
*
IN THE MATTER OF: *
*
SETERUS, INC. *
NMLS # 787641 *

*
*
(“Seterus”) *
*

**SETTLEMENT AGREEMENT
AND CONSENT ORDER**

WHEREAS, from at least January 1, 2014 through and including February 28, 2019 (the “Relevant Period”), Kyanite Services, Inc. (“Kyanite”) was the parent of Seterus, Inc. (“Seterus”), a Delaware corporation with a main office at 3039 Cornwallis Road, Building 203 #AA145, Research Triangle Park, North Carolina, through February 28, 2019;

WHEREAS, during the Relevant Period, Seterus was licensed as a mortgage servicer, mortgage lender servicer, debt collector, third party loan servicer, consumer loan company, and mortgage lender under the respective laws of several states, including Connecticut, Florida, Georgia, Massachusetts, Rhode Island, Washington and West Virginia (“Examining States”);

WHEREAS, as of February 28, 2019, Seterus was sold, including all rights and certain liabilities, to Nationstar Mortgage LLC d/b/a Mr. Cooper (“Purchaser”) and its entire mortgage loan servicing portfolio was transferred to Purchaser.

WHEREAS, all references to Seterus during the Relevant Period mean the company as it existed until February 28, 2019, and references to Seterus thereafter, or of its current acknowledgement, obligation or commitment, refer to Kyanite;

WHEREAS, the mortgage regulators of the Examining States (“State Regulators”) are members of the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and have agreed to address enforcement concerns with Seterus in a collective and coordinated

manner, working through the Multi-State Mortgage Committee (“MMC”). The State Regulators and Seterus are collectively referred to herein as the “Parties”;

WHEREAS, from August 15, 2016 to August 26, 2016, the Examining States conducted a full-scope, mortgage-servicing examination into the activities of Seterus to determine its compliance with applicable State and Federal laws and regulations, financial condition, and the adequacy of policies and procedures and control and supervision of its licensed mortgage loan servicing operations;

WHEREAS, the examination review period was from April 1, 2014 to March 31, 2016. Selected financial information in the Report of Examination (“ROE”) was updated through June 30, 2016, and additional operations and activity by Seterus through the execution of the Settlement Agreement and Consent Order (“Consent Order”) were also considered;

WHEREAS, as a result of such examination, the State Regulators issued an ROE, dated August 16, 2016, alleging several findings of non-compliance by Seterus with industry standards and State and Federal laws and regulations;

WHEREAS, on October 16, 2017, Seterus provided a response to the ROE disputing certain purported findings as inaccurate or incorrect;

WHEREAS, the Parties acknowledge and agree that the State Regulators have legal authority to initiate administrative actions or judicial proceedings against Seterus based on the conduct within the ROE. However, the parties agree to resolve the alleged deficient conduct of Seterus identified within the ROE and provided herein through this Consent Order;

WHEREAS, the State Regulators allege that from April 2014 to June 2016, Seterus committed certain violations of State and Federal laws and regulations as set forth in the ROE including failing to timely respond to qualified written requests in violation of Section 1024.36(d)(2) of the Real Estate Settlement Procedures Act, 12 CFR Part 1024 (“RESPA”), failing to exercise reasonable diligence in obtaining documents and information to complete loss mitigation applications in violation of Section 1024.41(b)(1) of RESPA, failing to timely acknowledge receipt of borrower loss mitigation applications in violation of Section 1024.41(b)(2)(i)(B) of RESPA, failing to include in notices a reasonable date by

which borrowers should submit documents and information necessary to make loss mitigation applications complete in violation of Section 1024.41(b)(2)(ii) of RESPA, failing to obtain audits pursuant to the Uniform Single Audit program for Mortgage Bankers as approved by the Mortgage Bankers Association of America, failing to file accurate reports, failing to provide access to books and records, failing to update a change to a Nationwide Multistate Licensing System and Registry (“NMLS”) disclosure question within ten (10) days of such change, collecting a late fee that exceeded the contractual maximum amount allowed and failing to implement a compliance management system and formal audit program to effectively manage the compliance and business risk of its consumer collections operations;

WHEREAS, Seterus, based upon an internal audit disclosed during the examination, further self-reported to the Examining States that it (the below hereinafter referred to as “Additional Conduct”):

- (a) improperly collected late fees in excess of Six Million Dollars (\$6,000,000) from over fifty thousand (50,000) borrowers, from a period of time commencing in 2013, up to and including 2016; and
- (b) identified issues with its loss mitigation application acknowledgement process and responsive letter sent in error (hereinafter the “L266 letter”), or with inaccuracies or other deficiencies in their L266 letters to consumers;

WHEREAS, Seterus continued to disclose to the Examining States results from its internal audit and has further represented that it had performed the following forms of remediation:

- (a) distributed restitution in excess of Six Million Dollars (\$6,000,000) as of the date of this Consent Order, further representing that all borrowers that were impacted by the improperly charged and collected late fees would be refunded in full;
- (b) made enhancements to its L266 letter production process; and
- (c) installed and/or enhanced the quality controls process for the L266 letters including, but not limited to, installing a population tracker, tracking corrections, enhancing review of documents for accuracy and periodically sampling letters for compliance.

WHEREAS, Seterus further represents that it is engaged in and remains in the process of negotiating the restitution and otherwise full remediation towards consumers adversely impacted by the improper and incorrect L266 letters and other issues involved with the loss mitigation application

acknowledgement process, which customer remediation is set to be wholly addressed as part of a separate and distinct matter;

WHEREAS, the Examining States believe that the failure of Seterus to comply with provisions of the laws of the Examining States and applicable Federal laws constitutes grounds for administrative action, including, but not limited to, the imposition of administrative fines or civil penalties, up to suspension or revocation of a license or registration granted by an Examining State, specifically Seterus's mortgage servicer license (CT), mortgage lender servicer license (FL), mortgage lender license (GA), debt collector license (MA), debt collector registration and third party loan servicer license (RI), consumer loan company license (WA) and mortgage lender license (WV);

WHEREAS, the Parties acknowledge the possible consequences of formal administrative or judicial proceedings, and the risks and expenses involved in such proceedings, and Seterus voluntarily agrees to consent to the entry of the sanctions imposed below solely for the purpose of obviating the need for formal administrative and judicial proceedings concerning the allegations set forth herein and without admitting any of the allegations set forth herein;

WHEREAS, the Parties now desire to resolve the matters set forth herein;

WHEREAS, Seterus specifically assures the State Regulators that Seterus will not engage in the violations alleged herein in the future;

WHEREAS, Seterus and/or Purchaser has voluntarily surrendered Seterus' mortgage servicing or other applicable licenses in all states in which Seterus was engaged in mortgage servicing activities requiring licensure;

WHEREAS, Seterus has been advised that the acceptance of said licensure surrender by the Examining States is conditioned, in part, on the execution of this Consent Order;

WHEREAS, Seterus acknowledges that this Consent Order is a public record and is a reportable event for purposes of the regulatory disclosure questions on NMLS, as applicable;

WHEREAS, Seterus, through its execution of this Consent Order, voluntarily agrees to waive its procedural rights as they concern any aspect of this Consent Order, including a right to a notice and an

opportunity for a hearing and/or judicial proceedings as they pertain to the allegations set forth herein, and voluntarily waives its right to seek judicial review or otherwise challenge or contest the validity of this Consent Order;

WHEREAS, Seterus voluntarily agrees to consent to the entry of the terms imposed herein without admitting any liability, fault or wrongdoing and solely for the purpose of resolving this matter and obviating the need for further formal administrative proceedings concerning the allegations in the Order and Notice and set forth herein;

AND WHEREAS, Kyanite represents that, as the parent of Seterus during the Relevant Period, it has authority to enter into this Consent Order, and that the person signing this Consent Order on behalf of Kyanite is duly authorized to execute this Consent Order for conduct occurring prior to February 28, 2019.

NOW THEREFORE, by this Consent Order, having been negotiated by the Parties in order to resolve the issues identified herein without incurring the costs, inconvenience and delays associated with protracted administrative and judicial proceedings, the Examining States hereby **ORDER**:

I. CIVIL PENALTY

1. *Civil Penalty*: No later than the date this Consent Order is executed by Seterus, it shall remit the sum of Three Hundred Fifty Thousand Dollars (\$350,000) as a civil penalty, to be divided equally among the State Regulators of the Examining States. Seterus shall pay this civil penalty by the means designated by each of the State Regulators.

II. COMPLIANCE MEASURES

2. *Cease and Desist*: Seterus shall cease and desist from failing to timely respond to qualified written requests in violation of Section 1024.36(d)(2) of the Real Estate Settlement Procedures Act, 12 CFR Part 1024 (“RESPA”), failing to exercise reasonable diligence in obtaining documents and information to complete loss mitigation applications in violation of Section 1024.41(b)(1) of RESPA, failing to timely acknowledge receipt of borrower loss mitigation applications in violation of Section 1024.41(b)(2)(i)(B) of RESPA, failing to include in notices a reasonable date by which borrowers should submit documents and information necessary to make loss mitigation applications complete in violation of Section 1024.41(b)(2)(ii) of RESPA, failing to obtain audits pursuant to the Uniform Single Audit program for Mortgage Bankers as approved by the Mortgage Bankers Association of America, failing to file accurate reports, failing to provide access to books and records, failing to update a change to a Nationwide Multistate Licensing System and Registry (“NMLS”) disclosure question within ten (10) days of such change, collecting a late fee that

exceeded the contractual maximum amount allowed, and failing to implement a compliance management system and formal audit program to effectively manage the compliance and business risk of its consumer collections operations. Seterus shall further cease and desist from engaging in any of the aforestated additional conduct.

3. *Accounting of Restitution of Late Fees:* Within sixty (60) calendar days following the effective date of this Consent Order, Seterus shall submit to the Examining States a report in Excel format containing, at a minimum, the following loan information for each borrower adversely impacted by the improperly changed and collected late fees: the name of the borrower, the loan account number, the amount offered, the amount paid, the method of payment, and the state of the property subject to the mortgage. On that same date, Seterus will provide an executed affidavit confirming that all impacted borrowers have been remediated.

III. GENERAL PROVISIONS

4. *Jurisdiction:* Pursuant to the licensing and supervision laws of the Examining States, the State Regulators have jurisdiction over Seterus as described herein and may enforce the terms of this Consent Order thereon unless otherwise stated in this Consent Order.
5. *Binding Nature:* The terms of this Consent Order shall be legally binding upon Kyanite's officers, owners, directors, employees, heirs, successors and assigns. Notwithstanding, for avoidance of any doubt, the obligations under this Consent Order shall not apply to Purchaser, or any of its officers, owners, directors, employees, heirs, ,successors, or assigns.
6. *Standing and Choice of Law:* Each State Regulator has standing to enforce this Consent Order in the judicial or administrative process otherwise authorized under the laws and regulations of the corresponding Examining State. Upon entry, this Consent Order shall be deemed a final order of each respective State Regulator unless adoption of a subsequent agreement is necessary under the terms of the corresponding state. In the event of any disagreement between any State Regulator and Seterus regarding the enforceability or interpretation of this Consent Order and compliance therewith, the courts or administrative agency authorized under the laws of the respective state shall have exclusive jurisdiction over the disputes, and the laws of such state shall govern the interpretation, construction and enforceability of this Consent Order.
7. *Adoption of Subsequent Orders to Incorporate Terms:* A State Regulator, if deemed necessary under the laws and regulations of the respective state, may issue a separate administrative order to adopt and incorporate the terms and conditions of this Consent Order.
8. *Titles:* The titles used to identify the paragraphs of this Consent Order are for the convenience of reference only and do not control the interpretation of this Consent Order.
9. *Counterparts:* This Consent Order may be executed in separate counterparts. A copy of the signed Consent Order shall be given the same effect as the originally signed Consent Order.
10. *Final Agreement:* This Consent Order supersedes any prior oral or written discussion or agreement and constitutes the entire agreement between the Parties relating to the ROE. Upon issuance of this Consent Order by each State Regulator, this matter will be resolved with the respective State Regulator and such State Regulator will not take any future enforcement action against Seterus, Kyanite, or Purchaser, their successors or assigns, or any of their officers, owners, directors, employees, heirs, successors, assigns, parents, or affiliates based upon the allegations set forth

herein, provided that issuance of this Consent Order is without prejudice to the right of a State Regulator to take enforcement action against Seterus based upon a violation of this Consent Order or the matters underlying its entry, if a State Regulator determines that compliance with the terms herein is not being observed or if any representation made by Seterus and reflected herein is subsequently discovered to be untrue. Nothing in this Consent Order shall be construed as limiting a State Regulator's ability to take enforcement action against Seterus based upon evidence indicating that Seterus withheld information from, or made any misstatement or omission to a State Regulator in connection with this matter.

11. *Enforcement; No Restriction on Existing Examination and Investigation Authority:* This Consent Order shall in no way preclude any Examining State from exercising its examination or investigation authority under the laws of the corresponding Examining State in the instance a determination is made wherein Seterus is found not to be adhering to the requirements of this Consent Order, other than inadvertent and isolated errors that are promptly corrected by Seterus, or involving any unrelated matter not subject to the terms of this Consent Order. Nor shall the provisions of this Consent Order limit, estop, or otherwise prevent any other state agency or department, from taking any other action affecting Seterus and/or any of its officers, directors or managers. Provided Seterus complies with the terms of the Consent Order, the State Regulators agree that they will not seek additional penalties related to the allegations contained in the Order. Furthermore, nothing in the Consent Order prohibits the State Regulators from taking administrative action on new issues discovered during the pendency of the Consent Order, or thereafter.
12. *Noncompliance:* That, notwithstanding any other relief to the contrary, if Seterus fails to comply with the terms and conditions of this Consent Order, the State Regulators may pursue any action allowed by law concerning the conduct and compliance violations stated in the ROE, such action including, but not limited to, suspension or revocation of a license issued by the State Regulators to Seterus, imposition of a civil money penalty against Seterus, or any other remedy allowed by law. The Parties agree that the failure of Seterus to comply with any term or condition of this Agreement with respect to a particular State shall be treated as a violation of an Order of the State and may be enforced as such. Moreover, Seterus acknowledges and agrees that this Agreement is only binding on the State Regulators and not any other Local, State or Federal Agency, Department or Office.
13. *Sharing of Information and Cooperation:* The Examining States may collectively or individually request and receive any information or documents in the possession of the MMC. This Consent Order shall not limit Seterus's obligations, as a licensee of an Examining State, to cooperate with any examination or investigation in any Examining State.
14. *Public Statements:* Seterus shall not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation referenced in this Consent Order or create the impression that this Consent Order is without factual basis. However, nothing in this paragraph shall prevent Seterus, Kyanite, or any of their officers, owners, directors, employees, heirs, successors, assigns, parents, or affiliates from making or refuting any statement in connection with any criminal, civil, administrative, or private litigation, investigation or action initiated against Kyanite or Seterus by any other party other than one of the Examining States.
15. *Licensure:* Subject to the foregoing, and so long as this Consent Order is promptly disclosed by Seterus or Kyanite and its control persons on NMLS, as applicable, nothing in the issuance of this Consent Order shall adversely affect the ability of Seterus or Kyanite to apply for or obtain licenses or renewal licenses to act as a mortgage servicer (CT), mortgage lender servicer (FL), mortgage

lender (GA), debt collector (MA), debt collector and third party loan servicer (RI), consumer loan company (WA) and mortgage lender (WV), provided all applicable legal requirements for any such licenses are satisfied. Further, at the sole discretion of the Examining States, any licensure application by Seterus may be required to be supported by documentary evidence showing that all of the above-referenced violations have either been remediated in full by Seterus prior to the sale and transfer of the servicing portfolio or as a function of said sale and transfer of the servicing portfolio to Nationstar Mortgage LLC d/b/a Mr. Cooper and fully agrees to cooperate and assist a requesting Examining State with the furnishing of said proof of compliance.

16. *Release:* Upon issuance of this Consent Order by the Examining States, this matter will be resolved and the Examining States will not take any future enforcement action against Seterus, Kyanite, or Purchaser, or any of their officers, owners, directors, employees, heirs, successors, assigns, parents, or affiliates and/or their past or present parents, successors or assigns based upon the allegations set forth herein, the ROE or the Additional Conduct; provided that the issuance of this Consent Order is without prejudice to the right of the Examining States to take enforcement action against Seterus or Kyanite based upon a finding that Seterus has materially failed to comply with the terms herein, if any material knowing misrepresentation is made by Seterus or Kyanite, or is subsequently discovered to be untrue.
17. *Effective Date:* This Consent Order shall become effective upon execution by all Parties.

It is so **ORDERED**.

In **WITNESS WHEREOF**, in consideration of the foregoing, including the recital paragraphs, the Parties, intending to be legally bound, do hereby execute this Settlement Agreement and Consent Order.

This 9th day of October 2019. /s/

Jorge L. Perez
Banking Commissioner
Connecticut Department of Banking

This 8th day of October 2019. /s/

Abigail L. Vail
Commissioner or Designee
Florida Office of Financial Regulation

This 18th day of September 2019. /s/

Kevin B. Hagler
Commissioner
Georgia Department of Banking and Finance

This 24th day of September 2019. /s/

Mary L. Gallagher
Commissioner
Massachusetts Division of Banks

This 20th day of September 2019. /s/

Elizabeth Kelleher Dwyer
Superintendent of Financial Services
Rhode Island Department of Business Regulation

This 20th day of September 2019. /s/

Charles E. Clark
Director
Washington State Department of Financial Institutions

This 18th day of September 2019. /s/

Dawn E. Holstein
Commissioner of Banking
West Virginia Division of Financial Institutions

I, Leslie Peeler, state on behalf of Kyanite as the parent of Seterus through February 28, 2019 (“Kyanite”), that I have read the foregoing Settlement Agreement and Consent Order; that I know and fully understand its contents; that I am authorized to execute this Settlement Agreement and Consent Order on behalf of Kyanite; that Kyanite agrees freely and without threat or coercion of any kind to comply with the sanctions entered and terms and conditions ordered herein; and that Kyanite voluntarily agrees to enter into this Settlement Agreement and Consent Order, expressly waiving the procedural rights set forth herein as to the matters described herein.

By: /s/
Name: Leslie Peeler
Title: President
Kyanite Services, Inc.

State of: Texas

County of: Dallas

On this the 7th day of August 2019, before me, Leslie Peeler, the undersigned officer, personally appeared Leslie Peeler who acknowledged himself/herself to be the President of Kyanite Services, Inc., a corporation and prior parent company of the subsidiary Seterus, Inc., a corporation, and that he/she as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as President.

In witness whereof I hereunto set my hand.

/s/
Notary Public Francis Elizabeth Guest
Date Commission Expires: 06/05/2023