IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY SWECKER a/k/a GREGORY R. SWECKER; BEVERLY SWECKER a/k/a BEVERLY F. SWECKER; SWECKS, INC.; PALISADES COLLECTION, LLC; STATE OF IOWA; GRAND JUNCTION MUNICIPAL UTILITIES; UNIFUND CCR PARTNERS; and MIDLAND POWER COOPERATIVE, Defendants.	*	4:09-cv-00013 ORDER

Before the Court is the Motion for Summary Judgment (Clerk's No. 155) filed by the United States of America ("Plaintiff") on June 7, 2016. Gregory and Beverly Swecker ("Defendants") jointly resisted the motion on July 1, 2016. Clerk's No. 157. Plaintiff replied on July 12, 2016. Clerk's No. 162. The matter is fully submitted.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

This action arises out of several contracts between Plaintiff and the Sweckers. Compl. ¶¶ 3–15 (Clerk's No. 1). The Sweckers are farmers residing in Greene County, Iowa. *Id.* ¶ 2. Plaintiff, by and through its agency the Farmers Home Administration, now the Farm Service

[1] The facts discussed in the following section are based upon the portions of the record upon which the parties agree. Any portions of the record that are disputed in part are expanded upon in footnotes throughout.

Agency ("FSA"),[2] became the Sweckers' mortgagee through the Sweckers' execution of multiple promissory notes. *Id.* ¶¶ 3–4, 6.

On May 31, 1983, the Sweckers executed two promissory notes for a total value of $242,000. Pl.'s Statement of Undisputed Facts ¶¶ 2–3 ("Pl.'s Facts") (Clerk's No. 155-2). The corresponding securing mortgage was recorded in Greene County on the same day. *Id.* ¶ 4. On March 19, 1984, the Sweckers executed a third promissory note for an additional $28,000. *Id.* ¶ 5. The 1983 loans were both rescheduled on February 1, 1985, pursuant to two new promissory notes. *Id.* ¶¶ 6–7. The 1984 loan was likewise rescheduled on June 3, 1986. *Id.* ¶ 8. All three loans were again rescheduled pursuant to three new promissory notes on July 12, 1991. *Id.* ¶¶ 10–12.

By December of 1996, the Sweckers had an unpaid principal balance of $243,872.21 and an unpaid interest balance of $56,413.31 between the three loans. *Id.* ¶ 13. The FSA agreed to write down the balance of the three loans and consolidate the debt into a single loan in the principal amount of $152,997.19. *Id.* The write-down was accomplished through two contractual agreements, both executed on December 30, 1996. *Id.* ¶¶ 14, 16. The first was a new promissory note in the amount of the agreed-upon write-down. *Id.* ¶ 14. The note required twenty-seven annual payments due on February 1 of each year. *See* Pl.'s App. at 52 (Clerk's No. 155-5). The second was a Shared Appreciation Agreement ("SAA"), which itemized the three promissory notes being written down and recognized the FSA was "restructuring the loan." Pl.'s Facts ¶¶ 16–17. In addition to the payments due on the new promissory note, the SAA provided,

> Borrower agrees to pay FSA an amount according to one of the following payment schedules:

[2] The Farmers Home Administration was restructured and consolidated into the Farm Service Agency, part of the U.S. Department of Agriculture, in 1994. *See* 7 U.S.C. § 6932(b)(3) (1994). Throughout this order, the relevant agency will be referred to as the "FSA" for consistency in identifying language.

> 1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan . . . between the date of the Agreement and either the expiration date of this Agreement or the date the Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.
>
> 2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan . . . between the date of the Agreement and either the expiration date of this Agreement or the date Borrower pays the loan in full, ceases farming or transfers title of the security, if such even occurs after four (4) years but before the expiration date of the Agreement.

Id. ¶ 17. The Sweckers executed a real estate mortgage to secure the debt write-down described in the SAA and reflected by the new promissory note. *Id.* ¶ 18.

Greg Swecker wrote a letter the following day, December 31, 1996, addressed to Robert Anderson, an Agriculture Credit Manager with the FSA who worked with the Sweckers on their debt write-down and the SAA. *Id.* ¶ 22; *see* Pl.'s App. at 67–68. In the letter, Swecker sought to "verify . . . [his] understanding" of the restructured loan. Pl.'s App. at 67. Most of the letter concerned the terms of the promissory note, but Swecker also stated it was his belief "the Shared Appreciation Agreement only comes into effect on the conditions [that the Sweckers] sell[] the farm, cease farming, pay the loan in full or transfer title of the security." *Id.* He expressed a belief that "[i]f none of these conditions are met, then the Shared Appreciation Agreement, Shared Appreciation Promissory Note and Shared Appreciation Mortgage becomes void after 10 years from the date of the signed agreement." *Id.* On January 6, 1997, Anderson sent a letter in reply. *Id.* at 69; *see* Pl.'s Facts ¶ 22. Anderson's letter responded primarily to Swecker's questions regarding the terms of the promissory note. Pl.'s App. at 69. However, Anderson wrote broadly that Swecker's "letter of December 31, 1996 is an accurate understanding of the new terms o[f] [the] note and shared appreciation agreement." *Id.*

On March 4, 1997, Anderson wrote a follow-up letter to the Sweckers. *Id.* at 70; *see* Pl.'s Facts ¶ 22; *see also* Defs.' Mem. in Opp'n to Pl.'s Mot. for Summ. J. at 16–17 ("Defs.' Mem.")

(Clerk's No. 157-3).[3] In that letter, Anderson noted there had been "some confusion" within his office regarding the legal effect of an SAA. Pl.'s App. at 70. Anderson clarified that he "was wrong" in his previous letter, that the SAA would not simply "[go] away after 10 years," and that the calculated appreciation would come due in ten years even if none of the conditions triggering early recapture[4]—payment of the loan in full, cessation of farming, or transfer of the title—occurred. *Id.*

The Sweckers thereafter submitted their annual payment for 1998 along with letters stating the payment was being made "under duress," without agreement to any "terms imposed under false pretense" by the FSA, without "acceptance of [the] fraudulent Farm and Home Plan," and without "waiv[ing] any rights pursuant to a Civil Rights Investigation." *See id.* at 72, 78, 86.

The interest rate of the loan and the annual payment amount for 1999 were increased pursuant to the terms of the promissory note, but the Sweckers expressed rejection of the change and submitted a payment equal to the amount of the 1998 payment, which left their account in arrears. *See id.* at 52, 135. In a letter dated October 19, 1999, Greg Swecker wrote that he considered the FSA to be in breach of contract as a result of the changes to the interest rate and annual payment. *Id.* at 135. He further wrote he would be "withholding any further payments as offset for damages that have occurred" and demanded "no further contact" from the FSA. *Id.* at 135–36. The Sweckers have not contested that they made no further payments on the loan.

[3] Plaintiff refers to this letter in its statement of undisputed facts and reproduces the letter in its appendix. *See* Pl.'s Facts ¶ 22; Pl.'s App. at 70. Defendants dispute some unidentified facts concerning the letter, but they concede that Anderson wrote the letter and rely upon the content of the letter to make a legal argument in their memorandum. *See* Defs.' Resp. to Pl.'s Facts ¶ 22 ("Defs' Resp.") (Clerk's No. 157-1); Defs.' Mem. at 16–17. Further, they reproduced the letter in their own appendix. Defs.' App. at B-14. The Court concludes Defendants have accepted the facts on which they rely in their memorandum and dispute any other alleged fact concerning this letter. Specifically, Defendants accept that Anderson wrote the letter on March 4, 1997, and that the content of the letter demonstrated Anderson "misrepresented the terms of the Shared Appreciation Agreement in his [previous] letter to Sweckers on December 30, 1996." Defs.' Mem. at 16–17.

[4] "Recapture" is the term used to describe the amount owed under the terms of the SAA as calculated once the payment becomes due. *See* Pl.'s App. at 59–60.

On November 14, 2006, the FSA sent the Sweckers a notice that the SAA's ten-year term would end on December 30, 2006. *Id.* at 137. On March 13, 2007, the FSA sent the Sweckers notice that the appreciation described in the SAA was due and owing. *Id.* at 138–39.[5] There is no dispute that no payments have been made on the matured SAA.[6]

On January 8, 2009, Plaintiff filed its Complaint seeking *in rem* judgment against the mortgaged property and *in personam* judgment against Defendants Greg and Beverly Swecker. *See generally* Compl. Plaintiff seeks $254,163.29 in principal, $77,552.59 in interest, and continuing interest. *Id.* at 11. The case was stayed until June 18, 2015. Clerk's No. 79. Plaintiff thereafter filed this motion for summary judgment on June 7, 2016. Clerk's No. 155.

II. SUMMARY JUDGMENT STANDARD

The term "summary judgment" is something of a misnomer. *See* D. Brock Hornby, *Summary Judgment Without Illusions*, 13 Green Bag 2d 273 (Spring 2010). Though it "suggests a judicial process that is simple, abbreviated, and inexpensive," in reality the process is complicated, time-consuming, and expensive.[7] *Id*. at 273, 281. The complexity of the process for determining whether summary judgment is appropriate, however, reflects the "complexity of law and life." *Id*. at 281. "Since the constitutional right to jury trial is at stake," judges must engage in a "paper-intensive and often tedious" process to "assiduously avoid deciding disputed facts or inferences" in a quest to determine whether a record contains genuine factual disputes that necessitate a trial. *Id*. at 281–82. Despite the seeming inaptness of the name and the desire for some in the bar to be rid of it, the summary judgment process is well-accepted and appears

[5] Pursuant to the Sweckers' answer and their resistance to the instant motion, they admit the notices dated November 14, 2006, and March 13, 2007, were executed, but dispute whether any payment is due. *See* Answer ¶¶ 20–21 (Clerk's No. 87); Defs.' Resp. ¶ 32–33.
[6] Additional facts pertinent to Defendants' assertions raised in their resistance are discussed below where relevant.
[7] Indeed, Judge Hornby, a district court judge for the District of Maine, convincingly suggests that the name "summary judgment" should be changed to "motion for judgment without trial." 13 Green Bag 2d at 284.

"here to stay."[8] *Id*. at 281. Indeed, "judges are duty-bound to resolve legal disputes, no matter how close the call." *Id*. at 287.

"[S]ummary judgment is an extreme remedy, and one which is not to be granted unless the movant has established his right to a judgment with such clarity as to leave no room for controversy and that the other party is not entitled to recover under any discernible circumstances." *Robert Johnson Grain Co. v. Chem. Interchange Co.*, 541 F.2d 207, 209 (8th Cir. 1976) (citing *Windsor v. Bethesda Gen. Hosp.*, 523 F.2d 891, 893 n.5 (8th Cir. 1975)). The purpose of summary judgment is not "to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broad. Sys., Inc.*, 368 U.S. 464, 467 (1962) (quoting *Sartor v. Ark. Natural Gas Corp.*, 321 U.S. 620, 627 (1944)). Rather, it is designed to avoid "useless, expensive and time-consuming trials where there is actually no genuine, factual issue remaining to be tried." *Anderson v. Viking Pump Div., Houdaille Indus., Inc.*, 545 F.2d 1127, 1129 (8th Cir. 1976) (citing *Lyons v. Bd. of Educ.*, 523 F.2d 340, 347 (8th Cir. 1975)).

Federal Rule of Civil Procedure 56(a) provides, "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Rule 56(a) mandates the entry of summary judgment upon motion after there has been adequate time for discovery "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Summary judgment is appropriately granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences,

[8] Judge Hornby notes that over seventy years of Supreme Court jurisprudence gives no hint that the summary judgment process is unconstitutional under the Seventh Amendment. *Id*. at 281 (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979) and *Sartor v. Ark. Natural Gas Corp.*, 321 U.S. 620, 627 (1944)). While he recognizes that not much can be done to reduce the complexity of the summary judgment process, he nonetheless makes a strong case for improvements in it, including, amongst other things, improved terminology and expectations and increased pre-summary judgment court involvement. *See id*. at 283–88.

shows that there is no genuine issue of material fact and the moving party is therefore entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994).

"In considering a motion for summary judgment the court does not weigh the evidence, make credibility determinations, or attempt to discern the truth of any factual issue." *Great Plains Real Estate Dev., L.L.C. v. Union Cent. Life Ins. Co.*, 536 F.3d 939, 944 (8th Cir. 2008) (quoting *Morris v. City of Chillicothe*, 512 F.3d 1013, 1018 (8th Cir. 2008)). Rather, the court only determines whether there are any disputed issues concerning the existence of material facts and, if so, whether those disputes are genuine. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986); *Wilson v. Myers*, 823 F.2d 253, 256 (8th Cir. 1987) ("Summary judgment is not designed to weed out dubious claims, but to eliminate those claims with no basis in material fact.") (citing *Weightwatchers of Quebec, Ltd. v. Weightwatchers Int'l, Inc.*, 398 F. Supp. 1047, 1055 (E.D.N.Y. 1975)). Summary judgment is appropriately entered against a party who has failed to make a showing sufficient to establish a genuine dispute as to the existence of an element essential to its case and upon which the party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

When a summary judgment motion is filed, the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *See id.* at 323; *Anderson*, 477 U.S. at 248. If the moving party has carried its burden, the nonmoving party must then go beyond its original pleadings and designate specific facts showing that there remains a genuine issue of material fact that needs to be resolved by a trial. *See* Fed. R. Civ. P. 56(c). This additional showing can be by affidavits, depositions, answers to interrogatories, or admissions in

the record. *Id.*; *Celotex*, 477 U.S. at 322–23; *Anderson*, 477 U.S. at 257. "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat a motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson*, 477 U.S. at 247–48. A disputed issue is "genuine" when the evidence produced "is such that a reasonable jury could return a verdict for the nonmoving party." *See id.* at 248. "As to materiality, the substantive law will identify which facts are material . . . . Factual disputes that are irrelevant or unnecessary will not be counted." *Id*.

Courts do not decide whether to grant a motion for summary judgment by conducting a paper trial. Rather, a "district court's role in deciding the motion is not to sift through the evidence, pondering the nuances and inconsistencies, and decide whom to believe." *Waldridge v. Am. Hoechst Corp*., 24 F.3d 918, 920 (7th Cir. 1994). In considering a motion for summary judgment, the court's task is merely to decide, based on the evidentiary record that accompanies the filings of the parties, whether there really is any genuine issue concerning a material fact that still requires a trial. *See id.* (citing *Anderson*, 477 U.S. at 249 and 10 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2712 (3d ed. 1998)); *see also* Fed. R. Civ. P. 56(c)(3).

IV. ANALYSIS

Based on the record, this Court must first determine whether Plaintiff has demonstrated there is no genuine issue of material fact that remains to be tried, then determine whether Plaintiff is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). There is no dispute over the existence, terms, and execution of the operative underlying contracts—the December 30, 1996 promissory note and the SAA. Pl.'s App. at 52–54, 59–60. There is no dispute that the note calls for annual payments or that Defendants ceased making those payments in 1999. *See*

id. at 52, 133–34. There is no dispute that the ten-year term described in the SAA has passed, and there is no dispute that Defendants have made no payments toward the appreciation amount contemplated by the SAA's terms. *Id.* at 59–60. Furthermore, the note and the SAA expressly permit the FSA to "declare all or any part of [the] indebtedness immediately due and payable" and liquidate if needed. *Id.* at 54, 60. Defendants have not disputed the calculation of principal and interest presented in Plaintiff's prayer for relief, which is supported by undisputed portions of the record. Pl.'s Facts ¶ 55.[9] Plaintiff has therefore carried its burden to demonstrate there is no genuine issue of material fact.

Defendants nevertheless assert summary judgment should not be granted and argue three bases support their claim. *See* Defs.' Mem. at 9, 13, 18. To determine whether Defendants' arguments overcome Plaintiff's showing that it is entitled to judgment as a matter of law, the Court must evaluate each of the three bases to determine whether they implicate any genuine issue of material fact.

A. *Loan Servicing & Discrimination Claims*

As their first basis for alleging summary judgment is improper, Defendants claim questions of material fact remain regarding the FSA's allegedly discriminatory servicing of their loans. Defendants assert these questions of fact may have implications on two dispositive issues: first, whether their nonpayment was legally justified; and second, whether the FSA was statutorily proscribed from initiating this foreclosure proceeding.

As to the question of whether nonpayment was justified, Defendants argue they made regular full and timely payments on their loans "until operating loan funding was unlawfully

[9] Defendants did not accept the paragraph containing Plaintiff's calculations, but they have made no claim that the calculations were erroneous. Defs.' Mem. at 17–18. Rather, they assert that the entire balance has been "written off" or forfeited by an alleged breach of contract. *See id.*; Defs.' Facts ¶ 55.

denied" by the FSA on four occasions between 1990 and 1994. Defs.' Mem. at 9. Defendants assert Plaintiff "uses these initial loans as a basis for the alleged default" and "has failed to properly support that these initial loans were not unreasonably delayed or denied, thus creating a dispute as to a material fact and precluding the entry of summary judgment." *Id.* at 10.

The four operating loans to which Defendants refer are entirely separate loans from those at issue in this case. Indeed, the operating loans predate the execution of the promissory note and the SAA. The loans presently at issue are real estate loans, not loans for working capital used to operate a farm. Plaintiff's complaint in no way relies upon or references Defendants' operating loans between 1990 and 1994. *See generally* Compl. No facts related to these operating loans—including whether they were "unreasonably delayed or denied"—would be material to the determination of Defendants' performance under the promissory note or SAA. Even if there were an unreasonable delay or denial of unrelated operating fund loans, Defendants would not be legally justified in refusing to pay on their 1996 written-down promissory note. Therefore, Defendants have not demonstrated there are any genuine issues of fact in relation to the servicing of operating loans that are material to the present action.

As to the question of whether the FSA was proscribed from initiating this foreclosure action, Defendants argue the FSA was not permitted to do so because they had civil rights complaints pending against it. The FSA is part of the U.S. Department of Agriculture ("USDA"), which has established the Office of the Assistant Secretary for Civil Rights ("OASCR") to "investigate and resolve complaints of discrimination in programs operated or assisted by USDA"—including FSA loan programs. *See How To File a Program Discrimination Complaint,* U.S. Dep't of Agric., www.ascr.usda.gov/node/119 (last visited November 10, 2016). A complaint alleging discrimination "on the bases of race, color, religious creed, sex, political

beliefs, age, disability, national origin, or limited English proficiency" may be filed with OASCR any time. *Id.*; *see also* 15 U.S.C. § 1691(a). Defendants have filed numerous such complaints throughout the last two decades.

In 2008, Congress enacted a provision related to these program discrimination claims that Defendants allege is dispositive of the instant motion:

> [T]here shall be in effect a moratorium, with respect to farmer loan programs . . . , on all acceleration and foreclosure proceedings instituted by the Department of Agriculture against any farmer or rancher who—
>
> (A) has pending against the Department a claim of program discrimination that is accepted by the Department as valid; or
>
> (B) files a claim of program discrimination that is accepted by the Department as valid.

Food, Conservation, and Energy Act of 2008 § 14002(a), Pub. L. No. 110-246, 122 Stat. 1664, 2204 (codified at 7 U.S.C. § 1981a(b)). Defendants submit the FSA's initiation of this foreclosure action on January 8, 2009, was proscribed by this statutory moratorium because Defendants "had claims of program discrimination pending with the Department of Agriculture."[10] Defs.' Mem. at 13. However, the moratorium is explicitly effective only after the Department—i.e., OASCR—has accepted a discrimination claim "as valid." 7 U.S.C. § 1981a(b)(1)(A), (B).

In a comprehensive Final Agency Decision dated January 10, 2011, OASCR clearly delineated the dates upon which it accepted Defendants' claims as valid. Pl.'s App. at 186–95. Of relevance to this motion, OASCR noted that all discrimination complaints accepted as valid prior to the initiation of this foreclosure action had been closed by September 30, 2007. *Id.* at

[10] Defendants attempt to collaterally litigate their discrimination claims in their resistance to Plaintiff's motion for summary judgment. *See* Defs.' Mem. at 10–12. Specifically, Defendants argue they have been the victims of disparate treatment by the FSA because they are Caucasian and because they are married. *Id.* at 11–12. These claims were ably disposed of in OASCR's Final Agency Decision and need not be addressed here. *See* Pl.'s App. at 186–95.

192. OASCR did not accept as valid another complaint from Defendants until July 12, 2009, six months after Plaintiff initiated this action. *Id.* at 186. Once Plaintiff was informed of OASCR's acceptance of Defendants' discrimination complaint, it moved to stay its foreclosure action on July 22, 2009, pending a final decision on the complaint. Clerk's No. 49. Plaintiff did not move to lift the stay until well after the final decision had been issued. Clerk's No. 73.

Defendants assert summary judgment is improper because "[t]he moratorium put into place on acceleration and foreclosure was fully in effect" when Plaintiff initiated this action. Defs.' Mem. at 13. However, as a matter of law, the moratorium was not in effect on January 8, 2009. The effective dates of the moratorium are defined by OASCR's date of formal acceptance of Defendants' claim. No claims were pending at the time this action was initiated, the action was stayed once a newly submitted claim was accepted as valid, and Plaintiffs took no action against Defendants until that claim was finally resolved. OASCR's acceptance dates are clear from the record, so there is no material fact that remains at issue. *See* Pl.'s App. at 186, 192.

Defendants have failed to demonstrate any genuine issues of material fact remain to be determined as to the servicing of their loans, their discrimination complaints, or the statutory moratorium.

B. *Enforceability of Shared Appreciation Agreement*

As their second basis for alleging summary judgment is improper, Defendants claim questions of material fact remain regarding the enforceability of the SAA. They assert the SAA has been preempted by a settlement agreement between the parties in 1997. The settlement agreement in question was prepared in contemplation of settling a lawsuit initiated by the Sweckers against the USDA in May 1996. *See Swecker v. U.S. Dep't of Agric.*, S.D. Iowa Case No. 4:96-cv-80430. In December 1996, the parties entered into the promissory note and SAA at

issue in this case. In January 1997, the Sweckers' 1996 lawsuit was dismissed. *Id.* A settlement agreement was prepared and signed by the attorneys for both parties after the dismissal, but the Sweckers initially refused to sign it when they received it in March 1997. *See* Defs.' App. at B-16, B-19 to B-20.

Defendants now claim the settlement agreement is binding, usurps the promissory note, and entirely voids the SAA. The settlement agreement describes the promissory note executed in December 1996 and states the note serves as the basis for settlement of the Sweckers' 1996 lawsuit. *Id.* at B-16 to B-17. It then provides, "This Agreement is the complete and final settlement between the parties for all issues and allegations alleged arising out of the loan relationship. . . . This writing contains the entire Agreement of the parties and all terms and/or conditions mentioned are incidental to this Agreement." Defendants rely on this language to claim "the Settlement Agreement stood as the one note and is the only document that sets the terms of the note." Defs.' Mem. at 14. They claim, "Under the terms of the Settlement Agreement, Sweckers became liable for only one mortgage under the terms therein." *Id.* at 16. Defendants even go so far as to suggest the settlement agreement "would write-off all of the original loans." *Id.* at 15.

The Court rejects Defendants' assertions regarding the effects of the settlement agreement. The settlement agreement is not and could not be an instrument of credit. The language quoted above is a simple integration clause, which serves to make the parol evidence rule applicable in any future contested proceedings as to the agreement's effect. *See* 11 Williston on Contracts § 33:23 (4th ed. 2016). References to the "entire Agreement of the parties" are by definition limited to the agreement to dismiss the Sweckers' 1996 lawsuit. They do not alter the terms of the promissory note or the SAA.

Defendants claim the settlement agreement "show[s] that a genuine issue exists to be tried in relation to the monetary obligation of [Defendants] to USA." Defs.' Mem. at 15. To the contrary, the facts surrounding the settlement agreement are fully developed, and no additional inquiries could cause that document to have the effects purported by Defendants. There is no genuine issue of material fact to be explored as to the settlement agreement.

Next, Defendants allege the SAA in unenforceable because Anderson misrepresented the terms of the SAA in his January 6, 1997 letter by insinuating the SAA would expire—i.e., become void with no recapture payment due—in ten years. *See* Pl.'s App. at 69. Even assuming Defendants' allegation to be true, they are mistaken as to the legal effect of any such misrepresentation. The operation of the SAA is statutorily defined. *See* 7 U.S.C. § 2001(e). The Eighth Circuit has already ruled that misrepresentations such as the one alleged in this case do not affect the enforceability of an SAA: "To the extent that the [SAA] is ambiguous or that representations made by the USDA county supervisors suggest that no recapture is due at the end of the term, the mandatory provisions of the statute control." *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 702 (8th Cir. 2003); *see also Parmenter v. Fed. Deposit Ins. Corp.*, 925 F.2d 1088, 1095 (8th Cir. 1991) ("[A]nyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." (quoting *Leimbach v. Califano*, 596 F.2d 300, 305 (8th Cir.1979))). Therefore, even if Defendants' allegations are true, it is immaterial to Plaintiff's entitlement to judgment as a matter of law in this case.

Defendants have not shown any genuine issue of material fact pertaining to the enforceability of the SAA. Neither the 1997 settlement agreement nor Anderson's alleged misrepresentations necessitate trial.

C. *Objections to Record*

Defendants' third and final basis for their resistance to Plaintiff's summary judgment motion relates to the affidavit of Brian Gossling, which was filed alongside the motion. Pl.'s App. at 1–13. Gossling is Chief Specialist of Farm Loan Programs with the FSA. *Id.* at 1. He is the custodian of the FSA's records pertaining to Defendants' loans. *Id.* Defendants assert that Gossling's affidavit does not comply with Fed. R. Civ. P. 56(e) and constitutes inadmissible hearsay. They argue, therefore, this Court may not properly consider the affidavit. Defs.' Mem. at 18.

The standard for determining whether evidence is admissible for summary judgment purposes is "whether it *could* be presented at trial in an admissible form." *Gannon Int'l Ltd. v. Blocker*, 684 F.3d 785, 793 (8th Cir. 2012). Fed. R. Civ. P. 56(c)(1)(A) expressly permits citation to affidavits and documents to support assertions in a motion for summary judgment. Additionally, Fed. R. Evid. 803(6) provides that records kept in the course of regularly conducted activity of an organization, as attested by the custodian of those records, are not excluded by the rule against hearsay. Gossling's affidavit and the records submitted along with it are reflective of his personal knowledge as custodian of the records and as Chief Specialist of Farm Loan Programs. These documents could be presented at trial in a form that complies with the rules of evidence, and therefore the affidavit at its supporting documents are properly considered by this Court in analyzing Plaintiff's summary judgment motion. The Court concludes there are no genuine issues of material fact pertaining to Gossling's affidavit that would prevent granting summary judgment.

Having fully considered the record in the light most favorable to Defendants, the Court concludes Plaintiff's right to judgment in this action is clear and there are no discernable

circumstances under which Plaintiff is not entitled to recover. *See Robert Johnson Grain Co.*, 541 F.2d at 209. To the extent Defendants have raised any remaining issues of fact, none are substantively material to this foreclosure action. *See Anderson*, 477 U.S. at 248. Defendants' pertinent arguments against this summary judgment motion are legal—not factual—in nature. However, Defendants are mistaken in their understanding of the legal effects of the servicing of their loans, their discrimination claims, the 1997 settlement agreement, and the misrepresentation of the terms of the SAA.

Plaintiff bears the burden of proof in this case to affirmatively show it is entitled to judgment. "Summary judgments in favor of parties who have the burden of proof are rare, and rightly so." *Turner v. Ferguson*, 149 F.3d 821,824 (8th Cir. 1998). This is one of the rare cases in which the record on summary judgment is sufficiently clear to demonstrate Plaintiff's right to recover. There are no genuine issues of material fact left to be tried in this case, and Plaintiff is entitled to judgment as a matter of law.

V. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Summary Judgment (Clerk's No. 155) is GRANTED. Judgment shall be entered *in rem* against the mortgaged property and *in personam* against Defendants. As reflected in the documentation of the loans in the record, the following amounts awarded in the judgment: $137,602.09 principal on the promissory note; $152,967.30 interest on the promissory note; accrual interest on the promissory note of $24.5045 per day starting April 23, 2016, and terminating the day of the judgment; and $116,500 per the terms of the SAA. The clerk shall enter judgment accordingly.

As a result of the entry of judgment in Plaintiff's favor, the Court DENIES as moot the following motions: (1) Defendants' Motion for Preliminary Injunction (Clerk's No. 145);

(2) Defendants' Motion for Final Summary Judgment (Clerk's No. 152); (3) Plaintiff's Motion in Limine (Clerk's No. 165); (4) Defendants' Motion in Limine to Exclude All Non-Previously Disclosed Witnesses (Clerk's No. 171); (5) Defendants' Motion to Set Aside Order Dismissing Defendants' Counterclaims (Clerk's No. 172); (6) Defendants' Motion for Trial by Jury (Clerk's No. 176); (7) Defendants' Motion in Limine (Clerk's No. 188).

IT IS SO ORDERED.

Dated this 10th day of November, 2016.

Robert W. Pratt

ROBERT W. PRATT, Judge
U.S. DISTRICT COURT