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11 of All Others Similarly Situated

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CENTRAL DIST. OF CALIF.  
SANTA ANA

12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **SOUTHERN DIVISION**

16 JEAN C. WILCOX, MICHELE  
17 HOOD, ROBERT HOOD, and  
18 SHARIE GREEN, Individually and on  
Behalf of All Other Consumers  
19 Similarly Situated,

20 Plaintiffs,

21 vs.

22  
23 EMC MORTGAGE CORPORATION,  
a Delaware corporation; J.P.  
24 MORGAN CHASE BANK, N.A., a  
25 Delaware corporation; DOES 1  
through 100, inclusive,

26 Defendants.  
27  
28

CASE NO. 8:10-CV-01923-DOC (JCG)

[Hon. David O. Carter]  
PUTATIVE CLASS ACTION

**THIRD AMENDED COMPLAINT**

- (1) **VIOLATION OF CALIFORNIA FAIR DEBT COLLECTION PRACTICES ACT [CIVIL CODE § 1788.2]**
- (2) **UNLAWFUL, UNFAIR AND DECEPTIVE BUSINESS PRACTICES [CAL. BUS. & PROF. CODE § 17200 ET SEQ.]**
- (3) **BREACH OF CONTRACT**
- (4) **FRAUD**
- (5) **PROMISSORY ESTOPPEL**

1 Plaintiffs Jean C. Wilcox (“Wilcox”), Michele Hood and Robert Hood (“the  
2 Hoods”), and Sharie Green (“Green”), acting individually and on behalf of all other  
3 persons similarly situated and in the public interest, hereby allege as follows as against  
4 defendant EMC Mortgage Corporation, a Delaware corporation (“EMC”) and J.P.  
5 Morgan Chase Bank, N.A., a Delaware corporation (“Chase”):

6 **SUMMARY OF ACTION**

7 1. Plaintiffs bring this action on behalf of themselves and a class of all  
8 similarly situated consumers pursuant to a variety of California statutes, including the  
9 Consumers Legal Remedies Act and Unfair Competition Law, plus common law causes  
10 action.

11 2. Defendants EMC and Chase are in the business of servicing mortgage loans  
12 on behalf of lenders and investors, including “pooled” mortgage-backed security  
13 investments. This complaint seeks to remedy EMC and Chase’s unlawful acts in  
14 servicing mortgage loans, summarized as follows:

- 15 a) repeatedly failing to grant, implement, or consider in good  
16 faith or in a timely manner, plaintiffs’ requests for loan  
17 modifications, including misrepresenting the requirements for  
18 achieving permanent loan modifications and the status of loan  
19 modification applications;
- 20 b) requesting and accepting interim debtor payments as a  
21 “condition” for promised permanent loan modifications, under  
22 temporary modifications or Trial Period Plans (“TPPs”),  
23 without any reasonable basis to believe that the loans would be  
24 permanently modified, and without taking diligent or  
25 reasonable steps to implement loan modifications or even to  
26 consider the borrowers’ applications as promised;
- 27 c) systematically and continually erecting artificial obstacles in  
28 the loan modification process (such as repeatedly “losing”

1 borrower documents; rotating personnel assigned to borrower  
2 files; altering modification requirements; making duplicate  
3 requests for the same documents; delaying the modification  
4 approval process and then rejecting applications on grounds  
5 that submitted documents were “stale” or outdated; and  
6 engaging in similar “red tape”) with the intent of obstructing,  
7 delaying, or preventing permanent loan modifications;

8 d) misrepresenting the amounts due under and the terms of the  
9 loans being serviced, including unlawfully applying mortgage  
10 payments or otherwise holding payments in “suspense  
11 accounts,” resulting in improperly escalated debt obligations,  
12 including interest and other unlawful charges;

13 e) instructing loan modification applicants to stop making their  
14 existing mortgage payments purportedly as a prerequisite to  
15 qualifying for a loan modification, thereby subjecting such  
16 applicants to additional financial jeopardy including  
17 foreclosure, risk of foreclosure, late payment fees or penalties,  
18 and negative references on credit histories;

19 f) inducing borrowers to participate in temporary modifications,  
20 TPPs, and/or forbearance agreements, then diverting payments  
21 made by borrowers to a “suspense account,” which is not  
22 applied to the borrowers’ principal or interest, then reporting  
23 borrowers as delinquent to credit reporting agencies, thus  
24 destroying their credit and leaving borrowers at the mercy of  
25 defendants’ loan modification hoax;

26 g) improperly recording notices of default regarding mortgage  
27 loans, initiating unlawful foreclosure actions, and causing  
28

1 improper reconveyance fees and other charges to be assessed;

2 and,

3 h) knowingly and intentionally maintaining a system of employee  
4 compensation incentives that assured employees would be  
5 motivated to act in contravention of defendants' obligations to  
6 it's borrowers.

7 3. Through their orchestrated loan modification hoax, EMC and Chase have  
8 induced consumers, including plaintiffs, to continue making excess or other unjustified  
9 payments in pursuit of illusory permanent loan modifications. EMC and Chase have  
10 thereby avoided or delayed the need to initiate, prosecute, and conclude multiple  
11 foreclosures (which might tax or exceed their available resources); and have avoided the  
12 need to liquidate excessive and under-valued real estate inventory, whether REO or  
13 otherwise (again beyond available resources).

14 4. In engaging in this scheme, defendants have increased profits through  
15 escalated loan servicing fees. Under defendants' Pooling & Servicing Agreements, they  
16 receive a higher fee per loan for servicing delinquent or distressed loans.

17 5. Defendants' conduct has artificially bolstered their financial statements,  
18 both on their own behalf and on behalf of their clients (lenders and investors), by  
19 minimizing mandatory reporting of defaulted or distressed loans.

20 6. Defendants' practice of cruelly stringing along homeowners who  
21 desperately need financial relief, while ultimately failing to provide them with  
22 permanent loan modifications, has been aptly characterized as a scheme of "**extend &**  
23 **pretend.**" This is not a product of mere negligence but rather is an intentional scheme  
24 with the foreseeable and known effect of harming consumers.

25 **PARTIES**

26 7. Plaintiff Jean C. Wilcox resides in Irvine, located in the County of Orange,  
27 State of California. Her mortgage loan has been serviced by defendant EMC for several  
28 years. Wilcox is herein suing only EMC, not Chase. Wilcox suffered injury in fact and

1 was otherwise damaged as a result of the unlawful conduct of defendant EMC as  
2 described herein.

3 8. Plaintiffs Robert and Michele Hood reside in Irvine, located in the County  
4 of Orange, State of California. Their mortgage lender or investor is Chase. Their loan  
5 has been serviced by EMC since January, 2009 (EMC Loan Number 0003859485), and  
6 was previously serviced by Chase. The Hoods suffered injury in fact and were  
7 otherwise damaged as a result of the unlawful conduct of defendants as described  
8 herein.

9 9. Plaintiff Sharie Lee Green resides in Marina Del Ray, located in the County  
10 of Los Angeles, State of California. Her mortgage lender or investor is Chase, and her  
11 loan has been serviced by Chase (Chase Loan Number 1749934819). Ms. Green  
12 suffered injury in fact and was otherwise damaged as a result of the unlawful conduct of  
13 defendants as described herein.

14 10. EMC was a wholly owned subsidiary of Bear Stearns. Bear Stearns was  
15 acquired by, and is now owned by, J.P. Morgan Chase, NA. Thus, EMC is now a  
16 wholly owned subsidiary of Chase. EMC is headquartered in Lewisville, Texas, with its  
17 principal executive offices in California located in the County of Orange, City of Irvine.

18 11. Chase is both a lender and a loan servicer. Some of Chase's loans are  
19 serviced in-house by Chase, and others are serviced by its subsidiary, EMC. Chase is  
20 headquartered at 270 Park Avenue, New York, NY 10017-2014, with its principal  
21 executive offices in California located at 560 Mission Street San Francisco, CA.  
22 Plaintiffs allege, based on information and belief, that EMC and Chase are among the  
23 nation's largest mortgage loan servicing companies.

24 12. Plaintiffs are informed and believe, and based thereon allege, that DOES 1  
25 through 100 are persons, corporations or other entities which reside in or are authorized  
26 to do and are doing business in the State of California, and who are liable in whole or in  
27 part for the misconduct described in this complaint. The true identities of these DOES  
28

1 are currently unknown to plaintiffs, and plaintiffs therefore pray for leave to amend this  
2 complaint to assert the proper names when their identity is discovered.

3 **JURISDICTION AND VENUE**

4 13. This is an action for damages, equitable, injunctive and other appropriate  
5 relief arising under various California statutes, including the Consumers Legal  
6 Remedies Act and Section 17200 of the California Business & Professions Code, and  
7 under California common law.

8 14. The amount in controversy exceeds the jurisdictional minimum for this  
9 court. The unlawful acts and practices alleged herein occurred in, or concern, the  
10 County of Orange, State of California. Defendants EMC and Chase are qualified to do  
11 business in the State of California, and conduct substantial business in the State of  
12 California, specifically including the County of Orange. Some of the subject real estate  
13 at issue is located in the County of Orange, as is EMC's principal executive office in  
14 California, and many of the events giving rise to this action occurred primarily in the  
15 County of Orange. Jurisdiction and venue are therefore appropriate in this court.

16 **FACTUAL SUMMARY**

17 ***I. THE HAMP PROGRAM***

18 15. The United States is suffering through an extended foreclosure crisis.  
19 Increased foreclosures adversely affect not only the borrowers who lose their homes, but  
20 also the surrounding neighborhoods that suffer decreased property values and the  
21 municipalities that lose tax revenues. Congress therefore passed the Emergency  
22 Economic Stabilization Act of 2008 on October 3, 2008, and amended it with the  
23 American Recovery and Reinvestment Act of 2009 on February 17, 2009 (collectively,  
24 the "Act"), 12 U.S.C.A. §5201 et. seq.

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

1 17. The Act grants the Secretary of Treasury the authority to establish the  
2 Troubled Asset Relief Program, or TARP. 12 U.S.C. §5211. Under TARP, the  
3 Secretary may purchase troubled assets from financial institutions. *Id.* Congress  
4 allocated up to \$700 billion to the United States Department of Treasury for TARP. 12  
5 U.S.C. § 5225.

6 18. In exercising its authority to administer TARP, the Act mandates that the  
7 Secretary take into consideration the “need to help families keep their homes and to  
8 stabilize communities.” 12 U.S.C. § 5213(3).

9 19. With regard to any assets acquired by the Secretary that are secured by  
10 residential real estate, the Act mandates that the Secretary “shall implement a plan that  
11 seeks to maximize assistance for homeowners” and use the Secretary’s authority over  
12 loan servicers to encourage them to take advantage of programs to “minimize  
13 foreclosures.” 12 U.S.C.A. § 5219.

14 20. On February 18, 2009, pursuant to the Act, the Treasury Secretary and the  
15 Director of the Federal Housing Finance Agency announced the Making Home  
16 Affordable Program.

17 21. The Making Home Affordable program consists of two sub-programs. The  
18 first sub-program concerns the creation of re-financing products for individuals with  
19 minimal or negative equity in their home, and is now known as the Home Affordable  
20 Refinance Program, or HARP. The second sub-program concerns the creation and  
21 implementation of a uniform loan modification protocol, and is now known as the Home  
22 Affordable Modification Program, or HAMP.

23 22. HAMP is funded by the federal government, primarily with TARP funds.  
24 The Treasury Department has allocated at least \$75 billion to HAMP, of which at least  
25 \$50 billion is TARP money.

26 23. Under HAMP, the federal government incentivizes participating loan  
27 servicers to modify existing mortgage obligations for struggling homeowners in order to  
28 make their monthly payments more affordable – and thereby reduce foreclosures.

1           24.    Should a loan servicer elect to participate in HAMP, it must execute a  
2    Servicer Participation Agreement (“SPA”) with the federal government. Chase and  
3    EMC *both* executed SPAs, thereby making them participating servicers in HAMP.

4           25.    The SPAs incorporate all guidelines, procedures and “supplemental  
5    documentation, instructions, bulletins, frequently asked questions, letters, directives, or  
6    other communications” issued by the Treasury, Fannie Mae or Freddie Mac. These  
7    documents together are known as the “Program Documentation.”

8           26.    The SPA states that a Participating Servicer “shall perform” the activities  
9    described in the Program Documentation “for all mortgage loans it services.”

10          27.    The Program Documentation requires Participating Servicers to evaluate all  
11    loans which are 60 or more days delinquent for HAMP modifications. In addition, if a  
12    borrower contacts a Participating Servicer regarding a HAMP modification, the  
13    Participating Servicer must collect income and hardship information to determine if  
14    HAMP is appropriate.

15          28.    A HAMP modification consists of two stages. First, a Participating  
16    Servicer is required to gather information and, if appropriate, offer the homeowner a  
17    TPP (Trial Period Plan). The TPP consists of a time frame, typically a three-month  
18    period, in which the homeowner makes mortgage payments based on a formula utilizing  
19    the initial financial information provided. The monthly mortgage payments under a TPP  
20    are lower than the borrower’s monthly payments under the ordinary mortgage contract.

21          29.    Chase and EMC offer TPPs to eligible homeowners, often but not always,  
22    by way of a TPP Agreement, which describes the homeowner’s duties and obligations  
23    under the plan and promises a permanent HAMP modification for those homeowners  
24    who execute the TTP and fulfill certain documentation and payment requirements. If  
25    the homeowner executes the TPP Agreement, complies with all documentation  
26    requirements and makes all TPP monthly payments, the second stage of the HAMP  
27    process is supposed to be triggered, in which the homeowner is offered a permanent  
28



1 modification. In reality, defendants are ignoring the HAMP guidelines and allowing  
2 TPPs to continue for months or years beyond the three month trial period.

3 30. Michele and Robert Hood and Sharie Green were qualified under the  
4 HAMP Program, but were never offered an appropriate permanent loan modification,  
5 and were kept in an indefinite cycle of TPPs and forbearance agreements. Although Ms.  
6 Wilcox did not apply for a loan modification pursuant to HAMP (her loan balance was  
7 too large), plaintiffs believe that the defendants process loan modification applications  
8 in the same manner and with the same core protocols, whether or not HAMP is  
9 applicable.

10 31. Defendants have routinely failed to offer or process loan modification  
11 applications – in violation of TPP Agreements and other written agreements. In  
12 January 2010, the U.S. Treasury reported that Chase had 424,965 HAMP-eligible loans  
13 in its portfolio. Of these loans, just 7,139 resulted in permanent modifications  
14 (approximately 1.7%), although many more homeowners had made the payments and  
15 submitted the documentation required by the TPP Agreement.

16 32. By failing to comply with their obligations under the TPP Agreements, and  
17 by failing to timely convert TPPs into permanent modifications or process loan  
18 modification applications in good faith, defendants are forcing homeowners into a state  
19 of anxiety and uncertainty, wondering if their homes can be saved, and inducing them to  
20 pay “trial payments” or “forbearance payments” indefinitely. Further, defendants are  
21 preventing homeowners from pursuing other avenues of resolution, including using the  
22 money they are putting toward TPP payments to fund relocation costs, short sales,  
23 bankruptcy, or other means of curing their default. These “*extend & pretend*” practices  
24 are deceptive and unlawful.

## 25 ***II. JEAN C. WILCOX***

### 26 ***Wilcox – Purchase Money Loan***

27 33. On or about November 4, 2004, Wilcox purchased a newly built single  
28 family residence, located in Irvine, California (the “Residence”) for occupancy by

1 Wilcox and her family. The Residence was purchased directly from its developer, and is  
2 located in the City of Irvine, County of Orange, State of California.

3 34. As a condition of the purchase, the developer required that Wilcox obtain  
4 her purchase money financing from a lender of the developer's choice. That lender was  
5 Washington Mutual Bank ("WAMU").

6 35. Wilcox was approved for the purchase money financing by WAMU. The  
7 terms of the WAMU purchase money loan entailed, among other things, an "Option  
8 ARM" feature that allowed for negative amortization of accrued interest. Negative  
9 amortization occurs when the loan payment for any period is less than the interest  
10 charged over that period, so that the outstanding balance of the loan increases. The  
11 difference between accrued interest and accrued interest plus principal is then added to  
12 the total principal owed on the loan. That feature was disadvantageous to Wilcox's goal  
13 of one day owning the Residence free and clear.

14 36. Following Wilcox's purchase of the Residence, she made substantial  
15 improvements to its interior and exterior, thereby increasing its market value.

16 ***Wilcox - Refinance of the Purchase Money Loan***

17 37. On or about January 15, 2007, Wilcox refinanced her WAMU purchase  
18 money loan with a new one (the "Loan") from Fremont Investment and Loan, which is  
19 now a dissolved corporation. Due to plaintiff's self-employment income and FICO  
20 score, her loan was categorized as "sub-prime" and the Loan's interest rate and terms  
21 were aggressively set by the lender. Under the terms of the Loan, the interest rate could  
22 never fall below 8.34% regardless of how low market interest rates declined.

23 38. A few months after the funding of the Loan, Wilcox was notified that the  
24 Loan had been sold and that EMC was the new "servicer" to which Wilcox was to make  
25 payments, until further notification. Wilcox was not informed of the identity of the new  
26 holder of the Loan. Plaintiff's Loan was registered pursuant to the Mortgage Electronic  
27 Registration Systems, Inc. ("MERS") system of registration that was and continues to be  
28

1 utilized by lenders as a means of transferring loans that are held in pooled mortgage-  
2 backed securities investments.

3 ***Wilcox - First Temporary Loan Modification***

4 39. Beginning in or about the summer of 2007, Wilcox began experiencing  
5 difficulty in collecting accounts receivables that were due her, as a self-employed  
6 lawyer. At the same time, she saw an increase in her family expenses, notably, college  
7 expenses. Consequently, Wilcox fell behind in her payments on the Loan.

8 40. In late October 2007, Wilcox contacted EMC concerning a modification of  
9 the Loan. At the time, her payments were due for September and October of 2007. An  
10 individual with EMC who identified himself as "Mr. Edwards" indicated that EMC was  
11 receptive to modifying the Loan, specifically including a reduction in the interest rate,  
12 which by then was substantially above market rates.

13 41. Also in late October 2007, Wilcox terminated her self-employment and  
14 obtained W-2 employment that enabled her to earn a fixed and steady income.

15 42. On November 6, 2007, Wilcox and EMC entered into a written agreement  
16 (hereinafter referred to as the "First Temporary Loan Modification"). Mr. Edwards  
17 advised Wilcox that the Loan would be permanently modified, provided she complied  
18 with the payment terms under the First Temporary Loan Modification. Under the terms  
19 of the First Temporary Loan Modification agreement, Wilcox agreed to make six  
20 payments commencing November 9, 2007. The First Temporary Loan Modification  
21 payments were significantly less than the payments required under the original terms of  
22 the Loan. Mr. Edwards informed Wilcox that the six payments would be automatically  
23 debited from plaintiff's banking account. Mr. Edwards further instructed Wilcox that  
24 she must cease payment of her credit card balances.

25 43. In reliance upon the enforceability of the First Temporary Loan  
26 Modification agreement, and according to its terms, Wilcox made the first of the  
27 anticipated six payments to EMC on or about November 9, 2007, in the amount of  
28 \$4,200.

1 44. When the second payment under the First Temporary Loan Modification  
2 agreement was not auto-debited from plaintiff's bank account, Wilcox immediately  
3 called EMC, on December 18, 2007, and this time was connected with a woman who  
4 identified herself as "Shawana." Shawana informed Wilcox that EMC could not auto-  
5 debit her banking account and that the First Temporary Loan Modification was not  
6 being reflected in EMC's system, although the November 9th payment had been  
7 received. Shawana also repeated the instruction that Wilcox should not make payments  
8 on her credit card balances, as that would prevent the Loan from being modified.  
9 During this conversation, Wilcox was repeatedly placed on "hold" for long periods of  
10 time while Shawana represented she was speaking with her supervisor.

11 ***Wilcox - Second Temporary Loan Modification***

12 45. By the conclusion of plaintiff's December 18, 2007 conversation with  
13 Shawana (EMC), the terms of a Second Temporary Loan Modification agreement had  
14 been structured. Again, Shawana, as with Mr. Edwards, advised Wilcox that after "two  
15 or three months" of making the payments set forth in the Temporary Loan Modification  
16 agreement, the Loan would be permanently modified. Wilcox agreed to the terms of the  
17 Second Temporary Loan Modification and Shawana promised to send a written  
18 agreement memorializing its terms. This was the only conversation Wilcox had with  
19 Shawana.

20 46. In addition, around this time, Wilcox listed her Residence for sale. Wilcox  
21 received an offer to purchase the Residence, but she did not accept the offer or open  
22 escrow because she reasonably believed that EMC would modify the Loan.

23 47. Pursuant to the directives initially given to Wilcox by EMC, Wilcox ceased  
24 making payments on her credit cards and any other unsecured debt. Consequently, with  
25 the missed payments on the Loan and the missed payments on her credit cards and other  
26 debts, plaintiff's FICO credit score fell dramatically.

27 48. Soon after December 19, 2007, and before the Second Temporary Loan  
28 Modification agreement had been received by Wilcox, Wilcox received un-signed

1 correspondence from EMC wherein EMC notified Wilcox that the Loan had been  
2 referred to a trustee for foreclosure. This notification was entirely inconsistent with the  
3 conversation Wilcox had with Shawana of EMC on December 18, 2007. Accordingly,  
4 on December 26, 2007, Wilcox called the trustee identified in the correspondence, Cal-  
5 Western Reconveyance, and spoke with a man who identified himself as "John  
6 Godfrey." Wilcox advised Mr. Godfrey of the Second Temporary Loan Modification  
7 that was in process with EMC and Wilcox understood, based on the conversation, that  
8 no further action would be taken by Cal-Western Reconveyance because the foreclosure  
9 notification had been a mistake on the part of EMC.

10 49. On December 28, 2007, Wilcox contacted EMC again because she had not  
11 received the agreement by which the Second Temporary Loan Modification would be  
12 documented. During this call Wilcox was transferred to "Kevan Jaskula." Mr. Jaskula  
13 then sent to Wilcox by facsimile a "Repayment Agreement" that set forth the terms of  
14 the Second Temporary Loan Modification. Wilcox promptly executed the "Repayment  
15 Agreement" and returned it to EMC. Pursuant to the terms of the "Repayment  
16 Agreement," which set forth the Second Temporary Loan Modification, Wilcox was to  
17 pay monthly payments of \$4,236 to EMC. Pursuant to the "Repayment Agreement,"  
18 Wilcox caused the required down payment thereunder, \$4,000, to be wired to EMC on  
19 December 28, 2007.

20 ***Wilcox - Secret Notice of Default***

21 50. Unbeknownst to Wilcox, and contrary to her written "Repayment  
22 Agreement" with EMC (which set forth the Second Temporary Loan Modification), and  
23 contrary to her conversation with Mr. Godfrey of Cal-Western Reconveyance, a Notice  
24 of Default was secretly recorded against plaintiff's Residence by EMC on December 27,  
25 2007. The Notice of Default was "secretly" recorded because at no time did EMC or  
26 Cal-Western Reconveyance cause to be served on Wilcox a copy of the Notice of  
27 Default by certified or registered mail, in violation of California Civil Code section  
28 2924b(b)(1).

1           51. At the time the Notice of Default was secretly recorded, the principal  
2 amount owing on the Loan was approximately \$800,000 and plaintiff's Residence had a  
3 fair market value well in excess of \$1 million. Also, plaintiff's Residence was still  
4 listed for sale on the MLS.

5           52. On December 29, 2007, Wilcox received from EMC by facsimile a copy of  
6 correspondence that Cal-Western Reconveyance had sent to EMC on December 28,  
7 2007, which set forth the fees that would be charged for Cal-Western Reconveyance's  
8 services in handling a foreclosure under the Loan. The correspondence appeared to be  
9 preliminary. Immediately upon receipt of the correspondence, on December 31, 2007,  
10 Wilcox called Cal-Western Reconveyance and spoke with a man who identified himself  
11 as "Mr. Albert." He advised that the Notice of Default had been sent for recording, but  
12 he did not know if it had yet been recorded, and that the statutory mailing of the Notice  
13 of Default would not take place until after it was recorded. Wilcox informed Mr. Albert  
14 that this was a mistake – as she was paying EMC pursuant to the Second Temporary  
15 Loan Modification as described in the "Repayment Agreement." Mr. Albert stated that  
16 most of the fees could be avoided if EMC directed Cal-Western Reconveyance to close  
17 the file.

18           53. Immediately following plaintiff's conversation with Mr. Albert, she wrote  
19 to Mr. Jaskula at EMC and demanded that EMC instruct Cal-Western Reconveyance to  
20 close its file and cancel any Notice of Default, because it had been an error on the part of  
21 EMC. Later that same day, Wilcox spoke with Mr. Jaskula, who confirmed that EMC's  
22 system was reflecting that the Loan was in a "repayment program" and that the Notice  
23 of Default and any related fees with Cal-Western Reconveyance would be "backed-out."

24           54. On January 2, 2008, Wilcox called Cal-Western Reconveyance and spoke  
25 with a man who identified himself as "Alberto Ponce." Mr. Ponce informed Wilcox that  
26 he did not know if any action had yet been taken by Cal-Western Reconveyance, but  
27 that his records showed the matter had been placed "on hold." Based on plaintiff's  
28 conversations with EMC and Cal-Western Reconveyance, and the fact that she had

1 never been served with a copy of the Notice of Default via certified mail, she was  
2 informed and reasonably believed that the Notice of Default had never been recorded  
3 and that Cal-Western Reconveyance was not taking any further action, pursuant to  
4 EMC's directives.

5 55. Pursuant to the Second Temporary Loan Modification, Wilcox made  
6 monthly payments to EMC in January, February and March 2008.

7 56. After listing her home again, Wilcox accepted another offer on the home,  
8 and an escrow was opened. (Although the home was not "under water" at that time, the  
9 only equity remaining in the home was an amount sufficient to cover estimated closing  
10 costs of a sale.) However, Ms. Wilcox cancelled the escrow because of her reasonable  
11 belief that EMC would provide a permanent loan modification.

12 57. During this time Wilcox was under great pressure from her unpaid  
13 unsecured creditors, to whom Wilcox had suspended payments at EMC's express  
14 instructions.

15 58. On April 10, 2008, after having made several payments under the Second  
16 Temporary Loan Modification – Wilcox again contacted EMC. This time, she was  
17 transferred to an individual named "Jennifer." During this call, Wilcox expressed  
18 frustration that despite her tender of four payments (including the down payment), *no*  
19 loan modification had yet been implemented.

20 59. On or about August 6, 2008, Wilcox followed-up by telephone to EMC  
21 concerning the promised modification of the Loan. She was informed by an  
22 unidentified female that the modification had been declined, for unknown reasons.  
23 Wilcox was obviously upset and outraged. The EMC representative recommended that  
24 Wilcox start a new repayment program.

25 60. On or about August 18, 2008, while plaintiff's Residence was still listed for  
26 sale on the MLS, she learned for the first time that a Notice of Default had in fact been  
27 secretly recorded against the Residence – contrary to representations made to her by  
28 EMC and Cal-Western Reconveyance. As a consequence, interest in and offers on the

1 Residence declined dramatically because buyers perceived that the Residence was in  
2 foreclosure.

3 ***Wilcox - First Notification to EMC***

4 61. On August 18, 2008, Wilcox wrote to EMC and Cal-Western  
5 Reconveyance demanding that the Notice of Default be rescinded because they had  
6 failed to comply with post-recordation notification requirements under California Civil  
7 Code section 2924b(c)(1). Also, in plaintiff's letter, she gave notice that EMC should  
8 cease intentionally engaging in deceptive practices wherein it falsely represented that  
9 loans like plaintiff's would be modified if payments under "temporary modifications"  
10 were made, as well as notifying EMC of related malfeasance. Plaintiff's notification  
11 letter was sent via certified mail, return receipt requested. This notification letter was  
12 received in EMC's Executive Office on August 21, 2008.

13 62. At no time following plaintiff's 2008 notification letter did EMC cease  
14 offering consumers loan modifications premised on temporary agreements. Instead, on  
15 September 29, 2008, Amber Duncan, an "Executive Research Specialist" for EMC, sent  
16 Wilcox a wholly unresponsive form letter that referenced the Truth in Lending Act and  
17 stated that EMC declined to rescind the Loan – neither of which had been referenced in  
18 the plaintiff's 2008 notification letter.

19 63. On October 21, 2008, Wilcox responded to Ms. Duncan with a letter that  
20 identified Ms. Duncan's failure to address the issues raised by Wilcox. Further, Wilcox  
21 stated that she was going to start making *voluntary* payments at the rate of \$3,500 per  
22 month, as a showing of her good faith. Also, in plaintiff's letter she requested the  
23 identity of the Trustee who was responsible for oversight of the securitized mortgage  
24 pool in which plaintiff's Loan was held (and by which EMC was servicing the Loan).  
25 On November 4, 2008, EMC stated that it would respond within 30 business days.

26 64. On December 8, 2008 Wilcox called EMC and spoke with "Geraldina."  
27 Wilcox again stated that she sought a modification of the Loan. Geraldina  
28



1 acknowledged that EMC had recently entered into a settlement with the Federal Trade  
2 Commission due to its wrongful business practices, including debt collection actions.

3 65. On December 29, 2008, Deana G. DeLaura, a Vice President with EMC,  
4 provided Wilcox (at her request) a breakdown as to how EMC had been applying the  
5 payments Wilcox had been making under the "Repayment Agreements." The payment  
6 breakdown showed that EMC had been improperly holding in "suspense" plaintiff's  
7 payments until it had sufficient funds to make a full payment pursuant to the original  
8 terms of the Loan, or to repay an escrow advance. This handling of plaintiff's payments  
9 had never been disclosed previously to Wilcox. EMC disclosed at this time that Wells  
10 Fargo Bank was allegedly the Trustee handling the mortgage backed security pool in  
11 which plaintiff's Loan was held.

12 ***Wilcox – Third Temporary Loan Modification***

13 66. On January 12, 2009, Wilcox wrote back to Ms. DeLaura at EMC and  
14 provided the requested financial information in order to obtain a permanent modification  
15 of the Loan. Wilcox informed EMC that she had paid the first installment of property  
16 taxes due on the Residence. This letter also informed EMC that plaintiff's payments  
17 had not been properly applied, and that by holding funds in "suspense" for months at a  
18 time EMC had enabled interest to improperly accrue on the loan at 8.34%. In addition,  
19 Wilcox again demanded that the improper Notice of Default be rescinded because it  
20 impaired the marketability of the Residence. On February 17, 2009, Ms. DeLaura wrote  
21 to Wilcox that her loan modification was "still" under review.

22 67. On February 17, 2009, Ms. DeLaura called Wilcox and stated that,  
23 although she did not have authority to make the offer, she was proposing a modification  
24 of the Loan at the rate of 5.5% for the remaining balance of the Loan term, with all  
25 accrued interest to be paid, with monthly payments to increase to \$6,291.43 (including  
26 impounds for taxes and insurance). Wilcox advised that these proposed terms (which  
27 apparently did not constitute an actual offer from EMC in any event) were wholly  
28 unreasonable, onerous and inconsistent with EMC's promises dating back to late 2007.

1 Wilcox also at this time requested a copy of EMC's Servicing Agreement, and asked to  
2 inspect the *original* of her promissory note. On February 24, 2009, Wilcox wrote to Ms.  
3 DeLaura confirming these discussions and Wilcox's requests for these documents.

4 68. On February 27, 2009, Ms. DeLaura wrote to Wilcox and proposed that  
5 Wilcox enter into another Temporary Loan Modification agreement with EMC. Further,  
6 Ms. DeLaura refused to provide EMC's Servicing Agreement, claiming that it was  
7 "proprietary." She did provide Wells Fargo's contact information and indicated that  
8 Wells Fargo Bank was the Trustee responsible for the mortgage-backed security pool  
9 that held plaintiff's Loan. Wilcox then wrote to Wells Fargo Bank in an effort to obtain  
10 its cooperation.

11 69. Wilcox did not sign or return the offered Third Temporary Loan  
12 Modification that Ms. DeLaura set forth in another "Repayment Agreement." This was  
13 because the payments were exorbitant and Wilcox was not willing to agree to pay EMC  
14 all of the interest which had accrued under the original Loan terms over the extensive  
15 time frame during which she had been battling with EMC for its promised permanent  
16 modification of the Loan, including time during which the payments she made had been  
17 held in a "suspense" account causing interest to continue to accrue on the balance.

18 70. On March 23, 2009, Wells Fargo Bank responded to plaintiff's earlier  
19 correspondence and advised that it "does not in any way supervise, monitor, oversee or  
20 have authority over how an individual loan is serviced, and in fact is legally prevented  
21 from doing so." This letter was signed by Kathleen A. Dean, a paralegal with Wells  
22 Fargo Bank.

23 71. Plaintiff's April 23, 2009, good faith payment to EMC was refunded to her  
24 and EMC informed her that it would **not** accept any more voluntary payments from  
25 Wilcox.

26 72. On April 23, 2009, Wilcox again wrote Ms. DeLaura of EMC and again  
27 stated the terms of the loan modification she sought. Ms. DeLaura never responded to  
28 this letter.

1           73. On April 28, 2009, Wilcox learned that EMC had paid the property taxes  
2 due on the Property, even though Wilcox had already made payment directly to the  
3 Orange County Tax Collector. In a letter dated April 28, 2009, Wilcox inquired why  
4 EMC was not refunding all of the payments she had made since January 2008, since  
5 EMC had been unable or unwilling to permanently modify the Loan. She also  
6 confirmed in this letter that EMC was no longer willing to accept her voluntary  
7 mortgage payments. EMC never responded.

8           74. On May 11, 2009, EMC advised Wilcox that it was reviewing her request  
9 for a Loan modification. No indication was made that an unidentified "investor" on the  
10 Loan would have to approve the Loan modification.

11           75. On May 29, 2009, Wilcox again sent written notice to EMC that it had  
12 perpetrated a fraud on consumers through false promises that consumer loans would be  
13 modified by entering into repayment agreements. Wilcox also informed EMC that due  
14 to adverse, declining market conditions, the value of the Residence had decreased  
15 significantly during the period she had been attempting to obtain a Loan modification  
16 since the summer of 2007.

17           76. On June 4, 2009, Wilcox wrote to Kathleen A. Dean, the paralegal at Wells  
18 Fargo Bank who had previously corresponded with Wilcox, and requested a copy of  
19 EMC's Servicing Agreement. In her letter, Wilcox advised Wells Fargo Bank that EMC  
20 was failing to perform its obligations as the Loan's putative servicer. Wells Fargo Bank  
21 never responded to plaintiff's letter.

22           77. On June 10, 2009, EMC, through Michelle Chancey, Research Specialist,  
23 responded to plaintiff's April 23, 2009 letter. Ms. Chancey's letter contained numerous  
24 falsehoods and exhibited an inaccurate understanding of plaintiff's history with EMC.  
25 Also in her letter, Ms. Chancey purported to opine on California foreclosure law – again  
26 misrepresenting the facts and law pertaining thereto.

27           78. In or about September 2009, Wilcox enlisted the assistance of the Legal  
28 Aid Society of Orange County relating to her Loan modification efforts with EMC.

*Wilcox - Fourth Temporary Loan Modification*

79. In October 2009, EMC offered another temporary loan modification program to Wilcox. This time, the required monthly payment was \$5,100, representing principal, interest and impounds for property taxes and insurance on the Residence.

80. Wilcox was reluctant to enter into another temporary Loan modification program with EMC. Accordingly, she went to the EMC office in Santa Ana and met there with Ceclia Hammer. Ms. Hammer encouraged Wilcox to enter into the proposed Fourth Temporary Loan Modification, which she claimed would provide for the following: (1) the excessive interest rate on the Loan would be modified and reduced to the then current market levels; (2) the proposed payments on the temporary Loan modification would represent the new amount of principal, interest, taxes and homeowner insurance that Wilcox would be required to pay under the modified Loan terms; (3) the accrued, exorbitant interest on the Loan would be written off; and (4) Wilcox would receive a permanent modification of the Loan upon completing three of the payments required by the temporary loan modification. Based on Ms. Hammer's representations, Wilcox agreed to the Fourth Temporary Loan Modification.

81. Wilcox made four payments under the Fourth Temporary Loan Modification program, from November 2009 through March 2010. During this payment period, at all times as requested, Wilcox provided EMC with copies of her paystubs and other documents that EMC requested, repeatedly.

82. EMC representatives told Wilcox numerous times over the phone that if she complied with her trial plans, she would get her loan modified to provide for the same monthly payments as the trial plans.

83. In April 2010, still having not heard from EMC that the permanent loan modification had been approved, Wilcox contacted EMC and demanded a decision on the requested loan modification. On April 15, 2010, a woman who identified herself as "Ramona" (at EMC) called Wilcox and requested certain additional statements and new paystubs to support the loan modification.

1           84. On April 21, 2010 Ramona called Wilcox and said that “Carrington,” the  
2 investor that owned or controlled the Loan, wanted to see a copy of Wilcox’s savings  
3 account statement. This was news to Wilcox, as she previously was told that Wells  
4 Fargo was the Trustee for the mortgage-backed security in which the Loan was pooled.  
5 In any event, Wilcox immediately sent her savings account statement to Ramona.  
6 Wilcox understands that Carrington is another mortgage servicer located in Santa Ana,  
7 California.

8           85. On April 22, 2010 Ramona called Wilcox again and informed her that the  
9 loan modification had been denied. Ramona was unable to advise Wilcox as to the  
10 reason why the Loan modification had been denied, but she expressed her own  
11 frustration that it had not been approved. She promised a letter would follow explaining  
12 the reasons. As discussed below, however, Wilcox did not hear from EMC again until  
13 July 2010.

14           86. In the meantime, on April 23, 2010 Wilcox sent EMC, via certified mail, a  
15 supplemental notification informing EMC that it was still in violation of the law by  
16 misrepresenting its loan services and by advertising its services with the intention of not  
17 providing the services as advertised. Plaintiff’s notice demanded that EMC immediately  
18 cease fraudulently offering consumers loan modifications, among other things. On  
19 April 29, 2010, EMC acknowledged receipt of plaintiff’s notification letter and stated it  
20 would require 30 business days in which to respond. EMC never responded further to  
21 plaintiff’s April 23, 2010 notification.

22           87. On July 28, 2010, EMC issued a letter to Wilcox (which she received on  
23 July 31, 2010) stating that plaintiff’s request for a Loan modification had been denied  
24 because her housing expenses (mortgage, taxes, hazard insurance and HOA dues) were  
25 less or equal to 31% of her gross income. This was a falsehood, as plaintiff’s housing  
26 expenses far exceeded 31% of her gross income.

27           88. Subsequently, Wilcox called Cecilia Hammer in EMC’s Santa Ana office,  
28 at which time Ms. Hammer admitted that she had personally “never” seen an EMC

1 “permanent” loan modification. Wilcox advised Ms. Hammer that EMC had defrauded  
2 her into making further payments, to which Ms. Hammer said nothing.

3 89. In August 2010, Wilcox again called EMC to discuss its erroneous denial  
4 of plaintiff’s request for a Loan modification. Wilcox spoke to “Smelvia” of EMC’s  
5 Loss Mitigation Department. Smelvia stated that the July 28, 2010 denial letter had  
6 erroneously stated the reason for denial of her request. In actuality, Smelvia stated,  
7 EMC had submitted the requested loan modification to the “investor” who held  
8 plaintiff’s Loan and it had rejected the request based on its internal guidelines. Smelvia  
9 refused to divulge the name of the “investor” who held the Loan, or the content of its  
10 internal guidelines. Smelvia stated that the information was “proprietary.” Further, she  
11 stated that the “investor” would not reduce the interest rate on the Loan and would not  
12 write-off accrued interest, which was specifically contradictory to the statements Ms.  
13 Hammer had made to Wilcox in October 2009.

14 90. When Wilcox asked why EMC had offered her multiple temporary loan  
15 modifications starting in 2007 even though the unidentified “investor” had secret  
16 internal guidelines that would not allow a permanent modification, Smelvia offered no  
17 answer. Wilcox informed Smelvia that she had paid EMC tens of thousands of dollars  
18 on the Loan and postponed selling the Residence in a declining market in reliance on  
19 EMC’s representations that she would receive a permanent loan modification. Again,  
20 Smelvia had no response. Smelvia did indicate that EMC had only recently received the  
21 investor’s secret guidelines, and that EMC continued to be overwhelmed with  
22 “thousands” of requests for loan modifications that EMC was trying to process.

23 91. On August 30, 2010, Wilcox received a letter from EMC asking her to call  
24 concerning her delinquent account and offering a modification as a “workout option.”  
25 The letter added that all workout options require the approval of management and that  
26 she would have to meet “workout criteria to qualify for assistance.”

27 92. On August 31, 2010, Wilcox called the number provided and spoke with  
28 “Deana,” questioning her about how defendant would be able to approve a workout

1 option after Wilcox had been refused a loan modification, for the third time, by a “secret  
2 investor” whose guidelines apparently were not known or available to EMC. She had  
3 no response, although she stated that the investor was not secret but was listed on the  
4 Loan documents. Wilcox had to explain to Deana that Fremont Investment, which  
5 originated the Loan, no longer exists.

6 ***Wilcox - Final Demand to EMC***

7 93. On August 13, 2010, legal counsel for Wilcox sent to EMC, via certified  
8 mail, another demand letter requesting that EMC cease its unlawful loan servicing  
9 misconduct, including the malfeasance described in this pleading. EMC failed to  
10 respond to that letter, and EMC has failed to correct its misconduct, remedy the resulting  
11 damages, or cease its unlawful practices. Thus, despite multiple warning letters dated  
12 August 18, 2008, May 29, 2009, April 23, 2010, and August 13, 2010, EMC continues  
13 its unlawful activities. Further, EMC ceased sending mortgage statements to Wilcox  
14 some time ago.

15 94. In summary, Wilcox complied with all of the paperwork requirements  
16 requested of her by EMC (multiple times), satisfied all required loan modification  
17 criteria, and made all the payments called for under her temporary trial plans. Yet, to  
18 this day, she has not received a permanent loan modification.

19  
20 ***III. MICHELE AND ROBERT HOOD***

21 95. In June, 2007, Michele and Robert Hood re-financed the mortgage on their  
22 home – a single family residence located in the City of Irvine, County of Orange, State  
23 of California (the “Hood Residence”). Pursuant to the re-finance, the Hoods secured a  
24 30 year adjustable rate loan from Chase.

25 96. Michele Hood works as a paralegal at a mortgage company in Irvine,  
26 California. In the second half of 2008, Michele Hood’s employer unexpectedly  
27 changed her weekly employment hours, reducing them from five days per week to three.  
28 Despite efforts to increase her employment to five days per week, Michele has been

1 unable to increase her hours. The resulting reduction in income forced the Hoods to  
2 seek a loan modification from Chase. In addition, Robert Hood is employed as a school  
3 teacher and receives no income during the summer months.

4 97. In July or August, 2008, the Hoods contacted Chase by telephone to request  
5 a loan modification. A Chase employee who identified herself only as "Myracle"  
6 (pronounced "Miracle") stated to Michele Hood that Chase could not consider the  
7 Hoods for a loan modification unless/until the Hoods were at least 90 days delinquent.  
8 Myracle advised the Hoods to intentionally allow their loan to become delinquent and  
9 then apply for a loan modification. Acting on this advice, the Hoods allowed their loan  
10 to become delinquent.

11 ***Hood – First Application for Loan Modification***

12 98. On November 24, 2008, the Hoods submitted a written loan modification  
13 request to the Loss Mitigation Department at the Chase Home Finance Department  
14 pursuant to Chase's instructions. From late November 2008 through January 2009, the  
15 Hoods periodically placed telephone calls to Chase's Home Finance Department  
16 attempting to determine the status of their requested loan modification. During each of  
17 the Hoods' attempts to learn of the status of their modification request, a Chase  
18 employee or agent informed the Hoods that the modification was "being processed," or  
19 words to similar effect.

20 99. In early January, 2009, while the Hoods' modification request with Chase  
21 remained pending, Chase informed the Hoods that the servicing of their loan had been  
22 transferred to EMC. Chase further informed the Hoods that their pending loan  
23 modification application would not be maintained after the transfer to EMC. Chase  
24 advised the Hoods that if they continued to seek a loan modification, they would be  
25 required to re-apply with EMC, and that Chase would *not* transfer the Hoods' loan  
26 modification application to EMC.

27 ///

28 ///



***Hood – Second Application for Loan Modification***

100. On January 10, 2009, the Hoods submitted a second application for loan modification, this time to EMC. EMC offered the Hoods a TPP. The Hoods accepted and made monthly payments under the TPP until May, 2009, when EMC offered a new TPP.

101. From late January, 2009 through early May, 2009, the Hoods periodically placed telephone calls to EMC's Loss Mitigation Department attempting to determine the status of their requested loan modification. In late April or early May, 2009, EMC advised the Hoods that it had not yet rendered a decision on the Hoods' loan modification request but that, in the meantime, the Hoods' income verification documentation supporting their loan modification application had "expired" pursuant to EMC's document expiration policy. EMC's unreasonable delay in processing the loan modification application had resulted in the expiration of the Hoods' income verification documentation, thereby ensuring the failure of the Hoods' application through no fault of their own. EMC demanded that the Hoods submit a third application containing updated financial records. Although EMC could not promise the Hoods that it would process the third application in a more timely manner, the Hoods were left with no real choice but to comply.

***Hood – Third Application for Loan Modification***

102. On May 3, 2009, the Hoods submitted a third application for a loan modification.

103. In June, 2009, EMC sent a letter inviting the Hoods to participate in a new TPP. The letter stated that the Hoods were now required to make payments of \$3,901 per month to avoid foreclosure. The Hoods complied with the new TPP.

104. From June, 2009, through May, 2010, the Hoods periodically placed telephone calls to EMC's Loss Mitigation Department attempting to determine the status of their requested loan modification. On occasions when the Hoods successfully reached a live representative, the representative advised the Hoods that their application