UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

FEDERAL TRADE COMMISSION, Plaintiff, v. EMC MORTGAGE CORPORATION, a Delaware corporation, and THE BEAR STEARNS COMPANIES LLC, a Delaware limited liability company, Defendants.	)	Civil No.

PLAINTIFF FEDERAL TRADE COMMISSION'S COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned attorneys, alleges as follows:

1. This is an action under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), to secure permanent injunctive relief and other equitable relief, including rescission, reformation, restitution, and disgorgement, against defendants for engaging in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, as amended, 15 U.S.C. § 45(a), and acts or practices in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, as amended, the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*, as amended, and the Truth in Lending Act's ("TILA") implementing Regulation Z, 12 C.F.R. § 226, as amended.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 1607(c), 1681s(a), 1692*l*(a), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue is proper in the United States District Court for the Eastern District of Texas under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff, the Commission, is an independent agency of the United States Government created and given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the FDCPA, FCRA, and TILA. The Commission is authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 108(c) of the TILA, 15 U.S.C. § 1607(c), Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 814 of the FDCPA, 15 U.S.C. § 1692*l*, to initiate federal district court proceedings to enjoin violations of the FTC Act, the FDCPA, the FCRA, and the TILA and its implementing Regulation Z, and to secure such equitable relief as may be appropriate in each case.

THE DEFENDANTS

5. Defendant The Bear Stearns Companies LLC, f/d/b/a The Bear Stearns Companies, Inc., ("Bear Stearns") is a Delaware limited liability company that maintains its principal place of business in New York, NY. Bear Stearns transacts business in this District.

6. Defendant EMC Mortgage Corporation ("EMC") is a Delaware corporation that maintains its principal place of business in Lewisville, TX. Defendant EMC is a wholly owned subsidiary of defendant Bear Stearns. EMC transacts business in this District.

7. Defendant Bear Stearns directs, controls, formulates, or participates in the acts or practices alleged in this complaint. Defendant EMC acts in the interests, and is the alter ego, of defendant Bear Stearns.

8. Defendants are "debt collectors" as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

9. In connection with the servicing and collection of mortgage loans, defendants furnish information to consumer reporting agencies. As such, defendants are subject to Section 623 of the FCRA, 15 U.S.C. § 1681s-2, which imposes a series of duties and prohibitions upon any person or entity that furnishes information to a consumer reporting agency.

10. Defendants are "creditors," as that term is defined in Section 103(f) of the TILA, 15 U.S.C. § 1602(f), and Section 226.2(a)(17) of Regulation Z, 12 C.F.R. § 226.2(a)(17), and therefore are required to comply with applicable provisions of the TILA and Regulation Z.

COMMERCE

11. The acts and practices of defendants alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

12. Defendants play a prominent role in the secondary market for residential mortgage loans by acquiring, servicing, and selling large volumes of such loans. In recent years, during the explosive growth of the mortgage industry, defendants acquired and securitized loans at a rapid pace, paying inadequate attention to the integrity of consumers' loan information and to sound servicing practices. As a result, in servicing consumers' loans, defendants neglected to obtain timely and accurate information on consumers' loans, made inaccurate claims to consumers, and engaged in unlawful collection and servicing practices. These practices

occurred prior to JP Morgan Chase & Co.'s acquisition of Bear Stearns, which became effective on May 30, 2008.

13. Defendants operate a vertically integrated mortgage business, which includes the acquisition and servicing of residential mortgage loans, and the packaging of those loans into mortgage backed securities ("MBS") for sale to investors. EMC is the mortgage servicer for many of the loans acquired by defendants. Bear Stearns' employees are primarily responsible for the acquisition of loans, such as the identification, bidding, and negotiation of deals, although frequently EMC is listed as the purchaser and subsequent seller on MBS documents. In many instances, after the defendants have acquired loans and EMC has begun servicing them, Bear Stearns packages the loans into MBS. After the loans have been packaged into MBS and sold on the secondary market, EMC often continues to service the loans pursuant to servicing agreements. In some instances, EMC also retains a residual ownership interest in the loans.

14. Many of the loans acquired, serviced, and sold by the defendants are subprime or "Alt-A," *i.e.*, less than prime, or "A," credit. These loans include "nontraditional" mortgages such as pay option adjustable rate mortgages ("ARMs"), interest-only mortgages, negative amortization loans, and loans made with little or no income or asset documentation. In recent years, defendants funded and acquired an increasing number of loans, and EMC's loan servicing portfolio overall grew significantly. As of September 2007, EMC serviced over 475,000 mortgage loans with a total unpaid principal balance of approximately $80 billion.

15. As a mortgage servicer, EMC makes various representations to borrowers, including on loans newly acquired by defendants. Specifically, in collection calls and notices, monthly statements, payoff statements, foreclosure notices, bankruptcy filings, and otherwise, EMC routinely makes representations to borrowers about their loans, including: (1) the unpaid

principal balance; (2) the due date; (3) the interest rate; (4) the monthly payment amount; (5) the delinquency status; and (6) fees and corporate advances assessed by prior loan servicers. In many instances, EMC makes these representations to borrowers within days of the transfer of the loans for servicing to EMC. For example, EMC begins making collection calls on those transferred loans that are purportedly past due. In many instances, however, EMC makes these early collection calls and sends collection notices to consumers before it has obtained complete loan information from the seller and before it has conducted quality control and other data integrity checks to ensure the accuracy of the representations it makes to borrowers.

16. In numerous instances, EMC has lacked a reasonable basis for its representations to borrowers, because it failed to obtain accurate and complete information about the consumer's loan account before making the representation. Despite indications that loan data obtained from prior loan servicers and loaded onto its servicing system was likely inaccurate or unverified, EMC nonetheless used that data to make representations to borrowers about their loans. As a result, defendants have made inaccurate claims to consumers and engaged in unwarranted collection practices.

17. As a mortgage servicer, EMC receives consumers' disputes regarding the status and handling of their loans. In numerous instances, EMC has failed to investigate and resolve consumers' disputes in a timely manner. In addition, in numerous instances, EMC has failed to report consumers' loan accounts as disputed when furnishing information to consumer reporting agencies.

18. In connection with loans that were in default when obtained by defendants, EMC has failed to disclose in initial communications with consumers that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. In

addition, EMC has failed to send consumers a written notice, or has sent untimely or defective notices, containing the amount of the debt, the creditor's name, and the consumer's rights to dispute the debt and obtain verification of the debt.

19. In numerous instances, including in connection with newly-acquired loans, EMC has made collection calls to borrowers repeatedly and with excessive frequency under the circumstances. In addition, in numerous instances, EMC has made collection calls using cell phones that display only the borrower's local area code on the borrower's caller identification display ("caller ID"), and without identifying its name on the caller ID. EMC has used cell phones and caller ID in this fashion notwithstanding that EMC was not calling from the borrower's local area code.

20. As a mortgage servicer, EMC "advances" money to a borrower to pay for items, such as property inspections, that it deems necessary to protect the note holder's rights in the property. Pursuant to the mortgage contract, EMC adds these "corporate advances" to the consumer's loan balance. In many instances, however, EMC has charged borrowers for property inspections that were not authorized by the mortgage contract. For example, EMC has charged borrowers for alleged property inspection fees, where the purpose of the inspector's visit to the consumer's home was to attempt to collect on the loan. In addition, EMC has charged borrowers for property inspections on newly acquired loans notwithstanding that EMC lacked a reasonable basis for the need for a property inspection.

21. As a mortgage servicer, EMC also charges borrowers other fees, such as late fees in connection with alleged defaults and prepayment penalties in connection with loan payoffs. In numerous instances, defendants have charged borrowers for fees, including late fees and prepayment penalties, in violation of state law.

22. In addition, in numerous instances, EMC has charged borrowers a loan modification fee – typically, $500 – and automatically included this fee in the principal balance of the modified loan on which interest accrued. In doing so, EMC has caused the borrower's loan balance to increase and created a new transaction, but has failed to provide the borrower with new loan disclosures as required by the TILA's Regulation Z. In addition, EMC has misrepresented that its modification fee is a corporate advance authorized by the mortgage contract, and has charged borrowers for the fee without authorization.

23. When borrowers request the amount of money necessary to reinstate or payoff their loan, and in other instances where EMC seeks payment, EMC's demands often contain fees that have been assessed by EMC, including fees for property inspections, late fees, prepayment penalties, and loan modifications. In many instances, these demands include unauthorized fees.

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I: Misrepresentation of Amounts Owed

24. Plaintiff incorporates by reference all the foregoing paragraphs.

25. In the course and conduct of their loan servicing and collection, defendants in numerous instances have represented, expressly or by implication, that consumers owe the amounts specified in defendants' communications.

26. In truth and in fact, in numerous instances, consumers do not owe the amounts that have been specified in defendants' communications. Consumers do not owe the amounts specified because, for example, (a) fees included in the amounts specified are not allowed under the mortgage contract or permitted by law; and/or (b) the amounts specified have been assessed or calculated incorrectly.

27. Therefore, defendants' representations as set forth in paragraph 25 are false or

misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II: Unfair and Deceptive Assessment and Collection of Fees

28. Plaintiff incorporates by reference all the foregoing paragraphs.

29. In the course and conduct of their loan servicing and collection, defendants in numerous instances have represented, expressly or by implication, that fees assessed and collected by EMC were (a) allowed under the mortgage contract and (b) permitted by law.

30. On numerous occasions, the fees assessed and collected by EMC were (a) not allowed under the mortgage contract or (b) not permitted by law. Nonetheless, EMC improperly assessed and collected these fees.

31. Defendants' actions have caused and are likely to cause substantial injury to consumers. This injury is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition.

32. Defendants' acts or practices constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

Count III: Deceptive Reasonable Basis Claims

33. Plaintiff incorporates by reference all the foregoing paragraphs.

34. In the course and conduct of their loan servicing and collection, defendants in numerous instances have represented, expressly or by implication, that they possessed and relied on a reasonable basis substantiating their representations about consumers' loans.

35. In truth and in fact, in numerous instances, defendants have not possessed and relied on a reasonable basis substantiating their representations about consumers' loans.

36. Therefore, defendants' representations as set forth in paragraph 34 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

37. In 1977, Congress passed the FDCPA, 15 U.S.C. § 1692 *et seq.*, which became effective in 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692*l*, specifically empowers the Commission to enforce the FDCPA. Under its provisions, for purposes of the exercise by the Commission of its functions and powers under the FTC Act, a violation of the FDCPA is deemed an unfair or deceptive practice in violation of the FTC Act. Further, the Commission is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any person, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests set by the FTC Act. The authority of the Commission in this regard includes the power to enforce the provisions of the FDCPA in the same manner as if the violations of the FDCPA were violations of a Federal Trade Commission trade regulation rule.

Count IV: Harassment or Abuse

38. Plaintiff incorporates by reference all the foregoing paragraphs.

39. On numerous occasions, in connection with the collection of debts that were in default when obtained by defendants, defendants have used conduct the natural consequence of which is to harass, oppress, or abuse any person, in violation of Section 806 of the FDCPA, 15 U.S.C. § 1692d, including but not limited to:

(a) causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or

harass any person at the called number, in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5); and

(b) the placement of telephone calls without meaningful disclosure of the caller's identity, in violation of Section 806(6) of the FDCPA, 15 U.S.C. § 1692d(6).

40. Pursuant to Section 814 of the FDCPA, 15 U.S.C. § 1692*l*, the acts and practices alleged in paragraph 39 also constitute unfair or deceptive acts or practices in violation of the FTC Act.

Count V: False or Misleading Representations

41. Plaintiff incorporates by reference all the foregoing paragraphs.

42. On numerous occasions, in connection with the collection of debts that were in default when obtained by defendants, defendants have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including but not limited to:

(a) Falsely representing the character, amount, or legal status of a debt, or any services rendered or compensation which may be lawfully received by a debt collector for collection of a debt, in violation of Sections 807(2)(A) and (B) of the FDCPA, 15 U.S.C. §§ 1692e(2)(A) and (B);

(b) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed, in violation of Section 807(8) of the FDCPA, 15 U.S.C. § 1692e(8);

(c) Using false representations or deceptive means to collect or attempt to

collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10); and

(d) Failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, in violation of Section 807(11) of the FDCPA, 15 U.S.C. § 1692e(11).

43. Pursuant to Section 814 of the FDCPA, 15 U.S.C. § 1692*l*, the acts and practices alleged in paragraph 42 also constitute unfair or deceptive acts or practices in violation of the FTC Act.

Count VI: Unfair Practices

44. Plaintiff incorporates by reference all the foregoing paragraphs.

45. On numerous occasions, in connection with the collection of debts that were in default when obtained by defendants, defendants have used unfair or unconscionable means to collect or attempt to collect a debt, including but not limited to collecting amounts (including any interest, fee, charge, or expense incidental to the principal obligation) not authorized by the agreement creating the debt or permitted by law, in violation of Section 808(1) of the FDCPA, 15 U.S.C. § 1692f(1).

46. Pursuant to Section 814 of the FDCPA, 15 U.S.C. § 1692*l*, the acts and practices alleged in paragraph 45 also constitute unfair or deceptive acts or practices in violation of the FTC Act.

Count VII: Validation of Debts

47. Plaintiff incorporates by reference all the foregoing paragraphs.

48. On numerous occasions, in connection with the collection of debts that were in default when obtained by defendants, defendants have failed to notify consumers of their right to dispute and obtain verification of their debts and to obtain the name of the original creditor, either in the initial communication with consumers by defendants, or within five days thereafter, in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).

49. Pursuant to Section 814 of the FDCPA, 15 U.S.C. § 1692*l*, the acts and practices alleged in paragraph 48 also constitute unfair or deceptive acts or practices in violation of the FTC Act.

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

50. In 1970, Congress passed the FCRA, 15 U.S.C. § 1681 *et seq.*, which became effective in 1971, and has been in force since that date. Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), specifically empowers the Commission to enforce the FCRA. Under its provisions, for purposes of the exercise by the Commission of its functions and powers under the FTC Act, a violation of the FCRA is deemed an unfair or deceptive practice in violation of the FTC Act. Further, the Commission is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by any person, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests set by the FTC Act.

Count VIII: Failure to Report Disputes

51. Plaintiff incorporates by reference all the foregoing paragraphs.

52. In numerous instances in which consumers have informed defendants that they dispute the completeness or accuracy of information furnished by defendants to a consumer

reporting agency, defendants have not reported the disputes to any or all of the consumer reporting agencies to which they furnish or have furnished the information.

53. The acts and practices alleged in paragraph 52 constitute violations of Section 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)(3).

54. Pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in paragraph 52 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TILA'S REGULATION Z

55. In 1968, Congress passed the TILA, 15 U.S.C. § 1601 *et seq.*, which became effective in 1969, and has been in force since that date. Section 108(c) of the TILA, 15 U.S.C. § 1607(c), specifically empowers the Commission to enforce the TILA. Under its provisions, for purposes of the exercise by the Commission of its functions and powers under the FTC Act, a violation of any requirement imposed under the TILA shall be deemed a violation of a requirement imposed under the FTC Act. Further, the Commission is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the TILA by any person, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests set by the FTC Act.

Count IX: Failure to Provide Required Disclosures

56. Plaintiff incorporates by reference all the foregoing paragraphs.

57. On numerous occasions, in the course and conduct of loan servicing and collection, defendants have included the cost of a modification fee (typically, $500) in the unpaid principal balance of modified loans, without providing required disclosures, in violation of Sections 226.18 and 226.20 of Regulation Z, 12 C.F.R. §§ 226.18 and 226.20. Regulation Z,

12 C.F.R. § 226, is issued by the Board of Governors of the Federal Reserve System and is the implementing regulation for the TILA.

58. Pursuant to Section 108(c) of the TILA, 15 U.S.C. § 1607(c), every violation of the TILA and Regulation Z constitutes a violation of the FTC Act.

CONSUMER INJURY

59. Consumers have suffered, and will continue to suffer, substantial injury as a result of defendants' violations of the FTC Act, FDCPA, FCRA, and the TILA's Regulation Z. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

60. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

61. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, pursuant to section 13(b) of the FTC Act, 15 U.S.C. § 53(b), section 814(a) of the FDCPA, 15 U.S.C. § 1692*l*(a), section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), section 108(c) of the TILA, 15 U.S.C. § 1607(c), and pursuant to its own equitable powers:

1. Enter a permanent injunction to prevent future violations of the FTC Act, the FDCPA, the FCRA, and the TILA's Regulation Z;
2. Award such relief as the Court finds necessary to redress injury to consumers

resulting from defendants' violations of the FTC Act, FDCPA, FCRA, and the TILA's Regulation Z, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement of ill-gotten gains; and

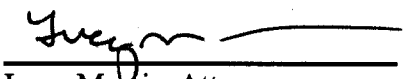
3. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: 9/9/08

Respectfully submitted,

FEDERAL TRADE COMMISSION:

WILLIAM BLUMENTHAL
General Counsel



Lucy Morris, Attorney
Washington State Bar #16510
Stephen Shin, Attorney
New York State Bar
Kristin Williams, Attorney
Virginia State Bar # 71561

Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Mail Drop NJ-3158
Washington, D.C. 20580
(202) 326-3224 (phone)
(202) 326-3768 (facsimile)
lmorris@ftc.gov (Ms. Morris' email)