IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WILFREDO and ODALID BOSQUE, VERA VICENTE MEEK, JENNIFER WILLIAMS, JENNIFER RYAN and GARY VOLTAIRE, and PAUL MONTERO, on behalf of themselves and all others similarly situated, **Plaintiffs,** **vs.** **WELLS FARGO BANK, N.A. d/b/a WELLS FARGO HOME MORTGAGE d/b/a AMERICA'S SERVICING COMPANY,** **Defendant.**	))))))))))))))))))))	**C.A. NO. 10-10311** **SECOND AMENDED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

INTRODUCTION

1. Wilfredo and Odalid Bosque, Vera Vicente Meek, Jennifer Williams, Jennifer Ryan Voltaire and Gary Voltaire, and Paul Montero bring this suit on behalf of themselves and a class of similarly situated Massachusetts residents ("Plaintiffs") to challenge the failure of Defendant Wells Fargo Bank, N.A. d/b/a Wells Fargo Home Mortgage d/b/a America's Servicing Company ("Defendant" or "ASC") to honor its agreements with borrowers to modify mortgages and prevent foreclosures under the United States Treasury's Home Affordable Modification Program ("HAMP").

2. Plaintiffs' claims are simple – when a large financial institution promises to modify an eligible loan to prevent foreclosure, homeowners who live up to their end of the

bargain expect that promise to be kept. This is especially true when the financial institution is acting under the aegis of a federal program that is specifically targeted at preventing foreclosure.

3. In October 2008, Wells Fargo Bank, N.A. accepted $25 billion in funds from the United States Government as part of the Troubled Asset Relief Program ("TARP"), 12 U.S.C. § 5211. Six months later Wells Fargo Home Mortgage signed a contract with the U.S. Treasury (attached as Exhibit 1 and included by reference) agreeing to participate in HAMP -- a program in which ASC received incentive payments for providing affordable mortgage loan modifications and other alternatives to foreclosure to eligible borrowers.

4. As a participating servicer in HAMP, ASC has, in turn, entered into written agreements with Plaintiffs for temporary trial modifications. Plaintiffs, for their part, have complied with these agreements by submitting the required documentation and making payments. Despite Plaintiffs' efforts, Defendant ASC has ignored its contractual obligation to modify their loans permanently.

5. As a result, hundreds, if not thousands, of Massachusetts homeowners are wrongfully being deprived of an opportunity to cure their delinquencies, pay their mortgage loans and save their homes. Defendant's actions thwart the purpose of HAMP and are illegal under Massachusetts law.

JURISDICTION

6. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 because the action is between parties that are citizens of different states and the amount in controversy is greater than $75,000. For diversity jurisdiction purposes, a national bank is a citizen of the state designated as its main office on its organization certificate. *Wachovia Bank,*

N.A. v. Schmidt, 546 U.S. 303, 306 (2006). ASC is, on information and belief, a citizen of California. Plaintiffs are citizens of Massachusetts.

7. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) in that it is brought as a putative class action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a State different from any defendant.

8. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) inasmuch as the unlawful practices are alleged to have been committed in this District, Defendant regularly conducts business in this District, and the named Plaintiffs reside in this District.

PARTIES

9. Odalid and Wilfredo Bosque are a married couple residing at 3 Elizabeth Circle, Leominster, MA 01453.

10. Vera Vicente Meek is an individual residing with her husband and 81-year-old mother at 616 Boylston Street, Newton, MA 02459. Vera Vicente Meek is her married name. Her maiden name – Vera Vicente – is used on the documents related to the purchase and financing of her home.

11. Jennifer Williams is an individual residing at 147 Indian Trail, Pembroke, MA 02359.

12. Jennifer Ryan Voltaire and Gary Voltaire ("Mr. and Mrs. Voltaire" or "the Voltaires") are a married couple residing at 77-79 Edward Street, Medford, MA 02155.

13. Paul Montero ("Mr. Montero" or "Montero") is an individual residing in his home located at 25 Appleby Road, Salem, Massachusetts.

14. Wells Fargo Bank, N.A. is a mortgage lender with a principal place of business at 420 Montgomery Street, San Francisco, CA 94104.

15. America's Servicing Company is an operating unit of Wells Fargo Bank, NA located in Fort Mill, South Carolina.

FACTUAL BACKGROUND

The Foreclosure Crisis

16. Over the last three years, the United States has been in a foreclosure crisis. A congressional oversight panel has recently noted that one in eight U.S. mortgages is currently in foreclosure or default.[1]

17. The number of Massachusetts properties with foreclosure filings in 2008 was 150% higher than in 2007 and 577% higher than in 2006 – a near seven-fold increase in only two years.[2]

18. According to 2009 data, the numbers continue to rise; in the third quarter of 2009, foreclosures were filed on 12,667 Massachusetts properties, a 35% increase over the same period of 2008.[3] Overall in 2009, over 36,000 individual properties in Massachusetts had foreclosure filings against them which, while slightly less than 2008, still represents an increase of over 100% from 2007 levels and an increase of more than 400% over 2004.[4]

19. Increased foreclosures have a detrimental effect not just on the borrowers who lose unique property and face homelessness, but also on the surrounding neighborhoods that suffer decreased property values and municipalities that lose tax revenue.

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[1] Congressional Oversight Panel, Oct. 9, 2009 report at 3. Available at http://cop.senate.gov/reports/library/report-100909-cop.cfm.

[2] RealtyTrac Staff. Foreclosure Activity Increases 81 Percent in 2008. Jan. 15, 2009. Available at http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&accnt=0&itemid=5681.

[3] RealtyTrac Staff. U.S. Foreclosure Activity Increases 5 Percent in Q3. Oct. 15, 2009. Available at http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&accnt=0&itemid=7706.

[4] RealtyRrac Staff. RealtyTrac Year End Report Shows Record 2.8 Million U.S. Properties with Foreclosure Filings in 2009. Available at http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&itemid=8333

20. State legislative efforts were able to temporarily slow the pace of completed foreclosures in 2009, but toward the end of the year, the number of new filings once again rose, demonstrating that foreclosures were merely delayed, not prevented.[5]

21. The foreclosure crisis is not over. Economists predict that interest rate resets on the riskiest of lending products will not reach their zenith until sometime in 2011. *See* Eric Tymoigne, Securitization, Deregulation, Economic Stability, and Financial Crisis, Working Paper No. 573.2 at 9, Figure 30 *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1458413 (citing a Credit Suisse study showing monthly mortgage rate resets).

Creation of the Home Affordable Modification Program

22. Congress passed the Emergency Economic Stabilization Act of 2008 on October 3, 2008 and amended it with the American Recovery and Reinvestment Act of 2009 on February 17, 2009 (together, the "Act"). 12 U.S.C.A. §5201 *et. seq.* (2009).

23. The purpose of the Act is to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority is used in a manner that "protects home values" and "preserves homeownership."12 U.S.C.A. §5201.

24. The Act grants the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program, or TARP. 12 U.S.C. § 5211. Under TARP, the Secretary may purchase or make commitments to purchase troubled assets from financial institutions. *Id.*

25. Congress allocated up to $700 billion to the United States Department of the Treasury for TARP. 12 U.S.C. § 5225.

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[5] For 2007 comparison, see Gavin, Robert. Fewer Lose Their Homes in August. Boston Globe. Sept. 23, 2009. Available at http://www.boston.com/realestate/news/articles/2009/09/23/foreclosures_in_mass_drop_but_petitions_soar/.

26. In exercising its authority to administer TARP, the Act mandates that the Secretary "shall" take into consideration the "need to help families keep their homes and to stabilize communities." 12 U.S.C. § 5213(3).

27. The Act further mandates, with regard to any assets acquired by the Secretary that are backed by residential real estate, that the Secretary "shall implement a plan that seeks to maximize assistance for homeowners" and use the Secretary's authority over servicers to encourage them to take advantage of programs to "minimize foreclosures." 12 U.S.C.A. §5219.

28. The Act grants authority to the Secretary of the Treasury to use credit enhancement and loan guarantees to "facilitate loan modifications to prevent avoidable foreclosures." *Id.*

29. The Act imposes parallel mandates to implement plans to maximize assistance to homeowners and to minimize foreclosures. 12 U.S.C.A. §5220.

30. On February 18, 2009, pursuant to their authority under the Act, the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the Making Home Affordable program.

31. The Making Home Affordable program consists of two subprograms. The first sub-program relates to the creation of refinancing products for individuals with minimal or negative equity in their home, and is now known as the Home Affordable Refinance Program, or HARP.

32. The second sub-program relates to the creation and implementation of a uniform loan modification protocol, and is now know as the Home Affordable Modification Program, or HAMP. It is this subprogram that is at issue in this case.

33. HAMP is funded by the federal government, primarily with TARP funds. The Treasury Department has allocated at least $75 billion to HAMP, of which at least $50 billion is TARP money.

34. Under HAMP, the federal government incentivizes participating servicers to enter into agreements with struggling homeowners that will make adjustments to existing mortgage obligations in order to make the monthly payments more affordable. Servicers receive $1000.00 for each HAMP modification.

Broken Promises Under HAMP

35. The industry entities that perform the actual interface with borrowers – including such tasks as payment processing, escrow maintenance, loss mitigation and foreclosure – are known as "servicers." Servicers typically act as the agents of the entities that hold mortgage loans. America's Servicing Company is a servicer operated by Wells Fargo Bank, N.A. and its actions described herein were made as agents for the entities that hold mortgage loans.

36. Should a servicer elect to participate in HAMP,[6] they execute a Servicer Participation Agreement ("SPA") with the federal government.

37. On April 13, 2009, Michael J. Heid of Wells Fargo Home Mortgage executed an SPA, thereby making ASC a participating servicer in HAMP. A copy of this SPA is attached and incorporated as Exhibit 1.

38. The SPA executed by Mr. Heid incorporates all "guidelines," "procedures," and "supplemental documentation, instructions, bulletins, frequently asked questions, letters, directives, or other communications" issued by the Treasury, Fannie Mae or Freddie Mac in

[6] Certain classes of loans, namely those held by Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac") or companies that accepted money under the TARP program, are subject to mandatory inclusion in HAMP. Otherwise, participation by servicers in the HAMP program is voluntary.

connection with the duties of Participating Servicers. These documents together are known as the "Program Documentation" (SPA 1.B.), and are incorporated by reference herein.

39. The SPA mandates that a Participating Servicer "shall perform" the activities described in the Program Documentation "for all mortgage loans it services." (SPA 1.A., 2.A.)[7]

40. The Program Documentation requires Participating Servicers to evaluate *all loans*, which are 60 or more days delinquent for HAMP modifications. (SD 09-01 p. 4.) In addition, if a borrower contacts a Participating Servicer regarding a HAMP modification, the Participating Servicer must collect income and hardship information to determine if HAMP is appropriate for the borrower.

41. A HAMP Modification consists of two stages. First, a Participating Servicer is required to gather information and, if appropriate, offer the homeowner a Trial Period Plan ("TPP").[8] The TPP consists of a three-month period in which the homeowner makes mortgage payments based on a formula that uses the initial financial information provided.

42. ASC offers TPPs to eligible homeowners by way of a TPP Agreement, which describes the homeowner's duties and obligations under the plan and promises a permanent HAMP modification for those homeowners that execute the agreement and fulfill the documentation and payment requirements.

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[7] The Program Documentation also includes Supplemental Directive 09-01 ("SD 09-01," attached hereto as Exhibit 2), Home Affordable Modification Program; Base Net Present Value (NPV) Model Specifications ("NPV Overview," attached hereto as Exhibit 3) and Supplemental Documentation—Frequently Asked Questions ("HAMPFAQS," attached hereto as Exhibit 4) and Supplemental Directive 09-08 ("SD 09-08," attached hereto as Exhibit 5). These documents together describe the basic activities required under HAMP and are incorporated by reference in both of the TPP Agreements signed by Plaintiffs as well as herein.

[8] The eligibility criteria for HAMP, as well as the formula used to calculate monthly mortgage payments under the modification, are explained in detail in SD 09-01, attached hereto as Exhibit 2. Generally speaking, the goal of a HAMP modification is for owner-occupants to receive a modification of a first-lien loan by which the monthly mortgage payment is reduced to 31% of their monthly income for the next five years.

43. If the homeowner executes the TPP Agreement, complies with all documentation requirements and makes all three TPP monthly payments, the second stage of the HAMP process is triggered, in which the homeowner is offered a permanent modification.

44. ASC has routinely failed to live up to their end of the TPP Agreement and offer permanent modifications to homeowners. In January 2010, the U.S. Treasury reported that ASC's parent company had 350,169 HAMP-eligible loans in its portfolio. Of these loans, just 8,424 resulted in permanent modifications (approximately 2%) even though many more homeowners had made the payments and submitted the documentation required by the TPP Agreement. The Treasury Report is attached hereto as Exhibit 6.

45. By failing to live up to the TPP Agreement and convert TPPs into permanent modifications, ASC is not only leaving homeowners in limbo, wondering if their home can be saved. ASC is also preventing homeowners from pursuing other avenues of resolution, including using the money they are putting toward TPP payments to fund bankruptcy plans, relocation costs, short sales or other means of curing their default.

Wilfredo & Odalid Bosque

46. On January 17, 2006, Plaintiffs Odalid and Wilfredo Bosque obtained a sub-prime mortgage loan for their residence in Leominster from Accredited Home Lenders, Inc. ("Accredited"). Mrs. Bosque currently operates a daycare center from her home. Mr. Bosque works as a corrections officer.

47. Mr. and Mrs. Bosque made the regularly scheduled payments on their loan for two years. However, in or about December 2007, the Bosques began experiencing various financial hardships that combined to cause them to have difficulty making their mortgage payments.

48. Beginning in or around March 2008, the Bosques began an effort to obtain a loan modification through the servicer of their loan, Defendant ASC.

49. Over several months, Mr. and Mrs. Bosque negotiated with Defendant ASC through its legal representative, Harmon Law Offices, P.C., ("Harmon") without success. During the course of these negotiations, the Bosques repeatedly provided documentation of their financial status and income to ASC.

50. In June 2009, Mr. and Mrs. Bosque, through counsel, requested that Defendant ASC consider their loan for modification under the HAMP program. Over the next three months, ASC repeatedly refused to admit that it was required by its participation in HAMP to allow the Bosques to apply for a HAMP loan modification.

51. Although ASC never expressly retracted this position, Mr. and Mrs. Bosque received an offer in late August 2009 from ASC to enter into a HAMP TPP to run from October 2009 – December 2009.

52. The first sentence of the TPP Agreement executed by Mr. and Mrs. Bosque states: "If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3 [below], that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage." Section 3 of the TPP Agreement references the means by which the principal balance and monthly payment amounts of the permanent modification will be calculated.

53. The TPP also states "I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of the Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer." Although ASC, to date, has sent

neither a signed copy of the Plan nor a written rejection to the Bosques, it accepted payments from Mr. and Mrs. Bosque under the TPP as described below.

54. On September 29, 2009, Mr. and Mrs. Bosque executed and returned two copies of the TPP Agreement, along with a hardship affidavit and the documents requested by Defendant ASC. Copies of the executed TPP Agreement and hardship affidavit (partially redacted) are incorporated and attached hereto as Exhibit 7.

55. Mr. and Mrs. Bosque timely made each of the payments required by the TPP Agreement. Mr. and Mrs. Bosque have also continued to make monthly payments in 2010. ASC accepted these payments without qualification and without notice of rejection of the TPP, thus demonstrating ASC's approval of the TPP and/or waiver of any right it might have to review documentation submitted in connection therewith.

56. Despite their compliance in all respects with the terms of the TPP Agreement, the Bosques have not been offered a Loan Modification Agreement under the HAMP Program guidelines to date.

57. Instead, Mr. and Mrs. Bosque have continued to receive account statements indicating that payment is currently due on the entire delinquent amount and that their HAMP modification is threatened because they have not submitted their paperwork. Mr. and Mrs. Bosque continue to receive other contacts from the ASC collections department.

58. On April 1, 2010, following the commencement of this litigation and in response to the G.L. c. 93A demand letter described below and attached as Exhibit 13, ASC made an offer of a permanent modification to the Bosques. This offer included an initial monthly payment term in an amount nearly 40% higher than the amount the Bosques had been paying during their TPP Agreement. The following day, on April 2, 2010, the Bosques responded to the offer,

through ASC's counsel, by asking for an accounting explaining, *inter alia*, the increased monthly payment. Negotiation on the terms of the Bosques' permanent loan modification terms are ongoing.

59. Prior to the filing of this litigation, like the other Plaintiffs in this matter, Mr. and Mrs. Bosque had been living in limbo, without any assurances that their home will not be foreclosed, despite their compliance with HAMP requirements and their continued monthly payments under the TPP. They have invested their limited resources in TPP payments based on the promise that doing so would result in a permanent loan modification.

Vera Vicente Meek

60. Vera Vicente Meek has been the owner of the property located at 616 Boylston Street for 11 years.

61. On April 5, 2006, Ms. Meek refinanced the loan on her residence at 616 Boylston Street with an adjustable rate mortgage.

62. The servicing of Ms. Meek's mortgage loan was transferred to ASC on September 1, 2006. ASC continues servicing her loan to this date.

63. Around April 2009, Ms. Meek began to experience various financial hardships that made it difficult for her to make her monthly mortgage payments.

64. In July of 2009, Ms. Meek began working with a housing counseling agency to address her difficulties making mortgage payments.

65. With the help of the counseling agency, Ms. Meek applied for a *Making Home Affordable* loan modification, which included the submission of financial documentation.

66. ASC approved Vera Vicente Meek's application and offered her a Making Home Affordable Trial Period Plan (hereinafter TPP) Agreement, which she accepted on September 9, 2009. A copy of the signed TPP is incorporated and attached hereto as Exhibit 8.

67. The TPP Agreement's effective date was October 1, 2009. The TPP period was for three (3) months: October, November and December, 2009.

68. The TPP Agreement is entitled "Home Affordable Modification Program Loan Trial Period," and the first sentence of the agreement provides: "If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage." Section 3 of the TPP Agreement references the means by which the principal balance and monthly payment amounts of the permanent modification will be calculated.

69. The TPP Agreement states: "If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income… to determine whether I qualify for the offer described in this Plan. I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer."

70. ASC returned an executed copy of the TPP Agreement to Vera Vicente Meek, dated October 1, 2009. Exhibit 8.

71. Ms. Meek timely made each of the payments described in the TPP agreement due in October, November and December, 2009. She also made timely payments at the TPP

payment amount for the months of January and February, 2010. She also made timely payments in March, April, May and June 2010.

72. Since the TPP period began, and at all times relevant hereto, Vera Vicente Meek has responded to all document requests made by ASC by timely supplying the requested documents.

73. Despite her compliance in all material respects with the terms of the TPP Agreement, ASC did not provide Vera Vicente Meek with a permanent loan modification by December 31, 2010, nor has it done so since.

74. On February 9, 2010, ASC sent Ms. Meek a letter informing her that the owner of her loan had not approved a modification based on the results of the net present value (NPV) test.

75. On March 7, 2010, ASC sent Ms. Meek a letter informing her that she was delinquent in the amount of $18,107.19 and threatening acceleration of her loan.

76. By offering Ms. Meek a TPP Agreement based on verified income, Defendant should already have determined that Ms. Meek passed the NPV test.

77. Ms. Meek is in compliance with her TPP Agreement and her representations to the Defendant continue to be true in all material respects.

78. Defendant has therefore breached the provision of the TPP Agreement that compliance with the TPP Agreement for the three-month trial period would result in a permanent loan modification.

79. Like the other class members in this matter, Vera Vicente Meek is living in limbo, without any assurances that her home will not be foreclosed, despite her compliance with HAMP requirements, her continued monthly payments under the TPP, and her right to a permanent HAMP modification.

Jennifer Williams

80. Jennifer Williams has been an owner of the property located at 147 Indian Trail, Pembroke, MA 02359 since June 28, 2007. She is employed full-time as a nurse at a nursing home providing care to the sick, disabled and elderly.

81. On June 28, 2007, Ms. Williams took out a mortgage loan for her residence at 147 Indian Trail, Pembroke, MA 02359 from Wells Fargo Home Mortgage.

82. The Defendant has been the only loan servicer of the mortgage loan.

83. Sometime after taking out the mortgage loan, Jennifer Williams began experiencing hardships which caused her to have difficulty making payments on her mortgage loan and resulted in her falling behind on her payments.

84. In early 2009 Jennifer Williams began seeking help with her mortgage from the Defendant. As part of her application for help, she provided Wells Fargo with information and documentation related to her financial circumstances.

85. On April 23, 2009, Jennifer Williams was offered a Making Home Affordable Trial Period Plan Agreement by Wells Fargo.

86. Jennifer Williams accepted the TPP Agreement offer on April 28, 2009. The TPP Agreement period was for three (3) months: June, July and August 2009.

87. The TPP Agreement is entitled "Home Affordable Modification Program Loan Trial Period," and the first sentence of the agreement provides: "If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by

the Mortgage." Section 3 of the TPP Agreement references the means by which the principal balance and monthly payment amounts of the permanent modification will be calculated.

88. The TPP Agreement also states "I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of the Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer." Wells Fargo has sent a June 20, 2009 and a November 6, 2009 signed copy of the TPP Agreement to Jennifer Williams. These documents are incorporated and attached hereto as Exhibits 9 and 10.

89. Ms. Williams timely made each of the payments described in the TPP Agreement due in May, July and August, 2009. She has also made timely payments at the TPP Agreement amount due in September, October, November and December, 2009 and January, February, March, April and May 2010.

90. Since the TPP period began, and at all times relevant hereto, Jennifer Williams has responded to all document requests made by Wells Fargo by timely supplying the requested documents.

91. Despite timely providing all documents and information requested by Wells Fargo, on December 23, 2009, Wells Fargo sent Ms. Williams a denial of her request for a loan modification.

92. On January 15, 2010 Wells Fargo sent a second denial notice, which was substantially similar to the December 23, 2009 notice.

93. At or about the time of Wells Fargo's December 23, 2009 and January 15, 2010 notices, Jennifer Williams had a number of conversations with Wells Fargo's Customer Service personnel concerning the notices and what she could do. During one of those conversations Wells Fargo Customer Service staff told her that her Trial Period Plan was being reinstated and

that she should send in her paystubs monthly while they processed her claim. She sent her January, 2010 paystubs by fax on February 4, 2010. On February 28, 2010 Jennifer Williams sent Wells Fargo her paystubs for February, 2010.

94. On March 23, 2010, Wells Fargo sent Ms. Williams another denial notice. This notice explained that she was denied "because your loan was previously modified under the Home Affordable Modification Program. The program does not allow more than one modification." Ms. Williams's loan has not been previously modified under the HAMP program.

95. Despite her compliance in all material respects with the terms of the TPP Agreement, Wells Fargo did not provide Ms. Williams with a permanent loan modification by August 31, 2009, nor has it done so since then. Rather, Wells Fargo has inflicted on Ms. Williams collection actions and redundant and ambiguous and threatening demands for documents and nonsensical denial notices while all along continuing to accept her TPP payments. At this point, her TPP is now in its eleventh month with no end in sight.

96. Like the other class members in this matter, Ms. Williams has been living in limbo, without any assurances that her home will not be foreclosed, despite her compliance with HAMP requirements, her continued monthly payments under the TPP, and her right to a permanent HAMP modification.

Jennifer Ryan and Gary Voltaire

97. The Voltaires have been the owners of 77-79 Edward Street in Medford, MA for four years and presently reside there with their three school-aged children. Mr. and Mrs. Voltaire have four jobs between the two of them.

98. On or about May 24, 2009, Mr. and Mrs. Voltaire refinanced the loan on home with a loan serviced by Wells Fargo.

99. In the spring of 2009, Mr. and Mrs. Voltaire began experiencing financial hardship, which caused them to have difficulty making payments on their loan.

100. Desperate to save their home, Mr. and Mrs. Voltaire sought help in obtaining a loan modification from Wells Fargo via a for-profit third-party loan modification outfit in or around April 2009. With the assistance of this outfit, the Voltaires applied to Wells Fargo for a loan modification after falling behind on their mortgage payments. The Voltaires provided financial information regarding their circumstances at the time of this application.

101. In the fall of 2009, Mr. and Mrs. Voltaire were offered a Making Home Affordable TPP Agreement by Wells Fargo.

102. Mr. and Mrs. Voltaire accepted, executed and returned the TPP Agreement offer. The TPP Agreement period was for three (3) months: December 2009, and January and February 2010.

103. The TPP Agreement is entitled "Home Affordable Modification Program Loan Trial Period," and the first sentence of the agreement provides: "If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage." Section 3 of the TPP Agreement references the means by which the principal balance and monthly payment amounts of the permanent modification will be calculated.

104. The TPP Agreement also states "I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of the Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer." Nevertheless,

Wells Fargo has sent the Voltaires neither a signed copy of the TPP Agreement, nor a written rejection.

105. The TPP also states "Except as set forth in Section 2.C. below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law . . . ."

106. Mr. and Mrs. Voltaire executed and returned the TPP Agreement in accordance with its terms, along with a hardship affidavit and other documents requested by Wells Fargo. A copy of the executed TPP Agreement is incorporated and attached hereto as Exhibit 11.

107. Mr. and Mrs. Voltaire timely made each of the payments described in the TPP Agreement due in December 2009, January and February 2010. Mr. and Mrs. Voltaire also continued to make monthly payments in March and April 2010. Wells Fargo accepted these payments without qualification and without notice of rejection of the TPP Agreement, thus demonstrating Well Fargo's approval of the TPP Agreement and/or waiver of any right it might have to review documentation submitted in connection therewith.

108. Since the trial period began, and at all times relevant hereto, Mr. and Mrs. Voltaire have responded to all document requests made by Wells Fargo by timely supplying the requested documents and have remained in compliance with the TPP Agreement.

109. At the close of the trial period in February, the Voltaires made inquiries to Wells Fargo, because they expected that if they made the three payments called for in the TPP

Agreement and complied with all documentation requests, they would be offered a permanent loan modification. The Voltaires' inquiries were met with assurances that they were still being considered for the modification.

110. In March 2010, Wells Fargo informed the Voltaires that they needed to submit tax information. The Voltaires responded to this request by sending recent tax returns and a completed IRS Form 4506-T to Wells Fargo. The Voltaires followed up on the telephone with a Wells Fargo representative named Christine, who confirmed that the tax documents were received and Wells Fargo had all the documentation it needed.

111. When Mrs. Voltaire telephoned Wells Fargo in May 2010 to make a monthly payment, she was informed by a Wells Fargo representative named Rayshelle or Rochelle that it would not be accepted. At that time, Wells Fargo informed Ms. Voltaire that the only amount acceptable to Wells Fargo was the amount necessary to cure the total default of nearly $40,000. The Voltaires asked Rayshelle why a monthly payment would not be accepted and was told that she was being taken out of the modification program because she had failed to submit documentation of her income each month.

112. After an investigation, the Voltaires, discovered that they had never been asked or required to submit documentation of her income each month.

113. When the Voltaires contacted Wells Fargo to question this development, they spoke with a Wells Fargo supervisor named Sergio. Sergio acknowledged that Wells Fargo did not require monthly updates to income documentation but said that the Voltaires had been removed from the modification program due to a failure to return IRS Form 4506-T. The Voltaires informed Sergio that they had submitted a completed IRS Form 4506-T in March 2010. Nevertheless, the Voltaires completed and sent to Wells Fargo another IRS Form 4506-T on or

about May 21, 2010, of which Wells Fargo confirmed receipt. On receipt, Sergio informed the Voltaires that they were placed back into consideration for a HAMP modification effective immediately.

114. The Voltaires followed up with Wells Fargo on multiple occasions over the following two months and confirmed that their permanent modification was still being processed. During the course of these calls, Wells Fargo representatives stated that the Voltaires' permanent modification was still being reviewed and no further documents were necessary.

115. Nevertheless and contrary to the express provisions of the TPP Agreement, Wells Fargo authorized the foreclosure sale of the Voltaires' home and refused to postpone or cancel the sale despite repeated, frantic requests from the Voltaires. The Voltaires' home was the subject of a foreclosure auction on July 20, 2010.

116. The Voltaires invested their limited resources in HAMP trial period payments based on the promise that doing so would result in a permanent loan modification. Instead, they have lost their home, despite their compliance with HAMP requirements, their continued monthly payments under the TPP Agreement for so long as Wells Fargo would accept their payments, and their right to a permanent HAMP modification.

117. The parties to this litigation have filed a stipulation memorializing an agreement by which Wells Fargo promised that, "[a]s servicing agent for HSBC, as Trustee of the WFHM Trust, Wells Fargo Bank, its respective attorneys, officers, employees and agents, will not initiate or advance any further sale of the Edward Street Property pending entry of judgment on the merits of the putative class claims in the *Bosque* lawsuit by the district court, issuance of a court order with respect to this Stipulation, or further agreement of the Parties."

Paul Montero

118. Paul Montero purchased the property located on Appleby Road on or about February 15, 2006, at which time he obtained a mortgage loan.

119. The servicing of Mr. Montero's mortgage loan was transferred to the Defendant Wells Fargo sometime after February 15, 2006. Wells Fargo continues servicing Montero's loan to date.

120. Sometime after taking out the mortgage loan, Montero began experiencing hardship that caused him to fall behind on his mortgage payments.

121. In January 2009 Mr. Montero began seeking a loan modification from Wells Fargo. Montero subsequently applied for a HAMP modification. As part of his application, he repeatedly provided Wells Fargo with information and documentation related to his financial circumstances.

122. After struggling through the application process for one year, Wells Fargo offered Mr. Montero a Making Home Affordable TPP Agreement in January 2010.

123. Paul Montero accepted, executed and returned the TPP Agreement on January 25, 2010. This TPP Agreement is incorporated and attached hereto as Exhibit 12.

124. The trial period described in Mr. Montero's TPP Agreement was for three (3) months: February, March and April, 2010.

125. The TPP Agreement is entitled "Home Affordable Modification Program Loan Trial Period," and the first sentence of the agreement provides: "If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by

the Mortgage." Section 3 of the TPP Agreement references the means by which the principal balance and monthly payment amounts of the permanent modification will be calculated.

126. The Trial Period Plan also states "I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer." Nevertheless, Wells Fargo has sent Mr. Montero neither a signed copy of the Plan, nor a written rejection.

127. The TPP Agreement also states "Except as set forth in Section 2.C. below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law . . . ."

128. Mr. Montero timely made all of the payments described in the TPP Agreement due in February, March and April, 2010. He also made a timely payment in the trial period amount in May 2010.

129. On or about May 14, 2010 Mr. Montero spoke with a Wells Fargo employee on the telephone seeking an explanation of their delay in making a permanent loan modification offer. Wells Fargo told him that he would be receiving a package in the mail with "new figures for his new loan modification payment for June 2010. Wells Fargo told Mr. Montero not to make a payment for June 2010 and told him that it had all of the information and documentation it required.

130. In June 2010, Mr. Montero followed up again with Wells Fargo on the telephone. Wells Fargo told him that his case was still "under review." He was told again not to send in the trial period payment for his June 2010, and to continue waiting for the permanent loan modification package to arrive by mail. Wells Fargo again confirmed that it had all documents and information required.

131. Since the trial period began, and at all times relevant hereto, Mr. Montero has responded to all document requests made by Wells Fargo by timely supplying the requested documents and has remained in compliance with the TPP Agreement.

132. As of this date, Mr. Montero has not received any written decision on his application for a Making Home Affordable permanent loan modification.

133. Because Wells Fargo told him to not make his TPP payments, Mr. Montero has not made payments since his May 2010 payment.

134. Despite being in compliance with all of his obligations under the TPP Agreement and despite never having sent him a notice denying him a loan modification under HAMP, Wells Fargo has begun the process to foreclose on Montero's home.

135. In response to Montero's repeated and desperate inquiries about the foreclosure and his modification, Wells Fargo has asked that he resubmit information that he has already submitted. Wells Fargo also continued to refuse Mr. Montero's tender of ongoing payments at the trial period level. The foreclosure process against Mr. Montero's home proceeded to the point where a foreclosure sale was scheduled. After a frantic series of urgent communications to Wells Fargo and their attorneys, Mr. Montero received conflicting and confusing responses about whether the foreclosure sale would be held. It was not until the day before the scheduled foreclosure sale that Mr. Montero was able to confirm that the sale of his home was postponed.

136. Despite Mr. Montero's compliance in all material respects with the terms of the TPP Agreement, Wells Fargo did not provide Mr. Montero with a permanent loan modification by April 30, 2010, nor has it done so since then. Rather, Wells Fargo has inflicted on Mr. Montero collection actions, a scheduled foreclosure sale, misleading and deceptive, and redundant and inexplicable demands for financial information. At this point, Mr. Montero's trial period is now in its seventh month with no end in sight.

137. Like the other class members in this matter, Mr. Montero has been living in limbo, without any assurances that his home will not be foreclosed, despite his compliance with his TPP Agreement, his continued monthly payments under the TPP for so long as Wells Fargo would accept his payments, and his right to a permanent HAMP modification.

Class Allegations

138. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

139. This class action is brought by the Plaintiffs on behalf of themselves and all Massachusetts homeowners whose loans have been serviced by Defendant and who, since April 13, 2009, have complied with all their obligations under a written TPP Agreement, but have not received a permanent HAMP modification.

140. Plaintiffs sue on their own behalf and on behalf of a class of persons under Rules 23(a) and (b) of the Federal Rules of Civil Procedure.

141. Plaintiffs do not know the exact size or identities of the members of the proposed class, since such information is in the exclusive control of Defendant. Plaintiffs believe that the class encompasses many hundreds of individuals whose identities can be readily ascertained from Defendant's books and records. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

142. Based on the size of the modifications at issue, Plaintiffs believe the amount in controversy exceeds $5 million. In the alternative, Plaintiffs believe the amount in controversy exceeds $5 million based on the equity loss that could result to putative class members if they were to lose their homes to foreclosure as a result of Defendant's failure to convert temporary modifications into permanent modifications.

143. All members of the class have been subject to and affected by the same conduct. The claims are based on form contracts and uniform loan modification processing requirements. There are questions of law and fact that are common to the class, and predominate over any questions affecting only individual members of the class. These questions include, but are not limited to the following:

a. the nature, scope and operation of Defendant's obligations to homeowners under HAMP;

b. whether Defendant's receipt of an executed TPP Agreement, along with supporting documentation and three monthly payments, creates a binding contract or otherwise legally obligates Defendant to offer class members a permanent HAMP modification;

c. whether Defendant's failure to provide permanent HAMP modifications in these circumstances amounts to a breach of contract and/or a breach of the covenant of good faith and fair dealing; and

d. whether the Court can order Defendant to pay damages and what the proper measure of damages is, and also whether the Court can enter injunctive relief.

144. The claims of the individual named Plaintiffs are typical of the claims of the class and do not conflict with the interests of any other members of the class in that both the Plaintiffs and the other members of the class were subject to the same conduct, signed the same agreement and were met with the same absence of a permanent modification.

145. The individual named Plaintiffs will fairly and adequately represent the interests of the class. They are committed to the vigorous prosecution of the class' claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions – in particular, consumer protection actions.

146. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability.

147. This putative class action meets both the requirements of Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3).

148. The Defendant has acted or refused to act on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

COUNT I
Breach of Contract

149. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

150. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

151. As described above, the TPP Agreement sent by Defendant to Plaintiffs constitutes a valid offer.

152. By executing the TPP Agreement and returning it to Defendant along with the supporting documentation, Plaintiffs accepted Defendant's offer.

153. Alternatively, Plaintiffs' return of the TPP Agreement constitutes an offer. Acceptance of this offer occurred when Defendant accepted Plaintiffs' TPP payments.

154. Plaintiffs' TPP Agreement payments to Defendant constitute consideration. By making those payments, Plaintiffs gave up the ability to pursue other means of saving their home and Defendant received payments it might otherwise not have.

155. Plaintiffs and Defendant thereby formed valid contracts.

156. To the extent that the contracts were subject to a condition subsequent providing ASC an opportunity to review the documentation submitted by Plaintiffs when they returned the signed TPP Agreement, this condition was waived by ASC and/or it is estopped to assert it as a defense to Plaintiffs' claims.

157. By failing to offer Plaintiffs permanent HAMP modifications, Defendant breached those contracts.

158. Plaintiffs remain ready, willing and able to perform under the contracts by continuing to make payments under the TPP Agreements and provide documentation.

159. Plaintiffs have suffered harm and are threatened with additional harm from Defendant's breach. By making TPP Agreement payments both during and after the TPP, Plaintiffs forego other remedies that might be pursued to save their homes, such as restructuring their debt under the bankruptcy code, or pursuing other strategies to deal with their default, such as selling their home. On information and belief, some putative class members have suffered additional harm in the form of foreclosure activity against their homes. Last, members of the

putative class have been living in a state of stressful anxiety because of the limbo in which the Defendant has placed them.

COUNT II
Breach of the Implied Covenant of Good Faith and Fair Dealing

160. Plaintiffs repeat and re-alleges every allegation above as if set forth herein in full.

161. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

162. Defendant is obligated by contract and common law to act in good faith and to deal fairly with each borrower.

163. "[T]he purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance." *Uno Restaurants, Inc. v. Boston Kenmore Realty Corp.*, 441 Mass. 376, 385 (2004).

164. Defendant routinely and regularly breaches this duty by:

a. failing to perform loan servicing functions consistent with its responsibilities to Plaintiffs;

b. failing to properly supervise its agents and employees including, without limitation, its loss mitigation and collection personnel and its foreclosure attorneys;

c. routinely demanding information already in its files;

d. making inaccurate calculations and determinations of Plaintiffs' eligibility for HAMP;

e. failing to follow through on written and implied promises;

f. failing to follow through on contractual obligations; and

g. failing to give permanent HAMP modifications and other foreclosure alternatives to qualified Plaintiffs.

165. These actions constitute bad faith by the Defendant.

166. On information and belief, the Defendant financially benefits from its breaches in a variety of ways, including but not limited to by not hiring sufficient staff to meet its obligations under HAMP, and the imposition of fees and charges on borrowers' accounts during and after their TPP.

167. As a result of these failures to act in good faith and the absence of fair dealing, Defendant caused Plaintiffs harm. By making TPP payments both during and after the TPP, Plaintiffs forewent other remedies that might be pursued to save their homes, such as restructuring their debt under the bankruptcy code, or pursuing other strategies to deal with their defaults, such as selling their homes. In addition to the lost opportunity cost of pursuing other means of dealing with their default, when a permanent modification is not offered at the close of the three-month TPP, the borrower's permanent modification terms may be adversely affected and additional fees and charges may be applied. Some members of the putative class also suffered additional harm in the form of foreclosure / collection activity against their homes. Last, members of the putative class have been living in a state of stressful anxiety because of the limbo in which the Defendant has placed them.

COUNT III
Promissory Estoppel, in the alternative

168. Plaintiffs repeat and re-alleges every allegation above as if set forth herein in full.

169. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

170. Defendant, by way of its TPP Agreements, made a representation to Plaintiffs that if they returned the TPP Agreement executed and with supporting documentation, and made their TPP payments, they would receive a permanent HAMP modification.

171. Defendant's TPP Agreement was intended to induce Plaintiffs to rely on it and make monthly TPP payments.

172. Plaintiffs did indeed rely on Defendant's representation, by submitting TPP payments.

173. Given the language in the TPP Agreement, Plaintiffs' reliance was reasonable.

174. Plaintiffs reliance was to their detriment. Plaintiffs have yet to receive permanent HAMP modifications. By making TPP payments both during and after the TPP, Plaintiffs forewent other remedies that might be pursued to save their homes, such as restructuring their debt under the bankruptcy code, or pursuing other strategies to deal with their defaults, such as selling their homes. In addition to the lost opportunity cost of pursuing other means of dealing with their default, when a permanent modification is not offered at the close of the three-month TPP, the borrower's permanent modification terms may be adversely affected and additional fees and charges may be applied. Some members of the putative class also suffered additional harm in the form of improper fees and costs on their accounts and/or foreclosure/collection activity against their homes. Last, members of the putative class have been living in a state of stressful anxiety because of the limbo in which the Defendant has placed them.

COUNT IV
Violation of the Massachusetts Consumer Protection Act and Applicable Regulations

175. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

176. The Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

177. Defendant has violated and continues to violate the Massachusetts Consumer Protection Act, G.L. c. 93A, §2 and applicable regulations promulgated by the Massachusetts Attorney General pursuant to G.L. c. 93A, §2(c) including, without limitation:

a. 940 C.M.R. § 3.16, in that its conduct was unfair, deceptive, oppressive, unconscionable, and contrary to public policy and generally recognized standards applicable to the consumer lending business;

b. 940 C.M.R. § 3.16, in that its conduct violated the requirement of good faith and fair dealing applicable to contracts under G.L. c. 106, §1-203;

c. 940 C.M.R. § 3.16, in that its conduct violated existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety or welfare, as detailed below;

d. 940 C.M.R. § 3.05, in that it made deceptive representations or failed to disclose relevant information as to loan modifications offered to borrowers;

e. 940 C.M.R. § 8.06, in that it is a Mortgage Lender and made false or misleading representations to borrowers; and

f. 940 C.M.R. § 25.03, because it offers Foreclosure-related Services within the meaning of 940 C.M.R. § 25.01 without adequately describing the services offered.

178. The Plaintiffs have been injured by virtue of Defendant's violations. Said injuries include, but are not limited to:

a. wrongful foreclosures;

b. otherwise avoidable losses of homes to foreclosure;

c. less favorable loan modifications;

d. increased fees and other costs to avoid or attempt to avoid foreclosure;

e. loss of savings in fruitless attempts to secure loan modifications;

f. loss of opportunities to pursue other refinancing or loss mitigation strategies; and

g. significant stress and emotional distress.

179. Defendant's conduct was and is willful or knowing within the meaning of the Massachusetts Consumer Protection Act, G.L. c. 93A, §9.

180. Defendant's refusal to grant relief upon demand was and is in bad faith, with knowledge or reason to know that the act or practice complained of violated G.L. c. 93A, §2.

181. On February 24, 2010, Mr. and Mrs. Bosque, along with a previous plaintiff in this matter, sent ASC a demand for relief pursuant to G.L. c. 93A on their own behalf and on behalf of a group of similarly situated individuals. A copy of this letter is attached as Exhibit 13. ASC responded by letter dated April 1, 2010. ASC's response and its counsel's subsequent communications have not yielded a satisfactory offer of settlement to the Bosques or the class of similarly situated individuals identified in the February 24, 2010 letter in accordance with G.L. c. 93A, § 9(2). No offer of settlement was made to the putative class. The offer extended to the Bosques individually was responded to with a request for information that has gone unanswered, as described above.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following relief:

a. Certify this case as a class action and appoint the named Plaintiffs to be class representatives and their counsel to be class counsel;

b. Enter a judgment declaring the acts and practices of Defendant complained of herein to constitute a breach of contract and a breach of the covenant of good faith and fair dealing, as well as a declaration that they are required by the doctrine of promissory estoppel to offer permanent modifications to class members;

c. Grant a permanent or final injunction enjoining Defendant's agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiffs and the members of the Class;

d. Order Defendant to adopt and enforce a policy that requires appropriate training of their employees and agents regarding their duties under HAMP;

e. Order specific performance of Defendant's contractual obligations together with other relief required by contract and law;

f. Award actual and/or statutory minimum damages pursuant to M.G.L. c. 93A § 9(3) to the Plaintiffs and the class;

g. Award multiple damages pursuant to M.G.L. c. 93A § 9(3) to the Plaintiffs and the class;

h. Award Plaintiffs the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees pursuant to M.G.L. c. 93A § 9(3);

g. Grant Plaintiffs and the Class such other and further relief as this Court finds necessary and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully Submitted,
On behalf of the Plaintiffs

/s/ Gary Klein
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DATE: August 16, 2010

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) and paper copies will be sent to those indicated as non-registered participants on August 16, 2010.

/s/ Gary Klein
Gary Klein