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DAVID SCOTT SOFFER IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SAN DIEGO JUDICIAL DISTRICT

DAVID SCOTT SOFFER

Plaintiff(s),

vs.

J.P. MORGAN CHASE BANK, N.A. d/b/a CHASE HOME FINANCE LLC ("Chase"), A Delaware corporation; SELECT PORTFOLIO SERVICING et al.,

Defendant(s).

CASE NO. 37-2014-000-16768-CU-BT-CTL

[Hon. Joel. R. Wohifiel]

PUTATIVE TORT

(1) BREACH OF CONTRACT
(2) BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING
(3) UNLAWFUL, UNFAIR AND DECEPTIVE BUSINESS PRACTICES [CAL. BUS. & PROF. CODE §17200 ET SEQ.]
(4) OPPRESSION/FRAUD/MALICE [CAL. CIVIL CODE §3294-3296 ET SEQ]
(5) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(6) INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

NATURE OF THE ACTION

1. Defendant(s) systematically and continually failed to honor its offers in Good Faith and to Deal Fairly, continually uses Unlawful, Unfair, and Deceptive Business Practices, and has used fraudulent means to avoid offers of mortgage assistance resulting in Breach of

Contract. Chase continues to offer then persists to repeatedly deny the plaintiff mortgage assistance in an effort to foreclose on the home. The defendant(s) have maintained a charade for over 5 years to maintain the image of commitment to assisting the plaintiff with avoiding foreclosure and to keep the home. The disingenuous offers of mortgage assistance were so overwhelming that the plaintiff ironically became consumed with actually protecting the home from foreclosure for over 5 years culminating in this complaint. This evolved into a massive undertaking and involved two years of actual foreclosure action. The other 3 years were spent remaining in compliance to avoid foreclosure while seeking assistance with every resource available. After being led into false hopes of assistance with a difficult Hardship, this massive effort to keep the property became a fundamental need. As Chase's actions became increasingly more aggressive, so did the plaintiff until it manifested into an obsession. The plaintiff had no other recourse than to make a full commitment to this endeavor. The irony is that the "mortgage assistance" became more of a Hardship than the actual Hardship the "mortgage assistance" is designed to assist with.

2. On March 4, 2009, the Making Home Affordable Plan was signed into Federal Law as part of the Emergency Economic Stabilization Act of 2008. The Making Home Affordable Plan provides eligible homeowners the ability to modify their mortgages to make them more affordable ("HAMP). Through Fannie Mae the Treasury Department entered into agreements with Mortgage Servicers (Servicer Participation Agreements). Based on their promises to help borrowers stay current on their mortgages, Chase has received billions of dollars from borrowers and government programs and in October 2008 Chase accepted $25 billion in Troubled Asset Relief Program (TARP) funds 12 U.S.C. §5211.

3. On July 31, 2009 Chase signed a Servicer Participation Agreement for HAMP (attached hereto as Exhibit A). Chase agreed to perform specified loan modification and other foreclosure prevention services. The Service Participation Agreement required Chase to modify loans according to specific guidelines. This included all **"Supplemental Directives"** issued by The United States Treasury. On April 6, 2009 ***Supplemental Directive 09-01*** (attached hereto as

Exhibit B) was created which detailed how the process would unfold. Regardless of when Chase actually signed the Servicer Participation Agreement, the servicer(s) **did** participate in the HAMP with the plaintiff from the start. Consequently the servicers needed to abide by the same terms and conditions of the Servicer Participation Agreement regardless of when it was actually signed. Otherwise the servicers should not have participated in the HAMP with the plaintiff.

4. Although the plaintiff engaged with the servicer(s) and made his second to last trial payment just 4 days prior to the Servicer Participation Agreement, Chase was clearly using ***Supplemental Directive 09-01***, as this had already been created, before Chase signed the Servicer Participation Agreement. The weight of the evidence shows that Chase was in control of the servicing of the plaintiff's loan at the time the plaintiff and the servicer(s) were engaged in the HAMP and that the servicer(s) applied ***Supplemental Directive 09-01*** at that time to initiate and facilitate the process. The Servicer Participation Agreement ("SPA") incorporates all previous guidelines, procedures, instructions, and communications, including all "Supplemental Directives" issued by the United States Treasury Department, Fannie Mae and Freddie Mac in connection with the duties of a participating servicer, Chase. In September 2010 these documents, including the Supplemental Directives, were compiled and incorporated into one set of HAMP guidelines entitled, "Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages, Version 2.0 As of September 22, 2010" (The "Handbook"). The plaintiff was never provided with this Handbook. Every borrower should have received this.

5. According to the HAMP Handbook at §8, ***"Borrowers who make all trial period payments timely and who satisfy all other trial period requirements will be offered a permanent modification."*** There were no other requirements of the plaintiff in the Trial Plan Agreement. Although Chase had not signed the Servicer Participation Agreement until 4 days after the plaintiff made his "second to last" (second) trial payment, Chase was clearly participating in the HAMP from the start and until the end. As a result Chase can not apply ***Supplemental Directive 09-01*** just as they see fit. Therefore Chase cannot use the fact that they did not enter into the Servicer Participation Agreement until later and also use ***Supplemental***

Directive 09-01 or any other reason as an excuse for not modifying the plaintiff's loan. After accepting billions of dollars in federal relief funds under HAMP, Chase has not followed through with its responsibilities, contractual obligations, and offers to modify the plaintiff's loan after agreeing to a Trial Plan Agreement on May 19, 2009.

JURISTRICTION AND VENUE

6. This is an action for damages, equitable, injunctive, and other relief arising under various California statutes including the Consumers Legal Remedies Act and section §17200 of the California Professional and Business and Professions Code, and under Common Law.

7. The amount in controversy exceeds the jurisdictional minimum for this court and is largely punitive in nature. The unlawful acts and practices alleged herein occurred in, or concern, the County of San Diego, State of California. Defendants Chase and Select Portfolio Servicing, Inc. are qualified to do business in the State of California, and conduct substantial business in the State of California. The subject real estate at issue is located in the County of San Diego and for over the past five years the defendant(s) have engaged with the plaintiff in the County of San Diego. Jurisdiction and venue are appropriate for this court.

PLAINTIFF SOFFER

8. At all times relevant to this matter, plaintiff David Scott Soffer resides and continues to reside in La Jolla, California. In April of 2009 the plaintiff requested mortgage assistance, was evaluated by a representative from Chase for a HAMP modification, and provided the required documentation to satisfy all requirements to verify eligibility for both income and occupancy status. **After** these requirements were satisfied, the plaintiff was approved for a HAMP Trial Plan Agreement. The signed letter which executed the agreement and the agreement itself was inconsistent with ***Supplemental Directive 09-01*** from which this derived. In addition it included a fraudulent attachment that was unfair and deceptive. Being naïve to the deception, the plaintiff expected to receive the modification after making the 3 trial payments. As a direct result of this fraudulent, unfair and deceptive agreement, the plaintiff never received the modification and spent years contending with the same problems as the

plaintiff was intent on holding the defendant(s) responsible for such actions. However the plaintiff did not discover when the harm began until late February, 2014 when learning of the Ninth Circuit Court of Appeals decision in *Phillip R. Corvello v. Wells Fargo Bank* in which the plaintiff discovered ***Supplemental Directive 09-01.*** This allowed the plaintiff to understand what Chase had done wrong and how. In addition the plaintiff did not discover the other violations until learning about similar cases.

FIRST CAUSE OF ACTION

Breach of Contract (Promissory Estoppel)

9. The plaintiff repeats and re-alleges the information in the paragraphs above as though fully set forth herein. On April 28, 2009 the plaintiff applied for the Home Affordable Modification Program and sent the servicer(s) a Borrower's Assistance Form and the required documentation in accordance with instructions from both Washington Mutual and Chase (attached hereto as Exhibit C). At this time Chase was in Control of Washington Mutual Bank who the plaintiff's loan was with. In fact, at that time Washington Mutual was a Division of JP Morgan Chase Bank, NA. (See Exhibit C, page 7). Chase purchased WAMU from the FDIC shortly thereafter. However Chase was already making this transition at the time the plaintiff applied for the HAMP (see exhibit C). Later letters were addressed CHASE/WAMU FULLFILLMENT CENTER. . The plaintiff found no evidence that Washington Mutual had ever entered into a Servicer Participation Agreement. Therefore the Trial Plan Agreement which was in fact a **Making Home Affordable Modification Trial Plan Agreement** had to have been created under Chase (see Exhibit C).

10. The plaintiff spoke to a representative for Chase and followed instructions to provide the necessary documentation to qualify for the HAMP. The documents were sent to victoriathorne@chase.com (attached hereto as Exhibit D). In addition the plaintiff faxed additional documentation and included a copy of a summons that was served just prior as proof of a hardship (see Exhibit C, page 6). Given this the servicer(s) could have simply provided a **"Deferment"** in accordance with the **LOAN INFORMATION** section of the Borrower's

Assistance Form (see Exhibit C, page 1). Instead the plaintiff was instructed to enter in "loss mitigation." The plaintiff had to defend a frivolous personal injury claim that lasted two years while Chase maintained a trustee sale to foreclose on the property for about a year, through the civil suit, which was ultimately dismissed, initiated foreclosure action again for another year, and then for two more weeks before the CA Monitor intervened on behalf of the CA Attorney General.

11. If the documents the plaintiff submitted were not satisfactory or if any additional documentation was required for any reason, the servicer(s) should have required it **at that time or clearly explained what was needed**. Otherwise the servicer is using this as an excuse not to modify the loan later. Subsequently the plaintiff received a **Trial Plan Agreement** (attached hereto as Exhibit E) from Washington Mutual dated May 19, 2009 and made all 3 scheduled trial payments in accordance with the agreement. The fact that this was an **Agreement** is due to the letter that the servicer **signed** which accompanied it. This allowed the plaintiff to **sign** and return the document which **executed** the agreement. However the servicer included an **Attachment to Special forbearance agreement** that was not valid and used this as an excuse to deny the plaintiff the HAMP Loan Modification.

12. The plaintiff was never provided with a copy of The ***Making Home Affordable Program Handbook*** or with ***Supplemental Directive 09-01***. Instead the plaintiff had to rely upon the representative from Chase to explain the requirements. The servicer(s) exploited this as the servicer(s) knew the plaintiff did not understand that what the servicer(s) were doing was wrong. It was reasonable for the plaintiff to trust the servicer(s) to make this clear and not try to deceive the plaintiff in any way. As a result when the plaintiff received the Trial Plan Agreement, the plaintiff believed that the documents had satisfied all the requirements for the program and that in accordance with the agreement, only needed to make the three trial payments to receive the loan modification (see Exhibit E). This was a reasonable expectation. Instead the plaintiff spent the next five years compelling Chase to honor offers of mortgage assistance and not foreclose on the home. This has been to the plaintiff's detriment as it has destroyed the last five years of the

plaintiff's life. This has prevented the plaintiff from receiving income, being able to afford the home, pursuing opportunities, and leading a normal life

13. To deny the plaintiff the modification, the servicer(s) violated laws for Good Faith and Fair Dealing and Unfair and Deceptive Business Practices. The servicer(s) did not properly apply ***Supplemental Directive 09-01***. The two areas of focus are ***Verifying Borrower Income and Occupancy*** **Status** and ***Executing the HAMP Documents*****;** neither of which are used for the purpose of a Forbearance Plan. The servicer(s) did not prepare the Trial Period Plan according to either method of ***Verifying Borrower Income and Occupancy Status.*** Also the servicer(s) combined two separate methods of ***Executing the HAMP Documents*** to approve the plaintiff for a **Trial Plan Agreement** with a fraudulent attachment. The servicer(s) did this to avoid one consistent methodology for a modification which created the illusion that the plaintiff had not fulfilled the requirements. The servicer(s) included an Attachment to Special Forbearance Agreement which was completely wrong. The servicer(s) should have either prepared the Trial Period Plan by using the income documentation to calculate the trial payments according to the underwriting criteria or promptly informed the plaintiff in writing that the underwriting standards were not met and considered the plaintiff for another foreclosure prevention alternative.

14. In accordance with the "alternative method," when income documentation in required in **advance** of **preparing** a Trial Period Plan, it is to be used to **verify** and **confirm** that the borrower meets the **underwriting requirements** and the trial payments are to be calculated according to this **before** the servicer signs a letter together with a Trial Period Plan and sends this **to the borrower for execution**. Thus the servicer **confirms** that the borrower **meets the underwriting requirements and qualifies for the HAMP** before the Trial Period Plan is **executed**. In addition, at this time the servicer requires the borrower to provide additional documentation to **confirm** all other **eligibility requirements**. At this time the servicer determines the back-end ratios and if these are equal to or over 55%, sends the borrower a Home Affordable Modification Program Counseling Letter.

15. However **when** the servicer **does not** require financial documentation in **advance** of preparing a Trial Period Plan, the servicer simply **assesses** the borrower's **eligibility** based upon recent **verbal** information from the borrower. Because the servicer is unable to actually verify and confirm that the borrower meets the underwriting requirements with actual **income documentation**, the servicer only sends the borrower a **solicitation** for the HAMP and an **offer** of a Trial Period Plan. The servicer(s) combined these two methods and intentionally did not maintain one consistent methodology in order to avoid modifying the loan.

16. In accordance with the first method, once the trial Period Plan is **returned** to the servicer **with the documentation**, they are reviewed to verify and confirm all the information the servicer **obtained verbally** and **relied on** to **assess** the borrower's eligibility and **to prepare** the **Trial Period Plan Offer.** The servicer(s) would then use the income documentation to determine the post-HAMP modification back end ratio. If the borrower's back-end ratios are equal to or above 55%, the borrower must agree to receive housing counseling.

17. At this time, the servicer may argue that if every piece of documentation has not been fully and completely provided to the servicer within the time frame allowed, the servicer cannot **confirm** whether the borrower **does or does not** meet all the eligibility and underwriting requirements and thus cannot make any confirmation. Therefore the servicer may **argue** that it is **not** promptly communicated to the borrower in writing that the borrower is **not** eligible for the HAMP and the servicer **does not** consider the borrower for another foreclosure prevention alternative. Instead, the servicer may argue that according to ***Supplemental Directive 09-01***, the borrower must be **reevaluated** and if still eligible, new documents must be prepared and the borrower must restart the trial period. This reevaluation was the servicer(s) goal from the start. The servicer(s) sent the plaintiff a letter (see Exhibit E) together with the Trial Plan Agreement that stated:*"If all payments are made as scheduled, we will* ***reevaluate*** *your application for assistance and determine if we are able to offer you a permanent workout solution to bring your loan current."*

18. According to ***Supplemental Directive 09-01***, under Trial Payment Period on **pages 17-18**, it states: ***"If the verified income evidenced by the borrower's documentation exceeds the initial income information used by the servicer to place the borrower in the trial period by more than 25 percent, the borrower must be reevaluated based on the program eligibility and underwriting requirements. If this reevaluation determines that the borrower is still eligible, new documents must be prepared and the borrower must restart the trial period."***

19. However under ***Executing the HAMP Documents***, on page 15 of ***Supplemental Directive 09-01***, it states: ***"Upon receipt of the Trial Period Plan from the borrower, the servicer must confirm that the borrower meets the underwriting and eligibility criteria."… "If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HAMP after the borrower has submitted a signed Trial Period Plan to the servicer, the servicer should promptly communicate that determination to the borrower in writing and consider the borrower for another foreclosure prevention alternative."***

20. When the borrower submits the documentation **prior** to the servicer preparing a Trial Period Plan and the servicer sends the borrower a signed letter together with a **Trial Plan Agreement**, there is absolutely no reason why the servicer cannot **confirm whether or not** the borrower meets the underwriting and eligibility criteria. Otherwise the servicer would not have been able to send a **Trial Plan Agreement** to the borrower for the borrower to sign and **execute.**

21. Consequently when the servicer sends the borrower a Trial Period Plan Agreement for execution, the servicer should have already confirmed that the borrower meets all the requirements and should have based the trial period payments on the underwriting criteria. When the servicer **properly** prepares the Trial Period Plan, and sends the borrower a **Trial Plan Agreement** for **execution**, there is no reason for the servicer to later require the borrower to provide any additional documentation as this only relates to the eligibility requirements.

22. On **page 2** of ***Supplemental Directive 09-01***, it states under ***HAMP Eligibility: "The documentation supporting income may not be more than 90 days old (as of the date the servicer is determining HAMP eligibility).*** This would explain why

servicers routinely informed borrowers that income documentation was missing especially when the requirements are so stringent that a self employed borrower with a LLC needs to provide an ***audited or reviewed year –to-date profit and loss statement.*** As a result the servicer maintains that there was **no confirmation one way or the other** because the servicer did not have **all** the documentation necessary within the **time frame** allowed. In addition while the servicer is requiring the borrower to satisfy every requirement to the last detail, the other documentation is ageing so **all** the documents are not received within the timeframe allowed. The servicer applied such requirements when it was convenient for the servicer and not when it was inconvenient. It is up to the discretion of the servicer on what to do. Excuses of investor requirements are disingenuous as these are not enforced.

23. Although the servicer may contend that no determination of the HAMP is made in writing to the borrower and that no other foreclosure prevention alternative is considered, if **enough** documentation shows **evidence** that the initial income exceeds the **verbal** income by more than 25%, the servicer proceeds to **reevaluate** the borrower based on **all** documentation supporting income not more than 90 days old. Given the servicer may contend that there was no confirmation **one way or the other** that the borrower met the underwriting and eligibility requirements because the servicer did not receive **all** of the documentation within the time frame allowed to conclude this, the servicer obviously may also contend that this documentation is **still** required in order to **reevaluate** the borrower so **new** documents can be prepared for the borrower to **restart** the trial period. However the servicer may continue to contend that no confirmation can be made one way or he other.

24. On page 5, under ***Verifying Borrower Income and Occupancy Status, Supplemental Directive 09-01*** states: ***"Servicers may use recent verbal financial information obtained from the borrower and any co-borrower 90 days or less from the date the servicer is determining HAMP eligibility to assess the borrower's eligibility. The servicer may rely on this information to prepare and send to the borrower a solicitation for the HAMP and an offer of a Trial Period Plan. When the borrower returns the Trial Period Plan and related documents, the servicer must review them to verify the borrower's financial information***

and eligibility-except that documentation of income may not be more than 90 days old as of the determination of eligibility."

25. When applying this method the servicer actually prepares a Trial Period Plan before the borrower has actually been solicited by the servicer for the Home Affordable Modification Program (HAMP). However this is possible, ***Supplemental Directive 09-01*** allows the servicer **to obtain financial information from the borrower** and rely on this to prepare and send the borrower an **offer** of a Trial Period Plan for the borrower to sign, **without** the borrower having responded to a solicitation from the servicer for the HAMP. (Since the servicer sends the borrower a solicitation for the HAMP and an offer of a Trial Period Plan, the borrower should expect that the Trial Period Plan is indeed for the HAMP). Anything to the contrary would be bad faith and unfair dealing.

26. This is a backward approach because the servicer is able to actually send the borrower a Trial Period Plan for the borrower to sign first. Because the servicer has not already agreed to it by signing a letter to that effect, the borrower agrees to this but it is not actually **executed** until the servicer also signs and returns a copy of the Trial Period Plan to the borrower. On page 15 of ***Supplemental Directive 09-01***, it states:

27. ***"In step one, the servicer should instruct the borrower to return the signed Trial Period Plan, together with a signed Hardship Affidavit and income verification documents (if not previously obtained from the borrower), and the first trial period payment (when not using automated drafting arrangements), to the servicer within 30 calendar days after the Trial Period Plan is sent by the servicer."… "Upon receipt of the Trial Period Plan from the borrower, the servicer must confir***m ***that the borrower meets the underwriting and eligibility criteria. Once the servicer makes this determination and has received good funds for the first month's trial payment, the servicer should sign and immediately return an executed copy of the Trial Period Plan to the borrower."***

28. This creates a big problem because the servicer does not confirm that the borrower meets the underwriting and eligibility criteria until after the servicer receives a signed

Trial Period Plan from the borrower. Until the servicer confirms eligibility and has received good funds for the first month's trial payment, the servicer does not sign and return the Trial Period Plan to the borrower and as a result it does not get executed. Meanwhile the borrower is already making the trial payments and the servicer can avoid **executing** the trial Period Plan if they contend that there is a problem with the documents **or if the servicer verifies that the income documentation exceeds the recent verbal financial information that the servicer based the trial payments on (trial period) by more than 25%.**

29. If the servicer verifies this, the borrower must be **reevaluated** and if the borrower is still eligible, **new documents must be prepared and the borrower must restart the trial period.** Also the servicer may wait until the ***"second to last trial payment"*** before sending the borrower a Modification Agreement to execute. However since the Trial Period can repeat itself, there is no telling when or if the borrower will ever make a ***"second to last trial payment."***

30. Since the servicer is not required to verify the financial information prior to the effective date of the trial period when using recent verbal financial information to prepare and offer a Trial Period Plan, the process may repeat itself until the servicer determines that the Borrower's income documentation meets the underwriting criteria. Also if the servicer is repeatedly not satisfied with any part of the documentation, the documents could become over 90 days old as it takes time before they can be reviewed and for the borrower to make corrections.

31. Each time the documents are submitted the borrower may miss something minor which the servicer can use as an excuse and force the borrower to correct. If **any** of the documents become over 90 days old before the borrower can provide a perfect set of documents, the borrower would have to submit new updated documentation before the servicer can **first** determine if the Borrower meets the underwriting criteria. This process often gets repeated because on page 2 of ***Supplemental Directive 09-01*** under ***HAMP Eligibility*** it states ***"the documentation supporting income may not be more than 90 days old as of the date the servicer is determining HAMP eligibility)."***

32. On page 17 of ***Supplemental Directive 09-01***, under ***Trial Payment Period***, it states: ***"The trial period is three months in duration (or longer if necessary to comply with applicable contractual obligations). The borrower must be current under the terms of the Trial Period Plan at the end of the trial period to receive a permanent loan modification. Current in this context is defined as the borrower having made all required trial period payments no later than 30 days from the date the final payment is due."***

33. Consequently, when the servicer requires the borrower to **continue to make trial payments**, the servicer can avoid **step 2** of ***Executing the HAMP Documents*** which states: ***"Servicers are encouraged to wait to send the Agreement to the borrower for execution until after receipt of the second to the last payment under the trial period."*** However in this scenario, there is no way for the borrower to know when the final payment will be.

34. This **only applies** when the servicer has not already required the borrower to submit the required documentation. When the servicer has required the borrower to submit the documentation and determines the borrower is eligible, the servicer sends a letter indicating that the borrower is eligible for the HAMP together with a trial Period Plan. The plaintiff received a letter signed by the servicer together with the Trial Period Plan. Because the servicer had already signed the letter, the servicer agreed to it **first** which means once the borrower also signs and returns this, the documents have been **executed**. In the first method, the servicer does not determine the Borrower's eligibility until **after** the borrower has agreed to the Trial Period Plan.

35. ***"As an alternative, a servicer may require a borrower to submit the required documentation to verify the borrower's eligibility and income prior to preparing a Trial Period Plan. Upon receipt of the documentation and determination of the borrower's eligibility, a servicer may prepare and send to the borrower a letter indicating that the borrower is eligible for the HAMP together with a Trial Period Plan. The borrower will only qualify for the HAMP if the verified income documentation***

confirms ***that the monthly mortgage payment ratio prior to the modification is greater than 31 percent."***

36. The Trial Period is the payment schedule for the trial payments. The Trial Period Plan outlines these terms. However once this is sent together with a letter signed by the servicer, it creates a **Trial Plan Agreement** which is **executed** after the Borrower signs and returns it to the servicer. This occurs under the alternative method. The plaintiff did receive a Trial Plan Agreement which he signed and returned to the servicer. The plaintiff made all three scheduled trial payments under the agreement. In the first method the servicer sends the Borrower a solicitation for the HAMP, which is accompanied by just an offer of an offer of a Trial Period Plan. This is a Trial Period Plan Offer. The plaintiff did not receive a **Trial Period Plan Offer** but the **Notice of Expiration** was for a **Trial Period Plan Offer**. This was wrong.

37. However the servicer **acted** as if this were not the case and instead had used the first method to obtain verbal financial information, sent the borrower a solicitation for the HAMP together with an **offer**, waited for the plaintiff to sign and return this **before** confirming the plaintiff met the underwriting and eligibility criteria, and waited until receiving good funds for the first month's trial payment before signing and returning an executed copy of the trial Period Plan. The servicer did **not** do this and also improperly applied a Housing Counseling Requirement in accordance **with** these conditions to avoid **step 2** for executing the Loan Modification Agreement.

38. When using the alternative method, the servicer must **confirm** that the borrower meets the underwriting criteria at this time. In **step 1** of ***Executing the HAMP Documents*** it states: ***"Upon receipt of the Trial Period Plan from the borrower, the servicer must*** ***confirm*** ***that the borrower meets the underwriting and eligibility criteria."***

39. Since the servicer **previously** obtained the **income verification documents** from the Borrower and the Borrower had already returned the signed Trial Period Plan, the servicer

was required to **confirm** (whether or not) the borrower **qualified** for the HAMP when the servicer was ***Verifying Borrower Income and Occupancy Status*.**

40. The servicer applies this before ***Executing the HAMP Documents*** and it states on page 6 of ***Supplemental Directive 09-01*** under ***Verifying Borrower Income and Occupancy Status "The borrower will only qualify for the HAMP if the verified income documentation confirms that the monthly mortgage payment ratio prior to the modification is greater than 31 percent."***

41**.** Therefore the servicer needed to **confirm** this before sending the borrower a letter indicating that he was eligible for the HAMP together with a Trial Period Plan. This way the HAMP documents cannot be executed before the servicer verifies the Borrower's income with its documentation and **confirms** the borrower meets all eligibility and underwriting requirements so that the borrower **can** qualify for the HAMP.

42. As a result the servicer should have prepared the Trial Period Plan with trial payments based upon these underwriting criteria because the Trial Period Plan was **executed.** However the trial payments were not calculated this way. Instead the servicer **switched** from the alternative method to the first and based the plaintiff's trial payments on just **financial information** from the **Borrower's Assistance Form**. By doing so the servicer avoided evidence that the trial payments had been calculated using the underwriting criteria and thus avoided the fact that the servicer had confirmed the plaintiff met the underwriting criteria and actually **qualified** for the HAMP.

43. Had the Servicer properly applied this, the trial payments should have been based upon the documentation which the plaintiff had provided and calculated according to the underwriting criteria before the servicer **prepared**, signed, and sent the plaintiff a Trial Period Plan for the plaintiff to sign, return, and execute. In addition the servicer should **not** have sent the plaintiff any signed letter together with a Trial Period Plan for him to sign and execute until his **submission was complete** and the servicer confirmed that the plaintiff's income documentation met the

underwriting criteria and that he qualified. If the servicer determines that the borrower does not qualify (meets the underwriting and eligibility standards) for the HAMP, the servicer is to ***"promptly communicate that determination to the borrower in writing and consider the borrower for another foreclosure alternative."***

44. The **first "Making Home Affordable Modification Trial Period Plan Offer – Notice of Expiration"** (attached hereto as Exhibit F) that the plaintiff received was from **Chase Home Finance LLC** and dated June 07, 2010. The plaintiff received an identical notice dated July 22, 2010. This stated:

45. *"We are unable to offer you a Home Affordable Modification because you did not provide us with the documents we requested. A notice, which listed the specific documents we needed and the time frame required to provide them, was sent to you previously."*

46. This was wrong and does not mention anything about the balance exceeding the program limits (by $4,004.74 if the calculations on the plaintiff's negatively amortized loan are correct) as Chase later contends. The plaintiff called the HOPE HOTLINE and was referred to MHA HELP/ Money Management International who requested that Chase (OH4-7120) provide the calculations to determine the unpaid balance but Chase (OH4-7120) refused. When the plaintiff asked for this in writing, MHA HELP instructed the plaintiff to get a subpoena.

47. Also the Plaintiff had not communicated with the servicer between the time he made the last trial payment and received this notice. Therefore the notice had to be in response to the **Trial Plan Agreement** which would mean it was in fact a **Making Home Affordable Modification Trial Plan Agreement**. However the **Trial Plan Agreement** included an **"Attachment to Special Forbearance Agreement."** Therefore the **"Making Home Affordable Trial Plan Offer"** could not also be a **"Special Forbearance."**

48. This notice of expiration references a Trial Period Plan **OFFER**. An ***"offer of a Trial Period Plan"*** is only sent when the servicer uses ***"recent verbal financial information…to assess the borrower's eligibility"*** and relies on this information ***"to prepare and send to the borrower a solicitation for the HAMP and an offer of a Trial Period Plan." Supplemental Directive 09-01***

states on page 5 under ***Verifying Borrower Income and Occupancy*** Status**:** ***"Servicers may use recent verbal financial information obtained from the borrower and any co-borrower 90 days or less from the date the servicer is determining HAMP eligibility to assess the borrower's eligibility. The servicer may rely on this information to prepare and send to the borrower a solicitation for the HAMP and an offer of a Trial Period Plan.*"**

49. The servicer did not do this. In fact the letter the plaintiff received from the servicer stated "*You have been **approved** for a **Trial Plan Agreement**"* (see Exhibit E). The plaintiff had actually been **approved** for the **Making Home Affordable Modification Trial Plan Agreement;** not the **Making Home Affordable Modification Trial Plan Offer**. This is a **huge** difference. Also the body of the letter that accompanied the **Trial Plan Agreement** was inconsistent. In the body of the letter it states: *"If you comply with al the terms of this Agreement, we'll consider a **permanent workout solution** for your loan once the Trial Plan has been completed."* The servicer should have sent a letter indicating that the plaintiff was eligible for the HAMP. Had the plaintiff only received an **offer**, the servicer would not have sent the plaintiff a signed letter together with a **Trial Period Plan Agreement** for the plaintiff to sign and execute. Therefore the Notice of expiration is invalid.

50. However ***"As an alternative a servicer may require a borrower to submit the required documentation to verify the borrower's eligibility and income prior to preparing a Trial Period Plan. Upon receipt of the documentation and determination of the borrower's eligibility, a servicer may prepare and send to the borrower a letter indicating that the borrower is eligible for the HAMP together with a Trial Period Plan."***

51. **Then** the servicer sends the plaintiff the Trial Period Plan to sign and execute. The servicer did do this. Once the Trial Period Plan is executed, the borrower should not need to send the servicer any further documents because the purpose for these documents is to determine that the borrower meets the eligibility requirements and to verify that the income documentation meets the underwriting criteria so that all the standards have been satisfied in order for the borrower to qualify for the HAMP **before** the Trial Period Plan is executed. After this has been accomplished the

borrower should not have to submit any further documentation to the servicer. Therefore the Notice of Expiration is invalid.

52. On August 8, 2013 The 9TH CIRCUIT COURT OF APPEALS decided in favor of the plaintiff in Corvello v. Wells Fargo. This held that Trial Period Plan Agreements are enforceable contracts. This in combination with the following establishes the plaintiff's claim for Breach of Contract.

SECOND CAUSE OF ACTION

Breach of the Duty of Good Faith and Fair Dealing

53. There are two possible methods for ***Verifying Borrower Income and Occupancy Status.*** Consequently there are also two possible ways for ***Executing the HAMP Documents.*** For each method of ***Verifying Borrower Income and Occupancy Status***, there is a **different** method of ***Executing the HAMP Documents***. The alternative method is, by far, more advantageous to the borrower. The Trial Period Plan is executed depending upon which method the servicer uses to verify the Borrower's income. However the servicer combined both methods of Verifying Borrower Income in order make it appear as if the servicer prepared and sent the Trial Period Plan to the plaintiff without determining that the plaintiff met the underwriting criteria and qualified for the HAMP.

54. In the alternative method the servicer verifies the income information on the application (Borrower's Assistance Form) with the income documentation and then confirms that this meets the underwriting criteria. The Borrower also must meet all the eligibility requirements in order for the servicer to determine that the borrower meets all the standards of the HAMP.

55. The servicer should then prepare a Trial Period Plan with payments based upon the underwriting criteria. The servicer then sends the Trial Period Plan to the borrower together with a signed letter indicating that the Borrower is eligible for the HAMP. The two together form a **Trial Plan Agreement**. Since the servicer has signed a letter accompanied by a Trial Plan Agreement, the borrower need only sign the Trial Period Plan Agreement and return it to the servicer for the documents to be considered as **executed**.

56. In the first method the servicer does not verify the income with the income

documentation because the income is obtained from the borrower verbally. Therefore the servicer has neither an application nor documentation to verify income. However the servicer still prepares a Trial Period Plan based solely on verbal information from the borrower. The servicer then sends the borrower a solicitation for the HAMP and an **offer** of a Trial Period Plan. This is different from the alternative method because the servicer is only **offering** the Borrower a Trial Period Plan. As a result the Borrower signs the Trial Period Plan first but until the servicer receives this along with all the income documentation to verify and confirm that the borrower meets the underwriting and eligibility criteria before signing and returning an executed copy of the trial Period Plan.

57. The servicer confirms that the borrower meets the underwriting and eligibility criteria **after** the borrower returns the Trial Period Plan together with this income documentation. The truly criminal component of this is that the servicer **avoids confirming whether or not** the borrower meets the **eligibility** and **underwriting** criteria because the servicer contends this **review can not be completed until every last single bit of both eligibility documentation and income documentation has been received together within the time frame allowed** (see Exhibit F, page 4) and is absolutely perfect in every way down to the last detail or simply contends a particular item was not received. If the servicer is not completely satisfied, the servicer will not confirm **whether or not** the borrower meets **all** the **underwriting and eligibility criteria** and thus **avoids** informing the borrower in writing that the borrower does not meet the **underwriting and eligibility standards of the HAMP** and consider the borrower for another foreclosure prevention alternative. The servicer's position is that without all the **fully complete** documentation within the time frame allowed, the servicer could not determine definitively whether or not the borrower meets **all** the eligibility and underwriting criteria and thus can not make a confirmation either way.

58. However at the same time the servicer can use this same documentation to **reevaluate** the borrower if there is **enough income documentation to show evidence** that the borrower's income is more than 25% of the income received verbally. Under ***Trial Payment Period***, pages 17-18 of ***Supplemental Directive 09-01***, it states: ***" If the verified income evidenced by the borrower's documentation exceeds the initial income information used by the servicer to place***

the borrower in the trial period by more than 25 percent, the borrower must be reevaluated based on the program eligibility and underwriting requirements. If this reevaluation determines that the borrower is still eligible, new documents must be prepared and the borrower must restart the trial period."

59. This **reevaluation** was the servicer(s) goal from the start as it stated in the **Trial Plan Agreement**: *"If all payments are made as scheduled, we will reevaluate your application for assistance and determine if we are able to offer you a permanent workout solution to bring your loan current."*(See Exhibit E). If the initial income is received **verbally**, there is no record to prove how much the verbal income was. Thus the servicer(s) can later contend the documentation exceeded the initial income by more than 25% in order to reevaluate the borrower. In addition being self-employed, the plaintiff had not listed the income on the application (see Exhibit C) as this had been documented (see Exhibit D). Without any income listed on the application, the servicer(s) took the approach that the income was received verbally which it was not. Meanwhile the servicer(s) instructed the plaintiff to continue making the same trial payments while requesting documentation "to verify the income." However the borrower is naïve to all of this as borrowers do not understand how the process works and are at the mercy of the servicer(s) and the servicer(s) know it. If the servicer(s) finds the borrower is still eligible, new documents must be prepared and the borrower must restart the trial period with **new** trial payments **based on the underwriting requirements**. The servicer(s) can then increase the trial payments or simply contend that it can not be confirmed whether the borrower is eligible or not because all the documentation was not received within the timeframe required and deceive the borrower into continuing to make the trial same trial payments. The servicer(s) had already received the plaintiff's documentation so this was all wrong.

60. **Until** the servicer is **satisfied** with **all** the documentation, the review to confirm **whether or not** the borrower meets the underwriting and eligibility criteria will not begin. If the income documentation is no more than 25% of the verbal income the servicer used to prepare the Trial Plan and the servicer receives good funds for the first trial payment, ***"the servicer should sign and immediately return an executed copy of the Trial Period Plan to the Borrower."*** As a result the

trial period will not restart because the servicer confirmed that the Borrower met the underwriting requirements.

61. Since the Trial Period Plan was prepared without any income documentation, the trial payments may not meet the underwriting requirements. Therefore the servicer would need to apply the income documentation in order to calculate the monthly mortgage payment for the Loan Modification Agreement because **these payments must be based upon the underwriting criteria**. As a result the trial payments may actually change and the trial period may restart when the servicer uses the first method of verbal information before the loan is actually modified.

62. However this was not the case because the servicer had in fact sent the plaintiff a signed letter together with the Trial Period Plan which enabled the plaintiff to **execute** these documents by signing the **Trial Period Plan Agreement** and returning it to the servicer. The servicer should **never** allow a Trial Period Plan to be **executed** until confirming that the Borrower's income documentation meets the underwriting requirements.

63. Based on the alternative the servicer would determine that the borrower meets the underwriting requirements and qualifies before sending a letter indicating that the borrower is eligible for the HAMP together with a Trial Period Plan for the borrower to sign and execute. The letter that accompanies the Trial Period Plan should be consistent with ***Supplemental Directive 09-01*** and consistent with the terms and conditions of the Trial Period Plan because **the two together** form the **Trial Plan Agreement** (see Exhibit E). Regardless of the precise wording of ***Supplemental Directive 09-01***, it would be Bad Faith for the servicer to send the borrower a signed letter together with a **Trial Plan Agreement** not consistent with each other, ***Supplemental Directive 09-01,*** and it's purpose to modify the borrower's loan in order to make the home affordable - **Making Home Affordable Modification Trial Plan Agreement.**

64. ***Supplemental Directive 09-01*** states on pages 5-6 ***"Upon receipt of the documentation and determination of the borrower's eligibility, a servicer may prepare and send to the borrower a letter indicating that the borrower is eligible for the HAMP***

together with a Trial Period Plan." The servicer did not do this. The letter that the servicer sent to the plaintiff stated:

65. *'Since you have told us you are committed to pursuing a stay-in-home option, you have been approved for a Trial Plan Agreement. If you comply with all the terms of this Agreement, we'll consider* ***a permanent work out solution for your loan*** *once the Trial Plan has been completed."* The Trial Plan Agreement then stated ***"If all payments are made as scheduled****, we will reevaluate your application for assistance and determine if we are able to offer you* ***a permanent workout solution*** *to bring your loan current."*

66. This is totally inconsistent with ***Supplemental Directive 09-01.*** After the plaintiff made the three scheduled payments, the servicer should have proceeded with **step 2** of ***Executing the HAMP Documents*** to modify the loan. On page 14 of ***Supplemental Directive 09-01***, under ***Executing the HAMP Documents*** it states: ***"Servicers must use a two-step process for HAMP modifications. Step one involves providing a Trial Period Plan outlining the terms of the trial period, and step two involves providing the borrower with an Agreement that outlines the terms of the final modification."***

67. Neither the letter nor the Trial Plan Agreement that accompanied it mentioned anything about the HAMP as it should. Also it was not until over a year later that the plaintiff received a **Notice of Expiration** referencing the HAMP. In addition the notice stated the Trial Period Plan was an **Offer**. In order to accomplish this the servicer acted as if the servicer had used the first method of verbal information, sent the plaintiff a solicitation and an **offer** (not a signed a letter together with a Trial Plan Agreement), verified that the plaintiff's income documentation exceeded the **verbal** income information by more than 25%, reevaluated the plaintiff, determined he was still eligible, prepared **new** documents, and the plaintiff restarted the Trial Period. None of this applies to the Borrower but it is the only way the servicer could have sent the plaintiff such a notice of expiration a year later. This is totally impossible. The servicer did not do any of this.

68. The only way any of this would apply is if the servicer had not required the borrower to submit the required documentation and instead relied solely on recent verbal financial information

to **only** prepare and **offer** the borrower a Trial Period Plan. When both the servicer and Borrower sign and **agree** to the Trial Period Plan and it is executed, the servicer cannot avoid having had confirmed that the borrower met the underwriting and eligibility criteria of the HAMP. When this is the case the servicer cannot send the borrower a **Trial Period Plan Offer –Notice of Expiration** because the servicer had sent the Borrower an actual **Trial Plan Agreement**. The plaintiff did send the servicer the required documentation (see Exhibit D) and both the servicer and the plaintiff signed the **Trial Period Plan Agreement** (see Exhibit E). Therefore the Notice of expiration is totally invalid.

69. However if the **servicer does** only rely on recent verbal financial information to prepare and send the borrower **just an offer** of a Trial Period Plan, than the servicer is not required to verify this verbal financial information because the servicer does not have any documents from the borrower **at that time**. Once the borrower returns the signed Trial Period Plan and related documents with the first month's trial payment, the servicer must **confirm** that the borrower meets both the underwriting criteria and eligibility requirements.

70. If the borrower's **income documentation** exceeds the initial **verbal income** by more than 25%, it means the trial period plan was not prepared correctly according to the underwriting requirements. In this case the servicer must reevaluate the borrower based **on** the underwriting requirements and if the borrower still meets all the **underwriting criteria** and the **eligibility requirements**, new documents are prepared correctly and the borrower must restart the trial period.

71. The servicer cannot **confirm** the borrower meets the underwriting criteria without the required income documentation to do so. Therefore if the trial payments do not reflect this, it would **appear** that the servicer did not **confirm** that the borrower met the underwriting criteria. If the servicer actually prepared the Trial Period Plan based solely on financial information received **verbally** and never received any **income documentation** than this is possible.

72. If this is truly the case than the servicer must prepare a **new** Trial Period Plan based on the income documentation to establish that the borrower meets the underwriting requirements and starts the process over again to execute the documents. However this would **ONLY** occur when the

servicer relied solely on verbal financial information to prepare a **Trial Period Plan Offer.** In this case the servicer would send this to the borrower with a **solicitation** for the HAMP and an **offer** of a trial Period Plan. Otherwise when the servicer sends a signed letter together with a **Trial Plan Agreement** for the borrower to **sign and execute**, it is because the servicer confirmed that the borrower met **all** the eligibility requirements.

73. The servicer(s) intentionally prepared the plaintiff's Trial Period Plan without basing the trial payments on the plaintiff's income documentation so that it would appear as if the servicer(s) never confirmed that the plaintiff met the underwriting requirements. The servicer proceeded as if having used the first method, sent the plaintiff an **offer**, and the Trial Period Plan was not executed. However this was not the case and the servicer did not need **new** documentation to calculate the payments for the modification. The income documentation only needs to be no more than 90 days old at the time the servicer is determining eligibility. However the servicer(s) instructed the plaintiff to wait until after (post-HAMP) the plaintiff completed the trial Period Plan to return additional documents for calculating the plaintiff's back-end ratio but this was wrong.

74. The fact that the servicer sent the plaintiff an actual **Trial Plan Agreement** for the plaintiff to sign and execute is proof positive that the servicer confirmed that the plaintiff did meet all the eligibility requirements. The servicer could have then used the income documentation to calculate the monthly mortgage payments under the modification agreement. It is apparent that the servicer did not base the trial payments on the underwriting requirements as this would support the fact that the plaintiff met the underwriting requirements.

75. When the service does not use the alternative method and relies solely on recent verbal financial information, the Trial Period can restart without the servicer having to actually confirm the borrower meets the underwriting and eligibility criteria. As a result the servicer avoids signing and returning an executed copy of the Trial Period Plan to the Borrower when the Borrower's eligibility can be **reevaluated**. **This is the ONLY possible way for the Trial Period to restart and it is the only possible way for the borrower to be in a forbearance**. This was **not** the situation but the servicer acted as if it **were**.

76. Under the Trial Payment Period it states: ***"If the verified income evidenced by the borrower's documentation exceeds the initial income information used by the servicer to place the borrower in the trial period by more than 25 percent, the borrower must be reevaluated based on the program eligibility and underwriting requirements. If this reevaluation determines that the borrower is still eligible, new documents must be prepared and the borrower must restart the trial period."***

77. The servicer applied the second method **"as an alternative,"** to require the borrower to submit the required documentation to **first** verify and confirm the borrower's eligibility and income **prior** to preparing a Trial Period Plan. **If** the borrower meets the underwriting criteria, the servicer should execute the HAMP Documents accordingly. The servicer most definitely **did verify** that the plaintiff met both the **eligibility requirements** and the **underwriting requirements** but **to avoid this** applied the first method to **prepare** the Trial Period Plan. As a result the trial period payments were not calculated using the **underwriting criteria** as this would **demonstrate** the servicer had **confirmed** that the plaintiff met the underwriting criteria.

78. Instead the servicer based the trial period payments on information from the plaintiff's application form which was insufficient for a modification. In doing so the servicer avoided **proof** of **confirmation** that the plaintiff met the underwriting criteria and planned to use this to justify reevaluating the plaintiff and either restarting the trial period or while collecting documents for reevaluation, simply manipulate the plaintiff into continuing to make the trial payments which would become a Special Forbearance.

79. On page 18, under ***Trial Payment Period*** of ***Supplemental Directive 09-01,*** it states; ***"If the verified income evidenced by the borrower's documentation is less than the initial income information used by the servicer to place the borrower in the trial period, or if the verified income exceeds the initial income information by 25 percent or less, and the borrower is still eligible, then the trial period will not restart and the trial period payments will not change; provided, that verified income will be used to calculate the monthly mortgage payment under the Agreement."***

80. The servicer based the trial payments on the plaintiff's gross monthly expenses from page 3 of the Borrower's Assistance Form (attached hereto as Exhibit G). However the trial payments were slightly altered to disguise this fact in case the plaintiff kept the original page 3 of the application which would prove what the servicer(s) had done. The plaintiff listed the total monthly expenses on the original form as $913.78. The plaintiff's trial payments were $971.38. The servicer instructed the plaintiff to submit a new page 3 to replace the original in order to change the gross monthly expenses which increased the back-end ratio. By doing so the servicer(s) required the plaintiff to agree to seek Housing Counseling from a certified housing counselor.

81. Since the servicer(s) stated this validation was required to proceed with a permanent modification (see Exhibit E, page 3) the servicer(s) should have included the **Home Affordable Modification Program Counseling Letter** together **with** the **Trial Plan Agreement** and included information on this in the agreement itself. Instead the servicer simply included an innocuous **Attachment to Special Forbearance agreement** (see Exhibit E, page 3) which included the requirement but did not require this to be returned until three months later; after the plaintiff made the three trial payments. The only reason the servicer did not instruct the plaintiff to return this with the **Trial Plan Agreement** was to intentionally make it difficult for the plaintiff to satisfy this requirement.

82. The other items in the attachment were part of the required documentation which the servicer(s) required the plaintiff to submit as an alternative method for ***Verifying Borrower Income and occupancy Status***. The servicer(s) also used the gross monthly expenses to disguise the Trial Plan Agreement/trial period as a Forbearance Plan/forbearance which it was **not** and which MHA is **not** intended for. The purpose of MHA (Making Home Affordable) is to modify the loan under the HAMP (Home Affordable Modification Program).

83. If the borrower's submission is not complete, the servicer should work with the borrower to complete the Trial Period Plan submission. Therefore the servicer should not have signed and executed the Trial Period Plan until they received all of the documentation and the submission was complete. As a result once the borrower signed and returned the Trial Period Plan the servicer

should have confirmed that the borrower met the underwriting and eligibility criteria **at that time**. After this there should be no reason for the servicer to request the borrower to send any more documentation. Otherwise if the plaintiff did not meet the underwriting and eligibility criteria, the servicer should have promptly communicated this to the plaintiff in writing and considered him for another foreclosure prevention alternative. The servicer did not do this.

84. Under ***Executing the HAMP Documents*** it states:

"In step one, the servicer should instruct the borrower to return the signed Trial Period Plan, together with a signed Hardship Affidavit and income verification documents (if not previously obtained from the borrower), and the first trial period payment (when not using automated drafting arrangements), to the servicer within 30 calendar days after the Trial Period Plan is sent by the servicer."…

"If the borrower's submission is incomplete, the servicer should work with the borrower to complete the Trial Period Plan submission."…

"Upon receipt of the Trial Period Plan from the borrower, the servicer must confirm that the borrower meets the underwriting and eligibility criteria."…

"If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HAMP after the borrower has submitted a signed Trial Period Plan to the servicer, the servicer should promptly communicate that determination to the borrower in writing and consider the borrower for another foreclosure prevention alternative."

85. Although the plaintiff did not provide this information verbally, he submitted an **APPLICATION listing his assets, income, and expenses**. The Servicer acted as if he had provided the information **VERBALLY.** (Such information is considered to be **STATED** when no documentation is included). Therefore by sending the plaintiff a Trial Period Plan with **TRIAL PAYMENTS BASED ONLY ON HIS APPLICATION,** the servicer could act as if the Trial Period Plan was based upon stated financial information. However since the application was sent in combination with the required documentation, the application would not be considered as stated. For underwriting purposes, this would be considered Full Documentation (Full Doc).

86. Instead the Servicer **combined** both methods by first requiring the plaintiff **"*to submit the required documentation to verify the borrower's eligibility and income prior to***

preparing a Trial Period Plan" as an alternative, and then changed to the first method by using the plaintiff's application to prepare the Trial Period Plan. By doing so the servicer attempted to make it appear as if the servicer had never verified the plaintiff's income with the plaintiff's documentation.

87. The Servicer then prepared the Trial Period Plan incorrectly. The servicer should **not** have based the Trial Period Plan on his application because the servicer required the plaintiff ***"to submit the required documentation to verify the borrower's eligibility and income prior to preparing a Trial Period Plan."*** When the plaintiff submitted the income documentation, the servicer(s) should have **confirmed** the plaintiff met the underwriting criteria by verifying this with the income documentation or promptly communicate to the plaintiff in writing that he does did not meet the underwriting and eligibility standards of the HAMP at that time. Anything else would only apply if the servicer relied solely on recent verbal financial information instead of the alternative.

88. For the Trial Period Plan to be based on the financial information from the application alone, the Servicer should not have first required the plaintiff to submit the required documentation. Once the servicer had required this they should have remained consistent with this method, **worked with the borrower on completing the Trial Plan submission,** and either determined that the plaintiff met both the eligibility requirements and the underwriting requirements or promptly communicated in writing that the borrower does not meet these standards and considered the borrower for another foreclosure prevention alternative. The servicer did not do this.

89. Since the servicer had required the plaintiff to submit his documentation before considering him for the HAMP and had already signed and sent him an executed copy of the Trial Period Plan, the Servicer should have confirmed ***"upon receipt of the Trial Period Plan from the borrower"… "the borrower meets the underwriting and eligibility criteria."*** The servicer should then have proceeded with the end of **step 1** which states: ***"If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HAMP after the*** **borrower** ***has submitted a signed Trial Period Plan to the servicer, the servicer should promptly***

communicate that determination to the borrower in writing and consider the borrower for another foreclosure prevention alternative." The Servicer did not do this.

90. As a result the servicer never proceeded with **step 2** which states: ***"In step two, servicers must calculate the terms of the modification using verified income, taking into consideration amounts to be capitalized during the trial period. Servicers are encouraged to wait to send the Agreement to the borrower for execution until after receipt of the second to the last payment under the trial period."***

91. The plaintiff made his second trial payment on July 27, 2009. This payment **must be considered** to be the "second to last payment under the **Trial Period.** Regardless of how the payments were calculated or what the payments were based on, the servicer should have proceeded with **step 2** of Executing the HAMP Documents. However had the servicer prepared the Trial Period Plan properly, the modification payments would have already been calculated according to the plaintiff's verified income. Therefore there should be no reason for the plaintiff to submit new income documentation.

92. On page 18 of ***Supplemental Directive 09-01*** it states: ***"If the verified income evidenced by the borrower's documentation is less than the initial income information used by the servicer to place the borrower in the trial period, or if the verified income exceeds the initial income information by 25 percent or less, and the borrower is still eligible, then the trial period will not restart and the trial period payments will not change; provided, that verified income will be used to calculate the monthly mortgage payment under the Agreement."***

93. This references **income information** used by the servicer to place the borrower in the trial period. This should **only** be necessary when the borrower does **not** submit **income documentation** as an **alternative method**. In this case the servicer needs to use **income documentation** to verify the initial income information that the servicer obtained **verbally**. If the servicer has no income documentation at the time the ***"borrower was placed in the trial period,"*** (at the time the servicer prepared the Trial Period Plan) the servicer needs to use the income documentation to verify and confirm that this meets the underwriting criteria before calculating the

monthly mortgage payment under the Modification Agreement.

94. This does not apply if the borrower already provided the income documentation because the trial payments should already be calculated accordingly. As a result the payments should not change. Consequently the plaintiff should not have had to provide any new documentation. New income documentation should only be necessary if the servicer had **not** required the plaintiff to submit the documentation before preparing the Trial Period Plan and **had** used the first method of verbal information to send the plaintiff a **solicitation** for the HAMP and a **Trial Period Plan Offer**. Although this was not the case, the servicer was clearly intent on not modifying the loan and instead having the plaintiff continue to make trial payments as a **Special Forbearance** while also requiring the plaintiff to continually resubmit documentation until this process exhausts itself and the property was sold. The plaintiff never had a chance.

95. As a result the Servicer **improperly incorporated** the following under the ***TRIAL PAYMENT PERIOD*** on page 17 of ***Supplemental Directive 09-01, "Servicers may use recent verbal financial information to prepare and offer a Trial Period Plan. Servicers are not required to verify financial information prior to the effective date of the trial period. The servicer must service the mortgage loan during the trial period in the same manner as it would service a loan in forbearance."***

96. This was the "writing on the wall." It is evident that the servicer had intended on this from the very beginning. Included with the plaintiff's **Trial Plan Agreement** was an Attachment to Special Forbearance Agreement. This listed items that had to be sent back upon completion of trial plan period. One of the items was 2 recent pay stubs. The application the plaintiff submitted and all the documentation showed the plaintiff was self employed. Therefore this could not have been created just for the plaintiff. This was obviously a premeditated crime created for many borrowers including the plaintiff.

97. The servicer intentionally prepared the trial plan period so that it could not be converted to a modification. Regardless of any other requirements for a modification, it is very clear that the servicer never intended to modify the plaintiff's loan. It is obvious that the servicer

intended to require the plaintiff to submit new documents for **reevaluation,** and to restart the trial period based on a **Trial Period Plan Offer** that the plaintiff never received.

THIRD CAUSE OF ACTION

(Unfair Competition Against All Defendants)

Violation of Business and Professions Code Section §17200, et seq.

98. The plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as it fully sets forth herein.

99. Business and Professions Code §17200 prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Chase has engaged in unfair, deceptive, untrue, and misleading advertising in violation of Business & Professions Code 17200.

100. Business & Professions Code §17200 also prohibit any "unlawful… business act or practice." Chase has violated 17200's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts as set forth more fully herein and violating business and Professions Code §17200 *et seq*., HAMP, the California Foreclosure Prevention Act, and the common law.

101. Business & Professions Code §17200 also prohibit any "unfair…business act or practice." Business & Professions Code also prohibits any "fraudulent business act or practice." Chase's claims, false misleading, and misdirection are more fully set forth above and below, were false, misleading, and deceiving to the plaintiff within the meaning of the Business & Professions Code §17200. The defendants(s) actions caused and continue to cause damage to the plaintiff for the 5 years invested in defending such actions to compel defendant(s) not to foreclose.

102. Chase's acts, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of Business and Professions Code §17200, *et seq.* in that its conduct is substantially injurious, offends public policy, and is immoral and unethical as the conduct is counter to its means.

103. The defendant(s) therefore have engaged in reoccurring unlawful, unfair, and fraudulent business acts and practices and false advertising, entitling plaintiff to judgment and equitable relief against defendant(s).

104. Additionally, pursuant to Business & Professions Code §17200, plaintiff seeks an order and injunction requiring Chase to immediately cease such acts of unlawful, unfair, and deceptive business practices.

105. Although the plaintiff had the good sense not to continue to make trial payments, many other people did. The motives to avoid modifying the plaintiff's loan were the same in claims file by many others against Chase. Servicers simply had more financial incentive not to modify loans. These individuals were routinely told that all the documents were not received within the timeframe allowed. Often times these individuals were allowed to re-apply and began making payments again only to have the same problem. Servicers ultimately placed homes in foreclosure as this was more lucrative. Claims against Chase for such actions were filed by JEAN C. WILCOX, MICHELE HOOD, ROBERT HOOD, and SHARIE GREEN, Individually and on Behalf of All Other Consumers similarly situated in The United States District Court Central District of California Southern Division and then transferred to a CONSOLIDATED CLASS ACTION COMPLAINT filed in the UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS. Many of these people were never approved for a Loan Modification and lost their homes to foreclosure. The same tactics used by Chase to foreclose on the plaintiff's home were used on many others as described in these class action complaints. Many others were and are similarly situated as the plaintiff for the same reasons that the plaintiff has explained.

106. After the plaintiff made the three trial payment in accordance with the Trial Plan Agreement, the plaintiff received five letters (attached hereto as Exhibit H) dated October 02, 2009, October 16, 2009, October 30, 2009, November 25, 2009, and December 11, 2009. All five letters required a LLC to have an audited or reviewed year-to-date profit and loss statement. The first three letters have the heading WAMU is becoming Chase. These letters are addressed:

CHASE/WAMU FULLFILLMENT CENTER. The first three letters stated: ***"Thank you for participating in the Chase Home Loan Modification Program. We are writing to advise you of important program requirements concerning the status of your Trial Plan Offer…Unfortunately, we are still missing documentation necessary to evaluate your modification request….In addition to getting us the required documents, you must also continue to make trial period payments at your current amount."***

> ***"IMPORTANT: IF YOU FAIL TO PROVIDE THESE DOCUMENTS TO US AND MAKE ADDITIONAL TRIAL PERIOD PAYMENTS IN A TIMELY MANNER YOU WILL NO LONGER BE ELIGIBLE FOR A CHASE HOME LOAN MODIFICATION."***

107. This references the **Chase Home Loan Modification Program** which is entirely different from the **Making Home Affordable, Home Affordable Modification Program (HAMP)** which the **Making Home Affordable Modification Trial Plan Offer - Notice of Expiration** relates to (see Exhibit F). The Chase Home Loan Modification Program is totally inconsistent with the **Attachment to Special Forbearance agreement** (see Exhibit E, page 3).

108. The Attachment to Special Forbearance agreement is invalid to begin with. There can be no such thing as a **Special Forbearance agreement**. This is a combination of a Trial Plan Agreement and a Forbearance Plan. A Trial Plan Agreement relates to a modification and involves trial payments. A Forbearance Plan does not relate to a modification and does not involve trial payments. The Attachment to Special Forbearance agreement was created as a ploy to impose an additional requirement for Housing Counseling **after** all the required documentation had been submitted as per the "alternative" method. This was completely unnecessary. The servicer(s) should have used the income documentation to calculate the trial payments according to the underwriting criteria and provided instructions for Housing Counseling **in** the Trial Plan Agreement.

109. The weight of the evidence shows that the servicer(s) did indeed use the income documentation to calculate the back-end ratio and then prepared the Trial Period Plan by using the gross monthly expenses for the **trial payments** to support a forbearance as this is how a forbearance is established. In doing so the servicer(s) avoided confirming **whether or not** the plaintiff was eligible for the HAMP. The trial payments were not calculated using the income documentation which would confirm that the plaintiff met the underwriting requirements. If not the servicer(s) would have to promptly communicate to the plaintiff in writing that the underwriting requirements were not met. However the servicer **also** avoided indication that the plaintiff **was** eligible for the HAMP in a letter together with the Trial Period Plan. In addition it gave the servicer(s) an excuse to request that the plaintiff re-submit recent documents upon completion of the Trial Period Plan to determine the plaintiff's eligibility at that time as the initial documents would then be over 90 days old. Finally, the servicer(s) exploited the **language** of ***Supplemental Directive 09-01*** to impose the requirement for the "**post-HAMP modification back-end ratio**.

110. The servicer(s) intentionally avoided using income documentation to calculate the trial payments according to the underwriting criteria as this would also cause the servicer(s) to calculate the back-end ratio at that time and to include the Home Affordable Modification Program Counseling Letter together with the Trial Plan Agreement. This would make it simple for the plaintiff to satisfy the requirement. Rather, the servicer(s) imposed this additional requirement and took the position that the back-end ratio needed to be calculated for the **post-HAMP modification.** However this would **only** relate to the first method of verbal financial information and **not** be necessary when the income documentation had **already** been submitted as per the alternative method.

111. The Attachment to Special Forbearance agreement is invalid no matter what and would not apply to the plaintiff anyway. The **post-HAMP modification back-end ratio** is determined by dividing the gross monthly expenses by the monthly **gross income**. If this is equal to or greater than 55%, the borrower must represent in writing that the borrower will work with a

HUDD-approved housing counselor to reduce the total indebtedness below 55%. The servicer(s) included an Attachment to Special Forbearance agreement for this purpose but it is a fraudulent document to begin with regardless of whether the servicer(s) received the required documentation before or after the Trial Period Plan was prepared. Consequently this cannot be used to enforce the post-HAMP modification back-end ratio either way.

112. The back-end ratio would only be calculated after (post-HAMP) the servicer prepares and sends the borrower a **solicitation for the HAMP** and an **offer of a Trial Period Plan** based solely on the first method of ***Verifying Borrower Income and Occupancy Status*** when the servicer(s) has **not** already required the borrower to submit all the required documentation. In this case the servicer cannot actually determine what the **back end ratio is** until **after** (post-HAMP) the borrower **returns** the Trial Period Plan with the **income documentation** to **"*calculate the monthly mortgage payment under the agreement*."**

113. Since verified income is used to **calculate the monthly mortgage payment under the modification agreement**, verified income is also used to calculate the post-HAMP back-end ratio as **a condition for the modification** as well; thus this is the **"post-HAMP modification back-end ratio."** It is considered **post-HAMP** with respect to the **HAMP Documents** which include the Trial Period Plan. However the back-end ratio is only **post-HAMP** when the Trial Period Plan is sent to the borrower as an **offer (**not an agreement) due to the fact that the servicer(s) did not have the documentation to determine the borrower's eligibility and calculate the back-end ratio beforehand.

114. ***Supplemental Directive 09-01*** states under ***Trial Payment Period***: ***"If the verified income evidenced by the borrower's documentation is less than the initial income information used by the servicer to place the borrower in the trial period, or if the verified income exceeds the initial income information by 25 percent or less, and the borrower is still*** **eligible, then the trial period will not restart and the *trial period payments will not change*; *provided, that verified income will be used to calculate the monthly mortgage payment under the Agreement."***

115. If these underwriting requirements are met than the trial payments do not need to change and the trial period does not need to restart. The borrower may proceed to make the trial payments and the servicer now has the **income documentation** to calculate the monthly mortgage payment under the **modification agreement**. At this time, the servicer also uses the **income documentation** to calculate the **post-HAMP modification back-end ratio to** determine if it is equal to or over 55% as this is a condition **for the modification.** If so, than the servicer sends the borrower the **Home Affordable Modification Program Counseling Letter.**

116. The ratios are calculated for the purpose of the modification as the borrower must agree to work with a housing counselor if the back-end ratio is equal to or over 55%; thus this is the **post-HAMP modification back end ratio**. This ratio obviously has to be determined **before** the **modification** can be executed but **after** (post-HAMP) the **HAMP Trial Period Plan** is returned with the income documentation **when** this documentation had **not** already been provided, so that the servicer(s) may calculate the back-end ratio **after** receiving the **HAMP** (post-HAMP) Trial Period Plan **for** the **modification**. Thus this is the **post-HAMP modification back-end ratio**. However the borrower must agree in writing to obtain Housing Counseling in the HAMP **Documents.** Since the **Trial Period Plan** is a **HAMP Document**, the servicer(s) should have included this information **in** the **Trial Plan Agreement**. The servicer(s) intentional omitted this and created a fraudulent attachment for this purpose in order to make it more difficult for the plaintiff to get the HAMP modification.

117. ***Supplemental Directive 09-01*** states on page 11 under ***Total Monthly Debt Ratio***: ***"The borrower's total monthly debt ratio ("back-end ratio") is the ratio of the borrower's monthly gross expenses divided by the borrower's monthly gross income. Servicers will be required to send the Home Affordable Modification Program Counseling Letter to borrowers with a post-HAMP modification back-end ratio equal to or greater than 55 percent. The letter states the borrower must work with a HUD-approved housing counselor on a plan to reduce their total indebtedness below 55 percent. The letter also describes the availability and advantages of counseling and provides a list of local HUD-approved housing counseling agencies and directs the borrower to the***

appropriate HUD website where such information is located. The borrower must represent in writing in the HAMP documents that (s)he will obtain such counseling."

118. The plaintiff submitted all the required documentation before the servicer(s) prepared the Trial Period Plan which was why the plaintiff received an actual **Trial Plan Agreement** (see Exhibit E). Therefore the servicer(s) should have determined the plaintiff's back-end ratio at that time. The servicer(s) based the Trial Period Plan on the plaintiff's gross monthly expenses and designed the Trial Period Plan to be a Forbearance Plan by calling the Trial Plan Agreement a Special Forbearance agreement. This way the servicer could contend that the Trial Period Plan was actually a Forbearance Plan and also maintain that the back-end ratio had to be calculated after the HAMP Trial Plan Agreement (post-HAMP). This was an illusion that the servicer(s) created by attaching an innocuous and fraudulent **Special Forbearance agreement** to the **Trial Plan Agreement** (see Exhibit E).

119. Contrary to what the servicer(s) would like the plaintiff to believe, a Trial Period Plan/trial period and a Forbearance Plan/forbearance is **not** the same thing. A Trial Period Plan/trial period relates to a modification and involves trial payments. A Forbearance Plan/forbearance is **not** related to a modification and does **not** involve trial payments. A Forbearance Plan/forbearance (see Exhibit F) is simply a temporary reduction in the current payment to provide time to improve financial circumstances. The purpose for the **Trial Plan Agreement** was to **modify** the loan and **not** to assist the plaintiff with a **forbearance**. If the servicer wanted to assist the plaintiff with a **forbearance**, the servicer needed to **first confirm** whether or not the plaintiff was **eligible** and if the plaintiff was **not eligible**, sent the plaintiff a letter explaining this **before** considering the plaintiff for another **foreclosure prevention alternative** such as the **Forbearance Plan** (see Exhibit F). Instead the servicer avoided confirming the plaintiff's eligibility but approved the plaintiff for a **Trial Plan Agreement** and **also** referred to it as a **Special Forbearance agreement** (see Exhibit E). This was completely wrong and fraudulent.

120. The servicer(s) combined the **alternative method** of ***Verifying Borrower Income and Occupancy Status*** with the **first method** of **verbal financial information** to create the **combination** of a **Trial Period Plan with a Forbearance Plan**. The servicer used this to impose an additional requirement for Housing Counseling and to require the plaintiff to submit additional documents upon completion of the trial Period Plan **three months later**, to deny the plaintiff a modification when this was not accomplished. Since the servicer(s) sent the plaintiff a **Trial Plan Agreement**, the servicer should have already calculated the post-HAMP modification back end ratio and provided the plaintiff with the **Home Affordable Modification Program Counseling Letter** instead of slipping the requirement in with an innocuous and fraudulent **Attachment to Special Forbearance agreement** (see Exhibit E, page 3) which did not require the plaintiff to send this back until 3 months later; including 2 most recent pay stubs that did not apply to the plaintiff's self employed status and other items already submitted.

121. The plaintiff provided a Borrower's Assistance Form that included gross expenses and income documentation which the servicer(s) obviously did use to determine the plaintiff's back end ratio. However the representative for Chase (see Exhibit D) who was assisting the plaintiff required the plaintiff to submit a **new page 3 of the Borrower's Assistance Form and instructed the plaintiff to correct the total monthly expenses to account for the math** (see Exhibit G) as this increased the back-end ratio. The representative then advised the plaintiff to discard the original page 3 of the application to avoid any later confusion. The plaintiff made these corrections but kept the original page 3.

122. When comparing the total monthly expenses from both pages 3 of the Borrower's Assistance Form (see exhibit G) to see the increase, in addition to the requirement for Housing Counseling in the Attachment to Special Forbearance agreement strongly indicate that the servicer had in fact calculated the plaintiff's back-end ratios by using the income documentation. Consequently the servicer(s) should have verified and confirmed **whether or not** the plaintiff met the underwriting requirements and either prepared the Trial Period Plan accordingly or promptly communicated to the plaintiff in writing that the plaintiff was not eligible for the

HAMP. The servicer(s) intentionally avoided this in an attempt to manipulate the plaintiff into continuing to make trial payments with no intention on modifying the loan.

123. The servicer(s) should have sent the plaintiff the actual Home Affordable Modification Program Counseling Letter with the Trial Plan Agreement which the servicer did not do. Since the back-end ratio is post-HAMP modification, when using the **first method** of **verbal financial information**, the servicer will wait for the borrower to return the Trial Period Plan with the income documentation in order to calculate the back-end ratio because the pre-HAMP modification ratio would have only involved verbal financial information.

124. However when the borrower submits all the required documentation before the servicer prepares the Trial Period Plan (pre-HAMP modification), this ratio would be determined **at that time.** Thus the only remaining requirement is for Housing Counseling. As a result the servicer(s) should simply send the borrower the Home Affordable Modification Program Counseling Letter with the Trial Plan Agreement and include instructions for this **in** the agreement.

125. The **instructions** in the Attachment to Special Forbearance agreement could only have been valid when sent with a solicitation for the HAMP and an offer of a Trial Period Plan as the servicer(s) still needs the income documentation to calculate the back-end ratio **and** to determine the borrower's eligibility. These should both be accomplished **at the same time regardless of which method the servicer uses**. Since the servicer required the plaintiff to submit all the required documentation before preparing the Trial Period Plan, the requirement for the post-HAMP modification back-end ratio was in fact a pre-HAMP modification back-end ratio requirement. The language in ***Supplemental Directive 09-01*** is geared toward the first method for Verifying Borrower Income and Occupancy Status. This is apparent Under Executing the HAMP Documents. The servicer(s) must properly apply the Directive according to **one** method and recognize that the language of the Directive does not **continue** to make such a distinction between the two as when it states:

126. ***"In step one, the servicer should instruct the borrower to return the signed Trial Period Plan, together with a signed Hardship Affidavit and income verification documents (if not previously obtained from the borrower), and the first trial period payment (when not using automated drafting arrangements), to the servicer within 30 calendar days after the Trial Period Plan is sent by the servicer."***

127. The servicer acted as if only verbal financial information was used to prepare the Trial Period Plan. Also the trial payments were only slightly altered from the original page 3 of the Borrower's Assistance Form for the servicer(s) to make the **Trial Plan Agreement** appear as either a **Trial Period Plan** or a **Forbearance Plan**. In doing so the servicer can take the position that the plaintiff was eligible or that the servicer had not confirmed this either way. As a result the servicer(s) may also contend the back-end ratio had or had not been calculated prior to preparing the Trial Period Plan in order to apply the post- HAMP modification back-end ratio either before or after the plaintiff completed the Trial Period Plan. Thus if the servicer is later challenged, the Attachment to Special Forbearance agreement could be applied multiple ways. However this was a fraudulent document to begin with that was designed for this purpose.

128. Therefore the servicer(s) combined the Housing Counseling requirement with other documents and instructed the plaintiff to send all these together upon completion of the Trial Period Plan (see Exhibit E, page 3). At this time the servicer had not indicated the plaintiff was actually eligible for the HAMP by combining the Trial Period Plan with a Forbearance Plan, calling it a Special Forbearance Agreement and discounted the fact that the plaintiff actually signed and **executed** a Trial Plan Agreement which cannot be accomplished without the servicer confirming that the borrower was actually eligible for the HAMP. The servicer(s) actions were totally inconceivable but these are the facts.

129. Since verified income is used to calculate the monthly mortgage payment under the modification, verified income is also used to determine the post-HAMP back-end ratio under the modification as well; thus this is the "**post-HAMP modification back-end ratio**." The servicer(s) should have calculated the trial payments according to the underwriting requirements

but this would have compelled the servicer(s) to confirm that the plaintiff met the underwriting requirements or to make the determination that the plaintiff was not eligible for the HAMP, notify the plaintiff of this in writing, and consider the plaintiff for another foreclosure prevention alternative. This would negate the necessity for the Housing Counseling requirement which was an integral component in the servicer(s) goal to get the plaintiff to continue to make trial payments and then deny the plaintiff the HAMP Loan Modification in order to sell the property.

130. The servicer(s) based the plaintiff's trial payments on monthly gross expenses **instead** of using the **income documentation**. This way the servicer(s) avoided proof that the back-end ratio had been calculated in order to require the plaintiff to submit the necessary items from the attachment to accomplish this. In addition the servicer combined methods and Plans along with an attachment which combined an additional Housing Counseling requirement with other documents which could be considered for either eligibility or the post-HAMP modification back-end ratio. This created so many different scenarios that the servicer(s) could spin their position whichever way worked best. It also made the process so convoluted that it was too difficult for others to follow which became a consistent theme.

131. Once these requirements were not satisfied, the servicer(s) may contend all the documents had not been received to confirm the plaintiff's eligibility one way or the other and proceed to **reevaluate** the plaintiff and also require the plaintiff to continue to make trial payments consistent with a forbearance. This reevaluation was intended from the start as the servicer(s) actually make reference to this in the Trial Plan Agreement (see Exhibit E). Regardless, the fact remains that the servicer(s) violated laws for Good Faith and Fair Dealing and Unfair and Deceptive Business Practices in order to accomplish this. This was a carefully contrived, well orchestrated, systematically calculated, diabolical plot, to scheme the plaintiff and others out of a government sponsored program that would make the home more affordable.

132. Since the Trial Plan Agreement was designed to be a Special Forbearance agreement, the servicer(s) could have sent the plaintiff a **Special Forbearance Agreement** instead of a **Trial Plan Agreement**. This could have explained the **post-HAMP modification**

back end ratio in the agreement and attached the **Home Affordable Modification Program Counseling Letter.** Instead the servicer(s) sent the plaintiff a **Trial Plan Agreement** with an **Attachment to Special Forbearance agreement** with instructions for the plaintiff to return the Housing Counseling requirement and other documents upon completion of the Trial Period Plan. The servicer slipped this in as an innocuous attachment (see Exhibit E, page 3) to move away from modifying the loan; intentionally making it as difficult as possible for the plaintiff to get the HAMP Modification. Since these items were not to be sent back until the completion of the Trial Period Plan, it was not difficult for the borrower to forget about it three months later as it was not part of the Agreement that was signed. This was completely unfair and deceptive.

133. In addition, following the Trial Period Plan, the servicer sent the plaintiff 5 misleading letters (See Exhibit H); **none** of which mentioned anything about seeking Housing Counseling or instructions explaining the post-HAMP modification back-end ratio. Since these letters were duplicates and required the plaintiff to continue to make the trial payments, the plaintiff naturally assumed that this was in relation to the Trial Plan Agreement. The letter stated that the plaintiff had not yet submitted all or some of the documents on the list (which were included in the **Trial Plan package**-see Exhibit H). As a result the plaintiff naturally felt this was wrong as the documents listed in the letter had been submitted in order to receive the Trial Plan Agreement. Given this and the fact that the plaintiff made all three trial payments, the plaintiff saw no reason to continue making trial payments or to submit any documents.

134. These five letters pertained to a Chase Home Loan Modification; not the Trial Plan Agreement that the plaintiff signed for the HAMP. As a result Chase began to consider the plaintiff for "another foreclosure prevention alternative" **without** informing the plaintiff of a determination that the eligibility requirements for the HAMP were not met. **The Making Home Affordable Modification Trial Plan Offer Notice of Expiration** (see Exhibit F) stated the plaintiff did not submit the documents that were requested and that a notice which listed the specific documents needed and the time frame required to provide them, had been sent previously. This was clearly not in relation to the **Attachment to Special Forbearance**

agreement as the **Notice of Expiration** is for a **Trial Plan Offer; not a Trial Plan Agreement**. The plaintiff did not receive any further information relating to the "Attachment to Special Forbearance agreement."

135. In addition the **Making Home Affordable Modification Trial Plan Offer Notice of Expiration** should have been sent to the plaintiff **before** these other five letters regarding the **Chase Home Loan Modification**. This was completely unfair and deceptive; especially considering they reference trial payments and the trial plan package. The plaintiff had no idea what was needed to receive the modification under the Trial Plan Agreement and at the time did not even understand that there were different types of loan modifications.

136. The letter the servicer signed (see Exhibit E), which accompanied both the **Attachment to Special Forbearance** and the **Trial Plan Agreement** states: *"If you comply with all the terms of the Agreement, we'll consider a permanent workout solution for your loan once the Trial Plan has been completed."* The servicer intentionally does not use the term HAMP in accordance with the following:

137**.** ***Supplemental Directive 09-01*** states on pages 5-6 that with the alternative method ***"Upon receipt of the documentation and determination of the borrower's eligibility, a servicer may prepare and send to the borrower a letter indicating that the borrower is eligible for the HAMP together with a Trial Period Plan."*** This shows that the servicer had no intention on providing the plaintiff with the **HAMP** because the servicer was considering the **Trial Period Plan** to be a **Forbearance Plan** which is ***"A temporary reduction in your current payment to provide time for you to improve your financial circumstances."*** (See Exhibit F, page 2 - **Forbearance Plan**).

138. The servicer combined this idea with **restarting** the **trial period** and calling it a **Special Forbearance agreement** (see Exhibit E, page 3). The servicer(s) proceeded in this manner by preparing the **Trial Period Plan** based upon **financial information** from the plaintiff's application as opposed to using the income documentation to properly prepare the Trial Period Plan for a HAMP Modification. If the servicer intended on assisting the plaintiff

with a **Forbearance Plan**, the servicer should have called it a **Forbearance Plan Agreement** and the letter which accompanied it should have been consistent with this. There should not have been any attachment. This was completely deceptive, unfair, and fraudulent.

139. The last two of the five letters from above, do not have the heading WAMU is becoming Chase and are addressed CHASE FULLFILLMENT CENTER. These letters state: *"Chase Home Finance LLC ("Chase") is writing to inform you that we have not received all required documentation necessary to complete your request for a modification of the above-reference Loan."* These last two letters did not require the plaintiff to continue making trial period payments which the first three letters required in order to be eligible for a **Chase** Home Loan Modification. These letters only required the plaintiff to submit the documentation within 15 days or *"Chase may be forced to cancel your request and your modification will be denied."*

140. From the time the plaintiff received these five letters until the time the plaintiff received the **Making Home Affordable Modification Trial Period Plan Offer - Notice of Expiration**, the plaintiff had not been involved in any other loan modifications other than the **Trial Plan Agreement** he was approved for on May 19, 2009. The first three letters reference a **Chase Home Loan Modification** which is very different from the **Making Home Affordable Modification**.

141. For years Chase continued to offer the plaintiff the opportunity to apply for the HAMP. However Chase also sent the plaintiff multiple letters for other programs. Chase engaged in a continual charade involving the use of acronyms that appeared to be interchangeable in combination with nearly identical form letters that made it virtually impossible to differentiate from the untrained eye. These terms included **HAMP, MHA, HAFA, Trial Period Plan** and the term **"modification with Chase"** itself (attached hereto as Exhibit I). Chase repeatedly sent the plaintiff letters requiring pay stubs after the plaintiff had already informed Chase that the plaintiff was self employed. This only confused matters more because Chase then sent more letters to correct this. It is not reasonable to expect people, who are already having financial problems, to understand that Chase is exploiting bureaucratic legislation to make it difficult for

people to understand what is happening and to expect people to take the time out to educate themselves on these programs so as to be able to differentiate as to what Chase is doing.

142. Chase simultaneously sent letters to the plaintiff for both a modification and a short sale and later contended that this was acceptable because the plaintiff was not actually being **reviewed** for both programs at the same time; Chase was only collecting documents from the plaintiff to be used for this purpose. However the plaintiff had been told by Chase previously that the plaintiff could only request one program at a time. As a result Chase would contend that a program was active but not open, denied but not closed, closed but not deleted, deleted but not removed.

143. Chase only allowed the plaintiff to request one program at a time in order to prevent the transition from keeping the home to selling the home. Since Chase had the plaintiff in foreclosure while working on a modification (Dual Tracking), there was no time for the plaintiff to submit the required documents for a short sale if Chase did not make it possible for the plaintiff to keep the home. A modification is supposed to be the first option but Chase offered the plaintiff **"other assistance options"** as well to keep the home which was what the plaintiff had been requesting for years. Since the plaintiff had no idea how much the payments for a modification would be or if Chase would consider offering any "other assistance options," the plaintiff did not know if it would be **possible** to keep the home.

144. When requesting a short sale, Chase required the plaintiff to provide an actual **Purchase Agreement** from a buyer before postponing the foreclosure. Of course the plaintiff had to find someone who was even willing to assist with this. Considering the plaintiff obviously did not have the home listed for sale while pursuing assistance that would enable the plaintiff to **keep** the home, it was not feasible for the plaintiff to provide an actual Purchase Agreement when making this transition.

145. The Loss Mitigation section of the National Mortgage Settlement Consent Judgment actually requires under the Settlement Term Sheet, that the servicer evaluate borrows for short sales **prior** to the borrower putting the home on the market. Although Chase eventually

added a Supplemental Short Sale Package to the webpage, which allowed for a transition form a modification to a short sale, Chase still required that the plaintiff submit an actual purchase agreement before postponing the foreclosure. This made it impossible for borrowers to make the transition to a short sale. To defend this egregious behavior, Chase would require borrowers to **choose** between keeping the home and selling the home. However since the plaintiff was in foreclosure and did not know ahead of time what or if Chase was going to finally offer assistance to keep the home, the plaintiff did not know if this would be possible. Obviously the plaintiff did not want to sell the home if the plaintiff could keep it.

146. Chase continually sent letters requesting the same documents. As the plaintiff sent in his documents, Chase sent the plaintiff new letters with a slightly different list of documents. Some letters arrived together and some arrived apart. This became so convoluted that the plaintiff could not keep track and did not know what to do. The plaintiff did not understand the difference between a Home Affordable Modification Program (HAMP), Home Affordable Foreclosure Alternative (HAFA), and a Chase Home Loan Modification. Since the letters all looked the same, it appeared that they were duplicates.

147. This practice lasted for months before Chase would either require the plaintiff to reapply or eliminated it as an option to keep the home. In order to avoid foreclosure, the plaintiff had to continually reapply for assistance so an RMA would always be in the system. During this time Chase was disingenuously working on an alternative to foreclosure while foreclosing at the same time (Dual Tracking). Chase maintained an actual trustee sale on calendar for a total of two years (attached hereto as Exhibit J). The plaintiff had to be totally dedicated in order to defend this foreclosure action.

148. The plaintiff researched Chase and found countless numbers of people experiencing the same problems. The plaintiff found an e-mail address for Chase CEO, Jamie Dimon and sent messages hoping this would help. The plaintiff received calls from various people. Some of these individuals were actually abusive but there was one common theme. Every Customer Service Representative assigned to the plaintiff and all the individuals who

responded to the messages sent o Jamie Dimon, all insisted that investor approval was required to postpone a foreclosure.

149. The plaintiff contacted Community Housing Works who provided a referral to the local La Mesa Chase Homeownership Center. The plaintiff spoke with Manager Vicki Korporal and asked if Chase needed to receive approval from the investor before postponing a foreclosure. Vicki Korporal informed the plaintiff that Chase did not need to do this. The plaintiff asked if this was certain and Vicki Korporal emphasized that this was positively certain. The plaintiff reported this to Christine Waters of the Chase Executive Offices who had responded to the plaintiff's message to Jamie Dimon. Christine Waters specifically asked the plaintiff who had said that investor approval was not needed to postpone a foreclosure. The plaintiff informed Christine Waters that Vicki Korporal had provided this information. The next time the plaintiff contacted the La Mesa Chase Homeownership Center, Vicki Korporal denied telling the plaintiff that investor approval was not needed to postpone a foreclosure.

150. In order to avoid foreclosure the plaintiff had to continue to submit an application to request mortgage assistance (RMA) and submit the documentation. However Chase would not begin to **review** these documents for a Chase modification (see Exhibit I, letters dated June 24, 2012, July 11, 2012, Aug. 9, 2012, Aug. 29, 2012, & Sept. 12, 2012) until they had every single document and considered them to be accurate and complete (See Exhibit I). In addition Chase would state that Chase could not continue to review the plaintiff for a Making Home Affordable Modification because the plaintiff had requested consideration for a Trial Period Plan (see Exhibit I, letters dated Feb. 8, 2012 & March 24, 2012). The plaintiff does not understand this at all.

151. Due to the approaching date of foreclosure the plaintiff received no cooperation. Consequently the plaintiff had to spend days on end on the phone to locate someone to postpone the foreclosure. Chase used a virtual fortress to prevent this from being accomplished. An escalation system was designed that was almost impenetrable. Chase insisted that only the Foreclosure Department could postpone a foreclosure. As a result the plaintiff found he could

never locate the Foreclosure Department. Chase used multiple names for the Foreclosure Department and the representatives would misdirect the plaintiff with false, incorrect, or misleading information. Chase would constantly change phone numbers to complicate the process. Ultimately the plaintiff was finally informed that there was no actual Foreclosure Department and that this was merely a service contained within the Loss Mitigation Department.

152. Once the plaintiff learned this, Chase informed the plaintiff that an escalation had to be opened first before a foreclosure could be postponed and that the plaintiff needed to contact whatever department the plaintiff's loan was with. If the plaintiff was working on a loan modification, the plaintiff needed to contact the Loan Modification Department. It took the plaintiff many hours before accomplishing this as the plaintiff had to wait on hold, was disconnected, and misdirected to the wrong departments.

153. Once the plaintiff finally reached the Loan Modification Department, the plaintiff was informed that this was the **HAMP** Modification Department and that the plaintiff needed to contact the **Chase** Modification Department. The plaintiff went through the same problems before finally reaching this department only to be told the plaintiff needed to call the Chase Modification **Escalation** Department. Sometimes the plaintiff was directed to the Escalation Department only to be told it was the **wrong** Escalation Department. Once the plaintiff finally managed to find the right department, the plaintiff was told only a supervisor could open an escalation and that there was no supervisor available. Once the plaintiff actually finally did manage to have an escalation opened, the number for that department would later be either disconnected or changed to another department.

154. The plaintiff had to call Chase offices all over the nation in order to find someone with enough integrity to have the foreclosure postponed. The plaintiff spoke with Cathy Roan in Customer Assistance who assisted the plaintiff in this manner. However Cathy Roan then informed the plaintiff that Chase issued instructions not provide such assistance ever again.

155. The plaintiff had to go through extreme efforts to reach Manager Paul Gritsak who had previously approved an escalation for the plaintiff and postponed the foreclosure. Once

finally reaching Paul Gritsak, the manager immediately wanted to know how the plaintiff got the phone number. Paul Gritsak then ignored the fact that the plaintiff was actively involved in receiving assistance and refused to postpone the foreclosure to make this possible.

156. The plaintiff was forced to search for assistance with others at Chase because the customer service representatives assigned to the plaintiff's loan were absolutely impossible to deal with and did not return the plaintiff's letters. These representatives were referred to as "Dedicated Customer Service Specialists" but it was clear these representatives were dedicated only to foreclosing on the plaintiff's home.

157. The plaintiff had to send letters to the Executive Offices in order to receive a response in writing. Even then the plaintiff had to make repeated inquires before receiving a written reply. Chase informed the plaintiff in writing that Investor Approval was necessary to postpone a foreclosure and that there was a limit. However according to the California Reconveyance Company schedule of Trustee's sale (see Exhibit J), the plaintiff's loan was postponed 28 times. It was obvious that investor approval was never actually enforced and definitely **not** necessary.

158. The **Notice of Trustee's Sale** posted to the plaintiff's door (attached hereto as Exhibit K) **from** California Reconveyance Company has the **same** address as the letter from the **servicer** that accompanied the Trial Plan Agreement (see Exhibit E). When the plaintiff called the number for California Reconveyance Company, who was handling the sale, the plaintiff was informed this was Chase. This may help explain why for so long when the plaintiff called California Reconveyance Company, it was impossible to speak to anyone and why California Reconveyance Company has covered up the fact that Chase violated civil code 2924F/G.

159. These tactics were continually used and the plaintiff had to endure this every month or so for years in order to simply compel Chase to recognize the fact that the plaintiff was working on an alternative to foreclosure and there was no reason for there to be a trustee sale scheduled for the property. The plaintiff learned that in order to avoid foreclosure it was essential

that there **always** be an "active" Request For Mortgage Assistance (RMA) with Chase. This caused the plaintiff to have to repeatedly submit new forms and documents to accomplish this.

160. However Chase would usually only postpone the foreclosure 30 days at a time. This forced the plaintiff to go through the same agonizing ordeal each time. Since Chase persisted in this manner, refusing to recognize these actions were clearly deliberate and unlawful, never offering the plaintiff any indication of how long the foreclosure action would last or when it would resume, the plaintiff's whole life revolved around this dilemma. Therefore the damages accrued as the problems reoccurred.

161. Even thought the plaintiff was actively in foreclosure for two years, none of the customer service representatives assigned to the plaintiff had the authority to postpone the foreclosure. At one point the plaintiff had to spend hours with Customer Service to compel Christine Waters to call and assist with the foreclosure. Christine Waters finally agreed to assign a new representative in the Foreclosure Department to postpone the foreclosure. The plaintiff spoke with Elizabeth Whipple who denied working in the Foreclosure Department; stating that it was the Imminent Default Department. The plaintiff sent a letter to Chase requesting time to recover (forbearance) dated June 15, 2011 after successfully defending a $615,000 civil action for 2 years in Superior Court. The letter documented the abusive behavior by Chase and unfair and deceptive business practices (attached hereto as Exhibit L).

162. Given Chase was clearly not cooperating at all; the plaintiff did whatever the plaintiff could to compel Chase not to foreclose. The plaintiff explained that the income documentation Chase required was unavailable due to the liability of the civil suit, the fact that the plaintiff was self employed, and that the plaintiff suspended business until the case was over. The plaintiff was eventually able to submit a legal document to prove to Chase that these assets were under attack but the plaintiff suffered unimaginable stress and anxiety as Chase was foreclosing for almost a year beforehand.

163. On June 15, 2011, the plaintiff requested that Chase simply provide time to recover (Forbearance) from the two years spent defending the civil action (as well as the

foreclosure action itself) as the plaintiff knew this type of assistance was provided to other borrowers. The plaintiff made this request to the **Executive Offices.** Despite letters the plaintiff received offering **"other assistance options,"** the local La Mesa Chase Homeownership Office and the other representatives assigned to the plaintiff could not provide this type of assistance. The plaintiff received a modification agreement (without first receiving a Trial Period Plan), which the plaintiff was told was the only assistance available. However the plaintiff could not agree to these payments and was waiting to receive a reply from the Chase Executive Offices. The executive offices finally responded to the plaintiff **four months later**, after the modification agreement had expired, refused to allow time for the plaintiff to recover from the tremendous hardship, and placed the plaintiff back in foreclosure which lasted over another year.

164. After all the plaintiff had already been through, this was devastating. After another year of unimaginable stress and anxiety from dealing with Chase, the plaintiff contacted California Reconveyance Company on September 11, 2012 and spoke with Vincent Hicks who, after the plaintiff explained that there was no public record of the sale and that it had not been posted, informed the plaintiff that the sale had to be cancelled and the matter referred to the Chase legal department because it was over 365 days old. Chase had postponed the sale to October 23, 2012 without posting and publishing this date which was illegal. Chase violated civil code 2924F/G, which requires the servicer to post and publish a trustee sale after it is over 365 days old. This prevented the plaintiff from confirming the date of foreclosure through public means which made it more difficult for the plaintiff to defend the wrongful foreclosure action.

165. Although the plaintiff had managed to get the foreclosure postponed to October 23rd Chase then scheduled a new sale for October 9th which actually moved the foreclosure closer. Chase and California Reconveyance deny a violation ever occurred. California Reconveyance has committed fraud to cover this up. The records for California Reconveyance (see Exhibit J) show that the sale was postponed from 7/17/2012 to 9/21/2012, cancelled and a new sale date was schedule for 10/09/2012. This is false. The sale was not postponed from 7/17/2012 to 9/21/2012 and cancelled. The sale had been postponed from 9/21/2012 to

10/23/2012. It was subsequently cancelled on approximately 9/10/2012 after the plaintiff called California Reconveyance. The plaintiff then followed up with a complaint to the OCC. The records provided to the plaintiff by the President of California Reconveyance are fraudulent. The President of California Reconveyance, Deborah Brignac, specifically stated in the cover letter: (see Exhibit J) "*California Reconveyance Company cancelled the October 20, 2011 sale and the October 23, 2012, postponement because it exceeded the allowable time frame of 365 days. Instead California Reconveyance Company scheduled a new sale date for October 9, 2012. There has been no violation of California Civil Code 2924F or 2924G."* If this were true the plaintiff would not have known about it. However the plaintiff filed a complaint with the OCC on September 10, 2012 about this. In addition the records show that the sale was not postponed to October 23, 2012 which is wrong. This implies that the problem was immediately corrected before it became a violation. This is completely false. The letter does not explain that the plaintiff brought the matter to the attention of California Reconveyance after the fact and that the cancellation was the direct result of this. This is fraud to cover up for Chase.

166. Due to the fact that the plaintiff had **appealed** a complaint with the OCC, the fact that Chase had only sent **the plaintiff** a response and did not **also** send this to the OCC, the fact Chase was deceiving the plaintiff into believing the OCC **had** received the same response, the fact that the OCC informed the plaintiff that there was **no time limit** for the appeal, the fact that the plaintiff sent the OCC the letters from Chase in response to the complaint along with the plaintiff's response, the obvious collusion the plaintiff explained to cover up the truth and prevent the complaint from reaching the Tier Two Appeal with the Ombudsman, the plaintiff was approved for a Trial Period Plan but the payments were over three times the income on the application. However the foreclosure was placed on hold and the plaintiff pursued the **first** appeal.

167. During this time, the plaintiff responded to a letter from Chase dated January 15, 2013 that include an IMPORTANT NOTICE FOR UNEMPLOYED HOMEOWNERS (attached hereto as Exhibit M) This notice stated: *If you are having trouble making your monthly mortgage*

payments, we may be able to help. The Unemployment Program is designed to help you stay in your home. If you are eligible for the program, we will offer you a grace period. During this time, we will delay some or all of your monthly payments to give you time to improve your financial situation. These payments will be due at the end of the grace period. The grace period is temporary. It lasts for a set number of months or until you find employment, whichever comes first. We will review your mortgage 30 days before the grace period ends to see if you are eligible for a loan modification."…

168. The plaintiff submitted an application and a Hardship Affidavit dated January 25, 2013 (attached hereto as Exhibit N) along with all the required documentation for this program. There is only one application for all programs and it requires the borrower to choose between keeping the home and selling the home (see Exhibit N, page 5). The plaintiff also called Chase and informed a representative of this. This hardship letter made it clear that the plaintiff had no income and it clearly stated that the plaintiff made all the Trial Period Plan Payments for the HAMP but did not receive the modification.

169. Chase ignored the plaintiff's request for the Unemployment Program and treated it like a normal Request for Mortgage Assistance. When submitting such an application to Request Mortgage Assistance (RMA) Chase offers other options to keep the home other than a loan modification. Although the plaintiff continually responded to offers for "other assistance options," Chase only responded with a modification. The only other alternative to foreclosure Chse seemed to consider was a short sale. The other offers of assistance to keep the home are disingenuous as Chase never actually responds with any other assistance.

170. The plaintiff received a letter dated February 28, 2013 and an identical letter dated April 4, 2013 that stated*: "We received your request to participate in a modification with Chase. We still need some additional information from you to review your request…The documents we still need are: Copy of most recent quarterly or year-to-date profit and loss statement, signed and dated, showing revenue, expenses, company name and period of time covered. Please call me at the telephone number below, I need to speak with you about some*

additional information we still need." The Profit & Loss Statement was the **only** item listed and the letter ended *"Sincerely, HEATHER ERDMANN."*

171. This made no sense because prior to this Chase stated in a letter dated January 16, 2013, that the plaintiff was not eligible for a modification. The plaintiff had responded to a letter from the day before for the Unemployment Program, dated January 15, 2013, and had not applied for a modification. The plaintiff received an identical letter dated April 4, 2013 referencing the modification.

172. The plaintiff had previously contended with almost two years of wrongful foreclosure action so severe it caused massive stress, anxiety, and exhaustion which made the plaintiff physically ill. Consequently the plaintiff had already informed Chase to cease and desist all verbal communication. The plaintiff needed to repeatedly request that Chase correspond in writing and not use form letters. As a result the plaintiff wrote Chase on April 15, 2013 and May 21, 2013 to explain that the RMA was for the Unemployment Program and that the plaintiff was requesting time to recover which the Unemployment Program provided (Grace Period) (see Exhibit M, page 2).

173. Although the plaintiff had a Cease and Desist Order restricting Chase and Select Portfolio Servicing from contacting him by phone and made it perfectly clear that all communication was to be in writing, Chase and Select Portfolio Serving continually requested that the plaintiff call as if the plaintiff was willing to speak to the servicer as long as the plaintiff made the call. Still, Chase violated the Cease and Desist order several times. Once in foreclosure, the plaintiff had no alternative but to accept this.

174. The plaintiff responded with a letter dated April 15, 2013 (attached hereto as Exhibit O). The letter explained that the plaintiff had applied for the Unemployment Program and clearly detailed the reasons why the profit and loss statement was **the most recent** one the plaintiff had as the form requests. The letter informed Chase of all the claims contained in this complaint. The letter ended by requesting Chase provide **time**, **in accordance with the application** (see Exhibit N, page 6), to recover from the years the plaintiff spent as a defendant

in court as well as the years of damage done by Chase before requiring the plaintiff to begin making payments.

175. The plaintiff repeatedly sent Chase the most recent profit and loss statement from the plaintiff's business but had selected business failure on page 2 of the Unemployment Form and listed zero for income (see Exhibit N, page 6 & 7). Although the plaintiff submitted an old profit and loss statement, it was the most recent. The plaintiff received a letter from Chase dated May 09, 2013 (attached hereto as Exhibit P) which stated *"We are writing to let you know we received your request for a mortgage modification. After completing two reviews of the information you sent us, we determined you are not eligible for a modification under the Home Affordable Modification Program (HAMP) or any other modification programs."*

176. After this the letter had in large bold captions: ***"You still have options to avoid foreclosure*** *… After you read this letter, please call us right away at one of the telephone numbers listed below. We would like to discuss the assistance options that may help make your mortgage payments more affordable and avoid foreclosure*." After this the letter had in large bold captions: ***"Reapplication options*** *...if you are still interested in being reviewed for assistance options that may be available, you can reapply. But we can't begin to determine if you are eligible until we receive new copies of all of the documents we need from you. Please send complete and accurate documents right away or you will not be considered for a modification and your home may be at risk of foreclosure sale."*

177. At the bottom of this letter it stated in large bold captions: "***Your options and next steps.***

To keep your property, *you must pay the total past due amount.*

To avoid foreclosure, *you may be eligible for the federal government's Home Affordable Foreclosure Alternatives (HAFA) program…"*

178. On the next page it stated: *"If you do not agree with the decision to deny the modification you requested, you can send us your reasons in writing. We will confirm in*

five business days *that we received your* *dispute.”* (See Exhibit P). The plaintiff disputed this decision in a letter dated May 16, 2013 which was cc: to the OCC and the OCC Ombudsman (attached hereto as Exhibit Q) as the plaintiff was engaged in complaints to the OCC regarding Chase. The plaintiff sent another Request For Mortgage Assistance with a Hardship Affidavit dated May 21, 2013 (attached hereto as Exhibit R) in response to the letter the plaintiff received from Chase dated May 09, 2013.

179. This letter again references that the plaintiff had requested time to recover. The OCC responded to the plaintiff's **initial** complaint by stating Chase informed the OCC that the plaintiff was eligible for the Independent Foreclosure Review. As a result the OCC simply referred the plaintiff to the Independent Foreclosure Review (attached hereto as Exhibit S). However the plaintiff had no recourse as there was no way to correspond with these consultants or the Administrator. In addition the Independent Foreclosure Review had been discontinued shortly afterward.

180. The plaintiff did not receive a letter within 5 business days regarding the dispute the plaintiff filed. The plaintiff did finally receive a letter from Chase (OH4-7304) dated May 27, 2013 which stated "**Your Inquiry is Under Review**…*I am writing in response to a recent inquiry about your loan. We are investigating the correspondence we received for your loan, and will provide you with a response in a timely manner.”* (Attached hereto as Exhibit T) On Friday, May 31, 2013, Chase had a Foreclosure Notice posted on the plaintiff's door with a trustee sale scheduled for June 21, 2013.

181. Once in foreclosure the plaintiff was forced to speak with Chase by phone because the sale was scheduled for 21 days later. Chase never gave the plaintiff any clear warning and advance notice of when this would occur and never had in the past. Chase informed the plaintiff that there was an active modification on the loan. As a result the plaintiff informed California Reconveyance Company that Chase was violating the **California Homeowner Bill of Rights** which restricts servicers from dual tracking (foreclosing when also working on an

alternative to foreclosure). Huey Chiu, a manager for California Reconveyance Company, stated that Crystal Arthurs of Chase Executive Offices, explained that all the necessary documents had not been received. Huey Chiu informed the plaintiff that this message would be sent to the plaintiff's Dedicated Customer Assistant Specialist, Heather Erdmann.

182. The plaintiff knew Heather Erdmann would be of no assistance so the plaintiff began franticly searching for assistance elsewhere. The plaintiff had previously filed a complaint with the California Attorney and received a reply from the CA Monitor for the National Mortgage Settlement. Although the plaintiff had explained the situation in the complaint, the CA Monitor did not actually take any action at this time. The plaintiff was also calling HUDD Approved Housing Counselors.

183. On June 4, 2013, the plaintiff spoke with HUDD Approved Housing Counselor Carla Macias of Community Housing Works in San Diego. Carla Macias informed the plaintiff that Heather Erdmann works at the La Mesa Chase Homeownership Center and was out of work for the next week and a half. The plaintiff called the LA Mesa Chase Homeownership Center to confirm this and spoke with Lourdes Moran who informed the plaintiff that despite what the forms said, the Profit and Loss statement was too old and needed to be **current.** In addition Lourdes Moran questioned the fact that the plaintiff selected Business Failure and stated that the income was not sufficient for a modification and until these changes were made, the application (RMA) would not be sent to **underwriting**. The plaintiff questioned all this and was requesting mortgage assistance; not a loan modification. The plaintiff had been continually asking for other assistance and explained the need for time to recover. Lourdes Moran stated these instructions came from the Chase Executive Offices in Columbus, Ohio.

184. Until the application was in underwriting, Chase was not restricted from foreclosing because the CA Homeowner Bill of Rights only applies when a **"complete application"** is in underwriting. Therefore Chase merely contended that the application was not complete when in fact it was. Also with the fast approaching foreclosure, the plaintiff was under duress and was coerced into making these changes to get the application into underwriting to

stop the foreclosure but the modification was closed prematurely on June 8, 2013 before this was accomplished.

185. After the plaintiff discovered that Heather Erdmann was out of the office, the plaintiff had sent a message to the CA Monitor (attached hereto as Exhibit U) explaining this and that Chase had not sent the plaintiff any letters acknowledging receipt of the RMA and did not inform the plaintiff of any additional documentation that was required. This finally prompted a response from the CA Monitor to take action as Chase was violating the **National Mortgage Settlement Consent Judgment**. In addition Chase displays a **"Commitment to Treating Customer's Fairly"** on the Chase Homeownership Center Webpage. This provides an address for customers to report fraud and other problems. Before receiving a call from the attorney with the CA Monitor, the plaintiff sent a long letter, dated June 10, 2013, Express Mail to Chase Customer Support (attached hereto as Exhibit V) documenting the coercion and many other problems. However the plaintiff never received a response.

186. As a result the plaintiff received a call from Jennifer Song, an attorney with the Consumer Rights Protection Clinic at the UC Irvine School of Law. Jennifer Song asked the plaintiff to send the latest letter from Chase which the plaintiff sent (see Exhibit P). The attorney informed the plaintiff that written authorization was required to receive assistance and sent the plaintiff a CA Monitor Borrower Authorization Form (attached hereto as Exhibit W) to allow communication with Chase. After the plaintiff faxed this, the plaintiff received a follow up call from Attorney Jennifer Song who explained that assistance was limited as it related only to loan modifications and once the application was in underwriting the "job was done." The attorney also insisted that the plaintiff would have to speak with Chase over the phone. However the plaintiff had already spoken to Lourdes Moran who claimed that the application needed to conform to a loan modification and that all instructions are received from the Executive Offices in Columbus, Ohio. As a result the plaintiff was coerced into changing the RMA to conform to a modification that Chase knew the plaintiff did not qualify for.

FOURTH CAUSE OF ACTION

FRAUD, OPRESSION, MALICE

[CA Civil Code Section §3294-§3296]

187. The plaintiff repeats and re-alleges the information in the paragraphs above as though fully set forth herein. Shortly after receiving assistance from Attorney Jennifer Song, the plaintiff received a call from Laura Minich, Chase Sr. Legal Specialist in Florida. Laura Minich offered the plaintiff any assistance but sounded very nervous. The plaintiff was very ill from the stress and anxiety but was determined to get some answers. The plaintiff asked for assistance with the foreclosure and was informed that it had been postponed to August 21, 2013. The plaintiff asked for written confirmation of this and written confirmation of the name of the person identified by Chase (OH4-7120), and the person who had responded to the complaints with the OCC. The plaintiff also asked for a written explanation for why Chase would not accept the P&L statement and allow the application into underwriting, and the person responsible for the foreclosure action. Laura Minich provided the plaintiff with a contact number but when the plaintiff called it, the number no longer worked.

188. The plaintiff received a letter from Chase (OH4-7120) dated July 5, 2013 (attached hereto as Exhibit X) that contained fraud. The letter stated:

189. *"We are writing in response to your inquiry dated June 5, 2013, to the California Monitor regarding your above referenced account. According to our research on June, on June 12, 2013, we received a Request for Mortgage Assistance Form indicating that you want to keep the above referenced property. On this same date, we also received a residential Listing Agreement, and California residential Purchase Agreement and Joint escrow Instructions, which indicated your intent to sell the property located at 315 Bonair Street, Unit 3, La Jolla, CA. Further research indicates that we spoke to you on June 12, 2013 and advised you that we needed the buyer's Pre-Approval to proceed with a short sale review. On June 13, 2013 we received the Standard Lender Loan Disclosure for Pre-Approval as requested and we proceeded with a short sale review based on the documentation received. On June 13, 2013, a foreclosure sale was schedule for June 21, 2013. We subsequently postponed the foreclosure sale until*

August 21, 2013." … "The information you submitted is being reviewed by underwriting at this time. If we are unable to approve your request for a loan modification and you ***would like*** *to keep the home, the following alternatives may be available:*

190. ***Temporary Forbearance Agreement****: Under this option, the lender agrees to delay foreclosure and/or collection on your mortgage loan to allow you time to establish the ability to make your monthly payments. The availability of this option depends on your current ability to pay and the nature of your hardship."*

191. This letter is dated July 5, 2013 but was not delivered to the plaintiff until July 15, 2013. It does not take 10 days for mail to be delivered from Columbus, Ohio to the plaintiff's address; it takes 4 days. Also the plaintiff was sent a letter dated July 9, 2013 that stated: *"You are approved to enter into a trial period payment plan….Call us or just make your first trial plan payment on time to accept this offer."*

192. This offer was made when Chase (OH4-7120) already knew the plaintiff was approved for the Trial Period Plan and was backdated to make it look as if the offer was made prior. Since the plaintiff was approved for the Trial Period Plan on July 9th and the plaintiff received the offer for a Temporary Forbearance Agreement on July 15th, there was sufficient time for delivery.

193. The letter was a cover up for the request made to the Senior Legal Specialist Laura Minich who had responded to the plaintiff after being contacted by the CA Monitor/Attorney Jennifer Song for violating the National Mortgage Settlement Consent Judgment. The letter from Chase (OH4-7120) states that it is in response to the plaintiff's inquiry to the **CA Monitor dated June 5, 2013** when in fact it was in response to the plaintiff's request to **Sr. Legal Specialist Laura Minich** who called the plaintiff on June 13, 2013 after the CA Monitor received a message from the plaintiff on June 5, 2013.

194. Chase was contacted by the CA Monitor/Attorney Jennifer Song from the UC Irvine Consumer Rights Protection Clinic who had a letter from Chase to the plaintiff which violates laws against Unfair and Deceptive Business Practices and lead to the foreclosure action

on **May 31, 2013**. The letter states that the foreclosure was **scheduled on** June 13, 2013 **for** June 21, 2013. This is false. This would only allow 8 days notice and the law requires at least 21 days. The foreclosure was **scheduled** on May 31, 2013 **for** a *"New sale date scheduled for 06/21/2013 and postponed to 06/21/2013."*(See Exhibit M, bottom of page 2).

195. On **June 13, 2013**, Sr. Legal Specialist Laura Minich informed the plaintiff that the foreclosure was postponed from June 21, 2013 to August 21, 2013. As the plaintiff had requested, confirmation of this was received from the California Reconveyance Company (attached hereto as Exhibit Y). This was the result of intervention by the CA Monitor/ Attorney Jennifer Song for violations of the National Mortgage Settlement Consent Judgment and Unfair and Deceptive Business Practices. This was why Chase postponed the foreclosure on June 13, 2013; not because Chase received the "Standard Lender Loan Disclosure for Pre-Approval" on June 13, 2013 or for any other reason. Chase (OH4-7120) committed fraud to cover up the truth as this executive was the one responsible.

196. The plaintiff received an additional letter from Chase (OH4-7120), dated July 8, 2013 (attached hereto as Exhibit Z). This letter also contained fraud to cover up the actions by this same executive for violating the National Mortgage Settlement Consent Judgment and avoiding the CA Homeowner Bill of Rights in order to foreclose on the plaintiff's home. Again instead of stating that the letter is in response to the request the plaintiff made to Sr. Legal Specialist Laura Minich, it states*: "This letter is in response to your correspondence dated June 5, 2013, addressed to the Chase Home Ownership Center (CHOC)" … "Our records show you reapplied for a modification in May 2013. Because it was a change in circumstances reapplication, no missing information letters were sent to you."… "the profit and loss (P&L) statement submitted was for the period of July 2011 to September 2011 and* ***not the most recent*** *quarterly or year –to-date (YTD)."*

197. This information is false. The plaintiff did not reapply for a modification in May 2013. On May 16, 2013, the plaintiff **disputed** the details about why the plaintiff was not eligible (see Exhibit Q). The letter from May 9, 2013 stated that the plaintiff did not provide all of the

documents requested within the required timeframe, or the documents were incomplete (see Exhibit P).

198. In the dispute the plaintiff explained that the plaintiff had received two identical letters (attached hereto as Exhibit A-1) from Heather Erdmann both of which requested a copy of the **"MOST RECENT"** quarterly or YEAR-TO-DATE PROFIT and LOSS STATEMENT. The plaintiff explained in the dispute that this most recent P&L statement was provided repeatedly and that the plaintiff selected business failure on the RMA forms. The plaintiff explained in the dispute that on April 15, 2013, a letter was sent to Chase explaining all this and requested that Chase correspond in writing regarding any issues and not use form letters but that the plaintiff received no response to this. Two weeks later, during foreclosure, the plaintiff experienced the same problem again with the profit and loss statement; except this time Chase would not send the plaintiff any letters to document it.

199. The letter from Chase (OH4-7120) is false. The plaintiff did not reapply for a modification in May 2013 and it was not a change in circumstances. The plaintiff sent Chase a letter dated May 21, 2013 (see Exhibit R) which requested time to recover in accordance with the "other assistance options" from the letter sent by Chase dated May 9, 2013 (see Exhibit P) as Chase had informed the plaintiff that a modification was no longer an option (see Exhibit P). The plaintiff's request for time to recover was consistent with the information on page 2; section B of the RMA which asks for the length of term for the situation, and the fact that the plaintiff had selected business failure (see Exhibit N).

200. Furthermore the RMA from May 2013 was by no means a **change in circumstances reapplication**. The Hardship Affidavit/RMA from May 21, 2013 was consistent with the Hardship Affidavit from January 25, 2013/ Unemployment Program forms (RMA) which was the plaintiff's prior application (see Exhibit N) and the plaintiff references this (see Exhibit R, bottom of page 1). In fact the plaintiff had requested **time to recover** and the Unemployment Program allows for a **grace period** which is the same thing (see Exhibit M, page 2, top). Chase ignored the plaintiff's request for the Unemployment Program and sent the

plaintiff a letter dated May 9, 2013 (see Exhibit P) which did not apply to the Unemployment Program and instead references a modification.

201. The hardship affidavit from May 21, 2013 and the previous hardship affidavit from January 25, 2013 as well as the forms and documents were all consistent and did not reflect any change in circumstances. The only letter from Chase that actually even mentions anything about a **change in circumstances reapplication** was dated **January 16, 2013** (attached hereto as Exhibit B-1) **and pertains only to a modification** and this letter was dated a day **after** the letter for the Unemployment Program dated **January 15, 2013** (see Exhibit M).

202. The plaintiff never responded to this **change in circumstances reapplication** because the plaintiff responded to the letter from the **day before** for the Unemployment Program. Therefore there was no change in circumstances because the plaintiff had not **applied** for a modification. The plaintiff merely **disputed** the decision and applied for **other assistance options** by **requesting time to recover** (see Exhibit R, page 1, 2nd paragraph, line 5) which is what the Unemployment Program offered. Also Chase stated the plaintiff was **not eligible** for a modification (see Exhibit B-1, first line). Yet Chase completed two reviews for a modification (see Exhibit P, first line) and never considered the plaintiff for **"other assistance options"** as in the letter from January 16, 2013 (see Exhibit B-1) which on July 8, 2013, according to Chase (OH4-7120), was what the plaintiff had responded to even thought this was wrong. Nothing Chase says or does makes any sense at all.

203. The letter from Chase dated May 9, 2013 (see Exhibit P) mentions a **reapplication for other assistance options** but does not mention anything about a **change in circumstances**. The plaintiff never responded to the letter form Chase dated January 16, 2013 which references a **change in circumstances reapplication**. This only related to a modification and in this same letter Chase stated the plaintiff was not eligible (see Exhibit B-1). Furthermore the letter states that to keep the property the plaintiff must pay the total past-due amount and to avoid foreclosure the plaintiff had to be eligible for HAFA which totally discounts the Unemployment Program.

204. The National Mortgage Settlement Consent Judgment requires servicers to provide borrowers with written letters regarding their applications. Chase (OH4-7120) violated the Consent Judgment in order to facilitate the foreclosure and committed fraud to cover this up. Also Chase was intentionally not allowing the plaintiff's RMA into underwriting in order to avoid the CA Homeowner Bill of Rights which restricts foreclosure when a **complete** application is in underwriting.

205. The plaintiff had repeatedly selected Business failure on the application and one of the required forms of proof was "Most recent signed and dated quarterly or year-to-date profit and loss statement" (see Exhibit N, page 6/page 2 of RMA, bottom). As a result Chase **repeatedly** refused to accept the plaintiff's P&L statement. Chase (OH4-7120) then committed fraud to cover this up by making the outrageous claim that the reason was because it was not **"the most recent."** This defies all logic and is rather pathological as this executive is clearly a compulsive liar. It is an obvious desperate attempt at avoiding the truth; that this executive was intentionally trying to foreclose on the plaintiff's home instead of providing the mortgage assistance Chase offers.

206. The plaintiff had filed complaints with the OCC and received replies from Chase (OH4-7120). The plaintiff refuted every excuse this executive provided with documentation to the contrary. The plaintiff sent both Chase and the OCC an 11 page letter dated March 12, 2013 which exposed this executive for fraud. In an attempt to make the response too convoluted to understand, the executive was using so much evasive terminology combined with so much false information that it contradicted itself.

207. In letters dated October 3, 2012 and February 20, 2013 (attached hereto as Exhibit C-1), the executive commits fraud.

208. At the top of page 2 of the first letter, the executive wrote: *"You contacted us on August, 21, 2012, stating that you were now interested in a modification, and you were informed that your loan was removed from the short sale review and in review for a modification. On*

August 21, 2012, we sent you a letter to confirm that your loan was no longer in the short sale review process because you were no longer interested in a short sale."

209. At the top of page 4 of the second letter (see Exhibit C-1) the executive makes a statement to the contrary which says: *"On August 21, 2012, your account was denied for a short sale because we were unable to determine your intent and you did not respond to Chase."*

210. The plaintiff explained to both Chase (OH4-7120) and the OCC that this was not possible because Chase (OH4-7120) had first explained that the plaintiff's loan was **removed** from the short sale review and no longer in that process in order for it to be reviewed for a modification. As a result this executive cannot later claim that on this same date, the loan was denied for a short sale because Chase could not determine the plaintiff's intent. Both cannot be true.

211. Once the loan was **removed** from the short sale review process, the review stopped. Thus the loan cannot then be denied for a short sale when there is no such review in progress. Further Chase obviously **did** know the plaintiff's intent because Chase admitted that the plaintiff made contact and expressed interest in a modification. Also Chase (OH4-7120) admitted the plaintiff contacted Chase on August 21, 2013 and then Chase (OH4-7120) claims the short sale was denied on August 21, 2013 because the Plaintiff did not contact Chase. Both statements cannot be true. Chase (OH4-7120) committed fraud in response to the plaintiff's complaint with the Comptroller of the Currency and this fraud was sent to the OCC (see Exhibit C-1, last page of both letters) to cover up the truth that Chase was intentionally doing everything possible to foreclose on the plaintiff's home instead of providing the assistance Chase offers.

212. In both letters Chase sent to the OCC, dated October 3, 2012 and February 20, 2013 (see Exhibit C-1, page 2 of 1st letter, 2nd to last paragraph and 1st page of 2nd letter, 2nd paragraph), it states: *"We show there was no violation of California Civil Code 2924fF or 2924G. The original sale date of October 20, 2011, was removed after the sale was postponed to October 23, 2012, which exceeded the allowable time frame of 365 days. A new sale was scheduled on October 9, 2012, but has since been postponed to November 15, 2012."*

213. The plaintiff had called California Reconveyance Company to confirm the date of the sale because no public information was available about this. After bringing the matter to the attention of Vincent Hicks of California Reconveyance Company, the plaintiff was informed that the problem was due to the sale being over 365 days old. As a result Vincent Hicks informed the plaintiff that the sale was now cancelled and that the Chase legal department would be contacted. The plaintiff then filed a complaint with the OCC on September 10, 2012 **after** speaking with Vincent Hicks. However the plaintiff later called the processor at California Reconveyance and received the date of cancellation as September 11, 2012. This would mean that California Reconveyance cancelled the sale **after** the plaintiff filed a complaint with the OCC. This is consistent with the letter from Chase (OH4-7120) dated October 3, 2012 in response to the complaint (see Exhibit C-1). This means that the sale was not cancelled **before** it was postponed past 365 days. Obviously the sale had to have been postponed beyond 365 days or the plaintiff would never have discovered the problem and filed a complaint in the first place.

214. In addition Vincent Hick's manager, Huey Chiu told the plaintiff that Chase had told California Reconveyance Company to cancel the sale. When the plaintiff replied by stating this was a lie, Huey Chiu hung up the phone. The plaintiff documented this with a complaint to the Attorney General (attached hereto as Exhibit D-1) and spoke with Vincent Hicks who stated that California Reconveyance Company had spoken to him about it but that he would not lie. The record of the Trustee's sale schedule from California Reconveyance Company has been altered to cover up this violation. The President of California Reconveyance stated in a letter dated September 18, 2013 (see Exhibit J) that there was no violation of CA civil code 2924F/G because the October 23, 2012 postponement was cancelled (as this would exceed 365 days). However the plaintiff had **previously** called California Reconveyance and spoke with the processor, Marlene, who provided a list of dates about the Trustee Sale (429729CA) which included when the sale was postponed. The processor informed the plaintiff that the sale was postponed from September 21, 2012 to October 23, 2012 and canceled because it exceeded 365 days.

215. The plaintiff's "Dedicated Customer Service Specialist," Heather Erdmann admitted not having "any ability to generate any letters" to the plaintiff. However her name appears at the bottom of the letters from Chase sent to the plaintiff (see Exhibits P and A-1). Since Heather Erdmann did not send this letter and considering Lourdes Moran confessed to the plaintiff that all instructions are received from the Executive Offices in Columbus, Ohio, it is evident that these letters came from the executive level and that the executive who sent them was the individual controlling the plaintiff's situation; not the "Customer Service Specialists" whose names appears at the bottom of the letters. In addition, Carla Macias, who is a HUDD approved Housing Counselor in San Diego that speaks with Heather Erdmann about assisting customers with their loans, informed the plaintiff that "no one really knows who is in charge of these files."

216. In the letters requesting "MOST RECENT" quarterly or YEAR-TO-DATE PROFIT and LOSS STATEMENT (see Exhibit A-1), it also states: *"Please call me at the telephone number below. I need to speak with you about some additional information that we still need."* Since Heather Erdmann did not send this letter and because Lourdes Moran, who later filled in for Heather Erdmann, told the plaintiff that all instructions are received from the Executive Offices in Columbus, Ohio, these instructions came from the executive in control of the plaintiff's home.

217. Since the plaintiff had actually applied for the Unemployment program, this was evidently an effort to use something that Chase would never put in writing, in order to get some information from the plaintiff which Chase could use to disqualify the plaintiff from the Unemployment Program. However the plaintiff had a cease and desist order to compel chase to correspond in writing in order to prevent this very problem and would not call.

218. When the plaintiff spoke with Laura Minich, Chase Sr. Legal Specialist, the plaintiff specifically requested that Chase provide, in writing, the name of the person who wrote the letters to the OCC, the person identified by Chase (OH4-7120), the name of the person who was responsible for the foreclosure action, and why Chase would not accept the P&L Statement.

At that point, all letters to the plaintiff from Chase (OH4-7120) had no name at the bottom. These letters merely ended, "Sincerely, Chase."

219. The plaintiff authorized the CA Monitor to communicate with Chase on June 13, 2013 (see Exhibit W) when the home was in foreclosure. After the plaintiff spoke with Sr. Legal Specialist, Laura Minich, the plaintiff subsequently received three separate letters from Chase (OH4-7120) (attached hereto as Exhibit E-1). One was dated June 29, 2013 and the other two were both dated July 20, 2013. Included in the attachment is the resume for Karen Martinez taken from Linkedin. The resume shows Karen Martinez is an analyst in Los Angeles; however the information is consistent. The resume shows no related job experience or degree. Considering the responsibilities given to Karen Martinez, Chase had to know that this person was not the right fit for such an important job. Chase clearly employed Karen Martinez with a conscious disregard for the rights of the customers whose property this employee would be responsible for.

220. The letter from Chase (OH4-7120), dated July 19, 2013 (see Exhibit E-1, page 1) stated: ***"We need additional time to research your request****…We are writing to follow up on your request and inform you we need additional research time because we are still pending additional research to resolve your inquiry or request. We will have an answer or a status update for you by August 03, 2013. In the meantime, if you have any additional questions please call the Chase Executive Office team dedicated specifically to this issue at (888) 310-7995. We appreciate your patience as we complete our research. Sincerely, Chase (888)-310-7995"*

221. One letter from Chase (OH4-7120) dated June 20, 2013 (see Exhibit E-1, page 2) stated: **"We are researching your request** ... *We received a request on June 19, 2013 and expect to have an answer or a status update for you by July 04, 2013. In the meantime, if you have any additional questions please call the Chase executive Specialist dedicated specifically to this issue, Karen Martinez at (888) 310-7995 EXT 3233306 Sincerely, Chase (888) 310-7995*

222. The other letter from Chase (OH4-7120) dated June 20, 2013 (see Exhibit E-1, page 3) was delivered by FED EX and stated: ***"We've tried to reach you about your question*** ...

I am responding to your question that we received on June 19, 2013 about the loan referenced above. I've tried to call you, but haven't been able to reach you. If you still have questions about this, please call me by June 26, 2013 at one of the telephone numbers listed below. Sincerely, Karen Martinez Chase 888-310-7995 Ext. 3233306

223. These three letters are clearly an attempt to conceal the truth that Karen Martinez was the executive in Columbus, Ohio who was in control of the plaintiff's account, was instructing the Customer Service Specialists assigned to the plaintiff on what to do, would not review the plaintiff for the Unemployment Program, would not accept the plaintiff's profit and loss statement in order to keep the plaintiff's loan out of underwriting so as to avoid the CA Homeowner Bill of Rights restricting dual tracking, sent the plaintiff the letter dated May 09, 2013 which violated laws against Unfair and Deceptive Business Practices which led to foreclosure, arranged for no Customer Service Specialist that was assigned to the Plaintiff to be working while the plaintiff was in foreclosure, did not send out any letters to the plaintiff in response to the last RMA before scheduling a trustee sale, had violated civil code 2924F/G to prevent the plaintiff from confirming the date of foreclosure, committed fraud in response to the plaintiff's complaint with the OCC, committed fraud to cover up the violations of the National Mortgage Settlement Consent Judgment and the CA Homeowner Bill of Rights, coerced the plaintiff into changing the RMA to conform with a TPP the plaintiff could not afford, and backdated letters to prevent the plaintiff from receiving the Temporary Forbearance Agreement which Chase had not previously included as a Loss Mitigation Option, in accordance with the Loss Mitigation Section of the National Mortgage Settlement Consent Judgment, until after the CA Monitor intervened and began monitoring Chase.

224. Chase and other banks were bailed out by the U.S. taxpayers after Congress voted **against** this. Chase accepted $25 Billion and in return agreed to assist homeowners with their mortgages. Instead Chase and other banks did nothing of the sort. In fact banks were caught actually committing mass fraud in the infamous "Robo Signing" in which banks paid individuals by the hour to fraudulently sign documents to foreclose on as many homes as possible. The

Independent Foreclosure Review was established to detect mortgage servicing issues. This was replaced with a Payment Agreement which ended any further proof of fraud. The plaintiff received $500 instead of the $6,000 allocated by the Payment Agreement. The plaintiff filed a claim in small claims court but on advice from the small claims advisor dismissed this to ensure it would not interfere with this complaint (attached hereto as Exhibit F-1). Any laws that otherwise or may restrict additional action were not intended to protect multi trillion dollar corporations from the customers they victimize; such laws were not designed for this situation.

225. A report from The Government Accountability Office demonstrated that the Independent Foreclosure Review was a complete failure. The Federal Government sued five banks including Chase over mortgage assistance which was settled for $26 Billion in the National Mortgage Settlement. As part of the settlement, The Federal Government agreed not to sue these banks for fraud again but the banks were bound by a Consent Judgment which prevented banks from avoiding responsibility to assist homeowners. The Treasury Department rated Chase worst among its peers for its modification practices. Chase foreclosed on homes in San Diego, CA owned by military service members while deployed at war which is a Federal Crime. In addition Chase should not have done business with Bernie Madoff but did anyway and got caught. The media reported that CEO Jamie Dimon was avoiding regulators when Chase lost billions in a single trade after being bailed out for the very same investments.

226. The California Reinvestment Coalition believed the banks were violating several consumer protections that were mandated by the National Mortgage Settlement and the CA Homeowner Bill of Rights which restricts dual tracking. The CA Monitor was established to protect Consumer Rights relating to the National Mortgage Settlement and is a program of the CA Attorney General. The CA Monitor has a Consumer Rights Protection Clinic at the UC Irvine School of Law. This is all a reflection of just how determined Chase and other banks have been to foreclose on homes and not provide people with the assistance they offer. The plaintiff filed a complaint with the CA Attorney General and received assistance from the CA Monitor (attached hereto as Exhibit G-1). However this did not interfere with the coercion Chased

imposed on the plaintiff in conjunction with the CA Homeowner Bill of Rights and did not stop Chase from committing fraud to cover up the violations of the National Mortgage Settlement Consent Judgment.

227. Chase is the wealthiest bank worth $2.4 Trillion and as such sets the standard for other banks to follow. Chase has been absolutely relentless in its actions to foreclose on homes and the plaintiff is an example of just how ruthless Chase can be. This started from the very beginning when the plaintiff first applied for assistance and continues to this day. Chase (OH4-7120) has acted in retaliation for exposing this executive for fraud in response to the complaint filed with the Comptroller of the Currency and for persisting to appeal this complaint with the Ombudsman who clearly ignored it. The plaintiff faxed a letter (attached hereto as Exhibit H-1) to Thomas J. Curry, the Chief of the OCC, to report the collusion between the OCC Customer Assistant Group and Chase (OH4-7120) but received no response and was told this was merely forwarded to the Ombudsman. As a result the plaintiff faxed this again with instructions not to forward this to the Ombudsman as this had achieved nothing.

228. The plaintiff had to contact the Inspector General (attached hereto as Exhibit I-1) to complain about the obvious collusion between Chase (OH4-7120) and the Customer Assistance Group of the OCC as the complaint Operations Manager, Melinda Goodnight informed the plaintiff that there was nothing that could be done to compel Chase to respond to the complaint. John Frauller of the Inspector General contacted the OCC Customer Assistance Group to gain insight into the complaint. After contacting the OCC, John Frauller informed the plaintiff that twenty boxes of documents were received before being ordered to end the investigation. However John Frauller did inform the plaintiff that the appeal would be concluded (attached hereto as Exhibit J-1) which would allow the plaintiff to file a Tier Two Appeal with the Ombudsman that would include an **Independent National Bank Examiner**. The OCC stated that according to Chase the plaintiff was denied the initial HAMP Modification because the plaintiff did not make all the trial payments (see exhibit J-1). The plaintiff did make all the trial payments (see Exhibit E, page 4). In addition Chase stated the reason the plaintiff did not receive

this modification was because the plaintiff did not provide al the documents (see Exhibit F). The plaintiff pursued this appeal in a complaint dated June 13, 2013 (attached hereto as Exhibit K-1) to the Ombudsman, Larry Helix and requested information regarding the Independent National Bank Examiner. However the plaintiff received no information about this and the conclusion of the Tier Two Appeal (attached hereto as Exhibit L-1) did not validate the plaintiff's complaint.

229. In accordance with CA Civil Code Section 3294-3296, Chase had an obligation to the plaintiff to provide mortgage assistance or Chase would not have done so. This obligation was not limited to The Servicer Participation Agreement which relates to The Making Home Affordable Plan or the Trial Plan Agreement but rather arose as the result of receiving $25 Billion in Troubled Asset Relief Program (TARP) funds. Consequently Chase also offered other assistance to prevent foreclosure. By making such offers, Chase was obligated to act accordingly. Instead Chase did the exact opposite. The offers of assistance were disingenuous and designed to extract money from homeowners before taking their homes.

230. In addition Chase had an obligation to provide mortgage assistance which arose out of the National Mortgage Settlement Consent Judgment. The plaintiff has provided clear and convincing evidence that Chase committed fraud to cover up the egregious actions to avoid its obligations to the plaintiff. Clear and convincing evidence has shown that Chase is guilty of Oppression, Fraud, and Malice. The plaintiff has provided clear and convincing evidence of despicable conduct with a willful and conscious disregard for the plaintiff's rights. In addition Chase subjected the plaintiff to cruel and unjust hardship with a conscious disregard of the plaintiff's right to due process, taking wrongful foreclosure action against the plaintiff for two years while dual tracking, violating civil code 2924F/G, violating the National Mortgage Settlement Consent Judgment, using coercion in conjunction with the California Homeowner Bill of Rights, and violating the other laws listed above, all with a willful and conscious disregard for the plaintiff's rights. Clear and convincing evidence shows that Chase committed fraud to cover up these violations, all to deprive the plaintiff of the property and of the plaintiff's legal rights. The plaintiff has provided clear and convincing evidence that Chase (OH4-7120)

retaliated against the plaintiff for pursuing complaints with the OCC involving the fraud this executive committed and for getting the Inspector General involved which finally ended the appeal with the OCC Customer Assistance Group in order for the plaintiff to appeal the complaint with the Ombudsman.

231. Chase (OH4-7120/Karen Martinez then violated the National Mortgage Settlement Consent Judgment in order to retaliate against the plaintiff to foreclose. This involved coercion, was despicable, and a willful and conscious disregard for the California Homeowner Bill of Rights resulting in assistance from the CA Monitor/Consumer Rights Protection Clinic (see Exhibit G-1). The plaintiff has provided clear and convincing evidence that Chase is guilty of CA Civil Code section 3294-329 by having advance knowledge that the employee was unfit for the job. Given the nature of the work, by allowing the employee to have such responsibilities, this was a conscious disregard for the plaintiff's rights. The resume for Chase (OH4-7120) /Karen Martinez (see Exhibit E-1) shows the title of **Executive Office Analyst at JPMorgan Chase in Lancaster, California** but no degree. However the letters from Karem Martinez show an address for the Executive Offices in Columbus, Ohio (see Exhibit E-1). Karen Martinez clearly did not have the qualifications for the previous work at Country Wide Home Loans and this was 6 years prior to working at Chase. Most of the conduct to foreclose and cover up the manner in which Chase operated had to have been authorized by an officer, director, or managing agent as a matter of expectation derived from policy enforcement or there is no reason why such an extraordinary and widespread effort would be made by all employees to avoid assisting the plaintiff and to foreclose. There is certainly no evidence that Chase did anything to control this abuse. This occurred on such a mass scale, is so well documented, involved so many class action suits which Chase settled for far less than the cost of a trial, that this had to have derived out of policy. It is not reasonable to believe that employees would act so deceitful and defiant to assist the plaintiff and to foreclose over a period of five years if this was not policy. These instructions are carried down from the top to the employees who have no motive to act otherwise except to keep their job. There is no other possible explanation for the evidence

provided. Thus Chase is guilty of CA Civil Code 3294-3296 and the plaintiff is entitled to damages for the sake of example and by way of punishing Chase.

232. While the plaintiff was under duress from the fast approaching foreclosure, Chase (OH4-7120) used coercion to force the plaintiff to alter the RMA before allowing this into underwriting which restricts foreclosure due to the CA Homeowner Bill of Rights as it relates to Dual Tracking. Chase then sent the plaintiff a letter dated June 24, 2013 (attached hereto as Exhibit M-1) that would allow Chase to proceed to foreclose after using coercion to change the RMA to conform with a Trial Period Plan that Chase (OH4-7120) knew the plaintiff could not afford. In retaliation for the complaints with the OCC, Chase (OH4-7120) ignored the plaintiff's application for the Unemployment Program and refused to allow the plaintiff's application into underwriting so as to avoid the CA Homeowner Bill of Rights. Then Chase sent the plaintiff a letter dated May 9, 2013 which violated laws against Unfair, Unlawful, and Deceptive Business Practices in order to initiate foreclosure. Chase violated the National Mortgage Settlement Consent Judgment by not sending the plaintiff any letters regarding the RMA from May 21, 2013 and by not informing the plaintiff that Heather Erdmann, the plaintiff's Dedicated Customer Service Specialist, was not at work while Chase was foreclosing. Once in foreclosure the plaintiff was forced to speak to Chase by phone.

233. The CA Monitor got involved because Chase (OH4-7120) violated the National Mortgage Settlement Consent Judgment, laws against Unfair and Deceptive Business Practices, and Consumer Rights to avoid the CA Homeowner Bill of Rights. Although the CA Monitor notified the Chase legal department of the situation, the very same executive who was responsible for these violations was allowed to handle the problem. Instead of taking the appropriate action, Chase simply allowed this executive to remain in control and commit fraud to cover up the violations (see Exhibits X and Z).

234. After the CA Monitor got involved, Chase should have recognized the violations, validated the plaintiff's complaints with the OCC, acknowledged the years of wrongful foreclosure action, accepted the truth that the plaintiff should have received the HAMP

modification in 2009, provided relief, made restitution for the years of damage, and apologized to the plaintiff. Instead Chase allowed the same executive to commit fraud to cover up the response by the CA Monitor and the Chase Sr. Legal Specialist, Laura Minich. Chase then transferred the servicing of the loan to Select Portfolio Servicing, Inc but has allowed the very same executive to remain in control of the servicing of the loan. Chase transferred the **servicing** of the loan but still actually owns the loan and is in control of the servicing.

FIFTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

235. The plaintiff repeats and re-alleges the information in the paragraphs above as though fully set forth herein. Obviously the plaintiff suffered from massive stress and anxiety especially while actually in foreclosure. The fact that for over 5 years Chase was making outrageous excuses and acting as if they were not doing anything wrong was extremely unsetting. The tactics Chase used were extremely abusive and cruel. Despite the Plaintiff's documented Hardship, Chase proceeded to foreclose and maintained a Trustee's Sale on calendar for almost a year as the plaintiff was defending a personal injury claim for $615,000 and representing himself to prepare the case for trial before it was dismissed in favor of the plaintiff. The foreclosure action continued thru the end of the case and beyond, again for over another year, and then again for over another month (see Exhibit J).

236. The foreclosure action was wrong or the plaintiff would have lost the home to foreclosure. The fact that Chase did not foreclose on the home is a testament to this wrongful foreclosure action. Had the foreclosure action been proper, Chase would have foreclosed. No legal action was taken to prevent Chase from foreclosing as the plaintiff did not and does not have the means to hire an attorney.

237. Chase's actions were so egregious that laws had to be created to stop them. Chase was disingenuously working on an alternative to foreclosure while simultaneously foreclosing (Dual tracking). Consequently the plaintiff received nothing but resistance. This created massive stress and anxiety so severe the plaintiff became physically ill as the Chase "Dedicated Customer

Service Specialists/Relationship Managers" and virtually all other representatives would not cooperate and were as difficult to deal with as possible. On two occasions the plaintiff was not able to have the foreclosure postponed until the day before the sale.

238. The plaintiff called 1-800-HOPE, filed complaints with the Consumer Financial Protection Bureau, made calls to the Treasury Department, faxed the Chief of the Comptroller of the Currency, spoke with and faxed the Vice President of Customer care, Larry Thode, sent e-mails to CEO Jamie Dimon, filed complaints with The Federal Reserve Customer Assistant Group, the Comptroller of the Currency Customer Assistance Group, The Comptroller of the Currency Ombudsman, The Inspector General, The California Attorney General, MHA HELP, LEGAL AID, the Better Business Bureau, contacted Community Housing Works, HUDD, and the F.B.I. However Chase remained constant in their effort to foreclose on the plaintiff's home and corrupted every agency.

239. The plaintiff had to endure abusive tactics every month or so for two years in order to simply compel Chase to recognize the fact that the plaintiff was working on an alternative to foreclosure and that there was no reason for a trustee sale to be scheduled for the property. If the plaintiff was able to prevent Chase from foreclosing; other people could have as well but simply did not have the time or strength to fight for their home as the plaintiff. The plaintiff is single, has no dependents, lives alone, was self employed, and does not have any other debt. Therefore the plaintiff managed to compel Chase not to foreclose but this has cost the plaintiff these last five years.

240. The last 5 years has cost the plaintiff everything including two relationships. The plaintiff is left with nothing and has every reason to believe that the home will be lost as well. As a result the plaintiff continues to suffer from stress and anxiety due to the suspense; not knowing what to expect next or when. The plaintiff has never known how much time there is before further action will be taken. The fact that Chase has refused to recognize any fault, taken any responsibility, offered any compensation, and committed fraud to cover up the truth; the plaintiff

has experienced continuous grief. Until the defendants are held accountable, the plaintiff will never feel satisfied or be able to recover from the damage.

241. The plaintiff has thoroughly explained how servicers foreclosed on so many homes by intentionally violating laws in order to divert borrowers away from the proper method to modify a loan. The plaintiff's analysis serves to benefit others who were similarly situated. The plaintiff is unique in that Chase was compelled not to foreclose due to the massive effort made on the plaintiff's behalf to defend these egregious actions.

242. Consequently the plaintiff has dedicated the majority of time to this cause which has consumed the past five years. As a result this effort has become the plaintiff's full time job, leaving no way to recover from the irreparable harm these last five years have had on the plaintiff's life. This leaves the plaintiff suspended in a state of distress brought on by the intentional acts of the defendants that have reoccurred for over five years and persist now. SPS informs the plaintiff that the loan is not in foreclosure (see Exhibit B-2) but on February 11, 2014, (see Exhibit T-1) SPS instructed the plaintiff to "*respond immediately to protect your home*." SPS/Chase does not inform the plaintiff when foreclosure action would resume and attempted to use coercion again to force the plaintiff to act so that foreclosure action may resume later, under **different** conditions than those present. However this failed and over 13 weeks later Chase/SPS have proceeded to foreclose without further warning. The irony is that the mortgage assistance Chase was to provide was based upon a documented hardship. However the servicing of the loan became far more of a hardship than the initial reason the plaintiff requested assistance. As a result Chase made matters worse by wasting the past five years of the plaintiff's life. This was the result of despicable acts by Chase who never had any intention of modifying the plaintiff's loan. Instead the true motive was to create the facade of providing mortgage assistance while deceiving homeowners into making trial payments in order to maximize income by squeezing homeowners before foreclosing.

SIXTH CAUSE OF ACTION

Injunctive Relief

243. The plaintiff repeats and re-alleges the information in the paragraphs above as though fully set forth herein. The plaintiff has had to file this complaint due to the fact that Chase continues to avoid responsibility for their actions to this day. Chase and Select Portfolio Servicing, Inc. will not resolve this matter. As a result the plaintiff has no idea what the future is for the home. The plaintiff continues to have the same problems and cannot trust the defendants at all. The plaintiff has disputed the servicing of the loan with Select Portfolio Servicing, Inc but it is obvious that Chase (OH4-7120) remains in control of this and continues to retaliate against the plaintiff for the truth.

244. Chase sent the plaintiff a Notice of Assignment, Sale, or Transfer of Servicing Rights, (attached hereto as Exhibit N-1) dated July 17, 2013, to Select Portfolio Servicing, Inc. This took effective on August 1, 2013. From that point on, Chase instructed the plaintiff to correspond with Select Portfolio Servicing, Inc.

245. August 1, 2013 was the same day that the first trial payment was due for the Trial Period Plan (attached hereto as Exhibit O-1) that the plaintiff was coerced to conform to. However the plaintiff **never entered into** this Trial Period Plan. In order to **enter into** the Trial Period Plan, the plaintiff had to call Chase or make the first trial payment on time (see Exhibit O-1) to accept the **offer.** The plaintiff did not do this.

246. The plaintiff received a letter from Select Portfolio Servicing, Inc. dated July 25, 2013 (attached hereto as Exhibit P-1). The letter confirmed the transfer of the servicing from Chase effective August 1, 2013. In accordance with this letter, the plaintiff sent a dispute to Select Portfolio Servicing, Inc. dated August 16, 2013 (attached hereto as Exhibit Q-1) to inform SPS that the plaintiff was coerced into changing the RMA to conform with a modification. In addition the plaintiff detailed the fraud Chase (OH4-7120) committed to cover up the events that led to the last foreclosure action. The plaintiff identified Chase (OH4-7120) as Karen Martinez and explained that this executive was exposed for making false statements in response to the complaint filed with the Comptroller of the Currency and this executive was retaliating against the plaintiff for the truth. Enclosed in the dispute were copies of the letters from Chase (OH4-

7120) dated July 5, 2013 and July 8, 2013. The plaintiff also e-mailed SPS all the supporting documents as well as the original 2009 HAMP TPP with copies of the certified checks for the three trial payments.

247. In the dispute the plaintiff explained how a company that did business with Chase under such conditions could not be trusted. In addition the plaintiff informed SPS that all communication must be in writing and must not be "form letters." The plaintiff informed SPS of their responsibility involving this information and to investigate and report the matter and relay all information pertaining to the matter directly to the plaintiff. Lastly the plaintiff informed SPS that should SPS proceed to foreclose; the plaintiff would hold SPS liable.

248. The plaintiff received a response from SPS dated August 23, 2013 (attached hereto as Exhibit R-1) confirming receipt of the dispute, However the letter contended that it did not raise an issue with the servicing, and that SPS directed it to the appropriate department for handling and considered the matter closed (see Exhibit R-1). The letter did not clarify the situation at all. SPS has not explained that Chase still in fact owns the loan. SPS has not explained exactly who or where the "appropriate department" is and the plaintiff has not received a response from this alleged department. However it has become evident that Chase still owns the loan, is in control of the servicing, and that the matter was simply referred back to Chase (OH4-7120).

249. The plaintiff received a letter dated November 18, 2013 (attached hereto as Exhibit S-1) from Chase (OH4-7120) after the servicing of the loan was **already** transferred to SPS. Although the plaintiff was instructed to direct all future correspondence to SPS (see Exhibit N-1), the letter from November 18, 2013 stated: *"We are researching our initial decision, but need more time because we're completing a* ***new review*** *of the modification application and waiting for the final decision. When we complete our research, we'll send you a letter that explains our findings and your next steps."* This was completely disingenuous as the plaintiff did not receive such a letter.

250. The plaintiff received a letter from SPS dated February 11, 2014 (attached hereto as Exhibit T-1) which stated that a forbearance payment of $3,217.53 was due on August 01, 2013 and **must** be received within "**fifteen (15) days**" from the date of the letter. The letter states: *"If payment is not received by SPS within fifteen (15) days of the date of this letter, SPS may cancel your Forbearance Agreement. If that occurs, the account may be referred for possible legal action. You must respond immediately to protect your home."*

251. The plaintiff sent a notice certified mail to Cease and Desist All Debt Collection and Foreclosure Action, dated February 25, 2014 (attached hereto as exhibit U-1) which was delivered to SPS on February 27, 2014. In this letter the plaintiff explained that Chase (OH4-7120) had previously informed the plaintiff on November 18, 2013 that a "**new review"** was being conducted and when this was completed would send the plaintiff a letter and the next steps. The plaintiff enclosed a copy of the letter. As a result the plaintiff explained to SPS that this conflicted with the letter from SPS dated February 11, 2014.

252. The plaintiff then received a letter from Chase (OH4-7120) that was backdated to February 24, 2014 (attached hereto as Exhibit V-1). The letter was **postmarked** February 27, 2013 (the same day that SPS received the plaintiff's certified letter) and was clearly an attempt to counter the plaintiff's position. The letter followed over three months of disingenuous research into the matter and then states: *"We cannot respond to you directly because your loan is involved with active litigation."*

253. The plaintiff had received a Mortgage Statement from February 10, 2014 (attached hereto as Exhibit W-1). The Mortgage Statement provided an **Explanation of Amount Due** and stated: "*This is an attempt to collect a debt. All information obtained will be used for that purpose. Our records indicate that you have entered into a Forbearance/Trial Plan Agreement. "*

254. The plaintiff sent SPS a letter dated March 6, 2014 (attached hereto as Exhibit X-1). The plaintiff enclosed a copy of the letter from Chase (OH4-7120) dated February 24, 2014 and a copy of the envelope with the postmark "February 27, 2014" which the plaintiff circled.

The plaintiff explained how, on the same day SPS received the plaintiff's letter, it was evident that SPS then forwarded this to Chase. This was due to the fact that Chase (OH4-7120)/Karen Martinez sent the plaintiff a letter on this same day which countered the plaintiff's letter to SPS. Chase (OH4-7120)/Karen Martinez would like the plaintiff to believe that the letter was actually composed on February 24, 2014 and simply not sent until February 27, 2014. The letter was dated February 24, 2014 but was clearly backdated and sent with a postmark to make it appear as if it was not backdated. In addition it is a feeble attempt to cover up the fact that the letter dated July 5, 2013, from Chase (OH4-7120)/Karen Martinez had **no** postmark as the plaintiff documented. This was because that letter was also backdated to deny the plaintiff a forbearance (see Exhibit X). The plaintiff has sent some letters that were composed before they were postmarked but Chase (OH4-7120)/Karen Martinez has a motive to actually backdate letters and make it appear as if this were not the case. This confirmed the plaintiff's original position that SPS could not be trusted under such conditions (see Exhibit X-1). As a result SPS was informed that the plaintiff would not engage with SPS. The plaintiff informed SPS again that the loan was transferred under fraudulent conditions, considered this to be mortgage fraud and that the loan was null and void (see Exhibit X-1).

255. In the letter from March 6, 2014 (see Exhibit X-1), the plaintiff **again** explains to SPS of the coercion used to **approve** the plaintiff for the Trial Period Plan and again enclosed copies of the fraudulent letters to cover up the events which led up to the foreclosure action that Chase (OH4-7120) used to coerce the plaintiff into changing the RMA to conform with a modification. Also the plaintiff previously explained how both the Hardship Affidavit and bank statements were totally contrary to a modification. The plaintiff informed SPS that this Trial Period Plan was **never** entered into (see Exhibit U-1). In addition the plaintiff maintained that a conflict of interest involving Chase and SPS still existed (see Exhibit X-1). The plaintiff explained that because the small claims case was dismissed on February 28, 2013, Chase no longer had a reason not to follow through with the "new review" that the plaintiff had been informed of. SPS was therefore informed that the plaintiff still expected Chase to conclude this

matter in accordance with the letter form Chase (OH4-7120) dated November 18, 2013 regarding the "findings" and "next steps" (see Exhibit N-1).

266. The next Mortgage Statement the plaintiff received from SPS dated March 14, 2014 (attached hereto as Exhibit Y-1) stated under **Explanation of Amount Due,** that the Total Amount Due was $233,742.27. Unlike the previous statement, there was no mention of the Forbearance/Trial Plan Agreement and no mention that it was an attempt to collect a debt. The following Mortgage Statement form SPS dated April 14, 2014 (attached hereto as Exhibit Z-1) reverted back to the other **Explanation of Amount Due,** stating: *"This is an attempt to collect a debt. All information obtained will be used for that purpose. Our records indicate that you have entered into a Forbearance/Trial Plan Agreement."*

267. Consequently the plaintiff has informed SPS that it is evident from the correspondence and lack of cooperation from SPS that Chase (OH4-7120)/Karen Martinez (or someone with the same motive) is actually still in control of the servicing of the loan (see Exhibit X-1). The plaintiff explained that it was no coincidence when Chase (OH4-7120) sent the plaintiff a letter that overcame the conflict between the information from Chase (OH4-7120) dated November 18, 2013 and the information from SPS dated February 11, 2014. The plaintiff sent SPS a letter dated December 9, 2013 (attached hereto as Exhibit A-2) requesting information regarding the servicing of the loan. This was ignored but the plaintiff received a letter from SPS dated March 28, 2014 (attached hereto as Exhibit B-2) which references certain information as *"privileged or proprietary."* SPS stated in this letter *"So that we may reevaluate the account for a modification, we will require all the documents resubmitted with the current information, including an up to date proof of income."*

268. SPS previously sent the plaintiff a letter dated November 15, 2013 (attached hereto as Exhibit C-2) which states: *"Thank you for your correspondence dated October 18, 2013 and October 31, 2013. In the correspondence, you wanted to know the status of your loan and request for a repayment plan of 12 months to bring the loan current."* SPS informed the plaintiff in letters dated August 14, 2013 and November 27, 2013 (attached hereto as Exhibit D-

2) that the plaintiff was being considered for a loan resolution option. The 12 month repayment plan is a loan resolution option and not a modification. The previous information SPS provided to the plaintiff from March 28, 2014 (see Exhibit B-2) does not explain the reason for this change but the plaintiff is certain it is the result of Chase who would only allow SPS to use it against the plaintiff.

269. However the plaintiff has now received a letter from SPS dated May 15, 2014 (attached hereto as Exhibit E-2) which again states that SPS is considering the plaintiff for a loan resolution option. Also, just prior the plaintiff received a copy of a Substitution of Trustee in which SPS has substituted ALAW in place of California Reconveyance Company and then on May 23, 2014 a Notice of Trustee's Sale for June 12, 2014 was posted on the plaintiff's door (attached hereto as Exhibit F-2). SPS had informed the plaintiff on November 15, 2013 (see Exhibit C-2) that the loan was not in foreclosure status as the plaintiff had requested the status. SPS has since placed the plaintiff in foreclosure without a clear indication of when this would occur as the plaintiff requested to be notified of any impending foreclosure action.

270. The plaintiff repeats and re-alleges the information in the paragraphs above as though fully set forth herein. The plaintiff trusted Chase to honor its commitments; respect the serious hardship the plaintiff was experiencing, provide genuine customer assistance, and modify the loan after receiving the three scheduled trial payments. Instead Chase acted as despicably as can be imagined. The plaintiff sent e-mail messages to CEO Jamie Dimon, sent letters to the Executive Offices, faxed letters to the Vice President of Chase Customer Care/Home Lending, Larry Thode, (attached hereto as Exhibit G-2) and personally spoke with Larry Thode over the phone who refused to place the foreclosure on hold after the plaintiff was approved for a short sale. None of this stopped the intentionally efforts to foreclose and the plaintiff continued to contend with the egregious actions by Chase and later Select Portfolio Servicing, Inc.

271. The plaintiff has spent over the last five years trying to compel Chase and later SPS to take responsibility for its actions and acknowledge the truth. The plaintiff did not know what direction to move in while compelling Chase and SPS not to foreclose. The plaintiff had no

other recourse but to provide proof of all the fraud to cover up the truth, proof that Chase did not honor the initial Trial Plan Agreement, and proof of all the other violations. Despite the massive proof, Chase and SPS refuse to accept responsibility and continue to foreclose. As a result the plaintiff now has to file claims in Superior Court. The defendants refuse to admit to anything and to accept any responsibility for the damage that has been done to the plaintiff's life which has resulted in this complaint. As the direct and intentional egregious actions of the defendants, the plaintiff has been damaged in the amount to be determined at the time of trial. The plaintiff requests a declaration from the court ordering the defendant(s) as follows.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment and relief as follows:

1. Injunctive relief by means of a restraining order preventing defendants from all debt collection, foreclosure action, and servicing.
2. Declaratory relief to refrain defendants from frivolous litigation to avoid responsibility, delay trial, and to make it difficult for the plaintiff to seek justice so as to facilitate a preferable settlement.
3. General damages in an amount to be determined at trial.
4. Punitive damages including those consistent with civil code Section 3294-3296 sufficient enough to punish defendants and to make an example proportionate to the scale of the matter.
5. Set trial immediately for the next available date to hold defendants responsible.
6. Providing such other relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

May 23, 2014 David Scott Soffer

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