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FILED
SAN MATEO COUNTY

JUL 21 2016

Clerk of the Superior Court.

~~DEPUTY CLERK~~

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN MATEO

12 **16 CIV 00556**

13 JESUS ANGEL MORA, an individual;
14
15 Plaintiffs,

16 vs.

17 WELLS FARGO BANK, N.A. dba
18 AMERICA'S SERVICING COMPANY;
19 SPECIALIZED LOAN SERVICING, LLC, a
20 business entity; THE BANK OF NEW YORK
21 MELLON, a business entity; and DOES 1
22 through 50, inclusive,
23 Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

1. Breach of Contract

BY FAX

DEMAND FOR JURY TRIAL

24 COME NOW PLAINTIFF JESUS ANGEL MORA, who alleges as follows:

PRELIMINARY ALLEGATIONS

25 1. Plaintiff's lawsuit arises out of Defendant's mishandling of Plaintiff's mortgage loan. In
26 the case at hand, Plaintiff successfully completed a HAMP Trial Period Plan he was offered
27 following a change in financial circumstances that affected his ability to perform under this
28 mortgage loan. Despite Plaintiff's full and timely performance under the trial plan, however,
Defendants refused to honor the HAMP Trial Period Plan and modify Plaintiff's loan consistent
therewith. This lawsuit follows.

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Complaint Filed
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JURISDICTION AND VENUE

2. This is an action asserting violations of California State Law. Plaintiff is a homeowner who brings this action as a result of Defendant’s unlawful conduct concerning a residential mortgage loan for the property located 284 Oakcrest Ave., South San Francisco, CA 94080 (hereinafter “Property”).

3. Venue is proper in this Court because a substantial part of the events giving rise to the claims herein occurred in the City of South San Francisco and the County of San Mateo. Venue is therefore proper in the Superior Court of California, County of San Mateo.

4. This court has personal jurisdiction over the parties as Defendant engages in business within the State of California. Defendant’s business involves providing mortgage loans and related services to consumers in the State of California

PARTIES

5. Plaintiff JESUS ANGEL MORA (“Plaintiff”) is a homeowner who brings this action as a result of Defendants’ unlawful conduct concerning a residential mortgage loan for the property located at 284 Oakcrest Ave., South San Francisco, CA 94080 (hereinafter “Property”). At all times mentioned herein, Plaintiff was an adult resident of San Mateo County, California. Plaintiff owns the Property at 284 Oakcrest Ave., South San Francisco, CA 94080.

6. Pursuant to Civil Code 2920.5(c)(2), Plaintiff is a borrower under the Homeowner’s Bill of Rights, as he is not an individual who has surrendered the secured property or an individual who contracted with an organization, person, or entity whose primary business is to advise people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries. Thus, at all times relevant, Plaintiff was a borrower within the meaning of the Homeowner Bill of Rights.

7. Plaintiff is informed and believes and thereon alleges that at all times relevant, Defendant Wells Fargo Bank, N.A. does business as America’s Servicing Company (hereinafter “ASC”) and is a diversified financial marketing and/or services corporation engaged primarily in residential mortgage banking and/or related businesses. Plaintiff is informed and believes and thereon alleges

1 that Defendant ASC was the servicer of Plaintiff's loan on behalf of The Bank of New York
2 Mellon, f/k/a The Bank of New York, successor in interest to JPMorgan Chase Bank, N.A. as
3 Trustee for Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust, Mortgage
4 Pass-Through Certificates, Series 2005-5.

5 8. Plaintiff is informed and believes and thereon alleges that at all times relevant, Defendant
6 The Bank of new York Mellon, successor in interest to JPMorgan Chase Bank, N.A. as Trustee
7 for Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust, Mortgage Pass-
8 Through Certificates, Series 2005-5 ("Bank of New York Mellon") is, and was at all relevant
9 times, the owner and holder of Plaintiff's loan and the beneficiary under the Deed of Trust
10 secured by Plaintiff's Property. On or about June 15, 2010, an Assignment of Deed of Trust was
11 recorded in the Official Records of the San Mateo County Recorder which documents that
12 Defendant Bank of New York Mellon obtained the beneficial interest in the Deed of Trust
13 securing Plaintiff's mortgage loan and secured by Plaintiff's property.

14 9. Plaintiff is informed and believes and thereon alleges that at all times relevant, Defendant
15 Specialized Loan Servicing, LLC (hereinafter "SLS") is a diversified financial marketing and/or
16 services corporation engaged primarily in residential mortgage banking and/or related businesses.
17 Plaintiff is informed and believes and thereon alleges that at all times relevant, Defendant SLS is
18 the current servicer of Plaintiff's loan on behalf of the beneficiary of the loan, The Bank of New
19 York, successor in interest to JPMorgan Chase Bank, N.A. as Trustee for Structured Asset
20 Mortgage Investments II Inc., Bear Stearns ALT-A Trust, Mortgage Pass-Through Certificates,
21 Series 2005-5.

22 10. Plaintiffs are ignorant of the true names and capacities of the Defendants sued herein
23 under the fictitious names Does 1 through 50, inclusive, and Plaintiffs will amend this Complaint
24 to allege such names and capacities at such time as they are ascertained. Each fictitiously named
25 Defendant is responsible in some manner for the wrongful acts complained of herein.

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AGENCY ALLEGATIONS

11. Plaintiff is informed, believes, and thereon allege that at all times herein mentioned, each Defendant was acting as the agent, servant, employee, partner, co-conspirator, and/or joint venturer of each remaining Defendant. Each Defendant was acting in concert with each remaining Defendant in all matters alleged, and each Defendant is responsible for any and all violations or liability of their predecessors-in-interest. Additionally, each Defendant has passed any and all liability to their successors-in-interest, and at all times was acting within the course and scope of its agency, employment, partnership, and/or concert of action.

STATEMENT OF FACTS

12. Plaintiff JESUS ANGEL MORA (“Plaintiff”) is the owner of the property located at 284 Oakcrest Ave., South San Francisco, CA 94080 (the “Property”). The Property is Plaintiff’s principal residence and is security for a loan made for personal, family, or household purposes. The property at issue contains one dwelling unit.

13. In or around April 2005, Plaintiff purchased the Property, obtaining financing for the purchase with Bank of America, N.A. To secure financing, Plaintiff executed a Promissory Note and Deed of Trust in favor of Union Federal Bank of Indianapolis.

14. On or about June 15, 2010, an Assignment of Deed of Trust was recorded in the Official Records of the San Mateo County Recorder which documents that Defendant Bank of New York Mellon obtained the beneficial interest in the Deed of Trust securing Plaintiff’s mortgage loan and secured by Plaintiff’s property. Plaintiff is informed and believes that Defendant ASC serviced the loan on behalf of Defendant Bank of New York Mellon before the servicing of the loan was transferred to Defendant SLS.

15. In 2011, Plaintiff fell upon hard economic times as a result of temporary disability and a sudden divorce. In addition, Plaintiff’s mother passed away, and he was left with the task of wrapping up her estate. Consequently, Plaintiff began applying for a loan modification with his then servicer, Defendant ASC.

1 16. In August 2012, Plaintiff was thrilled when he learned that he had been approved for a
2 HAMP Trial Period Plan loan modification program. Pursuant to the trial plan, Plaintiff was
3 required to make three payments totaling \$3,135.03 on September 1, 2012, October 1, 2012, and
4 November 1, 2012. After Plaintiff submitted all trial payments and provided all the required
5 materials, Plaintiff's loan would be permanently modified. In addition, pursuant to the trial plan,
6 if Plaintiff made all the trial payments timely, Defendant ASC would not conduct a foreclosure
7 sale.

8 17. Plaintiff made all payments pursuant to the trial plan, in full and on time, as required by
9 the Trial Period Plan.

10 18. Despite this fact, in December 2012, Defendant refused to provide Plaintiff the final
11 modification he was supposed to receive following his compliance with the trial plan. Then,
12 Defendants continued pursuing foreclosure proceedings for Plaintiff's home, pushing Plaintiff
13 into bankruptcy as his only option to save his property from foreclosure. This lawsuit follows.

14
15 **ALLEGATIONS PERTAINING TO SELECT PORTFOLIO SERVICING'S**
16 **STATUS AS A NECESSARY PARTY**

17 19. Under California law, a party who is subject to service of process and whose joinder will
18 not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party
19 in the action if (1) in his absence complete relief cannot be accorded among those already
20 parties *or* (2) he claims an interest relating to the subject of the action and is so situated that the
21 disposition of the action in his absence may (i) as a practical matter impair or impede his ability
22 to protect that interest *or* (ii) leave any of the persons already parties subject to a substantial risk
23 of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed
24 interest. (Cal. Code Civ. Proc. § 389.10.)

25 20. In the case at hand, Defendant Select Portfolio Servicing, as agent for the beneficiary of
26 the loan, The Bank of New York Mellon f/k/a The Bank of New York, successor in interest to
27 JPMorgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Inc., Bear
28 Stearns ALT-A Trust, Mortgage Pass-Through Certificates, Series 2005-5, is a necessary party to

1 this action. Plaintiff alleges that his loan should have been modified in connection with the trial
2 payment plan he performed under between September 2012 and November 2012. Thus, Plaintiff
3 alleges that the failure by his lender and servicer to modify the loan pursuant to the Trial Period
4 Plan he received resulted in the status of the account that Select Portfolio Servicing is now
5 servicing. Accordingly, Plaintiff prays for injunctive relief, which only the current holder and
6 servicer of the loan have authority to complete. Therefore, Select Portfolio Servicing is a
7 necessary party under California Code of Civil Procedure § 389.10.
8

9 **FIRST CAUSE OF ACTION**

10 **Breach of Contract**

11 21. Plaintiff incorporates all allegations of this complaint and re-allege them as though they
12 were fully set forth herein.

13 22. Defendant ASC and Bank of New York Mellon's conduct, as alleged above, constitutes a
14 breach of contract.

15 23. In the case at hand, in or around August 2012, Plaintiff was approved for a HAMP Trial
16 Period Plan, which required Plaintiff's acceptance and performance by submitting reduced trial
17 period payments on September 1, 2012, October 1 2012, and November 1, 2012. At that time,
18 Defendant Bank of New York Mellon was the owner of the Promissory Note and beneficiary
19 under the Deed of Trust for securing the loan, and Defendant ASC serviced the loan.

20 24. Plaintiffs allege that Defendants breached the HAMP Trial Period Plan by failing to
21 provide Plaintiff a modification pursuant to the terms of the agreement.

22 25. Pursuant to the trial plan, Plaintiff was required to make three payments totaling
23 \$3,135.03 on September 1, 2012, October 1, 2012, and November 1, 2012. After Plaintiff
24 submitted all trial payments and provided all the required materials, Plaintiff's loan would be
25 permanently modified. In addition, pursuant to the trial plan, if Plaintiff made all the trial
26 payments timely, Defendant ASC would not conduct a foreclosure sale.

27 26. Plaintiff made all payments pursuant to the trial plan, in full and on time, as required by
28 the Trial Period Plan.

1 27. Despite this fact, in December 2012, Defendant refused to provide Plaintiff the final
2 modification he was supposed to receive following his compliance with the trial plan. Then,
3 Defendant initiated foreclosure proceedings for Plaintiff's home, pushing Plaintiff into
4 bankruptcy in order to save is property from foreclosure.

5 28. By failing to modify Plaintiff's loan pursuant to HAMP Trial Period Plan, Defendants
6 thereby breached the agreement.

7 29. As a result of Defendants' breach of contract, Plaintiff has suffered actual damages, which
8 were reasonably foreseeable from Defendants' breach, including, but not limited to, increased late
9 fees and arrears. Plaintiffs are informed and believe that the late charges, attorney's fees, and
10 costs charged by Defendant have been applied to their loan balance and, thereby, decreased the
11 amount of equity, if any, in Plaintiff's Property. Plaintiff has also suffered damage to his credit as
12 a result of being forced into bankruptcy to save his property from foreclosure.

13 30. In addition, Plaintiff seek injunctive relief to enjoin Bank of New York Mellon and SLS
14 from pursuing foreclosure activity for Plaintiff's Property following the improper conduct.
15 Likewise, Plaintiff seeks specific performance of the HAMP Trial Period Plan, according to proof
16 at trial. Finally, Plaintiff seeks attorney's fees for Defendants' breaches herein.

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DEMAND FOR JURY TRIAL AND PRAYER FOR DAMAGES


WHEREFORE, Plaintiff JESUS ANGEL MORA demands a trial by jury. Plaintiff prays for judgment and order against Defendants, as follows:

1. That judgment is entered in Plaintiffs' favor and against Defendants, and each of them;
2. For an order requiring Defendant to show cause, if they have any, why they should not be enjoined as set forth below, during the pendency of the action;
3. For a temporary restraining order, preliminary and permanent injunction preventing Defendant, or anyone acting in concert with them from causing the Property to be sold, assigned, transferred to a third-party, or taken by anyone or any entity;
4. For a preliminary and permanent injunction preventing Defendant, or anyone acting in concert with them from seeking to evict Plaintiffs until the claims herein are resolved;
5. For damages, disgorgement, and injunctive relief;
6. For compensatory and statutory damages, attorneys' fees, and costs according to proof at trial;
7. For exemplary damages in an amount sufficient to punish Defendant's wrongful conduct and deter future misconduct;
8. For such other and further relief as the Court may deem just and proper.

DATED: July 19, 2016

Respectfully Submitted,

MELLEN LAW FIRM



Jessica Galletta, Esq.
Attorney for Plaintiff
JESUS ANGEL MORA