

## **Excerpts of Applicable Law**

### **12 C.F.R. § 1024.17 (c)(3)**

Subsequent escrow account analyses. For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

### **12 C.F.R. § 1024.17(f)(1)**

Shortages, surpluses, and deficiencies requirements—

- (1) Escrow account analysis. For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.
  - (i) As noted in § 1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.
  - (ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

### **Excerpts from FED.R.BANKR.P. 3002.1**

**(a) In general.** This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

**(b) Notice of payment changes.** The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

...

**(i) Failure to notify.** If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

- (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

**Excerpts from the Advisory Committee Notes (2011 Adoption) ON FED.R.BANKR.P. 3002.1**

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee must be informed of the exact amount needed to cure any prepetition arrearage, see Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if necessary, and to adjust postpetition mortgage payments to cover any properly claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

...

Subdivision (b). Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

...

Subdivision (i). Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Case No. 13-51681
	)	
HENRY CADE, III,	)	Chapter 13
	)	
Debtor.	)	Judge Caldwell
_____	)	

**UNITED STATES TRUSTEE’S MOTION FOR ESCROW ACCOUNT  
RECONCILIATION AND WAIVER OF UNNOTICED ESCROW CHARGES OR  
REFUND OF ESCROW SURPLUS; AND MEMORANDUM IN SUPPORT**

The United States Trustee (“U.S. Trustee”) hereby moves this Court for an Order requiring Nationstar Mortgage, LLC (“Nationstar”) to perform an Escrow Account Reconciliation, and Waive Unnoticed Escrow Charges or Refund Escrow Surplus (“Motion”). A Memorandum in Support is attached hereto and incorporated herein.

Dated: November 13, 2017

DANIEL M. MCDERMOTT  
UNITED STATES TRUSTEE FOR REGION 9

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## **MEMORANDUM IN SUPPORT**

### **INTRODUCTION**

The U.S. Trustee's Motion is made pursuant to 11 U.S.C. §§ 1322(b)(5) and § 307, and FED. R. BANKR. P. 3002.1(i). Nationstar failed to file Notices of Mortgage Payment Change for at least four years. Such failure calls into question whether the Debtor's escrow account balance is current, and consequently, whether Nationstar's reply to Trustee English's Notice of Final Cure stating that the loan is current is indeed accurate.

### **JURISDICTION AND VENUE**

This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1334, 151, and 157. Venue in this district and of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The U.S. Trustee has standing to appear and be heard on this issue pursuant to 11 U.S.C. § 307.

The U.S. Trustee is charged with certain administrative responsibilities pursuant to 28 U.S.C. § 586(a)(3), which include the supervision of the administration of cases pending under Chapter 13. 28 U.S.C. § 586(a)(3)(G) requires the U.S. Trustee to monitor the progress of cases under title 11 and take such actions as the U.S. Trustee deems appropriate to prevent undue delay in such progress.

### **BACKGROUND**

1. Henry Cade, III, (hereinafter "Debtor") filed a Voluntary Petition under chapter 13 of the United States Bankruptcy Code on March 7, 2013.

2. The schedules filed in this case state that the Debtor owns, as his personal residence, real estate at 6439 Kildale Square West, Columbus, OH 43229 (Docket No. 1).

3. Debtor's Amended Chapter 13 plan was filed July 5, 2013 (Docket No. 29). Confirmation of that Amended Chapter 13 plan occurred on July 12, 2013 (Docket No. 32). Debtor's confirmed Plan calls for payment of the mortgage via conduit.

4. Nationstar filed a proof of claim on June 11, 2013 (Claim No. 3-1). According to the Proof of Claim, arrears existed and the mortgage loan payment contained an escrow component.

5. The Claims Register for Claim Number 3-1 reflects that no Notices of Mortgage Payment Change were filed with the Court in 2014, 2015, 2016 or 2017.<sup>1</sup>

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<sup>1</sup> It is unknown at this time whether the escrow account is overdue for review in 2017.

6. On November 1, 2017, the Standing Chapter 13 Trustee filed a Notice of Final Cure Mortgage Payment regarding Rule 3002.1 and Claim Number 3-1 (Docket No. 46).

7. On November 8, 2017, Nationstar filed a Response to the Trustee's Notice of Final Cure (Docket No. 49). Nationstar's Response essentially stated that Nationstar (1) agrees the Debtor is current with pre-petition arrears, and (2) that the Debtor has paid all post-petition amounts. In essence, Debtor is "current" with his mortgage loan.

8. The failure of Nationstar to file Notices of Mortgage Payment Change for at least four years calls into question whether the escrow account balance is current.

9. Before closing the Bankruptcy Case, the United States Trustee asks this Honorable Court to require Nationstar to conduct a full and complete escrow analysis from 2013 to the present, and file an Escrow Account Reconciliation Statement to identify the accurate status of the escrow account for the Debtor.

10. If there are any additional unnoticed post-petition escrow charges, then, pursuant to FED. R. BANKR. P. 3002.1(i),<sup>2</sup> the Court should order Nationstar to waive those unnoticed charges or to refund any surplus to the Debtor or Chapter 13 Trustee, as appropriate.

11. The Debtor should have sufficient funding in his escrow account after exiting bankruptcy consistent with his right to cure under 11 U.S.C. § 1322(b)(5).

12. Any escrow surplus or overpayment must be vetted by the Chapter 13 Trustee in order to determine whether it is property of the bankruptcy estate.

#### **REQUEST FOR ESCROW ACCOUNT RECONCILIATION STATEMENT**

13. The United States Trustee is imposed with certain administrative responsibilities pursuant to 28 U.S.C. § 586(a)(3), which include the supervision of the administration of cases pending under Title 11.

14. "The United States Trustee may raise and may appear and be heard on any issue in any case or proceeding under this title . . . ."<sup>3</sup> Courts have interpreted § 307 to apply broadly to the United States trustee.<sup>4</sup> "United States Trustees . . . will serve as bankruptcy watch-dogs to

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<sup>2</sup> FED.R.BANKR.P. 3002.1 is occasionally abbreviated hereafter as "Bankruptcy Rule" or "Rule."

<sup>3</sup> 11 U.S.C. § 307.

<sup>4</sup> *United Artists Theatre Co. v. Walton*, 315 F.3d 217 (3<sup>rd</sup> Cir. Jan. 9, 2003); *In re Pillowtex, Inc.*, 304 F.3d 246 (3<sup>rd</sup> Cir. Sept. 23, 2002); *U.S. Trustee v. Price Waterhouse*, 19 F.3d 138 (3<sup>rd</sup> Cir. Mar. 16, 1994); *Countrywide Home Loans, Inc. v. Office of the United States Trustee*, 387 B.R. 467 (W.D. Pa. June 11, 2008).

prevent fraud, dishonesty, and overreaching in the bankruptcy arena.”<sup>5</sup> Congress has stated that trustees are responsible for “protecting the public interest and ensuring that bankruptcy cases are conducted according to law.”<sup>6</sup>

### **NEED FOR ESCROW ACCOUNT RECONCILIATION STATEMENT**

15. A chapter 13 debtor has the right to propose a plan providing “for the curing of any default within a reasonable time and maintaining payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due.”<sup>7</sup>

16. FED.R.BANKR.P. 3002.1(b) requires that:

The holder of the claim shall file and serve on the debtor, debtor’s counsel, and the trustee a notice of any change in the payment amount including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

17. The Advisory Committee Notes to the implementation of Rule 3002.1 states that:

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor’s plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage,<sup>8</sup> and the amount of the postpetition payment obligation. If the latter amount changes over time due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed, claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate automatic stay.

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<sup>5</sup> *In re Subpoena Duces Tecum*, 461 B.R. 823, 828 (C.D. Ca. 2011); H.R.Rep. No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 1, 88 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6049.

<sup>6</sup> *In re Revco D.S., Inc.*, 898 F.2d 498, 500 (6<sup>th</sup> Cir. 1990) (quoting H.Rep. 595 at 109, reprinted in 1978 U.S. Code Cong. & Admin. News at 6070).

<sup>7</sup> *See*, 11 U.S.C. § 1322(b)(5).

<sup>8</sup> *See*, FED.R.BANKR.P. 3001(c)(2).

18. As the Advisory Committee Notes make clear, the purpose of the Notice under Rule 3002.1(b) provides debtors with the ability to cure all prepetition arrears and to keep current on post-petition mortgage payments during the duration of the chapter 13 bankruptcy case. The Rule also balances those rights of the debtor with the interests of the holder of the claim to receive post-petition funds needed to keep the escrow account current without violating the automatic stay.

19. In this case, Nationstar filed a Response to Notice of Final Cure stating, in essence, that the Debtor is current with all post-petition payments consistent with § 1322(b)(5) of the Bankruptcy Code. Based on that statement by Nationstar, one is left to assume the escrow account, indelibly linked to the mortgage loan, is current as well.

20. A review of the claims register in this case shows that Nationstar did not file a Notice of Mortgage Payment Change in 2014, 2015, 2016 or 2017.

21. The failure to file Notices of Mortgage Payment Change for at least four years, calls into question whether the escrow account balance is in fact correct.

22. The post-petition amounts owed to a mortgage servicer are addressed by Rule 3002.1, and relate to the original mortgage claim.

23. Filing the Response to Notice of Final Cure Payment under Rule 3002.1(g) “shall be filed as a supplement to the holder’s proof of claim and is not subject to rule 3001(f).”<sup>9</sup>

24. “A proof of claim must be signed by a claim holder under penalty of perjury.”<sup>10</sup> Thus, again, the Rule 3002.1(g) response—as supplement to a proof of claim—must also be signed under penalty of perjury.”<sup>11</sup>

25. The Court, the Debtor, and the Chapter 13 trustee, have an interest in ensuring that the post-petition payments remitted by the Chapter 13 Trustee have been properly applied to the Debtor’s account.

26. A disclosure of all receipts and disbursements provides the Court, the Debtor, and the Chapter 13 Trustee with the ability to ensure that the escrow account activity since 2013 is accurate.

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<sup>9</sup> “A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” FED.R.BANKR.P. 3001(f).

<sup>10</sup> FED. R. BANKR. P. 3001(a) and Bankruptcy Official Form 10.

<sup>11</sup> *In re Nieves*, 499 B.R. 222, 225 (Bankr. D. P.R. 2013).

27. The U.S. Trustee requests the Court to order Nationstar to conduct a full and complete escrow analysis from 2013 to present and prepare and file with the Court an Escrow Account Reconciliation Statement to identify all post-petition escrow payments to, and disbursements from, the Debtor's escrow account prior to the closing of the bankruptcy case.

**WAIVER OF UNNOTICED ESCROW CHARGES OR REFUND OF SURPLUS**

28. “Bankruptcy Rule 3002.1 (the “Rule”) was promulgated in 2011, in response to a growing problem that had arisen in Chapter 13 cases throughout the country: debtors who had successfully completed their Chapter 13 plans, and paid all of their mortgage arrears and post-petition installment payments, would find themselves in renewed foreclosure proceedings due to undisclosed and unpaid post-petition charges and fees—a result clearly at odds with a debtor's right to a fresh start.”<sup>12</sup>

29. “To honor the promise and spirit of chapter 13 administrations for the compliant debtor . . . the remedy for a mortgage creditor's failure to provide appropriate notice is disallowance of the implicated deficiencies. Notice is vital to an effective rehabilitation, because it offers the opportunity to object and have a day in court, which ultimately allows a case to continue moving forward without ending in a surprise at the end of the case. It is from the twin pillars of a fresh start and the orderly administration of the estate to *all* creditors' benefit that the applicable notice requirements hang. Moreover, notice cannot function without a reasonable expectation that the rules will be followed by all. A mortgagee cannot spring upon the debtor a reticent debt that lingers like a haunting refrain.”<sup>13</sup>

30. “[C]ourts have determined that the proper remedy for a failure to abide by the required notice of escrow account analysis under RESPA is essentially a death knell: deeming a waiver of any right to recover any deficiencies encompassed by the failed period.”<sup>14</sup>

31. Rule 3002.1(i) provides:

If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as

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<sup>12</sup> *In re Gravel*, 556 B.R. 561, 568 (Bankr. D. Vt. 2016).

<sup>13</sup> *In re Tavares*, 547 B.R. 204, 221 (Bankr. S.D. TX 2016).

<sup>14</sup> *Tavares*, 547 B.R. at 220-21. [*citing* 2012 WL 4738651, at \*3; *see e.g.*, *In re Johnson*, 384 B.R. 763 (Bankr. E.D. Mich. 2008); *In re Dominique*, 368 B.R. 913 (Bankr. S. D. Fla. 2007)].



evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

- (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

32. The failure of a mortgage servicer to file Notices of Mortgage Payment Change deprives a debtor of the ability to timely challenge any inappropriate escrow charges and the right to cure any post-petition deficiencies under § 1322(b)(5).

33. It is appropriate for Nationstar to waive the collection of any unnoticed post-petition escrow charges that resulted from Nationstar's failure to conduct an escrow analyses and/or file Notices of Mortgage Payment Change for four years.

34. It is also appropriate to ensure that the escrow account is sufficiently funded so that no shortage is assessed against the Debtor resulting from the mortgage servicer's failure to file Notices of Mortgage Payment Change that would further harm the Debtor after the case closes.

35. Where the creditor fails to notice post-petition claims, they waive the right to collect postpetition taxes and insurance and may even be subject to disgorgement back to the Trustee for any overpayment.<sup>15</sup>

36. Any surplus that might result from the failure to file the Notices of Mortgage Payment Change should be disclosed and either refunded to the Debtor, or the Chapter 13 Trustee should be allowed to assess whether such surpluses are property of the estate and subject to administration by the Chapter 13 Trustee.

37. This Court has the authority and power under 11 U.S.C. § 105(a) to fashion orders providing appropriate relief to carry out the provisions of the Bankruptcy Code. This Court also has the authority and power under 11 U.S.C. § 105(a) to take any action necessary to enforce or implement the Rules of Bankruptcy Procedure and to prevent abuses of process.

WHEREFORE, the United States Trustee respectfully requests this Honorable Court to require Nationstar to:

- a. Conduct a full and complete escrow analysis from 2013 to present and file an Escrow Account Reconciliation Statement with the Court;
- b. Waive any unnoticed post-petition escrow charges;
- c. Refund any escrow surplus payable to the Debtor or Chapter 13 trustee as appropriate;

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<sup>15</sup> *Tavares*, 547 B.R. at 220-21.

- d. Sufficiently fund the Debtor's escrow account to accurately reflect the Chapter 13 trustee remittances and proper disbursements to ensure that the Debtor has cured his mortgage account (including escrow) under 11 U.S.C. § 1322(b)(5); and
- e. Comply with any other relief under FED. R. BANKR. P. 3002.1(i) or otherwise as the Court deems appropriate.

Dated: November 13, 2017

DANIEL M. MCDERMOTT  
UNITED STATES TRUSTEE FOR REGION 9

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**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**

**Dated: January 23, 2018**



*Charles M. Caldwell*  
Charles M. Caldwell  
United States Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: ) Case No. 13-51681  
)  
HENRY CADE, III, ) Chapter 13  
)  
Debtor. ) Judge Caldwell  
)

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**STIPULATED AND AGREED ORDER GRANTING UNITED STATES TRUSTEE’S  
MOTION FOR ESCROW RECONCILIATION AND WAIVER OF UNNOTICED  
ESCROW CHARGES OR REFUND OF ESCROW SURPLUS (Docket No. 50)**

The Motion for Escrow Account Reconciliation and Waiver of Unnoticed Escrow Charges or Refund of Escrow Status was filed November 13, 2017 (“Motion,” Docket No. 50), and Nationstar Mortgage, LLC (“Nationstar”) filed its Response on November 20, 2017 (Docket No. 52). The United States Trustee is represented by Matthew McDonald; Nationstar Mortgage, LLC (“Nationstar”) is represented by Phoebe Winder, Esq. and Adam B. Hall, Esq., and the Debtor is represented by Philip Gerth. The parties stipulate that a Notice of Mortgage Payment Change (“PCN”) was filed on November 20, 2017 (Docket No. 53), and no other PCNs were filed from 2013 to 2017.

The parties hereby enter into this Agreement:

**IT IS HEREBY ORDERED** that the mortgage loan serviced by Nationstar was current in contractual payments at the time of preparation and filing of Nationstar's Response to the Notice of Final Cure (Docket No. 49). However, an escrow surplus was present on the mortgage account, which may be attributable to the fact that Nationstar did not run annual post-petition escrow analyses for the Debtor's account. As a result, the Debtor's account did not reflect any change in escrow amounts owed and no PCN was filed, thus resulting in a conduit overpayment by the Chapter 13 Trustee.

**IT IS FURTHER ORDERED** that pursuant to the escrow analysis dated October 31, 2017, which is attached to a Notice of Payment Change and was filed on November 20, 2017 (Docket No. 53), the Debtor's escrow account had a surplus of \$1,040.30, and escrow account was in balance, after setting aside the surplus amount to be returned to the Chapter 13 trustee. The Debtor's monthly escrow payment effective January 1, 2018, in the amount of \$259.59, is equal to the base amount (estimated taxes, insurance and any other escrowed items disbursed in the aggregate amount of \$3,115.11, divided by 12 months). The Debtor's new total monthly payment effective January 1, 2018, is \$866.84 (\$607.25 for principal and interest, and \$259.59 for escrow).

**IT IS FURTHER ORDERED** that Nationstar shall return the overpayment to the Chapter 13 Trustee in the amount of \$1,040.30 no later than January 31, 2018, and recompense of said sum will never be sought from the Debtor by Nationstar at any time in the future.

**IT IS SO ORDERED.**

APPROVED AS TO FORM AND CONTENT BY:

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**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**

**Dated: April 18, 2018**



*Charles M. Caldwell*  
Charles M. Caldwell  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: ) Case No. 13-51385  
)  
MATTHEW PAUL WILSON AND ) Chapter 13  
KIMBERLY ANN WILSON, )  
Debtors. ) Judge Caldwell  
)

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**STIPULATION AND AGREED ORDER REGARDING ESCROW RECONCILIATION AND WAIVER OF UNNOTICED ESCROW CHARGES**

This matter came on for consideration upon the agreement of the Parties, who enter into the following Stipulations:

1. Matthew Paul Wilson and Kimberly Ann Wilson (hereinafter “Debtors”) filed a Voluntary Petition under Chapter 13 of the United States Bankruptcy Code February 27, 2013.
2. The schedules filed in this case state that Debtors own as their personal residence real estate at 9976 Egypt Pike, Clarksburg, OH 43115 (Docket No. 1).
3. The Chapter 13 plan was also filed on February 27, 2013 (Docket No. 8). That Plan was confirmed on May 10, 2013 (Docket No. 32), and calls for payment of the mortgage via conduit payments.
4. Prior mortgage servicer U.S. Bank National Association, filed a proof of claim on

April 5, 2013 (Claim No. 8-1).

5. An Assignment of Claim Transfer Agreement from U.S. Bank National Association to Nationstar Mortgage, LLC (“Nationstar”) was filed on August 7, 2013 (Docket No. 37).
6. The Claims Register for Claim No. 8-1 reflects that no Notices of Mortgage Payment Change pursuant to escrow changes were filed with the Court in 2014, 2015, 2016 or 2017.
7. The U.S. Trustee inquired to Nationstar about the lack of Notices of Payment Change filings and requested an accounting of Debtors’ escrow.
8. Nationstar did not run annual post-petition escrow analyses for Debtors’ account pursuant to 12 C.F.R. § 1024.17(c)(3) and (f)(1) and 24 C.F.R. § 3500.17, and no Notices of Payment Change were filed pursuant to FED. R. BANKR. P. 3002.1 for four years. As a result Debtors’ account was not adjusted for annual changes in the escrow amounts owed, which resulted in an escrow shortage.
9. Nationstar provided an accounting of Debtors’ escrow to the U.S. Trustee which now reflects (2) two credits to Debtors’ escrow account in the amount \$4,846.10 and \$52.42. Those credits represents the total of the increases in the monthly payments that were not noticed to the court pursuant to Bankruptcy Rule 3002.1 and is intended to compensate Debtors for the previously unfiled notices. This stipulation memorializes the aggregate escrow account credit of \$4,898.52.
10. Nationstar represents that the escrow account is now in balance as a result of the two escrow account credits that were applied.

In light of the foregoing Stipulations, the Court finds in favor of this Agreed Order. Good cause appearing, therefore:

**IT IS HEREBY ORDERED** that to resolve the U.S. Trustee’s inquiry without litigation, Nationstar shall waive the total escrow shortage in the aggregate amount of \$4,898.52.

Recompense of said sum will never be sought from Debtors by Nationstar at any time in the future.

**IT IS FURTHER ORDERED** that within 20 days of the date of this Order Nationstar shall file a Notice of Mortgage Payment change which contemplates the adjustments herein and indicates Debtors’ mortgage payment going forward. Said Notice of Mortgage Payment Change shall fully comply with FED. R. BANKR. P. 3002.1.

**IT IS SO ORDERED.**

APPROVED AS TO FORM AND CONTENT BY:

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