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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

9 Peter A Bayer, et al.,

10 Plaintiffs,

11 v.

12 Nationstar Mortgage LLC, et al.,

13 Defendants.

No. CV-15-02430-PHX-DGC

**ORDER**

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16 On May 19, 2017, the Court held the final pre-trial conference in this case. *See*  
17 Doc. 61. The parties sought clarification on what portions of Plaintiffs' RESPA claims  
18 were precluded by the Court's summary judgement orders. Docs. 43, 57. Specifically,  
19 the parties requested clarification on the following language:

20  
21 Material issues of fact exist as to whether Nationstar's investigations of  
22 Plaintiffs' QWR were reasonable. Both parties cite the same evidence in  
23 support of opposite conclusions, and both make rather conclusory  
arguments as to whether Nationstar's investigations of Plaintiffs' QWRs  
were reasonable. Doc. 34 at 15; Doc. 40 at 5. The Court finds summary  
judgment is inappropriate on this RESPA claim.

24 Plaintiffs also assert that "[i]t breaches the contracts and violates RESPA  
25 when a loan servicer fails to promptly credit payments" and allege that  
26 "Aurora and Nationstar were insufficiently vigilant or competent to redress  
27 their own errors." Doc. 34 at 17. This one-paragraph, conclusory assertion  
28 provides no citation to evidence and no allegation of specific instances of a  
violation. Such bare allegations are insufficient to survive summary  
judgment. The Court will grant summary judgment on the RESPA claim  
that payments were not properly credited.

1 Doc. 43 at 15. In light of the discussion during the conference, the Court agreed to revisit  
2 the parties' summary judgment briefing and provide clarification.

3 A party seeking summary judgment "bears the initial responsibility of informing  
4 the district court of the basis for its motion, and identifying those portions of [the record]  
5 which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*  
6 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the  
7 evidence, viewed in the light most favorable to the nonmoving party, shows "that there is  
8 no genuine dispute as to any material fact and the movant is entitled to judgment as a  
9 matter of law." Fed. R. Civ. P. 56(a). Summary judgment is also appropriate against a  
10 party who "fails to make a showing sufficient to establish the existence of an element  
11 essential to that party's case, and on which that party will bear the burden of proof at  
12 trial." *Celotex*, 477 U.S. at 322.

13 Defendants' motion for summary judgement made this argument:

14 Borrowers have no evidence that any charge was unauthorized or any  
15 payment misapplied. Rather, each charge on the account was for an item  
16 (bankruptcy, foreclosure, property inspection, or advances for taxes and  
17 insurance) explicitly authorized to be charged to the account by the Deed of  
18 Trust. Further, the evidence demonstrates that each payment made by  
19 Borrowers was applied to principal, interest, and escrow – not fees and  
charges, as alleged by Borrowers. Thus, Defendants are entitled to  
summary judgment on all remaining counts of the First Amended  
Complaint not addressed in Part I (above) or by Borrowers' agreement to  
voluntarily dismiss certain claims.

20 Doc. 32 at 9. Plaintiffs responded as follows:

21 It breaches the contracts and violates RESPA when a loan servicer fails to  
22 promptly credit payments. 12 C.F.R. § 226.36(c)(1)(i). *Mazonas v.*  
23 *Nationstar Mortg. LLC*, No. 16-CV-00660-RS, 2016 WL 2344196, at \*5  
(N.D. Cal. May 4, 2016). Aurora and Nationstar were insufficiently vigilant  
or competent to redress their own errors. For this, Defendants are liable.

24 Doc. 34 at 17.

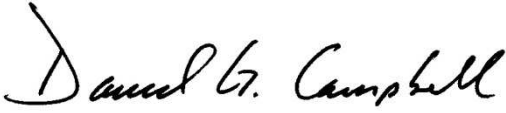
25 After review, the Court concludes that its summary judgment orders properly  
26 precluded only claims related to the \$12,900 in arrearages (comprised of 15 instalments  
27 of \$860) that Plaintiffs alleged were not properly credited. Plaintiffs withdrew this claim.

28 Doc. 57 at 5-6. The Court concludes, however, that Defendants are not entitled to

1 summary judgment on other arrearages or allegedly improper charges. As noted above, a  
2 party seeking summary judgment “bears the initial responsibility of . . . identifying those  
3 portions of [the record] which it believes demonstrate the absence of a genuine issue of  
4 material fact.” *Celotex*, 477 U.S. at 323. When Defendants asserted that “each charge on  
5 the account was for an item (bankruptcy, foreclosure, property inspection, or advances  
6 for taxes and insurance) explicitly authorized to be charged to the account by the Deed of  
7 Trust,” and that “the evidence demonstrates that each payment made by Borrowers was  
8 applied to principal, interest, and escrow – not fees and charges, as alleged by  
9 Borrowers” (Doc. 32 at 9), they cited no evidence in the record and thus failed to  
10 discharge their initial burden. As a result, the Court cannot grant summary judgment on  
11 these issues.

12 **IT IS ORDERED** that plaintiffs may assert the following alleged RESPA  
13 violations at trial: (1) Defendants’ process in responding to the QWR was not reasonable,  
14 (2) charges were not properly assessed, and (3) payments – other than those constituting  
15 the \$12,900 in arrearages that have been dismissed – were not properly credited.

16 Dated this 22nd Day of May, 2017.

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21 David G. Campbell  
22 United States District Judge  
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