

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
CIVIL CASE NO. 2:12-cv-000031-MR**

<b>KEVIN TRACY and KATHRYN L. TRACY,</b>	)	
	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
	)	
<b>BANK OF AMERICA, N.A.,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**THIS MATTER** is before the Court on the Defendant’s Motion to Dismiss [Doc. 9].

The facts, legal issues, and causes of action asserted by the parties in the present matter are substantially similar to those in the case of Beritelli, et al. v. Wells Fargo Bank, N.A., et al., No. 1:11-cv-00179-MR (W.D.N.C.), and the same attorneys appear on behalf of the Plaintiffs in both actions. Even though these cases have not been consolidated, the decision of this Court in the Order previously entered in Beritelli addresses and disposes of all of the legal issues raised by the motion currently before

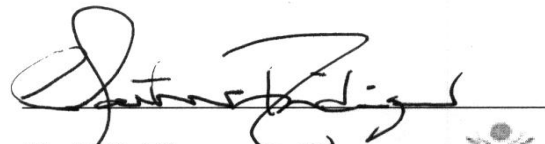
the Court in this matter. The Order in Beritelli, therefore, is incorporated herein, and the current motion will be disposed of in accord therewith.

**ORDER**

**IT IS, THEREFORE ORDERED** that the Defendant's Motion to Dismiss [Doc. 9] is **GRANTED IN PART** and **DENIED IN PART**. Specifically, with respect to the Plaintiffs' claim for negligent misrepresentation, the Motion to Dismiss [Doc. 9] is **GRANTED** and this claim is **DISMISSED**. In all other respects, the Motion to Dismiss [Doc. 9] is **DENIED**.

**IT IS SO ORDERED.**

Signed: September 30, 2013

  
Martin Reidinger  
United States District Judge

