

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF NEW HANOVER **2012 APR 12 PH 2: 54** FILE NO. 12-CVS-_____

TIMOTHY W. RAYNOR and NICOLE W. RAYNOR
NEW HANOVER COUNTY SUPERIOR COURT
BY _____)

Plaintiffs,)

vs.)

WELLS FARGO BANK, NATIONAL ASSOCIATION)

Defendants.)

COMPLAINT

and Motion to Enjoin Foreclosure

(Jury Trial Demanded)

A TRUE COPY

CLERK OF SUPERIOR COURT

NEW HANOVER COUNTY

BY *Katherine Thompson*

Deputy Clerk of Superior Court

NOW COME Plaintiffs TIMOTHY W. RAYNOR and NICOLE W. RAYNOR (collectively "Plaintiffs"), by and through their undersigned counsel of record, complaining of Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION (herein "Wells Fargo"), and state as follows:

NATURE OF THE CASE

1. This is an action seeking injunctive relief prohibiting Defendant Wells Fargo from enforcing a Note executed by the Plaintiffs and seeking to recover compensatory, and/or treble/punitive damages from Defendant Wells Fargo for unfair and deceptive trade practices, fraud, negligent misrepresentations, and alternatively, breach of contract and negligence. This Complaint also seeks to enjoin the foreclosure of property owned by Plaintiffs.

PARTIES

2. Plaintiff Timothy W. Raynor is a citizen and resident of New Hanover County, North Carolina.

3. Plaintiff Nicole W. Raynor is a citizen and resident of New Hanover County, North Carolina.

4. Plaintiffs are informed and believe, and therefore allege, that Defendant Wells Fargo is a national bank with a principal place of business at 101 North Phillips Avenue, Sioux Falls, South Dakota 57104. As described below, Wells Fargo directly and/or indirectly through its agents, employees, subsidiaries and/or related companies, including without limitation Wells Fargo Home Mortgage Inc., held, serviced and/or engaged in transactions related to mortgages of real property within North Carolina.

JURISDICTION & VENUE

5. This Court has jurisdiction over Defendants pursuant to N.C. Gen. Stat. § 1-75.4.

6. Venue is proper in this Court pursuant to N.C. Gen. Stat. §1-82, as Plaintiffs reside in New Hanover County and Defendant Wells Fargo has a place of business located in New Hanover County, North Carolina.

FACTUAL ALLEGATIONS

7. On or about June 12, 2008, Wells Fargo made a loan of \$221,777.00 backed by the Federal Housing Administration (hereinafter "FHA"), an agency under the United States Department of Housing and Urban Development (hereinafter "HUD").

8. This loan was secured by Plaintiffs' residential property, located at 6336 Naples Drive, Wilmington, North Carolina (hereinafter "the Property").

9. The FHA Note and Deed of Trust issued by Wells Fargo were subject to restrictions on Wells Fargo's ability to accelerate the note and/or foreclose on the Property as set forth by regulations implemented by the Secretary of Housing and Urban Development (hereinafter "Secretary").

10. In the middle of 2008 there was unprecedented and unforeseeable financial crisis in the credit markets and consequent severe downturn in the worldwide economy and real estate markets.

11. In or about October of 2009, Plaintiff Timothy Raynor, the primary caregiver for the Plaintiffs, lost his job due to financial cutbacks. He began to collect unemployment on November 16, 2009, which continued through October 15, 2011.

12. As a result of these financial stressors and on the advice of Wells Fargo, Plaintiffs repeatedly applied for loan modification agreements with Wells Fargo.

13. Wells Fargo informed Plaintiffs numerous times that despite the economic downturn that began in 2008, Wells Fargo would continue to work with Plaintiffs regarding their financial situation and offered guidance on how their Note could be modified.

14. Wells Fargo advised the Plaintiffs to enter into two Forbearance Agreements, which Wells Fargo agents or employees informed Plaintiffs were required steps before modification of their mortgage.

15. On or about December 8, 2009, on the advice of Wells Fargo and for the purpose of obtaining a loan modification, Plaintiffs entered into their first Forbearance Agreement with Wells Fargo, which did not require any payments to be made until April 8, 2010. Plaintiffs satisfied the conditions of that agreement.

16. On or about May 13, 2010, on the advice of Wells Fargo and for the purpose of obtaining a loan modification, Plaintiffs entered into a second Forbearance Agreement, which required them to make four monthly payments of \$650.00 each. Plaintiff satisfied all conditions of the second Forbearance Agreement.

17. Relying on the advice of Wells Fargo, Plaintiffs entered these Forbearance Agreements, which induced Plaintiffs to continue make reduced payments but allowed their arrearages to accumulate; Plaintiffs were told, however, that they would enter a modification program upon expiration of the second forbearance term.

18. Plaintiffs submitted various documents, including but not limited to, pay stubs, tax returns, hardship letters, monthly utility invoices, etc. in application for a loan modification on or about August 30, 2010.

19. Plaintiffs are informed and believe, and therefore allege, that under the facts and circumstances of this modification request, Wells Fargo was required under federal law to consider Plaintiffs for admission to a program known as FHA-HAMP (FHA-Home Affordable Modification Program).

20. Plaintiffs are informed and believe, and therefore allege, that all FHA lenders are required by regulations promulgated by the Secretary to offer a modification under FHA-HAMP to all FHA borrowers who qualify but do not qualify for a conventional loan modification offered by the lender.

21. The Plaintiffs' loan from Wells Fargo was at all times relevant to this action subject to these FHA restrictions.

22. The Secretary's regulations prohibited FHA lenders to initiate foreclosure proceedings against borrowers who qualified for FHA-HAMP unless they were first offered a modification under FHA-HAMP and declined or failed to comply with the terms of such modification.

23. Plaintiffs are informed and believe, and therefore allege, that based on the financial information submitted to Wells Fargo by Plaintiffs on or about August 30, 2010,

Plaintiffs did not qualify for a conventional modification offered by Wells Fargo but in fact qualified for FHA-HAMP.

24. Plaintiffs should have been offered a modification under that program as required by FHA regulations promulgated by the Secretary.

25. However, in September of 2010, Wells Fargo for the first time informed Plaintiffs that Wells Fargo would not modify the terms of the loan, despite prior representations. Wells Fargo informed Plaintiffs that it could not modify the loan to overcome their income deficit.

26. Without Plaintiffs' knowledge, however, Wells Fargo had calculated the Plaintiffs' gross monthly income to be \$407 higher per month than the accurate information the Plaintiffs submitted to Wells Fargo.

27. Wells Fargo would later admit that the reason for denial provided to Plaintiffs on this occasion, and further reasons provided to them on subsequent occasions, were erroneous.

28. Plaintiffs were unaware that their application was required to be considered for FHA-HAMP, and at the time Wells Fargo did not indicate that it had been so considered.

29. Wells Fargo advised Plaintiffs to drastically cut back expenses to reduce their monthly income deficit. Plaintiffs took the advice of Wells Fargo and drastically cut their monthly expenses to accommodate the guidelines that a Wells Fargo representative had explained to them. Plaintiffs cut their monthly expenses to \$2,882.17 in December 2010 from \$4,579.60 in the fall of 2010.

30. Wells Fargo advised Plaintiffs to submit another modification application with their reduced expenses. Accordingly, on December 4, 2010, Plaintiffs submitted another loan modification application.

31. Wells Fargo denied the modification on the grounds that it was unable to overcome an income-to-expense deficit of \$232.31.

32. Plaintiffs were unaware that their application was required to be considered for FHA-HAMP, and at the time Wells Fargo did not indicate that it had been so considered.

33. On January 9, 2011, Plaintiff Timothy Raynor obtained full-time employment but at much lower pay than the job he lost in 2009.

34. Nevertheless, with the combined income from Plaintiff Timothy Raynor's new full-time employment and a second part-time job, Plaintiff Nicole Raynor's full time employment income, and the Plaintiffs' austerity regimen to cut expenses, the Plaintiffs submitted a new loan modification application that showed a monthly income surplus of approximately \$800.

35. Plaintiffs submitted a third modification application reflecting the financial change.

36. On or about March 2, 2011, Wells Fargo offered a conventional modification that would increase the Plaintiffs' monthly payments, due to accumulated arrearages and fees added to their account by Wells Fargo, compared with their monthly payments under the terms of their loan prior to the Forbearance Agreements. Plaintiffs were unable to afford this increase given their financial circumstances.

37. Plaintiffs requested that Wells Fargo modify the loan under FHA-HAMP, as Wells Fargo was required to do in September 2010, but Wells Fargo denied that request.

38. Wells Fargo instituted foreclosure proceedings in or about February 15, 2011.

39. Wells Fargo obtained an Order of Foreclosure on February 13, 2012, which was stayed pending the outcome of Plaintiffs' appeal in a separate action.

FIRST CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

40. Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 39 as if fully set forth.

41. The actions and conduct of Defendant Wells Fargo, delineated above, constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of N.C. Gen.Stat. §75-1.1.

42. Plaintiffs' claims for unfair and deceptive trade practices against Wells Fargo include but are not limited to:

- a. Its actions detailed above and below offend established public policy, federal and state banking law, are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers;
- b. Its fraud and/or deceptive conduct, detailed below, which included the intentional misrepresentation and concealment of material facts.

43. In addition, the Secure and Fair Enforcement Mortgage Licensing Act, N.C. Gen.Stat. § 53-244.111 ("Mortgage Licensing Act") provides that it shall be unlawful for any person, in this case Wells Fargo, in the course of any mortgage loan transaction:

- a. (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- b. (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.
- c. (14) To fail to comply with applicable State and federal laws and regulations related to mortgage lending or mortgage servicing.

44. Through its conduct detailed above and below, Wells Fargo violated the provisions of the Mortgage Licensing Act.

45. As a direct and proximate result of the conduct of Wells Fargo, the Plaintiffs are entitled to recover from Wells Fargo an amount in excess of Ten Thousand Dollars (\$10,000.00), to recover treble damages pursuant to N.C. Gen. Stat. § 75-16, and to recover reasonable attorney's fees, as provided in N.C. Gen. Stat. § 75-16.1.

SECOND CLAIM FOR RELIEF

(Fraud)

46. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 45 as if fully set forth.

47. The misrepresentations made to Plaintiffs by Wells Fargo, by and through its duly authorized agents, consisted of the following:

- a. Time and Content:
 - i. In or about December 2009 and May 2010, that upon completion of two Forbearance Agreement terms, Plaintiffs would be entered into a loan modification program, having no intent to modify said loan;
 - ii. On or about September 16, 2010, informing Plaintiffs that they had not qualified for any loan modification programs when in fact they had qualified for FHA-HAMP.
 - iii. On or about November 10, 2010, informing Plaintiffs that they had not qualified for any loan modification program after changing the financial data supplied by Plaintiffs in such a way as to skew the outcome against Plaintiffs.
 - iv. On or about March 10, 2011, providing a second erroneous reason for Defendant's denial of FHA-HAMP modification in September 2010 when in fact Plaintiffs had qualified for FHA-HAMP.
 - v. On or about April 5, 2011, providing a third erroneous reason for Defendant's denial of FHA-HAMP modification in September 2010 when in fact Plaintiffs had qualified for FHA-HAMP.
- b. Place: By telephone conferences with Plaintiffs located New Hanover County, North Carolina.
- c. Identity: Wells Fargo agents, employees, executives, including but not limited to the Executive Mortgage Specialists with the Office of the President, Sarah Brown and Linda Parker.
- d. What Defendant Obtained Thereby:
 - i. Plaintiffs are informed and believe, and therefore allege, that by leading Plaintiffs to believe that they would be admitted to a loan modification program if they successfully completed two Forbearance Agreement terms, with no intention of making good on that promise, Wells Fargo induced Plaintiffs to continue making

- payments that they otherwise would have elected not to make and/or to forego seeking alternative solutions to their escalating mortgage debt, and therefore Wells Fargo continued to collect payments from Plaintiffs while pushing them toward foreclosure.
- ii. By wrongly denying Plaintiffs a modification under FHA-HAMP, Wells Fargo avoided payment and principal reductions that would have negatively impacted the income stream from this loan. Because FHA has insured this loan, Wells Fargo stands to enjoy full or near-full reimbursement from the Federal Government upon foreclosure of the Property, an expectation that far outweighs the minor payments that the Government offers as incentive to modify loans under FHA-HAMP in the current economic environment.
 - iii. By wrongly denying Plaintiffs a modification under FHA-HAMP, Wells Fargo has continued to add to the Plaintiffs' arrearage not only with monthly payments at rates that are higher than they would have been under modified terms, but also fees and other charges related to the foreclosure proceedings.

48. In addition to the affirmative representations and misrepresentations, Wells Fargo failed to disclose material information which, by reason of its superior knowledge and as a matter of law it had a duty to disclose to the Plaintiffs.

49. Wells Fargo representatives, at the time that said representations were made, were acting within the course and scope of their employment with Wells Fargo and had actual and/or apparent authority to bind Wells Fargo, since they had actual authority in all respects related to the Plaintiffs' loans.

50. These misrepresentations and failures to disclose induced Plaintiffs to accept additional financial hardships, and Plaintiffs could not discover with the exercise of reasonable diligence the truth about their eligibility for modification programs, including FHA-HAMP, and the information that Wells Fargo knew, or reasonably should have known about the Plaintiffs' loan.

51. Accordingly, Wells Fargo knowingly or recklessly made false and material representations, and otherwise failed to disclose material information, on which Plaintiffs

10.

reasonably relied upon in entering into the Forbearance Agreements and then pursuing multiple loan modification requests while sliding toward foreclosure despite having qualified for FHA-HAMP.

52. Wells Fargo had a duty to disclose all facts material to the Plaintiffs, known or reasonably ascertainable by it, since it had a duty imposed by law. The Mortgage Licensing Act, N.C. Gen. Stat. § 53-244.111, provides that it shall be unlawful for any person, in this case Wells Fargo, in the course of any mortgage loan transaction:

- a. To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- b. To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan
- c. To fail to comply with applicable federal laws and regulations related to mortgage lending or mortgage servicing.
- d. To engage in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.

53. Wells Fargo concealed material facts from the Plaintiffs, including but not limited to the following:

- a. Plaintiffs would not be deemed eligible for a loan modification upon their completion of the Forbearance Agreements.
- b. Plaintiffs qualified for the FHA-HAMP program in August 2010.
- c. Wells Fargo would in the future claim, erroneously, that entering into the Forbearance Agreements would have the effect of justifying Wells Fargo's rejection of Plaintiffs' application for FHA-HAMP assistance because those agreements would result in partial delinquencies accumulating and being treated as monthly delinquent.
- d. FHA regulations mandated that Plaintiffs be offered FHA-HAMP if they were not delinquent for more than twelve (12) months.
- e. That Wells Fargo would later claim, erroneously, that lower payments established during a mandatory trial period under FHA-HAMP also would add to monthly delinquencies and operate to trigger the delinquency limitation even after the Plaintiffs had properly applied and qualified for FHA-HAMP.

- f. Wells Fargo routinely used a multiplier of 1.25% to net unemployment benefits rather than using the actual gross income from those benefits, thus altering the financial data submitted by Plaintiffs in their modification applications.
- g. Wells Fargo's practice of altering expense information supplied by modification applicants when the reported expenses are lower than Wells Fargo's own estimates, thus altering the financial data submitted by Plaintiffs in a way that disadvantaged their modification application.

54. At the time that the false representations and/or concealments were made to the Plaintiffs by Wells Fargo, Wells Fargo knew the statements were false or incomplete, or should have reasonably known that the statements were false or incomplete.

55. The false representations and/or concealments made by Wells Fargo were calculated to deceive, and were made and done with the intent to deceive; and Plaintiffs were, in fact, deceived by the false representations and/or concealments.

56. The false representations and/or concealments were made by Wells Fargo with the intention that the Plaintiffs rely on the same, and the Plaintiffs did rely on the same, to their detriment, and their reliance on the representations and/or concealments by Wells Fargo were reasonable, under the circumstances.

57. Had Wells Fargo disclosed the aforementioned material facts to the Plaintiffs, Plaintiffs would not have undertaken the Forbearance Agreements and/or would not have foregone alternatives to continuing payments to Wells Fargo and pursuing a loan modification through Wells Fargo, which had the result of increasing their delinquencies beyond their ability to pay.

58. As a direct and proximate cause of Defendant Wells Fargo's fraudulent misrepresentations and/or concealments of material facts, the Plaintiffs have been damaged, and are entitled to recover from Defendant Wells Fargo an amount in excess of Ten Thousand Dollars (\$10,000.00).

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

59. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 58 as if fully set forth.

60. A fiduciary relationship is one in which one person or entity, the fiduciary, owes a special duty to another person/entity and must look out for that other person's interests with special care.

61. A "fiduciary relationship" exists in all cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.

62. In this case a fiduciary relationship existed between the parties because the Plaintiffs, based on the representations made by Wells Fargo and their prior business dealings with Wells Fargo, reposed faith, trust and confidence in Wells Fargo, which possessed superior and accurate knowledge about their loan and their ability to qualify for a loan modification, including a modification under FHA-HAMP.

63. Plaintiffs were in a position of inequality, dependence, weakness, and/or lack of knowledge when compared with Wells Fargo and the financial dependence and wherewithal of Plaintiffs were entrusted to Wells Fargo.

64. Wells Fargo had an obligation, under law, to act in a reasonable manner as to Plaintiffs' loan, so as not to cause injury to the Plaintiffs.

65. It was reasonable for the Plaintiffs to rely on Wells Fargo to protect the Plaintiffs' interest and it was reasonably expected between the parties that Wells Fargo would act in the best interests of the Plaintiffs.

66. Additionally, pursuant to N.C. Gen. Stat. Ann. § 53-244.109, as a mortgage

broker Wells Fargo owed Plaintiffs a duty of loyalty, including a duty not to compromise Plaintiffs' right or interest in favor of another's right or interest, including a right or interest of Wells Fargo.

67. After the fiduciary relationship was created, Wells Fargo took advantage of Plaintiffs' reliance that Wells Fargo would further the borrowers' interest thereby breaching its fiduciary duty to the Plaintiffs.

68. Plaintiffs trusted Wells Fargo to accurately and fairly apply their financial data to both conventional modification programs and FHA-HAMP, which Plaintiffs were not themselves in a position to do and which position Wells Fargo voluntarily assumed, but Wells Fargo altered Plaintiffs' data, failed to accurately apply the rules of the various modification programs, including regulations under FHA-HAMP, and then failed to inform Plaintiffs accurately about Wells Fargo's denial of their several applications.

69. Wells Fargo had a duty of loyalty, a duty to exercise reasonable care, skill and diligence, and a duty to make a full and truthful disclosure to Plaintiffs of all facts known to it, or discoverable with reasonable diligence, that was likely to affect Plaintiffs' decisions related to their mortgage, including the modification requests.

70. As detailed above, Defendant Wells Fargo breached its fiduciary duties to the Plaintiffs and as a direct and proximate cause of Defendant Wells Fargo's breach of its fiduciary duties, the Plaintiffs have been damaged, and are entitled to recover from Defendant Wells Fargo an amount in excess of Ten Thousand Dollars (\$10,000.00).

FOURTH CLAIM FOR RELIEF
(In the alternative - Negligence)

71. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 70 as if fully set forth.

72. Wells Fargo was a mortgage servicer or mortgage broker as those terms are defined in N.C. Gen. Stat. § 53-244.030.

73. In addition to its common-law duties, under N.C. Gen. Stat. § 53-244.109, Wells Fargo had a duty to the Plaintiffs to act with reasonable skill, care and diligence, and to safeguard and account for any money handled for Plaintiffs.

74. Wells Fargo owed a duty to the Plaintiffs to act with reasonable skill, care and diligence. Accordingly, Wells Fargo owed Plaintiffs a duty to exercise the care that a reasonable lender would exercise under similar circumstances, including but not limited to using sound lending practices and following all applicable law when processing loan modification applications.

75. Wells Fargo breached said duty by failing to administer the FHA-HAMP program according to the regulations promulgated by the Secretary.

76. In addition, Wells Fargo was negligent by failing to accurately apply the financial data submitted by Plaintiffs for modifications under conventional programs and FHA-HAMP.

77. By reason of the actions described above, Wells Fargo has breached its duty of care to Plaintiffs, and as a direct and proximate cause of said breach, Plaintiffs have incurred damages, all of which were reasonably foreseeable to Defendant Wells Fargo, which include, loss of their investment in the Property and any liability owed under the Note, and are entitled to have and recover from Defendant Wells Fargo a sum in excess of Ten Thousand Dollars (\$10,000.00).

FIFTH CLAIM FOR RELIEF
(In the alternative - Negligent Misrepresentations)

78. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 77 as if fully set forth.

79. As set forth above, Wells Fargo had a duty to exercise reasonable care or competence in obtaining or communicating information to Plaintiffs, who it knew would rely on information supplied by Wells Fargo.

80. Additionally, under N.C. Gen. Stat. § 53-244.109, Wells Fargo had a duty to timely and clearly disclose to Plaintiffs material information that may be expected to influence the Plaintiffs' decision and was reasonably accessible to Wells Fargo, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.

81. In the course of its business, Wells Fargo supplied information to the Plaintiffs and intended for the Plaintiffs to rely on that information for their guidance or benefit with respect to the Property and modifying the Note.

82. As stated above, Wells Fargo made a material misrepresentation or failed to exercise due care when it made a material misrepresentation.

83. Wells Fargo failed to exercise the reasonable care or competence of a lender in obtaining or communicating the false information detailed above, and the Plaintiffs actually relied on the false information supplied by Wells Fargo.

84. Plaintiffs' reliance was justifiable.

85. As a sole and proximate result of Wells Fargo's negligent misrepresentations, the Plaintiffs have suffered pecuniary losses, and are thereby entitled to judgment against Wells Fargo in a sum in excess of Ten Thousand Dollars (\$10,000.00).

SIXTH CLAIM FOR RELIEF
(In the alternative - Breach of Contract)

86. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 85 as if fully set forth.

87. In all contracts, there is an implied covenant of good faith and fair dealing that neither party will do anything which injures the right of the other to receive the benefits of the agreement.

88. To the extent it is determined that a valid loan agreement existed between Plaintiffs and Defendant Wells Fargo related to the Property, Wells Fargo is in material breach of that agreement.

89. There is an implied term in that agreement, as well as all contracts, that Wells Fargo was required to act in good faith and to make reasonable efforts to perform its obligations under the agreement; namely Wells Fargo was expected to act as an experienced lender would do in the same situation.

90. Wells Fargo acted in bad faith by inducing Plaintiffs to accept Forbearance Agreements by promising to modify their loan and then not modifying that loan; failing to accurately apply the financial data submitted to Plaintiffs when processing their various modification requests; providing erroneous reasons that their modification requests were denied; and failing to administer the loan modification programs competently and preventing said modification to occur as promised by Wells Fargo.

91. By reason of the foregoing, Wells Fargo has breached its contract with Plaintiffs, causing Plaintiffs to suffer pecuniary loss in the contemplation of the parties at the time of contract formation, and entitling Plaintiffs to an award of damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

SIXTH CLAIM FOR RELIEF

(In the alternative - Breach of Contract - Third-Party Beneficiary)

92. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 91 as if fully set forth.

93. Plaintiffs are informed and believe, and therefore allege, that a valid and enforceable contract exists between Wells Fargo and the United States to administer loans guaranteed by the FHA in accordance with all applicable rules and regulations promulgated by the Secretary.

94. Plaintiffs were intended and direct beneficiaries of that contract with the United States, as evidenced by the FHA's express limitation on Wells Fargo's right to accelerate the loan and foreclose on Plaintiffs' Property when restricted by regulations promulgated by the Secretary.

95. Wells Fargo is in material breach of that agreement by failing to administer the FHA-HAMP loss mitigation program according to the regulations promulgated by the Secretary and by failing to offer Plaintiffs admission into the FHA-HAMP program before initiating foreclosure proceedings against Plaintiffs when they applied for and qualified for the program in September 2010.

96. By reason of the foregoing, Wells Fargo has breached its contract with Plaintiffs, causing Plaintiffs to suffer pecuniary loss within the contemplation of the parties at the time of contract formation, and entitling Plaintiffs to an award of damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

SEVENTH CLAIM FOR RELIEF

(N.C. Gen. Stat. § 45-21.34 – Motion for Preliminary and Permanent Injunction)

97. The Plaintiffs incorporate herein by reference all the allegations contained in paragraphs 1 through 96 as if fully set forth.

98. N.C. Gen. Stat. § 45-21.34 provides that "[a]ny owner of real estate, or other person, firm or corporation having a legal or equitable interest therein, may apply to a judge of the superior court, prior to the time that the rights of the parties to the sale or resale becoming

SHIPMAN & WRIGHT, L.L.P.

575 Military Cutoff Road, Suite 106 – Wilmington, North Carolina 28405

fixed pursuant to G.S. 45-21.29A to enjoin such sale, upon the ground that the amount bid or price offered therefore is inadequate and inequitable and will result in irreparable damage to the owner or other interested person, or upon any other legal or equitable ground which the court may deem sufficient... Provided further, that in other respects the procedure shall be as is now prescribed by law in cases of injunction and receivership, with the right of appeal to the appellate division from any such order or injunction."

99. To secure the loans made by Wells Fargo for the Property, Plaintiffs executed the Deeds of Trust dated June 12, 2008, secured by real property recorded in book 5323 at page 2749 of the New Hanover County Registry and described as follows:

Being all of Lot 95, Kirkwood at Arrondale, Section 1, as shown on map of same recorded in Map Book 42, Page 104, New Hanover County Registry, reference to which is hereby made for a more particular description.

100. On February 15, 2011, Jamie L. Grubb attorney for Grady I. Ingle and Elizabeth B. Ellis, substitute trustee of the Deeds of Trusts that secure the property described above filed a Notice of Hearing on the Foreclosure of the Deeds of Trust seeking to foreclose on the Property.

101. On or about February 13, 2012, the Honorable Assistant Clerk of Superior Court of New Hanover County entered an Order authorizing the foreclosure of the Property.

102. Wells Fargo's actions, as set forth above, affect the rights of the Plaintiffs because they would not have been declared in default by Wells Fargo had they been afforded the loan modification for which they qualified in September 2011; furthermore, Wells Fargo contends (and Plaintiffs deny) that the Plaintiffs will be liable for any deficiency that still exists after application of the proceeds of any foreclosure sale, and accordingly, Wells Fargo's actions will subject the Plaintiffs to a greater deficiency than they would otherwise face had they been afforded the loan modification for which they qualified in September 2011, or had not foregone

alternatives to attempted modification in reliance upon the statements of Wells Fargo with respect to Forbearance Agreements and modification applications, thereby unjustly and substantially damaging the Plaintiffs.

103. Wells Fargo had scheduled a foreclosure sale of the Property for March 23, 2012, which was stayed when Plaintiffs filed their appeal and posted the required bond on February 23, 2012.

104. Based on the above, there are legal and equitable grounds to enjoin the foreclosure sale until the conclusion of this litigation.

105. By reason of all of the foregoing, Plaintiffs are entitled to a Preliminary and Permanent Injunction, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 45-21.34, enjoining and restraining Wells Fargo from undertaking any foreclosure of the Property pending the trial of this action.

106. Plaintiffs will suffer immediate and irreparable injury, loss, and damages if the foreclosure on the Property is allowed to proceed as presently contemplated.

WHEREFORE, the Plaintiffs pray the Court as follows:

1. That the Court issue a Preliminary Injunction which restrains and enjoins the Defendant from taking any action to foreclose on the Property.
2. That the Court issue a Permanent Injunction which restrains and enjoins the Defendant from taking any action to foreclose on the Property.
3. That Plaintiffs have and recover compensatory damages from the Defendant in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus interest as allowed by law.
4. That the costs of Plaintiffs' action, including reasonable attorney's fees in accordance with N.C. Gen. Stat. § 75-16.1, be taxed by the Court against the Defendant.

5. That any damages awarded the Plaintiffs be trebled pursuant to provisions of N.C. Gen. Stat. § 75-16.

6. For a trial by jury on all issues so triable.

7. That this verified Complaint be treated as an Affidavit in support of the relief, including the injunctive relief, prayed for herein.

8. For such other and further relief as to the Court deems just and proper.

Respectfully submitted this the 12th day of April, 2012.

SHIPMAN & WRIGHT, LLP
Attorneys for Plaintiffs



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N.C. State Bar No.: 41549
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SHIPMAN & WRIGHT, L.L.P.

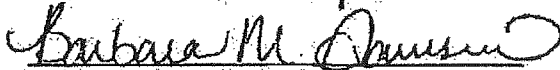
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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

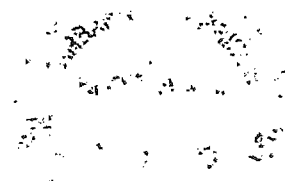
TIMOTHY W. RAYNOR, personally appeared before me this day and after being duly sworn deposes and says that he has read the foregoing Complaint, and that the same are true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those, he believes them to be true also.


TIMOTHY W. RAYNOR

Sworn to and subscribed before me,
this the 11th day of April, 2012.


Notary Public

My Commission Expires: March 22 2014



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

NICOLE W. RAYNOR, personally appeared before me this day and after being duly sworn deposes and says that she has read the foregoing Complaint, and that the same are true of her own knowledge, except as to those matters therein stated upon information and belief, and as to those, she believes them to be true also.

Nicole W. Raynor
NICOLE W. RAYNOR

Sworn to and subscribed before me,
this the 11th day of April, 2012.

Barbara W. Garrison
Notary Public

My Commission Expires: March 21, 2014

