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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LURLINE MCLEAN, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

CLASS ACTION COMPLAINT

HOUSEHOLD FINANCE CORPORATION
INTERNATIONAL, HOUSEHOLD FINANCE
CORPORATION II and
HOUSEHOLD FINANCE CORPORATION III,

JURY DEMAND

Defendants.

Plaintiff Lurline McLean (“McLean” or “Plaintiff”) files this class action complaint on behalf of herself and all others similarly situated, against defendants Household Finance Corporation International (“Household Finance”), Household Finance Corporation II (“Household Finance II”) and Household Finance Corporation III (“Household Finance III,” and collectively with Household Finance and Household Finance II, “HFC” or “Defendants”).

PARTIES

1. Plaintiff Lurline McLean is a citizen of New Jersey, residing at 219 Mechanic Street, Boonton, New Jersey. McLean is the borrower under a First Mortgage Loan and Security Agreement from Household Finance III, dated July 28, 2008, in the original amount of \$333,996.75.

2. Defendant Household Finance is a Delaware corporation with its headquarters at 26525 N. Riverwoods Blvd., Suite 100, Mettawa, Illinois 60045. Household Finance is a subsidiary of HSBC Holdings, PLC (“HSBC”), one of the largest banking and financial services organizations in the world. HSBC and Household Finance do business throughout the United States, including in the District of New Jersey.

3. Defendant Household Finance II is a Delaware corporation with its headquarters at 26525 N. Riverwoods Blvd., Suite 100, Mettawa, Illinois 60045. Household Finance is also a subsidiary of HSBC. HSBC and Household Finance II do business throughout the United States, including in the District of New Jersey.

4. Defendant Household Finance III is a Delaware corporation with its headquarters at 26525 N. Riverwoods Blvd., Suite 100, Mettawa, Illinois 60045. Household Finance is also a subsidiary of HSBC. HSBC and Household Finance III do business throughout the United States, including in the District of New Jersey.

NATURE OF THE CASE

5. McLean files this class action complaint to redress HFC’s wrongful conduct in offering two trial period loan modification plans in which HFC represented that it would provide McLean and the Class with permanent loan modifications if they made all payments required under two trial period loan modification plans it offered in 2010 and 2011. HFC offered the first trial period loan modification plan in or about July 2010. McLean and members of the Class accepted HFC’s offer and performed their material obligations under the plan, primarily the timely remittance of required payments. Nonetheless, HFC failed to honor its promise to McLean and the Class after they successfully completed the trial period plan, and did not provide the permanent loan modification. Instead, it directed the borrowers still seeking modifications to

submit an application for its Hardship Program. The HFC Hardship Program was not a permanent modification. It was a temporary reduction in a borrower's interest rate which lasted only six months. HFC strung Plaintiff and the Class along for months of additional payments under the Hardship Program on the false promise of a permanent loan modification. However, it never delivered the promised permanent loan modification.

6. Despite failing to fulfill its promises to McLean and the Class, HFC nonetheless, retained the payments it obtained from McLean and the Class under the false pretense of the promised loan modification. Had McLean and Class members known that HFC never intended to modify their loans as promised, they would have forgone the entire modification process.

7. HFC offered McLean and the Class a second trial period loan modification in or about March 2011. HFC again promised that it would provide, or in its words, "activate," a permanent loan modification for McLean and the Class if they made timely payments. McLean and the Class accepted the second trial period modification and performed all their material obligations under the second trial period plan.

8. HFC again failed to provide or "activate" the promised permanent loan modification after McLean and the Class successfully completed the second trial period plan. Instead, it again directed them to apply for the HFC Hardship Program. HFC never disclosed to McLean or members of the Class any grounds for its failure to activate the promised permanent loan modification. It again retained the trial plan payments it obtained from McLean and the Class under the false pretense of the promised loan modification.

9. HFC engaged in an array of unconscionable, deceptive and misleading practices and breaches of duty. HFC strung along Plaintiff and Class members, repeatedly requesting documentation already provided and promising a permanent loan modification that it apparently

never intended to grant, and in any event, never granted; directing them into additional “hardship” payment programs while misleading Plaintiff and Class members with the promise of a permanent loan modification. HFC continued to demand and obtain monthly payments under the false pretense that these payments supported Plaintiff and Class members’ efforts to obtain a permanent loan modification and avoid active foreclosure proceedings.

10. Upon information and belief, HFC knew that it would not provide permanent loan modification to McLean and the Class when it offered them the trial period plans. HFC’s policy was to not provide permanent loan modifications to any of its borrowers at the time it made its false promises to McLean and the Class. HFC’s numerous misrepresentations were made solely to induce McLean and the Class to remit additional monies to HFC. Among other things, HFC, in bad faith, failed to provide promised permanent loan modifications after successful completion of trial period plans, requested the same financial information over and over again, caused improper interest and other fees to accrue, flagrantly breached trial period plans, unilaterally proceeded with foreclosures despite Plaintiff and Class members’ compliance with their trial period plans.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.).

12. Plaintiff McLean is a citizen of New Jersey. The Defendants are citizens of Delaware and Illinois, and do business in the State of New Jersey. The amount in controversy exceeds \$5,000,000 and there are at least one hundred members of the putative class.

13. This Court has jurisdiction over Defendants because they either are foreign corporations authorized to conduct business in New Jersey, are doing business in New Jersey and have registered with the New Jersey Secretary of State, or do sufficient business in New Jersey, have sufficient minimum contacts with New Jersey, or otherwise intentionally avail themselves of the New Jersey consumer market through the promotion, marketing, sale and service of mortgage loans in New Jersey. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants and their affiliated or related entities permissible under traditional notions of fair play and substantial justice.

14. In addition, this Court has subject matter jurisdiction under CAFA because the amount in controversy exceeds \$5 million and diversity exists between Plaintiff and the Defendants. 28 U.S.C. § 1332(d)(2). Further, in determining whether the \$5 million amount in controversy requirement of 28 U.S.C. § 1332(d)(2) is met, the claims of the putative Class members are aggregated. 28 U.S.C. § 1332(d)(6).

15. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants transact business and may be found in this District and a substantial portion of the practices complained of herein occurred in the District of New Jersey.

16. All conditions precedent to this action have occurred, been performed, or have been waived.

STATEMENT OF FACTS

17. McLean entered into a first mortgage loan in the amount of \$334,499.49 with Household Finance III on July 28, 2006. As security for the loan, McLean granted Household Finance III a first mortgage on her home located at 326 Division Street, Boonton, New Jersey.

18. McLean's monthly payment of principal and interest was \$2,581.50. Her promissory note to HFC was adjustable every six months and its rate was indexed to the London Interbank Offered Rate ("LIBOR"). The interest rate was calculated by adding 2.936% to the LIBOR index. The initial interest rate at closing was 8.54%.

19. McLean contacted HFC in March 2009 to request a modification of her loan to reduce her monthly payment. HFC directed McLean to contact the HFC Hardship Department in connection with her request. HFC required McLean to provide financial information to determine whether it would provide her with a loan modification. McLean provided the information demanded by HFC, including payroll statements for herself and her daughter and her bank statements. HFC provided McLean with an "Account Modification Approval" through the HFC Hardship Program in August 2009. HFC temporarily adjusted McLean's account interest rate from 8.54% to 7.04% for six months, which changed her monthly payment from \$2,464.72 to \$2,247.76. It further provided that McLean's loan would revert to the original interest rate and payment amount at the conclusion of the six month term. The temporary Hardship Program payment amount began in September 2009.

20. McLean's six month period in the HFC Hardship Program ended in February 2010. As required by HFC, McLean again submitted additional financial documentation for an additional six month Hardship Program payment reduction. During this time, McLean made two monthly payments at the amounts required under her original loan documents. Defendants denied McLean's request for Hardship Program assistance in March and again in April 2010. McLean was unable to make her payments in May and June 2010, unable to meet the payment terms of her original loan, and having been denied the temporary Hardship Program assistance.

21. HFC offered McLean a trial period loan modification agreement on July 9, 2010 (the "2010 Trial Plan"), a copy of which is attached hereto as Exhibit A. HFC represented that it was offering the 2010 Trial Plan in response to McLean's request for a loan modification. HFC promised that if McLean made two payments of \$1,902.06 during the following two months, with both payments completed on or before September 6, 2010, HFC would provide her with a permanent loan modification. HFC expressly represented in its letter to McLean that "*if you complete the plan successfully, we will provide you with a loan modification.*" (emphasis supplied). HFC further stated that if McLean did not make the two trial payments by the payment due date, the 2010 Trial Plan would terminate and the loan would not be modified.

22. McLean accepted the 2010 Trial Plan and timely made all required payments. She made her payments to HFC on or about July 14, 2010 and August 19, 2010, respectively. HFC received the payments and posted them to her account. McLean continued to make payments to HFC after completing the required two payments, making two additional payments in August 2010.

23. HFC failed to honor its promise to provide McLean with a permanent loan modification after she successfully completed the 2010 Trial Plan. Despite McLean performing her material obligation under the terms of the 2010 Trial Plan, HFC did not provide her with a loan modification. Upon information and belief, HFC did not communicate to McLean a denial of the promised loan modification.

24. Instead of the promised modification, HFC again directed her to apply to the HFC Hardship Program. McLean was again required to provide additional financial information for the Hardship Program. She again provided payroll statements, bank statements, and documentation regarding other income or a letter stating explaining her co-borrower's income

and contribution. She made seven payments under the Hardship Program from September through March 2011. The Hardship Program payments were \$1,881.11 per month.

25. HFC offered McLean another trial period plan in March 2011 (the “2011 Trial Plan”), a copy of which is attached hereto as Exhibit B. HFC again represented that it was offering the trial plan in response to her request for a loan modification. HFC again promised that if she successfully completed the 2011 Trial Plan, it would “activate” her loan modification. The 2011 Trial Plan required that she make two payments in the amount of \$1,892.80, in April and May 2011. McLean timely made the payments required under the 2011 Trial Plan. HFC accepted the payments and posted them to her account.

26. Despite McLean’s performance of all her material obligations under the 2011 Trial Plan, HFC again failed to provide her with a permanent loan modification after she successfully completed it. Instead, HFC again directed her to apply to the HFC Hardship Program. She made payments under the HFC Hardship Program and again tried to comply with HFC’s documentation requirements, but was unable to fully meet its demands for additional financial information. HFC then denied McLean assistance under the Hardship Program in 2011.

27. HFC has never provided McLean a permanent modification of her loan. Nonetheless, it led her down a primrose path, demanding additional financial information, retaining the payments under the 2010 Trial Plan and the 2011 Trial Plan, which it obtained under the false pretense that it would provide her with a permanent loan modification, and causing her to forgo other opportunities to resolve her loan default. Indeed, upon information and belief, HFC did not provide permanent loan modifications to any of its borrowers during the period of the 2010 Trial Plan or the 2011 Trial Plan.

CLASS ALLEGATIONS

A. Class Definitions

28. Plaintiff McLean brings this action against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all other persons similarly situated. Plaintiff seeks to represent the following classes:

Nationwide class:

All HFC borrowers who, within the applicable statutes of limitation,

(1) accepted HFC's 2010 Trial Plan, timely remitted payments to HFC required by the terms of the 2010 Trial Plan and did not receive a permanent loan modification (the "2010 Denied Class"), or

(2) accepted HFC's 2011 Trial Plan, timely remitted payments to HFC required by the terms of the 2011 Trial Plan and did not receive a permanent loan modification (the "2011 Denied Class").

New Jersey Subclass as to Count III-

New Jersey Consumer Fraud Act:

(1) accepted HFC's 2010 Trial Plan, timely remitted payments to HFC required by the terms of the 2010 Trial Plan and did not receive a permanent loan modification (the "2010 Denied NJ Sub-Class"),or

(2) accepted HFC's 2011 Trial Plan, timely remitted payments to HFC required by the terms of the 2011 Trial Plan and did not receive a permanent loan modification (the "2011 Denied NJ Sub-Class").

29. Plaintiff reserves the right to modify or amend the definitions of the proposed classes before the Court determines whether certification is appropriate.

30. Defendants subjected Plaintiff and the respective Class members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner.

B. Numerosity

31. The proposed classes are so numerous that joinder of all members would be impracticable. Defendants have originated thousands of mortgage loans in the State of New Jersey and nationwide. Plaintiff does not know the exact size of the proposed class, as that information is in the exclusive control of the Defendants. Plaintiff believes the class encompasses many hundreds of individuals whose identities can be readily ascertained from Defendants' books and records. The numbers are more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiff does not anticipate any difficulties in the management of the lawsuit as a class action.

C. Commonality

32. There are questions of law and fact that are common to Plaintiff's and Class members' claims. These common questions predominate over any questions that go particularly to any individual member of the Class. Among such common questions of law and fact are the following:

Whether HFC failed to honor the 2010 Trial Plan and/or the 2011 Trial Plan accepted by Plaintiff and other members of the Class;

Whether HFC is required to honor the terms of the 2010 Trial Plan and/or the 2011 Trial Plan and provide permanent loan modifications or other equivalent remedies to Plaintiff and members of the Class;

Whether HFC breached the implied covenant of good faith and fair dealing by failing to honor the 2010 Trial Plan and/or the 2011 Trial Plan and instead offering Plaintiff and the Class only the HFC Hardship Program;

Whether HFC employed an unconscionable commercial practice, misrepresentation, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, by its

conduct in representing to Plaintiff and the Class that it would provide them with permanent loan modifications if they performed their material obligations under the 2010 Trial Plan and/or 2011 Trial Plan, obtained additional financial information and additional payments from Plaintiff and members of the Class under the false pretense of the opportunity for a permanent loan modification, and instead offering the temporary HFC Hardship Program; and

Whether Plaintiff and members of the Class are entitled to damages, restitution, declaratory relief and/or injunctive relief as a result of Defendants' conduct.

D. Typicality

33. Plaintiff is a member of the Class she seeks to represent. Plaintiff's claims are typical of the respective Class members' claims because of the similarity, uniformity, and common purpose of the Defendants' unlawful conduct. Each class member has sustained, and will continue to sustain, damages in the same manner as Plaintiff as a result of Defendants' wrongful conduct.

E. Adequacy of Representation

34. Plaintiff is an adequate representative of the Class she seeks to represent and will fairly and adequately protect the interests of that Class. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel, experienced in litigation of this nature, to represent her. There is no hostility between Plaintiff and the unnamed Class members. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

35. To prosecute this case, Plaintiff has chosen the undersigned law firms, which are very experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

36. The questions of law or fact common to Plaintiff's and each Class member's claims predominate over any questions of law or fact affecting only individual members of the Class. All claims by Plaintiff and the unnamed Class members are based on the 2010 Trial Plan and/or the 2011 Trial Plan which HFC offered to Plaintiff and members of the Class, and Defendants' deceptive and egregious conduct in failing to honor their obligations under the Plans.

37. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damage determinations.

38. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

39. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

Joinder of all Class members would create extreme hardship and inconvenience for the affected customers as they reside all across the United States;

Individual claims by Class members are impractical because the costs to pursue individual claims exceed the value of what any one class member has at stake. As a result, individual Class members have no interest in prosecuting and controlling separate actions;

There are no known individual Class members who are interested in individually controlling the prosecution of separate actions;

The interests of justice will be well served by resolving the common disputes of potential Class members in one forum;

Individual suits would not be cost effective or economically maintainable as individual actions; and

The action is manageable as a class action.

H. Requirements of Fed. R. Civ. P. 23(b)(1) & (2)

40. Prosecuting separate actions by or against individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the party opposing the class.

41. Defendants have acted or failed to act in a manner generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I
BREACH OF CONTRACT

Plaintiff realleges and incorporates paragraphs 1 - 41, above as if fully set forth herein and further alleges as follows.

42. Plaintiff and Class members were borrowers under loans originated, owned or serviced by HFC.

43. HFC offered Plaintiff and Class members the 2010 Trial Plan and/or 2011 Trial Plan. HFC promised in both Plans that if Plaintiff and the Class timely made all required payments, HFC would provide them with permanent loan modifications.

44. Plaintiff and the Class accepted the 2010 Trial Plan and/or the 2011 Trial Plan. Plaintiff and the Class performed all material obligations under the respective Plans, namely, timely remitting to HFC all required payments. HFC accepted the payments from Plaintiff and the Class. Upon information and belief, HFC offered the 2010 Trial Plan and/or the 2011 Trial

Plan to other borrowers in substantially the same forms, which they accepted and pursuant to which they performed all material obligations.

45. The 2010 Trial Plan and/or the 2011 Trial Plan are valid and enforceable contracts because:

The letters HFC sent to Plaintiff and other borrowers setting forth the 2010 Trial Plan and/or the 2011 Trial Plan constituted valid offers;

The Plaintiff and other members of the Class accepted the 2010 Trial Plan and/or the 2011 Trial Plan by making all payments required under terms of the Plans;

The 2010 Trial Plan and/or the 2011 Trial Plan were supported by consideration including, without limitation, additional financial information HFC required from borrowers to apply for loan modification, additional monies HFC received from borrowers whose loans were in default or were in imminent risk of going into default, and borrowers' forgone alternative opportunities to resolve loan defaults.

46. HFC breached the terms of the 2010 Trial Plan and/or the 2011 Trial Plan by, *inter alia*, failing to honor the contracts terms, subsequently attempting to collect and collecting amounts that would not be due under the terms of the promised permanent loan modification, including, without limitation, past due payments, interest, late fees, default-related fees and costs, foreclosure fees and costs and escrow account charges.

47. As a direct and proximate result of HFC's breach of the 2010 Trial Plan and/or the 2011 Trial Plan, Plaintiff and other members of the Class did not receive the benefit of the contract benefits, and suffered damages, including, but not limited to, having paid amounts to HFC under the false pretenses of the 2010 Trial Plan and/or the 2011 Trial Plan and being charged past due payments, interest, late fees, default-related fees and costs, foreclosure fees and costs and escrow account charges and foregoing other opportunities to resolve their loan defaults.

WHEREFORE, Plaintiff Lurline McLean, on behalf of herself and all similarly situated Class members, seeks compensatory damages resulting from Defendants' breach of contract. Plaintiff further seeks all relief deemed appropriate by the Court, including attorneys' fees and costs.

COUNT II
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiff realleges and incorporates paragraphs 1-47, above as if fully set forth herein and further alleges as follows.

48. A covenant of good faith and fair dealing is implied in every contract and imposes upon each party a duty of good faith and fair dealing in its performance. Common law calls for substantial compliance with the spirit, not just the letter, of a contract in its performance.

49. Where an agreement affords one party the power to make a discretionary decision without defined standards, the duty to act in good faith limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party.

50. The HFC 2010 Trial Plan and/or the 2011 Trial Plan gave HFC substantial discretion in granting Plaintiff and the Class permanent loan modifications. HFC could determine the terms and conditions of the permanent loan modifications. HFC had an obligation to exercise its discretion in good faith and not capriciously or in bad faith.

51. HFC breached the implied covenant of good faith and fair dealing by failing to provide McLean and the Class the promised permanent loan modification after they successfully completed the HFC 2010 Trial Plan and/or the 2011 Trial Plan. It further breached the implied covenant of good faith and fair dealing by, among other things, directing Plaintiff and members of the Class after their performance under the 2010 Trial Plan and/or 2011 Trial Plan to apply for

the temporary HFC Hardship Program, and reviewing Plaintiff and members of the Class only in connection with the HFC Hardship Program, not a permanent loan modification.

52. As a direct, proximate, and legal result of the aforementioned breaches of the covenant of good faith and fair dealing, Plaintiff and the Class have suffered damages, including, but not limited to, having paid amounts to HFC under the false pretenses of the 2010 Trial Plan and/or the 2011 Trial Plan and incurring past due payments, interest, late fees, default-related fees and costs, foreclosure fees and costs and escrow account charges and foregoing other opportunities to resolve their loan defaults.

WHEREFORE, Plaintiff Lurline McLean, on behalf of herself and similarly situated Class members, seeks a judicial declaration that Defendants' conduct in failing to provide McLean and other members of the Class permanent loan modification at the conclusion of the 2010 Trial Plan and/or 2011 Trial Plan violated the implied covenant of good faith and fair dealing. Plaintiff also seeks compensatory damages resulting from HFC's violation of its duties. Plaintiff further seeks all relief deemed appropriate by the Court, including attorneys' fees and costs.

COUNT III
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

Plaintiff realleges and incorporates paragraphs 1- 52 above as if fully set forth herein and further alleges as follow.

53. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.* (the "NJCFA"), prohibits the "use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise and misrepresentation ... in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or

damaged thereby.” N.J.S.A. § 56:8-2. The term “advertisement” includes “the attempt . . . to induce directly or indirectly any person to enter or not enter into any obligation . . . or to make any loan.” N.J.S.A. § 56:8-1(a). The broad language of the New Jersey Consumer Fraud Act has been held to encompass the offering, sale, or provision of consumer credit. *Gonzalez v. Wilshire Credit Corp.*, 207 N.J. 557, 577-78 (2011).

54. HFC has engaged in unconscionable commercial practices, deceptive acts, and misrepresentations in the conduct of its trade and/or commerce in the State of New Jersey. HFC offered McLean and the Class the 2010 Trial Plan and/or 2011 Trial Plan under the false pretense that HFC would provide McLean and the Class with permanent loan modifications if they performed their material obligations under the Plans. When Plaintiff and the Class successfully completed the 2010 Trial Plan and/or 2011 Trial Plan, HFC failed to provide McLean and members of the Class with the promised permanent loan modifications.

55. Defendants made misrepresentations and deceptive statements in carrying out their scheme to defraud Plaintiff and the members of the Class. HFC sent McLean letters stating that she had been approved for “Trial Period Plans” which promised that if she completed the Plans successfully, HFC would provide her with a loan modification.

56. For example, HFC sent McLean a letter dated July 9, 2010, which stated the subject was “Trial Period Plan Approval.” It further stated:

Congratulations! We are pleased to inform you that we are able to offer you a Trial Period Plan (the “Plan”) in response to your request for loan modification. If you complete the Plan successfully, we will provide you with a loan modification.

HFC’s statement was false and misleading because HFC did not provide permanent loan modifications to its borrowers. Upon information and belief, HFC did not participate in any federal or state government sponsored loan modification programs, and did not otherwise

provide its borrowers with permanent loan modifications, and did not do so when it offered the 2010 Trial Plan. Indeed, its company policy was to not provide permanent loan modifications.

57. HFC also deceived McLean by not revealing to her that it had reneged on the 2010 Trial Plan and/or 2011 Trial Plan. For example, it did not inform McLean whether she had completed the Trial Period Plans successfully. Instead, it deceived her by remaining silent and directing her to submit documentation for the HFC Hardship Program. In doing so, HFC created the false impression that it was fulfilling its obligation under the 2010 Trial Plan and/or 2011 Trial Plan by offering the HFC Hardship program. It also created the impression that McLean and the Class must continue making payments for HFC to permanently modify the loan.

58. Plaintiff further deceived McLean when it offered her a second Trial Period Plan. HFC sent McLean a second letter entitled “Trial Period Plan Approval” on March 29, 2011. The 2011 Trial Plan again stated:

Congratulations! We are pleased to inform you that we are able to offer you a Trial Period Plan (the “Plan”) in response to your request for a loan modification ... However, if you complete this Plan successfully, we will provide you with a loan modification.

59. HFC sought to deceive McLean by including an additional provision in the 2011 Trial Plan not present in the 2010 Trial Plan. The 2011 Plan added a caveat that

[u]pon receipt and review of all required documents, and upon receipt of the required trial period payments as outlined above, we will activate your loan modification and notify you of the terms of your loan modification.

McLean’s monthly payment under the 2011 Trial Plan was further reduced to \$1,892.80, from \$1,902.06 in the 2010 Trial Plan.

60. HFC’s conduct was deceptive and unconscionable because HFC added a condition the 2011 Trial Plan that was not present in the 2010 Trial Plan – namely, that the permanent loan modification was dependent upon timely payment and a review of undefined

documents. However, HFC did not require documents beyond what McLean had provided prior to commencement of the 2011 Trial Plan.

61. HFC also misled McLean by creating the impression that the 2011 Trial Plan would automatically transition to a permanent loan modification upon HFC's timely receipt of the required payments. It represented in the offer that it would "activate your loan modification and notify you of the terms of your loan modification." Based upon HFC's representation, the 2011 Trial Plan would turn into the permanent loan modification without any further action by McLean and the Class. It never did so. Moreover, its representations were false because, upon information and belief, HFC did not provide permanent loan modifications to any of the borrowers.

62. HFC employed unconscionable practices, misrepresentations, deceit and false pretenses when it failed to honor its obligation to provide McLean a permanent loan modification under the 2011 Trial Plan and instead (1) did not disclose to McLean that she had performed her obligations under the 2011 Trial Plan, but nonetheless was renegeing on its promise of a permanent loan modification; (2) offered her the 2011 Trial Plan as if it was substantially the same offer it had made in the 2010 Trial Plan, but including an additional documentation term not present in the 2010 Trial Plan; (3) not activating a permanent loan modification when McLean successfully concluded the 2011 Trial Plan, instead directing her to apply for the HFC Hardship Program and (4) continuing to string her along with false promises of a loan modification if she submitted additional documents and made additional payments.

63. The NJCFA further provides that "[a]ny person who suffers an ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under the [NJCFA] may bring an action or

assert a counterclaim therefore in any court of competent jurisdiction.” N.J.S.A. § 56:9-19.

Plaintiff and the New Jersey Subclass are “person(s)” as that term is defined in N.J.S.A. § 56:8-1(d).

64. Plaintiff and the Class have suffered an ascertainable loss of moneys or property as a direct and proximate result of HFC’s unlawful acts. McLean’s loan was in payment default at the time HFC solicited her to accept the 2010 Trial Plan. HFC solicited her to accept the 2010 Trial Plan and make additional payments to HFC based upon its representation that in exchange for her timely payments under the Plan, it would provide her with a permanent loan modification. As a direct and proximate result of HFC’s conduct, McLean made payments to HFC that she would not have paid in the absence of its unlawful conduct. HFC retained McLean’s payments despite failing to provide the promised permanent loan modification.

65. McLean’s loan was again in payment default when HFC solicited her for the 2011 Trial Plan. McLean again made timely payments to HFC under the 2011 Trial Plan due to HFC’s unlawful conduct. HFC again failed to provide the permanent loan modification while retaining all payments made by McLean. McLean and the Class also lost alternative opportunities to resolve their defaults while participating in the 2010 Trial Plan, the 2011 Trial Plan and the intervening and subsequent Hardship Programs.

66. McLean and other members of the Class have suffered damages as a result of HFC’s deceptive acts and practices, including, but not limited to, having paid amounts to HFC under the false pretenses of the 2010 Trial Plan and/or the 2011 Trial Plan and incurring additional past due payments, interest, late fees, default-related fees and costs, foreclosure fees and costs and escrow account charges which would have been avoided by the promised permanent loan modifications.

67. Plaintiff and the Class have a private right of action against HFC and it entitles them to recover, in addition to their actual damages a threefold award of the damages sustained by any person's interest, as well as an award of reasonable attorney's fees, filing fees and reasonable costs of suit. N.J.S.A. § 56:8-19.

WHEREFORE, Plaintiff, on behalf of herself and members of the Class, demands judgment against Defendants for compensatory damages, pre- and post-judgment interest, treble damages, attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as the Court deems just and proper.

COUNT IV
COMMON LAW FRAUD

McLean repeats and realleges the allegations set forth in paragraphs 1 - 67 as if fully set forth herein.

68. HFC offered McLean and the Class the 2010 Trial Plan and/or the 2011 Trial Plan under the false pretense that if McLean and the Class performed their material obligations under the respective plans, HFC would provide them with permanent loan modifications. HFC knew when it made its representation to McLean and the Class, that it did not provide permanent loan modifications to its borrowers. HFC knew that its representations that it would provide permanent loan modifications to McLean and the Class were false at the time they were made.

69. HFC intended that McLean and the members of the class rely upon HFC's false representations, omissions and concealments in accepting its offers in the 2010 Trial Plan and/or the 2011 Trial Plan. McLean and the members of the Class reasonably relied upon HFC's misrepresentations, omissions and concealments in accepting the trial plans.

70. McLean and the members of the Class suffered damages as a result of their reliance upon HFC's misrepresentations, omissions and concealments entering into the 2010

Trial Plan and/or the 2011 Trial Plan, including, but not limited to, having paid amounts to HFC under the false pretenses of the 2010 Trial Plan and/or the 2011 Trial Plan, foregoing alternative opportunities to resolve their loan defaults and incurring past due payments, interest, late fees, default-related fees and costs, foreclosure fees and costs and escrow account charges which would have been avoided with timely permanent loan modifications.

WHEREFORE, McLean and members of the Class demand judgment against Defendants for compensatory damages, punitive damages, pre-judgment and post judgment interest, cost of suit, and such other and further relief as the Court deems just and equitable.

COUNT V
PROMISSORY ESTOPPEL
(Pleaded in the Alternative to Breach of Contract)

McLean repeats and realleges the allegations set forth in paragraphs 1 – 70 as if fully set forth herein.

71. HFC promised to McLean and the Class that it would provide them with permanent loan modifications if they fulfilled their obligations under the 2010 Trial Plan and/or 2011 Trial Plan.

72. HFC's promise was made to induce McLean and the Class to enter into the 2010 Trial Plan and/or the 2011 Trial Plan and remit payments to HFC.

73. McLean and the Class relied upon HFC's promise in accepting the 2010 Trial Plan and/or the 2011 Trial Plan and performing their obligations under the plans in order to receive the permanent loan modifications.

74. HFC failed to honor its promise under the 2010 Trial Plan and/or the 2011 Trial Plan and did not provide McLean and the Class with the promised permanent loan modifications despite their performance of their obligations under the Plans.

75. HFC's failure to provide permanent loan modifications caused definite and substantial harm to McLean and the Class. McLean and the Class were denied the benefits of a permanent loan modification, continued in default under their prior loan agreements, entered into HFC temporary modifications on less favorable terms than under the promised permanent loan modification, or were compelled to resolve their default through a sale of the property for less than the loan amount, transferring their property to HFC in lieu of foreclosure, loss of their property through foreclosure sale or other resolution of their loan defaults on terms less favorable than the promised permanent loan modification, and additionally incurred past due payments, interest, late fees, default-related fees and costs, foreclosure fees and costs and escrow account charges..

WHEREFORE, McLean and the Class demand judgment against Defendants for declaratory and injunctive relief, compensatory damages, punitive damages, pre-judgment and post judgment interest, cost of suit, and such other and further relief as the Court deems just and equitable.

COUNT VI
EQUITABLE ESTOPPEL
(Pleaded in the Alternative to Breach of Contract)

McLean repeats and realleges the allegations set forth in paragraphs 1-75 as if fully set forth herein.

76. HFC's conduct induced McLean and the Class to enter into the 2010 Trial Plans and/or the 2011 Trial Plan by its promises of a permanent loan modification.

77. McLean and the Class relied upon HFC's conduct in entering into 2010 Trial Plans and/or the 2011 Trial Plan and performing their obligations.

78. HFC disavowed its prior conduct in failing to provide loan modifications to McLean and members of the class at the conclusion of the 2010 Trial Plans and/or the 2011 Trial Plan.

79. To permit HFC to repudiate its conduct would violate the demands of justice and good conscience.

WHEREFORE, McLean and the Class demand judgment against Defendants for declaratory and injunctive relief, compensatory damages, punitive damages, pre-judgment and post judgment interest, cost of suit, and such other and further relief as the Court deems just and equitable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all similarly situated individuals, demands judgment against Defendants as follows:

(1) Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiff and their counsel to be representatives of the Class and the New Jersey Subclass;

(2) Enjoining Defendants from continuing the acts and practices described above;

(3) Awarding damages sustained by Plaintiff and the Class as a result of HFC's breaches of the 2010 Trial Plan and/or the 2011 Trial Plan and the implied covenant of good faith and fair dealing, including compensatory damages, injunctive relief and declaratory relief, together with pre-judgment interest;

(4) Awarding Plaintiff and the New Jersey Subclass compensatory and treble damages, injunctive relief, declaratory relief, attorneys' fees, and costs, pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*;

(5) Awarding Plaintiff and the Class compensatory damages, punitive damages, pre-judgment and post-judgment interest, as a result of Defendants' common law fraud;

(6) Awarding Plaintiff and the Class declaratory relief and injunctive relief estopping Defendants from denying Plaintiff and the Class permanent loan modifications, as well as compensatory damages, punitive damages, pre-judgment and post-judgment interest, costs of suit and other relief the Court deems just and reasonable;

(7) Awarding Plaintiff and the Class costs and disbursements and reasonable allowances for the fees of Plaintiff's and the Class's counsel and experts, and reimbursement of expenses; and

(8) Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: December 30, 2015

By: s/Roosevelt N. Nesmith
Roosevelt N. Nesmith, Esq.

Roosevelt N. Nesmith, Esq.
roosevelt@nesmithlaw.com

**LAW OFFICE OF
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Facsimile: (646) 520-3236
Counsel for Plaintiffs

ATTN:
MR. NESMITH

HFC
P.O. Box 3425
Buffalo, NY 14240-9733



Member HSBC Group



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LURLINE MCLEAN
KAREIN SOUFFRANT
326 DIVISION ST
BOONTON, NJ 07005-1827

07/09/10

Account #: 0015031016

Re: 326 DIVISION ST
BOONTON, NJ 07005-1827

Subject: TRIAL PERIOD PLAN APPROVAL

Dear Valued Customer:

Congratulations! We are pleased to inform you that we are able to offer you a Trial Period Plan (the "Plan") in response to your request for a loan modification. If you complete the Plan successfully, we will provide you with a loan modification.

During the Trial Period Plan, we will collect a new payment from you in the amount of \$1902.06 for the next two (2) months beginning on 07/08/10. Payments are due on or before 09/08/10.

If you do not make two (2) successful trial payments by the payment due date, this Agreement will terminate and your loan will not be modified. The terms in your existing loan agreement that are not modified by the Plan remain in effect during the Plan period.

Please remit payments to:

Attn: Payments
2929 Walden Ave.
Depew, NY 14043

If you have questions, please contact us at 1-800-340-7505 during normal business hours.

Sincerely,

HFC
TRLMOD

Please note that HFC is a debt collector. Unless you have been previously discharged from a Chapter 7 bankruptcy without reaffirming the debt, HFC is attempting to collect a debt and any information obtained will be used for that purpose.

Esta carta contiene información importante sobre su cuenta y podría requerir su atención. Si tiene alguna pregunta y desea hablar en Español con un empleado, sírvase comunicarse con nosotros al 1-800-340-7505, marque el número 2, durante nuestras horas de oficina normales.

HFC
P.O. Box 3425
Buffalo, NY 14240-9733



Member HSBC Group



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LURLINE MCLEAN
KAREN SOUFFRANT
326 DIVISION ST
BOONTON, NJ 07005-1827

03/29/11

Account #: 0015031016
Re: 326 DIVISION ST
BOONTON, NJ 07005-1827
Subject: TRIAL PERIOD PLAN APPROVAL

Dear Valued Customer:

Congratulations! We are pleased to inform you that we are able to offer you a Trial Period Plan (the "Plan") in response to your request for a loan modification. Please be advised that your existing loan and loan requirements will remain in effect and unchanged during the trial period. However, if you complete the Plan successfully, we will provide you with a loan modification.

During the Trial Period Plan, you must make new monthly "trial period payments" in place of your normal monthly mortgage payment. We will collect the new trial period payment from you in the amount of \$1892.80 for the next two (2) months beginning on 03/28/11. Payments are due on or before 05/27/11.

Upon receipt and review of all required documents, and upon receipt of the required trial period payments as outlined above, we will activate your loan modification and notify you of the terms of your loan modification. If you do not make two (2) successful trial payments by the payment due date, this Agreement will terminate and your loan will not be modified. The terms in your existing loan agreement that are not modified by the Plan remain in effect during the Plan period.

Please remit payments to:

HFC
Attn: Payments
2929 Walden Ave.
Depew, NY 14043

If you have questions, please contact us at 1-800-340-7505 during normal business hours.

Sincerely,

Christopher Kulig
HFC
TRLMOD

THIS IS AN ATTEMPT TO COLLECT A DEBT BY A DEBT COLLECTOR AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.*

*PLEASE NOTE THIS STATEMENT DOES NOT APPLY TO YOU IF YOU FILED A BANKRUPTCY PETITION AND RECEIVED A DISCHARGE OF YOUR PERSONAL LIABILITY FOR THE OBLIGATION IDENTIFIED IN THIS LETTER, OR THERE IS AN AUTOMATIC STAY CURRENTLY IN EFFECT. IN EITHER CASE WE MAY NOT AND DO NOT INTEND TO PURSUE COLLECTION OF THE OBLIGATION FROM YOU PERSONALLY AND THIS LETTER IS NOT INTENDED AS A DEMAND FROM YOU PERSONALLY. UNLESS THE BANKRUPTCY COURT HAS ORDERED OTHERWISE, HOWEVER, PLEASE ALSO NOTE THAT DESPITE ANY SUCH BANKRUPTCY, HFC RETAINS A SECURITY INTEREST IN THE PROPERTY IDENTIFIED IN THIS LETTER, WHICH HFC MAY PURSUE AND ENFORCE.

Esta carta contiene información importante sobre su cuenta y podría requerir su atención. Si tiene alguna pregunta y desea hablar en Español con un empleado, sírvase comunicarse con nosotros al 1-800-340-7505, marque el número 2, durante nuestras horas de oficina normales.

Trial Period Plan

1. **The Trial Period Plan (the "Plan").** On or before each of the following due dates, I will pay the Lender the amount set forth below ("Trial Period Payment"), which may include payment for Escrow Items, including real estate taxes and insurance premiums of \$1892.80.

Trial Period Payment #	Trial Period Payment	Due Date On or Before
1	\$1892.80	04/27/11
2	\$1892.80	05/27/11

The Trial Period Payment is an estimate of the payment that will be required under the Loan Modification Agreement.

The Plan commences on 03/28/11 and will end on the earlier of: (i) the Loan Modification Agreement effective date or (ii) termination of the Plan. The Lender will hold the payments received during the Plan in a non-interest bearing account until the total amount held is sufficient to pay a full monthly payment. Any funds remaining will be applied as a principal reduction prior to your modification activation. In the event the total amount of trial payments does not equal a full monthly payment, all trial funds will be applied as a principal reduction prior to your modification activation.

When HFC accepts and posts a payment during the Plan, it will be without prejudice to, and will not be deemed a waiver of Lender's rights contained in the loan documents including, without limitation, the right to accelerate the balance due, continue or initiate a foreclosure action and will not constitute a cure of my default under my original loan documents unless such payments are sufficient to bring my loan current.

2. **EZ Pay/Automatic Payment Plan Suspension/EFT.** If Borrower is currently enrolled in an automatic payment plan, Borrower understands that automatic payment drafts will be cancelled. Borrower can request that automatic payment drafts resume once the Loan Modification Agreement begins.
3. **Billing Statement.** Borrower understands that the billing statement will not reflect the new Plan payment listed in "The Trial Period Plan" above.
4. **Credit Bureau Reporting.** Borrower understands that modifying the terms of the original loan agreement may negatively impact credit scores.
5. **Rate Reduction Plan.** If Borrower is on a Rate Reduction Plan under the original loan agreement, the Rate Reduction Plan will be terminated with the activation of the Modification for the life of the loan.
6. **Credit Line Cancellation.** If Borrower has a revolving line of credit, Borrower understands that the line of credit will be permanently cancelled. No additional advances can be taken.
7. **Chapter 7 Bankruptcy.** If Borrower was discharged in a Chapter 7 Bankruptcy proceeding after obtaining this loan, Lender agrees that Borrower will not have personal liability on the debt pursuant to this Plan.
8. **All terms and provisions of the Loan Documents remain in full force and effect.** Nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the original loan documents. HFC and Borrower are bound by, and will comply with, all of the terms and provisions of the loan documents.