No._____

In The
Supreme Court of The United States

PAMELA M. TIMBES,

Petitioner,

VS.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
As Indenture Trustee for American Home Mortgage
Investment Trust 2005-3,

OCWEN LOAN SERVICING, LLC, AND

ALDRIDGE PITE, LLP,
f.k.a. Aldridge Conners,

Respondents.

APPLICATION FOR STAY PENDING CERTIORARI

TO THE HONORABLE CLARENCE THOMAS
CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

PAMELA M. TIMBES

304 Carnoustie
St. Simons Island, GA 31522
(912) 222-6773
ptimbes@gmail.com

Petitioner Pro Se

January 2, 2018

APPLICATION FOR STAY PENDING CERTIORARI

TO THE HONORABLE CLARENCE THOMAS, AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT:

Petitioner, Pamela M. Timbes, "Timbes", pursuant to Supreme Court Rule 23 and 28 U.S.C. §2101(f), respectfully requests this Court to stay, pending Petition for Writ of Certiorari, the Order of the United States Court of Appeals for the Eleventh Circuit No. 17-10556-CC, filed September 6, 2017, **App. A** ; Petition for Rehearing and Rehearing en Banc having been denied on November 28, 2017, **App. B** and **App. C**; and, or in the alternative, treat the application as a petition for certiorari and/or petition for mandamus, grant the petition, and summarily reverse the decision below; the Eleventh Circuit Court having lacked jurisdiction over the subject matter.

The panel decision of the Eleventh Circuit conflicts with decisions of the United States Supreme Court and other decisions of the Eleventh Circuit. Consideration is therefore necessary to secure and maintain uniformity of the court's decisions. See *e.g.*:

Sprint Commc'ns, Inc. v. Jacobs, 134S. Ct. 584, 187L. Ed. 2d 505 (2013)

Shaffer v. Heitner, 433 U.S. 186, 207-208 (1977)

Redner v. Citrus County, Florida, 919 F.2d 646 (11th Cir., 1990)

Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 n.4 (11th Cir. 1998)

Russell Corp. v. Am. Home Assur. Co., 264 F.3d 1040, 1050 (11th Cir.2001)

Burns v. Windsor Ins. Co., 31 F.3d 1092, 1095 (11th Cir.1994).

This case involves questions of exceptional importance, because the panel decision of the Eleventh Circuit, not only conflicts with U.S. Supreme Court rulings and Eleventh Circuit rulings, it also conflicts with the authoritative decisions of other United States Courts of Appeal who have addressed the issues.

QUESTIONS PRESENTED

1. Whether a wrongful foreclosure lawsuit filed in the state court, and removed to federal court under 28 U.S.C. Section 1441, which challenges a state-regulated, non-judicial foreclosure as void for violation of Georgia law requiring that a valid assignment be filed prior to foreclosure, and/or for mortgage fraud under the Georgia RICO Act, and/or for violation of the Trust's PSA, can be considered exempt from the *Rooker-Feldman* doctrine "because there is no state-court judgment that could be reviewed"[1]; despite the fact that reversal of the state-regulated foreclosure would be a necessary part of the relief requested?

2. Whether a wrongful foreclosure lawsuit filed in the state court, and removed to federal court under 28 U.S.C. Section 1441, which challenges a state-regulated non-judicial foreclosure as void for violation of Georgia law requiring that a valid assignment be filed prior to foreclosure, and/or for mortgage fraud

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[1] Order, App. A at ,p.6.

under the Georgia RICO Act, and/or for violation of the Trust's PSA, can be exempt from the *Younger* doctrine "because there is no pending state-court or court-like proceeding with which the federal district court could interfere by exercising jurisdiction over the case."[2]; when in fact the wrongful foreclosure proceeding itself is a "civil enforcement proceeding" of O.C.G.A. § 44-14-162 (b) of the type defined by the Court in *Sprint*, supra to be included under *Younger*?

A. The important state issue which needs to be resolved by the state court and with which the federal court has interfered: Whether a borrower subject to Georgia law has standing to challenge an assignment of security deed which is void *ab initio* for mortgage fraud under the Georgia RICO Act and/or void *ab initio* for violation of the Trust's PSA and/or which is facially invalid for violation of a statutory protection, O.C.G.A. § 44-14-162 (b), and thereby injuring the borrower?

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

On January 5, 2016 Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, wrongfully foreclosed on Pamela Timbes' home in violation of O.C.G.A. § 44-14-162(b) which requires that a valid Assignment had to be filed prior to the foreclosure sale.

On January 7, 2016 Timbes filed in the Superior Court her Amended

[2] Order, App. A at p.6.

Complaint, **Dkt. 1-3.**[3] Claims included, *inter alia,* Mortgage Fraud under the Georgia RICO Act, Fraud Upon the Court, Void Assignment of Deed to Secure Debt Filed in County Records.

On February 24, 2016 all Defendants filed Notice of Removal of the Superior Court Case CE16-00001-063 to the U.S. District Court Southern District of Georgia which was filed as Case CV216-31.

On February 29, 2016 Timbes filed Motion to Remand (**Dkt. # 5**) on the ground that the District Court lacked subject-matter jurisdiction under *Rooker-Feldman* and *Younger* doctrines, and moved to stay ruling on Defendants' motions to dismiss pending ruling on the motion to remand.

On January 13, 2017 Judge Wood issued an Order, **App. D**, denying Pamela Timbes' Motion to Remand; granting Defendants' Motions to Dismiss; and ignoring Pamela Timbes' motion to stay ruling. Plaintiff's case was ordered closed.

On February 2, 2017 Timbes filed her timely Notice of Appeal, **Dkt. #24**, from the January 13, 2017 Order of Judge Lisa Godbey Wood.

On September 6, 2017, after briefing in Case 17-10556, a panel decision, **App. A**, was issued affirming the U.S. District Court decision. The panel stated:

> *Rooker-Feldman* does not apply because there is no state-court judgment that could be reviewed, and *Younger* does not apply because there is no pending state-court or court-like proceeding with which the

[3] Docket Numbers referenced are those in U.S. District Court Case 2:16-cv-31 unless otherwise noted.

federal district court could interfere by exercising jurisdiction over the case. Order at p. 6.

Because *Ames* does not cast doubt on *Haynes's* interpretation of Georgia state law, Timbes lacks standing to challenge the allegedly forged assignment. Order at p. 11.

On November 28, 2017 the Eleventh Circuit Court denied Timbes' Petition for Rehearing and Rehearing En Banc, **App. B** and **App. C.**

ARGUMENT AND CITATION OF AUTHORITY

I. THE *YOUNGER* ABSTENTION DOCTRINE IS APPLICABLE.

The U.S. District Court erred in taking jurisdiction over the present case and the Eleventh Circuit erred in affirming, because this case is of important state interest, and under the *Younger* Doctrine, the federal Court must abstain from interference with state judicial proceedings. See *Middlesex County Ethics Comm.*, 457 U.S. at 437,102 S. Ct. at 2524 (1982). Under the *Younger* doctrine, a federal District Court must abstain from hearing a federal case when that case interferes with state judicial proceedings. Courts have determined that cases involving property rights, particularly foreclosure actions and related matters, involve important state interests. See *Shaffer v. Heitner*, 433 U.S. 186, 207-208 (1977)(recognizing a state's "strong interests in assuring the marketability of property within its borders and in providing a procedure for peaceful resolution of disputes about the possession of that property."); *Gray v. Pagano*, 287 Fed. Appx.

155, 157-158 (3rd Cir. 2008)(affirming district court's abstention under *Younger* where state-court foreclosure action was pending and "[a]ny relief that could be granted by the district court would directly impact Pennsylvania's interest in protecting the authority of its judicial system"; *Doscher v. Menifee Circuit Court*, 75 Fed.Appx. 996 (6th Cir. 2003)(affirming district court's application of *Younger* abstention and finding important state interest in mortgage foreclosure); Wrongful foreclosure issues are considered important state interests; *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1262(D.Haw.2003) (finding foreclosure and ejectment proceedings are important state interests under the Younger doctrine).

Courts in the Eleventh Circuit have abstained under *Younger:* See *eg.*, *Barberi v. New Century Mortg. Corp.*, No. 3:12cv435/MCR/EMT, 2013 WL 1197732, at *3(N.D. Fla.Feb. 20,2013)("... Many courts recognize that state mortgage foreclosure actions implicate important state interests." (citation omitted)); *Sergeon v. Home Loan Center, Inc.*, No. 3:09-cv-01113-J-32JBT, 2010 ("Before proceeding with an analysis of the application of the *Younger* factors to this case, the Court notes that there are a multitude of federal cases recognizing that *Younger* abstention is appropriate when granting the relief requested in a federal court action would have the effect of interfering with an ongoing state court mortgage foreclosure action.").

In *Redner v. Citrus County, Florida,* 919 F.2d 646 (11th Cir., 1990) the Court stated:

> ....A state's trial and appeals process is considered "a unitary system," and *Younger* prevents a federal court from disrupting the process while a case is on appeal. *See New Orleans Public Service, Inc. v. Council of New Orleans,* 491 U.S. 350, ___, 109 S.Ct. 2506, 2518, 105 L.Ed.2d 298 (1989). Thus, as long as a federal challenge to a state statute or local ordinance "relate[s] to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state court litigation mandates that the federal court stay its hand." *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 14, 107 S.Ct. 1519, 1527, 95 L.Ed.2d 1 (1987).

In *Sprint Commc'ns, Inc. v. Jacobs*, 134S. Ct. 584, 187L. Ed. 2d 505 (2013) the Court defined the civil proceedings to be included under *Younger*:

"Circumstances fitting within the Younger doctrine..... 'civil enforcement proceedings,' and 'civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.' ." *Sprint*, at 588.

Enforcement of OCGA § 44-14-162 (b) is critical to ensure that only the record holders of deeds initiate foreclosure proceedings. As the Georgia Supreme Court noted in its recent decision, *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E. 2d 614 (Ga. 2016):

> [Footnote] 7 The legislature has indicated its desire to ensure that only the record holders of deeds initiate foreclosure proceedings. OCGA § 44-14-162 (b) requires that "[t]he security instrument or assignment thereof vesting the secured creditor with title to the

> security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located," and the stated legislative purpose of this provision is to "require a foreclosure to be conducted by the current owner or holder of the mortgage, as reflected by public records," Ga. L. 2008, p. 624, § 1. Because Chase recorded its assignment as required and the Ameses have not brought a distinct challenge under this statute, we need not decide whether § 44-14-162 (b) could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment. [Emphasis added.]

Pamela Timbes has challenged under OCGA § 44-14-162 (b); therefore, the Georgia Supreme Court has left no question whether or not the present wrongful foreclosure case is of important state interest with regard to enforcement of O.C.G.A. § 44-14-162 (b). *Ames v. JP Morgan Chase Bank, N.A.*, supra. Consequently, there should also be no question as to the application of the *Younger* Doctrine to the present case. Upon removal of the complaint from state court, the District Court, therefore, should have abstained under *Younger* and should have remanded the complaint to the state court, because 28 U.S.C. Section 1441 is to be strictly construed against removal. In the context of actions removed from state court, the removing party bears the burden of demonstrating the federal court's jurisdiction and that removal was proper. *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 n.4 (11th Cir. 1998). In *Russell Corp. v. Am. Home Assur. Co.*, 264 F.3d 1040, 1050 (11th Cir.2001) the Court held:

> Federal courts are courts of limited jurisdiction, and there is a presumption against the exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved in favor of

remand. *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir.1994).

See also *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000). *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir.2004).

Instead the District Court denied Timbes' motion to remand, assumed jurisdiction, and dismissed the complaint; and the Eleventh Circuit panel affirmed the decision; thereby interfering with the important state issue presented in *Ames* which needs to be resolved by the state court: **Whether § 44-14-162 (b) could ever provide a debtor with standing to challenge a foreclosure based on a facially invalid assignment.**

The Eleventh Circuit Court stated in *Timbes v. Deutcshe Bank National Trust Co. et al*:

> Turning to Timbes's challenge to the validity of the assignment, we agree the district court that she lacks standing to contest the assignment. [Order at p. 7].
>
> .....
>
> Timbes points out that Georgia courts have not gone quite so far as *Haynes*. In *Ames*, the Supreme Court of Georgia adopted the general rule that a borrower lacks standing to challenge an assignment of his or her security deed. 783 S.E.2d at 619-20. But the Court left open the possibility that a debtor could have standing to challenge the validity of an assignment indirectly, if the invalid assignment violated a statutory protection and thereby injured the debtor. *Id.* At 621. One question left unresolved by *Ames* is whether O.C.G.A. § 44-14-162 (b) "could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment." *Id.* At 622 n.7. Section§ 44-14-162 (b) "requir[es]foreclosures to be conducted by the current owner of the mortgage, as shown by public records." *Duke Galish LLC v. SouthCrest Bank*, 726 S.E.2d 54,56

(Ga. Ct. App. 2012). Thus, *Ames* left open a possibility—that a debtor could have standing to challenge an unrecorded or facially invalid assignment under § 44-14-162 (b)—that *Haynes* appears to foreclose. Compare *Ames*, 783 S.E.2d at 622 n.7 (noting *Haynes*), with *Haynes*, 793 F.3d at 1252-53. [Order at p. 9].

Furthermore, as acknowledged in *Ames* at n.8, **other Courts of Appeal have held that a debtor has standing to challenge a void assignment.**

A third party generally lacks standing to challenge the validity of an assignment; however, a borrower may raise a defense to an assignment, if that defense renders the assignment void. *See* e.g., *Bank of American Nat'l Assoc. v. Bassman FBT, L.L.C., et al.* 981 N.E.2d 1, 7 7 (Ill. App. Ct. 2012); *Culhane v. Aurora Loan Services of Nebraska,* 708 F3d282, 291 (1st Cir. 2013); *Livonia Properties Holdings, LLC v. 12840-12976Farmington Rd. Holdings, LLC,* 399 Fed. Appx. 97, 102 (6th Cir. 2010); *Vasquez v. Deutsche Bank National Trust Company, N.A.*, 441 S.W.3d 783 (Tex.App.-Houston [1st Dist.] 2014, no pet.).

Under Georgia law, *Brown v. Freedman*, 474 S.E.2d 73, 75 (Ga. Ct. App 1996) ("A claim for wrongful exercise of a power of sale under [O.C.G.A.] § 23-2-114 can arise when the creditor has no legal right to foreclose [such as where they do not possess a valid security deed]". In *Egana v. HSBC Mortg. Corp.*, 669 S.E.2d 159, 161 (Ga. Ct. App. 2008) the case involved an allegedly fraudulent security deed. Id. The Georgia Court of Appeals distinguished between defendants

challenging plaintiff's ownership of the property and defendants claiming defects in title. Id.

In *You v. JP Morgan Chase Bank, N.A.*, 293 Ga. 67,74 (2013) the Court held that the holder of a deed to secure debt is authorized to exercise the power of sale. However, the Assignment of the deed to secure debt must be a facially valid one.

In *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E. 2d 614 (Ga. 2016) the Court actually left open the distinct possibility of a challenge to a facially invalid Assignment under §44-14-162(b) as set forth above.

The panel relied on *Haynes v. McCalla Raymer, LLC*, 793 F.3d at 1252: "Georgia law is clear that borrowers do not have standing to attack a forged assignment of their security deed." Order at p.10. In the present case, not only is the assignment facially invalid, it is void *ab initio* for fraud under the Georgia RICO Act and void *ab initio* for violation of the Trust's PSA[4] as set forth in the complaint[5] and in Timbes' Appellant's Brief :

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[4] **App. F** (Dkt. 1-3, p. 24): Summary of Prospectus Supplement showing Closing Date of the trust to have been on or about September 20, 2005. The Assignment, **App. E**, was not filed until 12/2/2010 in contravention to the PSA which required filing and recording by closing date.

[5] **Dkt.1-3, p. 8**: "If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void." N.Y. Est. Powers & Trusts Law §7-2.4....*Wells Fargo Bank,N.A. v. Erobobo, et al.*, 2013 WL1831799 (N.Y.Sup.Ct. April 29, 2013)....*Erobobo* court held that under §7-2.4, any conveyance in contravention of the PSA is void.

Fraud Was Used to Obtain the Judgment.

As set forth with specificity in the Amended Complaint, **Dkt. 1-3,** Appellees committed documented fraud upon the Court. The Assignment of Deed to Secure Debt (**Dkt 1-1. p.16**) was the fabrication of Lender Processing Services (LPS). LPS is a known document fabricator and the Assignment was signed by known robo signers. See Footnote 1 above. See also *American Home Mortgage Servicing, Inc. v. Lender Processing Services, Inc.,* 11-10440, District Court of Dallas County, TX, 2011. Petitioner's Complaint, August, 2011: American Home Mortgage sued LPS for robo signing and violation of the Trust's PSA. American Home Mortgage admitted that assignments were done illegally by unauthorized parties; that filings were not done in compliance with the PSA; and that LPS had caused American Home Mortgage Servicing Inc. potential liability.

Claims cannot be barred where fraud was involved; and new evidence should be allowed in the advancement of truth. *Brown v. Felsen*, 442 U.S. 127, 132 (1979).

The Supreme Court has also held that if a party has used fraud to obtain a judgment, the party should be deprived of the benefit of the judgment. See *Marshall v. Holmes*, 141 U.S. 589 at 599 (1891), quoting *Johnson v. Waters*, 111 U.S. 640, 667, 28 L. Ed. 547, 4 S. Ct. 619 (1884). See also *Chambers v. NASCO, Inc., 501 U.S. 32,* 44, quoted supra.

Violations of the Georgia RICO Act are of Important State Interest.

As set forth in the Complaint with specificity all Defendants have violated one or more of the Georgia RICO statutes listed below.

135. Georgia defines Mortgage Fraud as when a person "[k]nowingly makes a deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that [the false information] be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process [including negotiation and servicing]."[6]

136. Further, a violation of the statute occurs when a person uses or facilitates the use of such false information with the intent that

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6 O.C.G.A.§16-8-102(1).

the false information be used by anyone during the mortgage lending process.[7]

137. Violation of the statute occurs when any written instrument that contains a deliberate misstatement, misrepresentation, or omission is recorded in the real estate records of any Georgia county.[8]

Attorneys and others who take part in the mortgage lending process are subject to separate prosecution for conspiracy,[9] should the party conspire with others to violate the statute.[10]

Aldridge Pite LLP is a high-volume foreclosure mill who has a history of fraudulent activity as set forth in the Complaint.[11] Fraud upon the Court as set forth with specificity in the Complaint is not subject to a statute of limitation. FRCP 60.

Regardless, the federal Court should have abstained under the *Younger* doctrine to allow the state court to resolve the important state issues.

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7 O.C.G.A.§16-8-102(2).

8 O.C.G.A.§16-8-102(5).

9 O.C.G.A.§16-4-8 (2003).

10 O.C.G.A.§16-8-102(4).

11 Aldgridge Pite LLP utilized documents prepared by the now-notorious fraudulent, robo-signing affidavit mill Lender Processing Services, "LPS" (f/k/a as Fidelity National Foreclosure Solutions and several other names) out of Mendota Heights, MN and Jacksonville, FL. The Assignment of Security Deed recorded December 2, 2010 (**Dkt.1-1,p.16**) was prepared and signed by Lender Processing Services (LPS). LPS is a known document fabricator for lenders and law firms. Michelle Halyard and Elizabeth Boulton signed as assistant secretary; they are employees of LPS with no authority. American Home Mortgage filed a lawsuit against LPS for robo signing. The FDIC also filed suit against LPS for other frauds.

II. THE ROOKER-FELDMAN DOCTRINE IS APPLICABLE.

The Rooker-Feldman doctrine has strictly limited federal district courts' authority to review state court judgments and related claims. See generally *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S.462 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923). Because the doctrine involves subject matter jurisdiction, it predominates over other issues because, where it applies, the court cannot consider the merits of the case. See *Powell v. Powell*, 80 F.3d 464, 466-67 (11th Cir. 1996); *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996). The Rooker-Feldman doctrine generally recognizes that federal district courts do not have jurisdiction to act as appellate courts and precludes them from reviewing state court decisions. *Ware v. Polk Cnty. Bd. of Cnty. Comm'rs*,2010 WL 3329959, at *1 (11th Cir. Aug. 25, 2010) (citation omitted). "The doctrine applies to both federal claims raised in the state court and to those 'inextricably intertwined' with the state court's judgment." *Casale v. Tillman*, 558F.3d 1258, 1260 (11th Cir. 2009).

The Eleventh Circuit Court and many district courts in this circuit have applied Rooker-Feldman where plaintiffs were, in reality, challenging state-foreclosure judgments. *See*, e.g., *Parker v. Potter*, 368 F. App'x 945, 947–48(11th Cir. 2010) (rejecting under Rooker-Feldman a federal claim under the Truth in Lending Act ("TILA") that sought rescission of a state foreclosure judgment);

Velardo v. Fremont Inv. & Loan, 298 F. App'x 890, 892–93 (11th Cir. 2008)(holding that Appellant's federal TILA claims were inextricably intertwined with a state-court foreclosure judgment and thus barred by Rooker-Feldman); *Harper v. Chase Manhattan Bank*, 138F. App'x 130, 132–33 (11th Cir. 2005)(dismissing federal TILA, Fair Debt Collection Practices Act ("FDCPA"), and Equal Credit Opportunity Act ("ECOA") claims under Rooker-Feldman because they were inextricably intertwined with a state-court foreclosure proceeding); *Aboyade-Cole Bey v. Bank Atl.*, No. 6:09-cv-1572-Orl-31GJK, 2010 WL3069102, at *2 (M.D. Fla. Aug. 2, 2010) (finding the court had no jurisdiction to hear plaintiff's case under Rooker-Feldman because the case was, "at its core," an attempt to revisit a state-court foreclosure judgment); *Distant v. Bayview Loan Servicing, LLC*, No. 09-61460-CIV,2010 WL 1249129, at * 3 (S.D. Fla. Mar. 25, 2010) ("Although plead as conspiracy claims . . ., Plaintiff is clearly asking this Court to invalidate the state court action by ruling that the state court foreclosure judgment is somehow void. Under the Rooker-Feldman doctrine, [defendant] is correct that this Court lacks subject matter jurisdiction, Plaintiff seeks a de facto appeal of a previously litigated state court matter.").

Federal courts in other circuits have also consistently rejected cases seeking to attack state-court foreclosure judgments. See, e.g., *Tropf v. Fidelity Nat'l Title Ins. Co.*, 289 F.3d 929, 937–38 (6th Cir. 2002)(affirming dismissal of a RICO

action under Rooker-Feldman where plaintiffs were alleging various frauds in connection with a state-court foreclosure judgment that allegedly allowed banks to "wrongfully" take their home); *Rene v. Citibank NA*, 32 F. Supp. 2d 539, 543 (E.D.N.Y. 1999) (finding that subject-matter jurisdiction did not exist under Rooker-Feldman to adjudicate Plaintiff's RICO and § 1983 claims because plaintiffs asked the court "to review the state court's judgment of foreclosure and eviction, by seeking damages for the loss of their property . . . ."); *Simpson v. Putnam Cnty Nat'l Bank of Carmel*, 20 F. Supp.2d 630, 633 (S.D.N.Y. 1998) ("[P]laintiff claims that defendants' actions caused him injury through the (1)loss of his real property; (2) loss of his residence; (3) loss of business relationships, esteem, and respect of some who dealt with him; and (4) damage to his creditworthiness . . . [Plaintiff] seeks to require this Court to revisit the State Court's foreclosure judgment that resulted in the loss of his property, and to declare that judgment invalid on account of the defendants' allegedly fraudulent actions. Under Rooker-Feldman, however, this Court has no authority to review the . . . judgment. Nor does the fact that plaintiff alleges that the . . . foreclosure judgment was procured by fraud and conspiracy change that result."); *Smith v. Wayne Weinberger, P.C.*, 994 F. Supp. 418, 424 (E.D.N.Y. 1998) (rejecting a federal claim that, in reality, attacked a state-court foreclosure judgment: "The fact that the plaintiff alleges that the State Court judgment was procured by fraud does not

remove his claims from the ambit of Rooker-Feldman. . . . Smith's claims for conversion are merely a thinly-veiled effort to invalidate the State Court's foreclosure judgment, in contravention of Rooker-Feldman."); *Zipper v. Todd,* No. 96 Civ. 5198(WK), 1997 WL 181044, at *3(S.D.N.Y. Apr. 14, 1997) ("While it is true that plaintiffs never actually raised the federal claims of Section1983, RICO and SLAPP violations before the state court, Rooker-Feldman precludes district court review of claims 'inextricably intertwined' with state court determinations. The fact that plaintiffs raise new claims under federal statutes does not preclude a finding that they are barred by the Rooker-Feldman doctrine.")(internal citation omitted); *In re Rusch*, No. 09-44799, 2010 WL 5394789, at *3 (Bankr. D.N.J. Dec. 28,2010) ("[T]he Courts in this Circuit have consistently found Rooker-Feldman to be applicable and a bar to plaintiff's relief in a federal district court in the context of state foreclosure actions.").

Although fraud is an exception in certain cases to the Rooker-Feldman doctrine, **the Eleventh Circuit has held that attempts to challenge state-court foreclosure judgments in federal court by alleging lenders' fraud in pursuing the foreclosure judgment is *not* an exception to Rooker-Feldman**. Quoting from The Federal Courts Law Review:

> The Fraud Exception to the Rooker-Feldman Doctrine:
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> Second, a fraud exception often removes a case that was, at its inception, a matter of state law and makes it one of federal law. This

consequence is especially significant in cases of quintessential state interest; a timely example is the recent trend of challenging state-court foreclosure judgments in federal court. 16 There can be little doubt that a federal district court should not be the primary place to sort out the thorny issues arising under the fifty states' foreclosure laws or lenders' alleged fraud in pursuing foreclosure judgments. Taking these issues from state to federal court deprives the states of the opportunity to apply and further refine their common law in these areas of quintessential state interest.

16 Most courts have consistently applied Rooker-Feldman to these cases, rejecting Plaintiff's attempts to challenge state-court foreclosure judgments in federal court. While this is true across several jurisdictions, the following cases from the Eleventh and Seventh Circuits provide adequate illustration. See, e.g., Parker v. Potter, 368 F. App'x 945, 948 (11th Cir. 2010); Stanley v. Hollingsworth, 307 Fed. App'x 6, 8 (7th Cir. 2009); Velardo v. Fremont Inv. & Loan, 298 F. App'x 890, 892-93 (11th Cir. 2008); Harper v. Chase Manhattan Bank, 138 F. App'x 130, 133 (11th Cir. 2005); Taylor v. Fannie Mae, 374 F.3d 529, 534 (7th Cir. 2004); GASH Assocs. v. Rosemont, 995 F.2d 726, 727 (7th Cir. 1993); Bryant v. Citimortgage, No. 6:10-cv-1206-Orl-28KRS, 2010 U.S. Dist. LEXIS 92384, at *2 (M.D. Fla. Aug. 13, 2010); J.P. Morgan Chase Bank v. Schneider, No. 10 C 4856, 2010 U.S. Dist. LEXIS 79728, at *3 (N.D. Ill. Aug. 4, 2010); Aboyade-Cole Bey v. BankAtlantic, No. 6:09-cv-1572-Orl-31GJK, 2010 U.S. Dist. LEXIS 90188, at *5-6 (M.D. Fla. Aug. 2, 2010); Moore v. Chase Home Fin., LLC, No. 06 C 3202, 2007 U.S. Dist. LEXIS 27555, at *2 (N.D. Ill. Apr. 11, 2007); Spencer v. Mortg. Acceptance Corp., No. 05 C 356, 2006 U.S. Dist. LEXIS 31668, at *13 (N.D. Ill. May 4, 2006); Thompson v. Ameriquest Mortg. Co., No. 03 C 3256, 2003 U.S. Dist. LEXIS 14700, at *7 (N.D. Ill. Aug. 19, 2003); Bounds v. Wells Fargo Bank Minn., No. 02 C 9010, 2003 U.S. Dist. LEXIS 10741, at *7 (N.D. Ill. June 24, 2003); Smith v. Bank One, No. 02 C8204, 2002 U.S. Dist. LEXIS 22423, at *5 (N.D. Ill. Nov. 18, 2002); Elysee v. Chi. Trust Co., No. 01 C 8839, 2001 U.S. Dist. LEXIS 20313, at *4 (N.D. Ill. Dec. 5, 2001).

THE FEDERAL COURTS LAW REVIEW, Volume 5, Issue 2, 2011.

The Eleventh Circuit has held that the Rooker-Feldman doctrine bars federal court review of state-court orders authorizing a writ of execution:

Further, [plaintiff] sought a declaration from the district court, and now this Court, that the state court orders authorizing the execution sale of his properties were void . . . . In other words, [plaintiff's] request for declaratory judgment 'complains of injuries caused by state-court judgments' and 'invites district court review and rejection

> of those judgments.' The Rooker-Feldman doctrine precluded the district court from engaging in such a review.

Paletti v. Yellow Jacket Marina, Inc., 2010 WL 3402271, at *4 (11th Cir. Aug. 31, 2010).

See also: *Cavero v. One West Bank FSB*, 14-14369, 2015 WL 3540388 (11th Cir. 2015) (Because the claims in the plaintiff's complaint attacked the validity of the debt and propriety of foreclosure, the Eleventh Circuit found that such claims were "inextricably intertwined" with the foreclosure judgment. Accordingly, the claims could not be heard by a federal district court under the Rooker-Feldman doctrine.); *Magor v. GMAC Mortg., L.L.C.*, 456 F. App'x 334, 336 (5th Cir.2011) (Rooker–Feldman bars a claim that a state foreclosure judgment was procured through fraud because "reversal of the state court's foreclosure judgment would be a necessary part of the relief requested").

Other circuits have held that a sheriff's sale is final and, therefore, not reviewable in federal district court nor subject to a constitutional attack based on procedures that the state court either ordered or found satisfactory. See *Ash v. Redevelopment Auth. of Philadelphia,* 143 F. App'x 439, 442 (3rd Cir. 2005) ("To the extent [plaintiff's] complaint seeks to challenge on equal protection grounds the Court of Common Pleas order allowing the property . . . to be sold at sheriff's sale, he is barred by the Rooker-Feldman doctrine."); *In re Knapper*, 407 F.3d 573, 579-580 (3rd Cir.2005) (holding that Rooker-Feldman prevented the bankruptcy

court from exercising jurisdiction over plaintiff's due process claims alleging that the sheriff's sale in question was based on invalid service); *Saker v. Nat'l City Corp.*,90 F. App'x 816, 818-19 (6th Cir. 2004) (remanding a case to district court with instructions to dismiss plaintiff's claim under Rooker-Feldman where plaintiff's federal claim could only be predicated on a finding that the state court's order to proceed with the sale of property constituted an improper interpretation of state law).

In the present case, on January 5, 2016 Defendant, Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, foreclosed on the subject property. The present Amended Complaint requests that the non-judicial foreclosure be set aside for violation of Georgia state law. Jurisdiction over any action to set aside the foreclosure sale and those claims inextricably intertwined lies with the Superior Court, Glynn County, GA. See, e.g., *In re Porovne*, 436 B.R. 791, 799 (Bankr.14W.D. Pa. 2010) ("Debtor attempted to distinguish [binding case law] on the basis that she was only attacking the sheriff's sale itself rather than the judgment originally giving rise to the sheriff's sale. This is a distinction without a difference."); see also *Robinson v. Porges*, 382 F. App'x 133, 135 (3rd Cir. 2010)(affirming district court's dismissal of plaintiff's claim where plaintiff asserted equal protection violations based on the procedures of the sheriff's sale but demanded "the return of his home as his own property with free

and clear deed and title," which could only be accomplished by rejecting the sheriff's sale).

Other Circuits Have Held Rooker-Feldman Doctrine Applies to All judgments by a State Court, Including Default Judgments and Judgments by Confession.

See *Perkins v. Beltway Capital, LLC,* 773 F.Supp.2d 553, 559 (E.D.Pa. 2011)(holding that *Rooker-Feldman* bars lower federal courts from exercising jurisdiction over a plaintiff's claim for rescission under TILA when such claim is asserted after the entry of a **default judgment** in mortgage foreclosure; and granting plaintiff's motion to remand after removal from state court by defendant).

The doctrine's application to default judgments derives from the more general precept that state court default judgments and confessed judgments are treated by federal courts as judgments on the merits. *See*, e.g., *In re James*, 940 F.2d 46, 52–53(3d Cir. 1991); *Conte v. Mortg. Elec. Registration Sys.*, Civ. A. No. 14-6788, 2015 WL1400997(E.D. Pa. Mar. 27, 2015) (barring claims arising out of state court default judgment based on Rooker-Feldman). As to the argument that non-judicial foreclosures should be treated differently with regard to Rooker-Feldman, as Appellees contend in the present case, a District Court in Pennsylvania replied:

> This Court is unpersuaded. First, Plaintiffs do not define the term non-judicial judgment. To the extent Plaintiffs seek to create a class of judgments entitled to less weight than judicial judgments, the Court rejects that argument. *Schraven v. Phelan, Hallinan Diamond & Jones, LLP,* No. 15-

3397, E.D. Pa. Feb. 1, 2016.

III. THERE IS A "REASONABLE PROBABILITY" THAT THE COURT WILL GRANT CERTIORARI AND A "FAIR PROSPECT" THAT THE COURT WILL REVERSE THE DECISION BELOW BECAUSE IT SQUARELY CONFLICTS WITH CONTROLLING PRECEDENT.

As established above, the Eleventh Circuit Order, **App. A**, squarely conflicts with the precedents of this Court. This Court's resolution of the circuit split is of national importance. That the Eleventh Circuit Court of Appeals has applied vastly different legal standards with regard to application of the *Rooker-Feldman* and *Younger* doctrines when removal to federal court of state-court wrongful foreclosure and fraud cases is initiated by the bank, as opposed to removal by the party alleging the wrongful foreclosure and fraud, demonstrates the inconsistency within the Eleventh Circuit, as well as inconsistency with the standards applied by other circuits. Furthermore, other circuits have held that a borrower may raise a defense to an assignment, if that defense renders the assignment void. Applying different standards can result in a different outcome. This is made clear in the instant case. It would be a great waste of judicial resources to allow courts to continue applying vastly different, and perhaps erroneous legal standards.[12]

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[12] See *Smith v. HSBC Bank USA, N.A. et al,* No. 16-11045(11th Cir. Feb. 13, 2017) where the Eleventh Circuit affirmed another ruling of Judge Lisa G. Wood, U.S. District Court for the Southern District of Georgia, that *Rooker-Feldman* did not apply with regard to the removal of a wrongful foreclosure case pursuant to O.C.G.A. § 44-14-162 (b). Rulings such as these by the Eleventh Circuit Court of Appeals have emboldened the banks to continue their removal tactics to federal court to evade rulings on the merits with regard to wrongful foreclosure and fraud upon the state court, important state issues; thereby, depriving the state courts of the opportunity to resolve these important state issues.

Furthermore, this Court has also made it clear that fraud upon the court cannot be condoned. *Chambers v. NASCO, Inc., 501 U.S. 32,* 44. Therefore, there is a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari and a fair prospect that a majority of the Court will vote to reverse the decision below.

IV. THERE IS A LIKELIHOOD THAT PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A STAY.

The Eleventh Circuit Order is void for want of jurisdiction. Allowing the Eleventh Circuit Order to stand deprives Pamela Timbes of her due process right to challenge the wrongful foreclosure of her home by Respondent, Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, who has provided absolutely no proof of ownership of the Deed to Secure Debt or ownership of the subject property at 304 Carnoustie, St. Simons Island, Ga. 31522; proof which is incumbent upon Respondent. Respondent has foreclosed on the subject property utilizing a fabricated, fraudulent Assignment of Deed by known robo signers, **App. E.**

Loss of one's home would clearly cause irreparable harm; and under these circumstances is clearly an injustice which only this Court can set right.

REQUEST TO TREAT THE STAY APPLICATION AS PETITION FOR CERTIORARI AND/ OR MANDAMUS, GRANT THE PETITION, AND SUMMARILY REVERSE THE DECISION BELOW

In addition to granting the application for stay, or in the alternative, Pamela

Timbes asks the Court to treat the application as a petition for certiorari and/ or mandamus[13], grant the petition, and summarily reverse the decision below. S. Ct. R. 16.1; see, e.g., *Purcell*, 549 U.S. at 2. Summary disposition is appropriate where "the lower court result is so clearly erroneous, particularly if there is a controlling Supreme Court precedent to the contrary, that full briefing and argument would be a waste of time." Eugene Gressman et al., Supreme Court Practice 344 (9th ed. 2007). That is precisely the circumstance here. For the reasons set forth above, summary reversal is warranted in this case.

CONCLUSION

For the foregoing reasons, Petitioner, Pamela Timbes, requests this Honorable Court to stay, pending Petition for Writ of Certiorari, the Order of the United States Court of Appeals for the Eleventh Circuit No. 17-10556-CC, filed September 6, 2017, **App. A**; and, or in the alternative, treat the application as a petition for certiorari and/or petition for mandamus, grant the petition, and summarily reverse the decision below for lack of jurisdiction. And remand to the Glynn Country Superior Court of Georgia from which the wrongful foreclosure Complaint was removed.

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[13] See *Kerr v. United States District Court*, 426 U.S. 394, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976). The Court stated in *Kerr* that the writ of mandamus has been traditionally used by federal courts to confine an inferior court to a lawful exercise of its jurisdiction, or to compel an inferior court to exercise its authority when it had a duty to do so, citing *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185 (1943).

Respectfully submitted this 30th day of January, 2018.

Pamela M. Timbes

Pamela M. Timbes

304 Carnoustie
St. Simons Is., GA 31522
912-222-6773
ptimbes@gmail.com

PRO SE PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the following parties with the

APPLICATION FOR STAY PENDING CERTIORARI:

Mark J. Windham
Marlee Waxelbaum
Matthew R. Brooks
Troutman Sanders, LLP
Bank of America Plaza
600 Peachtree St., NE, Suite 5200
Atlanta, GA 30308-2216
Attys for Deutsche Bank National Trust Company and Ocwen Loan Servicing, LLC

Dallas R. Ivey
L. Jason Jones
Viraj Prashant Deshmukh
Aldridge Pite, LLP
Fifteen Piedmont Center
3575 Piedmont Rd., NE, Suite 500
Atlanta, GA 30305
Attys for Aldridge Pite, LLP

By placing the same in the United States Mail with sufficient postage affixed thereon to assure delivery.

Respectfully submitted this ~~2nd~~ 30th day of January, 2018.

Pamela M. Timbes

304 Carnoustie
St. Simons Island, GA 31522
(912) 222-6773
ptimbes@gmail.com

PRO SE PETITIONER

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10556
Non-Argument Calendar

D.C. Docket No. 2:16-cv-00031-LGW-RSB

PAMELA M. TIMBES,

Plaintiff-Appellant,

versus

DEUTCHE BANK NATIONAL TRUST COMPANY,
as Indenture Trustee for American Home
Mortgage Investment Trust 2005-3,
OCWEN LOAN SERVICING, LLC,
ALDRIDGE PITE, LLP,
f.k.a. Aldridge Conners,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(September 6, 2017)

Before MARTIN, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

Pamela Timbes, proceeding *pro se*, appeals the district court's denial of her motion to remand to state court and dismissal of her complaint against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, LLC ("Ocwen"), and Aldridge Pite, LLP ("Aldridge"), raising state and federal claims related to the foreclosure of her property. After the defendants removed her complaint from state court, the district court denied Timbes's motion to remand and dismissed her complaint for failure to state a claim under Rule 12(b)(6), Fed. R. Civ. P. On appeal, Timbes argues that the district court should have declined to exercise jurisdiction and instead remanded her complaint to state court. She also challenges the dismissal of her complaint. After careful review, we affirm.

I.

In connection with the purchase of her home in St. Simons Island, Georgia, in 2005, Timbes executed a security deed to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for American Home Mortgage Acceptance, Inc. The security deed contained a power-of-sale provision authorizing a non-judicial foreclosure sale in the event of default. In 2010, the security deed was assigned to Deutsche Bank and recorded in Glynn County, Georgia, where St. Simons Island is located.

Timbes alleges that the assignment to Deutsche Bank was prepared and signed by Lender Processing Services ("LPS"), which she says is "a known document fabricator" for lenders and law firms.

In December 2015, Aldridge placed an advertisement for foreclosure of Timbes's property in *The Brunswick News*. Then on January 5, 2016, Deutsche Bank exercised the power of sale in the security deed and conducted a non-judicial foreclosure sale of the property.

The day before the scheduled foreclosure sale, Timbes filed suit against Deutsche Bank, Ocwen, and Aldridge in Georgia state court. In her complaint, Timbes brought causes of action for fraud upon the court, void assignment of a deed, wrongful foreclosure, violations of the Georgia and federal Racketeer Influenced and Corrupt Organizations Acts, and violations of the Fair Debt Collection Practices Act ("FDCPA").

With Aldridge's consent, Deutsche Bank and Ocwen removed the case to the United States District Court for the Southern District of Georgia. Soon after, Timbes moved to remand the case and to stay ruling on a motion to dismiss that had been filed in state court. The defendants moved to dismiss the complaint for failure to state a claim. Timbes did not respond to the motions to dismiss.

In January 2017, the district court denied Timbes's motion to remand and granted the defendants' motion to dismiss. The court rejected Timbes's contention

that the *Rooker-Feldman* doctrine barred its exercise of jurisdiction, reasoning that the doctrine did not apply because Timbes's challenge to the non-judicial foreclosure sale did not concern any state court judgment. On the merits, the court found that most of Timbes's claims rested on the alleged invalidity of the assignment, which she lacked standing to challenge under Georgia law. As for her claim under the FDCPA, the court found that her allegations were insufficient to show a violation. Accordingly, the court dismissed the complaint with prejudice. Timbes now appeals.

II.

Timbes first argues that the district court should have remanded her complaint to state court either because it lacked subject-matter jurisdiction under the *Rooker-Feldman*[1] doctrine or because abstention was warranted under the *Younger*[2] abstention doctrine. We review *de novo* a district court's denial of a motion to remand. *City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1313 (11th Cir. 2012).

"Generally speaking, the *Rooker-Feldman* doctrine bars federal district courts from reviewing state court decisions." *Nicholson v. Shafe*, 558 F.3d 1266, 1270 (11th Cir. 2009). Somewhat relatedly, the *Younger* abstention doctrine

[1] The *Rooker-Feldman* doctrine is named for *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[2] *Younger v. Harris*, 401 U.S. 37 (1971).

prohibits federal courts from interfering with or enjoining certain ongoing state proceedings, such as criminal prosecutions, civil proceedings that are akin to a criminal prosecution, or "strictly civil proceedings which implicate state courts' important interests in administering certain aspects of their judicial systems." *Green v. Jefferson Cty. Comm'n*, 563 F.3d 1243, 1250–51 (11th Cir. 2009) (internal quotation marks omitted).

Neither doctrine applies, however, where there is no state proceeding, either concluded or ongoing, to which the present federal action relates. No related state proceeding is involved in this case. It is undisputed that Timbes's property was sold through *non-judicial* foreclosure proceedings under Georgia law. *See You v. JP Morgan Chase Bank*, 743 S.E.2d 428, 430 (Ga. 2013) (stating that Georgia law "authorizes the use of non-judicial power of sale foreclosure as a means of enforcing a debtor's obligation to repay a loan secured by real property") (internal quotation marks omitted). The non-judicial foreclosure process, which is governed primarily by contract law with some "limited" statutory consumer protections, "permits private parties to sell at auction, without any court oversight, property pledged as security by a debtor who has come into default." *Id.*

Because Timbes's property was sold through non-judicial foreclosure proceedings, it was conducted without court oversight, which means that there was no state-court proceeding, no state-court judgment, and no sheriff's sale.

Therefore, *Rooker-Feldman* does not apply because there is no state-court judgment that could be reviewed, and *Younger* does not apply because there is no pending state-court or court-like proceeding with which the federal district court could interfere by exercising jurisdiction over the case. Timbes does not otherwise dispute that the district court had federal subject-matter jurisdiction over her complaint in light of her federal claims. *See* 28 U.S.C. § 1331. Accordingly, we affirm the denial of her motion to remand.

III.

Next, Timbes argues that the district court denied her due process of law by denying her motion to remand and granting the motions to dismiss her complaint, in a single order, without ruling on her motion to stay. She asserts that the district court erred in dismissing her complaint on the ground that she lacked standing to challenge the assignment. Timbes notes that the Supreme Court of Georgia has indicated that O.C.G.A. § 44-14-162(b) could provide a debtor with standing to challenge a foreclosure. Finally, she argues that she should have been allowed to amend her complaint.

We review *de novo* the dismissal of a complaint for failure to state a claim under Rule 12(b)(6), accepting as true the facts alleged in the complaint and construing them in the light most favorable to the plaintiff. *Hunt v. Aimco Props, L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016). To withstand dismissal, a plaintiff

must plead sufficient facts to state a claim for relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While we liberally interpret briefs filed by *pro se* litigants, issues not briefed on appeal are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

We review for an abuse of discretion a district court's denial of a motion to stay litigation. *Klay v. All Defendants*, 389 F.3d 1191, 1203 (11th Cir. 2004).

As an initial matter, even liberally construing her initial brief on appeal, we find no argument Timbes has raised as to the district court's dismissal of her FDCPA claim, so she has abandoned that issue. *See Timson*, 518 F.3d at 874. As for Timbes's right to due process, the district court did not violate it by denying her motion to remand at the same time the court granted the motions to dismiss. The motion to remand was properly denied, and Timbes had nearly a year to respond to the motions to dismiss. Nor is there any indication in the record that the district court otherwise acted in a manner inconsistent with due process.

Turning to Timbes's challenge to the validity of the assignment, we agree with the district court that she lacks standing to contest the assignment. Under Georgia law, "a person who is not a party to a contract, or an intended third-party

beneficiary of a contract, lacks standing to challenge or enforce a contract." *Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1251 (11th Cir. 2015). Therefore, a borrower ordinarily lacks standing to challenge an assignment of her security deed because she is not a party to the assignment or its intended beneficiary. *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E.2d 614, 620 (Ga. 2016); *Jurden v. HSBC Mortg. Corp.*, 765 S.E.2d 440, 442 (Ga. Ct. App. 2014).

Even in cases alleging forgery, we have found that "Georgia law is clear that borrowers do not have standing to attack a forged assignment of their security deed, which—if attacked by a party with standing—would provide the basis for a claim of wrongful foreclosure." *Haynes*, 793 F.3d at 1252; *see Montgomery v. Bank of Am.*, 740 S.E.2d 434, 437–38 (Ga. Ct. App. 2013) (holding that a borrower could not challenge an assignment to which he was not a party, even if the assignment was forged). Here, Timbes's claim is essentially one of forgery. She asserts that the assignment of her security deed was fabricated by LPS, a "known document fabricator," and signed by known "robosigners." Accordingly, *Haynes* makes clear that Timbes lacks standing to bring her claim.

Nor does it make any difference if Timbes frames her challenge as asserting a facial defect, rather than a latent defect, in the assignment. In *Haynes*, we held that even a facial defect in the assignment—such as the lack of proper attestation—does not provide a borrower with standing to challenge a security deed. *See* 793

F.3d at 1253. Therefore, we rejected a claim that "the lack of a valid official witness to the assignment rendered the deed facially defective and not fit for recording in violation of O.C.G.A. § 44–14–162(b)." *Id.* at 1251.

Timbes points out that Georgia courts have not gone quite so far as *Haynes*. In *Ames*, the Supreme Court of Georgia adopted the general rule that a borrower lacks standing to challenge an assignment of his or her security deed. 783 S.E.2d at 619–20. But the Court left open the possibility that a debtor could have standing to challenge the validity of an assignment indirectly, if the invalid assignment violated a statutory protection and thereby injured the debtor. *Id.* at 621. One question left unresolved by *Ames* is whether O.C.G.A. § 44-14-162(b) "could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment." *Id.* at 622 n.7. Section § 44-14-162(b) "requir[es] foreclosures to be conducted by the current owner of the mortgage, as shown by public records." *Duke Galish LLC v. SouthCrest Bank*, 726 S.E.2d 54, 56 (Ga. Ct. App. 2012). Thus, *Ames* left open a possibility—that a debtor could have standing to challenge an unrecorded or facially invalid assignment under § 44-14-162(b)—that *Haynes* appears to foreclose. *Compare Ames*, 783 S.E.2d at 622 n.7 (noting *Haynes*), *with Haynes*, 793 F.3d at 1252–53.

Nevertheless, while *Ames* did not fully foreclose the possibility of borrower standing to challenge an assignment, it also did not work any changes in existing

Georgia law. Significantly, nothing in *Ames* appears to cast doubt on our statement in *Haynes* that "Georgia law is clear that borrowers do not have standing to attack a forged assignment of their security deed." *Haynes*, 793 F.3d at 1252. Indeed, *Ames* indicates that if a borrower believes that the assignment of his or her security deed was invalid or fraudulent, he or she should alert the true deed holder so that it "may intercede to assert any rights it believes it has," which "would be expected to lead to remedial action by the true holder." *Ames*, 783 S.E.2d at 620–21. But a borrower "cannot manufacture standing . . . by asserting a claim that the party with standing has not asserted." *Id.* at 621. There has been no indication that MERS or American Home Mortgage Acceptance believed that Timbes's security deed was fraudulently conveyed, even if, as Timbes asserts, American Home Mortgage Acceptance had sued LPS for robosigning in the past.

The § 44-14-162(b) issue left unresolved by *Ames* concerns borrower standing based on an "unrecorded or *facially invalid* assignment," *Ames*, 783 S.E.2d at 622 n.7 (emphasis added), but a forged assignment is not invalid on its face, *see Haynes*, 793 F.3d at 1252 (describing forged signatures as a latent defect within an assignment). For this reason, Timbes's allegations of a latent forgery in a recorded assignment do not fit within the limited possibility left open by *Ames*.

Moreover, the fact that *Ames* declined to address an issue of law that *Haynes* addressed does not clarify or change state law in a way that casts doubt on or is

inconsistent with *Haynes*. We are bound to follow prior panel precedent even when addressing state-law issues, unless the state law changes or later state-court or United States Supreme Court decisions cast doubt on the prior panel's interpretation of the state law. *See World Harvest Church, Inc. v. Guideone Mut. Ins. Co.*, 586 F.3d 950, 957 (11th Cir. 2009); *Venn v. St. Paul Fire & Marine Ins. Co.*, 99 F.3d 1058, 1066 (11th Cir. 1996). Because *Ames* does not cast doubt on *Haynes*'s interpretation of Georgia state law, Timbes lacks standing to challenge the allegedly forged assignment.

Finally, the district court did not abuse its discretion by failing to provide Timbes with an opportunity to amend her complaint. While a *pro se* plaintiff ordinarily must be given at least one chance to amend her complaint, *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (*en banc*) (holding that this rule does not apply to counseled litigants who never requested leave to amend), the district court need not grant leave to amend where amendment would be futile, *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005). Here, amendment would have been futile because Timbes lacks standing to challenge the assignment. Accordingly, the court properly denied leave to amend.

For the reasons stated, we **AFFIRM** the judgment of the district court.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10556-CC

PAMELA M. TIMBES,

Plaintiff - Appellant,

versus

DEUTCHE BANK NATIONAL TRUST COMPANY,
as Indenture Trustee for American Home
Mortgage Investment Trust 2005-3,
OCWEN LOAN SERVICING, LLC,
ALDRIDGE PITE, LLP,
f.k.a. Aldridge Conners,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

BEFORE: MARTIN, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Pamela Timbes is DENIED.

ENTERED FOR THE COURT:

Robert J. Rosenbaum
UNITED STATES CIRCUIT JUDGE

ORD-41

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10556-CC

PAMELA M. TIMBES,

Plaintiff - Appellant,

versus

DEUTCHE BANK NATIONAL TRUST COMPANY,
as Indenture Trustee for American Home
Mortgage Investment Trust 2005-3,
OCWEN LOAN SERVICING, LLC,
ALDRIDGE PITE, LLP,
f.k.a. Aldridge Conners,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARTIN, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-42

APPENDIX D

In the United States District Court
for the Southern District of Georgia
Brunswick Division

PAMELA M. TIMBES,

Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3; OCWEN LOAN SERVICING, LLC; ALDRIDGE PITE, LLP, FKA ALDRIDGE CONNERS,

Defendants.

CV 216-31

ORDER

Pending before the Court is Plaintiff Pamela Timbes' ("Plaintiff") Motion to Remand (Dkt. No. 5), Defendant Deutsche Bank National Trust Company's ("Deutsche Bank") Motion to Dismiss (Dkt. No. 6) and Defendant Aldridge Pite, LLP's ("Aldridge Pite") Motion to Dismiss (Dkt. No. 10). Plaintiff has failed to respond to either of the defendants' motions. For the reasons stated below, Plaintiff's Motion to Remand (Dkt. No. 5) is **DENIED**, and Defendant Deutsche Bank's Motion to Dismiss (Dkt. No. 6) and Defendant Aldridge Pite's Motion to Dismiss (Dkt. No. 10) are **GRANTED**.

FACTUAL BACKGROUND

The following allegations are taken solely from Plaintiff's Complaint. Dkt. No. 1-3. Plaintiff secured title to a home on St. Simons Island, Georgia by conveying legal title by way of security deed with American Home Mortgage Investment ("American Home"). Id. ¶ 6. The assignment of this security deed to Deutsche Bank was filed on December 2, 2010. Id. ¶ 8. In December 2015, Aldridge Pite, a foreclosure firm, placed an advertisement for foreclosure regarding Plaintiff's home in the Brunswick News. Id. ¶ 7. Plaintiff alleges that she made multiple requests to all Defendants seeking written proof as to the legal holder of the security deed. Id. ¶ 9. Plaintiff alleges that Defendant Ocwen Loan Servicing, LLC ("Ocwen") was identified as the secured creditor of the property in a June 5, 2015 letter to the United States Bankruptcy Court. Id. ¶ 11. Plaintiff claims that there was no assignment of the security deed to Ocwen. Id. On January 5, 2016, Deutsche Bank foreclosed on Plaintiff's home. Plaintiff now brings multiple causes of action stemming from the foreclosure of her home against all Defendants.

DISCUSSION

I. Plaintiff's Motion to Remand

The Court first considers Plaintiff's Motion to Remand. Under 28 U.S.C. § 1441(a), a defendant in a case originally

filed in state court may remove the case to federal district court if the district court could have exercised original jurisdiction. Under 28 U.S.C. § 1447(c), however, the case must be remanded to state court "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction." Defendants claim that the Court has jurisdiction under 28 U.S.C. § 1331 because this case involves a federal question under the federal Fair Debt Collection Protection Act ("FDCPA") and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Dkt. No. 1 p. 3-4. Defendants claim that the Court may exercise supplemental jurisdiction over related state-law claims under 28 U.S.C. § 1367. Id.

Plaintiff's sole argument in support of her petition to remand is that the Court may not exercise jurisdiction over this action under the Rooker-Feldman doctrine. The Rooker-Feldman doctrine makes it clear that federal district courts cannot review state-court final judgments because that task is reserved for state appellate courts or, in rare instances, the United States Supreme Court. D.C. Ct. of App. v. Feldman, 460 U.S. 462, 482 (1983). However, the state court judgment must be final prior to removal for the Rooker-Feldman doctrine to apply. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Further, "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." Colo. River Water

Conservation Dist. v. United States, 424 U.S. 800, 813 (1976). The Court finds there are no grounds for abstention under the Rooker-Feldman doctrine here. It is undisputed that the foreclosure on Plaintiff's property was *non-judicial* in nature. Dkt. No. 5 p. 4. Therefore, the Court need not concern itself with an ongoing state court proceeding because no such proceeding has been initiated. See Fabre v. Bank of Am. Bank, NA, 523 F. App'x 661, 664 (11th Cir. 2013) (finding Rooker-Feldman abstention inapplicable when a non-judicial foreclosure had occurred but no prior state-court action had been filed). Therefore, the Court will deny Plaintiff's Motion to Remand and exercise jurisdiction over this case.

II. Defendant Deutsche Bank and Aldridge Pite's Motions to Dismiss

Defendants Deutsche Bank and Aldridge Pite now move separately to dismiss Plaintiff's Complaint. When ruling on a Rule 12(b)(6) motion to dismiss, a district court must accept as true the facts set forth in the complaint and draw all reasonable inferences in the plaintiff's favor. Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010). Although a complaint need not contain detailed factual allegations, it must contain sufficient factual material "to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). At a minimum, a complaint should "contain

either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Fin. Sec. Assurance, Inc. v. Stephens, Inc., 500 F.3d 1276, 1282-83 (11th Cir. 2007) (per curiam) (quoting Roe v. Aware Woman Ctr. for Choice, Inc., 253 F.3d 678, 683 (11th Cir. 2001)). Additionally, because Plaintiff is acting pro se, her "pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). "This leniency, however, does not require or allow courts to rewrite an otherwise deficient pleading in order to sustain an action." Thomas v. Pentagon Fed. Credit Union, 393 F. App'x 635, 637 (11th Cir. 2010).

Counts I-IV of Plaintiff's claims rely heavily on the allegation that Deutsche Bank received the security deed via "fraudulent" assignment. See generally Dkt. No. 1-3. The Court has reviewed the security deed referenced in Plaintiff's Complaint. Dkt. Nos. 6-1.[1] The agreement indeed granted American Home and its assigns the "power of sale" over the

[1] On a motion to dismiss, the Court may look outside the pleadings and properly consider documents that are central to the Plaintiff's complaint and undisputed in authenticity. Horsley v. Feldt, 304 F.3d 1125, 1134 (11th Cir. 2002). Plaintiff's claim is entirely based upon the allegation that the assignment to Deutsche Bank is void and, presumably, that this makes the Security Deed unenforceable. Plaintiff has not disputed the authenticity of the security deed, but does dispute the authenticity of the assignment contract.

property.[2] Dkt. No. 6-1 p. 1-3. Here, Plaintiff does not challenge the validity of the security deed. She does, however, challenge the validity of the assignment of rights of the security deed to Deutsche Bank. She argues that this document was fraudulently created in order to foreclose on her property. Dkt. No. 1-3 ¶ 4. Even assuming that this is true, Plaintiff's claim still fails.

At the outset, the Court notes that Counts I through IV of Plaintiff's claims sound in fraud. As such, these allegations are subject to the higher pleading standard imposed by Federal Rule of Civil Procedure 9(b). To satisfy Rule 9(b) in a civil action involving a scheme to defraud, a plaintiff must identify "(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled [Plaintiff]; and (4) what the defendants gained by the alleged fraud." Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1381 (11th Cir. 1997). When the alleged fraud involves multiple defendants, Rule 9(b) requires that the plaintiff plead sufficient facts to "inform each defendant of the nature of [its] alleged participation in the fraud." Id. (quoting Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 777-78 (7th Cir. 1994)).

[2] A "power of sale" means the ability to conduct a non-judicial disclosure, which is what ultimately occurred in this case.

Plaintiff fails to satisfy this heightened pleading standard. Plaintiff plainly fails to state the time, place, and person responsible for the allegedly fraudulent assignment. Furthermore, she fails to state how she was misled by the alleged fraud as a non-party to the assignment contract. As such, Plaintiff fails the heightened pleading standard of Rule 9(b) and Counts I-IV of her Complaint must be dismissed.

Regardless, a third-party has no standing to challenge an assignment of rights between an assignor and an assignee. Woodberry v. Bank of Am., N.A., No. 1:11-CV-3637-TWT, 2012 WL 113658 at *2 (N.D. Ga. Jan. 12, 2012) (citing Haldi v. Piedmont Nephrology Assocs., 641 S.E.2d 298 (Ga. Ct. App. 2007)). Furthermore, this principle applies under circumstances where the third-party's property has been foreclosed upon by the assignee. Montoya v. Branch Banking & Tr. Co., No. 1:11-CV-01869-RWS, 2012 WL 826993, at *4 n.3 (N.D. Ga. Mar. 9, 2012) (citing Breus v. McGriff, 413 S.E.2d 538, 539 (Ga. Ct. App. 1991)). Therefore, Plaintiff has no standing to challenge the allegedly fraudulent assignment. This finding is fatal to Count I (Fraud), Count II (Petition to Void Assignments), Count III (Wrongful Foreclosure) and Count IV (State and Federal RICO

claims).[3] All four counts are based upon the allegation that the assignment was fraudulent, and these claims will be dismissed.[4]

Lastly, the Court turns to Plaintiff's FDCPA claims against Aldridge Pite. The purpose of the FDCPA is to prohibit debt collectors from using abusive debt collection practices. 15 U.S.C. § 1692(e). The FDCPA requires "debt collectors" to send "consumers" written notice containing information related to the debt owed within five days of attempting to collect a debt. 15 U.S.C. § 1692g(b). Therefore, Plaintiff must plausibly allege that (1) Aldridge Pite is a debt collector and (2) the challenged conduct is related to debt collection. Saint Vil v. Perimeter Mortg. Funding Corp., 630 F. App'x 928, 930 (11th Cir. 2015). Plaintiff does not allege that Aldridge Pite is a debt collector, nor does she allege that at any point in time the firm attempted to collect a debt in its communications with her. Aldridge Pite appears to have sent Plaintiff a notice letter notifying her of the non-judicial foreclosure of her property. To the extent Plaintiff argues that this constitutes an attempt to collect a debt, this argument must fail. Aldridge Pite was required to send a notice of foreclosure under Georgia law, and this does not constitute an attempt to collect a debt. Id. at

[3] Plaintiff similarly lacks standing to challenge the "Master Servicing and Trust Agreement" because she does not allege she was a party to it, either.
[4] Plaintiff also claims that she sought "written proof" as to the holder of the security deed. It is unclear whether Plaintiff attempts to make this out as a separate claim. However, the Court can discern no legal basis for requiring Deutsche Bank to tender the security deed prior to foreclosure.

931-32. Therefore, Plaintiff's FDCPA claims must also fail. As such, the Court will dismiss Plaintiff's claim in its entirety.

CONCLUSION

For the reasons set forth above, Defendant Deutsche Bank's Motion to Dismiss or in the Alternative, Judgment on the Pleadings (Dkt. No. 6) and Aldridge Pite's Motion to Dismiss (Dkt. No. 10) are hereby **GRANTED**. Furthermore, Plaintiff's Motion to Remand (Dkt. No. 5) is hereby **DENIED**. The Clerk of Court is **DIRECTED** to enter the appropriate judgment and to close this case.

SO ORDERED, this 13th day of January, 2017.

LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

APPENDIX E

Exhibit A

Deed Book 2801 Page 247, Filed and Recorded 12/02/2010 at 10:45:12 AM
CFN #6320100012637 Lola Jamsky Clerk of Superior Court Glynn County, GA

When Recorded Return to:
Attn: Anthony DeMarlo Foreclosure Department
McCurdy & Candler, LLC
3700 Crestwood Parkway NW, Ste. 700
Duluth, GA 30096

STATE OF Florida
COUNTY OF Duval

File No. 10-20032
MIN# 100314000008799076

ASSIGNMENT OF SECURITY DEED

FOR VALUE RECEIVED, Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., its successors and assigns (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3 (hereinafter referred to as "Assignee"), whose address is 6591 Irvine Center Drive Irvine, CA 92618, that certain Security Deed or Deed to Secure Debt executed by Pamela M. Timbes to Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., its successors and assigns and dated June 23, 2005, recorded in Deed Book 1705, Page 178, Clerk's Office, Superior Court of Glynn County, Georgia, together with the real property therein described; and also the indebtedness described in said Deed and secured thereby, having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

File No. 10-28032 MIN# 100314000004793076

This Assignment of Security Deed is executed on this 19 day of November, 2010.

Signed, sealed and delivered
In the presence of:

Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., its successors and assigns

By: _____ Elizabeth Boulton
Its: Assistant Secretary

By: _____ Michelle Hilyard
Its: Assistant Secretary

Unofficial Witness Sabrina Wyche

Notary Public

My Commission Expires 4-30-2013

NOTARY PUBLIC-STATE OF FLORIDA
Brenda L. Frazier
Commission # DD885641
Expires: APR. 30, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

APPENDIX F

SUMMARY OF PROSPECTUS SUPPLEMENT

The following summary is a very broad overview of the notes and does not contain all of the information that you should consider in making your investment decision. To understand all of the terms of the notes, read carefully this entire prospectus supplement and the entire accompanying prospectus. A glossary is included at the end of this prospectus supplement. Capitalized terms used but not defined in the glossary at the end of this prospectus supplement have the meanings assigned to them in the glossary at the end of the accompanying prospectus.

Issuer or Trust	American Home Mortgage Investment Trust 2005-3.
Title of Series	Mortgage-Backed Notes, Series 2005-3.
Cut-off Date	September 1, 2005.
Closing Date	On or about September 20, 2005.
Depositor	American Home Mortgage Securities LLC.
Seller	American Home Mortgage Acceptance, Inc., an affiliate of the depositor and the servicer.
Master Servicer	Wells Fargo Bank, National Association.
Servicer	American Home Mortgage Servicing, Inc.
Indenture Trustee	Deutsche Bank National Trust Company.
Owner Trustee	Wilmington Trust Company.
Securities Administrator	Wells Fargo Bank, National Association.
Payment Dates	Payments on the notes will be made on the 25th day of each month, or, if such day is not a business day, on the next succeeding business day, beginning in October 2005.
Notes	The classes of notes and their note interest rates and initial note principal balances are set forth in the table below.