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CERTIFICATION FROM UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

IN

LAURA ZAMORA JORDAN, as her separate estate, and on behalf of  
others similarly situated,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC, a Delaware limited liability  
company,

Defendant.

Filed E  
Washington State Supreme Court

DEC 14 2015

Ronald R. Carpenter  
Clerk

**BRIEF OF *AMICUS CURIAE***  
**NORTHWEST CONSUMER LAW CENTER**

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 ORIGINAL

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## **I. IDENTIFICATION OF AMICUS**

The Northwest Consumer Law Center (“NWCLC”) zealously advocates, litigates, and promotes access to justice for low and moderate income clients, and through its education programs, empowers consumers with the knowledge and resources to protect their rights. Since opening its doors in January 2013, NWCLC has served approximately 2,200 clients. NWCLC’s primary work has been in support of the Washington State Foreclosure Fairness Act and Federal programs established in response to the foreclosure crisis which erupted in Washington State in 2008.

In its short history, NWCLC has assisted thousands of clients facing the prospect of losing their homes as a result of defaulted mortgages and the foreclosure process. NWCLC represents clients in pursuing loan modifications, mediations, and bankruptcy protection in order to save their homes. To date, NWCLC has saved approximately 220 homes from foreclosure. When saving a home is not possible, NWCLC works to guide homeowners through a process that is fair and transparent and works with them to achieve the best possible outcome. NWCLC serves Washington State residents with incomes up to 400% of the federal poverty level.

NWCLC’s main source of funding has come from two grants from the Washington State Attorney General’s Office. NWCLC also receives

funding from private foundations, individual and corporate donors, and cy pres awards.

## II. ARGUMENT

Foreclosure, or the threat of foreclosure, affects many Washington homeowners every year. In 2013, there were 34,117 unique properties in Washington in foreclosure.<sup>1</sup> This number does not include homeowners who defaulted on their mortgage, but were not served with a notice of default initiating the formal foreclosure process. Those homeowners are at risk for lockout and other pre-foreclosure consequences of default. The case before the Court involves a certified class consisting of more than 3,600 Washington homeowners locked out of their homes by or on behalf of a single loan servicer.

NWCLC agrees with Ms. Jordan's statutory construction arguments. For the reasons set forth in Ms. Jordan's briefing, the plain language of form deed of trust provisions authorizing lenders to change the locks on homes and take other "property preservation" measures runs afoul of both RCW 7.28.230 and Washington's statutory receivership scheme. NWCLC submits this amicus brief in order to respond to

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<sup>1</sup> Maria Y. Rodriguez, Northwest Justice Project, *WA State Foreclosures: Rates, Numbers, and Demographic Characteristics at the Zip Code Level*, at 5 (Feb. 27, 2015), available at <https://nwjustice.org/sites/default/files/Mapping%20Data.pdf>.

Nationstar's self-serving claims about the impact of pre-foreclosure lockouts on Washington homeowners and communities.

**A. Homeowners in Default Do Not Necessarily Abandon Their Homes**

Through its work on behalf of homeowners facing foreclosure, NWCLC has first-hand knowledge of the deleterious effects of foreclosure on individuals and communities. Many individuals who default on their mortgages do not immediately vacate their property or intend to relinquish possession of the property. Indeed, the factual record before the Court demonstrates that many individuals continue to live in or maintain their property after a default on their mortgage payments. Laura Jordan was still living in her home when Nationstar locked her out. *See* ECF 3-5, Ex. A. Lois Bushman and Jay Fleener were maintaining their home to make it attractive for sale and paying utilities when Nationstar locked them out. ECF 63-1 at 31, 36. Robert Miller had a renter living in his property when Nationstar changed the locks on the property. ECF 63-2 at 66-67. David Crain was actively renovating his property and maintaining utilities when he was locked out. ECF 63-1 at 34. Shane Bailey still had personal belongings in his home and maintained the utilities when he was locked out by Nationstar. ECF 63-1 at 25. These properties, though in default, were not “abandoned.”

There are many reasons that a homeowner may be in default on a mortgage, and default alone does not equate to a substantial likelihood of abandonment or inevitable foreclosure. Indeed, NWCLC's work is largely directed toward helping homeowners keep their homes after a mortgage default. Homeowners in default and facing the possibility of foreclosure have multiple legal options for remaining in their homes or, at a minimum, preserving value in their homes. Many homeowners in default scramble to find ways to pay their mortgage, seek loan modification, pursue mediation, or file bankruptcy in order to avoid foreclosure and keep their homes. All of these avenues offer a homeowner who is merely in default the opportunity to avoid foreclosure and keep his or her home. Indeed, the passage of the Foreclosure Fairness Act in 2011 demonstrates the legislature's concern with offering homeowners post-default options other than foreclosure. *See* Foreclosure Fairness Act, Laws of 2011, ch. 58, § 1(d) (stating that foreclosure mediation programs help homeowners and lenders "reach a mutually acceptable resolution that avoids foreclosure"); *id.* § 2(c) (stating that the Legislature's intent is to facilitate communication between borrowers and lenders in order to "avoid foreclosure whenever possible"). Even if homeowners cannot save their homes, many are able to preserve some of the value of their home by maintaining the home and negotiating a short sale or Deed in Lieu. As a

result, mere default should never be a basis for allowing a loan servicer such as Nationstar to enter a property and lock out a homeowner.

**B. Allowing Lenders and Loan Servicers to Lock Homeowners Out of Their Homes Is Contrary to Public Policy**

The real reason lenders and loan servicers like Nationstar use lockouts is to thwart efforts by homeowners to avoid foreclosure and preserve the value in their home. The ostensible policy rationale for allowing companies to engage in lockouts is that abandoned property deteriorates quickly and contributes to neighborhood blight, declining neighborhood property values, and public safety concerns. Under circumstances where a property is truly abandoned, servicers can avail themselves of RCW Chapter 7.60 in order to preserve property. However, locking individuals who are living in or maintaining their property out of their homes runs contrary to this supposed purpose. Indeed, a property is more likely to fall into disrepair, remain vacant, and contribute to neighborhood blight if a loan servicer locks out a homeowner who is living in or maintaining the property.<sup>2</sup>

The real “benefit” to Nationstar of locking homeowners out of their homes is to allow it to bully people into leaving their homes

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<sup>2</sup> See, e.g., Woodstock Inst., *Unresolved Foreclosures: Patterns of Zombie Properties in Cook County* (Feb. 2014), available at [http://www.woodstockinst.org/sites/default/files/attachments/140123\\_unresolved\\_foreclosures\\_final\\_0.pdf](http://www.woodstockinst.org/sites/default/files/attachments/140123_unresolved_foreclosures_final_0.pdf) (identifying problem as servicer neglect of properties).

prematurely, making the foreclosure process easier, quicker, and cheaper than it otherwise would be. Homeowners whose homes have been invaded by a “property preservation” company and had their locks changed are much more likely to be scared out of their property. David Crain believed that once Nationstar changed his locks, he did not have a right to continue to access his property, despite the lockout occurring prior to foreclosure. ECF 63-1 at 33-34. So did Daniela Drake, Robert Gilbert, Jane Gonzalez, Mandy and Garrett Hanousek, Trevor Irish, Shirley King, Charlene McCulley, Sarah Phillips, and Brian Sapp. ECF 63-1 at 36, 39, 42, 45, 54, 56; ECF 63-2 at 61, 69, 77. Ryan Haring felt as though Nationstar was “trying to bully [him] off of [his] property.” ECF 63-1 at 49.

Extensive media coverage of similar problems with lockouts, trash-outs, and other interferences with defaulting Washington homeowners’ right of possession of their property further demonstrates the widespread nature of this problem.<sup>3</sup> Keith and Sharon McElhaney shared

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<sup>3</sup> See, e.g., Chris Ingalls, KING 5 News, *Bank ‘break-ins’ show need to update WA foreclosure law*, Mar. 3, 2015, available at <http://www.king5.com/story/news/local/investigations/2015/03/02/banks-default-homeowners-lock-outs/24290199/>; KING 5 News, *Man facing foreclosure sues bank over items stolen from home*, Sept. 30, 2013, available at <http://www.king5.com/story/entertainment/television/programs/get-jesse/2014/08/04/13320642/>; Jon Humbert, KOMO 4 News, *Lawsuits: ‘Trash out’ company empties homes illegally*, Apr. 30, 2015, available at

their story as part of this media coverage. In 2013, they were trying to sell their home in order to avoid foreclosure. Nationstar serviced their loan. They were in the process of moving their belongings out of the house in preparation for the sale, but they had not vacated the property. Many of their personal possessions were in the home when, on May 29, 2013, representatives of Nationstar entered their home, changed the locks, and removed many of their personal possessions. Many items that were taken from the home were never returned. The McElhaney's filed suit to try to combat this widespread and unfair practice,<sup>4</sup> but their story is merely one of many demonstrating the abuses of loan servicers like Nationstar.

Further, lockouts frustrate the purpose of the Foreclosure Fairness Act to “avoid foreclosure whenever possible” by making it less likely that homeowners will take action to preserve their homes. *See* Foreclosure Fairness Act, Laws of 2011, ch. 58, § 2(c). Homeowners who have been forced out of their homes prematurely are less likely to receive notice of their rights after default and during the foreclosure process. They are less likely to pursue options for saving their homes, including seeking advice from an attorney and seeking referral to mediation under RCW 61.24.163,

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<http://www.komonews.com/news/local/Lawsuits-Trash-out-company-empties-homes-illegally-301728781.html>.

<sup>4</sup> *See McElhaney v. Nationstar Mortgage et al.*, Case No. 13-2-13077-2 (Pierce County Sup. Ct.).

when they are made to believe that they no longer have a right to possession of their homes. Loan servicers therefore benefit from premature lockouts by potentially avoiding expenditures of time, money, and effort involved in the mediation process; indeed, this may be a motivating reason for locking out homeowners prematurely. These lockouts accelerate, rather than avoid, foreclosure, and therefore frustrate the purpose of the Foreclosure Fairness Act and its mediation process.

### **III. CONCLUSION**

Nationstar interferes with the property rights of defaulting homeowners by locking them out of homes they are living in and maintaining. Allowing a loan servicer to lock out a homeowner upon mere default does not benefit homeowners or our local communities. As a result, NWCLC respectfully requests that the Court rule in favor of Plaintiff and find that pre-foreclosure lockouts are illegal.

RESPECTFULLY SUBMITTED AND DATED this 4th day of  
December, 2015.

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CERTIFICATE OF SERVICE

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I transmitted true and correct copies of the foregoing by email, to the  
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I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th day of December, 2015.

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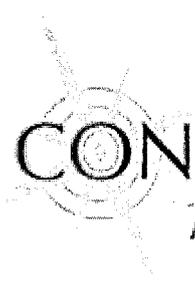
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Thank you.



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