

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MARIE FREEMAN, ANDREW BIANCHI, APRIL
TADDEO, MICHAEL JOHN TADDEO, TAE
YOUNG RHO and JEAN RHO individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

BAC HOME LOANS SERVICING, LP, a
subsidiary of BANK OF AMERICA, N.A., a
subsidiary of BANK OF AMERICA
CORPORATION,

Defendants.

Case No.: 1:10-cv-05380-JBW-RML

**FIRST AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

INTRODUCTION

1. Marie S. Freeman, Andrew Bianchi, April Taddeo, Michael John Taddeo, Tae Young Rho and Jean Rho (“Plaintiffs”) bring this suit on behalf of themselves and a class of similarly situated New York residents to challenge the failure of Defendants, BAC Home Loans Servicing, LP (hereinafter “BAC”), Bank of America, N.A., and Bank of America Corporation (hereinafter, collectively, “Bank of America”), to honor agreements with borrowers to modify mortgage loans and prevent mortgage foreclosures under the United States Treasury’s Make Home Affordable Modification Program (hereinafter “HAMP”).

2. Plaintiffs’ claims are simple: when a financial institution contracts to modify an eligible mortgage loan to prevent foreclosure, a homeowner who lives up to her end of the bargain has a right to expect that promise to be kept. This is especially true when the financial institution is acting under the aegis of a federal program specifically targeted at preventing foreclosure.

3. In October 2008, Bank of America accepted \$15 billion in funds from the United States Government as part of the Troubled Asset Relief Program (hereinafter “TARP”), 12 U.S.C. § 5211. In January 2009, in connection with its acquisition of Merrill Lynch, Bank of America accepted another \$10 billion in TARP funds as well as a partial guarantee against losses on \$118 billion in mortgage-related assets. In April 2009, Bank of America signed a contract with the U.S. Treasury Department (attached as Exhibit 1 and incorporated by reference) agreeing to participate in HAMP – a program through which BAC, as one of the servicing arms of Bank of America, receives incentive payments for providing affordable mortgage loan modifications and other foreclosure alternatives to eligible borrowers.

4. As a participating servicer in HAMP, BAC is bound by standard agreements with each Plaintiff and class member for temporary trial modifications of their existing notes and mortgages. In each such trial modification agreement, Defendants promise that if the borrower complies with the terms of the temporary modification agreement and the borrower’s representations on which the offer of a modification was based continue to be true in all material respects, then the trial modification will become permanent on the same terms. Ms. Freeman and members of the class, for their part, have complied with these trial agreements by making all required payments and submitting the required documentation. Despite Ms. Freeman’s and class members’ best efforts, Defendants have ignored their contractual obligation to permanently modify the class members’ mortgage loans.

5. As a result, Plaintiffs and class members have been wrongfully deprived of an opportunity to cure the delinquency on their mortgage loans, pay the arrears due under the loans and save their homes. Defendants’ actions thwart the purpose of HAMP and are illegal under New York State law.

6. Upon information and belief, there are a number of economic factors that make it more profitable for Defendants to renege rather than to meet their contractual obligations under HAMP.¹

JURISDICTION

7. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 because this action is between parties that are citizens of different states and the amount in controversy is greater than \$75,000.

8. For diversity jurisdiction purposes, a national bank is a citizen of the state designated as its main office on its organization certificate. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 306 (2006). Defendants Bank of America, N.A. and Bank of America Corporation are, upon information and belief, citizens of North Carolina. Defendant BAC Home Loans Servicing, LP is, upon information and belief, a citizen of California. Plaintiffs are citizens of New York.

9. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d) in that this matter is brought as a putative class action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a State different from any Defendant.

¹ See Thompson, Diane E., *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior*, National Consumer Law Center (October 2009). This report details the reasons why it is more profitable for servicers to foreclose than modify loans. Such factors include: (a) entering into a permanent modification will often delay a servicer's ability to recover advances it is required to make to investors of the unpaid principal and interest payments on a non-performing loan. The servicer's right to recover expenses from an investor in a loan modification, rather than a foreclosure, is often less clear and less generous; (b) the monthly service fee that servicers, like Defendants, collect as to each loan it services in a pool of loans is calculated as a fixed percentage of the unpaid principal balance of the loans in the pool. Consequently, modifying a loan to reduce the principal balance results in a lower monthly fee to the servicer; (c) fees that servicers, like Defendants, charge borrowers that are in default constitute a significant source of revenue to the servicer. Late fees and "process management fees" are often added to the principal loan amount thereby increasing the unpaid balance in a pool of loans, which increases the amount of the servicer's monthly fee; and (d) fixed overhead costs involved in successfully performing loan modifications involve up-front costs to the servicer for additional staffing, physical infrastructure, and expenses such as property valuation, credit reports and financing costs. Available at: http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/servicer-report1009.pdf

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) inasmuch as the unlawful practices are alleged to have been committed in this District, Defendants regularly conduct business in this District, and the named Plaintiffs reside in this District.

PARTIES

11. Marie Freeman is a 50-year-old woman residing with her husband at 219 Benziger Avenue, Staten Island, New York, 10301.

12. Andrew Bianchi is a 51-year-old man residing at 77 Belfast Avenue, Staten Island, New York, 10306.

13. April Taddeo is a 41-year-old woman residing with her husband at 35 Salamander Court, Staten Island, New York, 10309.

14. John Michael Taddeo is a 39-year-old man residing with his wife at 35 Salamander Court, Staten Island, New York, 10309.

15. Tae Young Rho is a 36-year-old man residing with his wife at 121 Gannon Avenue, Staten Island, New York, 10314.

16. Jean Rho is a 35-year-old woman residing with her husband at 121 Gannon Avenue, Staten Island, New York, 10314.

17. Bank of America Corporation, a Delaware corporation, is a bank holding company with its principal place of business in Charlotte, North Carolina.

18. Bank of America, N.A. is a mortgage lender with headquarters at 101 Tryon Street, Charlotte, North Carolina 28255. Bank of America, N.A. is a subsidiary of Bank of America Corporation.

19. BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A., located at 4500 Park Granada, Calabasas, California 91302.

FACTUAL BACKGROUND

I. The Foreclosure Crisis

20. In 2007, at the beginning of the current foreclosure crisis, 57,350 foreclosure actions were filed in New York State, a 55% increase from the number of foreclosure filings in 2005.²

21. Record foreclosure filings in New York State continued in 2008 and 2009 with over 50,000 foreclosure actions filed each year (55,641 in 2008³ and 50,369 in 2009⁴).

22. To address the burgeoning foreclosure crisis, on December 15, 2009, New York Governor David A. Paterson signed the Mortgage Foreclosure Law (Chapter 507 of the Laws of 2009).

23. To better protect homeowners, the Mortgage Foreclosure Law requires that at least 90 days before a lender files a foreclosure action on a one-to-four family home, the lender mail a notice to the homeowner informing her that a foreclosure filing is imminent (“90-Day Pre-Foreclosure Notice”).

24. To track the depth of the mortgage foreclosure crisis in New York State, the Mortgage Foreclosure law also requires that the lender file a copy of the 90-Day Pre-Foreclosure Notice with the New York State Banking Department. Since February 2010, the Banking Department has maintained statistics of the 90-Day Pre-Foreclosure Notices sent to homeowners at risk of losing their homes.

² RealtyTrac, U.S. Foreclosure Activity Increases 75 Percent in 2007, Jan. 29, 2008. Available at <http://www.realtytrac.com/content/press-releases/us-foreclosure-activity-increases-75-percent-in-2007-3604>.

³ RealtyTrac Staff, Foreclosure Activity Increases 81 Percent in 2008, Jan. 15, 2009. Available at <http://www.realtytrac.com/content/press-releases/foreclosure-activity-increases-81-percent-in-2008-4551>.

⁴ RealtyTrac Staff, A record 2.8 million properties receive foreclosure notices in 2009. Available at <http://www.realtytrac.com/landing/2009-year-end-foreclosure-report.html?a=b&acct=233496>.

25. The Banking Department's recent 90-Day Pre-Foreclosure report reflects the ongoing and deepening foreclosure crisis in New York State: 134,000 90-Day Pre-Foreclosure Notices were mailed to New York homeowners with mortgages on one-to-four family homes who had fallen behind on their mortgage payments in the period between February 13, 2010 and August 31, 2010.⁵

26. While not every one of the 134,000 90-Day Pre-Foreclosure Notices will result in a foreclosure filing, the sheer magnitude of the numbers already filed indicate that 2010 is on track to match, if not surpass, the previous years' foreclosure filings of over 50,000 per year.

27. Increased foreclosures have a detrimental effect not just on the borrowers who lose property and face homelessness, but also in the surrounding neighborhoods that suffer decreased property values and their municipalities that lose tax revenue.⁶

28. The foreclosure crisis is not close to over. The current unemployment rate of 9.8%⁷ does not appear to be falling, leaving many homeowners unable to pay their monthly mortgage loan payments. Furthermore, economists predict that interest rate resets on the riskiest of lending products will not reach their zenith until sometime in 2011.⁸

⁵ New York State Banking Department, 90-Day Pre-Foreclosure Notice Report, Oct. 7, 2010. Available at: <http://www.banking.state.ny.us/pr101007.htm>.

⁶ Center for Responsible Lending, "Soaring Spillover: Accelerating Foreclosures to Cost Neighbors \$502 Billion in August 2009 Alone," p. 4 (May 2009) at <http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>); Furman Center for Real Estate and Urban Policy, "Kids in Foreclosure: New York City (Sept. 2010), at http://furmancenter.org/files/Foreclosures_and_Kids_Policy_Brief_Sept_2010.pdf.

⁷ United States Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (November 2010), available at: http://data.bls.gov/PDO/servlet/SurveyOutputServlet?data_tool=latest_numbers&series_id=LNS14000000.

⁸ See Eric Tymoigne, Securitization, Deregulation, Economic Stability, and Financial Crisis, Working Paper No. 573.2 at 9, Figure 30, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1458413 (citing a Credit Suisse study showing monthly mortgage rate resets).

II. Creation of the Home Affordable Modification Program

29. Congress passed the Emergency Economic Stabilization Act of 2008 on October 3, 2008, and amended it with the American Recovery and Reinvestment Act of 2009 on February 17, 2009 (together, the “Act”). 12 U.S.C. § 5201, *et. seq.* (2009).

30. The purpose of the Act is to grant the Secretary of the Treasury (hereinafter “Secretary”) the authority to restore liquidity and stability to the financial system, and ensure that such authority is used in a manner that “protects home values” and “preserves homeownership.” 12 U.S.C. § 5201.

31. The Act grants the Secretary the authority to establish the Troubled Asset Relief Program, or TARP. 12 U.S.C. § 5211. Under TARP, the Secretary may purchase or make commitments to purchase troubled assets from financial institutions. *Id.*

32. Congress allocated up to \$700 billion to the United States Department of the Treasury for TARP. 12 U.S.C. § 5225.

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

34. The Act further mandates, with regard to any assets acquired by the Secretary that are backed by residential real estate, that the Secretary “shall implement a plan that seeks to maximize assistance for homeowners” and use the Secretary’s authority over mortgage loan servicers to encourage them to take advantage of programs to “minimize foreclosures.” 12 U.S.C. § 5219.

35. The Act grants authority to the Secretary to use credit enhancements and loan guarantees to “facilitate loan modifications to prevent avoidable foreclosures.” *Id.*

36. The Act imposes parallel mandates to implement plans to maximize assistance to homeowners and to minimize foreclosures on the Federal Housing Finance Agency, Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”) and the Federal Reserve Board in their roles as “Federal property managers.” 12 U.S.C. § 5220.

37. On February 18, 2009, pursuant to their authority under the Act, the Secretary and Director of the Federal Housing Finance Agency announced the Making Home Affordable Program. (SD 09-01, pg.1)

38. The Making Home Affordable Program consists of two subprograms. The first subprogram relates to the creation of refinancing products for individuals with minimal or negative equity in their home, and is now known as the Home Affordable Refinance Program, or HARP.

39. The second subprogram relates to the creation and implementation of a uniform loan modification protocol, and is now known as the HAMP. It is this subprogram that is at issue in this case. (SD 09-01, pg.1)

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

41. Under HAMP, the federal government provides incentives to participating mortgage loan servicers to enter into agreements with struggling homeowners that will adjust their existing mortgage obligations in order to make the monthly payments more affordable. Servicers receive \$1,000 for each HAMP modification.

III. Broken Promises Under HAMP

42. The entities that perform the actual day-to-day interaction with borrowers – including such tasks as payment processing, escrow maintenance, loss mitigation and foreclosure – are known as “servicers.” Servicers typically act as the agents of entities that hold mortgage loans. BAC Home Loans Servicing, LP is a servicing business operated by Bank of America, N.A., and its actions described herein were made as agents for the entities that hold mortgage loans.

43. Servicers that elected to participate in HAMP⁹ executed a Servicer Participation Agreement (“SPA”) with the federal government. Such servicers are denominated “Participating Servicers.”

44. On April 19, 2009, Steve R. Bailey, Senior Vice President of Bank of America, N.A. executed a SPA, thereby making BAC a participating servicer in HAMP. A copy of this SPA is incorporated herein and attached as Exhibit 1.

45. The SPA executed by Mr. Bailey incorporates all “guidelines,” “procedures,” and “supplemental documentation, instructions, bulletins, frequently asked questions, letters, directives, or other communications . . . issued by the Treasury, Fannie Mae or Freddie Mac . . . in connection with the duties of Participating Servicers.” These documents together are known as the “Program Documentation” (SPA at 1.A.) and are incorporated by reference herein.

46. The SPA mandates that a Participating Servicer “shall perform” the activities described in the Program Documentation “for all mortgage loans it services.” (SPA at 1.A., 2.A.)¹⁰

⁹ Certain classes of loans, namely those held by Fannie Mae, Freddie Mac or companies that accepted money under the TARP, are subject to mandatory inclusion in HAMP. Otherwise, participation by servicers in the HAMP is voluntary.

47. The Program Documentation requires Participating Servicers to evaluate all first lien mortgage loans for HAMP if two or more payments are due and unpaid. (SD 09-01, pg. 4) In addition, if a borrower contacts a Participating Servicer regarding a HAMP modification, the Participating Servicer must collect income and hardship information to determine if HAMP is appropriate for the borrower. (SD 09-01, pg. 13)

48. A HAMP Modification consists of two stages. First, a Participating Servicer is required to gather information and, if appropriate, offer the homeowner a Trial Period Plan (“TPP” or “plan”).¹¹ The TPP consists of a three-month period in which the homeowner makes mortgage payments based on a strict formula that uses the initial financial information provided to the servicer.

49. BAC offers TPPs to eligible homeowners by way of a TPP Agreement, which describes the homeowner’s duties and obligations under the plan and promises a permanent HAMP modification for those homeowners who accept the Agreement and fulfill the documentation and payment requirements.

50. If a homeowner executes the TPP Agreement, complies with all documentation requirements and makes the three TPP monthly payments, the second stage of the HAMP process is triggered, and BAC must provide the homeowner with a permanent modification document.

¹⁰ The Program Documentation also includes Supplemental Directive 09-01 (“SD 09-01”), Supplemental Directive 09-08 (“SD 09-08”), Supplemental Directive 10-01 (“SD 10-01”), Base Net Present Value (NPV) Model Specifications (“NPV Overview”) and Supplemental Documentation – Frequently Asked Questions, attached hereto as Exhibit 2. These documents together describe the basic activities required under HAMP and are incorporated by reference in the TPP Agreements accepted by Plaintiffs.

¹¹ The eligibility criteria for HAMP, as well as the formula used to calculate a modified monthly mortgage payment under the modification, are explained in detail in the SD 09-01, attached hereto as Exhibit 2. Generally speaking, the goal of a HAMP modification is for owner-occupants to receive modifications of first-lien loans by which the monthly mortgage payment is reduced to 31% of their current monthly income for the next five years.

51. BAC routinely fails to provide a permanent modification agreement to qualified homeowners as required by the TPP Agreement. In February 2010, the U.S. Treasury reported that BAC's parent company had 1,066,025 HAMP-eligible loans in its servicing portfolio. At the time of the report, trial periods had been started on only 237,766 of these loans. Of those trial periods, just 12,761 resulted in permanent modifications (only 5.37% of the started TPPs and 1.2% of the eligible pool) even though many more homeowners had made the payments and submitted the documentation required by the TPP Agreement. The Treasury Report is attached hereto as Exhibit 3. The common experience of foreclosure prevention advocates in New York State and elsewhere is that Defendants violate the HAMP SPA and TPP Agreements by, *inter alia*, failing to convert trial period plans to permanent modifications on a routine and systematic basis.

52. By failing to live up to the TPP Agreements and convert TPPs into permanent modifications, BAC is not only leaving homeowners in limbo, but is also preventing homeowners from pursuing other avenues of resolution, including using the money they are putting toward TPP payments to fund bankruptcy plans, relocation costs, short sales or other means of curing their delinquencies.

IV. Plaintiffs' Efforts to Obtain HAMP Loan Modifications

A. Marie Freeman

53. In 2000, Marie Freeman purchased her home in Staten Island, New York where she currently lives with her husband.

54. On or about April 28, 2006, Ms. Freeman took out a mortgage loan for her residence from Accredited Home Lenders, Inc., a California corporation, in the amount of \$418,000.00. The purpose of the mortgage loan was to refinance a previous mortgage loan.

55. The servicing of Ms. Freeman's mortgage loan was transferred to Wilshire Credit Corporation ("Wilshire") after origination. Wilshire serviced the mortgage loan until February 28, 2010, at which time servicing was transferred to Defendant BAC.

56. Upon information and belief, Merrill Lynch & Co., Inc. purchased Wilshire Credit Corporation from Wilshire Financial Services Group in 2004. Upon information and belief, Bank of America Corporation acquired Merrill Lynch & Co., Inc. on or about January 1, 2009.

57. Sometime after taking out the mortgage loan, Ms. Freeman began experiencing financial hardships that caused her to have difficulty making payments on her mortgage loan.

58. In 2009, Ms. Freeman appealed to Wilshire for help to make her monthly mortgage loan payments more affordable. Also during that time, the law firm of Steven J. Baum, P.C. commenced a foreclosure action against Ms. Freeman in the New York State Supreme Court, County of Richmond, entitled *CITIBANK, N.A., AS TRUSTEE FOR THE MLMI TRUST SERIES 2006-HE5 vs. MARIE FREEMAN, et al.*, and filed a Special Request for Judicial Intervention on April 10, 2009.¹²

59. Wilshire offered Ms. Freeman a TPP under cover of a letter dated October 14, 2009. A copy of the TPP and cover letter are attached hereto as Exhibit 4. At that time, Wilshire was a subsidiary of Bank of America Corporation.

60. Ms. Freeman accepted the offer on November 1, 2009, when she returned an executed copy of the TPP Agreement to Wilshire along with the first TPP payment and documentation Wilshire requested.

¹² Richmond County Index Number 130179/2009.

61. The TPP provided that the plan was effective November 14, 2009, and would run for three months, from November 2009 to January 2010. Ms. Freeman's monthly mortgage payments (Principal, Interest, Taxes and Insurance) were set at \$1,679.17.

62. The TPP Agreement is entitled "Home Affordable Modification Trial Period Plan." The first sentence of the agreement provides: "If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Servicer will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage."

63. The TPP states, "I understand that after I sign and return two copies of this Plan to the Servicer, the Servicer will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer." Nevertheless, neither Wilshire nor BAC Home Loan Servicing, LP has sent Ms. Freeman a signed copy of the Plan or a notice stating that she did not qualify for the Plan.

64. Supplemental Directive 10-01 provides that "*Borrowers who make all trial payments timely and satisfy all other trial period requirements will be offered a permanent HAMP modification . . .* The trial period is three months in duration . . ." (emphasis supplied). (SD 10-01, pg. 8)

65. Ms. Freeman made all three TPP payments in the amount of \$1,679.17 on or before the payment deadlines. Ms. Freeman also continued to make payments in the amount of \$1,679.17 even after making all three trial payments in a timely manner.

66. In February 2010, Ms. Freeman received a Notice of Transfer of Servicing from Wilshire, informing her that servicing of her loan would be transferred to Defendant BAC,

effective March 1, 2010. The Notice of Transfer of Servicing states “Your new servicer must also send you this notice no later than 15 days after the effective date or at closing.” A copy of the Notice of Transfer of Servicing is attached hereto as Exhibit 5.

67. Upon BAC’s assumption of the servicing of Ms. Freeman’s mortgage loan, Ms. Freeman continued to make monthly payments in the amount of \$1,679.17 even though she had made all required TPP payments on a timely basis (and an additional payment of \$1,679.17 after the last TPP payment due date) and was not contractually required to do so. Ms. Freeman simply wanted to make payments on her mortgage loan.

68. BAC accepted Ms. Freeman’s payment in amount of \$1,679.17 in March 2010 but refused to accept subsequent payments in the amount of \$1,679.17, stating that the funds were not sufficient to reinstate the loan and/or they were not certified. The letter is attached hereto as Exhibit 5.

69. Moreover, shortly after BAC began servicing the loan, BAC sent Ms. Freeman a billing statement demanding an amount in excess of the \$1,679.17.

70. After rejecting Ms. Freeman’s payments after March 2010, BAC sent Ms. Freeman a notice dated July 21, 2010, stating that she was not eligible for the HAMP due to a “Trial Plan Default.” The letter purports to explain further that “Under the guidelines of the Home Affordable Modification Program . . . Your loan is not eligible for a Home Affordable Modification because you did not make all of the required Trial Period Plan Payments by the end of the trial period.” The letter is attached hereto as Exhibit 6.

71. On August 10, 2010, Ms. Freeman and her counsel, MFY Legal Services, Inc., appeared at a settlement conference in the Foreclosure Conference Part in the Supreme Court of the State of New York, Richmond County.

72. During the settlement conference, Bank of America employee Daniel Skidell stated that BAC had no information that Ms. Freeman was in a TPP agreement with Wilshire. At the same time, Mr. Skidell claimed that Ms. Freeman was not eligible for a HAMP modification because she only made a single payment of \$1,679.17 to BAC.

73. In response to this inaccurate factual presentation, Ms. Freeman provided Mr. Skidell evidence that Ms. Freeman accepted the TPP offer, that she made all required TPP payments in a timely manner as well as additional payments identical to the TPP amount after all required TPP payments were made, that BAC began rejecting payments made by Ms. Freeman, and that BAC sent her a denial letter claiming that she was ineligible for a HAMP modification because she purportedly defaulted on her trial plan.

74. In response to the documents Ms. Freeman provided to the Baum firm as recounted in the previous paragraphs, BAC sent Ms. Freeman a letter stating that her request for assistance was denied because she did not have sufficient resources to support payments under a loan modification agreement. BAC's denial letter is attached hereto as Exhibit 7.

75. Like other class members in this matter, Ms. Freeman has been living in limbo, without any assurances that her home of more than 10 years will not be sold at a foreclosure auction, despite her compliance with HAMP requirements, her continued monthly payments, and her contractual right to a permanent HAMP modification.

B. Andrew Bianchi

76. In 2003, Andrew Bianchi purchased his home in Staten Island, New York where he currently lives with his wife and children.

77. On or about December 27, 2005, Mr. Bianchi took out a mortgage loan for his residence from MCS Mortgage Bankers, Inc. in the amount of \$340,000.00. The purpose of the mortgage loan was to refinance a previous mortgage loan.

77. Mr. Bianchi's mortgage loan is serviced by BAC.

79. Sometime after taking out the mortgage loan, Mr. Bianchi began experiencing financial hardships that caused him to have difficulty making payments on his mortgage loan.

80. In 2009, Mr. Bianchi appealed to BAC for help to make his monthly mortgage loan payments more affordable.

81. BAC offered Mr. Bianchi a TPP on or about September 8, 2009.

82. Mr. Bianchi accepted the offer on or about September 10, 2009, when he executed the TPP Agreement and subsequently returned it to BAC. A copy of the TPP Agreement is attached hereto as Exhibit 8.

83. The TPP provided that the plan was effective October 1, 2009, and would run for three months, from October 2009 to December 2009. Mr. Bianchi's monthly mortgage payments (Principal, Interest, Taxes and Insurance) were set at \$1,596.81.

84. The TPP Agreement is entitled "Home Affordable Modification Trial Period Plan." The first sentence of the agreement provides: "If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Servicer will provide me with a Home Affordable Modification Agreement ("Modification Agreement") as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note Secured by the Mortgage."

85. The TPP states, "I understand that after I sign and return two copies of this Plan to the Servicer, the Servicer will send me a signed copy of this Plan if I qualify for the Offer or will

send me written notice that I do not qualify for the Offer.” Nevertheless, BAC has sent neither a signed copy of the TPP nor a written rejection stating that Mr. Bianchi did not qualify for the Plan.

86. Supplemental Directive 10-01 provides that “*Borrowers who make all trial payments timely and satisfy all other trial period requirements will be offered a permanent HAMP modification* . . . The trial period is three months in duration . . .” (emphasis supplied). (SD 10-01, pg. 8)

87. Mr. Bianchi made all three TPP payments in the amount of \$1,596.81 on or before the payment deadline. Copies of the cashed checks representing payment of the October 2009, November 2009 and December 2009 TPP payments are attached hereto as Exhibit 9.

88. Mr. Bianchi continues to make payments to BAC in the amount of \$1,596.81 even after he made all three trial payments in a timely manner.

89. Mr. Bianchi and/or his loan modification representative, Great Atlantic Group, submitted all required documents requested to BAC in a timely manner.

90. On or about May 21, 2010, approximately eight months after the Trial Period Plan effective date, BAC sent Mr. Bianchi a notice stating that he was not eligible for the HAMP due to a “Trial Plan Default.” The letter purports to explain further that “Under the guidelines of the Home Affordable Modification Program . . . Your loan is not eligible for a Home Affordable Modification because you did not make all of the required Trial Period Plan payments by the end of the trial period.” BAC’s denial letter is attached hereto as Exhibit 10.

91. Like other class members in this matter, Mr. Bianchi has been living in limbo, without any assurances that his home of more than eight years will not be sold at a foreclosure

auction, despite his compliance with HAMP requirements, his continued monthly payments, and his contractual right to a permanent HAMP modification.

C. April and Michael John Taddeo

92. April and Michael John Taddeo are owners of their home in Staten Island, New York where they currently live with their children. Mr. Taddeo has been an owner of the home since 1996. Mrs. Taddeo has been an owner of the home since 2006.

93. On or about June 23, 2006, Mr. and Mrs. Taddeo took out a mortgage loan for their residence from Countrywide Home Loans, Inc., in the amount of \$288,000.00. The purpose of the mortgage loan was to refinance a previous mortgage loan.

94. Mr. and Mrs. Taddeo's mortgage loan is serviced by BAC.

95. Sometime after taking out the mortgage loan, Mr. and Mrs. Taddeo began experiencing financial hardships that caused them to have difficulty making payments on their mortgage loan.

96. In 2009, Mr. and Mrs. Taddeo appealed to BAC for help to make their monthly mortgage loan payments more affordable.

97. BAC offered Mr. and Mrs. Bianchi a TPP on or about December 2009. A copy of the TPP is attached hereto as Exhibit 11.

98. Mr. and Mrs. Taddeo accepted the offer on or about January 4, 2010, when they executed the TPP Agreement and subsequently returned it to BAC along with the first TPP payment.

99. BAC requested certain documents from Mr. and Mrs. Taddeo in a letter dated February 27, 2010. Mr. and Mrs. Taddeo provided BAC with the documents it requested shortly after receiving BAC's letter dated February 27, 2010.

100. The TPP provided that the plan was effective January 1, 2010, and would run for three months, from January 2010 to March 2010. Mr. and Mrs. Taddeo's monthly payments were set at \$1,708.12.

101. The TPP Agreement is entitled "Home Affordable Modification Trial Period Plan." The first sentence of the agreement provides: "If I am in compliance with this Trial Period Plan ("the Plan") and my representations in Section 1 continue to be true in all material respects, then the Servicer will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage."

102. The TPP states "I understand that after I sign and return two copies of this Plan to the Servicer, the Servicer will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer." Nevertheless, BAC has sent neither a signed copy of the TPP nor a written rejection stating that Mr. and Mrs. Taddeo did not qualify for the Plan.

103. Supplemental Directive 10-01 provides that "*Borrowers who make all trial payments timely and satisfy all other trial period requirements will be offered a permanent HAMP modification . . .* The trial period is three months in duration . . ." (emphasis supplied).

(SD 10-01, pg. 8)

104. Mr. and Mrs. Taddeo made all three TPP payments in the amount of \$1,708.12 in a timely manner.

105. Mr. and Mrs. Taddeo also continue to make payments to BAC in the amount of \$1,708.12 even after they made all three trial payments in a timely manner.

106. Although Mr. and Mrs. Taddeo submitted all required documents requested by BAC in a timely manner and within the timeframe specified by BAC, BAC informed Mr. and Mrs. Taddeo that they are not eligible for a Home Affordable Modification because they failed to provide documents requested by BAC. A copy of the erroneous denial letter is attached hereto as Exhibit 12.

107. Although almost a year has passed since Mr. and Mrs. Taddeo's TPP began, BAC has not converted Mr. and Mrs. Taddeo's TPP to a permanent modification under the HAMP.

108. Like other class members in this matter, Mr. and Mrs. Taddeo have been living in limbo, without any assurances that their home of more than 15 years (for Mr. Taddeo) will not be sold at a foreclosure auction, despite their compliance with HAMP requirements, their continued monthly payments, and their contractual right to a permanent HAMP modification.

D. Jean and Tae Young Rho

109. In 2007, Jean and Tae Young Rho purchased their home in State Island, New York where they currently live with their child.

110. On or about July 30, 2007, Mr. and Mrs. Rho took out a mortgage loan for their residence from Bank of America, N.A. in the amount of \$319,000.00. The purpose of the mortgage loan was to purchase the home.

111. Mr. and Mrs. Rho's mortgage loan is serviced by BAC.

112. Sometime after taking out the mortgage loan, Mr. and Mrs. Rho began experiencing financial hardships that caused them to have difficulty making payments on their mortgage loan.

113. In 2009, Mr. and Mrs. Rho appealed to BAC for help to make their monthly mortgage loan payments more affordable.

114. BAC offered Mr. and Mrs. Rho a TPP on or about February 17, 2010.

115. Mr. and Mrs. Rho accepted the offer on or about March 15, 2010, when they executed the TPP Agreement and subsequently returned it to BAC. A copy of the TPP Agreement is attached hereto as Exhibit 13.

116. The TPP provided that the plan was effective April 1, 2010, and would run for three months, from April 2010 to June 2010. Mr. and Mrs. Rho's monthly mortgage payments (Principal, Interest, Taxes and Insurance) were set at \$1,334.67.

117. The TPP Agreement is entitled "Home Affordable Modification Trial Period Plan." The first sentence of the agreement provides: "If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all materials respects, then the Servicer will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage."

118. The TPP states, "I understand that after I sign and return two copies of this Plan to the Servicer, the Servicer will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer."

119. Supplemental Directive 10-01 provides that "*Borrowers who make all trial payments timely and satisfy all other trial period requirements will be offered a permanent HAMP modification . . . The trial period is three months in duration . . .*" (emphasis supplied). (SD 10-01, pg. 8)

120. Mr. and Mrs. Rho made all three TPP payments on or before the payment deadlines.

121. Mr. and Mrs. Rho continue to make payments to BAC at or above the trial period payment amount even though they made all three trial payments in a timely manner.

122. Mr. and Mrs. Rho submitted all required documents requested by BAC in a timely manner.

123. Although almost seven months have passed since Mr. and Mrs. Rho's TPP began, BAC has not converted Mr. and Mrs. Rho's TPP to a permanent modification under the HAMP.

124. Like other class members in this matter, Mr. and Mrs. Rho have been living in limbo, without any assurances that their monthly mortgage loan payments will be modified permanently, despite their compliance with HAMP requirements, their continued monthly payments, and their contractual right to a permanent HAMP modification.

V. Class Allegations

125. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

126. This class action is brought by the Plaintiffs on behalf of themselves and all New York homeowners whose loans have been serviced by Defendant BAC and who, since April 19, 2009, have complied with their obligations under a TPP and have not received a permanent HAMP modification.

127. Plaintiffs sue on their own behalf and on behalf of a class of persons under Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

128. Plaintiffs do not know the exact size or identities of the proposed class, since such information is in the exclusive control of Defendants. Plaintiffs believe that the class encompasses many hundreds, if not thousands, of individuals whose identities can be readily ascertained from Defendants' books and records. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

129. Based on the size of the modifications at issue and the unusually high principal balance of mortgage loans in New York State, particularly property located in the five boroughs of New York City where Plaintiffs reside, Plaintiffs have a good faith reasonable belief that the amount in controversy exceeds \$5 million.

130. All members of the class have been subjected to and affected by the same conduct. The claims are based on standard form contracts and uniform federally-mandated loan modification processing requirements. There are questions of law and fact that are common to the class and that predominate over any questions affecting only individual members of the class. These questions include, but are not limited to, the following:

- a. the nature, scope and operation of Defendants' obligations to homeowners under HAMP;
- b. whether Defendants breached, and continue to breach, their duties under HAMP that were intended for the benefit of class members;
- c. whether the manner in which Defendants have executed the duties they undertook as part of the HAMP program violates the duty of good faith and fair dealing;
- d. whether Defendants' receipt of an executed TPP Agreement, along with supporting documentation and three monthly payments, creates a binding contract or otherwise legally obligates Defendants to provide class members permanent HAMP modifications;
- e. whether a borrower's remittance of the first monthly payment due under a TPP constitutes acceptance of the TPP offer by the borrower;

- f. whether Defendants' receipt of the first payment due under a TPP offer constitutes evidence of the borrower's acceptance of the TPP offer;
- g. whether Defendants' failure to provide permanent HAMP modifications in the circumstances set forth in the complaint amounts to a breach of contract and/or a breach of the covenant of good faith and fair dealing;
- h. whether Defendants' written representations to homeowners stating that they would receive permanent loan modifications upon successful completion of the trial period plan and then failing to deliver such permanent modifications constitutes a deceptive practice under New York General Business Law Section 349 (the "Deceptive Practices Act");
- i. whether the above practices caused class members to suffer injury; and
- j. the proper measure of damages and injunctive relief.

130. The claims of the named Plaintiffs are typical of the claims of the class and do not conflict with the interests of any other member of the class in that both the Plaintiffs and the other members of the class were subject to the same conduct, entered into the same standard form agreement, and were met with the same wrongful denial or absence of a permanent modification.

131. The named Plaintiffs will fairly and adequately represent the interests of the class. They are committed to the vigorous prosecution of the class claims and have retained attorneys who are qualified to pursue this litigation and have experience in class action litigation, consumer protection class actions and HAMP compliance.

132. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any manageability problems.

133. This putative class action meets both the requirements of Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3).

134. The Defendants have acted or refused to act on grounds that apply generally to the class so that final injunctive relief or declaratory relief is appropriate respecting the class as a whole.

COUNT I

BREACH OF CONTRACT (TRIAL PERIOD PLAN AGREEMENT)

135. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

136. Plaintiffs bring this claim on behalf of themselves and on behalf of each member of the class described above.

137. As described above, the standard TPP Agreement offered by Defendants, their agents, or predecessors in interest to Plaintiffs and class members constitutes a valid offer.

138. By executing the TPP Agreement and returning it to Defendants and providing Defendants with the supporting documentation, Plaintiffs accepted Defendants' offer.

139. Alternatively, Plaintiffs' return of the TPP Agreements constitutes offers that Defendants accepted when they accepted Plaintiffs' TPP payments.

140. Alternatively, Plaintiffs' remittance of the first payments due under the TPP Agreements constitutes acceptance of the TPP offers.

141. Plaintiffs' TPP payments to Defendants constitute consideration. By making those payments, Plaintiffs gave up the ability to pursue other means of saving their homes from

foreclosure, or otherwise curing their delinquency and/or default, or making their monthly payments more affordable in light of their financial hardships.

142. Plaintiffs' submission to Defendants of IRS Form 4506T (or IRS Form 4506T-EZ), copies of federal tax returns, copies of recent pay stubs, copies of recent bank statements, and other financial information, as well as missed days at work and hours speaking to BAC employees over the telephone regarding their TPPs also constitutes adequate legal consideration for the TPP Agreements.

143. Plaintiffs and Defendants thereby formed valid contracts.

144. To the extent that the contracts were subject to a condition subsequent by providing Defendants an opportunity to review the documentation submitted by Plaintiffs when they returned the signed TPPs, to determine its sufficiency, this condition was waived by Defendants in that they failed to timely raise the failure to fulfill the condition subsequent and/or are estopped to assert it as a defense to Plaintiffs' claims.

145. By failing to provide Plaintiffs with permanent HAMP modification documents, Defendants breached the TPP.

146. Plaintiffs remain ready, willing and able to perform under the contracts by continuing to make additional payments in the TPP payment amount and/or to provide additional, duplicate financial and personal documentation.

147. Plaintiffs have suffered harm and are threatened with additional harm from Defendants' breach. By making TPP payments during the TPP and making payments in the TPP amount after the three-month trial period contemplated by the TPP contracts, Plaintiffs forewent other remedies that might be pursued to save their homes from foreclosure and/or cure their delinquency and/or default, such as restructuring their debt under the bankruptcy code, or

pursuing other strategies to deal with their delinquency and/or default, such as selling their homes. Plaintiff Marie Freeman, like other class members, has also suffered additional harm in the form of Defendants' continued prosecution of a foreclosure action against her. Upon information and belief, other putative class members have suffered additional harm in that they have lost their homes to foreclosure.

COUNT II

BREACH OF CONTRACT (SERVICER PARTICIPATION AGREEMENT)

148. Plaintiffs repeat and re-allege every allegation above as set forth herein in full.

149. Plaintiffs bring this claim on behalf of themselves and on behalf of each member of the class described above.

150. On April 19, 2009, Bank of America and the United States (through Fannie Mae acting as Financial Agent for the United States) entered into a Servicer Participation Agreement ("SPA"), which is a valid and enforceable contract.

151. Plaintiffs and members of the class are intended third-party beneficiaries under the SPA, which states the express intention that "homeowners who are in default and . . . who are at imminent risk of default" be granted modifications to reduce "monthly payments to sustainable levels." (*See* Exhibit 2) Plaintiffs and members of the class were intended beneficiaries of the SPA.

152. By entering into the SPA, Bank of America agreed to comply with the requirements set forth in the SPA and the Program Documentation incorporated by reference into the SPA. In exchange, the U.S. Treasury agreed to pay certain amounts set forth in the SPA and the Program Documentation to Defendants in consideration for their compliance with the SPA.

153. The central purpose of the SPA is to ensure that borrowers whose loans are serviced by Defendants and who are eligible for loan modifications under HAMP are properly considered for modification in compliance with the Program Documentation requirements incorporated in the SPA.

154. Defendants failed to perform under the SPA in a manner that directly impacts Plaintiffs and members of the class. Defendants' refusal to perform their obligations under the SPA was unlawful, without justification and/or excuse, and constituted a total and material breach.

155. Defendants breached the SPA by, *inter alia*, failing to timely convert TPPs into permanent modifications as required by the SPA.

156. As a result of Defendants' breach of the SPA, Plaintiffs and members of the class suffered and will continue to suffer reasonable and foreseeable consequential damages resulting from such breaches, including payment of increased interest, late fees, delinquency fees, foreclosure costs, longer loan payoff times, higher principle balances, deterrence from seeking other remedies to address their default and/or unaffordable mortgage payments, further damage to their credit scores, additional income tax liability, costs and expenses incurred to prevent or fight foreclosure, and other damages for breach of contract.

157. Plaintiffs and members of the class have been damaged by Defendants' breach of the SPA contract in an amount to be proven at trial.

COUNT III

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

158. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

159. Plaintiffs bring this claim on behalf of themselves and on behalf of each member of the class described above.

160. Defendants are obligated by contract and common law to act in good faith and to deal fairly with each borrower. Under common law, a covenant of good faith and fair dealing is implied in every contract, including the TPP Agreements, which prevents one contracting party from unfairly frustrating the other party's right to receive the benefits of the contract. Defendants are obligated to act in good faith and deal fairly with each borrower who entered into a TPP Agreement.

161. Defendants have violated and continue to violate this covenant of good faith and fair dealing in its TPP Agreements with Plaintiffs and members of the class by doing, *inter alia*, the following:

- a. Failing to perform loan servicing functions consistent with its responsibilities to Plaintiffs and members of the class;
- b. Failing to properly train and supervise its agents and employees, including without limitation, its loss mitigation and collection personnel, foreclosure personnel, and personnel implementing its modification programs;
- c. Failing to permanently modify loans and/or provide alternatives to foreclosure and using unfair means to keep Plaintiffs and the class in TPPs, including, without limitation, routinely demanding information it already possesses and failing to communicate accurately or consistently with borrowers about the status of their loan modification applications;
- d. Making inaccurate calculations and determinations of Plaintiffs' eligibility for permanent modifications; and

- e. Encouraging and/or allowing its employees and agents to make inaccurate statements regarding Plaintiffs' and class members' eligibility for permanent loan modifications under HAMP, particularly when such statements are made in connection with CPLR Rule 3408 conferences in the New York State Supreme Court.

162. Plaintiffs and members of the class remain ready, willing and able to begin performance under permanent HAMP modifications.

163. As a result of Defendants' breach of this implied covenant, Plaintiffs and members of the class suffered and will continue to suffer reasonable and foreseeable consequential damages resulting from such breaches, including payment of increased interest, delinquency- and foreclosure-related costs and fees, late fees, longer loan payoff times, higher principle balances, late fees, additional attorney's fees and other damages for breach of contract.

164. Plaintiffs and members of the class have been damaged by Defendants' breach of the implied covenant of good faith and fair dealing in an amount to be proved at trial.

COUNT IV

PROMISSORY ESTOPPEL, IN THE ALTERNATIVE

165. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

166. Plaintiffs bring this claim on behalf of themselves and on behalf of each member of the class described above.

167. Defendants, by way of their TPP Agreements, made representations to Plaintiffs that if they returned the TPP Agreements executed, provided the necessary supporting documentation required by the HAMP, and made their TPP payments, they would receive permanent HAMP modifications.

168. Defendants' TPP Agreements were intended to induce Plaintiffs to rely on them and make their monthly TPP payments.

169. Plaintiffs did indeed rely on Defendants' representation, by submitting TPP payments.

170. Given the language in the TPP Agreements, Plaintiffs' reliance was reasonable.

171. Plaintiffs' reliance was to their detriment. Plaintiffs have yet to receive permanent HAMP modifications and have lost the opportunity to fund other strategies to deal with their delinquency and/or default and avoid foreclosure, or otherwise make their monthly payments more affordable in light of their financial hardships.

COUNT V

VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

172. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

173. Plaintiffs bring this claim on behalf of themselves and on behalf of each member of the class described above.

174. New York law prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state . . ." N.Y. Gen. Bus. Law § 349(a).

175. An individual "injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful acts or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions." N.Y. Gen. Bus. Law § 349(a).

176. As enumerated above, Defendants violated Section 349 of the New York General Business Law by using deceptive acts and practices in the conduct of their business.

177. Defendants' conduct has a broad impact on consumers at large.

178. Defendants committed the above-described acts willfully and/or knowingly.

179. Defendants' wrongful and deceptive acts have caused injury and damages to Plaintiffs and the class and, unless enjoined, will cause further irreparable injury.

180. Defendants' violations include, but are not limited to:

- a. collecting TPP payments from Plaintiffs when Defendants never intended to provide Plaintiffs permanent HAMP modifications;
- b. using a transfer of servicing from one subsidiary servicing unit to another to circumvent the contractual obligation to provide a permanent HAMP modification;
- c. using unfair and unconscionable means to collect debt from Plaintiffs;
- d. making false promises and misrepresentations directly to Plaintiffs in order to collect debt;
- e. demanding amounts from Plaintiffs in excess of their TPP payment;
- f. allowing their employees and agents to make false and inaccurate statements regarding a borrower's eligibility for HAMP or Defendants' compliance with HAMP Program Documentation, particularly when such statements are made during CPLR Rule 3408 settlement conferences in the New York State Supreme Court.

181. As a direct and proximate result of these violations of Section 349 of the General Business Law, Plaintiffs and members of the class have suffered compensable harm and are entitled to preliminary and permanent injunctive relief, and to recover actual damages, costs and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- a. Certify this case as a class action and appoint the named Plaintiffs to be class representatives and their counsel to be class counsel;
- b. Enter judgment declaring the acts and practices of Defendants complained of herein to constitute a breach of contract and a breach of the covenant of good faith and fair dealing, as well as a declaration that Defendants are required by the doctrine of promissory estoppel to provide permanent modifications to Plaintiffs and members of the class on the terms promised in class members' TPPs;
- c. Grant a permanent or final injunction enjoining Defendants' agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiffs and the members of the class;
- d. Order Defendants to adopt and enforce a policy that requires appropriate training of their employees and agents regarding their duties under HAMP;
- e. Order specific performance of Defendants' contractual obligations, together with other relief required by contract and law;
- f. Award actual and/or minimum damages, whichever are greater, pursuant to N.Y. Gen. Bus. Law § 349(h);
- g. Award Plaintiffs the costs of this action, including the fees and costs of experts, together with reasonable attorney's fees pursuant to Fed. R. Civ. P. 23(h) and N.Y. Gen. Bus. Law § 349(h);
- h. Grant Plaintiffs and the class such other and further relief as this Court finds equitable, just, necessary and proper;

JURY TRIAL DEMANDED

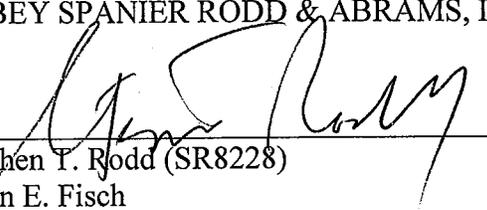
Plaintiffs demand a trial by jury on all issues so triable.

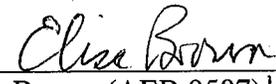
Dated: December 23, 2010.
New York, New York

Respectfully Submitted,

ABBEY SPANIER RODD & ABRAMS, LLP

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