

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MATTHEW W. FANCHER and)	
BELLA HOMES, LLC, a Delaware)	
Limited Liability Company,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
vs.)	
)	NO. 1:11-CV-2832-SCJ
SUNTRUST MORTGAGE, INC.;)	
MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS, INC.;)	
JOHN DOE, Attorneys for SunTrust)	
Mortgage, Inc.,)	
)	
Defendants.)	
_____)	

ANSWER AND AFFIRMATIVE DEFENSES
OF SUNTRUST MORTGAGE, INC.

COMES NOW, SUNTRUST MORTGAGE, INC. ("SunTrust Mortgage"), one of the named Defendants in the above-styled civil action,¹ and responds to the "Verified Complaint for Wrongful Foreclosure and Damages" filed by Plaintiffs Matthew W. Fancher ("Mr. Fancher" or, alternatively, "Plaintiff Matthew Fancher")

¹ Plaintiffs, in their initial pleading, also filed this lawsuit against "John Doe, Attorneys for SunTrust Mortgage, Inc.", whose identity is apparently unknown to the respective Plaintiffs. Plaintiffs' Complaint [Doc. No. 1].

and Bella Homes, LLC, a Delaware Limited Liability Company (“Plaintiff Bella Homes”) (hereinafter, “Plaintiffs’ Complaint” or, alternatively, the “Complaint”), respectfully showing this honorable Court as follows:

FIRST DEFENSE

Plaintiffs’ Complaint fails to state a claim or cause of action against SunTrust Mortgage upon which relief may be granted. FED. R. CIV. P. 12(b)(6).

SECOND DEFENSE

Plaintiff Bella Homes lacks standing to bring some or all of the claims alleged in Plaintiffs’ Complaint.

THIRD DEFENSE

Plaintiff Bella Homes’ claims against SunTrust Mortgage fail for lack of privity of contract.

FOURTH DEFENSE

Plaintiffs’ Complaint fails to comply Federal Rules of Civil Procedure 8(a) and 10(b).

FIFTH DEFENSE

Plaintiffs have failed to join a necessary party. FED. R. CIV. P. 19(a)(1); *see also* FED. R. CIV. P. 12(b)(7).

SIXTH DEFENSE

Any injury or damage suffered by the Plaintiffs was caused in whole or in part by the actions or inactions of the respective Plaintiffs or others, whose acts or omissions were the intervening and superseding cause of such alleged injury or damage, but not by the acts or omissions of SunTrust Mortgage.

SEVENTH DEFENSE

Plaintiffs' claims against SunTrust Mortgage are precluded under the doctrine of avoidable consequences.

EIGHTH DEFENSE

Plaintiffs' claims against SunTrust Mortgage are precluded due to Plaintiff Matthew Fancher's failure to exercise ordinary care.

NINTH DEFENSE

Plaintiffs are barred from the relief sought against SunTrust Mortgage in the Complaint due to their respective failure to exercise due diligence.

TENTH DEFENSE

Plaintiffs are barred from the relief sought in the Complaint against SunTrust Mortgage due to their respective failure to satisfy a condition precedent.

ELEVENTH DEFENSE

Plaintiffs' claims against SunTrust Mortgage must fail due to their respective failure to tender amount(s) admittedly owed.

TWELFTH DEFENSE

Plaintiff Matthew Fancher's claims against SunTrust Mortgage are barred by the doctrines of affirmation, ratification and waiver.

THIRTEENTH DEFENSE

The affirmative defenses of estoppel and release bar Plaintiffs' claims against SunTrust Mortgage.

FOURTEENTH DEFENSE

Plaintiffs' claims against SunTrust Mortgage are barred as there was no meeting of the minds between the respective Plaintiffs and SunTrust Mortgage.

FIFTEENTH DEFENSE

Plaintiff Bella Homes' claims against SunTrust Mortgage are barred by the Statute of Frauds.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred as there is a failure of consideration of a contract between the Plaintiffs and SunTrust Mortgage.

SEVENTEENTH DEFENSE

Plaintiffs' respective failure to make legally sufficient tender bars relief sought against SunTrust Mortgage in the Complaint.

EIGHTEENTH DEFENSE

Plaintiffs' claims against SunTrust Mortgage are barred by the economic loss rule.

NINETEENTH DEFENSE

Plaintiff Matthew Fancher's material breach of his contractual and/or legal duty(ies) bars the relief sought in the Complaint.

TWENTIETH DEFENSE

Plaintiffs' claims against SunTrust Mortgage regarding any alleged breach of contractual duty(ies) existing outside of the loan agreement fail for lack of consideration.

TWENTY-FIRST DEFENSE

Plaintiffs' claims against SunTrust Mortgage are barred because SunTrust Mortgage did not breach any duty owed to the respective Plaintiffs.

TWENTY-SECOND DEFENSE

The equitable claims of Plaintiffs' Complaint are barred in whole or in part because of the doctrine of unclean hands.

TWENTY-THIRD DEFENSE

Plaintiffs' state law claims are preempted by federal law.

TWENTY-FOURTH DEFENSE

Plaintiffs have not stated their allegations of fraud with the specificity required by Federal Rule of Civil Procedure 9(b).

TWENTY-FIFTH DEFENSE

Plaintiffs have not sustained any compensable damages.

TWENTY-SIXTH DEFENSE

Plaintiffs' claims are barred because SunTrust Mortgage has not caused the respective Plaintiffs any financial injury.

TWENTY-SEVENTH DEFENSE

Plaintiffs' claims are barred because no act or omission by SunTrust Mortgage, as alleged in Plaintiffs' Complaint, caused the respective Plaintiffs any loss or damage.

TWENTY-EIGHTH DEFENSE

Plaintiffs' claims against SunTrust Mortgage fail for lack of causation.

TWENTY-NINTH DEFENSE

Plaintiffs' Complaint is barred because SunTrust Mortgage was not the proximate cause of the respective Plaintiffs' alleged damages.

THIRTIETH DEFENSE

To the extent the Plaintiffs seek equitable relief, the affirmative defense of laches bars the relief sought against SunTrust Mortgage in the Complaint.

THIRTY-FIRST DEFENSE

Plaintiffs' allegation that SunTrust Mortgage breached a fiduciary duty owed to them must fail because no special relationship existed.

THIRTY-SECOND DEFENSE

To the extent the Plaintiffs seek equitable relief, Plaintiffs' Complaint against SunTrust Mortgage is barred because the respective Plaintiffs have adequate remedies at law.

THIRTY-THIRD DEFENSE

Plaintiffs' claims against SunTrust Mortgage are barred by the Plaintiffs' failure to mitigate their respective alleged damages.

THIRTY-FOURTH DEFENSE

SunTrust Mortgage reserves the right to assert any affirmative defenses and matters in avoidance as may be disclosed during the course of additional investigation and discovery.

THIRTY-FIFTH DEFENSE

Subject to and without waiving any of its other rights, defenses or objections, SUNTRUST MORTGAGE, INC., by and through its undersigned counsel, responds to the specific averments and allegations contained in the individual and enumerated paragraphs of Plaintiffs' Complaint as follows:

INTRODUCTION

The averments and allegations contained in the unnumbered paragraph preceding the first numbered paragraph of Plaintiffs' Complaint state a legal conclusion and, as such, require no response. Insofar as a response may be deemed necessary, SunTrust Mortgage denies any averments and/or allegations contained therein and specifically denies Plaintiff Bella Homes has standing to raise the claims alleged in the Complaint. By way of further answer, SunTrust Mortgage denies the Plaintiffs are entitled to the remedy(ies) sought therein, or to any relief whatsoever against SunTrust Mortgage.

PARTIES

1. SunTrust Mortgage is without knowledge or information sufficient to form a response as to the truth of the averments contained in numbered Paragraph 1 of Plaintiffs' Complaint and can, therefore, neither admit or deny same.

2. The averments contained in numbered Paragraph 2 are denied as stated. SunTrust Mortgage states it is a corporation organized under the laws of the Commonwealth of Virginia and that it is registered with the Office of the Secretary of State to do business in the State of Georgia. SunTrust Mortgage admits its registered agent for service is Corporation Service Corporation, located at 40 Technology Parkway South, #300, Norcross, Gwinnett County, Georgia 30092.

3. SunTrust Mortgage is without knowledge or information sufficient to form a response as to the truth of the averments contained in numbered Paragraph 3 of Plaintiffs' Complaint and can, therefore, neither admit or deny same.

4. SunTrust Mortgage is without knowledge or information sufficient to form a response as to the truth of the averments contained in numbered Paragraph 4 of Plaintiffs' Complaint and can, therefore, neither admit or deny same.

THE SUBJECT PROPERTY

5. In response to the averments contained in numbered Paragraph 5 of Plaintiffs' Complaint, SunTrust Mortgage admits the real property at issue in this litigation is located at and more commonly known as 1011 Highgrove Drive, Monroe, Georgia 30655. By way of further answer, SunTrust Mortgage states the Walton County, Georgia Deed Records speak for themselves, as applicable.

THE LOAN TRANSACTION

6. The averments and allegations contained in numbered Paragraph 6 of Plaintiffs' Complaint assume facts not in evidence, misstate numerous legal propositions, and call for a conclusion of law; as such, no response is required. These averments and allegations fail to identify with specificity the identity to which Plaintiff and which Defendant they pertain and, consequently, SunTrust Mortgage is left to speculate at its potential detriment. Notwithstanding the foregoing, and to the extent a response is required, SunTrust Mortgage states as follows:

The averments and allegations contained in the first paragraph of numbered Paragraph 6 are denied as stated. By way of further answer, SunTrust Mortgage states the respective loan documents speak for themselves as to their terms and conditions. SunTrust Mortgage further states the Walton County, Georgia Deed

Records speak for themselves, as applicable. All remaining averments and/or allegations contained in the first paragraph of numbered Paragraph 6 not specifically admitted herein or otherwise directly addressed, including any legal theory(ies) or proposition(s) posited therein, are denied.

In response to the averments contained in the second paragraph of numbered Paragraph 6, SunTrust Mortgage states the respective loan documents speak for themselves as to their terms and conditions. SunTrust Mortgage denies as stated the remaining averments contained in the second paragraph of numbered Paragraph 6. By way of further answer, SunTrust Mortgage states the Walton County, Georgia Deed Records speak for themselves, as applicable. SunTrust Mortgage further states no documents were attached to the Complaint as averred therein. Any remaining averments and/or allegations contained in the second paragraph of numbered Paragraph 6 not specifically admitted herein or otherwise directly addressed, including any legal theory(ies) or proposition(s) posited therein, are denied.

In response to the averments contained in the third paragraph of numbered Paragraph 6, SunTrust Mortgage states the respective loan documents speak for themselves as to their terms and conditions. By way of further answer, SunTrust

Mortgage states the Walton County, Georgia Deed Records speak for themselves, as applicable.

The averments and allegations contained in the fourth paragraph of numbered Paragraph 6 assume facts not in evidence, misstate numerous legal propositions, and call for a legal conclusion; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these averments and allegations as stated. By way of further answer, SunTrust Mortgage states the Walton County, Georgia Deed Records speak for themselves, as applicable. SunTrust Mortgage further states no documents were attached to the Complaint. Any remaining averments and/or allegations contained in the fourth paragraph of numbered Paragraph 6 not specifically admitted herein or otherwise directly addressed, including any legal theory(ies) or proposition(s) posited therein, are denied.

The allegations contained in the fifth paragraph of numbered Paragraph 6 are denied. SunTrust Mortgage specifically denies Plaintiff Bella Homes is a “party in interest”, as averred therein, and further denies the legal propositions and theories posited therein. SunTrust Mortgage further denies Plaintiff Bella Homes is entitled

to the remedy(ies) sought therein, or to any relief whatsoever against SunTrust Mortgage.

7. The averments and allegations contained in numbered Paragraph 7 of Plaintiffs' Complaint assume facts not in evidence, misstate a legal proposition, and call for a conclusion of law; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations.

8. The allegations contained in numbered Paragraph 8 of the Complaint state a legal conclusion and, as such, no response is required. Notwithstanding the foregoing, these allegations are denied as stated.

9. The allegations contained in numbered Paragraph 9 of Plaintiffs' Complaint assume facts not in evidence and misstate several legal propositions; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations as stated and specifically denies it lacks standing to foreclose on the subject property. By way of further answer, SunTrust Mortgage states the Walton County, Georgia Deed Records speak for themselves, as applicable. Any remaining averments and/or allegations contained in numbered Paragraph 9 of the Complaint not specifically admitted herein or otherwise directly

addressed, including any legal theory(ies) or proposition(s) posited therein, are denied.

THE LOAN PROCESSING and DECEPTIVE UNDERWRITING

10. The allegations contained in numbered Paragraph 10 of Plaintiffs' Complaint assume facts not in evidence and call for a legal conclusion; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations as stated.

11. The allegations contained in numbered Paragraph 11 of Plaintiffs' Complaint assume facts not in evidence and call for a legal conclusion; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations as stated.

12. The allegations contained in numbered Paragraph 12 of the Complaint are specifically denied.

13. The allegations and averments contained in numbered Paragraph 13 of Plaintiffs' Complaint misstate a legal proposition and call for a legal conclusion; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations and averments as stated. By way of further answer,

SunTrust Mortgage states the respective statute(s), and the meaning and intent contained therein, speak for themselves.

JURISDICTION

14. The averments contained in numbered Paragraph 14 of the Complaint are denied as stated.

15. The averments contained in numbered Paragraph 15 of the Complaint are admitted.

FACTUAL ALLEGATIONS

16. The allegations contained in numbered Paragraph 16 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, these allegations, as they may be deemed to pertain to SunTrust Mortgage, including the legal theories and propositions posited therein, are denied.

17. The allegations contained in numbered Paragraph 17 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, these allegations, and the legal theories and propositions posited therein, are denied. By way of further answer, SunTrust

Mortgage states the respective loan documents speak for themselves as to their terms and conditions.

18. The allegations contained in numbered Paragraph 18 of Plaintiffs' Complaint, including the legal theories and propositions posited therein, are denied.

19. The allegations contained in numbered Paragraph 19 of Plaintiffs' Complaint, including the legal theories and propositions posited therein, are specifically denied.

20. The allegations contained in numbered Paragraph 20 of Plaintiffs' Complaint, including the legal theories and propositions posited therein, are denied.

21. The allegations contained in numbered Paragraph 21 of Plaintiffs' Complaint, including the legal theories and propositions posited therein, are denied.

COUNT I

(Declaratory Relief Against All Defendants)

22. In response to the averments and allegations contained in numbered Paragraph 22 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

23. The allegations contained in numbered Paragraph 23 of the Complaint misstate legal propositions and legal theories and, as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations and the legal theories posited therein. SunTrust Mortgage specifically denies the Plaintiffs are entitled to the remedy sought therein, or to any relief whatsoever against SunTrust Mortgage.

24. The allegations contained in numbered Paragraph 24 of Plaintiffs' Complaint are specifically denied.

25. The allegations contained in numbered Paragraph 25 of Plaintiffs' Complaint are denied, and SunTrust Mortgage specifically denies the legal theory posited therein.

26. The allegations contained in numbered Paragraph 26 of the Complaint are denied, and SunTrust Mortgage specifically denies the legal theories posited therein. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy sought therein, or to any relief whatsoever against SunTrust Mortgage.

27. The allegations contained in numbered Paragraph 27 of the Complaint are denied. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy(ies) sought therein, or to any relief whatsoever against SunTrust Mortgage.

COUNT II

Injunctive Relief (Against All Defendants)

28. In response to the averments and allegations contained in numbered Paragraph 28 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

29. The allegations contained in numbered Paragraph 29 of Plaintiffs' Complaint assume facts not in evidence, misstate various legal propositions, and call for legal conclusion; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations and specifically denies the legal theories and propositions posited therein.

30. The allegations contained in numbered Paragraph 30 of Plaintiffs' Complaint assume facts not in evidence, misstate various legal propositions, and call for legal conclusion; as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations and specifically denies the legal theories and propositions posited therein, inclusive of sub-paragraphs (a)

through (c). By way of further answer, SunTrust Mortgage states the respective statute(s), and the meaning and intent contained therein, speak for themselves.

31. The allegations contained in numbered Paragraph 31 of Plaintiffs' Complaint are denied as stated, and SunTrust Mortgage specifically denies the legal theories and propositions posited therein.

32. The allegations contained in numbered Paragraph 32 of the Complaint are denied. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy sought therein, or to any relief whatsoever against SunTrust Mortgage.

33. The allegations contained in numbered Paragraph 33 of the Complaint are denied. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy sought therein, or to any relief whatsoever against SunTrust Mortgage.

COUNT III

Contractual Breach of Good Faith and Fair Dealing (Against All Defendants)

34. In response to the averments and allegations contained in numbered Paragraph 34 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

35. The allegation contained in numbered Paragraph 35 of Plaintiffs' Complaint calls for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies this allegation and any legal theory or proposition posited therein.

36. The allegations contained in numbered Paragraph 36 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and any legal theory(ies) or proposition(s) posited therein.

37. The allegations contained in numbered Paragraph 37 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and any legal theory(ies) or proposition(s) posited therein.

38. The allegations contained in numbered Paragraph 38 of Plaintiffs' Complaint calls for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies this allegation and any legal theory or proposition posited therein.

39. The allegations contained in numbered Paragraph 39 of Plaintiffs' Complaint calls for a legal conclusion and, as such, no response is required. To the

extent a response is required, SunTrust Mortgage denies these allegations and any legal theory(ies) or proposition(s) posited therein.

40. The allegations contained in numbered Paragraph 40 of Plaintiffs' Complaint are denied, and SunTrust Mortgage specifically denies the legal theories posited therein.

41. The allegations contained in numbered Paragraph 41 of Plaintiffs' Complaint are denied.

42. The allegations contained in numbered Paragraph 42 of the Complaint are denied. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy(ies) sought therein, or to any relief whatsoever against SunTrust Mortgage.

COUNT IV

Unfair and Deceptive Business Act Practices (UDAP) (Against All Defendants)

43. In response to the averments and allegations contained in numbered Paragraph 43 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

44. The allegations contained in numbered Paragraph 44 of Plaintiffs' Complaint assume facts not in evidence and, as such, no response is required. Notwithstanding the foregoing, SunTrust Mortgage denies these allegations and specifically denies the legal theories posited therein.

45. The allegations contained in numbered Paragraph 45 of Plaintiffs' Complaint are denied, and SunTrust Mortgage specifically denies the legal theories posited therein. SunTrust Mortgage further states no documents were attached to the Complaint.

46. The allegations contained in numbered Paragraph 46 of the Complaint are denied. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy sought therein, or to any relief whatsoever against SunTrust Mortgage.

COUNT V

UNCONSCIONABILITY - UCC-2-3202 [sic] (Against All Defendants)

47. In response to the averments and allegations contained in numbered Paragraph 47 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

48. The allegations contained in numbered Paragraph 48 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and any legal theory(ies) or proposition(s) posited therein.

49. The allegations contained in numbered Paragraph 49 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and any legal theory(ies) or proposition(s) posited therein.

50. The allegations contained in numbered Paragraph 50 of the Complaint are denied, and SunTrust Mortgage specifically denies the legal theories posited therein. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedies sought therein, or to any relief whatsoever against SunTrust Mortgage.

COUNT VI

Predatory Lending (Against Suntrust [sic] and MERS)

51. In response to the averments and allegations contained in numbered Paragraph 51 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations

contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

52. The allegation contained in numbered Paragraph 52 of Plaintiffs' Complaint calls for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies such allegation and specifically denies the legal theory contained therein.

53. The allegations contained in numbered Paragraph 53 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and specifically denies the legal theories posited therein.

54. The allegations contained in numbered Paragraph 54 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and specifically denies the legal theories posited therein.

55. The allegations contained in numbered Paragraph 55 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and specifically denies the legal theories posited therein.

56. The allegations contained in numbered Paragraph 56 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and specifically denies the legal theories posited therein.

57. The allegations contained in numbered Paragraph 57 of Plaintiffs' Complaint call for a legal conclusion and, as such, no response is required. To the extent a response is required, SunTrust Mortgage denies these allegations and specifically denies the legal theories posited therein.

58. The allegations contained in numbered Paragraph 58 of the Complaint are specifically denied. SunTrust Mortgage further denies the Plaintiffs are entitled to the remedy sought therein, or to any relief whatsoever against SunTrust Mortgage.

COUNT VIII

ILLEGAL AND DEFECTIVE FORECLOSURE ADVERTISEMENT

59. In response to the averments and allegations contained in numbered Paragraph 59 of Plaintiffs' Complaint, SunTrust Mortgage incorporates by reference each and every defense and response made to the averments and allegations

contained in the preceding numbered and unnumbered paragraphs of the Complaint as if fully set forth herein.

60. The allegations contained in numbered Paragraph 60 of Plaintiffs' Complaint are denied, and SunTrust Mortgage further denies the legal theories and propositions posited therein.

PRAYER FOR RELIEF

SunTrust Mortgage denies the allegations and prayers for relief contained in the unnumbered paragraph(s) following numbered Paragraph 60 of the Complaint, including sub-paragraphs (A) through (F) contained therein, and further denies the Plaintiffs are entitled to the remedy(ies) sought therein or to any relief whatsoever against SunTrust Mortgage.

* * *

SunTrust Mortgage denies each and every allegation contained in Plaintiffs' Complaint not specifically admitted herein or otherwise directly addressed.

WHEREFORE, having fully responded to each and every averment and allegation contained in Plaintiffs' Complaint, SUNTRUST MORTGAGE, INC. respectfully prays as follows:

(a) That Plaintiffs' Complaint be dismissed with prejudice;

(b) That SunTrust Mortgage be dismissed with all costs, including the attorney's fees incurred by SunTrust Mortgage in defending this action, cast upon the Plaintiffs;

(c) That the Court deny the Plaintiffs' request for any and all equitable, declaratory and/or injunctive relief in this action; and

(d) That the Court grant such other and further relief as may be just and proper.

Respectfully submitted this 31st day of August, 2011.

DICKENSON GILROY LLC

/s/ Monica K. Gilroy
MONICA K. GILROY
Georgia Bar No. 427520
TANIA T. TRUMBLE
Georgia Bar No. 720348
EMILY HART COBB
Georgia Bar No. 450385
**Attorneys for SunTrust Mortgage, Inc.
and MERS**

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FONT CERTIFICATION

The undersigned counsel for Defendant SunTrust Mortgage, Inc. hereby certifies that the within and foregoing Answer and Affirmative Defenses of SunTrust Mortgage, Inc. was prepared using Book Antiqua 13-point font in accordance with LR 5.1C (N.D. Ga.).

This 31st day of August, 2011.

/s/ Monica K. Gilroy
MONICA K. GILROY
Georgia Bar No. 427520
**Attorney for SunTrust Mortgage, Inc.
and MERS**

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MATTHEW W. FANCHER and)	
BELLA HOMES, LLC, a Delaware)	
Limited Liability Company,)	
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Plaintiffs,)	
)	CIVIL ACTION FILE
vs.)	
)	NO. 1:11-CV-2832-SCJ
SUNTRUST MORTGAGE, INC.,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with LR 5.1A (N.D. Ga.), I have this date electronically filed the within and foregoing **ANSWER AND AFFIRMATIVE DEFENSES OF SUNTRUST MORTGAGE, INC.** in the above-styled civil action with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all counsel of record in this matter as follows:

Stephen M. Maurillo, Esq.
sjudge40@bellsouth.net
STEPHEN M. MAURILLO & ASSOCIATES
1400 Market Place Boulevard
Suite 133
Cumming, Georgia 30041

This 31st day of August, 2011.

/s/ Monica K. Gilroy
MONICA K. GILROY
Georgia Bar No. 427520
**Attorney for SunTrust Mortgage, Inc.
and MERS**

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