

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS

SUPERIOR COURT

CIVIL ACTION NO.

KAREN MICHELE SALA MICHAELS,
Plaintiff

vs.

WELLS FARGO HOME MORTGAGE,
a Division of WELLS FARGO BANK, N.A.
Defendant

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION AND SUMMARY

An actual controversy has arisen between plaintiff, Karen Michele Sala Michaels, and defendant, Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., concerning plaintiff's rights and defendant's duties and the status between them under a mortgage deed, a written contract between them, and federal statutes and administrative regulations. Therefore, plaintiff seeks a binding declaration of her rights pursuant to G.L. c. 231A, §§ 1, *et seq.*

In addition, plaintiff alleges: that defendant, Wells Fargo Home Mortgage, has failed to fulfill its obligations pursuant to that contract; and that it has failed to fulfill its obligations of good faith and fair dealing in its contractual dealings with plaintiff. As a result, plaintiff has suffered money damages.

The Defendant, Wells Fargo Home Mortgage, was the recipient of Troubled Asset Relief Program ("TARP") funds. Among the federal mandates imposed on recipients of TARP funds was participation in programs intended to minimize foreclosures and to facilitate alternatives to foreclosures.

By failing to approve plaintiff's application for a permanent loan modification under HAMP, but instead proceeding to foreclose on the mortgage granted by the plaintiff the Defendant has breached duties owing to the plaintiff, and Wells Fargo Home Mortgage has breached duties it has undertaken by contract and imposed on it as the recipient of TARP funds.

JURISDICTION

1. The plaintiff, Karen Michele Sala Michaels, invokes the jurisdiction of this court (a) pursuant to General Laws chapter 212, § 4, chapter 213, § 1A, and chapter 214, § 1, as she alleges, by this civil action, claims for relief at law and in equity; and (b) pursuant to General Laws c. 231A, §§ 1, *et seq.*, as she seeks a declaration of her right, status, or other legal relations under a mortgage deed, or under common law, or under federal statute or administrative regulation against the defendant, Wells Fargo Home Mortgage.

PARTIES

2. Plaintiff, Karen Michele Sala Michaels, is a natural person who resides at 240 South Silver Lane, Sunderland, Franklin County, Massachusetts.

3. Defendant, Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A., which is a banking corporation chartered and existing under the laws of the United States. Wells Fargo Home Mortgage has its principal place of business in Des Moines, Iowa. Wells Fargo Bank, N.A. has its principal place of business in San Francisco, California.

AVERMENTS OF FACTS

4. On May 14, 2004, the plaintiff, Karen Michele Sala Michaels, purchased real property located at and identified as 240 South Silver Lane, Sunderland, Franklin County, Massachusetts. Ms. Michaels paid two hundred forty-five thousand dollars (\$245,000.00) for that property. The quitclaim deed by which Ms. Michaels acquired title to the real estate was recorded on

the same day in Franklin County Registry of Deeds Book 4596, at Page 180.

5. Since that time, Ms. Michaels, a single mother, has resided in that home with her adolescent daughter. Ms. Michaels, as a licensed massage therapist, also conducts her home business from that location, treating individuals.

6. On March 17, 2006, in order to refinance the loan she had obtained to purchase the Sunderland property, Ms. Michaels entered into a refinance loan agreement with Prime Mortgage Financial, Inc. in the amount of two hundred twelve thousand dollars (\$212,000.00). As security for that loan, Ms. Michaels granted a mortgage to MERS (Mortgage Electronic Registration System, Inc.) which was recorded on March 23, 2006, in the Franklin County Registry of Deeds Book 5068, at Page 114.

7. On June 25, 2009, MERS assigned the mortgage granted by Ms. Michaels to Wells Fargo Bank, N.A.. That assignment was recorded in the Franklin County Registry of Deeds Book 5703, at Page 168.

8. Wells Fargo Home Mortgages performs the duties of a mortgage "servicer" for Wells Fargo Bank, N.A., its corporate parent, and the holder of the mortgage by assignment. As a servicer, Wells Fargo Home Mortgage processes payments, maintains escrow accounts, engages in debt collection, and initiates mortgage foreclosure activities.

9. In March 2006, when Ms. Michaels refinanced her home mortgage she had part-time employment as a dance instructor and licensed massage therapist. At the same time, she received three thousand dollars (\$3,000.00) per month from her ex-husband in child support for their adolescent daughter and spousal support for herself.

10. In the fall of 2008, Ms. Michaels' full-time employment was reduced by approximately thirty-five percent (35%), and that employment ended in February 2009. In January 2009, Ms. Michaels' ex-husband lost his job and stopped paying both spousal support and child support to Ms. Michaels.

11. Beginning in December 2008, Ms. Michaels began calling and corresponding with defendant, Wells Fargo Home Mortgage. From that time through mid-June 2009, Ms. Michaels called Wells Fargo Home Mortgage more than twenty (20) times, either initiating the calls or responding to correspondence from Wells Fargo Home Mortgage, all in an attempt to prevent a default in her mortgage loan terms.

12. During that time, Ms. Michaels sought the assistance from HAP Housing, Inc., and in particular the help from one of its employees, a HUD Certified Counselor, who also called Wells Fargo Home Mortgage on behalf of Ms. Michaels, seeking to obtain an adjustment to the mortgage payment terms.

13. During the period from February through mid-June, 2009, Ms. Michaels transmitted to defendant, Wells Fargo Home Mortgage, financial information and documentation at least six (6) times.

14. On November 10, 2009, Wells Fargo Bank, N.A. recorded a notice in the Franklin County Registry of Deeds Book 5778, at Page 52, which indicated that, on June 25, 2009, it had commenced an action in Land Court under the Service Members Civil Relief Act as a predicate to foreclosure proceedings against Ms. Michaels. (A true and exact copy of that recorded notice is attached to this Complaint as Exhibit A and incorporated within it)

15. From mid-June 2009 through October 2009, Ms. Michaels retained an attorney to contact defendant, Wells Fargo Home Mortgage in order to obtain a modification to her mortgage terms. Her attorney assembled all of the financial information and documentation that Wells Fargo Home Mortgage had requested, and she both transmitted that material by telefax and had it delivered by overnight delivery service. During that time period, in addition to the calls and written communications that her attorney made on her behalf, Ms. Michaels called Wells Fargo Home Mortgage three (3) to four (4) times. All of those efforts were aimed at obtaining a temporary loan modification, the first step toward a permanent loan modification under HAMP.

16. From the end of October through the end of November 2009, Ms. Michaels called

defendant, Wells Fargo Home Mortgage four (4) times, and the HUD Certified Counselor called once. All of those calls were made in an attempt to advance Ms. Michaels' mortgage loan modification application.

17. During the period from mid-June through November, 2009, Ms. Michaels transmitted to defendant, Wells Fargo Home Mortgage, financial information and documentation between five (5) to seven (7) times.

18. On November 20, 2009, Wells Fargo Home Mortgage sent a letter to Ms. Michaels explaining that she had been approved for the temporary loan modification phase of HAMP, the Trial Period Plan. Under the Trial Period Plan, Ms. Michaels was required to make a reduced mortgage payment of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) on or before January 1, 2010, and then again on or before February 1 and March 1, 2010. (A true and exact copy of that recorded notice is attached to this Complaint as Exhibit B and incorporated within it)

19. These Trial Period Plan payments were a reduction of three hundred seventy-five dollars and twelve cents (\$375.12) from her previous monthly mortgage payment of one thousand six hundred ninety-two dollars and sixty-two cents (\$1,692.62).

20. Ms. Michaels made the initial modified mortgage payment of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) and each subsequent payment, on time, from January through July 2010.

21. During the period from January 7, 2010, through June 4, 2010, Ms. Michaels called defendant, Wells Fargo Home Mortgage no fewer than eleven (11) times. Within the first six months of 2010, Ms. Michaels transmitted to Wells Fargo Home Mortgage financial information and documentation at least ten (10) times. All of these efforts to communicate with Wells Fargo Home Mortgage and to provide it with financial information and documentation were directed toward moving from the Trial Period Plan to a permanent loan modification.

22. On June 3, 2010, Ms. Michaels called defendant, Wells Fargo Home Mortgage to provide her monthly financial update over the telephone and to inform Wells Fargo Home Mortgage that she would be transmitting her monthly financial information and documentation by telefax. During that telephone conversation, the Wells Fargo Home Mortgage representative informed Ms. Michaels that Wells Fargo Home Mortgage had denied her application for a permanent loan modification because her income was too low to support the modified mortgage payment.

23. The Wells Fargo Home Mortgage representative informed Ms. Michaels that her file indicated a gross monthly income of approximately two thousand two hundred forty-three dollars (\$2,243.00). That figure represents only about fifty-five percent (55%) of Ms. Michaels' true current gross monthly income.

24. That was the first time that a Wells Fargo Home Mortgage representative had informed Ms. Michaels that Wells Fargo Home Mortgage considered her gross monthly income to be only \$2,243.00. During that conversation, and each and every later time that a Wells Fargo Home Mortgage representative expressed that erroneous information to her, she protested that the information was incorrect, that Wells Fargo Home Mortgage must correct the information, and that Wells Fargo Home Mortgage must base its evaluation of her mortgage loan modification application on her correct gross monthly income, which is approximately four thousand dollars (\$4,000.) per month.

25. In the nineteen (19) months from December 2008 through June 2010, Ms. Michaels called and spoke with a representative of defendant, Wells Fargo Home Mortgage no fewer than fifty (50) times.

26. During approximately that same time period, defendant, Wells Fargo Home Mortgage received financial information and documentation from or on behalf of Ms. Michaels at least twenty-four (24) times.

27. The most recent examples of correspondence that defendant, Wells Fargo Home Mortgage sent to Ms. Michaels is a letter dated July 5, 2010, which she received on July 12, 2010, in

which Wells Fargo Home Mortgage (in Des Moines, Iowa) asks Ms. Michaels to gather together information and documentation showing (a) monthly gross income, (b) additional household income, (c) current monthly expenses, and (d) the reason for her financial hardship and then call Wells Fargo Home Mortgage once again. (A true and exact copy of that two-page letter is attached to this Complaint as Exhibit C and incorporated within it.)

28. Five days later, on July 17, 2010, Ms. Michaels received a letter dated July 8, 2010, from defendant, Wells Fargo Home Mortgage (in Fort Mill, South Carolina) in an envelope postmarked July 14, 2010. That letter outlined several options that might be available to avoid mortgage foreclosure and forwarded a Financial Worksheet. That letter also asked Ms. Michaels to complete the Financial Worksheet and forward that form along with pay stubs or a tax return, within ten (10) days to Wells Fargo Home Mortgage (in Eagan, Minnesota). (A true and exact copy of that two-page letter, and two-page Financial Worksheet, and envelope are attached to this Complaint as Exhibit D and incorporated within it.)

29. On the same day, July 17, 2010, Ms. Michaels received a letter dated July 11, 2010, from Wells Fargo Home Mortgage (in Fort Mill, South Carolina) stating that "[t]he following documents are required from Karen Michele Sala Michaels: Hardship Letter, Bank Statements, [and] 3 X Pay Stubs." The letter also demanded that the documentation be transmitted by fax "within ten (10) days." (A true and exact copy of that two-page letter is attached to this Complaint as Exhibit E and incorporated within it.)

30. On July 13, 2010, defendant, Wells Fargo Home Mortgage (in Des Moines, Iowa) sent a letter to Ms. Michaels, which she received on July 19, 2010. That letter asked Ms. Michaels to "gather all financial information related to your monthly income and expenses, and contact our office at the number provided above." (A true and exact copy of that two-page letter is attached to this Complaint as Exhibit F and incorporated within it.)

31. On July 15, 2010, defendant, Wells Fargo Home Mortgage (in Des Moines, Iowa) sent

a letter to Ms. Michaels, which she received on July 20, 2010. By that letter, Wells Fargo Home Mortgage returned to Ms. Michaels her check dated July 12, 2010 in the amount of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) with the statement: "Enclosed are the following negotiable items which are being returned as the funds do not represent the total amount due to reinstate the account" (A true and exact copy of that two-page letter is attached to this Complaint as Exhibit G and incorporated within it)

32. In response to that letter, Ms. Michaels, on July 20, 2010, drafted yet another letter of explanation to defendant, Wells Fargo Home Mortgage reiterating that she had successfully completed the Temporary Loan Modification trial period by paying, in full and on time, each of the three (3) modified payments (\$1,317.50); that Wells Fargo Home Mortgage had persistently and incorrectly set Ms. Michaels' gross monthly income at \$2,243.00, or approximately 55% of her actual gross monthly income; that she had complied with many requests for financial information and documentation that Wells Fargo Home Mortgage lost or ignored; and that she was properly entitled to be considered for a permanent mortgage loan modification instead of facing foreclosure. (A true and exact copy of that two-page letter is attached to this Complaint as Exhibit H and incorporated within it)

FEDERAL LAW AND TREASURY SUPPLEMENTAL DIRECTIVES

33. Congress passed the Emergency Economic Stabilization Act of 2008, P.L. No. 110-343, on October 3, 2008, and amended it with the American Recovery and Reinvestment Act of 2009 on February 17, 2009, P.L. No: 111-5, (together, the "Act"). 12 U.S.C.A. §§ 5201, et seq. (2009).

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

35. The Act granted 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 of the

Treasury is authorized to purchase or to make commitments to purchase troubled assets from financial institutions. Id.

36. On February 18, 2009, President Obama announced the Home Owner Affordability and Stability Plan, pursuant to which the Department of the Treasury promulgated its Supplemental Directive 09-01, the Home Affordable Modification Program (HAMP). (A true and exact copy of that Supplemental Directive 09-01 is attached to this Complaint as Exhibit I and incorporated within it)

37. The HAMP program is a sub-program of the Home Owner Affordability and Stability Plan which creates and formulates the implementation of a uniform loan modification protocol.

38. Wells Fargo Bank, N.A. has received TARP funds. By accepting TARP funds, Wells Fargo Home Mortgage agreed that it would participate in one or more programs that TARP authorized the Secretary of the Treasury to establish in order to minimize foreclosures.

39. On April 13, 2009, Michaels J. Heid, Co-President of Wells Fargo Home Mortgage, executed a Servicer Participation Agreement, with the Federal National Mortgage Association, "solely as financial agent for the United States" signing on behalf of the government. The Servicer Participation Agreement 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 connection with the duties of Participating Servicers, which are collectively known as the "Program Documentation." (A true and exact copy of that Service Participation Agreement is attached to this Complaint as Exhibit J and incorporated within it)

40. Specific categories of residential mortgage loans, those held either by Federal National Mortgage Association ("Fannie Mae") or by Federal Home Loan Mortgage Corporation ("Freddie Mac") or companies that accepted money under the TARP

program, are subject to mandatory inclusion in HAMP.

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. The Trial Period Plan involves of a three-month period in which the homeowner makes mortgage payments based on a formula that uses the initial financial information provided.

42. In very general terms, the goal of a HAMP modification is for the homeowner to receive a modification of a first-lien loan by which the monthly mortgage payment would be reduced to thirty-one percent (31%) of his or her gross monthly income for the next five years.

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

44. The defendant, Wells Fargo Home Mortgage, wrote to Ms. Michaels, in its notification of the Trial Period Plan: "If you qualify under the federal government's Home Affordable Modification Program and comply with the terms of the Trial Period Plan, we will modify your mortgage loan and you can avoid foreclosure." (Exhibit B, second page)

45. The Trial Period Plan documents presented to Ms. Michaels also expressed, in the Frequently Asked Questions section, the following:

Q. Will a foreclosure occur if I participate in the Home Affordable Modification Program?

As long as you comply with the terms of the Trial Period Plan, we will not start foreclosure proceedings or conduct a foreclosure sale if foreclosure proceedings have started.

(Exhibit B, fifth page)

CLAIMS FOR RELIEF

COUNT I
DECLARATION RELIEF

46. Defendant, Wells Fargo Home Mortgage, on April 13, 2009, entered into a contract, a "Commitment to Purchase Financial Instrument and Servicer Participation Agreement," Exhibit J to this Complaint

47. The terms of that contract obligated Defendant, Wells Fargo Home Mortgage, as a servicer, in simple terms, "Servicer shall perform the loan modification and other foreclosure prevention services" described in that contract, its "Financial Instrument," the "Program Guidelines," the "Supplemental Directives," and all other "Program Documentation."

48. The plaintiff, Karen Michele Sala Michaels, as the grantor of a mortgage which is being serviced by the defendant, Wells Fargo Home Mortgage, is an intended beneficiary of that contract

49. Plaintiff, Karen Michele Sala Michaels, has fulfilled all of the criteria to be eligible for a permanent loan modification under HAMP and has satisfied all of her duties and obligations under the Trial Period Plan Agreement, including paying of the modified mortgage loan payments of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) for seven consecutive months from January through July, 2010, although the defendant, Wells Fargo Home Mortgage has refused to accept the July payment (See Exhibit G)

50. Defendant, Wells Fargo Home Mortgage, accepted all of those payments (except the last payment; see Exhibit G) without qualification and without notice of rejection of the Trial Period Plan.

51. Despite the plaintiff's compliance in all respects with the terms of the Trial Period Plan agreement, the defendant, Wells Fargo Home Mortgage has not offered a Permanent Loan Modification Agreement under the HAMP guidelines to date.

52. Through its Trial Period Plan, the defendant, Wells Fargo Home Mortgage, stated: "As long as you comply with the terms of the Trial Period Plan, we will not start foreclosure proceedings or conduct a foreclosure sale if foreclosure proceedings have started." (Exhibit B, fifth page).

53. Despite the plaintiff's fulfilling all of her contractual duties and obligations, the defendant, Wells Fargo Home Mortgage, has initiated and is prosecuting mortgage foreclosure with an auction sale scheduled for Friday, August 6, 2010, at 12:00 PM.

WHEREFORE, plaintiff, Karen Michele Sala Michaels, demands that this Court

1. Enter a Temporary Restraining Order prohibiting the defendant, Wells Fargo Home Mortgage, or any of its agents, servants, employees, attorneys, independent contractors, auctioneers, or any person acting on their behalf from conducting a mortgage foreclosure auction seeking to terminate the plaintiff's right, title, and interest in her property known and identified as 240 South Silver Lane, Sunderland, Franklin County, Massachusetts;
2. After a hearing, enter a Preliminary Injunction prohibiting the defendant, Wells Fargo Home Mortgage, or any of its agents, servants, attorneys, independent contractors, auctioneers, or any person action on their behalf from conducting a mortgage foreclosure auction seeking to terminate the plaintiff's right, title, and interest in her property known and identified as 240 South Silver Lane, Sunderland, Franklin County, Massachusetts;
3. After a trial, enter a Permanent Injunction and final judgment prohibiting the defendant, Wells Fargo Home Mortgage, or any of its agents, servants, attorneys, independent contractors, auctioneers, or any person action on their behalf from conducting a mortgage foreclosure auction seeking to terminate the plaintiff's right, title, and interest in her property known and identified as 240 South Silver Lane, Sunderland, Franklin County, Massachusetts.
4. Enter judgment including a binding declaration of the right, duty, status and other legal relation between plaintiff and defendant under the written contract or other writings constituting a contract or under federal statutes and regulations (HAMP), specifically, that plaintiff has fulfilled all of her duties and obligations under the written contract or

other writings constituting a contract, and that plaintiff has fulfilled all of her duties and obligations under federal statutes and regulations (HAMP);

5. Enter judgment for plaintiff and against defendant, Wells Fargo Home Mortgage, and order defendant to modify permanently the current mortgage loan payment terms in conformity with the HAMP guidelines, but in no event on terms materially any more onerous than the loan payment terms of the Trial Period Plan;

6. Enter judgment for plaintiff and against defendant, Wells Fargo Home Mortgage, and order the defendant to pay to plaintiff her actual damages, together with interest at the rate set by law;

7. Order defendant, Wells Fargo Home Mortgage, to pay plaintiff her costs of this action, including the reasonable attorney's fees; and

8. Order such other and further relief as this court may deem just and equitable.

COUNT II
BREACH OF CONTRACT

54. Plaintiff, Karen Michele Sala Michaels, has fulfilled all of her duties and obligations under the written Trial Period Plan entered into with defendant, Wells Fargo Home Mortgage, including paying of the modified mortgage loan payments of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) for seven consecutive months from January through July, 2010, although the defendant, Wells Fargo Home Mortgage has refused to accept the July payment (See Exhibit G).

55. Defendant, Wells Fargo Home Mortgage, has refused to fulfill its duties under the contract and enter into a Permanent Loan Modification Agreement under the HAMP guidelines.

WHEREFORE, plaintiff, Karen Michele Sala Michaels, demands that this Court

1. Enter judgment for plaintiff and against defendant, Wells Fargo Home Mortgage, and order defendant to modify permanently the current mortgage loan payment terms in conformity with the HAMP guidelines, but in no event on terms materially any more onerous than the loan payment terms of the Trial Period Plan;

2. Enter judgment for plaintiff and against defendant, Wells Fargo Home Mortgage, and order the defendant to pay to plaintiff her actual damages, together with interest at the rate set by law;
3. Order defendant, Wells Fargo Home Mortgage, to pay plaintiff her costs of this action, including the reasonable attorney's fees; and
4. Order such other and further relief as this court may deem just and equitable.

COUNT III
BREACH OF CONVENANT OF
GOOD FAITH AND FAIR DEALING

56. Plaintiff, Karen Michele Sala Michaels, entered into a written contract or other writings constituting a written contract with defendant, Wells Fargo Home Mortgage known and identified as the Trial Period Plan.

57. Plaintiff, Karen Michele Sala Michaels, has fulfilled all of her duties and obligations under the Trial Period Plan by providing to defendant, Wells Fargo Home Mortgage, all of her financial information and documentation requested of her by the defendant and by paying to the defendant the modified mortgage loan payments of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) for seven consecutive months from January through July, 2010, although the defendant, Wells Fargo Home Mortgage has refused to accept the July payment (See Exhibit G).

58. Plaintiff, Karen Michele Sala Michaels, was and is an intended beneficiary of the contract between defendant, Wells Fargo Home Mortgage, and the Federal National Mortgage Association, "solely as financial agent for the United States" on behalf of the government

59. Defendant, Wells Fargo Home Mortgage, has failed and refused to fulfill its obligations to plaintiff, Karen Michele Sala Michaels, under the written contract or other writings constituting a contract, the Trial Period Plan, as it has failed or refused to enter into a permanent loan modification agreement with the plaintiff under the HAMP guidelines.

60. Defendant, Wells Fargo Home Mortgage, has failed and refused to fulfilled its obligations to the Department of the Treasury, and thereby to plaintiff, Karen Michele Sala Michaels, under the written contract or other writings constituting a contract, the Service Agreement, as it has failed or refused to enter into a permanent loan modification agreement with the plaintiff under the HAMP guidelines.

61. By refusing to enter into a permanent loan modification agreement with the plaintiff under the HAMP guidelines defendant, Wells Fargo Home Mortgage, has breached the contract with the Department of the Treasury and has deprived plaintiff of the fruits of that contract

62. Defendant, Wells Fargo Home Mortgage has routinely and regularly breached its duty of good faith and fair dealing toward the plaintiff by actions and inactions, each of which constitute acts of bad faith, including but not limited to:

- a. failing to perform loan servicing functions consistent with its responsibilities to plaintiff under the HAMP guidelines;
- b. routinely demanding information and documentation that plaintiff had provided to it several times;
- c. making inaccurate and grossly distorted calculations and determinations of plaintiff's eligibility for HAMP;
- d. failing to fulfill its written and oral promises; and
- e. failing to fulfill its contractual obligations.

63. As a result of these breaches of the covenant of good faith and fair dealing by defendant, Wells Fargo Home Mortgage, plaintiff, Karen Michele Sala Michaels, has suffered money damages and will suffer irreparable harm through the loss of her home if such loss is not enjoined.

WHEREFORE, plaintiff, Karen Michele Sala Michaels, demands that this Court

1. Enter judgment for plaintiff and against defendant, Wells Fargo Home Mortgage, and order defendant to modify permanently the current mortgage loan payment terms in conformity with the HAMP guidelines, but in no event on terms materially any more onerous than the loan payment terms of the Trial Period Plan;
2. Enter judgment for plaintiff and against defendant, Wells Fargo Home Mortgage, and order the defendant to pay to plaintiff her actual damages, together with interest at the rate set by law;
3. Order defendant, Wells Fargo Home Mortgage, to pay plaintiff her costs of this action, including the reasonable attorney's fees; and
4. Order such other and further relief as this court may deem just and equitable.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully Submitted
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