VIRGINIA:

IN THE CIRCUIT COURT OF THE FAIRFAX COUNTY

[redacted] ROSA

AND

[redacted] ROSA
[redacted]

Plaintiffs,

v.

Case No. 2009-7662
JURY DEMANDED

FEDERAL HOME LOAN MORTGAGE CORP.
Serve:
Hyacinth Kucik, Vice President-Litigation
Legal Division
8200 Jones Branch Drive
Mail Stop 202
McLean, Virginia 22120

AND

PROFESSIONAL FORECLOSURE CORP. OF VA
Serve:
John S. Burson, Registered Agent
13135 Lee Jackson Highway, #201
Fairfax, Virginia 22033-0000

Defendants.

COMPLAINT

NOW COME Plaintiffs, [redacted] Rosa and [redacted] Rosa by counsel, and for their Complaint state as follows:

FACTUAL ASSERTIONS

1. The Defendants wrongfully foreclosed on the [redacted] home that the Plaintiffs have owned for the past eight years despite their repeated and painstaking

procedures for obtaining a loan modification so as to avoid foreclosure. Even though the Plaintiffs followed the procedures outlined in the written agreements sent to the Plaintiffs, the Defendants foreclosed on their home.

2. This foreclosure was conducted despite assurances to the Plaintiffs by Defendant Federal Home Loan Mortgage Corporation and its agents that they were successfully proceeding through the modification process and need not worry about foreclosure and eviction notices they were receiving.
3. The Plaintiffs are natural persons who reside in Fairfax County, Virginia.
4. The Plaintiffs are married and have three minor children ranging in age from one week old to ten years old.
5. Defendant Federal Home Loan Mortgage Corp. (hereinafter "Freddie Mac") is a federally chartered corporation headquartered in McLean and authorized to do business in Virginia. It engages in the business of purchasing and pooling residential mortgages loans that have been originated according to its specifications, particularly the specifications set out in its Single Family Seller/Servicer Guide (hereinafter "the Guide"). Its activities principally are financed by borrowing from large institutional investors.
6. Defendant Professional Foreclosure Corporation is a corporation incorporated in Virginia. The purpose of the corporation is to serve as a substitute trustee and conduct foreclosure sales at the behest of Shapiro & Burson, LLP. Shapiro & Burson, LLP is one of two law firms that Freddie Mac has designated must be used to foreclose on its home loans secured by property located in Virginia.

John S. Burson, who is also a named partner of Shapiro & Burson, LLP, serves as its registered agent and president.

7. All events relevant to this matter occurred in Fairfax County, Virginia.
8. In 2001, the Plaintiffs bought a house at [redacted] ("the Property"), which has served as the sole residence for them and their three children.
9. On December 4, 2006, the Plaintiffs made and entered into a refinance transaction for the Property.
10. As a result of the refinance transaction, the Plaintiffs owed a principal sum of $292,000, evidenced by a note, dated December 4, 2006 ("the Note"). A copy of the Note is attached hereto as Exhibit A.
11. The Note is secured by a Deed of Trust on the Property dated December 4, 2006 and recorded in the Clerk's Office of the Circuit Court of the County of Fairfax, Virginia in Deed Book 18969, Page 0441. A copy of the Deed of Trust is attached hereto as Exhibit B.
12. The Plaintiffs' Note and Deed of Trust obligated them to repay IndyMac Bank, FSB (hereinafter "IndyMac").
13. At the time of the Plaintiffs' refinance transaction, Defendant Freddie Mac had a contractual agreement with IndyMac to purchase loans originated by IndyMac.
14. Defendant Freddie Mac purchased the Plaintiffs' loan subsequent to its origination through the above-described contractual agreement with IndyMac.

As allowed by the Deed of Trust, Freddie Mac provided no documentation of that sale to the Plaintiffs.

15. Under its contractual agreement with Defendant Freddie Mac, after the sale of the Plaintiffs' loan to Freddie Mac, IndyMac was given responsibility for performing certain functions (commonly known in the mortgage industry as "servicing") related to collecting payments from the Plaintiffs, communicating with Plaintiffs, and responding to any default by the Plaintiffs, including by hiring and managing foreclosure counsel.

16. This contractual agreement obligated IndyMac to follow Defendant Freddie Mac's instructions for servicing the loan, particularly the instructions detailed in the Guide. This agreement, and the direction it imposed on IndyMac, had the effect of making IndyMac an agent of Defendant Freddie Mac to perform servicing functions.

17. Since December 2006, the Guide gave IndyMac the authority to enter into forbearance and modification agreements with the Plaintiffs on behalf of Defendant Freddie Mac. The Guide and other instructions from Defendant Freddie Mac detailed how IndyMac was to use this authority.

18. Since December 2006, the Guide gave IndyMac, on behalf of Defendant Freddie Mac, the authority to commence foreclosure on the Plaintiffs' home in case of the Plaintiffs' default in their obligations under the Note and Deed of Trust. The Guide and other instructions from Defendant Freddie Mac detailed when IndyMac was to commence proceedings and how they were to supervise foreclosure counsel.

19. Starting in December 2006, IndyMac regularly communicated with Plaintiffs concerning their payment obligation as Freddie Mac's servicing agent.

20. On or about March 15, 2008, Mr. Rosa called IndyMac, using the contact information listed on his monthly billing statements. He informed IndyMac that his hours would be cut at work, and he might have trouble paying his monthly mortgage payment in the future.

21. The IndyMac employee who answered Mr. Rosa's call told him that the Plaintiffs could not receive assistance while they were current on their mortgage payments.

22. Upon information and belief, Freddie Mac's then-current servicing instructions restricted the Plaintiffs from receiving a loan modification while current on their mortgage payments.

23. The IndyMac employee who answered Mr. Rosa's call told him to stop making loan payments for three months so that the Plaintiffs would no longer be current on their mortgage payments, which would qualify them to receive a loan modification with lower payments.

24. Upon information and belief, Freddie Mac's then-current servicing instructions allowed the Plaintiffs to receive a loan modification when they were three months delinquent on their mortgage payments.

25. Following these instructions, the Plaintiffs stopped paying for three months.

26. On June 13, 2008, IndyMac appointed Professional Foreclosure Corporation as Substitute Trustee, as recorded in the Clerk's Office of the Circuit Court of the

County of Fairfax, Virginia in Deed Book 20033, Page 1872. A copy of the Appointment of Substitute Trustee is attached hereto as Exhibit C.

27. As explicitly stated in the Appointment, IndyMac made this appointment as "authorized agent of the holder of the Note," which was Freddie Mac.

28. On or about June 24, 2008, the Plaintiffs received a written offer of a Forbearance Plan (hereinafter "the First Forbearance Plan") in the mail. A copy of this offer is attached hereto as Exhibit D.

29. The First Forbearance Plan specified that the Plaintiffs would make payments of $1,844.88 for three months and then, upon successfully making those three payments, learn the sum of their permanently modified payments.

30. Upon information and belief, IndyMac prepared the First Forbearance Plan following Freddie Mac's then-current servicing instructions.

31. On June 29, 2008, the Plaintiffs made the $1,844.88 payment required by the First Forbearance Plan. A copy of the receipt from the wire transaction is attached hereto as Exhibit E.

32. The Plaintiffs signed and returned the First Forbearance Plan by fax on July 7, 2008.

33. Defendant Freddie Mac retained the payment the Plaintiffs made under the First Forbearance Plan.

34. On July 30, 2008, Mr. Rosa received a phone call from an IndyMac employee advising him that the Plaintiffs made the payment too late and that they would need to enter into a new Forbearance Plan.

35. During this conversation, Mr. Rosa asked about the foreclosure notices the Plaintiffs were receiving from the Substitute Trustee.

36. The IndyMac employee advised the Plaintiffs "to ignore the sale because they were in their special modification program."

37. During that call, Mr. Rosa also asked what the new payment would be under the new Forbearance Plan (hereinafter "the Second Forbearance Plan").

38. Upon information and belief, IndyMac calculated the terms of the Second Forbearance Plan following Freddie Mac's then-current servicing instructions.

39. The IndyMac employee responded to Mr. Rosa that the payment would be $1,866.77.

40. Relying on this representation, the Plaintiffs wired the $1,866.77 payment that same day. A copy of the receipt from the wire transaction is attached hereto as Exhibit F.

41. On or about August 11, 2008, the Plaintiffs received a written copy of the Second Forbearance Plan in the mail. A copy of the Second Forbearance Plan is attached hereto as Exhibit G.

42. The Second Forbearance Plan specified that the Plaintiffs would make payments of $1,866.77 for three months and then, upon successfully making those three payments, learn the sum of their permanently modified payments.

43. Upon information and belief, IndyMac prepared the written copy of the Second Forbearance Plan following Freddie Mac's then-current servicing instructions.

44. Along with a written copy of the Second Forbearance Plan, the mailing also offered the Plaintiffs a loan modification (hereinafter "the Loan Modification

Plan"). The plan consisted of a terms sheet and a cover letter. A copy of the Loan Modification Plan, including the cover letter, is attached hereto as Exhibit H.

45. The terms sheet stated the Loan Modification Plan was offered as part of the "Freddie Mac Loan Modification Program."

46. The cover letter instructed the Plaintiffs they "[s]imply" needed to "sign the enclosed modification agreement and borrower financial statement and return them in the prepaid envelope by 8/31/2008" in order to receive a modification.

47. The cover letter also informed the Plaintiffs that they were "pre-qualified" for a modification; that it would make their "loan current without the hassle or expense of a refinance"; that it would provide the Plaintiffs with "a fresh start"; and that it demonstrates a "commit[ment] to helping our borrowers stay in their home."

48. Upon information and belief, IndyMac prepared the written copy of the Loan Modification Plan following Freddie Mac's then-current servicing instructions.

49. The Plaintiffs relied on the details and dates contained in written copy of the Second Forbearance Plan and the Loan Modification Plan. Accordingly, they signed and returned the written copy of the Second Forbearance Plan and the Modification Agreement on August 16, 2008.

50. Mr. Rosa also called IndyMac on or about August 12, 2008 at the contact number found on the Second Forbearance Plan to confirm the accuracy of these documents.

51. During the above-referenced phone call, an IndyMac employee again advised Mr. Rosa to ignore the notices of sale the Plaintiffs had received from the Substitute Trustee because they were in a "special program."

52. Mr. Rosa called IndyMac after August 16, 2008 at the contact number found on the Second Forbearance Plan to confirm that IndyMac received the Second Forbearance Plan. He was told by the male representative that IndyMac had received everything required of them to comply with the Second Forbearance Plan.

53. On August 1, 2008 and August 8, 2008, Defendant Professional Foreclosure Corporation, acting as Substitute Trustee, advertised a pending foreclosure sale on the Plaintiffs' home in the Washington Post.

54. On August 15, 2008, Defendant Professional Foreclosure Corporation, acting as Substitute Trustee, purported to sell the Property at a foreclosure sale, notwithstanding the above-described statements made to the Plaintiffs. The Plaintiffs were unaware that the foreclosure sale was held.

55. Defendant Freddie Mac purported to buy the property at the foreclosure sale for $151,071. A copy of the Trustee's Deed prepared after the foreclosure sale, and recorded in the Clerk's Office of the Circuit Court of the County of Fairfax, Virginia in Deed Book 20104, Page 1360, resulting from the foreclosure sale is attached hereto as Exhibit I.

56. On September 2, 2008, the Plaintiffs wired their second payment in accordance with the Second Forbearance Plan. A copy of the receipt from the wire transaction is attached hereto as Exhibit J.

57. On or about September 4, 2008, Mr. Rosa called IndyMac at the contact number found on the Second Forbearance Plan and received confirmation that the Plaintiffs' September payment was received.

58. On September 16, 2008, a Summons for Unlawful Detainer was filed by Freddie Mac.

59. After receiving the Summons, Mr. Rosa called IndyMac at the contact number found on the Second Forbearance Plan to discuss the notice.

60. The IndyMac employee, Maria, who answered the call again advised Mr. Rosa that he was in a special modification program and would not be evicted.

61. On October 8, 2008, the Plaintiffs wired their final payment in accordance with the Second Forbearance Plan. A copy of the receipt from the wire transaction is attached hereto as Exhibit K.

62. On October 31, 2008, judgment was entered against the plaintiff in Fairfax County General District Court, pursuant to the Plaintiff's Summons for Unlawful Detainer.

63. The Plaintiffs appealed that Unlawful Detainer judgment. The appeal is now pending in Fairfax Circuit Court, as case number CL-2008-16064.

64. Defendant Freddie Mac is proceeding with the eviction of the Plaintiffs.

65. Defendant Freddie Mac has retained all payments made by Plaintiffs pursuant to the Second Forbearance Plan, and neither it nor IndyMac contacted the Plaintiffs to rescind or alter the Second Forbearance Plan.

66. Despite the terms of the Second Modification Plan, neither Defendant Freddie Mac nor IndyMac provided the Plaintiffs with the sum of their permanently modified payments after they made the three payments it required.

67. Upon information and belief, Defendant Professional Foreclosure Corporation has not investigated whether the foreclosure sale was valid.

68. Upon information and belief, Defendant Professional Foreclosure Corporation has not investigated whether the Plaintiffs did in fact have a loan modification.

69. Defendants Freddie Mac and Professional Foreclosure Corporation have taken no steps to undo the foreclosure sale or eviction.

70. The Plaintiffs have suffered extreme emotional distress that no reasonable person could be expected to endure based on Defendants' participation in the foreclosure of their house, after the Plaintiffs had entered into a loan modification agreement.

71. The Plaintiffs have been repeatedly misled by the Defendants and as a result have suffered public embarrassment and distress in the following ways: having their home advertised for sale in the widely read and distributed Washington Post; having their home wrongfully sold at public auction on the steps of the Fairfax County Courthouse; having their neighbors see realtors come to the house after the wrongful foreclosure sale; receiving court papers seeking to evict the family from their home; and having judgment entered against them in Fairfax County General District Court.

72. In addition to suffering public humiliation and having to answer distressing questions to their friends and neighbors about the loss of their home, the

Plaintiffs have suffered severe distress due to losing their home and having to explain to their young children that they may be homeless.

73. The Plaintiffs could be liable for the difference between what they owed on the Note and the purported sale price at the foreclosure sale. This amount is in excess of $100,000.

74. The Plaintiffs are distressed about losing their home and fear a lawsuit for over $100,000.

75. Defendant Freddie Mac has not notified the Plaintiffs that it has forgiven this deficiency balance. Even if Defendant Freddie Mac forgives the balance, the Plaintiffs could suffer income tax consequences as a result of such debt forgiveness.

76. Upon information and belief, the foreclosure sale appears on the Plaintiffs' credit report, resulting in significant damage to their credit rating.

COUNT 1 – ACTION TO SET ASIDE FORECLOSURE BASED ON UNCLEAN HANDS
(All Defendants)

77. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

78. Foreclosure procedure in Virginia is equitable in nature. Foreclosures, therefore, are subject to equitable defenses.

79. The equitable doctrine of "unclean hands" prevents a party from benefiting from any inequitable or wrongful conduct.

80. The foreclosure of the Plaintiffs' house was a product of unclean hands.

81. At all times relevant to this Complaint, IndyMac had actual and/or apparaent authority to serve as Defendant Freddie Mac's agent for purposes of servicing the Plaintiffs' loan.

82. Defendant Freddie Mac made IndyMac its agent, among other times, when it provided servicing directions to IndyMac and required IndyMac to follow those directions.

83. Defendant Freddie Mac's policy and its agents' representations that the Plaintiffs could receive a loan modification only if they defaulted inequitably and wrongfully lured the Plaintiffs into defaulting while current on their loan.

84. Defendant Freddie Mac's policy and its agents' representations that the Plaintiffs could receive a loan modification only if they defaulted inequitably and wrongfully lured the Plaintiffs into accumulating significant fees and interest.

85. Defendant Freddie Mac, through the representations of its agents that the Plaintiffs should ignore the foreclosure notices, inequitably and wrongfully lured the Plaintiffs into forbearing their rights to cure the mortgage default and to enjoin the foreclosure sale.

86. Defendants Freddie Mac and Professional Foreclosure Corporation inequitably and wrongfully sold the Plaintiffs' home in a foreclosure sale without allowing the Plaintiffs to demonstrate their ability and willingness to satisfy the First Forbearance Plan.

87. Defendants Freddie Mac and Professional Foreclosure Corporation inequitably and wrongfully sold the Plaintiffs' home in a foreclosure sale without allowing

the Plaintiffs to demonstrate their ability and willingness to satisfy the Second Forbearance Plan.

88. Defendants Freddie Mac and Professional Foreclosure Corporation inequitably and wrongfully sold the Plaintiffs' home in a foreclosure sale without allowing the Plaintiffs to demonstrate their ability and willingness to satisfy the Modification Plan.

89. Defendants Freddie Mac and Professional Foreclosure Corporation inequitably and wrongfully sold the Plaintiffs' home in a foreclosure sale before the date to respond to the Modification Plan had passed.

90. Defendant Freddie Mac inequitably and wrongfully did not offer the Plaintiffs a bona fide opportunity to modify their loan before their house was sold in a foreclosure sale.

91. Accordingly, the foreclosure sale should be set aside.

COUNT 2 – ACTION TO SET ASIDE FORECLOSURE BASED ON EQUITABLE ESTOPPEL (Defendant Freddie Mac)

92. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

93. Foreclosure procedure in Virginia is equitable in nature. Foreclosures, therefore, are subject to equitable defenses.

94. The equitable doctrine of "equitable estoppel" prevents a party from taking advantage of misrepresentations.

95. The foreclosure of the Plaintiffs' house was a product such misrepresentations.

96. At all times relevant to this Complaint, IndyMac had actual and/or apparent authority to serve as Defendant Freddie Mac's agent for purposes of servicing the Plaintiffs' loan.

97. Defendant Freddie Mac made IndyMac its agent, among other times, when it provided servicing directions to IndyMac and required IndyMac to follow those directions.

98. The Plaintiffs reasonably relied on the false representations and concealments made by Defendant Freddie Mac's agents concerning material facts, including representations about the Plaintiffs' ability to receive a modification only by defaulting, the status of the Plaintiffs' foreclosure, and the status of the Plaintiffs' modification agreement.

99. Defendant Freddie Mac knew that true nature of these material facts, including the fact that the Defendant Freddie Mac was not going to modify the Plaintiffs' loan after default, the fact that the Plaintiffs' foreclosure was not being discontinued, and the fact that the Plaintiffs were not being considered for a permanent modification.

100. The Plaintiffs were ignorant as to the truth of these material facts, which were entirely in the control of Defendant Freddie Mac.

101. Defendant Freddie Mac intended that the Plaintiffs would act in accord with the representations of its agents, whom the Plaintiffs were instructed to call with any concerns about their loan.

102. The Plaintiffs in good faith changed their position to their detriment, including by defaulting on the loan and forbearing their rights to stop the

foreclosure process, which was induced by the misrepresentation by the Defendant Freddie Mac and its agents. A reasonable person would have similarly relied upon the representations made.

103. Defendant Freddie Mac's conduct exhibits an express intention to deceive or such careless and culpable negligence as amounts to constructive fraud.

104. Accordingly, the foreclosure sale should be set aside.

COUNT 3 - BREACH OF CONTRACT
(Defendant Freddie Mac)

105. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

106. At all times relevant to this Complaint, IndyMac had actual and/or apparent authority to serve as Defendant Freddie Mac's agent for purposes of modifying the Note and Deed of Trust and entering into a modification agreement.

107. Defendant Freddie Mac made IndyMac its agent, among other times, when it detailed IndyMac's ability to enter into modification agreements on its behalf in the Guide.

108. The Note and Deed of Trust were modified by the Second Forbearance Plan, which cured their default upon timely making the payments demanded by the plan.

109. The Plaintiffs accepted the Second Forbearance Plan when they sent their first payment under the Plan on July 30, 2008.

110. The Plaintiffs made all the payments on or before the deadlines required by the Second Forbearance Plan.

111. Defendant Freddie Mac breached the Second Forbearance Plan, Note and Deed of Trust by not providing the Plaintiffs with a permanently modified loan payment when the Plaintiffs made all payments required by the Second Forbearance Plan.

112. Defendant Freddie Mac breached the Second Forbearance Plan, Note and Deed of Trust by foreclosing on the property when the Plaintiffs made all payments required by the Second Forbearance Plan.

113. Defendant Freddie Mac breached the Second Forbearance Plan, Note and Deed of Trust by filing to evict the Plaintiffs when they made all payments required by the Second Forbearance Plan.

114. Defendant Freddie Mac breached the Second Forbearance Plan, Note and Deed of Trust by taking no steps to undo the foreclosure or eviction when the Plaintiffs made all payments required by the Second Forbearance Plan.

115. The Note and Deed of Trust were modified by the Modification Plan, which cured their default.

116. The Plaintiffs accepted the Modification Plan, prior to the specified reply deadline, by returning a signed copy of the written Plan on August 16, 2008.

117. Defendant Freddie Mac breached the Modification Plan, Note and Deed of Trust by foreclosing on the property when the Plaintiffs were not in default of the Modification Plan.

118. Defendant Freddie Mac breached the Modification Plan, Note and Deed of Trust by filing to evict the Plaintiffs when they were not in default of the Modification Plan.

119. Defendant Freddie Mac breached the Modification Plan, Note and Deed of Trust by taking no steps to undo the foreclosure or eviction when the Plaintiffs were not in default of the Modification Plan.

120. The Note and Deed of Trust were modified by the First Forbearance Plan, which cured their default.

121. The Plaintiffs accepted the First Forbearance Plan when they sent their first payment under the Plan on June 29, 2008, which Defendant Freddie Mac retained.

122. The effort by Defendant Freddie Mac's agent to repudiate the First Forbearance Plan was ineffective because it accepted and retained payment made under the plan.

123. The effort by Defendant Freddie Mac's agent to repudiate the First Forbearance Plan constituted an anticipatory breach of the First Forbearance Plan, Note and Deed of Trust.

124. Defendant Freddie Mac breached the First Forbearance Plan, Note and Deed of Trust by not providing the Plaintiffs with a permanently modified loan payment.

125. Defendant Freddie Mac breached the First Forbearance Plan, Note and Deed of Trust by foreclosing on the property.

126. Defendant Freddie Mac breached the First Forbearance Plan, Note and Deed of Trust by filing to evict the Plaintiffs.

127. Defendant Freddie Mac breached the First Forbearance Plan, Note and Deed of Trust by taking no steps to undo the foreclosure or eviction.

128. The Note and Deed of Trust were also modified by the statements of Defendant Freddie Mac's agents that the Plaintiffs would be able to obtain a modification by defaulting on their loan and that the Plaintiffs' home would not be sold at foreclosure while they were making efforts to modify the loan.

129. The Plaintiffs relied to their detriment on those statements, including by defaulting on the loan and forbearing their rights to stop the foreclosure process.

130. The Plaintiffs were never offered a bona fide opportunity to modify their loan.

131. Defendant Freddie Mac breached the Note and Deed of Trust by foreclosing on the property without offering the Plaintiffs a bona fide opportunity to modify their loan and by foreclosing while the Plaintiffs were making efforts to modify the loan.

132. Defendant Freddie Mac breached the Note and Deed of Trust by foreclosing on the property when it had waived its right to foreclose by entering into the First Forbearance Plan, Second Forbearance Plan, and Modification Plan.

133. Defendant Freddie Mac, including through the statements of its agents that the Plaintiffs should discontinue paying their loan and that they need not worry about the foreclosure and eviction notices they were receiving, intentionally relinquished its known right to foreclose on the Plaintiffs' house for any defaults that occurred prior to the Plaintiffs' efforts to pursue a modification.

134. Defendant Freddie Mac, including through the statements of its agents that the Plaintiffs should discontinue paying their loan and that they need not worry

about the foreclosure and eviction notices they were receiving, intentionally relinquished its known right to foreclose on the Plaintiffs' house while the Plaintiffs pursued a modification.

135. Even absent any modification and waiver, the Note and Deed of Trust contained an implied covenant obligating Defendant Freddie Mac to treat the Plaintiffs with good faith and fair dealing.

136. Defendant Freddie Mac failed to treat the Plaintiffs with good faith and fair dealing, including through its agents' direction for the Plaintiffs to default on the loan, its agents' false assurances about the status of the Forbearance Plan, and its agents' assurances about the need not to worry about the foreclosure notices.

137. Defendant Freddie Mac's failure to treat the Plaintiffs with good faith and fair dealing breached the Note and Deed of Trust

138. The breaches of the Note, Deed of Trust, First Forbearance Plan, Second Forbearance Plan, and Modification Plan, and all other contracts have caused the Plaintiffs to suffer economic damages, in addition to those complained of in the previous count hereof for which there is no adequate remedy at law, and for which Defendant Freddie Mac should be held liable to the Plaintiffs.

139. Such damages amount to sums in excess of $50,000 in the aggregate and include losses relating to the loss of their home, the degradation of their credit, and the imposition of fees related to the foreclosure sale and eviction proceeding when the borrowers were not in default.

140. In addition and in the alternative, the Second Forbearance Plan, Note and Deed of Trust were all valid and fair contracts requiring mutuality of obligation and performance. Plaintiffs satisfied the conditions of the contracts and cannot be made completely whole without specific performance because monetary damages are unavailable and/or inadequate. Plaintiffs' property is unique and has served as their home for the past eight years. Thus, their home cannot be substituted with money recoverable as legal damages and such damages would be speculative.

Wherefore, the Plaintiffs request that the Court enter an a decree ordering Defendant Freddie Mac specifically perform the terms of the contracts, as modified; that the Plaintiffs be awarded judgment for their costs incurred in this matter; and that the Court award the Plaintiffs such other relief as may seem appropriate to the Court.

Alternatively, the Plaintiffs request that judgment be entered in their favor against the Defendant Freddie Mac for breach of contract in the amount of the value of their home as determined by the Court, plus interest and costs and other legal and equitable relief that the Court deems appropriate.

COUNT 4 – ACTUAL FRAUD
(Defendant Freddie Mac)

141. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

142. At all times relevant to this Complaint, IndyMac had actual and/or apparent authority to serve as Defendant Freddie Mac's agent for purposes of servicing the Plaintiffs' loan.

143. Defendant Freddie Mac made IndyMac its agent, among other times, when it provided servicing directions to IndyMac and required IndyMac to follow those directions.

144. Defendant Freddie Mac's agents, consistent with Freddie Mac's policy, represented to the Plaintiffs that they would be able to get assistance with a loan modification if they missed three mortgage payments.

145. Defendant Freddie Mac and its agents represented to the Plaintiffs that they had qualified for various modification plans, including the First Forbearance Plan, the Second Forbearance Plan, and the Modification Plan.

146. The Plaintiffs made payments to the Defendant Freddie Mac in accordance with the First Forbearance Plan and Second Forbearance Plan.

147. The Plaintiffs relied on the representations made by Defendant Freddie Mac, contained in the terms of the First Forbearance Plan and the Second Forbearance Plan, that they were going to receive a permanent loan modification if they complied with those plans.

148. The Plaintiffs relied on the representations made by the Defendant Freddie Mac's agents that their home would not be foreclosed on because they had entered into a modification program.

149. Defendant Freddie Mac knew, or should have known, that the Plaintiffs were relying on its agents' representations that the Plaintiffs had entered into a modification program and that their home would not go into foreclosure.

150. The representations made by Defendant Freddie Mac and its agents were untrue, as evidenced by the foreclosure of the Plaintiffs' home.

151. Defendant Freddie Mac and its agents made these false statements of fact with the intent to deceive the Plaintiffs into paying additional money and forego other options to save their home.

152. Plaintiffs were damaged by losing their home as a result of the Defendant Freddie Mac and its agents' misrepresentations.

Wherefore, the Plaintiffs request the Court declare the foreclosure sale void or in the alternative voidable, impose a resulting trust, or in the alternative, a constructive trust for their benefit so that their home can be deeded back to the Plaintiffs, and the award of actual damages, punitive damages, court costs and such further legal and equitable relief as this court deems appropriate.

COUNT 5 – CONSTRUCTIVE FRAUD
(Defendant Freddie Mac)

153. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

154. At all times relevant to this Complaint, IndyMac had actual and/or apparent authority to serve as Defendant Freddie Mac's agent for purposes of servicing the Plaintiffs' loan.

155. Defendant Freddie Mac made IndyMac its agent, among other times, when it provided servicing directions to IndyMac and required IndyMac to follow those directions.

156. Defendant Freddie Mac and its agents intended that the Plaintiffs rely on their misrepresentations of material facts as asserted above.

157. The Plaintiffs relied on the Defendant Freddie Mac and its agents' misrepresentations to their detriment, as evidenced by the loss of their home to a foreclosure sale.

158. Therefore, Plaintiffs assert in the alternative that material misrepresentation of the Defendant Freddie Mac and its agents as outlined above, constitute constructive fraud.

Wherefore, the Plaintiffs request the Court declare the foreclosure sale void, or in the alternative voidable, impose a resulting trust, or in the alternative, a constructive trust for their benefit so that their home can be deeded back to the Plaintiffs, and the award of actual damages, court costs and such further legal and equitable relief as this court deems appropriate.

COUNT 6 – UNJUST ENRICHMENT
(Defendant Freddie Mac)

159. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

160. A benefit was conferred by the Plaintiffs on Defendant Freddie Mac through the payments they made in order to modify their loan.

161. Defendant Freddie Mac knew of the conferring of the benefit.

162. If it is determined that the Plaintiffs did not have an enforceable modification with Defendant Freddie Mac, then Defendant Freddie Mac retained the benefit even though it did not modify the Plaintiffs' loan.

163. These circumstances would render it inequitable for Defendant Freddie Mac to retain the benefit without paying for its value.

Wherefore, the Plaintiffs request the Court declare the foreclosure sale void, or in the alternative voidable, impose a constructive trust for their benefit so that their home can be deeded back to the Plaintiffs, and the award of court costs and such further legal and equitable relief as this court deems appropriate.

COUNT 7 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Defendant Freddie Mac)

164. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

165. At all times relevant to this Complaint, IndyMac had actual and/or apparent authority to serve as Defendant Freddie Mac's agent for purposes of servicing the Plaintiffs' loan.

166. Defendant Freddie Mac made IndyMac its agent, among other times, when it provided servicing directions to IndyMac and required IndyMac to follow those directions.

167. Defendant Freddie Mac's foreclosure on the Plaintiffs' home, after its agents directed them to default and assured them that they were under consideration for a modification and need not pay attention to the foreclosure notices, was intentional or reckless.

168. Defendant Freddie Mac's effort to evict the Plaintiffs, after its agents directed them to default and assured them that they were under consideration for a modification and need not pay attention to the foreclosure notices, was intentional or reckless.

169. Defendant Freddie Mac controlled the initiation and continuation of the foreclosure and eviction process.

170. Defendant Freddie Mac's conduct is outrageous and intolerable. Its foreclosure on the Plaintiffs' home and eviction effort threatens their ability to meet the basic human need of shelter. Defendant Freddie Mac's conduct shows no understanding of the importance of maintaining shelter.

171. Defendant Freddie Mac has publicly touted its willingness to work with responsible borrowers who seek help in light of financial trouble. Defendant Freddie Mac's conduct toward the Plaintiffs indicates such statements are little more than public relations puffery.

172. The Plaintiffs suffered emotional distress as a result of the conduct of Defendant Freddie Mac and its agents. They were lured into believing that they were succeeding in an effort to save their home, causing them to experience great emotional shock and disturbance when they learned that in fact Defendant Freddie Mac had sold their house in a foreclosure sale.

173. The Plaintiffs are worried about Freddie Mac suing them for the over $100,000 deficiency for which they are now allegedly liable.

174. The Plaintiffs' credit has been significantly damaged by the foreclosure sale, so much so that upon information and belief, the Plaintiffs would have a difficult time renting another place to live, obtaining a credit card, or even obtaining employment.

175. The emotional stress endured by the Plaintiffs is of an extreme nature that no reasonable person should be expected to endure.

176. The Plaintiffs have been deceived into losing their family home, putting not only the Plaintiffs, but also their young children, at risk of becoming homeless.

177. The Plaintiffs have had to deal with the embarrassment of seeing their home advertised in for sale, sold at public auction, and being personally served by the sheriff with eviction papers. They have had to answer friends and family members' questions about what has happened. The Plaintiffs have also had to explain to their children that they may not have a place to live.

Wherefore, the Plaintiffs request the Court award damages for their emotional distress in the amount not less than $50,000, costs and such further legal and equitable relief as this court deems appropriate.

COUNT 8 - BREACH OF FIDUCIARY DUTY
(Defendant Professional Foreclosure Corporation)

178. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

179. Defendant Professional Foreclosure Corporation served as Substitute Trustee on the Deed of Trust granted by the Plaintiffs.

180. Defendant Professional Foreclosure Corporation had a fiduciary duty to the Plaintiffs in the role of serving as a trustee to a deed of trust, which required it to act in good faith and utilize discretion in the management of the trust that a prudent man of discretion and intelligence would in exercising his own affairs. Additionally, the trustee has the right to invoke the aid and direction of a court of equity in the execution of the trust.

181. That fiduciary duty required Defendant Professional Foreclosure Corporation to verify that the loan was in default before conducting a foreclosure sale.

182. Defendant Professional Foreclosure Corporation breached its fiduciary duty by not properly verifying the loan was in default at the time of the foreclosure sale.

183. Defendant Professional Foreclosure Corporation breached its fiduciary duty by conducting a foreclosure sale when the Plaintiffs' loan was not in default.

184. The fiduciary duty of a trustee to a deed of trust also required Defendant Professional Foreclosure Corporation to investigate the validity of the foreclosure sale when it learned post-foreclosure that the Plaintiffs had entered into a loan modification agreement.

185. Defendant and Professional Foreclosure Corporation breached this duty by proceeding to evict the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendant Professional Foreclosure Corporation in their favor in the amount of not less than $100,000 in compensatory damages, punitive damages in an amount sufficient to punish the Defendant and prevent the Defendant from engaging in such conduct again, costs of this action; reasonable attorney's fees; and such further legal and equitable relief as the Court deems appropriate.

COUNT 9 – ABUSE OF PROCESS
(Defendant Professional Foreclosure Corporation)

186. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

187. Defendant Professional Foreclosure Corporation served the Plaintiffs with various notices related to the pending foreclosure sale of their property.

188. These notices demanded the Plaintiffs pay the entire, accelerated balance of the Note and demanded the Plaintiffs pay various fees related to the foreclosure sale in order to stop the pending foreclosure sale.

189. Defendant Professional Foreclosure Corporation served these notices in order to have the Plaintiffs pay money on their loan that they did not yet owe because the loan was not in default.

190. Defendant Professional Foreclosure Corporation served these notices in order to have the Plaintiffs pay fees related to the foreclosure sale that they did not owe because the loan was not in default.

191. Use of foreclosure notices to demand a borrower make payments that are not in default or that are not owed is not proper in the regular prosecution of a foreclosure.

192. The Plaintiffs' receipt of these foreclosure notices caused the Plaintiffs substantial damages.

Wherefore, the Plaintiffs request the Court award damages for abuse of process in the amount not less than $50,000, costs and such further legal and equitable relief as this court deems appropriate.

COUNT 10 – SLANDER ON TITLE
(Defendant Professional Foreclosure Corporation)

193. The Plaintiffs incorporate herein by reference all other factual allegations contained in this Complaint.

194. Defendant Professional Foreclosure Corporation published foreclosure notices in the Washington Post on August 1, 2008 and August 8, 2008.

195. These notices falsely stated that the Plaintiffs were in default under the Deed of Trust.

196. These notices brought into question or disparage the Plaintiffs' title to the Property.

197. Defendant Professional Foreclosure Corporation acted in reckless disregard of the truth or falsity of the statement of default made in the foreclosure notice, by, among other things, failing to determine that the Plaintiffs had made payments curing their default pursuant to the First Forbearance Plan and Second Forbearance Plan.

198. The publication of these notices in the Washington Post specifically damaged the Plaintiffs, among other ways, by subjecting the Plaintiffs to embarrassment and ridicule by neighbors who thereby learned of the pending foreclosure sale and by having their property become entered into commercial databases that track pending foreclosure sales and will forever list the Plaintiffs' house as being subject to a foreclosure sale.

Wherefore, the Plaintiffs request the Court award damages for slander of title in the amount not less than $50,000, costs and such further legal and equitable relief as this court deems appropriate.

COUNT 11 – DECLARATORY JUDGMENT
(All Defendants)

199. The dispute and controversy is a justiciable matter which is not speculative, and a resolution by this court will determine the rights and interests of the parties to the property in issue as well as the legal effect, if any, of the purported foreclosure sale on the property.

200. All parties are or claim interest in this matter and a determination of the respective interests in the property will determine which party has a right to enforce the instrument and avoid the need for further litigation.

201. Pursuant to Va. Code Ann. §§ 8.01-184 and 8.01-191, there is an actual justiciable controversy, and a declaratory judgment is the appropriate mechanism for resolving the ownership interests of each of the parties hereto to the Property.

WHEREFORE, the Plaintiffs respectfully moves for entry of a declaratory judgment to determine the purported foreclosure sale was void, alternatively that it was voidable and that the purported Substitute Trustee's deed was void, alternatively voidable; that the Plaintiffs are entitled to appointment of a constructive trustee with instructions to convey title to the home to them, subject to the Deed of Trust; and such further legal and equitable relief as the Court deems appropriate.

Respectfully Submitted.

[redacted] ROSA
By Counsel

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