

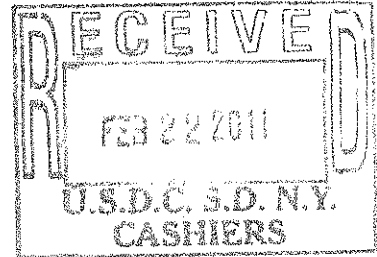
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KARAS

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DANIEL and BRENDA SELLER, on behalf of)
themselves and all others similarly situated,)
)
)
Plaintiffs,)
)
)
)
v.)
)
CITIMORTGAGE, INC.,)
)
Defendant.)
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CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED



INTRODUCTION

1. Plaintiffs, Daniel and Brenda Seller, bring this suit on behalf of themselves and a class of similarly situated persons in New York to challenge the failure of Defendant CitiMortgage, Inc. ("Citi") to honor its uniform written agreements with borrowers to modify mortgages and prevent foreclosures under the federal Home Affordable Modification Program ("HAMP"), a government program designed to alleviate the foreclosure crisis by providing affordable mortgages through a uniform loan modification protocol. Plaintiffs allege common law claims for breach of contract, breach of the implied covenant of good faith and fair dealing and promissory estoppel and statutory violations under the New York General Business Law § 349. Plaintiffs seek declaratory and injunctive relief, as well as damages, restitution and costs.

2. Citi represented to Plaintiffs and other similarly situated home owners who applied for a HAMP loan modification that (a) they were "prequalified" or "pre-approved" for a loan modification, (b) they would be placed in a ninety (90) day trial period plan during which they could make modified payments, and (c) the trial loan modification would become permanent if they made the modified payments during the trial period and provided additional

documents to Citi.

3. Plaintiffs and other similarly situated home owners fulfilled their obligations under the HAMP trial period plan. They made three or more timely modified payments and provided the requested documentation to Citi. Citi, however, has failed to uphold its end of the bargain because it did not offer a permanent loan modification to Plaintiffs and numerous other similarly situated homeowners. Instead, Citi has engaged in dilatory and abusive practices in order to avoid its obligations to Plaintiffs and the other homeowners by, *inter alia*, extending the trial payment periods far beyond the requisite 90-day period and requesting repeated submissions of additional, unnecessary and/or duplicative documentation.

4. While delaying and otherwise avoiding satisfaction of its obligations under the HAMP trial period plan, Citi has generated late or default fees and unpaid interest, both of which are often added to the principal of the loan, and additional servicing compensation calculated as a percentage of the unpaid loan balance, all at the expense of Plaintiffs and other similarly situated homeowners.

5. Citi also has reported Plaintiffs and other home owners who participated in the HAMP trial period plan as delinquent to credit reporting agencies, despite the fact that they had made timely reduced payments consistent with Citi's modification instructions.

6. Citi's failure to honor its agreements, and its misrepresentations and omissions about how it implemented its HAMP loan modification program, has caused Plaintiffs and other similarly situated homeowners who have been denied a permanent loan modification through no fault of their own to be in a worse position financially than when they applied to Citi for the loan modification.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this civil action pursuant to the Class Action Fairness Act, and particularly, 28 U.S.C. § 1332(d)(2), as the matter in controversy in this action exceeds \$5,000,000, there are at least 100 members of the proposed Class, and is a class action in which numerous members of the proposed Class are citizens of a state that is different from the principal place of business of Defendant.

8. This Court has personal jurisdiction over Defendant because a substantial portion of the wrongdoing alleged herein took place in New York. Defendant is authorized to do business in New York and has sufficient minimum contacts with New York through the promotion, marketing and servicing of loans in New York so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

9. Venue is proper in this District under 28 U.S.C. § 1391(a)-(c), because Defendant transacts business, maintains offices, and is otherwise found within this District; and the Defendant's unlawful acts giving rise to Plaintiffs' claims occurred, and a substantial portion of the affected trade and commerce described herein has been carried out, in this District.

THE PARTIES

10. Plaintiffs Daniel and Brenda Seller are residents of Mahopac, New York. The Sellers have a mortgage from Citi for their primary residence in Mahopac.

11. Defendant CitiMortgage, Inc. ("Citi") is headquartered in O'Fallon, Missouri, and is the fourth largest mortgage service provider in the United States.

STATEMENT OF FACTS

The Home Affordable Modification Program

12. In March 2009, the federal government launched the Home Affordable

Modification Program (“HAMP”) in response to the foreclosure crisis, promising to help three to four million troubled American home owners rework the terms of their mortgages by 2012 with the goal of keeping them in their homes. The purpose of HAMP is to modify eligible mortgages for homeowners at risk of default so that their monthly payments are lower. HAMP provides a uniform structure and process for offering modified loans to qualified borrowers.

13. The United States Treasury Department has allocated at least \$75 billion in federal funds to HAMP, of which at least \$50 billion is from the Troubled Asset Relief Program (“TARP”), 12 U.S.C. §5225.

14. The HAMP is implemented through the Servicer Participation Agreement (“SPA”), contracts prepared by the Treasury Department and signed by the banks and other mortgage service providers (collectively referred to herein as “servicers” or “servicer”). A servicer’s duties and responsibilities under HAMP are set forth in the SPA.¹ To participate in HAMP, and receive potentially billions in government incentives, the servicers have agreed to offer loan modifications to homeowners pursuant to the SPA requirements. In exchange, the servicers receive \$1,000 for each loan modification and up to \$4,000 if the loan continues to perform. Given these large financial incentives, servicers eagerly entered into the HAMP trial payment period plans with homeowners.

15. The HAMP is falling far short of its goals in the wake of widespread reports of the servicers who do not uphold their end of the bargain by, among other things, “wrongly rejecting homeowners, losing paperwork, and otherwise breaking the program’s rules.” See www.propublica.org/article/loan-mod-program-crippled-by-lax-oversight-and-deference-to-

¹ A copy of the SRA signed by Citi, dated April 13, 2009, is available at <http://www.financialstability.gov/docs/HAMP/CitiMortgage%20Servicer%20Participation%20Agreement.pdf>.

banks. The Congressional Oversight Panel estimates that as a result, permanent loan modifications will be given to less than 800,000 homeowners. *Id.*

16. Servicers, moreover, have little incentive to grant the permanent loan modifications. Many servicers do not actually own the vast majority of loans that they service and do not take the loss in the event of foreclosure.

Homeowner Eligibility Under The HAMP

17. A homeowner is required to meet certain criteria in order to be eligible for the HAMP. The homeowner's mortgage either must be delinquent or at risk of imminent default as a result of a material change in financial circumstances. The mortgage must have originated before January 1, 2009, be secured by a 1 to 4 unit property (one of which is the borrower's principal residence), and fall within HAMP's maximum unpaid principal balance requirements. The homeowner must have a monthly mortgage payment ratio of greater than 31 percent. The property must not be investor-owned, vacant or condemned. All homeowners must sign a Hardship Affidavit that describes their reason for applying for a HAMP loan modification.

18. If a borrower is determined to be at risk of imminent default, or is 60 days or more delinquent and the mortgage meets the HAMP requirements, the servicer must evaluate the loan to determine whether it qualifies for modification. The servicer must determine if the borrower's total payment can be reduced to 31% of the borrower's monthly income by changing the interest rate, duration or other loan terms. The servicer also must perform a "Net Present Value" ("NPV") test based on factors including the value of the mortgage, the homeowner's credit score and debt to income ratio, the location of the home, and the delinquency status of the loan, to determine whether the borrower's loan should be modified. The NPV test determines whether it is economically advantageous to modify the loan. If the homeowner has a positive

NPV, the servicer must offer a HAMP loan modification. If the homeowner has a negative NPV, the servicer may offer modification at its discretion.

The Trial Period Plan

19. When a homeowner qualifies for loan modification, the servicer must provide the borrower with a Trial Period Plan (“TPP”), the terms of which are set forth in the Trial Period Plan Agreement. Pursuant to the TPP Agreement, the servicer is required to give a permanent loan modification if the homeowner provides requested documentation and makes timely trial payments during the trial period.

20. During the trial period, servicers are required to report a “full file” status report to credit reporting agencies. “If the borrower is current when they enter the trial period, the servicer should report the borrower as current but on a modified payment” In other words, the servicer cannot simply report the homeowner during the TPP as delinquent and must notify the credit reporting agency about the modified plan.

21. HAMP rules and directives set forth strict time lines for compliance by the servicers. HAMP requires that the servicers evaluate income documentation from homeowners within 30 days and to prepare the permanent HAMP modification agreement early “to allow sufficient processing time for the modification to become effective on the first day of the month following the final trial period month.” HAMP rules also require that servicers “comply with HAMP requirements” and “document the execution of loan evaluation, loan modification and accounting processes.” Servicers also “must have adequate staffing, resources, and facilities for receiving and processing HAMP documents and any requested information that is submitted by borrowers. Servicers must also have procedures and systems in place to be able to respond to inquiries and complaints about the HAMP.” Servicers are required to retain documents and keep

detailed records. When a servicer denies a permanent loan modification, it must set forth an explanation to the borrower in writing.

Citi's Participation In HAMP

22. Citi conducted a "Homeowner Assistance" publicity campaign which promoted its participation in HAMP and encouraged thousands of customers to apply for loan modifications. On its website, Citi promoted its ability and commitment to help homeowner's stay in their homes with lower monthly payments. The Citi website states:

Citi is committed to helping keep people in their homes. There are many possible solutions to manage your mortgage payment, and the most important step you can take is to reach out for help today. . . . Are you concerned about your ability to pay your bills? Help Is Free!. . . . Many homeowners are having trouble with their mortgage payments and you may have the option to modify or change certain parts of your mortgage loan agreement. Sometimes altering the interest rate, the term of the mortgage or even the mortgage product may be able to help you manage your monthly payments. . . . Citi understands sometimes situations occur that make it difficult for you to make your monthly mortgage payments. . . . If you're facing foreclosure, you may still be able to keep your home. This requires you to be proactive and work with your lender or servicer, or a professional counselor.

23. Through its solicitations to the public, Citi represented both implicitly and explicitly that it complied with HAMP requirements, when it does not. Citi fails to live up to its end of the bargain under HAMP and fails to provide homeowners who complete the TPP with permanent loan modifications. Citi fails to process modifications on time or in accordance with HAMP rules. Repeatedly, Citi extends the trial period far beyond the 90-day HAMP guidelines and erroneously denies permanent loan modifications to qualified homeowners.

24. Citi also fails to staff its loan modification program with a sufficient number of adequately trained employees and is otherwise not equipped to handle the large volume of loan

modification requests and related paper work. Homeowners have complained about Citi's poor customer service. One of the most common complaints from homeowners is that despite their submitting all the documents which Citi has requested for loan modification, Citi routinely cannot locate the documentation and/or claims it was never sent. The homeowners are forced to resubmit the requested paper work, often several times, as a result of Citi's failures.

25. In addition, Citi fails to comply with HAMP's credit reporting guidelines, despite its representations of compliance with HAMP. Under HAMP, a borrower who is current upon entering a TPP must be reported by Citi as current but on a payment plan. A borrower who is late upon entering a TPP, but current for the duration of the TPP, must be reported by Citi as delinquent only for the duration of the time prior to entering the TPP and indicate that the borrower is on a payment plan. Instead, Citi has a uniform written policy of reporting borrowers delinquent, even if they are current on the payment plan.

26. Citi represents, falsely, to homeowners that they will not suffer adverse credit consequences by entering into a TPP. When homeowners apply for a loan modification, Citi fails to inform them that their loans will be reported by Citi as delinquent, even if they make timely modification payments. In addition, Citi's repeated failures to process the loan modification paper work in a timely manner and Citi's repeated extensions of the trial period beyond 90 days have increased the time during which the homeowner's loan is considered delinquent and the homeowner's credit score is negatively impacted as a result.

27. By failing to make timely permanent loan modifications upon the homeowner's completion of the trial period, Citi generates profits for itself at the expense of homeowners. The homeowner's unpaid mortgage balance continues to rise because Citi adds the difference between the trial payment and regular payment to the arrearage. The higher balance makes it

harder for the homeowner to sell the home, complete a short sale or repay the arrearage, whether through a repayment plan or bankruptcy. The greater arrearage can make it more difficult for a homeowner to qualify for other loan modifications. By keeping homeowners in the trial period indefinitely, and by failing to promptly offer permanent loan modification upon completion of the trial period, Citi can charge larger penalties and to extract more cash from borrowers.

The Plaintiffs' Experience With Citi

28. In January, 2009, in response to financial difficulties, Plaintiffs Daniel and Brenda Seller contacted Citi to inquire about a loan modification to reduce their approximately \$2,120.20 monthly mortgage payment. At this time, the Sellers were current on their mortgage payments. The Citi Loan Mitigation department informed the Sellers that in order to qualify for a loan modification, they must be delinquent on their mortgage payments. Citi instructed the Sellers to make four months of mortgage payments at a reduced rate of \$1,610 per month and to submit a hardship package to Citi at the end of the four month period. Citi also informed the Sellers that by making these reduced mortgage payments, their credit would not be negatively impacted in any way and that Citi would put a "block" on their account so that no negative information would be provided to the credit reporting agencies. This representation was false.

29. The Sellers agreed to participate in the four month loan modification program with Citi and timely made the reduced payments of \$1,610 as per Citi's instructions. At the end of the four month period, Citi informed the Sellers that this particular loan modification was no longer available and that they should look into the HAMP loan modification program.

30. In September 2009, Citi determined that the Sellers were "pre-approved" for a HAMP loan modification.

31. In September 2009, the Sellers received a written agreement from Citi to enter

into a three month HAMP TPP. The TPP Agreement is entitled "Home Affordable Modification Trial Period Plan" and the first sentence of the agreement provides "If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (a) the Mortgage on the Property, and (2) the Note secured by the Mortgage." The TPP Agreement informed Plaintiffs that their monthly mortgage payments would now be \$1,812.23, and instructed Plaintiffs to begin paying this amount immediately for three months with the final payment due on or before December 1, 2009. A copy of the TPP Agreement is attached hereto as Exhibit A.

32. On September 25, 2009, Plaintiffs accepted the offer by signing the TPP Agreement, making their first TPP payment of \$1,812.23 in September 2009 and submitting the requested documentation. The Sellers timely made the remaining two payments.

33. Despite the Sellers' compliance in all respects with the terms of the TPP Agreement, the Sellers have not been offered a permanent loan modification under HAMP. Citi has not informed them in writing whether their loan will be permanently modified under HAMP. Rather, Citi continually told the Sellers that they must call back to check on the status of their loan

34. At the end of the trial period in December 2009, Citi did not offer the Sellers a permanent loan modification. Ms. Seller contacted Citi multiple times to inquire about the status of her modification, and a Citi representative told her to continue making the trial period payments and to submit additional documentation. The Sellers complied with these instructions.

35. Over the next several months, the Sellers complied with Citi's requests for

additional – and often duplicative – verification documents and continued to pay \$1,812.23 in monthly mortgage payments as per Citi's instructions. Citi refused to send written invoices to remind the Sellers to pay their monthly mortgage payment and refused to provide a clear due date in writing. The Sellers also were required to pay by phone each month and Citi charged the Sellers a \$25 fee for paying by phone. Often, but not always, Ms. Seller was able to get this monthly fee waived after speaking with a supervisor.

36. On or around June 8, 2010, Ms. Seller spoke with a Citi representative, Elonza, who confirmed that the Sellers' documents are in order and their file was ready for underwriting. The Citi representative told Ms. Seller that they were "pre-approved" for the modification and that everything "looks good."

37. On or around June 15, 2010, the Sellers received a letter from Citi stating that their mortgage loan was in default and that "[t]o cure the default you must pay the past due amount of \$14,971.87, including \$91.89 in late charges and \$186.00 in delinquency related expenses."

38. In or around June 28, 2010, the Sellers enrolled in a six month auto withdrawal program pursuant to which Citi would withdraw the Sellers' monthly mortgage payments directly from their designated bank account. This was done to eliminate any question of timely payment, and to prevent the Sellers from being dropped from the modification program, and to avoid the \$25 payment service fee.

39. In or around September 13, 2010, Citi dropped the Sellers from the loan modification program on the grounds that the Sellers failed to provide Citi with the requested documentation. When Ms. Seller explained that all of the requested documentation had been sent to Citi, sometimes more than once, Citi apologized and reopened the loan modification

process for the Sellers.

40. In or around September 23, 2010, Citi requested that the Sellers submit documentation, including the last three bank statements, W-2 and other IRS forms, and profit and loss statements. On or around October 29, 2010, the Sellers submitted the requested documentation to Citi and received a fax confirmation of Citi's receipt. The Sellers were instructed to call Citi representative, Kathy Medlin, to confirm that the documents had been "uploaded." However, when the Sellers called Ms. Medlin, her voice mail box was full.

41. At all times during 2010, the Sellers made timely monthly mortgage payments to Citi in the amount of \$1,812.23.

42. On or around December 9, 2010, Citi sent the Sellers a notice of foreclosure, stating, *inter alia*, "This letter will serve as notice that your mortgage is still in default. All reasonable efforts afforded you to cure this default have failed. Your loan has been referred to the following legal firm to begin foreclosure proceedings: Rosicki, Rosicki & Associates, PC, 51 Bethpage Road, Plainview, NY 11803." When Ms. Seller contacted Citi concerning the foreclosure notice, Citi told Ms. Seller not to worry because Citi was still reviewing the Sellers' paperwork for a loan modification and that foreclosure would take a very long time.

43. On or around January 9, 2011, Citi informed Ms. Seller on the telephone that a permanent loan modification was being denied because the Sellers were now required to submit additional documentation.

44. On or around January 10, 2011, Citi informed Ms. Seller on the telephone that they were potentially eligible for an "in house" loan modification which would be much faster than the HAMP loan modification process. Citi informed the Sellers that they would need to pay \$24,505.64 to Citi immediately to bring their loan current and that the Sellers most likely would

also be responsible for paying the accruing attorneys' fees of Rosicki, Rosicki & Associates, lawyers retained on behalf of Citi.

45. Despite their compliance in all respects with the terms of the TPP Agreement, the Sellers were never offered a HAMP final modification, nor did they ever receive a letter explaining the basis for Citi's failure to provide them with a permanent loan modification.

46. Citi has reported the Sellers' account to at least one credit reporting agency as delinquent, and the Sellers' credit score has dropped as a result. Moreover, at all relevant times since the Sellers began participating in the loan modification program with Citi, the Sellers have received a constant stream of telephone calls from Citi's debt collectors, sometimes receiving multiple calls per day at odd hours. When Ms. Seller informed Citi about these harassing calls, Citi explained that the calls were being placed by an automated call center and that there was no way to stop the calls.

47. The Sellers have sacrificed time, money and other alternatives to loan modification by complying with all of the terms of Citi's purported loan modification programs, including the TPP Agreement, in reliance on Citi's promises that compliance would result in a permanent HAMP loan modification. Despite the Sellers full compliance with Citi's instructions and the TPP Agreement, Citi currently represents that the Sellers owe Citi \$26,643.85, including attorney's fees and other late fees, on their mortgage. Citi has also represented that approximately \$1,119.75 of the Sellers' payments to Citi have been set aside in an "un-applied funds" account.

CLASS ALLEGATIONS

48. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of persons defined as follows:

(a) All New York residents with mortgage loans serviced by Citi and who, since April 2009, (i) requested a mortgage loan modification from Citi, made timely modified mortgage payments and provided documentation as instructed by Citi, and (ii) have not received or have been denied a permanent loan modification by Citi.

and/or

(b) All New York residents with mortgage loans serviced by Citi and who, since April 2009, (i) requested a mortgage loan modification from Citi, made timely modified mortgage payments and provided documentation as instructed by Citi, and (ii) were reported to credit reporting agencies as delinquent during the Trial Period Plan.

49. Plaintiffs and the other members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical.

50. Common question of law and fact raised in this action include the following:

- (a) Whether Citi has breached its contract to provide a permanent loan modification under HAMP;
- (b) Whether Citi breached the implied covenant of good faith and fair dealing inherent in those contracts;
- (c) Whether Citi is required to provide permanent loan modifications to Plaintiffs and other members of the Class under the doctrine of promissory estoppel;
- (d) Whether Citi breached plaintiffs' deeds of trust;
- (e) Whether Citi violated New York General Business Law § 349; and
- (f) Whether Plaintiffs and the other members of the Class are entitled to damages, restitution, declaratory relief and/or injunctive relief as a result of Citi's conduct, and

the proper measure of damages and other relief.

51. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained able counsel with extensive experience in breach of contract, consumer fraud, and class action litigation. The interests of Plaintiffs are coincident with, and not antagonistic to, the interests of the other Class members.

52. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

53. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for defendant.

54. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a class action will eliminate the possibility of repetitious litigation. Plaintiffs will encounter no difficulty in managing this action as a class action.

COUNT I

Breach of Contract (TPP Agreements)

55. The allegations contained in each paragraph set forth above in this Complaint are realleged and incorporated by reference as if fully set forth herein.

56. Plaintiffs held a mortgage serviced through Citi.

57. Plaintiffs sought a permanent loan modification through Citi's advertised loan modification programs, as described above. Plaintiffs timely provided all the necessary documentation requested by Citi in order to participate in the loan modification program.

58. Citi's trial modification agreements offered Plaintiffs and other similarly situated homeowners a permanent loan modification in return for making timely trial period payments and complying with Citi's documentation requests.

59. Plaintiffs agreed to Citi's offer and made timely trial period payments and provided all requested documentation in accordance with Citi's instructions, or are excused from performance.

60. Citi accepted Plaintiffs' modified payments during the trial period.

61. Plaintiffs' modified trial period payments and compliance with documentation requests constitute consideration. By making those payments during the trial period, Plaintiffs also gave up their ability to pursue other alternatives to prevent default and foreclosure, and other alternative living arrangements.

62. Plaintiffs and Citi formed a valid contract to modify the Plaintiffs' mortgage.

63. Citi breached the terms of the trial modification agreements. Citi systematically delayed and obstructed its duty to convert the trial modifications into a permanent loan modification by, *inter alia*, demanding burdensome and duplicative documentation, failing to provide adequately trained loan modification staff, and other failures described herein.

64. Citi has denied or failed to approve Plaintiffs for permanent loan modifications and instead has demanded balloon payments, late and default fees and attorneys' fees, in violation of the modification contract.

65. Plaintiffs remain ready, willing and able to perform under the loan modification

contract by continuing to make their modified reduced loan payments.

66. As a direct and proximate result of Citi's breach of the loan modification agreements, Plaintiffs did not receive the benefit of their bargain, were damaged and are threatened with additional harm, in an amount to be determined at trial.

COUNT II

Breach of the Implied Covenant Of Good Faith And Fair Dealing

67. The allegations contained in each paragraph set forth above in this Complaint are realleged and incorporated by reference as if fully set forth herein.

68. Every contract imposes upon each party a duty of good faith and fair dealing in the performance of the contract. The duty of good faith and fair dealing requires that neither party do anything to infringe on the other party's rights to the benefits of the agreements or to deprive the other party of the benefits of the contract.

69. Citi breached the implied covenant of good faith and fair dealing contained in its trial modification agreements.

70. Citi also breached an implied contractual term requiring Citi to offer permanent loan modifications within a reasonable time following the 90-day trial modification period.

71. Citi further breached the implied covenant of good faith and fair dealing by, inter alia:

(a) failing to make a good faith effort to fulfill Citi's contractual obligations, written and implied promises, and loan servicing functions;

(b) making false and misleading representations that Plaintiffs and other members of the Class were eligible for trial modifications which would lead to permanent loan

modifications upon completion of the trial payment period and compliance with Citi's requests for documents;

(c) falsely representing to Plaintiffs and other Class members that participation in the loan modification program would not hurt their credit ratings and failing to disclose that Plaintiffs participation in the loan modification program would adversely affect their credit scores because Citi would report their accounts to the credit reporting agencies as delinquent;

(d) demanding duplicate documents, delaying processing of documents, and failing to allocate sufficient resources to ensure timely processing of loan modification requests; and

(e) demanding balloon payments, late fees, attorney's fees and other delinquency related fees from Plaintiffs that neither Plaintiffs nor other members of the Class, could reasonably pay.

72. As a direct result of Citi's breaches of the implied covenant of good faith and fair dealing, Plaintiffs and the other members of the Class suffered damages in an amount to be determined at trial.

COUNT III

Promissory Estoppel

73. The allegations contained in each paragraph set forth above in this Complaint are realleged and incorporated by reference as if fully set forth herein.

74. Citi represented that Plaintiffs and other members of the Class were eligible for trial loan modifications and that Plaintiffs and the other members of the Class could make immediate modified payments that would satisfy existing loan obligations and lead to permanent

loan modifications.

75. Citi intended to and did induce Plaintiffs and the other members of the Class to rely on its representations concerning its loan modification programs and to begin making the modified payments.

76. Plaintiffs' reliance was reasonable in light of Citi's representations regarding its loan modification programs.

77. Plaintiffs relied on Citi's representations to their detriment.

COUNT IV

Violation of the New York General Business Law § 349

78. The allegations contained in each paragraph set forth above in this Complaint are realleged and incorporated by reference as if fully set forth herein.

79. Citi's acts and practices alleged herein constitute acts, uses, or employment by defendant and its agents of deception, fraud, unconscionable and unfair commercial practices, false pretenses, false promises, misrepresentations, or the knowing concealment, suppression, or omission of material facts with the intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of merchandise, and with the subsequent performance, of defendant in violation of § 349 of New York's General Business Law, making deceptive and unfair acts and practices illegal.

80. Citi's conduct is deceptive because it is likely to mislead consumers. Citi's TPP Agreement mislead Plaintiffs and other members of the Class to believe that if they made timely payments and provided documents as instructed by Citi pursuant to the TPP, then Citi would provide them with a permanent loan modification at the end of the trial period. Citi's unfair and deceptive trade practices with respect to the TPP Agreements include the following:

(a) representing to Plaintiffs and other members of the Class that they were applying and being evaluated for HAMP modifications consistent with HAMP requirements, when at all relevant times Citi failed to comply with HAMP requirements;

(b) making false and misleading representations that compliance with the trial modification requirements would lead to permanent loan modifications for Plaintiffs and other members of the Class;

(c) failing to make timely determinations in accordance with HAMP rules and time lines as to whether Plaintiffs and other members of the Class were eligible for permanent loan modifications;

(d) extending the HAMP trial periods beyond 90 days and delaying determinations as to whether Plaintiffs and other members of the Class in the trial modifications qualified for permanent loan modifications by, *inter alia*, (i) requesting unnecessary and/or duplicative verification documents; and (ii) failing to allocate sufficient resources and training to ensure timely and proper processing of the loan modification requests;

(e) failing to provide prompt written notification to Plaintiffs and other members of the class notice that they are not eligible for permanent HAMP loan modification;

(f) offering Plaintiffs and other members of the Class deceptive and less favorable “in-house” loan modifications;

(g) failing to waive all late fees for borrowers who comply with the terms of the HAMP TPPs;

(h) charging unreasonable and unconscionable fees, including, but not limited to, Citi’s attorney’s fees; and

(i) failing to disclose to Plaintiffs and other members of the Class that if they are

denied a permanent HAMP modification, that Citi will demand immediate balloon payments, plus late fees and other related delinquency fees;

81. Citi, moreover, represented to Plaintiffs and other members of the Class that by participating in the modified loan payment plans, there would be no resulting negative impact on their credit reports, when Citi knew, or should have known, that this was not true because Citi's standard practice is to report participants in the loan modification programs as delinquent to the credit reporting agencies.

82. Citi's standard policy and practice during the trial period is to "report [consumer loans] as delinquent to the credit reporting agencies", even if trial payments are made on time and even if a borrower was current at the time the borrower entered the trial payment plan.

83. Plaintiffs and other members of the Class were current on their mortgage payments when they were instructed by Citi to make reduced monthly payments on a trial basis in order to qualify for a permanent modification. Plaintiffs and other members of the Class made timely modified mortgage payments during the trial period as instructed by Citi. Citi should have reported the accounts of Plaintiffs and other members of the Class to credit reporting agencies as current, but on a modified payment plan.

84. Citi's acts and misrepresentations constitute acts, uses, or employment by defendant and its agents of deception, fraud, unconscionable and unfair commercial practices, false pretenses, false promises, misrepresentations, or the knowing concealment, suppression, or omission of material facts with the intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of merchandise, and with the subsequent performance, of defendant in violation of § 349 of New York's General Business Law, making deceptive and unfair acts and practices illegal.

85. The unfair and deceptive trade acts and practices of Citi have directly, foreseeably, and proximately caused damages and injury to Plaintiffs and the other members of the Class.

86. Plaintiffs and the other members of the Class have no adequate remedy of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Citi as follows:

- A. An order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;
- B. An order declaring that Citi's alleged acts and practices constitute a breach of contract and breach of the covenant of good faith and fair dealing;
- C. An order declaring that Citi is required under the doctrine of promissory estoppel to offer permanent loan modifications to Plaintiffs and the other members of the Class on the terms represented in their trial period modifications;
- D. An injunction enjoining Citi permanently from continuing to harm Plaintiffs and the other members of the Class;
- E. An order requiring Citi to adopt and enforce a policy that provides appropriate staffing and training of employees and agents concerning their duties and responsibilities pursuant to HAMP and other loan hardship assistance programs;
- F. An order for Citi's specific performance of its contractual obligations together with other relief required by contract law;
- G. Restitution to Plaintiffs and the other members of the Class;
- H. Actual damages for injuries suffered by Plaintiffs and the other members of the

Class;

- I. Treble damages pursuant to GBL § 349,
- J. Reasonable attorney's fees and costs of this action, statutory pre-judgment interest, and such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

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New York, New York

By:


Oren Giskan (OG 3667)
Catherine E. Anderson (CA 5129)
GISKAN SOLOTAROFF
ANDERSON & STEWART LLP
11 Broadway, Suite 2150
New York, New York 10004
(212) 847-8315
ogiskan@gslawny.com
canderson@gslawny.com

Richard Wolfson, Esq.
RICHARD WOLFSON P.C.
100 Ring Road West, Suite 214
Garden City, New York 11530
(516) 220-1380

Keith Scott Lederman, Esq.
100 Ring Road West, Suite 214
Garden City, New York 11530
(516) 806-4363