

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

HENRY PETERSON and MARILYN PETERSON,

Plaintiffs,

v.

ORDER

Civil File No. 12-759 (MJD/JJG)

CARRINGTON MORTGAGE SERVICES, INC.
and DEUTSCHE BANK NATIONAL TRUST COMPANY,

Defendants.

Jeffrey R. Vesel and James L Gunn, IV, Jeffrey R. Vesel Law Office, Counsel for Plaintiffs.

Ernest F. Peake and Patrick J. Lindmark, Leonard, O'Brien, Spencer, Gale & Sayre, Ltd., Counsel for Defendants.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Jeanne J. Graham dated October 11, 2012. [Docket No. 36] Plaintiffs Henry and Marilyn Peterson filed objections to the Report and Recommendation. Defendants Carrington Mortgage Services, Inc. and Deutsche Bank National Trust Company also filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Graham filed October 11, 2012.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Graham dated October 11, 2012 [Docket No. 36].
2. Defendants Carrington Mortgage Services, Inc. and Deutsche Bank National Trust Company's Motion to Dismiss [Docket No. 23] is **GRANTED IN PART** and **DENIED IN PART** as follows:
 - a. Plaintiffs' claims for declaratory relief (Count 1), violation of Minn. Stat. §§ 58.13 and 58.18 (Count 3), violation of RESPA (Count 4), and breach of contract (Count 5), and any ostensible HAMP claim are **DISMISSED WITH PREJUDICE**; and
 - b. Plaintiffs have adequately stated a claim for negligent and fraudulent misrepresentation (Count 2) and Defendants' motion is **DENIED** with respect to Count 2.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 4, 2013

s/ Michael J. Davis _____
Michael J. Davis
Chief Judge
United States District Court