led to it, the Maryland General Assembly and the Maryland Governor has enacted and signed into law a number of new protections and requirements, including those identified herein, for so-called mortgage professionals and others involved in the mortgage lending process including Ocwen. In addition, Ocwen entered into a Consent Judgment in matter known as *CFPB v. Ocwen Financial Corp., et al.*, U.S.D.C. Dist. of Col., Case No. 1:13-cv-02025 (filed February 26, 2014) in which it knowingly agreed to a settlement term sheet (available at <https://d9klfgibkequc.cloudfront.net/Ocwen-Consent-Judgment-Ex-A.pdf>) that provides, among other responsibilities, that Ocwen should have “adequate and competent staff to answer consumer disputes promptly” and “take appropriate action to promptly remediate any inaccuracies in borrowers’ account information” “not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract’s requirements to maintain property insurance.”

13. The Court of Appeals has held that in light of these “public policy statements as exemplified by its recent enactments...a stricter adherence to the rules of procedure in mortgage foreclosure sales of residential property is required.” *Maddox v. Cohn*, 424 Md. 379, 393, 36 A.3d 426, 434 (2012). The same strict adherence applies to certain mortgage origination practices subject to this action as well.

B. THE DEFENDANT’S LEGAL DUTIES RELATED TO THE SUBJECT TRANSACTION

14. Under the Maryland common law, Ocwen owes the Plaintiff, as discussed *infra*, a duty of care due to the ‘intimate nexus’ which exists between the Plaintiff and each of the Defendant who is a licensed real estate professional. This ‘intimate nexus’ arises from the relation of a customer like the Plaintiff who relies upon the accuracy of the professional’s services to her. *See 100 Investment Limited Partnership v. Columbia Town Center Title Co.*, 60 A.3d 1 (2013); *Jacques v. First Nat’l Bank of Md.*, 307 Md. 527 (1986).

15. As a licensed Maryland mortgage lender (§ 9), Ocwen volunteered and agreed to accept as a condition of its license 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” to include a duty to “promptly” provide borrowers with an accounting of their loan when requested and to have “trained” employees on staff to “promptly answer and respond to borrower inquiries.” Md. Code Regs.

09.03.06.20. Hastings is a third party beneficiary of Ocwen's duty under Md. Code Regs. 09.03.06.20.

16. 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).
17. Ocwen intended that Hastings would rely upon its representations and omissions of material fact and Hastings would pay it sums it claimed due.
18. Because it was a party to resolving the Prior Litigation (defined in ¶¶ 20-21, *infra*), Ocwen owed Hastings a special duty of care and knew of the prior servicing issues Hastings had encountered and the effect certain practices would have upon him in the future if it failed to implement the terms of the parties agreement(s) and promises to each other.

C. BACKGROUND ON THE RELEVANT FACTS RELATED TO THE PLAINTIFF'S MORTGAGE WHICH IS SERVICED BY THE DEFENDANT

19. Hastings borrowed the sum of \$240,000 from IndyMac Bank, FSB on or about November 7, 2007 ("Hastings Note"). This mortgage loan was for his home and Property was secured by a Deed of Trust to which Ocwen now claims "all beneficial interest." See ¶ 9, *supra*.

20. A dispute arose concerning the serving of Hastings' Note before September 2010 and was litigated for nearly three years in the Circuit Court for Harford County and the United States District Court for the District of Maryland (Case No. 1:10-cv-3375-GLR)("Prior Litigation").
21. Ocwen acquired the servicing rights of the Hastings Note on September 1, 2013. As of September 24, 2013 and again on October 10, 2013 Ocwen and Hastings agreed that Hastings was then current on the Hastings Note and entered into a Settlement Agreement (signed and agreed to by Ocwen's authorized representative on October 11, 2013 and Ocwen's counsel on October 14, 2013 and by Hastings and his counsel on October 2, 2013). Hastings reasonably relied upon Settlement Agreement and trusted that Ocwen would honor the agreement as any other reasonable person would do so as thereafter fulfilled his obligations under the Hastings Note as modified by the parties and Ocwen's predecessor Onewest and Fannie Mae.
22. As of September 24, 2013 and again on October 10, 2013 Ocwen calculated the escrow sum due with each monthly payment due under the Hastings Note in the sum of \$292.12. Hastings reasonably relied upon these calculations and agreed to enter into the Settlement Agreement based upon Ocwen's stated proposal.
23. None of the claims, damages, or losses asserted herein arose during or before to the Prior Litigation. The facts and claims at issue herein arose subsequent to October 10, 2013.

24. Subsequent to October 10, 2013, Hastings, in reliance to Ocwen's agreements with him and its duties and responsibilities described *supra*, made regular on-time payments due under the Hastings Note as modified and agreed to by Ocwen. The payments are due on the 1st day of each month in the sum of \$972.93 plus the appropriate escrow for taxes and insurance. A summary of Hastings on-time payments to Ocwen is as follows:

Month Payment Applied To	Amount of Monthly Payment	Date Payment Sent by Hastings	Date Payment Received
November 2013	1400.05	10/24/13	10/28/13
December 2013	1400.05	11/27/13	11/30/13
January 2014	1400.05	12/26/13	12/30/2013
February 2014	1400.05	1/28/14	1/29/14
March 2014	1400.05	2/27/14	2/28/14
April 2014	1400.05	3/21/14	3/24/14
May 2014	1400.05	4/29/14	4/30/14
June 2014	1400.05	5/28/14	5/29/14
July 2014	1400.05	6/28/14	6/30/14
August 2014	1400.05	7/30/14	7/31/14

25. Despite Hastings' on-time and full payments due under the Hastings Note as modified for the periods subject to this complaint (which have been collected and retained by Ocwen), as described in the preceding paragraph, Ocwen

knowingly failed to give Hastings credit for the on-time payments which he tendered to the addresses required by Ocwen during all relevant periods subject to this action.

26. The monthly payments identified in ¶ 24 that were made by Hastings include an additional payment of approximately \$135.00 more than what is contractually due and owing on the Hastings Note as modified. Hastings has included a statement with each payment directing Ocwen to apply the additional, approximate sum of \$135 toward his principal sum of the Hastings Loan. Hastings relied upon Ocwen's duty under Maryland law that it would timely and appropriately credit all his payments.

27. Because of his experiences in the Prior Litigation and the ongoing issues described herein related to Ocwen since the Prior Litigation, Hastings sent each of the payments identified in ¶ 24 and thereafter by registered mail and incurred the extra expense of sending his on-time payment by that method to prove that Ocwen received his payment and the day it received the payment. This expense is approximately \$28.00 per payment and on-going.

28. On December 20, 2013 Ocwen knowingly wrote to Hastings, with the intent that he would rely upon its statement(s), and misstated and misrepresented to him that it had not received his mortgage payments for the months of October through December 2013 when it had actually received the tendered payments.

29. In the December 20, 2013 letter Ocwen falsely and deceptively demanded (invalid) sums from Hastings which were not due as he was current on the

Hastings Note (as modified pursuant to the Settlement Agreement) including demands for:

- \$3,734.31 in Payments
- \$3,234.81 in Late Charges
- \$267,565.64 in Fees, costs, and other

30. In the December 20, 2013 letter Ocwen threatened to proceed to foreclosure and other late fees and costs when it knew it did not have the right to do so because Hastings was current with Ocwen on the Hastings Note.

31. In the December 20, 2013 letter Ocwen also falsely represented that Hastings could only avoid a foreclosure sale if he paid the total sum it (invalidly) claimed due on the Hastings Note at least five days before the foreclosure sale. Maryland law actually permits Hastings the right to reinstate up to 24 hours before a foreclosure sale.

32. In the December 20, 2013 letter Ocwen threatened to invalidly report to the credit bureaus and others negative information about Hastings, with the intent that others would rely on the false information, even though it knew he was current on the Hastings Note and had not missed any required payments.

33. Ocwen's December 20, 2013 threats described in detail in ¶¶ 28-32, *supra*, were materially false, misleading, willful, and knowing since Ocwen had agreed just weeks before that Hastings was current on the Note and it had accepted his on-time and full payments he had tendered to it since that agreement to resolve the Prior Litigation was reached.

34. On or about December 27, 2013, Ocwen sent to Hastings another letter regarding his escrow payments related to the Hastings Note that it intended for him to rely upon. In this correspondence Ocwen falsely claimed that his escrow balance was short the sum of \$1,097.53 even though it knew it had just calculated the true sum due just a few weeks before as part of the Settlement Agreement. In addition, this correspondence unfairly and deceptively appeared to concern retroactively certain payments already made by Hastings concerning the Hastings Note for October through December 2013 pursuant to the Settlement Agreement and was otherwise incomprehensible except that it falsely claimed a shortage where no shortage existed but for Ocwen's apparent breach of the sums it had agreed would be due and owing under the Settlement Agreement.

35. In a good faith attempt to inquire as to why Ocwen was in error as to the status of his mortgage loan and in reasonable reliance that Ocwen would comply with its statutory and regulatory duties to correct its knowing errors, Hastings wrote to Ocwen on or about January 24, 2014 for two specific purposes permitted under the law:

- Pursuant to the Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-316(c), Hastings informed Ocwen of some of his losses and damages sustained as a result of Ocwen's improper demands for sums not contractually due by him and requested a full accounting of his loan and Ocwen's processing of his payments since his September 2013 modification was agreed to by Ocwen and Hastings; and

- Pursuant to the Real Estate Settlement Procedures Act and 12 CFR Section 1024.35 of Regulation X, Hastings requested an accounting of his loan, the payments he had made to Ocwen since the September 2013 modification was agreed to by Ocwen and Hastings, and an explanation as to errors made by Ocwen and if Ocwen claimed it made no errors a statement of reasons why it made such a determination.

36. On or about February 11, 2014, Ocwen acknowledged receipt of Hastings' letters of inquiry by written correspondence. Ocwen promised to provide a written response within 20 days from the receipt of Hastings' letters of inquiry.

37. On or about February 13, 2014, Ocwen knowingly responded to Hastings inquires by falsely, deceptively, unfairly, misstating and misrepresenting to him that that it never threatened foreclosure against him. Ocwen also knowingly ignored his bona fide inquires and chose instead to provide information concerning Hastings' prior loan with Ocwen for which he had not requested any information.

38. On or about February 14, 2014, Ocwen knowingly responded to Hastings inquires by falsely, deceptively, unfairly, misstating and misrepresenting by response letter the loan history of Hastings' prior loan with Ocwen which he had not requested any information.

39. Ocwen failed to provide any of the information requested by Hastings in his January 24, 2014 letters under RESPA and the MCPA.

40. On or about March 17, 2014, Ocwen knowingly sent Hastings a Mortgage Account Statement which was false and misleading because it claimed: (i) no principal and interest payments had been made on the Hastings Note by Hastings which had actually been made from November 2013 through March 2014; (ii) past due fees and other charges were due when they were not; and (iii) Hastings made an escrow payment of \$577.89 on March 1, 2014 when in fact the escrow portion of his March payment that was actually made was approximately \$292.12.
41. On or about May 17, 2014 Ocwen knowingly sent Hastings a false and misleading letter it intended for him to rely upon which alleged, “Our records show that your hazard insurance expired, and we do not have evidence that you have obtained new coverage. **Because hazard insurance is required on your property, we plan to buy insurance for your property.** You must pay us for any period which the insurance we buy is in effect by you do not have insurance” (emphasis in original).
42. Ocwen knew the allegation made in its May 17, 2014 letter described in the preceding paragraph was false and misleading because it received notice of Hastings’ renewal of insurance, effective May 8, 2014, from USAA Financial Planning Services Insurance Agency, Inc. (“USAA”) on or about March 10, 2014. Further, USAA provided notice of the change in the mortgagee clause (in the name of Ocwen) to Ocwen on or about April 28, 2014. In reliance to Ocwen’s false claim, Hastings took time to investigate his insurance situation and

confirmed the facts describe herein with Barbara L. Whetman of USAA on July 14, 2014.

43. On or about June 18, 2014 (after this action had commenced), Ocwen knowingly sent Hastings a Mortgage Account Statement which was false and misleading because it claimed, among other issues, that Hastings had only paid it a total of \$4,200.15 through that date when in fact Hastings had actually paid and Ocwen had received no less than \$7,000.25 in 2014 (not including his January payment which Ocwen received on December 30, 2013)(apparently Ocwen is continuing to fail to credit Hastings for payments it has received).

D. Additional Damages and Losses for Hastings

44. The material omissions, misstatements, misrepresentations, false statements and otherwise unfair and deceptive acts of Ocwen which it intended for Hastings and others rely upon and concerns the matters described above have caused actual damages to Hastings. These damages and losses, detailed herein, include loss of time from work (opportunity to work) and out of pocket costs to communicate with Ocwen in a good faith attempt to investigate the matter and send Ocwen inquiries in an attempt to reasonably mitigate the situation as well as sending his payments to Ocwen on a timely basis through certified mail or express mail with a green, return card to ensure the payment was received.
45. Hastings is entitled to certain statutory damages.
46. Hastings has also suffered significant non-economic damages and losses related to the stress and emotional damages caused by Ocwen's acts and

omissions. As a result of the emotional damage caused by Ocwen's unfair and deceptive practices and misstatements discussed above:

- a. Hastings has suffered severe anxiety and worry which has manifested itself in worry, fright and reasonable anger that Ocwen did not intend to honor its agreements with him and simply wished to proceed on a path of taking his home and property from him even though he was current on the Hastings Note.
- b. Hastings' stress as a result of Ocwen's actions has also been exacerbated by poor sleep and restlessness.
- c. Hastings' stress has also caused him to be embarrassed that even after three prior years of litigation the resolution he had envisioned has not materialized but for Ocwen's acts and omissions described herein.

COUNT I
VIOLATION MARYLAND'S CONSUMER PROTECTION ACT ("MCPA"),
Md. Code Ann., Com. Law §13-101 *et seq.*
&
MARYLAND'S CONSUMER DEBT COLLECTION ACT ("MCDCA")
Md. Code Ann., Com. Law § 14-201

47. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
48. The mortgage loan servicing and origination practices described herein related to Ocwen, as set forth herein, are governed by the Consumer Protection Act, Md. Code Ann., Com. Law. § 13-101, et seq.
49. Section 13-303 prohibits unfair or deceptive trade practices in the extension of consumer credit or collection of consumer debts. The mortgage servicing and

collection of Hastings' mortgage payments by Ocwen and the threatened foreclosure involves both the extension of credit and the collection of consumer debts.

50. Section 13-303 also prohibits unfair or deceptive trade practices in the sale or provision of consumer services, such as those performed by Ocwen.

51. The Maryland Consumer Protection Act defines unfair or deceptive trade practices to include, inter alia, the following:

(a) False, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind which has the capacity, tendency or effect of deceiving or misleading consumers; and (b) Failure to state a material fact if the failure deceives or tends to deceive.

Md. Code Ann., Com. Law § 13-301(1) and (3)

52. Ocwen failed to state material facts directly and indirectly through authorized agents and employees or otherwise misstated, misrepresented, or omitted the true facts concerning or related to the status of the Hastings Loan that tended to deceive and did in fact deceive Hastings in violation of Md. Code Ann., Com. Law § 13-301(3) including those described *supra* in ¶¶ 2-4, 20-22, 25, 28-34, 37-41, 43.

53. Ocwen's deception, fraud, false premise, misrepresentations, and knowing concealment and omission of material facts from Hastings with the intent that he rely upon the same during the serving of his loan and related consumer services also violated Md. Code Ann., Com. Law § 13-301(9) as described *supra* in ¶¶ 2-4, 20-22, 25, 28-34, 37-41, 43. It is unreasonable to conclude that a licensed

mortgage servicer does not intend for its customers to rely upon the statements and letters it sends to them about their account—especially when the servicer refuses to acknowledge its errors but simply ratifies them by its continued conduct like Ocwen in this matter.

54. Hastings reasonably relied upon the material acts and actions of Ocwen as exemplified by ¶¶ 2-4, 21-22, 24, 26, 35, 42. Ocwen also intended for Hastings to rely upon its promises, misstatements, omissions, and misrepresentations as described *supra* in ¶¶ 3, 17, 28, 32, 34, 41.
55. Had the Ocwen not acted unfairly and deceptively, Hastings would not have suffered the damages and losses he has proximately sustained as exemplified by ¶¶ 5, 25, 27, 39-41.
56. Hastings has pled sufficient facts to put Ocwen on notice as to the claims against it as exemplified by ¶¶ 21-22, 24, 28-43 (i.e. dates of key acts and representations of the Defendant), ¶¶ 24-25, 28-34, 36, 38, 40-43 (i.e. methods of key acts and false statements of the Defendant), and ¶¶ 12, 14-18 (i.e. the regulatory, statutory, and special duties of the Defendant which were simply ignored and thereby infected the subject transaction to ensure its failure and breached the Settlement Agreement).
57. Ocwen also failed to respond to Hastings' inquiry in the time period required by Md. Code Ann., Com. Law § 13-316(c) since its response never answered the actual inquiry Hastings presented to it.

58. A violation of the MCDCA is also a *per se* violation of the MCPA. Md. Code Ann., Com. Law § 13-301(14)(iii).

59. The MCDCA prohibits “[i]n collecting or attempting to collect an alleged debt” by a collector such as Ocwen any “[c]laim, attempt, or threat[] to enforce a right with knowledge that the right does not exist.” Md. Code Ann., Com. Law § 14-202(8).

60. Ocwen, directly and indirectly, claimed certain sums (i.e. invalid debts) due from Hastings that it knew were not in fact due and owing as described in ¶¶ 28-34, 40-41, 43. At all times relevant herein Hastings was current on the Hastings Note (as modified by Ocwen and Onewest) and there was no basis whatsoever for Ocwen to threaten Hastings with foreclosure or negative credit reporting or claim he owed sums which were not contractually due and owing or force placing insurance on his Property and mortgage account.

61. Ocwen’s conduct and omissions, as set forth above, had the capacity, tendency or effect to deceive and unfairly or deceptively harm Hastings, who has suffered economic and non-economic damages (including emotional distress and mental anguish). These damages are also more fully described in ¶¶ 4-5, 27, 43, 44-46.

WHEREFORE, Plaintiff respectfully requests the Court enter judgment pursuant to the MCPA and/or MCDCA in favor of Plaintiff and against Ocwen for actual damages and losses (including economic and non-economic) of not less

than \$125,000; costs and attorney's fees incurred by Plaintiff; and grant Plaintiff such other and further relief as this court finds necessary and proper.

COUNT II
VIOLATION OF THE MARYLAND MORTGAGE FRAUD PROTECTION ACT,
Md. Code Ann., Real Prop. §§ 7-401, et seq.
(Against All Defendants)

62. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
63. The Maryland Mortgage Fraud Protection Act (“MMFPA”), Md. Code Ann., Real Prop. § 7-401, et. seq., governs the relationship between Defendant Ocwen and Plaintiff Hastings.
64. Md. Code Ann., Real Prop. § 7-401(c) provides: “Homeowner” means a record owner of residential real property. The Plaintiff is record owner of the Property in question and is therefore a Homeowner.
65. Md. Code Ann., Real Prop. § 7-401(e) provides: “Mortgage lending process... include[s] [t]he solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan.”
66. Md. Ann. Code, Fin. Inst. § 11-501(l) provides: “‘Mortgage loan’ means any loan or other extension of credit that is: (i) secured, in whole or in part, by any interest in residential real property in Maryland; and (ii) for personal household or family purposes, in any amount.”
67. The MMFPA works to protect the interests of all parties to mortgage transactions in Maryland from misstatements, misrepresentations and omissions.

In this instance, the MMFPA works to protect borrowers like Hastings from mortgage companies and so-called professionals like Ocwen to ensure a level, fair playing field between all borrowers and professionals.

68. The Plaintiff is a homeowner in the Mortgage Lending Process as defined by the MMFPA since the actions in dispute in this lawsuit involve the negotiation and servicing of his residential mortgage loan with Ocwen.

69. Md. Code Ann., Real Prop. § 7-401(d) provides:

“Mortgage fraud” means any action by a person made with the intent to defraud that involves:

1. Knowingly making any deliberate misstatement, misrepresentation or omission during the mortgage lending process with the intent that the misstatement, misrepresentation or omission be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;
2. Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.
3. Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1) or (2) of this section;
4. Conspiring to violate any provisions of item (1), (2), or (3) of this section...

70. Ocwen’s knowing conduct and intention to defraud Hastings is demonstrated by its: bad faith as exemplified in ¶¶ 25, 28-34, 37-39, 40-43; dishonest statements and reckless indifference exemplified in ¶¶ 28-34, 38-39, 41-43; deliberate disregard of the consequences exemplified in ¶¶ 5, 18, 27, 43, 44-46; and willful refusal to know the true facts as exemplified in ¶¶ 36-39, 43.

71. As a result of Ocwen's knowingly deceptive and untrue communications and misstatements and omissions (¶¶ 2-4, 20-22, 25, 28-34, 37-41, 43), Plaintiff has suffered economic and noneconomic damages (¶¶ 4-5, 27, 43, 44-46).

WHEREFORE, Plaintiff respectfully requests the Court enter judgment pursuant to the MMFPA in favor of Plaintiff and against Defendant for: actual damages of not less than \$125,000; treble damages against the Defendant pursuant to Md. Code Ann., Real Prop. § 7-406(c), costs and attorney's fees incurred by Plaintiff; and grant Plaintiffs such other and further relief as this court finds necessary and proper.

COUNT III

Negligence as an Alternative Claim to Counts I, II & V

72. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.

73. Plaintiff brings this claim in the alternative pursuant to Fed. R. Civ. P. 8(d)(2)

74. Ocwen owed Hastings multiple duties of care in the servicing of his mortgage loan (*see* ¶¶ 12, 14-18, *supra*).

75. Ocwen negligently serviced and represented the true status of Hastings' loan as summarized and detailed in ¶¶ 2-4, 20-22, 25, 28-34, 37-41, 43, *supra*.

76. If the fact finder finds that the various statements, omissions, and representations of Ocwen described *supra* (*see* ¶¶ 2-4, 20-22, 25, 28-34, 37-41, 43) were not intentional, knowing, and/or willfull but finds instead they were

negligent, Hastings suffered damages as a proximate result of Ocwen's negligent acts and omissions as described in ¶¶ 4-5, 27, 43, 44-46.

WHEREFORE, Plaintiff respectfully requests the Court alternatively to the relief request in Counts I, II, and V enter judgment in favor of Plaintiff and against Defendant for its negligence in the sum of his actual damages of not less than \$125,000, costs and attorney's fees incurred by Plaintiff; and grant Plaintiffs such other and further relief as this court finds necessary and proper.

COUNT IV
VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT,
12 U.S.C.A. § 2605, 12 C.F.R. § 1024.35

77. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
78. Ocwen was required to respond to Hastings Qualified Written Request (¶ 35) within five days of receipt of the letter. 12 U.S.C.A. § 2605(e)(1)(A). However, Ocwen failed to timely acknowledge receipt of the Hastings QWR even though Hasting's QWR had sufficient information for Ocwen to identify the loan subject to the request.
79. Hastings' QWR (¶ 35) informed Ocwen of several issues he believed were in error in Ocwen's records including but not limited to:
- His belief that Ocwen had failed to apply his payments which were accepted by it since the Parties had entered into their prior agreements as of the date of receipt by it or its authorized agent(s). 12 C.F.R. §

1024.35(b)(2)(3).

- His belief that Ocwen had accessed improper fees or charges without a basis to do so since he was current and had made on time and timely payments. 12 C.F.R. § 1024.35(b)(5).

80. Ocwen was required to investigate Hastings' notice of error. 12 C.F.R. § 1024.35(e)(1)(i). However, by its response, Ocwen failed to do any investigation and instead knowingly elected to manufacture a false and misleading response to Hastings' actual inquiry—i.e. it responded inappropriately by knowingly stating it investigated a different loan not even subject to the QWR and therefore it conducted no timely investigation whatsoever to the actual QWR Hastings sent it.

81. Ocwen was required to correct the errors identified in the Hastings QWR (§ 33) and notify Hastings that in writing that it had done so. 12 U.S.C.A. § 2605(e)(2)(A). However, Ocwen failed to make any corrections to its servicing records related to the Hastings' loan and notify Hastings in writing whatsoever. Instead, it knowingly responded related to a completely different loan which was not even subject a QWR from Hastings.

82. Ocwen has never apologized to Hastings for its errors in writing or otherwise.

83. Upon information and belief Ocwen has a pattern and practice of noncompliance with the requirements of 12 U.S.C.A. § 2605 for borrowers like Hastings as well as a failure to apologize for its errors. This belief is based Hastings' own experience with Ocwen and based upon public complaints, reports, and investigations of Ocwen by various state and federal agencies including but

not limited to the following:

- The Consumer Financial Protection Bureau and 48 states and the District of Columbia alleged in a public complaint against Ocwen (*see CFPB v. Ocwen Financial Corp., et al.*, U.S.D.C. Dist. of Col., Case No. 1:13-cv-02025 (filed December 19, 2013)(ECF/Doc. 1)), that it engaged in the “acts and practices...[of] providing false and misleading information in response to borrower complaints.” *Id.* at ¶ 20(d).
- A complaint filed in this Court in the matter styled *Galante v. Ocwen Loan Servicing LLC*, Case No. 1:13-cv-01939-ELH, alleging that Ocwen failed to make corrections to certain errors related to the crediting of payments and failing to timely respond to notice of errors (see Complaint (Doc. 1) pursuant to RESPA at ¶¶121-128).³
- A complaint filed in this Court in the matter styled *Daggett, et al. v. Ocwen Loan Servicing LLC*, Case No. 1:14-cv-01602-RDB, alleging that Ocwen failed to fully respond to plaintiffs’ QWR(s) (see Complaint (Doc. 1) pursuant to RESPA at ¶¶ 97-101).
- The recent decision in *Lacey v. Ocwen Loan Servicing, LLC*, 6:13-CV-1418-EFM-KMH, 2014 WL 2885471, *3 (D. Kan. June 25, 2014)(“Plaintiff alleges sufficient facts to withstand a motion to dismiss. Plaintiff alleges that he sent qualified written requests to both Ocwen and GMAC. Furthermore, Plaintiff alleges that Ocwen and GMAC ‘did not make appropriate corrections to the account’ and ‘did not provide a written explanation or clarification’ to his inquiry. Plaintiff alleges he had actual damages of emotional distress. This is sufficient to satisfy the actual damage requirement”).

³ Judge Hollander dismissed the Plaintiffs’ claim under RESPA in *Galante* because the Plaintiffs’ had not alleged any facts, unlike this Amended Complaint, to state a cause of action since the plaintiffs (i) appeared merely dissatisfied with the response they received about their current loan, (ii) failed to identify any failure to comply with 12 U.S.C.A § 2605(e) by Ocwen; and (iii) failed to adequately plead allege any “pattern or practice” necessary for an award of statutory damages and apparently did not seek actual damages pursuant to RESPA. *See Galante v. Ocwen Loan Servicing LLC*, Case No. 1:13-cv-01939-ELH (Memorandum Op. [Doc. 12] at Pages 53-57.

- A complaint filed in the United States District Court for the District of Connecticut in the matter known as *Brown, et al. v. Ocwen Loan Servicing, LLC*, Case No. 3:14-cv-00644-RNC detailing Ocwen's pattern of non-compliance--i.e. failing to timely and properly respond to QWRs—related to five named plaintiffs (see Complaint (ECF/Doc. 1) pursuant to RESPA at ¶¶64-68).

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in favor of Plaintiff and against Defendant for its violations of 12 U.S.C.A. § 2605 and implementing regulations in the sum of his actual damages of not less than \$125,000, statutory damages in the sum of \$2,000, costs and attorney's fees incurred by Plaintiff; and grant Plaintiffs such other and further relief as this court finds necessary and proper.

COUNT V

TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONSHIP

84. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
85. Hastings and Fanie Mae have agreed to contractual terms on the Hastings Note as modified. As the authorized servicer of the Hastings Note as retained by Fannie Mae, Ocwen is aware of Hastings Note as modified.
86. Hastings has timely and fully performed all his obligations and requirements to Fannie Mae under the Hastings Note since the completion of the Prior Litigation.
87. However, with knowledge that Hastings had completely and fully complied with his obligations to Fannie Mae under the Hastings Note since the completion of the Prior Litigation and even after this action has commenced, Ocwen has

without legal justification intentionally, willfully, and improperly attempted to interfere with Hastings's and Fannie Mae's contract under the Hastings Note as modified as explained as follows:

- Ocwen knowingly and falsely claimed to Hastings that he owed sums due on the Hastings Note that were not in fact due and owing by Hastings.
- Even after Hastings notified Ocwen of its errors and incorrect data and the commencement of this lawsuit, it knowingly and falsely continued to induce Hastings to breach his obligations.
- Since Hastings has been correct at all times on his obligations, relevant for this action, under the Hastings Note as modified, Ocwen had no justification to claim that Hastings owed sums not validly due and owing.

88. Ocwen understood at all times subject to acts described herein, based on its servicing agreement with Fannie Mae, that if it could induce Hastings into defaulting upon the Hastings Note that it might realize certain additional benefits to itself through its improper assessments of fees and costs and force placing insurance upon Hastings Note and related mortgage account to which it would receive a portion as it collected from Hastings his payments.

89. Ocwen's improper motive, intent to injure Hastings, ill will, or otherwise fraudulent intent is described and demonstrated in ¶ 70 and includes its acts and omissions even after Hastings put it on notice of its errors but it did not correct them but simply continued to knowingly make false assertions after Hastings' economic relationship with Fannie Mae—including those made even after the

commencement of this action.

90. As a result of the conduct of Ocwen, Hastings has sustained damages and harm to his reputation as described herein as well as consequential damages and losses. He is also entitled to punitive damages.

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in favor of Plaintiff and against Defendant in the sum of his actual damages of not less than \$125,000, punitive damages, costs and attorney's fees incurred by Plaintiff; and grant Plaintiffs such other and further relief as this court finds necessary and proper.

COUNT VI

BREACH OF SETTLEMENT AGREEMENT

91. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.
92. Ocwen, along with Onewest, offered to enter into a binding contract—i.e. a Settlement Agreement—with Hastings to resolve his dispute related to the Prior Litigation.
93. Hastings accepted Ocwen's offer in good faith and dismissed his then pending claims in the Prior Litigation.
94. Ocwen has materially breached the terms of the Settlement Agreement that it entered into with Hastings in October 2013 by claiming sums due from Hastings not permitted by the Settlement Agreement, threatening foreclosure and force placing insurance when it had no right to do so, and failing to timely accept and

credit Hasting's payments.

95. Hastings has suffered damages as a result of Ocwen's breaches of the Settlement Agreement as described herein.

WHEREFORE, Plaintiff respectfully requests the Court enter judgment in favor of Plaintiff and against Defendant Ocwen for: nominal and actual damages and losses in the sum of no less than \$125,000; and grant Plaintiff such other and further relief as this court finds necessary and proper.

Respectfully Submitted,

 //s//

Phillip R. Robinson

Jesse Iliff

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Silver Spring, MD 20910

Phone (301) 637-6270

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing of the foregoing Amended Complaint was sent by the Court's ECF system to all parties and counsel of record when filed with the Court.

//s//

Phillip Robinson

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BRIAN HASTINGS

Plaintiff

v.

OCWEN LOAN SERVICING LLC

Defendant

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Case No.: 1:14-cv-02244-GLR



OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

Respectfully submitted,

//s//

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Plaintiff Brian Hastings (“Plaintiff” or “Hastings”), by his undersigned counsel, does hereby oppose Defendant Ocwen Loan Servicing LLC’s (“Defendant”) Motion to Dismiss (ECF. 20)(“Motion to Dismiss”) his Amended Complaint (“AC”) (ECF. 16) in this action and says:

I. INTRODUCTION

After several years of prior, contentious litigation and what was anticipated as final resolution nearly a year ago to Hasting’s dispute with the owner of his mortgage loan and its assigned mortgage servicers. Hastings has performed all that was required of him by the settlement. However, Ocwen knowingly breached the terms of the settlement agreement and attempted to induce a breach of the loan modification agreed to by it just weeks before. In good faith Hastings wrote to Ocwen and asked it to correct its errors but Ocwen simply ignored the notice and manufactured a response which was not even related to Hastings’ dispute. Ocwen has claimed continued to make material, misstatements, misrepresentations, and omissions about the true facts related to Hastings’ mortgage loan to him with the intent that he rely upon its acts. Even after this matter commenced, Ocwen continued to represent to Hastings that it had not received certain sums of money from him that it knew he had paid and it had accepted and retained.

But for Ocwen’s acts and omissions, Hastings would not have sustained the damages claimed herein (which have arisen since the prior action). These injuries and losses have only increased by Ocwen’s inability and unwillingness to correct its clear errors and apparent decision to willfully blind itself to the true facts when Hastings made it aware of the errors. The Motion to Dismiss the Amended Complaint addresses this point exactly, since Ocwen makes arguments and presents issues not even properly before the Court and simply misstates the well-pled facts before the Court. For example, if Ocwen truly believed, as it argues in its motion to dismiss, that any of its written statements, representations, and omissions that are specifically identified and are

integral to Hastings' claims before the Court are non-actionable, then why did it elect not to present them in support of its motion and so argue to the Court?

The likely answer is telling; either Ocwen does not have copies of the offending communications to support its version of events or it wishes for the Court to simply assume its view and believe that a national mortgage lender could never have committed the acts and omissions alleged by Hastings. Respectfully, at the motions to dismiss stage the Court should deny Ocwen's invitation to rewrite the well-pled complaint and the motion should be denied and this action should proceed in the normal course.

II. SUMMARY OF WELL-PLED FACTS

While there are many interesting facts in this case, only the following facts, more fully set forth in Plaintiff's Amended Complaint, are relevant to Defendant's Motion to Dismiss.

Ocwen and Hastings entered into a Settlement Agreement and Loan Modification of his mortgage note with Fannie Mae. (AC ¶21). The Settlement Agreement was signed and agreed to by Ocwen's authorized representative on October 11, 2013 and Ocwen's counsel on October 14, 2013 and by Hastings and his counsel on October 2, 2013. (*Id.*) The Hastings reasonably relied on Ocwen to perform under the Settlement Agreement and Loan Modification. (AC ¶¶ 17, 21-22, 24-25). Ocwen owes a common law duty of care to Hastings due to the intimate nexus between them, and Hastings' reasonable reliance upon Ocwen's representations as a real estate professional tendering services to him. (AC ¶14). Moreover, Ocwen voluntarily accepted a duty of good faith and fair dealing with Hastings and other borrowers like him as a condition of its license and a Maryland mortgage lender. (AC ¶15). Ocwen also owes a statutory duty of care to Hastings under the Maryland Consumer Protection Act ("MCPA") to make a "reasonable investigation" of the facts of a real estate transaction. (AC ¶16).

Ocwen had calculated Hastings' monthly escrow payment under his modified mortgage note to be \$292.12. (AC ¶22). Hastings reasonably relied on Ocwen to have accurately calculated this payment, and counter-signed the Settlement Agreement and Loan Modification based on that reliance. (*Id.*).

After execution of the Settlement Agreement and Loan Modification, Hastings performed his duties under it by making regular, timely and accurate payments to Ocwen. (AC ¶24). Notwithstanding Hastings' performance under the Settlement Agreement and Loan Modification, Ocwen knowingly failed to accurately credit Hastings' account to reflect his timely and complete payments. (AC ¶25). Ocwen has a duty under Maryland law to timely and accurately credit properly tendered payments. (AC ¶26).

Ocwen sent Hastings a deceptive and misleading letter on December 20, 2013, intending that he rely on it, stating that Ocwen had not received his payments made subsequent to the Settlement Agreement (AC ¶28) (Exhibit 1);¹ demanding sums not actually due under Hastings' note as amended by the Loan Modification (AC ¶29); improperly threatening foreclosure and assessing bogus late fees (AC ¶30); falsely claiming amounts due and misstating Hastings' rights under Maryland law with respect to his ability to reinstate the loan (AC ¶31); and improperly threatening to report false information to the credit bureaus regarding Hastings' loan payment history and creditworthiness, with the intent that such false information be relied upon by Hastings and others (AC ¶32). Ocwen knew that its misrepresentations and misstatements were false and deceptive, since it had represented to Hastings just weeks prior to the December 20, 2013 letter

¹ Exhibits 1-10 attached hereto may be considered by the Court without converting the Defendant's motion to one for summary judgment since each are integral to and explicitly relied upon in the Amended Complaint.

that he was current on his loan, and because it accepted his payments as they were tendered. (AC ¶33).

On or about December 27, 2013 Ocwen sent Hastings another letter, with intent that he rely upon it, falsely claiming that his escrow balance was short the sum of \$1,097.53 even though Ocwen knew the true sum due because it had just calculated that sum a few weeks before as part of the Settlement Agreement. (AC ¶34) (Exhibit 2).

In good faith Hastings wrote to Ocwen on or about January 24, 2014 to resolve these errors and exercise his rights under the the Real Estate Settlement Procedures Act and the Maryland Consumer Protection Act. (AC ¶ 35) (Exhibits 3 and 4). Hastings advised Ocwen of its errors in failing to comply with the Settlement Agreement and Loan Modification and certain of his losses and injuries sustained as a result of Ocwen's improper demands for sums not contractually due from him. (*Id.*) Hastings also requested a full accounting of his loan and Ocwen's processing of his payments since his September 2013 modification was agreed to by Ocwen, and requested an accounting of his loan, the payments he had made to Ocwen since the September 2013 modification was agreed to by Ocwen and Hastings, and an explanation as to errors made by Ocwen and if Ocwen claimed it made no errors a statement of reasons why it made such a determination. (*Id.*).

Ocwen did not acknowledge receipt of Hasting's inquiries until February 11, 2014. (AC ¶36) (Exhibit 5). On February 13, 2014 Ocwen knowingly responded to Hastings inquires by falsely, deceptively and unfairly misstating and misrepresenting to him that that it never threatened foreclosure against him. Ocwen also knowingly ignored his bona fide inquires and chose instead to provide information concerning Hastings' prior loan with Ocwen for which he had not requested any information. (AC ¶37) (Exhibit 6). On or about February 14, 2014, Ocwen knowingly

responded to Hastings inquires by falsely, deceptively, unfairly, misstating and misrepresenting by response letter the loan history of Hastings' prior loan with Ocwen, for which he had not requested any information. (AC ¶38) (Exhibit 7). Ocwen never provided any of the information sought by Hastings in his January 24, 2014 letters under RESPA and the MCPA. (AC ¶39).

Even after receipt of Hastings' January 24, 2014 letters, Ocwen continued to send materially false and deceptive information to Hastings with the intent that he rely on same, including on or about March 17, 2014, when Ocwen knowingly sent Hastings a Mortgage Account Statement, it intended him to rely upon, which was false and misleading because it claimed: (i) no principal and interest payments had been made on the Hastings Note by Hastings which had actually been made from November 2013 through March 2014 (AC ¶ 24); (ii) past due fees and other charges were due when they were not; and (iii) Hastings made an escrow payment of \$577.89 on March 1, 2014 when in fact the escrow portion of his March payment that was actually made was approximately \$292.12. (AC ¶¶ 24, 40) (Exhibit 8).

Also, on or about May 17, 2014 Ocwen knowingly sent Hastings a false and misleading letter it intended for him to rely upon which alleged, "Our records show that your hazard insurance expired, and we do not have evidence that you have obtained new coverage. **Because hazard insurance is required on your property, we plan to buy insurance for your property.** You must pay us for any period which the insurance we buy is in effect by you do not have insurance" (emphasis in original). (AC ¶41) (Exhibit 9). Ocwen knew the allegation made in its May 17, 2014 letter described in the preceding paragraph was false and misleading because it received notice of Hastings' renewal of insurance, effective May 8, 2014, from USAA Financial Planning Services Insurance Agency, Inc. ("USAA") on or about March 10, 2014. Further, USAA provided notice of the change in the mortgagee clause (in the name of Ocwen) to Ocwen on or about April 28,

2014. (AC ¶42). Nonetheless, in reliance on Ocwen's misrepresentations in the May 17, 2014 letter, Hastings took time to verify that proof of his insurance renewal had been sent to Ocwen by his insurer by speaking with one Barbara L. Whetman at USAA on July 14, 2014. (*Id.*)

On or about June 18, 2014 (after this action had commenced), Ocwen knowingly sent Hastings a Mortgage Account Statement which was false and misleading because it claimed, among other issues, that Hastings had only paid it a total of \$4,200.15 through that date when in fact Hastings had actually paid and Ocwen had received no less than \$7,000.25 in 2014 (not including his January payment which Ocwen received on December 30, 2013)(apparently Ocwen is continuing to fail to credit Hastings for payments it has received). (AC ¶43) (Exhibit 10).

Hastings has suffered direct and proximate damages as a result of Ocwen's material omissions, misstatements and misrepresentations, including loss of time from work (opportunity to work) and out of pocket costs to communicate with Ocwen in a good faith attempt to investigate the matter (AC ¶44); statutory damages (AC ¶45); non-economic damages and losses related to the stress and emotional damages caused by Ocwen's acts and omissions, including severe anxiety, worry, fright, reasonable anger, stress manifested by poor sleep and restlessness, and embarrassment (AC ¶46).

III. STANDARD OF REVIEW

a. Fed.R.Civ.P. 12(b)(6) Motion to Dismiss

The Fourth Circuit has explained, “[t]o survive a Rule 12(b)(6) motion to dismiss, the facts alleged ‘must be enough to raise a right to relief above the speculative level’ and must provide ‘enough facts to state a claim to relief that is plausible on its face.’” *Robinson v. American Honda Motor Co., Inc.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). In *Twombly* the Court considered whether the plaintiff stated “enough facts to state a

claim to relief that is plausible on its face,” *Twombly*, 550 U.S. at 570, observing that “plaintiff’s obligation to provide grounds for his entitlement to relief requires more than labels and conclusions, and formalistic recitation of the elements of a cause of action will not do.” *Id.* at 545. However, “[o]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A court must also view the factual allegations of the complaint “in the light most favorable to plaintiff.” *Battlefield Builders, Inc. v. Swango*, 743 F.2d 1060, 1062 (4th Cir.1984). But the court is not necessarily bound by the legal conclusions drawn. *Dist. 28, United Mine Workers of Am., Inc. v. Wellmore Coal Corp.*, 609 F.2d 1083, 1085-86 (4th Cir. 1979).

b. Fed.R.Civ.P. (8) & 9(b) Pleading Requirements

Pleadings are generally required to set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.8(a)(2). In addition each allegation must be “simple, concise and direct.” *Id.* at 8(d)(1).

The purpose of a motion to dismiss is to test the sufficiency of the complaint...A plaintiff’s complaint need only satisfy the standard of Rule 8(a), which requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). However, “Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.”... That showing must consist of more than “a formulaic recitation of the elements of a cause of action” or “naked assertion [s] devoid of further factual enhancement.”

Hart v. Lew, 973 F.Supp.2d 561, 571 (D. Md. 2013) (internal citations omitted).

However, when asserting claims based in fraud or mistake, “a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.” Fed.R.Civ.P. 9(b). Conversely, statutory consumer protection claims, based on nonfraudulent but unfair or deceptive conduct, are not necessary required to be pled with particularity. Judge Titus explained the limits of the requirement to plead with particularity in the context of remedial, consumer protection statutes [similar to those in this matter] as follows:

[Defendants] are simply mistaken that Rule 9(b)'s requirement of particularity applies to the other elements of the [*Racketeer Influenced and Corrupt Organizations Act*] claims (e.g. existence of a conspiracy) *in addition to* the predicate acts of mail and/or wire fraud. *Williams*, 498 F.Supp.2d at 842. For the remaining RICO elements and *the remaining non-RICO claims*, *Plaintiffs' allegations are construed under the more liberal pleading standard of a “short and plain statement of the claim showing that the pleader is entitled to relief.”* Fed.R.Civ.P. 8(a)(2); *see also Baltimore County v. Cigna Healthcare*, 238 Fed.Appx. 914, 921 (4th Cir.2007) (holding that the “notice pleading” standard of Fed.R.Civ.P. 8 applies to allegations of non-fraudulent conduct and thus plaintiff's claim of negligent misrepresentation did not need to be pleaded with particularity under Fed.R.Civ.P. 9(b)). Because the remaining claims in Plaintiffs' complaint do not allege fraudulent conduct (rather, they consist of the other elements of the RICO claims in addition to claims under [*Real Estate Settlement Procedures Act*], [*Protection of Homeowners in Foreclosure Act*], and a gross negligence claim), the lower pleading standard applies.

Proctor v. Metropolitan Money Store Corp., 645 F.Supp.2d 464, 476 (D.Md.,2009) (emphasis added).

Finally, Rule 9(b)'s strict requirements do not apply to claims relating to fraudulent concealment and omission claims. *Akinkoye v. Wells Fargo Home Mortg.*, CIV.A. DKC 11-2336, 2011 WL 6180210 (D. Md. Dec. 12, 2011)(“In cases involving concealment or omissions of material facts, however, meeting Rule 9(b)'s particularity requirement will likely take a different form. *See Shaw v. Brown & Williamson Tobacco Corp.*, 973 F.Supp. 539, 552 (D.Md.1997)”).

Flynn v. Everything Yogurt, CIV. A. HAR92-3421, 1993 WL 454355 (D. Md. Sept. 14, 1993) (“the more stringent requirements of Rule 9(b) do not apply to omissions”).

IV. ARGUMENT

Throughout its Motion to Dismiss, Ocwen makes factual allegations and legal arguments not supported by either the well pled facts of Mr. Hastings’s Amended Complaint or any other evidence properly before the Court and believes its distributed version of the facts require dismissal of the Amended Complaint. Generally, Ocwen claims:

- (i) it does not have sufficient notice of Mr. Hastings’ claims against it to respond to the Amended Complaint; and
- (ii) Mr. Hastings did not sustain compensable damages or losses by Ocwen’s acts and omissions, despite the facts showing Ocwen’s false credit reporting, invalid threats of foreclosure, force-placed insurance, improper crediting of Hastings’ timely mortgage payments, breach of their mutual Settlement Agreement and interference with Hastings’ obligation to Fannie Mae.

On the basis of these theories, Ocwen also asks this Court to depart from the case law and interpret consumer protection statutes contrary to their intended remedial nature—in other words Ocwen implicitly asks the Court to rule that it is permitted to not honor a loan modification or settlement agreement, fail to account for payments made by borrowers to it, and may otherwise make a series of false and misleading statements to borrowers without any consequences whatever for the losses and damages that result.

Respectfully, Defendant’s arguments are unfounded and not supported by the well pled factual allegations of the Amended Complaint or Maryland common law and the remedial legislative purposes of Maryland and federal statutory law. Therefore, the Motion to Dismiss should be denied.

a. Not Satisfied with the Well Pled Allegations of the Amended Complaint, Ocwen Improperly Presents a Series of Disputed Facts for Consideration by the Court as a Motion to Dismiss rather than a Motion for Summary Judgment

The Fourth Circuit has explained that:

[a] district court may go beyond these documents, which constitute “the pleadings,” in a Rule 12(b)(6) proceeding if it converts the proceeding to one for summary judgment. Fed.R.Civ.P. 12(d). Statements of counsel at a Rule 12(b)(6) hearing that raise new facts constitute matter beyond the pleadings. *Hamm v. Rhone-Poulenc Rorer Pharms., Inc.*, 187 F.3d 941, 948 (8th Cir.1999).

Dolgaleva v. Virginia Beach City Pub. Sch., 364 F. App'x 820, 825 (4th Cir. 2010).

In *Dolgaleva*, the Fourth Circuit found that the district court had erred by allowing the defendant “to plead facts outside the pleadings, and relying on those facts to dismiss the complaint with prejudice.” *Id.* at 826. Here too Defendant requests the Court to accept unsupported and disputed factual and legal arguments that not part of any pleading presently before the Court. Moreover, even if Defendant had attempted to file a motion for summary judgment, such motion is not properly supported by an affidavit based upon “personal knowledge” as required by Fed.R.Civ.P.56.

i. Ocwen Presents a Series of Disputed Facts, Not Based Upon the Complaint or Any Testimony Properly Before the Court:

Disputed Fact No. 1: Ocwen claims that “Fannie Mae previously owned the [Hastings] loan.” *See* Mem. in Sup. of MTD (Doc. 20-1)(“MTD”) at Page 1, ¶ 2.² Respectfully, the well pled allegations of the AC actually state:

Fannie Mae is the owner of Hastings loan. However, by a recorded instrument in the land records for Harford County, Maryland (Liber 10520, Folio 60), Fannie Mae no further “beneficial interest” under the Deed of Trust related to Hastings’ mortgage loan subject to this action was which was conveyed to Ocwen on October 2, 2013. Hastings was not aware of the factual assertions in the recorded assignment until April 26, 2014. However, **Fannie Mae still claims to own the Hastings Note as modified by Onewest and Ocwen.** This conclusion is based upon a search of the MERS Servicer Id database on August 2, 2014 located at <https://www.mers-servicerid.org/sis/investor>, identifies Fannie Mae as the investor for Hastings’ loan.

² Hastings does not believe there is any merit to Ocwen’s version of the well-pled facts presented to the Court which like this example generally misstate the actual well-pled facts before the Court.

AC at ¶ 11 (emphasis added).

Disputed Fact No. 2: In a broad, conclusory statement, without any citation to authority, Ocwen argues that Hastings is not entitled to any relief from the Court since he did not attach the certain communications from Ocwen as exhibits to his Amended Complaint. *See, e.g.* MTD at 5 (“it is impossible for this Court to find that Plaintiff has a claim under the MCDCA inasmuch as he did not attach the alleged communications that are the core of his claims. Without the Court having the ability to ascertain what specific statements were made, the allegations cannot be said to be well pled”). Respectfully, Hastings has identified sufficient information to Ocwen for it to identify the offending communications and there is no requirement for Hastings to have attached the documents to his well pled Amended Complaint. *See* AC at ¶¶ 28-32, 34, 38-41, 43 (identifying the date and summary details of various misleading communications from Ocwen to Hastings in which it intended him to rely). If Ocwen truly believed the false and deceptive communications were not actionable, then why did it not present them to the Court as part of its motion to dismiss? Hastings has not yet requested the Court to make any findings or judgments; he has merely provided the Court and Defendant with a pleading containing notice of his alleged claims and facts. In this response and in light of Ocwen’s disputed but unsubstantiated version of Hastings’ well pled facts, Hastings has presented to the Court as attachments to this opposition certain of the false and misleading communications which are “integral to and explicitly relied on in the [amended] complaint.” *Robinson v. Am. Honda Motor Co.*, 551 F.3d 218, 222 (4th Cir. 2009). *See* Exhibits 1-10.

Disputed Fact No. 3: Ocwen claims that it timely acknowledged Hastings’ inquiry under the Real Estate Settlement Procedures Act. (“Plaintiff’s claim is flawed inasmuch as he asserts a

violation because Ocwen did not respond within five days of the day he wrote the letter, rather than from the date Ocwen received it.” (MTD at 10). Because Hastings did not attach his QWR to his Amended Complaint, Ocwen argues that “the Court cannot determine whether or not Ocwen complied with any obligation that may exist”. *Id.* Ironically, while Ocwen implies to the Court that it must have responded timely, it fails to present the Court any facts to support that conclusion. Hastings has pled that on or about January 24, 2014 he sent his inquiry to Ocwen (AC ¶ 35) and Ocwen did not acknowledge the inquiry until on or about February 11, 2014 (AC ¶ 36).

ii. Pursuant to Fed.R.Civ.P.56(d) Plaintiff Respectfully Requests the Opportunity to Conduct Discovery on the Unsupported and Disputed Facts Above Before the Court Considers Them as Part of the Defendant's Motion to Dismiss

Hastings respectfully requests pursuant to Fed.R.Civ.P. 56(d) that the Court defer considering Defendant’s motion or the disputed facts described above until discovery is completed in this matter. In support of this request, Hastings has filed a declaration with specific requests and details he expects to present to the Court which only just arose and are directly contrary to the unsupported arguments of Ocwen identified above. See Exhibit 11, Dec. of P. Robinson.

b. Hastings has Stated Sufficient Claims Under the Maryland Consumer Protection Act.

The Maryland Consumer Protection Act prohibits “unfair or deceptive trade practices,” and lists fourteen categories of proscribed conduct. Md.Code Ann., Com. Law § 13-301. Specifically, **the MCPA prohibits both the use of false or misleading statements, and also the omission of material facts.** *Id.* Under the MCPA, “an individual may only bring a claim if she can ‘establish the nature of the actual injury of loss that he or she allegedly sustained as a result of the prohibited practice.’” *Allen v. CitiMortgage, Inc.*, No. CCB 10-2740, 2011 WL 3425665, at *10 (D.Md. Aug. 4, 2011) (quoting *Lloyd v. General Motors Corp.*, 397 Md. 108, 916 A.2d 257, 280 (2007)).

Marshall v. James B. Nutter & Co., 816 F. Supp. 2d 259, 266 (D. Md. 2011)(emphasis added).

The Maryland Consumer Protection requires the disclosure of material facts in connection with any consumer transaction and defines any unfair or deceptive trade practices to include the

“[f]ailure to state a material fact if the failure deceives or tends to deceive.” MD. CODE ANN., COM. LAW §13-301(3). This statement imposes a duty on any person involved in a consumer transaction to disclose material facts. Further, consistent with the legislature’s stated purpose of the MCPA, its requirements, including those stated in §13-301(3), “shall be construed and applied liberally to promote its purpose.” MD. CODE ANN., COM. LAW §13-105.

The gravamen of an ‘unfair or deceptive trade practice’ under the Consumer Protection Act is whether the false or misleading statements or representations have ‘the capacity, tendency, or effect of deceiving or misleading consumers.’ Section 13-301(1) of the Consumer Protection Act. Thus, the issue is whether the [omissions, misstatements, or misrepresentations] were misleading or had the capacity, tendency, or effect of misleading or deceiving.

MRA Prop. Mgmt., Inc. v. Armstrong, 426 Md. 83, 110-11, 43 A.3d 397, 413 (2012).

The only (unsupported and conclusory) basis the Defendant claims for dismissal of Hastings’ MCPA claim is that he has not alleged any reliance. (MTD 4, 5, 7). Respectfully, despite the Defendant’s misstatement to the Court of the actual well pled facts before it, the Plaintiff alleged reliance in numerous paragraphs of his Amended Complaint. *See* AC at ¶¶ 3, 21, 22, 24, 26, 35, 42.

Allegations similar to those raised by Plaintiff have previously been found sufficient to state a claim under the MCPA. For example, in *Ademiluyi v. PennyMac Mortgage Inv. Trust Holdings I, LLC*, 929 F. Supp. 2d 502 (D. Md. 2013) the court explained:

The Complaint indicates that plaintiff “reasonably relied” on alleged misrepresentations or omissions by defendants that they could lawfully pursue foreclosure and collection activities in the State, *see* Compl. ¶¶ 50, 83, thereby suffering damages in the form of “sums collected directly and indirectly by PennyMac to which it had no legal right to collect.” Opp. at 37 (citing Compl. ¶ 49). Further, plaintiff avers that, in reliance on PennyMac Holdings’ seemingly lawful conduct, she incurred expenses in the form of attorney’s fees to contest its collection efforts, and suffered emotional distress as a direct result of the collection activities. *See* Compl. ¶ 49. Put another way, plaintiff claims that, if PennyMac Holdings had disclosed that it lacked a State of Maryland collection agency license,

and was not in compliance with Maryland collection laws, she would not have suffered such harm.

In my view, plaintiff has adequately stated a claim for mortgage fraud under Rule 9(b). The Complaint's factual allegations are sufficient to provide notice to defendants of the basis of plaintiff's claims. *Cf. Piotrowski*, 2013 WL 247549 at *12–14 (“[T]he substance of the alleged omissions is clear: despite repeatedly communicating with Mr. Piotrowski, Wells Fargo failed to disclose that it was not actually considering Mr. Piotrowski's requests but had instead summarily ignored them. This is sufficient to meet the relaxed Rule 9(b) standard as it provides Wells Fargo with notice for the basis of Mr. Piotrowski's [MCPA] claim” and “an MMFPA claim based on the same conduct”).

Id. at 533-34 (D. Md. 2013)(citing and quoting from *Piotrowski v. Wells Fargo Bank, N.A.*, CIV.A. DKC 11-3758, 2013 WL 247549 (D. Md. Jan. 22, 2013)). *See also Currie v. Wells Fargo Bank, N.A.*, 950 F. Supp. 2d 788, 797-98 (finding at the motions to dismiss stage sufficiently pled reliance based upon (i) payments made to the mortgage servicer in relation to unfair and deceptive practices at issue and (ii) assurances of mortgage servicer to borrowers which borrowers acted in response).

Like the borrowers in *Ademiluyi*, *Piotrowski* and *Currie*, Hastings has presented sufficient well pled facts at the present stage of this action, assuming the truth of his allegations, to demonstrate his reliance on Ocwen's various misrepresentations, misstatements and omissions. Ocwen is on sufficient notice of the claim and any “fact intensive” inquiry it seeks to make is more appropriate for later stages of the litigation and not at the motions to dismiss stage. *Tasciyan v. Med. Numerics*, 820 F. Supp. 2d 664, 673 (D. Md. 2011)(factual disputes by the parties are more appropriately considered after discovery). Defendant's motion to dismiss Hastings' Motion to Dismiss should therefore be denied.

c. Hastings has Stated Sufficient Claims Under the Maryland Consumer Debt Collection Act

The Maryland Consumer Debt Collection Act (“MCDCA”) prohibits Ocwen,³ “[i]n collecting or attempting to collect an alleged debt [from]...Claim[ing], attempt[ing], or threaten[ing] to enforce a right with knowledge that the right does not exist.” MD. CODE ANN. COM. LAW §14-202(8). Here, Ocwen knew that the amounts it claimed were owed and the amounts it claimed Plaintiff had failed to pay in the various statements described *supra* and attached hereto as Exhibits 1-2, 5-10 were incorrect and invalid⁴ since Ocwen also knew that at all times relevant herein Hastings was current on the Hastings Note (as modified by Ocwen and Onewest on behalf of Fannie Mae) (AC ¶ 24) and there was no basis whatsoever for Ocwen to threaten Hastings with foreclosure or negative credit reporting or claim he owed sums which were not contractually due and owing or force placing insurance on his Property and mortgage account. (AC ¶ 60). Notwithstanding this knowledge, Defendant knowingly and intentionally sent Hastings those communications, fully intending for him to rely upon them, and attempting to collect on those invalid amounts. *See* AC ¶¶ 17, 54. Exhibits 1-2, 5-10.

This Court has explained the requirement of knowledge under the MCDCA in a factually similar matter as follows:

This Court has previously construed the level of knowledge required under the MCDCA and has held that “[c]onsidering the remedial aim of the MCDCA and the dilution of the statute that would result from a contrary interpretation, the Court holds that the term ‘knowledge’ in the Act does not immunize debt collectors from liability for mistakes of law.” *Spencer v. Hendersen–Webb, Inc.*, 81 F.Supp.2d 582, 594 (D.Md.1999). In addition, the “knowledge” requirement of the MCDCA “has

³ The MCDCA defines a collector to be any “persons collecting or attempting to collect an alleged debt arising out of a consumer transaction.” MD. CODE ANN. COM. LAW § 14-201(b). The well-pled facts of the complaint describe Ocwen’s attempts to collect invalid debts from Hastings. AC ¶ 60.

⁴ It is axiomatic that a mortgage servicer has a duty under Maryland law to know what is actually owed on the loan it is collecting upon. *Compare* MD. CODE ANN., COM. LAW § 12-308; MD. CODE ANN., COM. LAW § 13-316.

been held to mean that a party may not attempt to enforce a right with actual knowledge or with reckless disregard as to the falsity of the existence of the right.” *Kouabo v. Chevy Chase Bank, F.S.B.*, 336 F.Supp.2d 471, 475 (D.Md.2004) (citing *Spencer*, 81 F.Supp.2d at 595). Moreover, this Court has further noted that “it does not seem unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.” *Spencer*, 81 F.Supp.2d at 595 (quoting *Russell v. Equifax A.R.S.*, 74 F.3d 30, 35 (2d Cir.1996)) (in turn, quoting *FTC v. Colgate–Palmolive Co.*, 380 U.S. 374, 393, 85 S.Ct. 1035, 13 L.Ed.2d 904 (1965)). In the present case, Hilco undoubtedly went perilously close to an area of proscribed conduct in failing to abide by Maryland's licensing laws for debt collectors, and as discussed above, actually crossed the line.

Bradshaw v. Hilco Receivables, LLC, 765 F. Supp. 2d 719, 732 (D. Md. 2011).

Plaintiff therefore has properly stated a claim under MD. CODE ANN. COM. LAW § 14-202(8) and Defendant's motion to dismiss this claim should be denied since accepted as true, the well pled facts demonstrate Ocwen claimed certain invalid sums due from Hastings and therefore improperly sought sums not due through threats of foreclosure and false reporting.

d. Hastings has Stated Sufficient Claims Under the Maryland Mortgage Fraud Protection Act

The Mortgage Fraud Protection Act, MD. CODE ANN., REAL PROP. § 7–401 *et seq.*

(“MMFPA”)

[i]n its broadest sense...simply states “[a] person may not commit mortgage fraud.” *Id.* § 7–402. Relevant to the present action, the statute defines mortgage fraud as:

(1) Knowingly making any deliberate **misstatement, misrepresentation, or omission** during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) Knowingly creating or producing a document for use during the mortgage lending process that contains a **deliberate misstatement, misrepresentation, or omission** with the intent that the document containing the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) Knowingly using or facilitating the use of any **deliberate misstatement, misrepresentation, or omission** during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; ...; or

(6) Filing or causing to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

MD. CODE ANN., REAL PROP. § 7-401(d)(1)-(6). The statutory definition of the “mortgage lending process” includes “(i) [t]he solicitation, application, origination, **negotiation, servicing**, underwriting, signing, closing, and funding of a mortgage loan; and (ii) the notarizing of any document in connection with a mortgage loan.” *Id.* § 7-401(e)(2).

Stovall v. SunTrust Mortg., Inc., CIV.A. RDB-10-2836, 2011 WL 4402680. *9-10 (D. Md. Sept. 20, 2011)(emphasis added). *See also Marchese v. JPMorgan Chase Bank, N.A.*, 917 F. Supp. 2d 452, 469 (D. Md. 2013)(“Although Chase seeks to curtail the breadth of the statute to exclude loan servicing with regard to defaulting borrowers, this Court has held that ‘the plain language of the statute clearly countenances post-closing servicing activities.’ *Stovall*, 2011 WL 4402680, at *10”); *Ademiluyi v. PennyMac Mortgage Inv. Trust Holdings I, LLC*, 929 F. Supp. 2d 502, 531-32 (D. Md. 2013)(“The plain text of the MMFPA creates a statutory duty to disclose and a related action for fraud. As noted, mortgage fraud under R.P. § 7-401(d) includes the making, knowingly and with the ‘intent to defraud,’ of an ‘omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process’”); *Currie v. Wells Fargo Bank, N.A.*, 950 F. Supp. 2d 788, 799-800 (D. Md. 2013); *Piotrowski v. Wells Fargo Bank, N.A.*, CIV.A. DKC 11-3758, 2013 WL 247549, *13 (D. Md. Jan. 22, 2013).

If the common law, including common law fraud, were sufficient to address the scope of issues intended to be addressed by the MMFPA, then there would have been no need for the

legislature to enact the MMFPA. *Robinson v. State*, 353 Md. 683, 694, 728 A.2d 698, 703 (1999)(“a cardinal rule of statutory construction to give effect to the intent of the Legislature” and “where a statute deals with an entire subject-matter...the statute is generally construed as abrogating the common law as to that subject). *Robinson v. State*, 353 Md. 683, 693, 728 A.2d 698, 702 (1999). Here, however as explained the Fourth Circuit previously, “remedial legislation should receive a broad interpretation to effectuate its purposes.” *D.L. ex rel. K.L. v. Baltimore Bd. of Sch. Comm'rs*, 706 F.3d 256, 260 (4th Cir. 2013)(citing *Tcherepnin v. Knight*, 389 U.S. 332, 336, 88 S.Ct. 548, 19 L.Ed.2d 564 (1967)). *See also Pak v. Hoang*, 378 Md. 315, 324-26, 835 A.2d 1185, 1190-91 (2003)(explaining that remedial statutes under Maryland law are recognized by providing remedies and improved remedies not previously available under prior law including common law and that court should not narrowly construe the statute which would only “perpetuate the very evils to be remedied....”)(internal quotations and citations omitted).

There are numerous misrepresentations, misstatements and omissions alleged by the Plaintiff in his Amended Complaint. *See* AC at ¶¶ 25, 26, 28-32, 34, 37-41, 43. Defendant’s only basis for dismissal of Plaintiff’s MMFPA claim is its unsustainable contention that the Amended Complaint to identify any act or omission of Ocwen was done

knowingly or with reckless indifference to the truth nor has he shown that Defendant misrepresented the facts with the intention of defrauding the Plaintiff. Furthermore, Plaintiff has failed to provide any evidence as to his reliance on this misrepresentation or the proximate injury that resulted.

MTD at 7.

Respectfully, the Amended Complaint has identified specific facts for each of these issues. For example, Ocwen’s knowledge or reckless indifference of the truth is identified at AC ¶¶ 25-

26, 28-32, 34, 37-41, 43. The facts demonstrating Ocwen's intent to defraud Hastings (and Fannie Mae) are identified at AC ¶¶ 17, 28, 32, 34, 41, 44.⁵ Finally, as argued supra, Hastings has sufficiently pled damages and losses as a direct and proximate result of Ocwen's acts and omissions at issue in this matter at AC ¶¶ 4-5, 23, 35, 44-46.

Defendant has failed to present any basis for the Court to dismiss Plaintiff's MMFPA claim based upon the Defendant's material misrepresentations, misstatements and omissions, the Defendant's motion must be denied. To say otherwise would improperly curtail the breath of the MMFPA which was not intended by the legislature. *Stovall* at FN 2; *Marchese* at 469; *Piotrowski* at *13. The MMFPA must be seen as a remedial statute and to construe narrowly as advocated by Ocwen would be akin to permitting the 'very evils to [be] remedied' by the statute. *Pak v. Hoang*, 835 A.2d at 1190-91.

Finally, at the motion to dismiss stage the analysis of the claims presented is the same under the MCPA and the MMFPA. *Marchese v. JPMorgan Chase Bank, N.A.*, 917 F. Supp. 2d 452, 468-469 ("The grounds for denying the Motion to Dismiss with respect to [mortgage servicing practices] under the MMFPA involve the same analysis the Court conducted under the MCPA"); *Piotrowski v. Wells Fargo Bank, N.A.*, CIV.A. DKC 11-3758, 2013 WL 247549, *13 ("Because Mr. Piotrowski states an MCPA claim based on Wells Fargo's alleged representations and omissions about its consideration of his loan modification requests, the complaint also states an

⁵ Intent to defraud is not a term defined by the MMFPA. The Court of Appeals has defined it however in another context to include facts demonstrating bad faith by the defendant, acts of dishonestly or reckless indifference, deliberate disregard of the consequences, and a willful refusal to know. *Ferguson Trenching Co., Inc. v. Kiehne*, 329 Md. 169, 184-85, 618 A.2d 735, 742-43 (1993). In this instance when the well-pled facts demonstrate that Ocwen was a party to a complex settlement agreement but either ignored it or willfully refused to honor it and Hastings' timely payments. Assuming the truth of these facts, Hastings has sufficiently pled Ocwen's intent to defraud under Maryland law.

MMFPA claim based on the same conduct”). Therefore for the additional reasons stated by Hastings in opposition to dismissal of his MCPA claim he requests the Court to deny the motion to dismiss his MMFPA claim as well.

e. Hastings has Stated Sufficient Claims Under the Real Estate Settlement Procedures Act

Ocwen seeks dismissal of Hastings claim under the Real Estate Settlement Procedures Act (“RESPA”) and its implementing regulations. MTD at 10-12. Pursuant to 12 U.S.C.A. § 2605(e), Ocwen has a duty to respond to certain inquiries or qualified written requests (“QWR”) from borrowers, like Hastings.

A qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that--

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

12 U.S.C.A. § 2605(e)(1)(B).

In response to a QWR, Ocwen was required to “provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays).” 12 U.S.C.A. § 2605(e)(1)(A). Next it is required to respond in writing to the inquiring borrower by (i) making the “appropriate corrections” to the borrower’s account, (ii) declaring that it made no error(s) and why it believes its records are correct, or (iii) explain that it does not have sufficient information to respond to the inquiry. 12 U.S.C.A. § 2605(e)(2); 12 C.F.R. § 1024.35(e). Exercising its rule-making authority, the Consumer Financial Protection Bureau has defined those errors to be governed by RESPA QWR’s to include:

- (1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.
- (2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.
- (3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1)...
- (5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower...
- (11) Any other error relating to the servicing of a borrower's mortgage loan.

12 C.F.R. § 1024.35(b)(effective January 10, 2014).

If a servicer fails to complete its duties or comply with RESPA it is liable to the individual borrower, like Hastings, for “(A) any actual damages to the borrower as a result of the failure; and (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.” 12 U.S.C.A. § 2605(f)(1).

In support of its request for dismissal of Hastings’ RESPA claim, Ocwen advances four arguments:

- Ocwen claims, without presenting any admissible evidence in support, that it timely acknowledged Hastings’ inquiries. MTD at Page 10.⁶
- Hastings’ inquiry does not even qualify as a QWR under RESPA. *Id.*
- Hastings has no RESPA claim based upon Ocwen’s failure to actually respond to his actual inquiry and Ocwen is relieved of any RESPA liability because it elected to respond to issues not even raised by Hastings related to a different loan than the loan at issue in this case. *Id.* at Page 10-11.
- Hastings is not entitled to pursue statutory damages under RESPA because he has allegedly failed to plead “pattern or practice of noncompliance” by Ocwen based upon the well pled

⁶ Hastings has previously addressed this claim in section IV(a), *supra* at Pages 10-11.

allegations of the CFPB and nearly every state attorney general and similar allegations asserted by no less than eight other borrowers in this and other courts around the country.

Id. at Page 11.

Hastings' well pled facts state that in good faith he sent Ocwen a QWR reflecting its errors concerning the servicing of his loan on or about January 24, 2014. AC ¶ 35; Exhibit 3. That letter identified his address, mortgage loan account number, and other information necessary for Ocwen to understand who he was. *Id.* See also 12 U.S.C.A. § 2605(e)(1)(B)(i). Hastings also provided Ocwen with specific information and notice of the errors he complained about as follows:

I believe you have failed to properly account for the payments made on my mortgage account from September 25, 2013 through the present and also have failed to honor September 24, 2013 loan modification offered by you and agreed to and relied upon by me. I also believe you have not provided me with accurate and complete information as to the loss mitigation options available to me as required by Section 1024.39 of Regulation X and furthermore have threatened to commence a state court foreclosure notice under applicable law in violation of Sections 1024.41(f) and (j) of the same Regulation.

Accordingly, I demand that you immediately file a notice of stay of any pending foreclosure proceeding and provide me with all of the loss mitigation options available to me under any of your external or internal programs. I also demand a full accounting of my loan including the payments received by you from September 25, 2013 to the present and how you have processed those payments and what charges and fees you have accessed to my account.

Please correct all of these errors and provide us with notification of the correction, the date of the correction, and contact information for further assistance; or after conducting a reasonable investigation and providing me with a notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of my right to request documents relied upon by the servicer in reaching its determination, information regarding how I can request such documents, and contact information for further assistance.

AC ¶ 35; Exhibit 3.

Hastings has also identified, contrary to Ocwen's overbroad statement argument, at least eight other pattern and practice examples of its recent failures of Ocwen properly responding to borrower qualified written requests from this and other courts around the country. (AC ¶ 83). In addition, he has also cited as additional support for his pattern and practice evidence the allegations of nearly every state attorney general and the Consumer Financial Protection Bureau's Complaint against Ocwen that resulted in the national Mortgage Settlement. (*Id.*) Unlike, other cases where only a single example of pattern of practice was even pled by the plaintiff, i.e. *Galante v. Ocwen Loan Servicing LLC*, CIV.A. ELH-13-1939, 2014 WL 3616354, *34 (D. Md. July 18, 2014), in this instance Hastings has respectfully identified sufficient facts to support his statutory damages claim under RESPA at this stage of the proceedings. In the alternative he requests leave to do further discovery on Ocwen's pattern and practice to responding to QWRs and has provided his counsel's declaration for that purpose. *See* Ex. 11.

Hastings' QWR inquiries are entirely consistent with the areas identified in 12 C.F.R. § 1024.35(b) that are proper for a QWR. Ocwen had a duty to respond to Hastings' inquiry. 12 U.S.C.A. § 2605(e). Instead, Ocwen responded to none of Hastings' areas of inquiry, admitted no errors whatsoever, and simply elected to provide information to Hastings totally unrelated to his actual inquiry. AC ¶¶ 37-39; Exhibits 6-7.

The remedial purpose of RESPA's servicing statute cannot be read to permit a servicer to respond to a totally different loan or actual inquiry by a borrower as Ocwen requests. To say otherwise makes meaningless the reforms passed by Congress and implemented by the CFPB.

f. Hastings has Stated Sufficient Claims for Breach of Settlement Agreement by Ocwen

Ocwen takes a novel approach in its Motion to Dismiss Hastings' Breach of Settlement Agreement claim by arguing that Hastings has failed to state a claim for breach of a different contract entirely. "Presumably, Plaintiff theorizes that Ocwen violated the Note and/or Deed of Trust." (MTD 12). Ocwen then proceeds to argue how Hastings has not shown a breach of either of those agreements. Respectfully, Ocwen's basic presumption is wrong. In fact, as is made clear by the title of the count in question ("COUNT VI BREACH OF SETTLEMENT AGREEMENT")⁷ and the argument following it, Hastings has based his claim on breach of the Settlement Agreement between the parties, not the "Note and/or Deed of Trust."

In this respect, Hastings' Breach of Settlement Agreement claim is well-pled and should not be dismissed based on Ocwen's conclusory and demonstrably incorrect arguments and assumptions. Ocwen correctly notes that "[t]o prevail on a claim for breach of contract under Maryland law, "a plaintiff must prove that the Defendant owed the Plaintiff a contractual obligation and that the defendant breached that obligation." *Taylor v. NationsBank, N.A.*, 776 A.2d 645, 651 (Md. 2001); *see also Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 36 A.3d 399, 416 (2012)." (MTD 12). Here, Hastings has shown in his Amended Complaint that:

- (i) Hastings and Ocwen entered into the Settlement Agreement, which is a legally binding contract (AC ¶92);
- (ii) Ocwen materially breached the terms of the Settlement Agreement by claiming sums due from Hastings not permitted by the Settlement Agreement, threatening foreclosure and force placing insurance when it had no right to do so, and failing to timely accept and credit Hastings' payments (AC ¶94); and
- (iii) Hastings has been damaged by that breach (AC ¶95).

⁷ See also AC ¶¶ 92, 94 (referencing the Settlement Agreement as the contract related to this claim).

Thus, Hastings has sufficiently pled a valid claim for breach of the Settlement Agreement by Ocwen, even according to Defendant's own cited authority, and his claim for breach of the Settlement Agreement should therefore not be dismissed.

g. Hastings has Stated Sufficient Claims for Ocwen's Tortious Interference with Economic Relationship between Himself and Fannie Mae

Ocwen makes three unpersuasive arguments for dismissing Hastings' Tortious Interference claim. First, after acknowledging that Hastings has sufficiently pled the existence of a contractual relationship between himself and Fannie Mae, Ocwen's knowledge of that contract, and Ocwen's intentional interference with it, Ocwen attempts to artificially narrow the elements for a tortious interference claim and states that Hastings has failed to show that Fannie Mae breached its contract with him. To be clear, Maryland law recognizes tortious interference with contracts without breach:

[T]he two general types of tort actions for interference with business relationships are inducing the breach of an existing contract and, more broadly, maliciously or wrongfully interfering with economic relationships in the absence of a breach of contract. The principle underlying both forms of the tort is the same: under certain circumstances, a party is liable if he interferes with and damages another in his business or occupation.⁸

Kaser v. Financial Protection Marketing, Inc., 376 Md. 621, 831 A.2d 49, 53 (2003) (citations omitted). See also *Webb v. Green Tree Servicing, LLC*, CIV.A. ELH-11-2105, 2011 WL 6141464, *7 (D. Md. Dec. 9, 2011) ("Therefore, "breach of contract" may be a convenient shorthand for this element of the tort in most circumstances. But, *Macklin, Lake Shore*, and the other cases upon which they relied make clear that intentional interference with a party's rights under a contract or

⁸ To the extent Defendant may argue that Hastings' claims do not relate to his "business or occupation," this argument fails. As this Court has recognized, "Because the buying and selling of property is a business relation and involves economic rights, the "lawful business" aspect of this element is satisfied." *Abbott v. Gordon*, No. 09-372, 2009 WL 2426052, at *8, 2009 U.S. Dist. LEXIS 68819, at *22 (D.Md. 2009).

inducing a termination without breach, as plaintiff alleges occurred here, may also satisfy this element of the tort in Maryland. Accordingly, defendant's argument is without merit”).

Judge Eldridge, writing for the Maryland Court of Appeals in *Kaser*, identified the following long-established elements of tortious interference with contractual relationships:

Almost one hundred years ago, this Court in *Willner v. Silverman, supra*, 109 Md. at 355, 71 A. at 964, cited with approval the case of *Walker v. Cronin*, 107 Mass. 555, 562 (1871), decided by the Supreme Judicial Court of Massachusetts, and held that the elements required to establish the tort of wrongful interference with contractual or business relations are as follows:

(1) intentional and wilful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting.

In his Amended Complaint Hastings has set forth in detail facts showing each of the four elements of tortious interference with contractual relationships. Ocwen intentionally and willfully sent Hastings multiple false and deceptive communications regarding his loan (AC ¶¶ 25, 26, 28-32, 34, 37-41, 43); these communications were calculated to cause damage to Hastings (AC ¶¶ 17, 28, 32, 34, 41, 44); without right or justifiable cause (AC ¶¶ 3, 5, 35, 79, 87, 89); and in fact these communications did cause damage to Hastings (AC ¶¶ 4, 5, 23, 35, 44, 45, 46). Because each element of tortious interference with contractual relationships has been established in detail in the Amended Complaint, the Motion to Dismiss should be denied.

h. Hastings has Stated Sufficient Alternative Claims for Negligence Against Ocwen

Under Maryland common law, the Defendants owed the Plaintiff a duty of care due to the ‘intimate nexus’ which exists between the Plaintiff and the Defendant who purports to be a mortgage professional. This ‘intimate nexus’ arises from the relation of a layman customer like the Plaintiff who relies upon the accuracy of information provided by the professional to him, and the propriety and benefit of the professional’s services to him. *See 100 Investment Limited*

Partnership v. Columbia Town Center Title Co., 60 A.3d 1 (2013); *Jacques v. First Nat'l Bank of Md.*, 307 Md. 527 (1986). Compare *NVR Mortgage Fin., Inc. v. Carlsen*, 11 SEPT.TERM 2013, 2014 WL 3565472 (Md. July 21, 2014)(A mortgage professional “owes to a borrower a common law duty to ‘disclose ... all facts or information which may be relevant or material in influencing the judgment or action of the [borrower] in the matter’”)(interactive citation omitted).

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).

Ocwen attempts to diminish its duties under the authority cited above by distinguishing the roles of the defendants in *100 Investment Limited Partnership* and *Jacques* from its role as a mortgage servicer. “[O]n their facts alone those cases are distinguishable because neither case involved nor spoke to the relationship between a borrower and a loan servicer.” (MTD 8). It is certainly true that *100 Investment Limited Partnership* and *Jacques* did not involve mortgage servicers. However the cases establish that when, as here, a layman reasonably relies on the expertise in the field of a real estate professional to act in his best interests, this relationship creates an intimate nexus between them and gives rise to a duty in tort. Ocwen’s attempt to claim that the servicer-borrower relationship “does not involve dependency or a level of reliance upon the judgment [sic] like these other cases” is plainly wrong. *Id.* Hastings’ Amended Complaint is detailed with facts showing that he depended on Ocwen to perform its duties with respect to his loan accurately and honestly (AC ¶¶ 21, 22, 24, 26), and that he relied on Ocwen’s judgment to competently service his mortgage loan (AC ¶¶ 21, 22, 24, 35). At the very least, if Ocwen disputes

that Hastings relied upon it to exercise its duties honestly and competently, that raises a factual issue not appropriate for resolution at a later stage of this litigation.

Moreover, Maryland common law is not the only source of a legal duty on Ocwen's part to competently and honestly service the mortgage loans of consumers like Hastings. As a licensed Maryland mortgage lender Ocwen volunteered and agreed to accept as a condition of its license 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" to include a duty to "promptly" provide borrowers with an accounting of their loan when requested and to have "trained" employees on staff to "promptly answer and respond to borrower inquiries." Md. Code Regs. 09.03.06.20. Hastings is a third party beneficiary of Ocwen's duty under Md. Code Regs. 09.03.06.20. *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 321, 918 A.2d 1230, 1239 (2007) ("the violation of a statute or regulation may sometimes be evidence of negligence").⁹

Finally, Ocwen incorrectly claims that Hastings has not plead facts showing its breach of the above-described duties, causation or damages. Ocwen's claim that no facts showing breach, causation or damages are plead in the Amended Complaint is incorrect. Had Ocwen carefully reviewed the Amended Complaint, it would have recognized that Hastings did indeed allege breach (AC ¶75); causation (AC ¶76) and damages (AC ¶76) resulting from Ocwen's negligence.

⁹ If the Court determines that no controlling appellate decision or statute controls whether under Maryland law a mortgage servicer has a duty of care to a borrower which may be subject to a negligence claim, despite the authorities relied upon by Hastings, he requests the Court exercise its authority to certify the issue to the Maryland Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Md. Code Ann., Cts. & Jud. Proc. § 12-601, *et seq.*

For these reasons, the Motion to Dismiss Hastings' alternative claims for negligence should be denied.

V. CONCLUSION

WHEREFORE, for the reasons stated above, Hastings requests that this Court deny Defendant's Motion to Dismiss and allow his claims to proceed.

Respectfully submitted,

//s//

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Counsel for the Plaintiff

TABLE OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	December 20, 2013- Letter from Ocwen
2	December 27, 2013 Escrow Analysis from Ocwen
3	January 24, 2014- RESPA Qualified Written Request to Ocwen
4	January 24, 2014- MCPA Letter Inquiry to Ocwen Pursuant to Maryland Consumer Protection Act
5	February 11, 2014- Letter from Ocwen
6	February 13, 2014- Letter from Ocwen
7	February 14, 2014- Letter from Ocwen
8	March 17, 2014- Mortgage Statement from Ocwen
9	May 17, 2014 Letter from Ocwen
10	June 18, 2014- Mortgage Statement from Ocwen
11	Declaration of Counsel Phillip Robinson

CERTIFICATE OF SERVICE

This is to certify that on this day the foregoing served via the Court's electronic filing on all counsel and parties of record.

_____/s/_____/_____

Phillip Robinson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIAN HASTINGS, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. GLR-14-2244
 :
 OCWEN LOAN SERVICING, LLC, :
 :
 Defendant. :

AMENDED MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Ocwen Loan Servicing, LLC's ("Ocwen") Motion to Dismiss Plaintiff Brian Hastings's ("Hastings") Amended Complaint (ECF No. 20). The issues here have been fully briefed and the Motion is ripe for disposition. No hearing is necessary. See Local Rule 105.6 (D.Md. 2014). For the reasons outlined below, the Motion will be granted in part and denied in part.

I. BACKGROUND¹

In November 2007, Hastings refinanced the mortgage on his home, located at 2923 Goat Hill Road, Bel Air, Maryland (the "Property"), by a loan from IndyMac Bank, FSB (the "Note"). The Note was secured by a deed of trust.

On September 1, 2010, Hastings filed a Complaint in the Circuit Court of Maryland for Harford County against OneWest

¹ Unless otherwise stated, the following facts are alleged in the Amended Complaint.

Bank, FSB ("OneWest"), alleging OneWest breached an agreement to modify his mortgage loan; the action was removed to this Court on December 2, 2010. See Hastings v. OneWest Bank, FSB, No. GLR-10-3375 (D.Md. filed Dec. 2, 2010). On September 1, 2013, the servicing rights and obligations for Hastings's mortgage loan transferred from OneWest to Ocwen, and Ocwen accepted Hastings's offer to settle the prior lawsuit. See id. Prior to entering into the Settlement Agreement, the parties agreed that Hastings was current on the Note. Thereafter, Hastings made regular timely payments of \$1,400.05 per month to Ocwen, which included \$972.93 in mortgage payments, \$292.12 towards his escrow, and \$135.00 to be applied to his principle balance.

Despite his compliance with the terms of the Settlement Agreement, Ocwen began to send Hastings letters claiming his payments were past due, his escrow account was short, and his hazard insurance had expired. Ocwen informed Hastings that his account had been charged late fees and that it would proceed to foreclosure unless he paid the purported balance of the note, \$274,534.76. Further, Ocwen informed Hastings that his credit rating could be negatively affected if he failed to pay this amount in full.

On January 24, 2014, Hastings sent Ocwen a Qualified Written Request ("QWR") seeking a full accounting of his loan and requesting that Ocwen correct the errors on his account.

Ocwen acknowledged receipt of Hastings's QWR on February 11, 2014. On February 13 and 14, 2014, Ocwen responded to Hastings's QWR by providing a loan history and information concerning a prior loan for which Hastings had not requested information. Further, despite having renewed and updated his hazard insurance in March 2014, Ocwen sent Hastings a letter, dated May 17, 2014, informing him that it planned to purchase insurance for his property.

On May 23, 2014, Hastings filed a Complaint in the Circuit Court for Harford County, Maryland. (ECF No. 2). On July 14, 2014, Ocwen removed the case to this Court. (ECF No. 1). On August 4, 2014, Hastings filed an Amended Complaint, alleging violations of the Maryland Consumer Protection Act ("MCPA"), Md. Code Ann., Com. Law §§ 13-101 et seq. (West 2014) and the Maryland Consumer Debt Collection Act ("MCDCA"), Md. Code Ann., Com. Law § 14-201 (West 2014) (Count One); the Maryland Mortgage Fraud Protection Act ("MMFPA"), Md. Code Ann., Real Prop. § 7-401(d) (West 2014) (Count Two); and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605(e) (2012) (Count Four). (ECF No. 16). The Complaint also includes claims of negligence (Count Three), tortious interference with an economic relationship (Count Five), and breach of settlement agreement (Count Six). Id. On August 21, 2014, Ocwen filed its Motion to

Dismiss the Amended Complaint. (ECF No. 20). The Motion is ripe for disposition.

II. DISCUSSION

A. Standard of Review

A Federal Rule of Civil Procedure 12(b) (6) motion should be granted unless an adequately stated claim is "supported by showing any set of facts consistent with the allegations in the complaint." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007); see Fed.R.Civ.P. 12(b)(6). "[T]he purpose of Rule 12(b)(6) is to test the sufficiency of a complaint and not to resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Presley v. City of Charlottesville, 464 F.3d 480, 483 (4th Cir. 2006) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999)) (internal quotation marks and alterations omitted). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Twombly, 550 U.S. at 555. A complaint is also insufficient if it relies upon "naked assertion[s] devoid of further factual enhancement." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (alteration in the original) (quoting Twombly, 550 U.S. at 557) (internal quotation marks omitted).

To survive a Rule 12(b)(6) motion to dismiss, a complaint

must set forth "a claim for relief that is plausible on its face." Id.; Twombly, 550 U.S. at 547. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556).

In considering a Rule 12(b)(6) motion, the Court must construe the complaint in the light most favorable to the plaintiff, read the complaint as a whole, and take the facts asserted therein as true. Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). "Conclusory allegations regarding the legal effect of the facts alleged," however, need not be accepted. Labram v. Havel, 43 F.3d 918, 921 (4th Cir. 1995) (citing United Mine Workers of Am., Inc. v. Wellmore Coal Corp., 609 F.2d 1083, 1085-86 (4th Cir. 1979)). Because the central purpose of the complaint is to provide the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests, the plaintiff's legal allegations must be supported by some factual basis sufficient to allow the defendant to prepare a fair response. Twombly, 550 U.S. at 555 n.3.

B. Analysis

1. MCDCA and MCPA

The Court will deny Ocwen's Motion to Dismiss with respect to Count I of the Amended Complaint. The MCDCA provides that a

debt collector may not "claim, attempt, or threaten to enforce a right with knowledge that the right does not exist." Md. Code Ann., Com. Law § 14-202(8). To establish a prima facie case under the MCDCA, Hastings must set forth factual allegations tending to establish: (1) Ocwen did not possess the right to collect the amount of debt sought and (2) Ocwen attempted to collect the debt knowing it lacked the right to do so. See Pugh v. Corelogic Credco, LLC, No. DKC 13-1602, 2013 WL 5655705, at *4 (D.Md. Oct. 16, 2013).

Ocwen argues Hastings has not stated a claim under the MCDCA because he failed to allege Ocwen acted with knowledge that the debt was invalid. Further, Ocwen asserts it had the right to collect the debt because Hastings is indebted under the mortgage. Hastings alleges he made regular, timely payments on the Note, yet Ocwen sent him multiple notices stating he was delinquent on his mortgage payments, his escrow balance was \$1,097.53 short, and his insurance had expired. The notices demanded payment not yet due under the Note, informed Hastings that his account had been charged late fees, and threatened him with foreclosure and a negative credit rating. Thus, the Court concludes Hastings has sufficiently alleged Ocwen attempted to collect a debt with knowledge that it had no right to do so.

Accordingly, the Court will deny Ocwen's Motion to Dismiss as to Count I.²

2. MMFPA

The Court will dismiss Count II of the Amended Complaint. The MMFPA prohibits mortgage fraud during the mortgage lending process. Md. Code. Ann., Real Prop. § 7-401(d) (West 2014). The "mortgage lending process" includes servicing the loan. Id. § 7-401(e)(2); Stovall v. SunTrust Morg., Inc., No. RDB-10-2836, 2011 WL 4402680, at *10 (D.Md. Sept. 20, 2011) (explaining that the MMFPA encompasses conduct in connection with a mortgage loan closing, as well as "post-closing servicing activities.").

The MMFPA is a fraud-based claim. In Maryland, to state a claim for fraudulent misrepresentation, a plaintiff must plead with particularity pursuant to Federal Rule of Civil Procedure 9(b):

(1) that the defendant made a false representation to the plaintiff; (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference to its truth; (3) that the misrepresentation was made for the purpose of defrauding the plaintiff; (4) that the plaintiff relied on the misrepresentation and had the right to rely on it; and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.

² Violations of the MCDCA are defined as "unfair or deceptive trade practices" under the MCPA. Md. Code Ann., Com. Law § 13-301(14)(iii) (West 2014). As such, MCDCA violations constitute per se violations of the MCPA. See Fontell v. Hasset, 870 F.Supp.2d 395, 411 (D.Md. 2012). Accordingly, the Court need not discuss Hastings's MCPA claim at this stage.

Ayres v. Ocwen Loan Serv., LLC, No. WDQ-13-1597, 2014 W.L. 4269051, at *8 (D.Md. Aug. 27, 2014) (emphasis added) (quoting Ademiluyi v. PennyMac Morg. Inv. Holdings I, LLC, 929 F.Supp.2d 502, 530 (D.Md. 2013)).

Ocwen argues Hastings failed to plead that he relied on Ocwen's alleged misrepresentations. Hastings alleges Ocwen intended him to rely on its letters, which threatened to foreclose on his home and stated Ocwen had charged late fees to his account. Hastings does not allege, however, that he made any payments in reliance on these threats and statements. Accordingly, the Court will grant the Motion to Dismiss as to Count II.

3. Negligence

The Court will dismiss Count III of the Amended Complaint. To state a claim for negligence, a plaintiff must show the defendant owed him a duty of care. See Jacques v. First Nat. Bank of Md., 515 A.2d 756, 758 (Md. 1986) (citing Ashburn v. Anne Arundel Cnty., 510 A.2d 1078, 1082 (Md. 1986)). A duty giving rise to a tort action must be "imposed by a source independent of that arising out of the contract itself." Mesmer v. Md. Auto. Ins. Fund, 725 A.2d 1053, 1059 (Md. 1999) (quoting Bd. of Educ. of Charles Cnty. v. Plymouth Rubber Co., 569 A.2d 1288, 1298 (Md.Ct.Spec.App. 1990)). Where "the dispute is over

the existence of any valid contractual obligation covering a particular matter, or where the defendant has failed to recognize or undertake any contractual obligation whatsoever, the plaintiff is ordinarily limited to a breach of contract remedy." Id. at 1059.

Hastings alleges Ocwen owed him a duty of care in servicing his mortgage. The Amended Complaint, however, lacks sufficient facts to support the inference that Ocwen owed a duty of care independent of its duties under the Note. Accordingly, the Court will grant Ocwen's Motion to Dismiss with respect to Count III.

4. RESPA

The Court will deny Ocwen's Motion to Dismiss as to Count IV of the Amended Complaint. RESPA requires the servicer of a federally related mortgage loan to acknowledge receipt of a QWR within five business days of receipt.³ 12 U.S.C. § 2605(e)(1)(A)(2012); 12 C.F.R. § 1024.35 (2014). Thereafter, within thirty business days, the servicer must (1) make corrections to the borrower's account; (2) after conducting an investigation, provide a written explanation stating the reasons the servicer believes the account is correct; or (3) conduct an

³ Requesting "information related to loan servicing, including the receipt and amount of periodic payments, constitutes a QWR. See Minson v. CitiMortgage, Inc., No. DKC 12-2233, 2013 WL 2383658, at *5 (D.Md. May 29, 2013).

investigation and provide the information requested by the borrower or an explanation of why the information is unavailable. 12 U.S.C. § 2605(e)(2). In the event a servicer fails to comply with this requirement, RESPA authorizes a plaintiff to recover actual damages "as a result of" the servicer's failure. 12 U.S.C. § 2605(f).

Hastings alleges, and Ocwen does not deny, that Ocwen failed to timely acknowledge his QWR within five business days.⁴ Further, Hastings alleges Ocwen's response did not address the loan for which he requested information. Finally, Hastings alleges Ocwen did not provide the information requested within the thirty-day time limit under RESPA. Thus, Hastings has sufficiently alleged Ocwen failed to conduct an investigation of the errors on his account or provide a sufficient response. See Powell v. Aegis Mortg. Corp., No. DKC 2006-1198, 2007 WL 98372, at *8 (D.Md. Jan. 11, 2007) (finding party sufficiently alleged loan servicer's response was not "adequate under RESPA" by demonstrating servicer failed to conduct adequate investigation). Accordingly, the Motion to Dismiss will be denied as to Count IV.

⁴ Ocwen argues Hastings cites to the wrong benchmark by stating Ocwen's response was due five business days after he sent the QWR. This argument is without merit, however, because the Amended Complaint clearly states "within five days of receipt of the letter." (Am. Compl. ¶ 78).

5. Tortious Interference with an Economic Relationship

The Court will dismiss Count V of the Amended Complaint. To state a claim for tortious interference with an economic relationship, Hastings must allege: "(1) the existence of a contract between plaintiff and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional interference with that contract; (4) a breach of that contract by the third party; and (5) resulting damages to the plaintiff." Suss v. JP Morgan Chase Bank, N.A., No. WMN-09-1627, 2009 WL 2923122, at *5 (D.Md. Sept. 10, 2009) (citing Sensormatic Sec. Corp. v. Sensormatic Elect. Corp., 455 F.Supp.2d 399, 426 (D.Md. 2006)).

Hastings alleges Ocwen intentionally attempted to interfere with the contract between himself and Fannie Mae, the owner of the Note, by misrepresenting to him that he owed additional sums on the loan. Hastings alleges Ocwen engaged in this practice without justification to induce him into defaulting on the Note so it could realize additional benefits through the assessment of fees, costs, and force placed insurance. Finally, Hastings alleges he suffered damages and harm to his reputation.

Hastings has not alleged, however, that he or Fannie Mae breached the contract as a result of Ocwen's alleged interference. Accordingly, the Court will dismiss Count V.

6. Breach of Settlement Agreement

The Court will deny Ocwen's Motion to Dismiss with respect to Count VI. To state a claim for breach of contract, a plaintiff "must allege facts showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation." Swedish Civil Aviation Admin. v. Project Mgmt. Enters., Inc., 190 F.Supp.2d 785, 791 (D.Md. 2002) (citing Cont'l Masonry Co., Inc. v. Verdel Constr. Co., 369 A.2d 566, 569 (Md. 1977)); see also Barclay White Skanska, Inc. v. Battelle Mem'l Inst., 262 F.App'x 556, 561 (4th Cir. 2008) (quoting Taylor v. NationsBank, N.A., 776 A.2d 645, 651 (Md. 2001)).

Ocwen contends Hastings does not specify which clauses of the Settlement Agreement were violated or when the breaches occurred. Hastings clearly alleges, however, that breaches occurred each time Ocwen demanded sums in excess of the amounts owed under the Settlement Agreement. Further, Hastings alleges Ocwen supported these demands through threats to foreclose on his home, report him to credit bureaus, charge him late fees, and charge him for force-placed insurance. Accordingly, the Court will deny Ocwen's Motion to Dismiss as to Count VI.

III. Conclusion

For the foregoing reasons, it is hereby ordered that Ocwen's Motion to Dismiss Hastings's Amended Complaint (ECF No.

20) is GRANTED in part and DENIED in part. Ocwen's Motion to Dismiss is GRANTED as to Counts II, III, and V of the Amended Complaint and DENIED as to Counts I, IV, and VI. A separate Order will follow.

Entered this 2nd day of February, 2015

/s/
George L. Russell, III
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

BRIAN HASTINGS

Plaintiff

v.

OCWEN LOAN SERVICING LLC

Defendant

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Case No.: 1:14-cv-02244-GLR

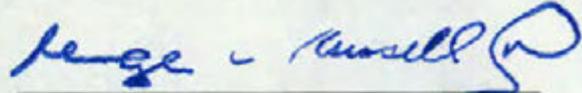
ORDER & FINAL JUDGMENT

Pursuant to Rule 68 of the federal Rules of Civil Procedure, Plaintiff Brian Hastings has accepted the offer from Defendant Ocwen Loan Servicing LLC to allow judgment to taken against it for all claims presented in this action by the Plaintiff (ECF. No. 2).¹ Accordingly, it is this 21st day of July, 2015, by the Untied States District Court for the District of Maryland, ORDERED that:

1. Judgment BE, and the same hereby IS, ENTERED in favor of Plaintiff Brian Hastings and against Defendant Ocwen Loan Servicing LLC in the amount of TWENTY THOUSAND, ONE HUNDRED DOLLARS (\$20,100.00).
2. If the parties do not otherwise come to some agreement on Plaintiff's reasonable attorney fees, pursuant to (i) the accepted offer, (ii) Local Rule 109, (iii) 12 U.S.C.A. § 2605(f)(3); and (iv) Md. Code Ann., Com. Law § 13-408(b), the Plaintiff may file within 14 days of entry of this Order and Final Judgment a motion for his reasonable attorneys' fees and costs incurred in connection with this action.
3. Defendant will pay post-judgment interest pursuant to 28 U.S.C. § 1961.

¹ These include: (i) Count I pursuant to the Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-101 *et seq.* and Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law § 14-201, *et seq.*; (ii) Count II pursuant to the Maryland Mortgage Fraud Protection Act, Md. Code Ann., Real Prop. § 7-401, *et seq.*; (iii) Count III pursuant common law Negligence; (iv) Count IV pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C.A. § 2605 & 12 C.F.R. § 1024.35; (v) Count V pursuant to common law tortious interference with economic relationship; and (vi) Count VI pursuant to common law breach of settlement agreement.

4. The Clerk will transmit a copy of this Order to counsel for the parties and CLOSE this case.



The Honorable George Levi Russell, III
District Judge