

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

KAREN MICHELE SALA MICHAELS,

Plaintiff,

v.

WELLS FARGO HOME MORTGAGE,
a division of WELLS FARGO BANK, N.A.,

Defendant

Civil Action No. 3:10-cv-11471-MAP

AFFIDAVIT OF FRANCIS K. MORRIS, PLAINTIFF'S COUNSEL,
IN SUPPORT OF
MOTION FOR PRODUCTION OF DOCUMENTS
AND
TO CONTINUE THE HEARING ON THE PLAINTIFF'S MOTION TO DISMISS

I, Francis K. Morris, on my oath hereby swear and affirm as follows:

1. I am a member of the bar of the Supreme Judicial Court of the Commonwealth of Massachusetts and a member of the bar of the United States District Court for the District of Massachusetts, and I am counsel for the plaintiff, Karen Michele Sala Michaels, in this action.

2. On December 2, 2010, I wrote to Attorney Heather L. Bennett, counsel for defendant, Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. With that letter, I sent to Ms. Bennett copies of the plaintiff's most recent financial information, which included photocopies of the plaintiff's bank statements and child support and spousal support checks from her former husband. (A true and exact copy of that letter, but not of any of the financial documentation, is attached to this affidavit as Exhibit K.)

3. On December 2, 2010, I provided the plaintiff's most recent financial

information in order both to supplement the plaintiff's financial documentation that I had sent on October 19, 2010 to Attorney Jeffrey Patterson and to comply with this Court's advice "to insure an accurate and complete exchange of documents on both sides."

4. On December 7, 2010, I telephoned Ms. Bennett and asked her if she had received my letter of December 2, 2010, and if her client required any additional documentation or further information from the plaintiff. Ms. Bennett told me that she was not aware of anything further required of the plaintiff. However, she would be speaking with Wells Fargo Home Mortgage later in the week, and if there was anything else that the defendant thought was necessary, Ms. Bennett would let me know.

5. On December 9, 2010, I again wrote to Ms. Bennett. I sent that letter to Ms. Bennett both by fax and by U.S. mail. In that letter, I confirmed the point that when Ms. Bennett and I spoke on December 7, she was not aware of any other document that Wells Fargo Home Mortgage required from the plaintiff. Also in that letter I informed Ms. Bennett that pursuant to the Order of this Court, I paid the Town of Sunderland real estate tax bill from the Western Massachusetts Legal Services IOLTA account, and I enclosed copies of the tax bill and the check.

6. Also in my letter of December 9, 2010, pursuant to the advice of this Court "to insure an accurate and complete exchange of documents on both sides," I requested four categories of documents relevant to the issues presently before the Court. (A true and exact copy of that letter, with the loan number redacted, is attached to this affidavit as Exhibit L.) Those four requests are:

1. All documents showing the components, elements, and calculations used to determine the Trial Period Plan offered by Wells Fargo Home Mortgage to Karen M. S. Michaels on November 20, 2009.

2. All documents showing the components, elements, and calculations used to determine, in May, June or July, 2010, that Karen M. S. Michaels was not able to continue to make the temporary payment plan modified loan payments to Wells Fargo Home Mortgage.

3. All correspondence, including all internal communications, concerning the Wells Fargo Home Mortgage loan (loan number [REDACTED]) during the period from June 1, 2010 until the present.

4. All correspondence, including all internal communications, leading to the e-mail message from Attorney Scott C. Owens stating: "My contact at Wells Fargo . . . has also reviewed his notes and has confirmed that the issue appears to be that the self employment income was not factored into your client's gross income for the purposes of HAMP calculations."

7. On December 10, 2010, I received a letter from Attorney Heather Bennett dated December 10, 2010, in which she stated that Wells Fargo Home Mortgage would not exchange any documents with the plaintiff, that according to her client the plaintiff no longer had an active HAMP application pending, that the defendant refused to review or consider any of the financial documentation that Ms. Michaels had submitted, even the documents submitted on December 2, and that Wells Fargo Home Mortgage had set a deadline of Monday, December 27 for the plaintiff to reapply for a mortgage loan modification and submit all of the financial documentation that Wells Fargo Home Mortgage required. (A true and exact copy of that letter is attached to this affidavit as Exhibit M.)

8. On December 15, 2010, I wrote to Ms. Bennett, responding to her letter of December 10, 2010, explaining to her that the position that Wells Fargo Home Mortgage had taken was absolutely contrary to the advice of the Court, that Wells Fargo Home Mortgage had not previously asserted, either before the Court or with me, the positions it was taking through her letter, and asking that her client reconsider its position and agree to exchange documents with the plaintiff. (A true and exact copy of that letter is attached

to this affidavit as Exhibit N.)

9. On December 20, 2010, because I had not heard from counsel for Wells Fargo Home Mortgage, I called Attorney Bennett. During that conversation, Ms. Bennett told me that she had received my letter of December 15, 2010, but that she had not spoken with Wells Fargo Home Mortgage with respect to that letter. Ms. Bennett also said that with the approaching holidays, she expected that it might be difficult to speak with her client. Although Ms. Bennett could not offer me a date certain by which she could speak with her client, she said that the December 27, 2010 deadline set in her letter of December 10, 2010 could not be changed.

10. Attorney Bennett could not tell me whether Wells Fargo Home Mortgage would change its position and agree to produce to the plaintiff the documents that I had requested.

11. During that telephone conversation, I told Attorney Bennett that I considered our discussion to fulfill my obligation, under Local Rule 7.1, to confer and attempt in good faith to resolve or narrow the issue. Ms. Bennett told me that she would try to contact her client and call me later that day.

12. That evening, on December 20, 2010, I received an e-mail message from Attorney Jeffrey Patterson, counsel for the defendant, seeking to schedule a Local Rule 7.1 conference. I responded to Mr. Patterson's e-mail message later that evening, and he replied on December 21, 2010, setting the date and time for the Local Rule 7.1 conference on Thursday, December 23, 2010, at 10:30 AM. (A true and exact copy of that chain of e-mail messages, with the telephone number and pass code redacted, is attached to this affidavit as Exhibit O.)

13. On Thursday, December 23, 2010, I called Attorney Patterson. With him were Attorney Bennett and Attorney Patrick Clendenen. During that telephone conference, we discussed this Court's Order of November 24, 2010, and letters exchanged during December, 2010, and the documents that the plaintiff had produced to date.

14. During more than 45 minutes of discussion, the parties' positions came into sharper focus. First, instead of requiring all of the documents listed in Attorney Bennett's letter of December 10, Wells Fargo Home Mortgage insisted that the plaintiff provide (1) an updated profit and loss statement through November 2010, or year-to-date, (2) proof of child support payments correlated to bank statements and deposit receipts, and (3) a certification with respect to all documents submitted to date were accurate and complete. With the plaintiff's submission of those documents, then Wells Fargo Home Mortgage would review the plaintiff's loan modification to determine if she qualified for a loan modification.

15. Second, Wells Fargo Home Mortgage would not provide any of the documents that the plaintiff had requested in the letter of December 9, 2010.

16. I explained to Attorney Patterson, Attorney Bennett, and Attorney Clendenen that I would convey Wells Fargo Home Mortgage's position to my client and I would call him the next week.

17. On Monday, December 27, 2010, after having conferred with the plaintiff, I called Attorney Patterson, but due to the snowstorm his office was closed. I called again on Tuesday, December 28, 2010, and Mr. Patterson returned my call later that morning. When Mr. Patterson and I spoke, I explained that the plaintiff would provide the three

categories of documents to Wells Fargo Home Mortgage but I expected the defendant to produce the documents that I had requested in my letter of December 9, 2010.

18. Attorney Patterson took the position that Wells Fargo Home Mortgage had no obligation to provide the documents requested because all such documents were beyond the scope of this Court's Order and not relevant to the focus of a HAMP application for a loan modification. The documents requested, he asserted, have nothing to do with the plaintiff's request for a permanent loan modification. However, he wanted to speak with his client to ascertain if Wells Fargo Home Mortgage would reconsider its position. He promised to contact me after he had spoken to Wells Fargo Home Mortgage.

19. This afternoon, at about 2:10, I received an e-mail message from Attorney Jeffrey Patterson in which he wrote that "it would be a waste of time and money and not in compliance with the Court's direction to spend time gathering documents and information . . ." (A true and exact copy of that e-mail message is attached to this affidavit as Exhibit P.)

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 7th DAY OF JANUARY 2011

/s/ Francis K. Morris
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CERTIFICATE OF SERVICE

I, Francis K. Morris, 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 Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this date.

January 7, 2011

/s/ Francis K. Morris
