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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ORANGE, CIVIL COMPLEX CENTER SANTA ANA**

14 Judge Nancy Wieben Stock

15 JEAN C. WILCOX, individually and on
16 behalf of all other consumers similarly
17 situated and in the public interest;

17 Plaintiff,

18 vs.

19 EMC MORTGAGE CORPORATION, a
20 Delaware corporation; DOES 1 through 100,
21 inclusive;

22 Defendants.

CASE NO.: 30-2010-00408955-CU-BT-CXC

Complex Litigation (Class Action)

**COMPLAINT FOR EQUITABLE RELIEF
AND DAMAGES:**

- 23 (1) **VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT
[CAL. CIV. CODE § 1750]**
- 24 (2) **UNLAWFUL, UNFAIR AND
DECEPTIVE BUSINESS PRACTICES**
- 25 (3) **BREACH OF CONTRACT**
- 26 (4) **UNJUST ENRICHMENT**
- 27 (5) **FRAUD**

28 DEMAND FOR JURY TRIAL

26 ///

27 ///

28 ///

1 Plaintiff Jean C. Wilcox (“Wilcox”), acting individually and on behalf of all other consumers
2 similarly situated and in the public interest, hereby alleges as follows as against defendant EMC
3 Mortgage Corporation (“EMC”):

4 **SUMMARY OF ACTION**

5 1. Plaintiff brings this action on behalf of herself and a class of all similarly situated
6 consumers pursuant to a variety of California statutes, including the Consumers Legal Remedy Act and
7 Unfair Competition Law, plus common law causes action.

8 2. Defendant EMC is in the business of servicing mortgage loans on behalf of lenders and
9 investors, including “pooled” mortgage-backed security investments. This complaint seeks to remedy
10 EMC’s unlawful acts in servicing mortgage loans, notably its false loan modification promises,
11 followed by its bogus modification quagmire (which is really nothing more than a hoax), summarized
12 as follows:

- 13 a) repeatedly failing to grant or implement loan modifications as promised,
14 including misrepresenting the requirements for achieving permanent loan
15 modifications and the status of loan modification applications;
- 16 b) requesting and accepting interim debtor payments as a condition for promised
17 permanent loan modifications, under temporary modification or trial plan
18 agreements, without any reasonable basis to believe that the loans would be
19 permanently modified, and without taking diligent or reasonable steps to
20 implement loan modifications as promised;
- 21 c) systematically and continually erecting artificial obstacles in the loan
22 modification process with the intent of obstructing, delaying, or preventing
23 permanent loan modifications;
- 24 d) misrepresenting the amounts due under and the terms of the loans being
25 serviced, including unlawfully applying mortgage payments, in whole or in part,
26 or otherwise holding payments in suspense, resulting in improperly escalated
27 debt obligations, including interest and other excessive or otherwise unlawful
28 charges;

- 1 e) instructing loan modification applicants to stop making their existing mortgage
2 payments purportedly as part of the loan modification process, thereby
3 subjecting such applicants to additional financial jeopardy including foreclosure,
4 risk of foreclosure, late payment fees or penalties, and negative references on
5 credit histories; and
- 6 f) improperly recording notices of default regarding mortgage loans and initiating
7 unlawful foreclosure actions, and causing improper reconveyance fees and other
8 charges to be assessed.

9 3. Through its orchestrated loan modification hoax, EMC has induced consumers,
10 including plaintiff, to continue making excess or other unjustified payments in pursuit of illusory
11 permanent loan modifications. EMC has thereby avoided the need to initiate, prosecute, and conclude
12 multiple foreclosures (beyond its available resources); and has avoided the need to liquidate excessive
13 and under-valued real estate inventory, whether REO or otherwise (again beyond its available
14 resources); and has artificially bolstered its financial statements, including balance sheets and related
15 SEC filings, both on its own behalf and on behalf of its clients (lenders and investors), by minimizing
16 mandatory reporting of toxic loans, defaulted loans, or distressed loans.

17 **PARTIES**

18 4. Plaintiff Jean C. Wilcox resides in Irvine, located in the County of Orange, State of
19 California. Her mortgage loan has been serviced by defendant EMC for several years. Plaintiff
20 suffered injury in fact and was otherwise damaged as a result of the unlawful conduct of defendants as
21 described herein. A true and correct copy of plaintiff's Declaration pursuant to the Consumer Legal
22 Remedies Act, California Civil Code Section sec. 1780(c), is attached hereto and filed herewith.

23 5. At all times relevant to this action, EMC was a wholly owned subsidiary of Bear
24 Stearns. Bear Stearns was acquired by, and is now owned by, JP Morgan Chase. Thus, EMC is now a
25 wholly owned subsidiary of JP Morgan Chase. EMC is headquartered in Lewisville, Texas, with its
26 principal executive offices in California located in the County of Orange, City of Irvine. Plaintiff
27 alleges, based on information and belief, that EMC is one of the nation's largest mortgage loan
28 servicing companies.

1 WAMU purchase money loan entailed, among other things, an “Option ARM” feature that allowed for
2 negative amortization of accrued interest. That feature was disadvantageous to plaintiff’s goal of one
3 day owning the Residence free and clear. Negative amortization occurs when the loan payment for any
4 period is less than the interest charged over that period, so that the outstanding balance of the loan
5 increases. The difference between accrued interest and accrued interest plus principal is then added to
6 the total principal owed on the loan.
7

8 12. Following plaintiff’s purchase of the Residence, she made substantial improvements to
9 its interior and exterior, thereby increasing its market value.

10 ***Refinance of the Purchase Money Loan***

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

17 14. A few months after the funding of the Loan, Wilcox was notified that the Loan had been
18 sold and that EMC was the new “servicer” to which Wilcox was to make payments, until further
19 notification. Wilcox was not informed of the identity of the new holder of the Loan. Plaintiff’s Loan
20 was registered pursuant to the “MERS” system of registration that was and continues to be utilized by
21 lenders as a means of transferring loans that are held in pooled mortgage-backed securities
22 investments.

23 ***First Temporary Loan Modification***

24 15. Beginning in or about the summer of 2007, Wilcox began experiencing difficulty in
25 collecting accounts receivables that were due her pursuant to her self-employment as a lawyer. At the
26 same time, her family expenses increased, notably including college expenses. Consequently, Wilcox
27 fell behind in her payments on the Loan.
28

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

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

7 18. On November 6, 2007, Wilcox and EMC entered into a written agreement (hereinafter
8 referred to as the "First Temporary Loan Modification"). Mr. Edwards advised Wilcox that the Loan
9 would be permanently modified, provided she complied with the payment terms under the First
10 Temporary Loan Modification. Under the terms of the First Temporary Loan Modification agreement,
11 Wilcox agreed to make six payments commencing November 9, 2007. The First Temporary Loan
12 Modification payments were significantly less than the payments required under the original terms of
13 the Loan. Further, Mr. Edwards informed Wilcox that the six payments would be automatically
14 debited from plaintiff's banking account and that she could not continue paying her credit card
15 balances.

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

19 20. When the second payment under the First Temporary Loan Modification agreement was
20 not auto-debited from plaintiff's bank account, Wilcox immediately called EMC, on December 18,
21 2007, and this time was connected with a woman who identified herself as "Shawana." Shawana
22 informed Wilcox that EMC could not auto-debit her banking account and that the First Temporary
23 Loan Modification was not being reflected in EMC's system, although the November 9th payment had
24 been received. Shawana also advised Wilcox that she could not continue making payments on her
25 credit card balances, as that would prevent the Loan from being modified. During this conversation,
26 Wilcox was repeatedly placed on "hold" for long periods of time while Shawana represented she was
27 speaking with her supervisor. This was the only conversation Wilcox had with Shawana.

Second Temporary Loan Modification

1
2 21. By the conclusion of plaintiff's conversation with Shawana (EMC), the terms of a
3 Second Temporary Loan Modification agreement had been structured. Again, Shawana, as with Mr.
4 Edwards, advised Wilcox that after "two or three months" of making the payments set forth in the
5 Temporary Loan Modification agreement, the Loan would be permanently modified. Wilcox agreed to
6 the terms of the Second Temporary Loan Modification and Shawana promised to send a written
7 agreement memorializing its terms.

8 22. In addition, around this time, Wilcox listed her Residence for sale. Wilcox received
9 several offers for the Residence, but she did not accept any or open escrow because she believed that
10 EMC would modify the Loan.

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

15 24. Soon after December 19, 2007, and before the Second Temporary Loan Modification
16 agreement had been received by Wilcox, Wilcox received un-signed correspondence from EMC
17 wherein EMC notified Wilcox that the Loan had been referred to a trustee for foreclosure. This
18 notification was entirely inconsistent with the conversation Wilcox had with Shawana of EMC on
19 December 18, 2007. Accordingly, on December 26, 2007, Wilcox called the trustee identified in the
20 correspondence, Cal-Western Reconveyance, and spoke with a man who identified himself as "John
21 Godfrey." Wilcox advised Mr. Godfrey of the Second Temporary Loan Modification that was in
22 process with EMC and Wilcox understood, based on the conversation, that no further action would be
23 taken by Cal-Western Reconveyance because the foreclosure notification had been a mistake on the
24 part of EMC.

25 25. On December 28, 2007, Wilcox contacted EMC again because she had not received the
26 agreement by which the Second Temporary Loan Modification would be documented. During this call
27 Wilcox was transferred to "Kevan Jaskula." Mr. Jaskula then sent to Wilcox by facsimile a
28 "Repayment Agreement" that set forth the terms of the Second Temporary Loan Modification. Wilcox

1 promptly executed the "Repayment Agreement" and returned it to EMC. Pursuant to the terms of the
2 "Repayment Agreement," which set forth the Second Temporary Loan Modification, Wilcox was to
3 pay six (6) monthly payments of \$4,236 to EMC. Pursuant to the "Repayment Agreement," Wilcox
4 caused the required down payment thereunder, \$4,000, to be wired to EMC on December 28, 2007.

5 *Secret Notice of Default*

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

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

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

26 29. Immediately following plaintiff's conversation with Mr. Albert, she wrote to Mr.
27 Jaskula at EMC and demanded that EMC instruct Cal-Western Reconveyance to close its file and
28 cancel any Notice of Default, because it had been an error on the part of EMC. Later that same day,

1 Wilcox spoke with Mr. Jaskula, who confirmed that EMC's system was reflecting that the Loan was in
2 a "repayment program" and that the Notice of Default and any related fees with Cal-Western
3 Reconveyance would be "backed-out."

4 30. On January 2, 2008, Wilcox called Cal-Western Reconveyance and spoke with a man
5 who identified himself as "Alberto Ponce." Mr. Ponce informed Wilcox that he did not know if any
6 action had yet been taken by Cal-Western Reconveyance, but that his records showed the matter had
7 been placed "on hold." Based on plaintiff's conversations with EMC and Cal-Western Reconveyance,
8 and the fact that she had never been served with a copy of the Notice of Default via certified mail, she
9 was informed and reasonably believed that the Notice of Default had never been recorded and that Cal-
10 Western Reconveyance was not taking any further action, pursuant to EMC's directives.

11 31. Pursuant to the Second Temporary Loan Modification, Wilcox made monthly payments
12 to EMC in January, February and March 2008.

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

15 33. On April 10, 2008, Wilcox again contacted EMC and this time was transferred to an
16 individual named "Jennifer." During this call, Wilcox expressed frustration that despite her tender of
17 four payments (including the down payment), *no permanent* loan modification had yet been
18 implemented.

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

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

28

1 *First CLRA Notification*

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

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

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

21 39. On December 8, 2008 Wilcox called EMC and spoke with "Geraldina." Wilcox again
22 stated that she sought a modification of the Loan. Geraldina acknowledged that EMC had recently
23 entered into a settlement with the Federal Trade Commission due to its wrongful business practices,
24 including debt collection actions.

25 40. On December 29, 2008, Deana G. DeLaura, a Vice President with EMC, provided
26 Wilcox (at her request) a breakdown as to how EMC had been applying the payments Wilcox had been
27 making under the "Repayment Agreements." The payment breakdown showed that EMC had been
28 improperly holding in "suspense" plaintiff's payments until it had sufficient funds to make a full

1 payment pursuant to the original terms of the Loan, or to repay an escrow advance. This handling of
2 plaintiff's payments had never been disclosed previously to Wilcox. EMC disclosed at this time that
3 Wells Fargo Bank was allegedly the Trustee handling the mortgage backed security pool in which
4 plaintiff's Loan was held.

5 ***Third Temporary Loan Modification***

6 41. On January 12, 2009, Wilcox wrote back to Ms. DeLaura at EMC and provided the
7 requested financial information in order to obtain a permanent modification of the Loan. Wilcox
8 informed EMC that she had paid the first installment of property taxes due on the Residence. This
9 letter also informed EMC that plaintiff's payments had not been properly applied, and that by holding
10 funds in "suspense" for months at a time EMC had enabled interest to improperly accrue on the loan at
11 8.34%. In addition, Wilcox again demanded that the improper Notice of Default be rescinded because
12 it impaired the marketability of the Residence. On February 17, 2009, Ms. DeLaura purported to
13 respond to plaintiff's letter, but her response was not meaningful, and she stated that plaintiff's loan
14 modification was "still" under review.

15 42. On February 17, 2009, Wilcox received a phone call from Ms. DeLaura wherein she
16 stated that, although she did not have authority to make the offer, she was proposing a modification of
17 the Loan at the rate of 5.5% for the remaining balance of the Loan term, with all accrued interest to be
18 paid, with monthly payments to **increase** to \$6,291.43 (including impounds for taxes and insurance).
19 Wilcox advised that these proposed terms (which apparently did not constitute an actual offer from
20 EMC in any event) were wholly unreasonable, onerous and inconsistent with EMC's promises dating
21 back to late 2007. Wilcox also at this time requested a copy of EMC's Servicing Agreement, and
22 asked to inspect the *original* of her promissory note. On February 24, 2009, Wilcox wrote to Ms.
23 DeLaura confirming these discussions and Wilcox's requests for these documents.

24 43. On February 27, 2009, Ms. DeLaura wrote to Wilcox and proposed that Wilcox enter
25 into another Temporary Loan Modification agreement with EMC. Further, Ms. DeLaura refused to
26 provide EMC's Servicing Agreement, claiming that it was "proprietary." She did provide Wells
27 Fargo's contact information and indicated that Wells Fargo Bank was the Trustee responsible for the
28

1 mortgage-backed security pool that held plaintiff's Loan. Wilcox then wrote to Wells Fargo Bank in
2 an effort to obtain its cooperation.

3 44. Wilcox did not sign or return the offered Third Temporary Loan Modification that Ms.
4 DeLaura set forth in another "Repayment Agreement." This was because the payments were
5 exorbitant and Wilcox was not willing to agree to pay EMC all of the interest which had accrued under
6 the original Loan terms over the extensive time frame during which she had been battling with EMC
7 for its promised permanent modification of the Loan.

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

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

14 47. On April 23, 2009, Wilcox again wrote Ms. DeLaura of EMC and again stated the terms
15 of the loan modification she sought. Ms. DeLaura never responded to this letter.

16 48. On April 28, 2009, Wilcox learned that EMC had paid the property taxes due on the
17 Property, even though Wilcox had already made payment directly to the Orange County Tax Collector.
18 In a letter dated April 28, 2009, Wilcox inquired why EMC was not refunding all of the payments she
19 had made since January 2008, since EMC had been unable or unwilling to permanently modify the
20 Loan. EMC never responded to this inquiry.

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

24 50. On May 29, 2009, Wilcox again sent written notice to EMC that it had perpetrated a
25 fraud on consumers through false promises that consumer loans would be modified by entering into
26 repayment agreements. Wilcox also informed EMC that due to adverse, declining market conditions,
27 the value of the Residence had decreased significantly during the period she had been attempting to
28 obtain a Loan modification.

1 Wilcox provided EMC with copies of her paystubs and other documents that EMC requested,
2 repeatedly.

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

7 58. On April 21, 2010 Ramona called Wilcox and said that "Carrington," the investor that
8 owned or controlled the Loan, wanted to see a copy of Wilcox's savings account statement. This was
9 news to Wilcox, as she previously was told that Wells Fargo was the Trustee for the mortgage-backed
10 security in which the Loan was pooled. In any event, Wilcox immediately sent her savings account
11 statement to Ramona. Wilcox understands that Carrington is another mortgage servicer located in
12 Santa Ana, California.

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

18 60. In the meantime, on April 23, 2010 Wilcox sent EMC, via certified mail, supplemental
19 notification under the Consumers Legal Remedies Act, Civil Code section 1782 (CLRA), informing
20 EMC that it was violating the CLRA by misrepresenting its loan services and by advertising its
21 services with the intention of not providing the services as advertised. Plaintiff's notice demanded that
22 EMC immediately cease fraudulently offering consumers loan modifications, among other things. On
23 April 29, 2010, EMC acknowledged receipt of plaintiff's CLRA notification and stated it would require
24 30 business days in which to respond. EMC never responded further to plaintiff's April 23, 2010
25 CLRA notification.

26 61. On July 28, 2010, EMC issued a letter to Wilcox (which she received on July 31, 2010)
27 stating that plaintiff's request for a Loan modification had been denied because her housing expenses
28

1 (mortgage, taxes, hazard insurance and HOA dues) were less or equal to 31% of her gross income.

2 This was a falsehood, as plaintiff's housing expenses far exceeded 31% of her gross income.

3 62. Subsequently, Wilcox called Cecilia Hammer in EMC's Santa Ana office, at which time
4 Ms. Hammer admitted that she had personally "never" seen an EMC "permanent" loan modification.
5 Wilcox advised Ms. Hammer that EMC had defrauded her into making further payments, to which Ms.
6 Hammer said nothing.

7 63. In August 2010, Wilcox again called EMC to discuss its erroneous denial of plaintiff's
8 request for a Loan modification. Wilcox spoke to "Smelvia" of EMC's Loss Mitigation Department.
9 Smelvia stated that the July 28, 2010 denial letter had erroneously stated the reason for denial of her
10 request. In actuality, Smelvia stated, EMC had submitted the requested loan modification to the
11 "investor" who held plaintiff's Loan and it had rejected the request based on its internal guidelines.
12 Smelvia refused to divulge the name of the "investor" who held the Loan, or the content of its internal
13 guidelines. Smelvia stated that the information was "proprietary." Further, she stated that the
14 "investor" would not reduce the interest rate on the Loan and would not write-off accrued interest,
15 which was specifically contradictory to the statements Ms. Hammer had made to Wilcox in October
16 2009.

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

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

1 70. The Class for whose benefit this action is brought is so numerous that joinder of all
2 Class members is impracticable. While the exact number and identities of individual Class members
3 are unknown at this time to Plaintiff, thousands of Class members likely applied for loan modifications
4 with Defendant in California.

5 71. The claims of Plaintiff are typical of the claims of the Class in that Plaintiff, like all
6 Class members, applied for loan modifications with defendant EMC and suffered losses due to EMC's
7 misconduct in connection with loan modifications and/or were exposed to the illegal conduct described
8 above.

9 72. Plaintiff, like all Class members, has been similarly injured by EMC's misconduct.
10 Plaintiff has experienced these injuries or been exposed to the likelihood of such conduct, but, as of the
11 time of the filing of this lawsuit, has not had the issue remedied or been provided appropriate
12 compensation.

13 73. The factual basis of EMC's misconduct as described above is common to all Class
14 members and represents a common thread of illegal, unfair and/or deceptive misconduct.

15 74. There are numerous questions of law and fact common to the Class, which common
16 questions predominate over any questions affecting individual Class members.

17 75. Among questions of fact common to the Class are whether EMC:

- 18 (a) misrepresented to consumers the requirements for achieving permanent loan
19 modifications and the statuses of loan modification applications;
- 20 (b) requested and accepted interim debtor payments under temporary modification
21 or trial plan agreements as a condition for promised permanent loan
22 modifications, without any reasonable basis to believe that the loans would be
23 permanently modified, and without taking diligent or reasonable steps to
24 implement permanent loan modifications;
- 25 (c) misrepresented to consumers seeking loan modifications the terms of and the
26 balances of the loans being serviced;

- (d) unlawfully applied mortgage payments, and/or held mortgage payments in suspense, resulting in escalated debt obligations, including interest and other charges;
- (e) instructed consumers seeking loan modifications to cease making existing mortgage payments, thereby subjecting them to additional financial losses including foreclosure, risk of foreclosure, late payment fees or penalties, and/or negative references to credit rating agencies;
- (f) instructed consumers seeking loan modifications to cease making payments on credit cards and/or other unsecured debt, thereby subjecting them to additional financial losses including late payment fees or penalties, negative references to credit rating agencies, and/or legal action by those creditors;
- (g) improperly recorded and/or caused to be recorded notices of default regarding mortgage loans;
- (h) improperly initiated and/or caused to be initiated unlawful foreclosure actions regarding mortgage loans; and
- (i) engaged in practices that have injured Plaintiff and Class members.

76. Among the questions of law common to the Class are whether EMC:

- (a) engaged in illegal acts and practices in violation of California laws, including, but not limited to, California Bus. & Prof. Code §17200, *et seq.*, Consumer Legal Remedies Act, California Civil Code Section sec. 1780, *et seq.*, and the other laws detailed herein, for which Plaintiff and the other members of the Class are entitled to relief;
- (b) breached its contracts with consumers who applied for loan modifications;
- (c) was unjustly enriched by its improper course of dealings with consumers who applied for loan modifications;
- (d) converted Plaintiff's and Class members' funds; and
- (e) engaged in practices that warrant equitable, injunctive and monetary relief.

1 77. Plaintiff's claims thus raise predominant common issues for all Class members as they
2 arise out of the same acts and practices of EMC.

3 78. Plaintiff has suffered the harm alleged, and Plaintiff has no irreconcilable interests
4 antagonistic to the interests of any other Class member. Plaintiff is committed to the vigorous
5 prosecution of this action and has retained counsel experienced in the prosecution of class actions.
6 Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect
7 the interests of the Class.

8 79. To the extent it is an element for class certification, a class action is superior to other
9 available methods for the fair and efficient group-wide adjudication of this controversy and provides
10 substantial benefits. Since the amount of each individual Class member's claim is small relative to the
11 complexity of the litigation, and due to the financial resources of EMC, no Class member could
12 individually afford to seek effective legal redress for the claims alleged herein.

13 80. Therefore, absent a class action, Class members will continue to suffer losses and
14 defendants' violations of the law will proceed without remedy.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of Consumers Legal Remedies Act)**

17 **(California Civil Code Section 1780, et seq.)**

18 81. Plaintiff hereby incorporates by reference all the foregoing paragraphs as though fully
19 set forth herein.

20 82. The CRLA, California Civil Code Section 1750, *et. seq.*, protects consumers in relation
21 to actions undertaken by defendants in consumer transactions intended to result or which result in the
22 sale or lease of goods or services. The factual allegations summarized above demonstrate that EMC
23 has engaged in a variety of prohibited acts under the CLRA, intended to result or which resulted in the
24 sale or lease of goods or services, specifically including, but not necessarily limited to, the following:

25 (1) Representing that EMC's loan services had sponsorship, approval, characteristics or
26 benefits which they did not have. (CLRA § 1770(a) (5)).

27 (2) Advertising EMC's services with the intention not to provide the services as advertised.
28 (CLRA § 1770(a) (9)).

1 (3) Advertising EMC's services with the intention not to supply reasonably expectable
2 demand, which advertisements failed to disclose a limitation of quantity (intent not to provide services
3 as advertised). (CLRA § 1770(a)(10)).

4 (4) Representing that a transaction confers or involves rights, remedies or obligations,
5 which it does not have or involve, or which are prohibited by law. (CLRA § 1770(a)(14)).

6 (5) Representing that the consumer will receive a rebate, discount or other economic
7 benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation
8 of the transaction. (CLRA § 1770(a)(17)).

9 (6) Misrepresenting the authority of the representative or agent to negotiate the final terms
10 of the transaction with the consumer. (CLRA § 1770(a)(18).)

11 (7) Additional misconduct arising from the allegations summarized above.

12 83. At least 30 days prior to the commencement of this action, plaintiff and/or legal counsel
13 for plaintiff notified EMC of the CLRA violations noted above, and demanded correction, repair,
14 replacement, or other rectification of the goods or services provided in violation of the CLRA. In fact,
15 such notifications have been sent via multiple letters, dated August 18, 2008, May 29, 2009, April 23,
16 2010, and August 13, 2010. As such, plaintiff has satisfied the requirements of Civil Code Section
17 1782(a). Further, this action is appropriate for class certification under Civil Code Section 1781(a)
18 based in part upon EMC's decision to ignore the multiple notification letters sent by plaintiff.

19 84. As a direct, foreseeable, and proximate result of defendant's wrongful actions alleged
20 herein, plaintiff and the class members have been damaged in an amount to be determined according to
21 proof at the time of trial, in addition to equitable and/or injunctive relief, plus the right to attorney fees
22 and punitive damages, as specified in the prayer.

23 **SECOND CAUSE OF ACTION**

24 **(Unfair Competition)**

25 **(Violation of Business & Professions Code Section 17200, et seq.)**

26 85. Plaintiff hereby incorporates by reference all the foregoing paragraphs as though fully
27 set forth herein.

1 94. Defendant breached the Agreements (including the covenant of good faith and fair
2 dealing inherent in every contract) in that, *inter alia*, defendant:

- 3 (a) misrepresented the requirements for achieving permanent modification of the Loan and
4 the status of the modification applications;
- 5 (b) requested and accepted interim payments under temporary modification or trial plan
6 agreements as a condition for the promised permanent loan modifications, without any
7 reasonable basis to believe that the Loan would be permanently modified, and without
8 taking diligent or reasonable steps to implement permanent loan modifications;
- 9 (c) misrepresented the terms of and the balances of the Loan being serviced;
- 10 (d) unlawfully applied mortgage payments, and/or held mortgage payments in suspense,
11 resulting in escalated debt obligations, including interest and other charges;
- 12 (e) instructed plaintiff to cease making existing mortgage payments, thereby subjecting her
13 to additional financial losses including foreclosure, risk of foreclosure, late payment
14 fees or penalties, and/or negative references to credit rating agencies;
- 15 (f) instructed plaintiff to cease making payments on credit cards and/or other unsecured
16 debt, thereby subjecting her to additional financial losses including late payment fees or
17 penalties, negative references to credit rating agencies, and/or legal action by those
18 creditors;
- 19 (g) improperly recorded and/or caused to be recorded notices of default regarding plaintiff's
20 Loan; and
- 21 (h) improperly initiated and/or caused to be initiated unlawful foreclosure actions regarding
22 plaintiff's Loan.

23 95. As a direct, proximate and foreseeable result of defendant's breaches of the Agreements,
24 plaintiff and the class members have been damaged in an amount to be determined according to proof
25 at the time of trial, including equitable and/or injunctive relief, and potentially rescission, as specified
26 in the Prayer.

1 **FOURTH CAUSE OF ACTION**

2 **(Unjust Enrichment)**

3 96. Plaintiff herein incorporates by reference all the foregoing paragraphs as though fully
4 set forth herein.

5 97. Defendant has been unjustly enriched based upon the misconduct described above in
6 that defendant has received mortgage payments from plaintiff and/or class members and related fees
7 and/or charges beyond that to which EMC is or was entitled.

8 98. Further, through its orchestrated loan modification hoax (pretense), EMC has induced
9 consumers, including plaintiff, to continue making excess or other unjustified payments in pursuit of
10 illusory permanent loan modifications. EMC has thereby avoided the need to initiate, prosecute, and
11 conclude multiple foreclosures (beyond its available resources); and has avoided the need to liquidate
12 excessive and/or under-valued real estate inventory, whether REO or otherwise (again beyond its
13 available resources); and has artificially bolstered its financial statements, including balance sheets and
14 related SEC filings, both on its own behalf and on behalf of its clients (lenders and investors), by
15 minimizing mandatory reporting of toxic loans, defaulted loans, or distressed or non-performing loans.

16 99. This unjust enrichment has been realized by defendant and by defendant's clients,
17 including lenders and investors, the benefits of which have been realized by EMC based upon its
18 economic relations with such lenders and investors, and the fees paid to, or collected by, EMC based
19 on its mortgage loan services offered to such clients.

20 100. As a direct, foreseeable, and proximate result of defendant's wrongful actions alleged
21 herein, plaintiff and the class members have been damaged in an amount to be determined according to
22 proof at the time of trial, in addition to equitable and/or injunctive relief, as specified in the prayer.

23 **FIFTH CAUSE OF ACTION**

24 **(Fraud)**

25 101. Plaintiff herein incorporates by reference the foregoing paragraphs as though fully set
26 forth herein.

1 102. Defendant made multiple representations to plaintiff relating to the Residence and her
2 mortgage Loan secured by the Residence, as specified above in detail. These multiple representations
3 will not be repeated herein, but are specifically identified above in the Factual Summary section.

4 103. Plaintiff is informed and believes, and based thereon on alleges, that defendant's
5 representations were in fact false. Based on further information and belief, at the time defendant made
6 these multiple misrepresentations, defendant knew them to be false and made them with the intention
7 to induce plaintiff to act in reliance on said representations as alleged herein, or with the expectation
8 that plaintiff would do so.

9 104. At the time the misrepresentations were made by defendant, and at the time plaintiff
10 took the actions alleged herein, or failed to act as alleged herein, plaintiff was ignorant of the falsity of
11 defendant's misrepresentation and believed them to be true. In reasonable and justifiable reliance on
12 such misrepresentations, plaintiff was induced to, and in fact did, take certain actions, to her detriment,
13 and/or forego or delay multiple alternative options that would have been available to her, including
14 selling the Residence, refinancing the debt on the Residence, initiating legal action at an earlier
15 juncture, seeking alternate remedies at an earlier juncture, avoiding damage to her credit scores, or
16 negotiating for a short sale, deed in lieu of foreclosure, debt restructuring, or other foreclosure options
17 or alternatives. Had plaintiff known the true facts, she would not have taken such actions, or would not
18 have taken such actions as and when she did, or would have taken other actions altogether.

19 105. As a direct, foreseeable, and proximate result of defendant's wrongful actions alleged
20 herein, plaintiff and the class members have been damaged in an amount to be determined according to
21 proof at the time of trial, in addition to equitable and/or injunctive relief, as specified in the prayer.

22 106. In doing the acts alleged in this cause of action, defendant acted intentionally, willfully,
23 and with the intent to injure plaintiff with malice, fraud, and oppression. As a result, plaintiff seeks
24 punitive and exemplary damages as provided by Section 3294 of the California Civil Code in an
25 amount sufficient to punish defendant and to deter such conduct in the future.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff, on behalf of herself, members of the class, and in the public interest,
3 pray for judgment and relief as follows:

4 1. With respect to the class claims, a declaration that the action is a proper class, that
5 plaintiff be appointed as an adequate class representative, and that her counsel be appointed as class
6 counsel;

7 2. For injunctive relief consisting of a temporary restraining order, preliminary injunction,
8 and/or permanent injunction preventing defendant from continuing its illegal business practices, and/or
9 compelling defendant to honor its representations, specifically including the prompt implementation of
10 permanent loan modifications, as promised, or pursuant to an appropriate loan modification standard or
11 formula;

12 3. In the alternative, and where appropriate, rescission and/or restitution, or other
13 appropriate equitable relief;

14 4. For general, compensatory and consequential damages in an amount to be determined
15 according to proof at the time of trial;

16 5. For interest at the highest legal rate commencing from the earliest date allowed by law;

17 6. For costs of suit incurred herein;

18 7. For reasonable attorney fees pursuant to the CLRA (mandatory for a prevailing plaintiff
19 under Civil Code Section 1780), the common fund doctrine, the substantial benefit doctrine, and/or the
20 private attorney general doctrine, including Code of Civil Procedure Section 1021.5;

21 8. For punitive damages; and

22 9. For such other and further relief as the Court may deem just and proper.

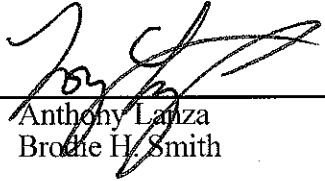
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JURY DEMAND

Plaintiff hereby demands a trial by jury.

LANZA & GOOLSBY, PLC

DATED: September 15, 2010

By: 
Anthony Lanza
Brodie H. Smith

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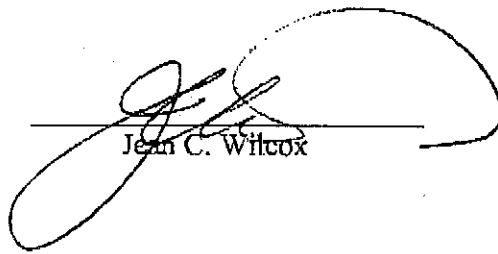
Attorneys for Plaintiff, Jean C. Wilcox

DECLARATION OF JEAN WILCOX

I, JEAN C. WILCOX, declare under penalty of perjury as follows:

1. I make this Declaration based on my personal knowledge except as to those matters that are stated herein that are based on information and belief, which I believe to be true.
2. I am an adult citizen of the State of California and am the named Plaintiff in this litigation.
3. I submitted applications for mortgage loan modifications with Defendant EMC Mortgage Corporation ("EMC") that are the subject of this lawsuit. I reside in the City of Irvine, County of Orange, California, from which I engaged in the aforementioned loan modification transactions with Defendant EMC. The County of Orange thus is the county where the transactions or substantial portions thereof occurred.
4. To the best of my knowledge, information, and belief, EMC is incorporated in the State of Delaware and has its principal place of business is in Lewisville, Texas; but in addition, EMC does business throughout the County of Orange, State of California, and has its principal executive offices in California in the County of Orange, City of Irvine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of September 2010 at Irvine, California.



Jean C. Wilcox