

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

AFFIDAVIT OF PLAINTIFF, KAREN MICHELE SALA MICHAELS,

IN SUPPORT OF

MOTION FOR INJUNCTIVE RELIEF

I, Karen Michele Sala Michaels, on my oath hereby swear and affirm as follows:

1. I now reside and have resided at 240 South Silver Lane, Sunderland, Franklin County, Massachusetts, since I purchased that property on May 14, 2004. It is my home and the home of my adolescent daughter. As a licensed massage therapist, I also use a part of the house as my home office, treating individuals.

2. On March 17, 2006, in order to refinance the loan, I 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, I granted a mortgage to MERS (Mortgage Electronic Registration System, Inc.) which I have come to learn was recorded on March 23, 2006, in the Franklin County Registry of Deeds Book 5068, at Page 114.

3. In the summer of 2008, Wells Fargo Bank, N.A. informed me that it had acquired my mortgage loan and that I should send all of my mortgage payments to it.

4. In March 2006, when I refinanced my home mortgage, I had part-time employment as a

dance instructor and licensed massage therapist. At the same time, I received three thousand dollars (\$3,000.00) per month from my ex-husband in child support for our adolescent daughter and spousal support for me.

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

6. Beginning in December 2008, I began calling and corresponding with Wells Fargo Home Mortgage in order to see what could be done to reduce my monthly mortgage payments.

7. From that time through mid-June 2009, I 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 either to prevent a default in my mortgage loan or to obtain a reduction in my monthly mortgage payments.

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

9. During the period from February through mid-June, 2009, at least six (6) times, I transmitted to Wells Fargo Home Mortgage all of the financial information and documentation that its representatives had requested.

10. In June 2009, I received a notice from Wells Fargo Bank, N.A., through its attorneys, Harmon Law Offices, indicating that it had commenced an action to foreclose on my mortgage.

11. From mid-June 2009 through October 2009, I retained an attorney to contact Wells Fargo Home Mortgage in order to obtain a modification to my mortgage terms and to prevent the foreclosure from going forward. My attorney assembled all of the financial information and documentation that Wells Fargo Home Mortgage had requested and both transmitted that material by telefax and had it

delivered by overnight delivery service.

12. During that time period, in addition to the calls and written communications that my attorney made on my behalf, I 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, as well as seeking to stop the foreclosure action.

13. From the end of October through the end of November 2009, I called Wells Fargo Home Mortgage four (4) times and the HUD Certified Counselor called at least once. Again, all of those calls were made in an attempt to advance my mortgage loan modification application.

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

15. On November 20, 2009, Wells Fargo Home Mortgage sent a letter to me informing me that I had been approved for the temporary loan modification phase of HAMP, the Trial Period Plan. Under the Trial Period Plan, I 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.)

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

17. I 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.

18. During the period from January 7, 2010, through June 4, 2010, I also called Wells Fargo Home Mortgage no fewer than eleven (11) times. Within the first six months of 2010, I 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.

19. On June 3, 2010, I called Wells Fargo Home Mortgage to provide my monthly financial update over the telephone and to inform Wells Fargo Home Mortgage that I would be transmitting my monthly financial information and documentation by telefax. During that telephone conversation the Wells Fargo Home Mortgage representative informed me that Wells Fargo Home Mortgage had denied my application for a permanent loan modification because, according to its records, my income was too low to support the modified mortgage payment.

20. The Wells Fargo Home Mortgage representative informed me that the file indicated my gross monthly income was approximately two thousand two hundred forty-three dollars (\$2,243.00). That figure represented only about fifty-five percent (55%) of my true current gross monthly income.

21. That was the first time that a Wells Fargo Home Mortgage representative had informed me that Wells Fargo Home Mortgage considered my gross monthly income to be only \$2,243.00. Then and each and every later time that a Wells Fargo Home Mortgage representative expressed that erroneous information to me, I 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 my mortgage loan modification application on my correct gross monthly income, which is approximately four thousand dollars (\$4,000.) per month.

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

23. During approximately that same time period, Wells Fargo Home Mortgage received financial information and documentation from me or from someone representing me at least twenty-four (24) times.

24. The most recent examples of correspondence that Wells Fargo Home Mortgage sent to me is a letter dated July 5, 2010, which I received on July 12, 2010, in which Wells Fargo Home Mortgage (in Des Moines, Iowa) asked me to gather together information and documentation showing (a) monthly gross income, (b) additional household income, (c) current monthly expenses, and (d) the reason for my financial hardship and then to call Wells Fargo Home Mortgage once again. (A true and exact copy of that two-page letter is attached to the Complaint as Exhibit C.)

25. Five days later, on July 17, 2010, I received a letter dated July 8, 2010, from Wells Fargo Home Mortgage (in Fort Mill, South Carolina) in an envelope post marked July 14, 2010. That letter outlined several options that might be available to avoid mortgage foreclosure and it also forwarded a Financial Worksheet. In addition, that letter asked me 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.) I did so as soon as I possibly could.

26. On the same day, July 17, 2010, I 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.)

27. On July 13, 2010, Wells Fargo Home Mortgage (in Des Moines, Iowa) sent a letter to me, which I received on July 19, 2010. That letter asked me to "gather all financial information related to [my] 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.)

28. On July 15, 2010, Wells Fargo Home Mortgage (in Des Moines, Iowa) sent me a letter, which I received on July 20, 2010. By that letter, Wells Fargo Home Mortgage returned to me my

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.)

29. In response to that letter, on July 20, 2010, I wrote yet another letter of explanation to Wells Fargo Home Mortgage reiterating that I 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 my gross monthly income at \$2,243.00, or approximately 55% of my actual gross monthly income; that I had complied with the many requests for financial information and documentation that Wells Fargo Home Mortgage lost or ignored; and that I 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.) On July 23, 2010, by telefax, I sent to Wells Fargo Home Mortgage that letter along with all of the financial information and documentation that it had requested.

30. When I received the letter dated November 20, 2009, informing me that I had been accepted into the Trial Period Plan, I was very pleased. I was especially gratified that the papers told me that if I successfully completed the three-month trial period, I would be granted a permanent loan modification. Also, among the statements that I read in that letter, was the question and answer in the Frequently Asked Questions section, which stated:

**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)

31. Also, through its Trial Period Plan, 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).

32. I have fulfilled all of the criteria to be eligible for a permanent loan modification under HAMP and I have satisfied all of my 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. Wells Fargo Home Mortgage has refused to accept the August payment, which I sent on July 12, 2010, and returned it to me. (See Exhibit G)

33. 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 until June 11, 2010, when I received a letter dated June 3, from Wells Fargo Home Mortgage saying that I had been rejected for the permanent mortgage loan modification.

34. Notwithstanding that letter, on June 14, 2010, I sent to Wells Fargo Home Mortgage by overnight delivery my Trial Period Plan Agreement modified mortgage loan payments of one thousand three hundred seventeen dollars and fifty cents (\$1,317.50) for the month of July, which was accepted by Wells Fargo Home Mortgage.

35. To date, Wells Fargo Home Mortgage has not offered me a Permanent Loan Modification Agreement under the HAMP guidelines; instead, Wells Fargo Home Mortgage is proceeding with a mortgage foreclosure auction sale scheduled for Friday, August 6, 2010, at 12:00 PM.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY  
THIS 5<sup>TH</sup> DAY OF AUGUST 2010

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KAREN MICHELE SALA MICHAELS