

3. As a participating servicer in HAMP, Citi has entered into written agreements with Plaintiffs, known as Trial Period Plan (“TPP”) Agreements. In these Agreements, Citi agreed to a finite “trial period,” and promised that compliance with the Agreement would result in the tender of a permanent loan modification under HAMP rules. Plaintiffs, for their part, have complied with this agreement by submitting the required documentation and making payments. Despite Plaintiffs’ efforts, Defendant Citi has failed to meet its contractual obligation to tender permanent modifications complying with HAMP rules. Nor did Citi notify Plaintiffs that they failed to comply with their TPP Agreements by the close of the trial period.

4. The same problems affect other members of the putative class. As a result, Plaintiffs and hundreds, if not thousands, of other 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

5. 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). Citi is, on information and belief, a New York corporation with headquarters in Missouri. Plaintiffs are citizens of Massachusetts.

6. This court also 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.

7. 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

8. Davidson Calfee resides at 23 Asa Meiggs Road, Sandwich, MA 02563.

9. Robert Gatti resides at 528 East 8th Street, Unit 1, Boston, MA 02127.

10. Daniel Korzep resides with his wife and three children at 21 Maple Street, Methuen, MA 01844.

11. Karen Grover is an individual residing at 25 Brandley Road, Watertown, MA 02472.

12. Defendant CitiMortgage, Inc. is owned by Citigroup, Inc. a New York corporation.

Defendant is headquartered at 1000 Technology Drive, O'Fallon, Missouri, 63368, and is the fourth largest mortgage servicer in the country.

FACTUAL BACKGROUND

The Foreclosure Crisis

13. Over the last three years, the United States has been in a foreclosure crisis. In 2009, a congressional oversight panel noted that one in eight U.S. mortgages was already in foreclosure or default, and an additional 250,000 foreclosures were beginning every month.¹ In April 2010, the congressional oversight panel reported that foreclosures were continuing at a rapid pace. In total, 2.8 million homeowners received a foreclosure notice in 2009.²

¹ *October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months*, Congressional Oversight Panel at 3 (October 9, 2009), <http://cop.senate.gov/documents/cop-100909-report.pdf>.

² *April Oversight Report: Evaluating Progress on TARP Foreclosure Mitigation Programs*, Congressional Oversight Panel at 3 (April 14, 2010), <http://cop.senate.gov/documents/cop-041410-report.pdf>.

14. 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.³

15. The numbers continue to rise; in September 2010, foreclosures in Massachusetts increased 26.6% compared with the same month last year.⁴ In the third quarter of 2009, foreclosures were filed on 12,667 Massachusetts properties, a 35% increase over the same period of 2008.⁵ 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 2004.⁶

16. 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.

17. 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.⁷

18. 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

³ RealtyTrac Staff, *Foreclosure Activity Increases 81 Percent in 2008*, Jan. 15, 2009, <http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&acct=0&itemid=5681> (last visited April 26, 2011).

⁴ Jennifer B. McKim, *Mass. Foreclosures up nearly 27%*, *The Boston Globe*, October 22, 2010, *available at* http://www.boston.com/business/articles/2010/10/22/mass_foreclosures_up_nearly_27_percent/.

⁵ RealtyTrac Staff, *Foreclosure Activity Hits Record High in Third Quarter*, Oct. 15, 2009, <http://www.realtytrac.com/foreclosure/foreclosure-rates.html> (last visited April 26, 2011).

⁶ Daren Blomquist, *A record 2.8 million properties receive foreclosure notices in 2009*, <http://www.realtytrac.com/landing/2009-year-end-foreclosure-report.html?a=b&acct=233496> (last visited April 26, 2011).

⁷ *See* Gavin, Robert, *Fewer Lose Their Homes in August*, *Boston Globe*, Sept. 23, 2009, *available at* http://www.boston.com/realstate/news/articles/2009/09/23/foreclosures_in_mass_drop_but_petitions_soar/ (last visited April 26, 2011).

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

19. 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).

20. 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.

21. 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.*

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

23. 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).

24. 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.

25. 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.*

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

27. 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.

28. 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.

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

30. 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.

31. 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 at least \$1000.00 for each HAMP modification.

Broken Promises Under HAMP

32. 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. Defendant

Citi is a servicer and its actions described herein were made as agents for the entities that hold mortgage loans.

33. Should a servicer elect to participate in HAMP,⁸ they execute a Servicer Participation Agreement (“SPA”) with the federal government.

34. On April 13, 2009, Paul R. Ince, Chief Financial Officer and Senior Vice President of Citi executed an SPA, thereby making Citi a participating servicer in HAMP. This document is attached and incorporated as Exhibit 1.

35. The SPA executed by Mr. Ince incorporates all “guidelines,” “procedures,” and “supplemental documentation, instructions, bulletins, letters, directives, or other communications” issued by the Treasury, Fannie Mae or Freddie Mac in connection with the duties of Participating Servicers. These documents together are known as the “Program Documentation” (SPA at ¶ 1.A.), and are incorporated by reference herein.

36. The SPA mandates that a Participating Servicer “shall perform” the activities described in the Program Documentation “for all mortgage loans it services.” (SPA at ¶¶ 1.A., 2.A.)⁹

37. The Program Documentation requires Participating Servicers to evaluate *all first-lien loans* where two or more payments are delinquent for HAMP modifications. (HB § 2.2. at 46.) In addition, if a borrower contacts a Participating Servicer regarding a HAMP modification, the

⁸ 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.

⁹ The Program Documentation includes the Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages, Version 3.0 (December 2, 2010), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf (“HB”), which, as of December 2, 2010, incorporates and supersedes in their entirety Supplemental Directives 09-01, 09-02, 09-03, 09-04, 09-06, 09-07, 09-08, 09-10, 10-01, 10-02, 10-03, 10-04, 10-05, 10-6, 10-07, 10-08, 10-09, 10-10, 10-11, 10-12, 10-13, 10-14, and 10-15, as well as related Frequently Asked Questions. *See* Supplemental Directive 10-17: *Making Home Affordable Program- Handbook for Servicers* (December 2, 2010), https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1017.pdf.

Participating Servicer must collect income and hardship information to determine if HAMP is appropriate for the borrower.

38. 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”) Agreement.¹⁰

39. Under the rules in effect at the time Plaintiffs applied for HAMP, before a servicer offers a borrower a TPP Agreement, it must determine that the loan meets certain criteria (including that the investor who owns it is participating in HAMP) and also evaluate all aspects of the homeowner’s eligibility for a permanent Home Affordable Modification, subject to verification of the information used to make the evaluation. This includes determining what the terms of the modification will be under the HAMP “Waterfall” and checking to make sure the modification passes the “Net Present Value” test.¹¹

40. The TPP Agreement lays out a defined period in which the homeowner makes mortgage payments in an amount determined using the HAMP “waterfall,” based on the initial financial information.

41. The TPP Agreement describes the homeowner’s duties and obligations and promises a permanent HAMP modification for those homeowners that execute the agreement and comply with its terms.

¹⁰ The eligibility criteria for HAMP, as well as the formula used to calculate monthly mortgage payments under the modification, are explained in detail in HB § 6.3 and HB § 7. 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.

¹¹ Plaintiffs refer to Supplemental Directives 09-01: *Introduction of the Home Affordable Modification Program 1* (attached hereto as Exhibit 7) at 17-18 (April 6, 2009), https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd0901.pdf, and 09-03: *Home Affordable Modification Program- Trial Period Guidance* (attached hereto as Exhibit 8) at 1-2 (July 6, 2009), https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd0903.pdf, in effect at the time Plaintiffs’ TPP Agreements were entered into, for a description of the HAMP rules incorporated into the named Plaintiffs’ Agreements.

42. Under the terms of the TPP Agreement, if the homeowner executes the Agreement, makes certain legal certifications, complies with all documentation requirements, provides truthful information and makes timely trial period monthly payments, the second stage of the HAMP process is triggered, in which the homeowner is offered a permanent modification.

43. Citi has routinely failed to live up to their end of the TPP Agreement and offer permanent modifications to homeowners. In February 2011, the U.S. Treasury reported that Citi had 94,815 HAMP-eligible loans in its portfolio and 128,405 HAMP trials entered into.¹² However, just 43,996 have resulted in active permanent modifications. The report estimates that Citi's conversion rate from trial periods into permanent loan modifications is at an average trial length of 6.3 months. The report indicates that Citi is among the worst servicers in the nation in terms of the conversion rate of trial period plans into permanent modifications.

44. By failing to live up to the TPP Agreement and convert TPP Agreements into permanent modifications, Citi is leaving homeowners in a state of limbo and stressful anxiety, wondering if their homes can be saved. Citi 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 defaults. Citi's conduct in promising a permanent modification following compliance with a TPP Agreement was the direct cause of Plaintiffs' inability to successfully pursue other avenues of resolving their defaults.

Davidson Calfee

45. Davidson Calfee has owned his home at 23 Asa Meiggs Road in Sandwich, Massachusetts since 2007.

¹² Making Home Affordable Program: Servicer Performance Report Through February 2011 (April, 2011), <http://www.treasury.gov/initiatives/financial-stability/results/MHA-Reports/Documents/Feb%202011%20MHA%20Report%20FINAL.pdf>.

46. On February 26, 2007, Mr. Calfee took out a mortgage loan for the purchase of his home at 23 Asa Meiggs Road in Sandwich, Massachusetts.

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

48. Sometime after taking out the mortgage loan, Mr. Calfee began experiencing hardships which caused him to have difficulty making payments on his Mortgage, although he continued to make timely monthly payments.

49. After receiving a solicitation, Mr. Calfee contacted Citi in June 2009 to apply for a *Making Home Affordable* loan modification.

50. After providing them with information about his financial status, Citi told Mr. Calfee on the phone that he was “prequalified” for a modification on his mortgage and instructed Mr. Calfee to begin making reduced monthly payments of \$991.72 during the application process.

51. By letter dated July 15, 2009, Citi offered Mr. Calfee a TPP Agreement entitled *Home Affordable Modification Trial Period Plan* (“Trial Period Plan” or “TPP”).

52. Mr. Calfee timely accepted the offer by executing the TPP Agreement on July 22, 2009, and returning it to Citi, along with the completed Hardship Affidavit, IRS Form 4506-T, and other supporting documentation. In addition, Mr. Calfee started to make his monthly TPP payments of \$991.72. A copy of the signed TPP Agreement sent by Mr. Calfee to Citi is attached hereto as Exhibit 2.

53. The TPP Agreement provided that the plan was effective August 1, 2009 and would run from August 2009 to October 2009. The monthly mortgage payments were \$991.72 under the TPP Agreement.

54. The first sentence of the TPP Agreement provides: “If I am in compliance with this [TPP] 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 (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage.”

55. Section 2 of the TPP Agreement provides that “TIME IS OF THE ESSENCE under this Plan” and defines the “Modification Effective Date” for the permanent HAMP modification as “the first day of the month following the month in which the last Trial Period Payment is due.”

56. Mr. Calfee timely made each of the payments contemplated in the TPP Agreement due in August, September, and October 2009. He continued to make payments consistent with the trial period amount for an additional 10 months through August 2010.

57. After entering into the TPP Agreement, Mr. Calfee followed up with Citi on multiple occasions. Each time Citi representatives told Mr. Calfee that his modification was still being processed.

58. Even though Mr. Calfee was current on his mortgage payments when he accepted the TPP Agreement in July 2009 and despite having made all payments under the agreement, Citi began making negative credit bureau reports concerning Mr. Calfee beginning at the start of his trial period in July 2009.

59. By letter dated September 1, 2009, in the midst of his trial period, Mr. Calfee received a delinquency notice from Citi, demanding \$2,894.62, including \$34.42 in late charges. Mr. Calfee had been current on his mortgage when he accepted the TPP offer and timely made all payments under the agreement. Mr. Calfee received various other contacts from Citi’s collection department as well.

60. Citi also inflicted on Mr. Calfee redundant and ambiguous and threatening demands for documents while all along continuing to accept his payments both during and after the trial period.

61. By letter dated February 2, 2010, Citi sent Mr. Calfee an “Urgent Notice” informing him that he needed to provide Citi with a copy of his IRS Form 4506-T to avoid risking “being dropped from the program.” Despite already providing Citi with the requested documents, Mr. Calfee timely provided Citi with the documents again.

62. Since the trial period began, and at all times relevant hereto, Davidson Calfee has timely responded to all information and document requests made by Citi by supplying the documents and information requested.

63. Despite his compliance in all material respects with the terms of the TPP Agreement, Citi failed to provide Mr. Calfee a permanent loan modification by the end of his Trial period.

64. On July 13, 2010, Defendant Citi sent Mr. Calfee a denial of his request for a loan modification because it claimed that he had not provided Citi with all requested documentation. Mr. Calfee disagreed with this basis for denial because he responded to all information and document requests made by Citi by supplying the documents and information requested.

65. This basis for denial was in violation of the TPP Agreement. Even if Mr. Calfee had not timely provided all required and/or all documents requested by Citi, any contractual condition of documentation had been waived by Citi long before July 13, 2010 in light of its failure to take timely action required by the TPP Agreement and because it accepted payments under the original loan contracts as modified by the TPP Agreement.

66. On July 13, 2010, Citi sent Mr. Calfee a second letter that he was delinquent in the amount of \$5,871.74 and threatened acceleration of his loan on October 11, 2010 despite the fact that Mr. Calfee had never missed a single monthly payment to Citi.

67. At or about the time of Citi’s denial, Mr. Calfee had a number of conversations with Citi’s Customer Service personnel concerning the notices and possible alternatives. During one of

those conversations with Citi Customer Service staff, Mr. Calfee offered to send his supposedly missing bank statements again even though he had already sent them. Citi refused this offer.

68. Worried about the threat of foreclosure, Mr. Calfee struggled to resume monthly payments at his pre-Trial Period levels in September 2010 and has never missed a mortgage payment. The arrears that had accrued during the Trial Period, however, remain.

69. As of February 2011, Citi claims Mr. Calfee is delinquent in the amount of approximately \$12,499.

70. Defendant has breached the TPP Agreement it entered into with Mr. Calfee insofar as it promised that compliance with the TPP Agreement would result in a permanent loan modification.

71. Mr. Calfee attempted to pursue other avenues to save his home. He applied for a non-HAMP Citi loan modification in August, 2010. However, Citi denied him this modification because of the amount that Citi claims is delinquent on his loan.

72. Like the other borrowers in the class, Mr. Calfee has been living in a state of limbo and stressful anxiety, without any assurances that his home will not be foreclosed, despite his compliance with the TPP Agreement.

Robert Gatti

73. Robert Gatti has owned his condominium at 528 East 8th Street, Unit 1, Boston, MA 02127 for over two years.

74. On May 1, 2007, Mr. Gatti took out a mortgage loan for the purchase of his home at 528 East 8th Street, Unit 1, Boston, Massachusetts.

75. The Defendant was the loan servicer of Mr. Gatti's mortgage loan from its origination through 2010.

76. In or about February 2009, Mr. Gatti began experiencing various financial hardships. This caused Mr. Gatti to have difficulty making payments on his mortgage loan, although he continued to make timely payments. Indeed, Mr. Gatti never missed a payment on his mortgage prior to his application for HAMP, and made his mortgage payments through and including October 2010.

77. In or about February 2009, Mr. Gatti contacted Citi in an effort to learn about his options to avoid default. A Citi representative suggested that Mr. Gatti would be eligible for a *Making Home Affordable Modification*.

78. Mr. Gatti provided his income and financial information to a Citi representative over the phone. Mr. Gatti was “preapproved,” and was told to begin paying trial payments of \$1,637 during the application process. Mr. Gatti began paying \$1,637 on March 7, 2009.

79. In July 2009, Citi informed Mr. Gatti to begin making trial payments of \$1,078.02 while the application was still pending.

80. Despite Citi’s assurance that Mr. Gatti was in a TPP Agreement, Mr. Gatti continued to receive account statements that did not recognize or account for this fact.

81. Even though Mr. Gatti was current on his mortgage payments at this time and despite having made all payments he was told to, Citi immediately began making negative credit bureau reports concerning Mr. Gatti.

82. By letter dated October 8, 2009, Citi offered Mr. Gatti a TPP Agreement entitled *Home Affordable Modification Trial Period Plan* (“Trial Period Plan” or “TPP”).

83. Mr. Gatti timely accepted the offer by executing the TPP Agreement and returning it to Citi, along with the completed Hardship Affidavit, IRS Form 4506-T, and other supporting

documents. Mr. Gatti continued to make his monthly TPP payments of \$1,078.02. A copy of the TPP Agreement is attached hereto as Exhibit 3.

84. The TPP Agreement provided that the plan was effective November 1, 2009 and would run from November 2009 to February 2010. The monthly mortgage payments were \$1,078.02 under the TPP Agreement.

85. The first sentence of the TPP Agreement provides: “If I am in compliance with this [TPP] 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 (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage.”

86. Section 2 of the TPP Agreement provides that “TIME IS OF THE ESSENCE under this Plan” and defines the “Modification Effective Date” for the permanent HAMP modification as “the first day of the month following the month in which the last Trial Period Payment is due.”

87. The last paragraph of the TPP also provides that “if my final two Trial Period Payments are received by Servicer after the close of business on the 15th calendar day of the last month of the Trial Period but before the end of the Trial Period, I agree that the Trial Period shall be extended by one calendar month...” The Additional Trial Period was not to extend more than “30 days after the last due date listed” in Section 2 of the Agreement.

88. Mr. Gatti timely made each of the payments contemplated in the TPP Agreement due in November, December 2009, January, February 2010. He continued to make payments consistent with the trial period amount through October 2010.

89. After entering into the TPP Agreement, Mr. Gatti continued to receive account statements indicating that payment was due on the entire amount. When he followed up with Citi to inquire about these statements, he was assured that his modification was still being processed.

90. Mr. Gatti continued to receive other contacts from the Citi collections department.

91. Citi also inflicted on Mr. Gatti redundant and ambiguous and threatening demands for documents while all along continuing to accept his payments both during and after the TPP period.

92. Since and before the TPP period began, and at all times relevant hereto, Robert Gatti has timely responded to all information and document requests made by Citi by supplying the documents and information requested.

93. Despite his compliance in all material respects with the terms of the TPP Agreement, Citi failed to provide Mr. Gatti a permanent loan modification by the end of his Trial Period.

94. On May 7, 2010, Citi sent Mr. Gatti a denial of his request for a *Making Home Affordable Modification* because he had not provided Citi with all documentation requests. Citi sent Mr. Gatti an identical denial letter again on May 13, 2010.

95. To the best of his knowledge, Mr. Gatti timely provided Citi with all documentation it requested.

96. On May 28, 2010 Citi sent Mr. Gatti another letter that he was delinquent in the amount of \$15,609.31 and threatened acceleration of his loan on August 26, 2010.

97. On August 27, 2010, Harmon Law Offices sent Mr. Gatti a foreclosure notice, informing him that the loan was accelerated and the entire balance of \$336,985.16 was due.

98. When Mr. Gatti called Citi to question these developments, he spoke with a Citi employee named James. James admitted to Mr. Gatti that there was a mistake and told Mr. Gatti

that he was being put back on the trial plan. Mr. Gatti continued to make payments in the same amount as his trial payments.

99. In September 2010, Mr. Gatti received numerous emails and text messages from Citi informing him that he was close to receiving his permanent modification.

100. On October 14, 2010, Citi sent Mr. Gatti another denial of his request for a *Making Home Affordable Modification* based on the net present value (NPV) test.

101. The following day, Citi sent Mr. Gatti a notice informing him that his loan was being sold to Nationstar Mortgage.

102. Mr. Gatti is in compliance with his TPP Agreement and his representations to the Defendant continue to be true in all material respects.

103. By letter dated October 28, 2010, Citi puzzlingly offered Mr. Gatti a permanent *Home Affordable Modification Agreement*. The modification called for a new principal balance of \$340,214.34.

104. By offering Mr. Gatti a permanent *Home Affordable Modification*, Citi effectively admitted that its previous contradictory denial letters sent to Mr. Gatti were mistakenly issued.

105. When Mr. Gatti called Citi to inquire about the *Home Affordable Modification Agreement*, a Citi representative told him that his loan was already with Nationstar Mortgage, and there was nothing that Citi could do about his modification. Citi refused to accept further payments from Mr. Gatti.

106. Mr. Gatti is now facing foreclosure activity from Nationstar Mortgage.

107. Had Citi not found Mr. Gatti eligible for HAMP and offered him a TPP Agreement, Mr. Gatti would have pursued other avenues of addressing his difficulty in paying his mortgage.

108. Like the other borrowers in this matter, Mr. Gatti has been living in a state of limbo and stressful anxiety, without any assurances that his home will not be foreclosed, despite his compliance with the TPP Agreement.

Daniel Korzep

109. Daniel Korzep has owned his home at 21 Maple Street in Methuen, Massachusetts for around six years. Mr. Korzep is a pastor and works at Grace Covenant Church in Methuen, Massachusetts.

110. On August 1, 2007, Mr. Korzep refinanced his mortgage for his home at 21 Maple Street.

111. Sometime after August 1, 2007, the Defendant Citi began servicing the loan and continues to do so to this date.

112. Sometime after taking out the mortgage loan, Mr. Korzep began experiencing various hardships that caused him to have difficulty making payments on his Mortgage.

113. In or around October 2009, Mr. Korzep began seeking assistance from Citi in an effort to modify his mortgage. After providing financial information, Citi told Mr. Korzep on the phone that he was “prequalified” for a modification on his mortgage.

114. By letter dated November 13, 2009, Citi offered Mr. Korzep a TPP Agreement entitled *Home Affordable Modification Trial Period Plan* (“Trial Period Plan” or “TPP”).

115. Mr. Korzep timely accepted the offer by executing the TPP Agreement on and returning it to Citi, along with supporting documentation and his initial trial period payment. A copy of Mr. Korzep’s TPP Agreement is incorporated and attached hereto as Exhibit 4.

116. The TPP Agreement provided that the plan was effective December 1, 2009 and would run from December 2009 to February 2010. The monthly mortgage payments were \$1,085.16 under the TPP Agreement.

117. The first sentence of the TPP Agreement provides: “If I am in compliance with this [TPP] 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 (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage.”

118. Section 2 of the TPP Agreement provides that “TIME IS OF THE ESSENCE under this Plan” and defines the “Modification Effective Date” for the permanent HAMP modification as “the first day of the month following the month in which the last Trial Period Payment is due.”

119. The last paragraph of the TPP also provides that “if my final two Trial Period Payments are received by Servicer after the close of business on the 15th calendar day of the last month of the Trial Period but before the end of the Trial Period, I agree that the Trial Period shall be extended by one calendar month...” The Additional Trial Period was not to extend more than “30 days after the last due date listed” in Section 2 of the Agreement.

120. Mr. Korzep timely made each of the payments contemplated in the TPP Agreement due in December 2009, January, and February 2010. He continued to make payments consistent with the trial period amount.

121. By letter dated January 1, 2010, in the midst of his trial period, Mr. Korzep received a delinquency notice from Citi, demanding \$5,633.39 even though Mr. Korzep timely made all payments under the TPP Agreement.

122. Citi also inflicted on Mr. Korzep redundant, ambiguous, and threatening demands for documents while all along continuing to accept his payments both during and after the trial period.

123. By letter dated December 31, 2009, and again on February 15, 2010, Citi demanded additional financial documentation from Mr. Korzep, which he timely provided.

124. Since the TPP period began, and at all times relevant hereto, Daniel Korzep has timely responded to all information and document requests made by Citi by supplying the documents and information requested.

125. Despite his compliance in all material respects with the terms of the TPP Agreement, Citi failed to provide Mr. Korzep a permanent loan modification consistent with HAMP rules by the end of his trial period.

126. By letter dated April 26, 2010, Citi sent Mr. Korzep another delinquency notice, demanding \$7,546.02.

127. On May 14, 2010, Defendant Citi sent Mr. Korzep a denial of his request for a HAMP loan modification alleging that he had not provided Citi with all requested documentation. Mr. Korzep disagrees with this basis for denial because he timely responded to each document request.

128. The basis for denial was in violation of the TPP Agreement. Even if Mr. Korzep had not timely provided all required and/or all documents requested by Citi, any contractual condition of documentation had been waived by Citi long before May 14, 2010 in light of its failure to take timely action required by the TPP Agreement.

129. In response to this denial, Mr. Korzep called Citi and disputed the denial. Citi ignored his dispute and told him that he was still being considered for other workout options. He was instructed to continue making mortgage payments consistent with the trial period amount.

130. Mr. Korzep continued to submit documentation and worked with Citi to obtain a permanent loan modification.

131. On August 6, 2010, Harmon Law Offices sent Mr. Korzep a notice of intent to foreclose. Harmon Law Offices sent Mr. Korzep another foreclosure notice on November 2, 2010 indicating

that a foreclosure sale of his home was scheduled for December 2, 2010. This date was then postponed to January 19, 2011.

132. By letter dated December 29, 2010, Mr. Korzep was offered an unaffordable non-HAMP permanent loan modification. The modified principal balance of \$290,837.67 included \$16,647.50 in delinquent interest, which accrued during the Trial Period. The modification agreement also called for monthly payments of \$1,705.92 and \$870.96 of fees due by January 3, 2011.

133. In a last chance effort to save his home and faced with the impending foreclosure date, Mr. Korzep accepted the modification agreement on February 9, 2011. The arrears that had accrued during the Trial Period, however, remain.

134. Like the other borrowers in the class, Mr. Korzep has been living in a state of limbo and stressful anxiety, without any assurances that his home will not be foreclosed, despite his compliance with the TPP Agreement.

Karen Grover

135. Karen Grover has owned her home at 25 Brandley Road in Watertown, Massachusetts for 9 years.

136. On December 20, 2006, Ms. Grover refinanced the loan on her residence at 25 Brandley Road with Citi in the amount of \$348,000. Citi has been the only loan servicer of the mortgage loan.

137. In or about June 2009, Ms. Grover began experiencing financial hardships as a result of losing her job in business development. This caused Ms. Grover to have difficulty making payments on her mortgage loan, although she continued to make timely payments. Indeed, Ms. Grover never missed a payment on her mortgage prior to her application for HAMP.

138. In or about August 2009, Ms. Grover contacted Citi to apply for assistance. Ms. Grover provided Citi with financial information at this time. After speaking with a Citi representative

(“Ron”), she was told that she “prequalified” for a *Making Home Affordable Modification* based on her unemployment income. Ms. Grover sent Citi income documentation. A Citi representative subsequently instructed Ms. Grover not to make her September 2009 mortgage payment as her application was being processed.

139. By letter dated September 10, 2009, Citi offered Ms. Grover a TPP Agreement entitled *Home Affordable Modification Trial Period Plan* (“Trial Period Plan” or “TPP”).

140. Ms. Grover timely accepted the offer by executing the TPP Agreement and returning it to Citi, along with the completed Hardship Affidavit, IRS Form 4506-T, pay stubs, tax returns, and other supporting documents. A copy of the signed TPP Agreement is attached hereto as Exhibit 5.

141. The TPP Agreement provided that the plan was effective October 1, 2009 and would run from October 2009 to December 2009. The monthly mortgage payments were \$1,078.50 under the TPP Agreement.

142. The first sentence of the TPP Agreement provides: “If I am in compliance with this [TPP] 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 (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage.”

143. Section 2 of the TPP Agreement provides that “TIME IS OF THE ESSENCE under this Plan” and defines the “Modification Effective Date” for the permanent HAMP modification as “the first day of the month following the month in which the last Trial Period Payment is due.”

144. Ms. Grover timely made each of the payments contemplated in the TPP Agreement due in October, November, and December 2009. She has continued to make payments consistent with the TPP amount through the present.

145. Ms. Grover consistently followed up with Citi during and after the trial period to inquire about the status of her loan modification. Citi would inform Ms. Grover to continue making payments in the TPP amount and that her modification was still being processed.

146. Citi inflicted on Ms. Grover redundant and ambiguous and threatening demands for documents while all along continuing to accept her payments both during and after the TPP period.

147. By letter dated May 28, 2010, Citi demanded financial documentation from Ms. Grover, which she timely provided despite it already being in Citi's possession.

148. Since the trial period began, and all times relevant hereto, Ms. Grover has timely responded to all information and document requests made by Citi by supplying the documents and information requested.

149. Despite her compliance in all material respects with the terms of the TPP Agreement, Citi failed to provide Ms. Grover a permanent loan modification by the end of her Trial Period.

150. On July 22, 2010, Citi sent Ms. Grover a denial of her request for a *Making Home Affordable Modification* because she had not provided Citi with all documents requested. On the same day, Citi sent Ms. Grover a delinquency notice from Citi in the amount of \$17,829.68. Ms. Grover disagrees with the basis of this denial because she timely responded to each of Citi's document requests.

151. The basis for denial was in violation of the TPP Agreement. Even if Ms. Grover had not timely provided all required and/or all documents requested by Citi, any contractual condition of documentation had been waived by Citi long before July 22, 2010 in light of its failure to make timely action required by the TPP Agreement and because it accepted payments under the original loan contracts as modified by the TPP Agreement.

152. Despite other efforts to work out her delinquency, on February 24, 2011, Citi sent Ms. Grover another delinquency notice, threatening acceleration. The notice demanded \$31,136.48 by July 3, 2011.

153. As of this date, Ms. Grover has not received a permanent modification nor received a written decision of eligibility consistent with HAMP rules.

154. Despite her compliance in all material respects with the terms of the TPP Agreement, Citi did not provide Ms. Grover with a permanent modification by the Modification Effective Date, nor has it done so since then.

155. Like the other borrowers in the class, Ms. Grover has been living in a state of limbo and stressful anxiety, without any assurances that her home will not be foreclosed, despite her compliance with the TPP Agreement.

Class Allegations

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

157. The Plaintiffs, on behalf of themselves and all Massachusetts homeowners whose loans have been serviced by Defendant and who, since April 13, 2009, have entered into a TPP Agreement with the Defendant and made all trial period payments identified in that TPP Agreement, other than borrowers to whom Defendant sent, either:

- a. The Home Affordable Modification Agreement required by their TPP Agreement;
- or
- b. A written Non-Approval Notice on a basis permitted by their TPP Agreement prior to the end of their trial period.

158. 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.

159. 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.

160. Based on the size of the modifications at issue, Plaintiffs believe the amount in controversy exceeds \$5 million.

161. 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 required 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.

162. 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 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 timely permanent modification.

163. 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.

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

165. 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.

166. 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

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

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

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

170. By executing the TPP Agreements and returning it to Defendant along with the supporting documentation, Plaintiffs accepted Defendant's offers.

171. Alternatively, Plaintiffs' return of the TPP Agreements constituted offers. Acceptances of these offers occurred when Defendant accepted Plaintiffs' TPP payments.

172. Plaintiffs' trial period payments to Defendant constitute consideration. By making those payments, Plaintiffs gave up the ability to pursue other means of saving their homes, and Defendant received payments it might otherwise not have received.

173. The TPP Agreement is supported by additional consideration in the form of agreements to undergo financial counseling and the provision of substantial financial documentation by Plaintiffs. Plaintiffs were also required to make payments into a new escrow account. This consideration benefited the Defendant and was a detriment to Plaintiffs.

174. In the alternative, the TPP Agreement is a type of binding Agreement for which the law does not require consideration.

175. Plaintiffs and Defendant formed valid contracts.

176. To the extent that the contracts were subject to a condition subsequent providing Citi an opportunity to review the documentation submitted by Plaintiffs during the trial period, this condition was waived by Citi and/or it is estopped to assert it as a defense to Plaintiffs' claims.

177. To the extent that Plaintiffs rendered any defective performance under the contract, this condition was waived and, therefore, excused by Citi and/or it is estopped to assert it as a defense to Plaintiffs' claims.

178. To the extent that Citi provided Plaintiffs with written denials of eligibility after the close of the defined trial period, the reason(s) for denial was accepted and excused by Citi following the close of the trial period and, therefore, waived by Citi.

179. By failing to offer Plaintiffs permanent HAMP modifications by the close of the trial period defined in the contracts, Defendant breached those contracts and any further obligation by Plaintiffs remaining under the contract was excused.

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

181. Plaintiffs have suffered harm and are threatened with additional harms from Defendant's breach. By making payments both during and after the TPP, Plaintiffs forewent other remedies that might be pursued to save their homes, such as restructuring their debts under the bankruptcy code, or pursuing other strategies to deal with their defaults, such as selling their homes. In addition, Plaintiffs built up substantial and unmanageable delinquency in an amount exceeding that which otherwise would have accrued.

182. In addition to the lost opportunity cost of pursuing other means of dealing with their defaults, when a permanent modification is not offered at the close of the trial period, the borrower's permanent modification terms and other options may be adversely affected and additional fees and charges may be applied. On information and belief, Defendant has imposed improper fees and costs on borrowers during and after their trial period.

183. Plaintiffs also suffered additional harm in the form of foreclosure and collection activity against their homes.

184. Plaintiffs have suffered the additional harm of adverse credit reporting, thus undermining their credit standing for lower cost refinancing and other necessary credit transactions.

185. Plaintiffs have lived in a state of stressful anxiety because of the limbo in which the Defendant has placed them.

186. Members of the putative class have experienced damages in forms similar or identical to the Plaintiffs. Some members of the putative class also suffered additional harm in the form of foreclosure/ collection activity against their homes.

COUNT II

Breach of the Implied Covenant of Good Faith and Fair Dealing

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

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

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

190. “[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).

191. Defendant routinely and regularly breaches this duty by:

- a. failing to perform loan servicing functions consistent with its responsibilities to Plaintiffs;
- b. failing to supervise its agents and employees properly including, without limitation, its loss mitigation and collection personnel and its foreclosure attorneys;
- c. routinely demanding information it has already received;
- 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 borrowers.

192. These actions constitute bad faith by the Defendant.

193. 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, the imposition of fees and charges on borrowers' accounts during and after their trial period, and obtaining greater fees from foreclosing than from modifying loans it services.

194. As a result of these failures to act in good faith and the absence of fair dealing, Defendant caused Plaintiffs harm. By making trial period payments both during and after the trial period, Plaintiffs forewent other remedies that might be pursued to save their homes, such as restructuring their debts 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 defaults, when a permanent modification is not offered at the close of the trial, the borrower's permanent modification terms may be adversely affected and additional fees and charges may be applied. Plaintiffs have suffered the additional harm of having adverse reporting against their credit profiles. Plaintiffs have also incurred damages because the Defendant's breach, i.e., Citi's failure to provide permanent HAMP modifications, means that Plaintiffs are further in arrears than they would have been otherwise. These damages are especially acute for Plaintiffs, who were not in default at the time they entered their TPP Agreements. Last, plaintiffs have been living in a state of stressful anxiety because of the limbo in which the Defendant has placed them.

195. Members of the putative class have experienced damages in forms similar or identical to the Plaintiffs. Some members of the putative class also suffered additional harm in the form of foreclosure/ collection activity against their homes.

COUNT III

Promissory Estoppel, in the alternative

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

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

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

199. Defendant's TPP Agreements were intended to induce Plaintiffs to rely on them and make monthly trial period payments.

200. Plaintiffs did indeed rely on Defendant's representation, by submitting trial period payments.

201. Given the language in the TPP Agreements, Plaintiffs' reliance was reasonable.

202. Plaintiffs' reliance was to their detriment. Plaintiffs have yet to receive a permanent HAMP modification. By making trial period payments both during and after the trial period, Plaintiffs forewent other remedies that might be pursued to save their homes, such as restructuring their debts under the bankruptcy code, or pursuing other strategies to deal with their defaults, such as selling their homes. In light of the declining real estate market in Massachusetts since July 2009, failure to market and sell the property at that time has reduced the amount that Plaintiffs can recover from such sale.

203. In addition to the lost opportunity cost of pursuing other means of dealing with their defaults, when a permanent modification is not offered at the close of the trial period, the borrower's permanent modification terms are adversely affected and additional fees and charges are applied.

On information and belief, Defendant has imposed improper fees and costs on Plaintiffs during and after the trial period.

204. Plaintiffs have also suffered detriment in the form of foreclosure and collection activity against their homes.

205. Plaintiffs have also incurred damages in reliance on the TPP Agreement, i.e., Citi's failure to provide permanent HAMP modifications, means that Plaintiffs are now further in arrears than they would have otherwise been. These damages are especially acute for Plaintiffs, who were not in default at the time they entered their TPP Agreements.

206. Plaintiffs have been living in a state of stressful anxiety because of Defendant's conduct and in light of the ongoing risk of foreclosure.

207. Members of the putative class have experienced harm in forms similar or identical to the Plaintiffs. Some members of the putative class also suffered additional harm in the form of foreclosure/ collection activity against their homes.

COUNT IV

Violation of the Massachusetts Consumer Protection Act and Applicable Regulations

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

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

210. 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.

211. 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.

212. Defendant's conduct as described in this complaint was and is willful or knowing within the meaning of the Massachusetts Consumer Protection Act, G.L. c. 93A, §9.

213. 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.

214. On December 8, 2010, Davidson Calfee and Robert Gatti sent Citi a demand for relief pursuant to G.L. c. 93A on their behalf and on behalf of a group of similarly situated individuals. A copy of this letter is attached as Exhibit 6. Citi responded by letter dated February 16, 2011. Citi's untimely response has not yielded an offer of settlement to the Plaintiffs or the class of similarly situated individuals identified in the December 8, 2010 letter in accordance with G.L. c. 93A, §9(2). No offer of settlement was made to the putative class.

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 the practices that are the subject of this action;
- 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. 9A, § 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); and
- i. 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: May 25, 2011

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 May 25, 2011.

/s/ Gary Klein
Gary Klein