

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Nichole Williams,

JURY TRIAL REQUESTED

Johnson Sendolo,

Civil: 09-CV-1959 ADM JJG

Carey Koppenberg,

Carrie Strohmayer,

On behalf of themselves and all others  
similarly situated,

**FIRST AMENDED CLASS  
ACTION COMPLAINT**

Plaintiffs.

vs.

Timothy F. Geithner, as United States  
Secretary of the Treasury

U.S. Department of the Treasury,

The Federal Housing Finance Agency,  
as conservator for the Federal National  
Mortgage Association, d/b/a Fannie  
Mae and the Federal Home Loan  
Mortgage Corporation d/b/a Freddie  
Mac,

Federal National Mortgage Association,  
d/b/a Fannie Mae, and

Federal Home Loan Mortgage  
Corporation d/b/a Freddie Mac,

Ocwen Loan Servicing, LLC,

GMAC Mortgage, f/d/b/a  
Homecomings Financial,

U.S. Bank,

Defendants.

Ms. Nichole Williams, Mr. Johnson Sendolo, Ms. Carey Koppenberg, and Ms. Carrie Strohmayer, on behalf of themselves and all others similarly situated, allege the following:

### INTRODUCTION

1. Plaintiffs Johnson Sendolo and Nichole Williams are the types of people that the federal government's foreclosure prevention program was intended to help. Both had good jobs. Mr. Sendolo was a medical coder for a health insurance company, and Ms. Williams was a legal assistant. But, when the economy faltered, they were both laid off. Eventually, after depleting their savings, they fell behind on their monthly mortgage payments. Now, both have managed to get new jobs and have steady income, but they need a loan modification to get current and make their mortgage loan sustainable.

2. Plaintiffs Carey Koppenberg and Carrie Strohmayer are also the types of people that the federal government's foreclosure prevention program was intended to help. Although they did not lose their jobs, their financial situation faltered. Ms. Koppenberg's husband died in August 2008, leaving her with only one income to pay the mortgage. Ms. Strohmayer, who worked in the home, went through a divorce and is caring for four children, one who is disabled. Currently, they both have steady income, but they also need a loan modification to get current and make their mortgage loan sustainable.

3. All four Plaintiffs are eligible for the federal government's Home Affordable Modification Program ("HAMP"), but they have all been denied.

4. Mr. Sendolo and Ms. Koppenberg applied for the program, and then, without being given any reason or an opportunity to appeal, their applications were denied and their houses were sold at a Sheriff's Sale.

5. Ms. Williams faxed, emailed, and verbally requested a modification through HAMP with the help of her housing counselor, but Ms. Williams' requests were ignored. Instead, the servicer offered its own non-HAMP three-month payment plan. The temporary plan does not offer any of the advantages of a HAMP modification and foreclosure continues to be eminent. Similarly, Ms. Strohmayer has also contacted her servicer on many occasions, specifically requesting a HAMP loan modification. Once, she was told she was approved, and then later, she was told she was denied. Ms. Strohmayer is simply in limbo.

6. In all cases, the Plaintiffs' constitutional rights to procedural due process have been violated. HAMP is part of a \$75 billion government program to prevent foreclosures, approximately six times larger than the National School Lunch Program. Both the enabling legislation and the federal government's own implementing guidelines make it clear that eligible and qualified homeowners "shall" receive a loan modification, thus creating legal entitlements for thousands of Minnesota homeowners facing foreclosure. Yet, the government has denied Mr. Sendolo, Ms. Williams, Ms. Koppenberg, and Ms. Strohmayer and others like them the most fundamental due process protections: notice of the basis for a decision and an opportunity to appeal.

7. HAMP does not require that homeowners are given any notice of a denial at all, and for homeowners, like Mr. Sendolo, the notices that are given do not provide

any specific reason for the denial. HAMP is complex, and the lack of transparency prevents Mr. Sendolo and others like him from correcting errors or misinformation. The lack of opportunity to appeal makes it even more difficult to access the benefits. Now that Mr. Sendolo's house has been sold, there is also no formal and uniform method to undo the wrongful foreclosure.

8. Plaintiffs are seeking to enjoin all foreclosures in Minnesota of mortgages owned by Fannie Mae or Freddie Mac, or serviced by one of the mortgage loan servicers who have agreed to administer the HAMP program and provide loan modifications to the homeowners they service.

#### PARTIES

9. Plaintiff Nichole Williams resides at 9129 Maryland Avenue North, Brooklyn Park, MN 55445 with her two daughters, ages 15 and 20. 9129 Maryland Avenue North is Ms. Williams' primary residence.

10. Plaintiff Johnson Sendolo resides at 3218 Leyland Trail, Woodbury, Minnesota 55125. 3218 Leyland Trail is Mr. Sendolo's primary residence.

11. Plaintiff Carey Koppenberg resides at 501 North Linden Street, Belle Plaine, Minnesota 56011. 501 North Linden Street is Ms. Koppenberg's primary residence.

12. Plaintiff Carrie Strohmayer resides at 10926 Xylite Court Northeast, Blaine, Minnesota 55449. 10926 Xylite Court Northeast is her primary residence.

13. Defendant Timothy F. Geithner is Secretary of the United States Department of the Treasury, and he has been named as a defendant in this action in his official capacity as Treasury Secretary.

14. Defendant United States Department of Treasury (“Treasury”) has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs’ constitutional rights to procedural due process. Defendant United States Department of Treasury is located at 1500 Pennsylvania Avenue NW, Washington DC 20220.

15. Defendant Federal Housing Finance Agency has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs’ Constitutional rights to procedural due process, role in creating the policies for HAMP as mandated by statute, and as conservator for Fannie Mae and Freddie Mac. Defendant Federal Housing Finance Agency is located at 1700 G Street, Washington DC 20552. Defendant Federal Housing Finance Agency is the conservator for Federal National Mortgage Association d/b/a Fannie Mae and The Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac (“Federal Housing Finance Agency”).

16. Defendant Federal National Mortgage Association d/b/a Fannie Mae (“Fannie Mae”) has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs’ Constitutional rights to procedural due process, authority to issue guidelines and rules related to the HAMP program in coordination with the Treasury Department, and as fiscal agent for HAMP. Defendant Fannie Mae is located at 3900 Wisconsin Avenue NW, Washington DC 20016.

17. Defendant Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac (“Freddie Mac”) has been named as a defendant in this action due to its failure to administer HAMP in accordance with Plaintiffs’ Constitutional rights to procedural due process, authority to issue guidelines and rules related to the HAMP program in coordination with the Treasury Department as statutorily required, and as the entity required to hold mortgage loan servicers accountable for compliance with all HAMP guidelines. Defendant Freddie Mac is located at 8200 Jones Branch Drive, McLean, VA 22102.

18. Defendant Ocwen Loan Servicing has been named as a defendant in this action because it has, in administering HAMP on behalf of and as an agent of the government, violated Plaintiff Johnson Sendolo’s procedural due process rights. Ocwen Loan Servicing (“Ocwen”) is a Delaware corporation, and has a registered agent in the State of Minnesota at 380 Jackson Str #700, Saint Paul, MN 55101.

19. GMAC Mortgage is the successor in interest to Homecomings Financial, which are both within the GMAC family of companies (“Homecomings”). Homecomings has been named as a Defendant in this action because it has, in administering HAMP on behalf of and as an agent of the government, violated Plaintiff Nichole William and Plaintiff Carrie Strohmayer’s procedural due process rights. Homecomings is a Delaware corporation, and has a registered agent in the State of Minnesota at 380 Jackson Str. #700, Saint Paul, MN 55101.

20. Defendant U.S. Bank, a successor in interest to U.S. Bancorp, has been named a Defendant in this case, because it has, in administering HAMP on behalf of and

as an agent of the government, violated Plaintiff Carey Koppenberg's procedural due process rights. U.S. Bancorp is located at the U.S. Bancorp Center, 800 Nicollet Mall, Minneapolis, Minnesota 55402.

### **JURISDICTION AND VENUE**

21. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (2008), because this action arises under the Constitution of the United States of America.

22. Venue is proper pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the State of Minnesota and the properties that are the subject of this action are situated in the State of Minnesota.

### **FACTS**

#### **I. JOHNSON SENDOLO, NICHOLE WILLIAMS, CAREY KOPPENBERG, AND CARRIE STROHMAYER HAVE BEEN WRONGFULLY DENIED ACCESS TO A HAMP LOAN MODIFICATION.**

##### **A. Johnson Sendolo's Denial Of A Loan Modification and Sheriff's Sale Was In Violation Of His Due Process Rights.**

23. Johnson Sendolo came to the United States in the early 1980s, just as the violence began to escalate in his home country of Liberia.

24. In Liberia, he had worked for the government in the health ministry. Once here, he became a United States citizen and found work in the medical information industry. Specifically, Mr. Sendolo worked as a medical record coder.

25. Eventually, Mr. Sendolo moved to Minnesota with his family, and on September 9, 2005, he purchased his first home in Woodbury, Minnesota.

26. In order to finance the purchase, Mr. Sendolo obtained an 80/20 loan, meaning that he got two loans through Ocwen, which still services both mortgage loans.

27. The first mortgage loan was in the amount of \$143,137.

28. The second mortgage was for \$35,785.

29. For the first three years, Mr. Sendolo made every loan payment and was careful never to fall behind. Then, in September 2008, Mr. Sendolo lost his job.

30. Nonetheless, he continued making payments, and even called Ocwen and told them about his situation and that he needed help.

31. Eventually his savings ran out, and he stopped making mortgage payments in December 2008.

32. In the meantime, Mr. Sendolo also started working with a mortgage loan counselor at Washington County Housing and Redevelopment Authority, and together they continued to contact Ocwen and seek help.

33. Ocwen is one of the mortgage loan servicers who agreed to provide loan modifications through and administer HAMP on behalf of the government, as well as abide by all of the government's program requirements.

34. At the end of March, Mr. Sendolo submitted paperwork to Ocwen for a HAMP modification of his first mortgage.

35. Mr. Sendolo also submitted paperwork to Ocwen for a modification of his second mortgage.

36. Mr. Sendolo was a good candidate for a loan modification because, at the time, he had income through a new job and continues to have income.

37. Although he did not get paid as much as he had previously, Mr. Sendolo had found a part-time job for about thirty-two hours per pay period. He also received unemployment income, and Mr. Sendolo's son had moved back home, while attending school, and his son often pays rent.

**1. Johnson Sendolo Is Eligible For A Loan Modification Through HAMP.**

38. Mr. Sendolo meets all of the eligibility requirements for a loan modification through HAMP. Eligibility for HAMP is determined by five general criteria.<sup>1</sup> First, the home must be the applicants' primary residence. Second, the amount owed on the first mortgage must be equal to or less than \$729,750. Third, a homeowner must be "having trouble" paying their mortgage. This means that the homeowner is delinquent (missed two payments) or default is "imminent" due to the nature of the homeowner's hardship and assets. Fourth, the mortgage was originated before January 1, 2009. Fifth, the payment is more than 31% of the homeowner's gross monthly income.

39. In this case, Mr. Sendolo's mortgage relates to his primary residence and the first mortgage is far less than \$729,750.

40. Mr. Sendolo is delinquent in the mortgage loan, meaning he owes two or more monthly payments.

41. The mortgage loan was originated before January 1, 2009, and the monthly mortgage payment is more than 31% of his gross income.

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<sup>1</sup> These are the five general criteria, but Fannie Mae and Freddie Mac have identified a few other minor criteria that generally would not apply to most homeowners. For example, in its guidance Fannie Mae prohibits homeowners who have already obtained a modification through HAMP to obtain another one.

42. However, despite satisfying these eligibility criteria, Mr. Sendolo's access to HAMP was denied.

**2. Mr. Sendolo Was Not Given Adequate Notice Related To His Denial or Opportunity To Appeal The Decision.**

43. After waiting over a month, Mr. Sendolo's mortgage loan counselor was e-mailed a boilerplate letter from Ocwen stating that he was denied a HAMP modification. Attached as Exhibit A is a copy of the denial letter, which was sent in a "track changes" format.

44. The letter did not state any reason why Mr. Sendolo had been denied. The letter only provides theoretical examples of reasons for a denial, none of which apply to Mr. Sendolo.

45. This surprised Mr. Sendolo, because Ocwen had already granted a loan modification of his second mortgage, although the modification was not through HAMP.

46. The letter also provided no information related to how Mr. Sendolo could appeal the decision or even if Ocwen had any procedures to handle adverse HAMP decisions.

47. The letter also did not describe any information about other loan modification or loss mitigation programs that were offered through Ocwen.

48. If, for whatever reason, a homeowner is denied a HAMP modification, the government requires that all other loan modification or loss mitigation programs be considered for the homeowner *prior* to initiating foreclosure proceedings.

49. The letter does not provide any indication as to whether such an evaluation ever occurred.

**3. Johnson Sendolo's House Was Foreclosed and Sold At A Sheriff's Sale.**

50. On June 25, 2009, Mr. Sendolo's home was sold at a Sheriff's Sale to Ocwen. Under Minnesota law, Mr. Sendolo now has six months to "redeem," meaning that he has an opportunity to pay back the full amount of the mortgage loan.

51. If Mr. Sendolo fails to redeem, he must leave the property by the end of December. The whole process has been confusing and stressful.

52. In addition to his adult son, Mr. Sendolo has two children living at home with him. He's not sure exactly what he is going to do, and only wants to stay in his house and make his mortgage work. Mr. Sendolo does not have the money to redeem and he cannot refinance, because the house has lost value. Mr. Sendolo estimates that the total amount of his mortgages is approximately \$14,000 more than the house is worth.

53. If Mr. Sendolo and his family are forced out of their house after the end of the redemption period, the eviction will cause him irreparable harm.

**B. Nichole William's Denial Of A Loan Modification Was In Violation Of Her Due Process Rights.**

54. In 2004, Nichole Williams purchased her first home, and then refinanced the original mortgage loan about a year later.

55. Ms. Williams had wanted to get a 30-year, fixed-rate mortgage loan. But the mortgage broker used a typical "bait and switch" with a lot of pressure.

56. Ms. Williams ended up with an “80/20 loan,” meaning that there was a first mortgage loan for 80% of the value and a smaller, second mortgage that was 20% of the value.

57. The first mortgage loan for approximately \$232,000 is serviced by Homecomings, a GMAC Company, and the second mortgage loan company is serviced by HSBC.

58. The second mortgage was approximately \$58,000.

59. Ms. Williams made payments on the mortgage loans, but on June 20, 2007 she was laid-off and lost her job as a legal assistant.

60. Ms. Williams was unemployed for six months, and she fell behind. Meanwhile, Ms. Williams’ child support payments stopped causing further financial hardship.

61. Eventually, Ms. Williams obtained another legal assistant position. She could make some payments, but she was still significantly behind.

62. In July 2008, she sought a loan modification from Homecomings, and a few months later, Ms. Williams received an offer from Homecomings.

63. This began an on-going struggle to obtain a loan modification. On multiple occasions, she was given a “temporary” loan modification of two or three months only to have a permanent modification denied for dubious, if not factually wrong reasons, and then offered another temporary modification. None of these modifications were through HAMP.

**1. Nichole Williams Is Eligible For A Loan Modification Through HAMP.**

64. After HAMP was announced by Defendants, Ms. Williams worked with her housing counselor to gain access to the government program. Homecomings, a subsidiary of GMAC, is one of the mortgage loan servicers who agreed to provide loan modifications through and administer HAMP on behalf of the government, as well as abide by all of the government's program requirements.

65. On multiple occasions Ms. Williams specifically asked for a modification under the HAMP program, and stated that she wanted a modification under HAMP.

66. She or her housing counselor made these requests to participate in HAMP by facsimile, e-mail, and verbally over the phone.

67. Ms. Williams is eligible for HAMP, because she meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than \$729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent, approximately four monthly payments are past due. Finally, the monthly payments for the mortgage loan are more than 31% of her gross monthly income.

**2. Nichole Williams Is Effectively Denied Access To A Loan Modification Through HAMP.**

68. Despite Ms. Williams' specific requests, on June 16, 2009, Homecomings did not offer a temporary or permanent loan modification through HAMP. Instead, the offer was just another temporary Homecomings program similar to others that she had been offered.

69. The temporary program offers none of the benefits or sustainability that is a part of a loan modification through HAMP. Specifically, Ms. Williams is to make three monthly payments of \$1,582.21 (more than 31% of her monthly income), and then it is unclear what will happen after the three months.

70. Ms. Williams knows that she does not have enough money to get current on her mortgage loan, and is fearful that at any moment Homecomings will initiate foreclosure proceedings even though she is eligible for HAMP. Once foreclosed, Ms. Williams and her children will be uprooted and it will cause irreparable harm.

**C. Carey Koppenberg's Denial Of A Loan Modification and Sheriff's Sale Was In Violation Of Her Due Process Rights.**

71. Ms. Koppenberg and her husband owned their home for fifteen years. They purchased the property in June of 1994. They had two affordable mortgages on the property. Since they were both working, they were able to make their mortgage payments.

72. On August 27, 2008, Ms. Koppenberg's husband passed away. Although his medical expenses were largely covered by insurance, there was little life insurance to help Ms. Koppenberg continue making the mortgage payments.

73. After Ms. Koppenberg's husband passed away, she became delinquent on the mortgage payments. Although she continued to work, and even took on a part-time job, it was not enough to cover the loss of his income.

**1. Carey Koppenberg Is Eligible For A Loan Modification Through HAMP.**

74. In the late fall of 2008, Ms. Koppenberg began working with a housing counselor from Carver County Community Development Agency, to help save her home from foreclosure.

75. Once the Home Affordable Modification Program was announced, the housing counselor recommended that Ms. Koppenberg apply for the program, because they both believed she was eligible.

76. Ms. Koppenberg's mortgage loan is owned by Fannie Mae.

77. Ms. Koppenberg is eligible for HAMP, because she meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than \$729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent; indeed, her home sold at a sheriff's sale. Finally, the monthly payments for the mortgage loan were more than 31% of her gross monthly income.

78. Ms. Koppenberg completed the HAMP application and submitted it her mortgage servicer, U.S. Bank in late May 2009. Ms. Koppenberg even called to confirm they had received her application packet. A representative from U.S. Bank confirmed that they had received her HAMP application on June 1, 2009.

**2. Carey Koppenberg's House Was Foreclosed and Sold At A Sheriff's Sale Without Adequate Notice or Opportunity to Appeal The Decision.**

79. Ms. Koppenberg's home was sold at a sheriff's sale on June 7, 2009, despite the ban on foreclosures while HAMP applications are pending.

80. US Bank, as an agent of the United States Department of the Treasury, the Federal Housing Finance Agency and Fannie Mae, failed to follow the HAMP guidelines loss mitigation waterfall, and violated Ms. Koppenberg's procedural due process rights by denying her access to a benefit for which she is entitled.

81. Before Ms. Koppenberg's home was sold at the sheriff's sale, she was not given notice of denial from HAMP, nor was she given an opportunity to appeal the decision.

82. Currently, Ms. Koppenberg does not have the money to redeem her property by December 7, 2009. Ms. Koppenberg is under stress and fearful of what will happen in December, because she does not have any other housing arrangements.

**D. Carrie Strohmayer's Denial Of A Loan Modification Was In Violation Of Her Due Process Rights.**

83. In the fall and winter of 2008, Ms. Strohmayer anticipated a financial hardship approaching, as her marriage was ending. As part of the separation, Ms. Strohmayer agreed to take full responsibility of the home. Her ex-husband moved out and stopped contributing towards the mortgage in January 2009.

84. Ms. Strohmayer's mortgage loan is owned by Fannie Mae.

85. Despite the drastic fall in household income, Ms. Strohmayer prioritized her mortgage payments, and was current until June 2009. This meant, however, that she was late making other monthly payments, such as her car payment.

86. In March 2009, Ms. Strohmayer called her mortgage servicer, GMAC Mortgage, about applying for a HAMP loan modification. She filled out and sent in the appropriate documentation to apply for the program.

**1. Carrie Strohmayer Is Eligible For A Loan Modification Through HAMP.**

87. GMAC Mortgage, as an agent of the United States Department of the Treasury, the Federal Housing Finance Agency and Fannie Mae, failed to follow the HAMP guidelines loss mitigation waterfall, and violated Ms. Koppenberg's procedural due process rights by denying her access to a benefit for which she is entitled.

88. Ms. Strohmayer is eligible for the HAMP loan modification. She meets all of the program's eligibility requirements. First, the mortgage loan relates to her primary residence and it is far less than \$729,750. Second, the mortgage loan was originated prior to January 1, 2009. Third, she is delinquent; she is currently about three months behind in payments. Finally, the monthly payments for the mortgage loan are more than 31% of her gross monthly income.

89. Currently, Ms. Strohmayer is not working, but she is receiving income. First, she received about \$900 a month in child support payments. Second, she receives about \$2,300 a month in social security income for the care she gives her nephews.

90. When her brother was killed in a car accident in 2002, Ms. Strohmayer took responsibility for her two nephews, because the children's mother was unable to do so. The youngest nephew needs full-time care as he is disabled.

**2. Carrie Strohmayer Was Denied Access To A Loan Modification Through HAMP.**

91. After Ms. Strohmayer filled out and sent in her HAMP application in March, she called on or about April 14, 2009 for an update on the application. She was told by a representative that GMAC Mortgage had not yet received her application.

92. On or about April 15, 2009, Ms. Strohmayer called back, and was told by a different GMAC Mortgage representative that they had, in fact, received her HAMP application.

93. The representative then stated they would need another fourteen (14) days, but then GMAC would call Ms. Strohmayer back to let her know whether or not she was accepted into the program.

94. Ms. Strohmayer never received that phone call, so she called GMAC back in May to check the status of her application. She was told by a representative that she was accepted into HAMP, but she never received any paperwork notifying her of her acceptance.

95. June 2009 was the first month that Ms. Strohmayer was unable to make her regular monthly mortgage payment. She has not been able to catch up since.

96. On Tuesday, July 28, 2009, Ms. Strohmayer called GMAC again, to check the status of her loan modification. Another GMAC representative told her that she was denied a HAMP loan modification. The representative further stated that GMAC had communicated this message to her previously. Ms. Strohmayer, however, never received any denial communication – whether by phone or mail – from GMAC Mortgage.

97. The representative from GMAC stated the reason she was denied was because her debt-ratio was too high. Ms. Strohmayer was not given an explanation of what numbers were used to make this determination. This explanation is confounding, because, if Ms. Stohmayer’s debt wasn’t high, she would not need a HAMP loan modification.

98. Ms. Strohmayer demanded a written explanation of her denial, but has not received a written denial letter.

**E. Congress Acts and the Federal Government Gets The Authority To Create A Foreclosure Prevention and Loan Modification Program.**

99. Congress passed the Emergency Economic Stabilization Act of 2008 (the “Act”) on October 3, 2008.

100. The purpose of the Act was to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority was used, in part, to “preserve homeownership.”

101. In addition to allocating \$700 billion to the United States Department of the Treasury, the Act also specifically granted the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program or TARP. 12 U.S.C. §§ 5211, 5225 (2008).

102. In exercising its authority to administer TARP, Congress mandated that the Secretary “shall” take into consideration the “need to help families keep their homes and to stabilize communities.” 12 U.S.C. § 5213(3) (2008). To that end, Congress created two specific sections within Title I of the Act related to homeowners. *See Id.*

103. Section 109 is entitled “Foreclosure Mitigation Efforts,” and specifically states that the Secretary “shall” implement a plan to “maximize assistance for homeowners.” 12 U.S.C. § 5219(a). These efforts are to be coordinated with other federal agencies including the Federal Housing Finance Agency, which is the conservator for Fannie Mae and Freddie Mac. *Id.*

104. The Act further requires the Secretary to consent to any reasonable loan modification offer:

[T]he Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitations on modifications.

12 U.S.C. 5219(c).

105. Similarly, Section 110 requires the Federal Housing Finance Agency, as conservator for Fannie Mae and Freddie Mac, to create and implement a plan to prevent foreclosures. Specifically, the Act states:

[T]he Federal property manager [defined, in part, as the Federal Housing Finance Agency] shall implement a plan that seeks to maximize assistance for homeowners and...minimize foreclosures.

12 U.S.C. § 5220 (b).

106. The statutory tools to be used by Fannie Mae and Freddie Mac include reducing interest rates and reducing the principal balance of mortgage loans.

**F. The Creation of the Making Home Affordable Program and HAMP.**

107. Pursuant to its legal authority, as granted to it by Congress, both the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the Making Home Affordable program on February 18, 2009.

108. Specifically, the Making Home Affordable program consists of two sub-programs.

109. The first sub-program relates to the creation of refinancing products for individuals with minimal or negative equity in their home, which eventually was entitled the Home Affordable Refinance Program or HARP.

110. The second sub-program relates to the creation and implementation of a uniform loan modification protocol, which eventually was entitled the Home Affordable Modification Program or HAMP.

111. The scope of HAMP is broad; approximately 85 percent of homeowners in the United States are eligible for the program.

112. Homeowners who meet the government's criteria and standards for the program are entitled to a loan modification pursuant to the terms of HAMP.

113. A mortgage loan servicer implementing HAMP does not have discretion to deny a homeowner access to the HAMP program, if the homeowner satisfies the government's criteria for the program.

114. HAMP is funded by the federal government, primarily with TARP funds. The Treasury Department has allocated at least \$50 billion of its TARP money to fund the refinance and modification programs and offered an additional \$25 billion of non-TARP funds, totaling \$75 billion.

115. By statute, the Treasury department, Fannie Mae and Freddie Mac must jointly develop the policies and procedures for the Making Home Affordable Program and HAMP.

116. Fannie Mae is also the fiscal agent of the federal government for HAMP.

117. Freddie Mac is responsible for compliance, meaning auditing mortgage loan servicers for compliance with program rules and protocols.

118. HAMP applies to any mortgage loan owned by Fannie Mae and Freddie Mac, as well as any loans owned by companies that accepted other TARP money or who volunteered to participate in the program.

119. As of the time of filing this action, there are approximately thirty-one servicers who have signed a contract to administer and participate in HAMP in addition to other servicers who manage Fannie Mae and Freddie Mac loans.

120. Ocwen and Homecomings both have voluntarily agreed to administer HAMP and participate in the program.

121. In signing a contract with the Treasury Department, Ocwen and Homecomings agreed to be bound by HAMP requirements and must abide by the framework and protocols for administering the benefits of HAMP.

**1. Defendants Create A Framework For The Implementation of HAMP.**

122. From March 4, 2009 to present, the Treasury Department, Fannie Mae and Freddie Mac have issued a series of directives for the servicers of mortgage loans and the implementation of HAMP.

123. The directives set forth the framework and protocol to implement HAMP. Notably, Fannie Mae and Freddie Mac both mandate that its servicers participate in HAMP. Guidelines issued by Fannie Mae, Freddie Mac, or the Treasury Department are also legally binding for program participants.

124. HAMP is always clearly identified as a program of the federal government. For example, an introductory letter to homeowners is often co-branded with the government's Making Home Affordable and servicer logos, and then begins with the following introduction:

There is help available if you are having difficulty making your mortgage loan payments. ***You may be eligible for the Home Affordable Modification program, part of the initiative announced by President Obama to help homeowners.***

125. HAMP is premised on the idea that getting a homeowner's monthly payment to 31% of the homeowner's gross monthly income will be a sustainable loan

modification. *See* U.S. Department of Treasury's Making Home Affordable Summary of Guidelines (March 4, 2009) (attached to the Complaint as Exhibit B).

126. Prior to any foreclosure, the mortgage loan servicers are required to follow three basic steps for all distressed homeowners with the goal of reaching a monthly mortgage payment of 31% of the homeowner's gross monthly income. *See* Fannie Mae, Announcement 09-05R (Exhibit C); Freddie Mac, Single Family Servicer Guide C65.1 (Exhibit D); Treasury Department, Supplemental Directive 09-01 (Exhibit E).

127. The first step is to identify the homeowner's income. Initially the income may be unverified, and then the mortgage loan servicer must create a three-month trial period while it verifies income. Once income is verified, the modification becomes permanent.

128. The second step is to calculate the "target payment," which is 31% of the homeowner's gross monthly income.

129. The third step is to implement the "loss mitigation waterfall."

130. The servicer is required to use each loss mitigation tool within the waterfall, in the correct order, until the servicer reaches the target payment.

131. There are four loss mitigation tools in the waterfall, which must be applied in the following order: (a) capitalizing arrearages, meaning that accrued interest, funds advanced by the servicer, and appropriate foreclosure expenses incurred by the servicer are added to the existing principal balance of the mortgage loan; (b) reducing the interest in increments of .125% until the target payment is reached or the servicer reaches a 2% floor; (c) extending the term of the loan or amortization period by one month increments

until the target payment is reached, but the loan schedule cannot exceed 480 months (40 years) from the date of the loan modification; and, finally (d) forbearing a part of the principal balance, meaning that the principal amount of the loan will be reduced in \$100 increments until the target payment is reached. The reduction, however, is not forgiven. It is simply a balloon payment that must be paid at the end of the loan term. The principal balance forbearance does not accrue interest or amortize. It is also not included in calculating a monthly payment.

132. Initial eligibility for HAMP is determined by the five general criteria previously described above.

**2. The government has no specific notification procedures or disclosure requirements for a homeowner that is denied access to HAMP.**

133. There are no requirements that homeowners are told the specific reasons for their denial of a HAMP modification, and, in fact, the government requires no notice at all.

134. In contrast, all HAMP servicers have very specific requirements, instructions, and model letters related to homeowners who are accepted into the program.

135. But, denial is devoid of uniformity and standards.

136. There is no model letter related to a denial of a HAMP modification.

137. There are no requirements to inform a homeowner why they are denied access to the program, or any transparency related to how the loss mitigation waterfall was applied.

138. There is only one sentence in the entire guidance issued by Fannie Mae and the Treasury Department that addresses the topic of denial.

139. In it, both Fannie Mae and the Treasury Department simply encourage servicers to communicate in writing, but such communication is not required and the notice does not need any detail:

If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HMP after the borrower has submitted a signed Trial Period Plan to the servicer, the servicer should promptly communicate that determination to the borrower in writing...

140. The one sentence in the Fannie Mae and Treasury's guidance also assumes that there was a trial period plan, which there may not be.

141. There is no written guidance or requirements at all related to homeowners who do not sign a Trial Period Plan and are denied access to the program without being given a temporary modification.

142. Similarly, Freddie Mac has a half dozen standard documents or letters to be used for correspondence with homeowners who are eligible and accepted into HAMP.

143. None of these documents relate to what and how a denial of access to HAMP should be communicated with homeowners. Elsewhere in the guide, there are no requirements that homeowners be contacted in writing related to their denial.

144. Indeed, the only other person that is required to be informed in writing of the denial and basis for the denial by the servicer is Freddie Mac.

145. Upon information and belief, even those homeowners who happen to receive notice that they were denied access to HAMP are still denied procedural due

process, because the notice does not provide the specific reasons for the denial, the Net Present Value formula and application, or an opportunity to appeal.

**3. Fannie Mae and Freddie Mac have no process to appeal an adverse decision or undo a wrongful foreclosure.**

146. As alleged above, Defendants have created specific eligibility requirements and procedures that servicers must implement to get the monthly payments of distressed homeowners to the target payment.

147. Defendants have also ordered all Fannie Mae and Freddie Mac mortgage loan servicers and other participating servicers to suspend foreclosure proceedings for all eligible homeowners until they are determined to be eligible for HAMP or, if not eligible for HAMP, another loss mitigation program offered by the servicer.

148. Specifically, on March 4, 2009, the Treasury Department, Fannie Mae, and Freddie Mac ordered all of its servicers to cease foreclosures until homeowners were evaluated for eligibility for a modification through HAMP.

149. Nonetheless, if a homeowner has been wrongfully foreclosed upon prior to evaluation for eligibility in the program, if the servicer failed to comply with the loss mitigation waterfall, or if the foreclosure was otherwise conducted in violation of the homeowner's procedural due process rights, Defendants have no uniform program or procedure to ensure that the homeowner is able to appeal and that such an appeal will be properly considered and impartially decided.

150. There is also no mandatory process for how an appeal is communicated or triggered, nor is there evaluation criteria that all servicers must use when their decision to

deny access to HAMP is appealed that would ensure “fair,” “timely,” and “appropriate” responses.

151. Furthermore, if servicers do have such a process, there is no requirement that homeowners who are denied a HAMP modification be provided written notice of how to access the appeal process.

152. Upon information and belief, the “appeals” at mortgage servicers, if any, are simply ad hoc with little or no criteria.

### **III. HOMEOWNERS ELIGIBLE FOR RELIEF HAVE LOST THEIR HOMES OR ARE AT RISK OF LOSING THEIR HOMES.**

153. The high level of foreclosures in Minnesota have continued, despite HAMP.

154. Every day tens, if not hundreds, of foreclosure Sheriff’s Sales occur throughout Minnesota.

155. Foreclosures nationwide were up 32% last April compared to a year ago. An estimated two million people will lose their homes this year.

156. In Minnesota, there were 5,157 foreclosures in the First Quarter of 2009, nearly as high as the *total* number of foreclosures that occurred in all of 2005.

157. Nearly 1,000 public records related to foreclosure Sheriff’s Sales have been reviewed pertaining to foreclosures that have occurred in Hennepin and Washington Counties.

158. Due to the securitization of mortgage loans (converting a pool of mortgage loans into bonds, and selling the income streams to a myriad of investors), it is often

difficult to determine the identity of the owner and servicer of the mortgage loans. However, it was clear that a substantial number of these foreclosures were of Minnesotans who were eligible and entitled for benefits through HAMP.

159. Approximately 40% to 60% of the foreclosures in Minnesota were conducted by mortgage loan servicers bound by HAMP requirements.

160. Assuming the rate of foreclosure remains consistent in the Second Quarter, approximately 3,000 people or more have been or will be denied HAMP procedural due process in the same manner as Plaintiffs Nichole Williams and Johnson Sendolo.

161. Indeed, a recent report from the United States Department of the Treasury found that a very small percentage of eligible homeowners are actually receiving a loan modification through HAMP. (Exhibit F).

162. Of the 2.7 million eligible homeowners, only 9% have actually been given a trial loan modification and an even smaller percentage have received a permanent loan modification through HAMP.

163. This report is actually quite conservative, because it only counts individuals who are 60+ days delinquent as “eligible.” In fact, an even higher number of homeowners are eligible because they are at-risk of “imminent default.”

164. Another report, from the General Accountability Office, concludes that HAMP lacks transparency and accountability. And, that the government does not have the proper resources to ensure that mortgage loan servicers have adequate staffing and comply with the limited procedures that are in place. (Exhibit G).

### CLASS ALLEGATIONS

165. Plaintiffs Nichole Williams, Johnson Sendolo, Carey Koppenberg, and Carrie Strohmayer bring this class action on behalf of themselves and, pursuant to Fed. R. Civ. P. 23(b)(2), and all others similarly situated. The Plaintiffs seek certification of the following class:

Borrowers who are: (a) Minnesota homeowners who have a mortgage loan owned by Fannie Mae or Freddie Mac or that is serviced by a mortgage loan servicer who has volunteered to participate in HAMP, (b) who currently occupy the mortgaged property as their primary residence, and (c) have been or will be denied a loan modification through HAMP without receiving a notice of the reason for the denial or an opportunity to appeal. There are two subclasses:

- (1) Borrowers, like Ms. Williams and Ms. Strohmayer with mortgages that are currently in pre-foreclosure proceedings or at-risk of being foreclosed upon, although a sheriff's sale has not yet occurred; and
- (2) Borrowers, like Mr. Sendolo and Ms. Koppenberg, whose homes have been sold at a sheriff's sale after March 4, 2009.

The Court, court personnel, employees, and officers of Defendants are expressly excluded from this Class and its subclasses. This class period runs from the applicable statute of limitations as calculated from the date of service of Plaintiffs' Complaint.

166. Numerosity: The members of the class are so numerous that joinder of all members is impractical. Plaintiffs estimate that thousands of Minnesotans are at risk of foreclosure in 2009. There were approximately 5,157 foreclosures that occurred in just Minnesota just in the First Quarter of 2009.

167. According to the Treasury Department, approximately 85% of all homeowners are potentially eligible for HAMP.

168. Commonality: Common questions of law and fact exist as to all members of the class. Among the questions of law or fact to the class are:

- i. Whether the Defendants' failure to promulgate regulations, guidelines or rules requiring all servicers of Defendants' mortgage loans or participants in HAMP to provide and, in fact, provide notice through a written decision setting forth the reason for denial of access to HAMP, and showing proper application of the "loss mitigation waterfall" and the formula for the Net Present Value determination is a violation of their rights to procedural due process;
- ii. Whether Defendants failure to promulgate regulations, guidelines or rules offering a reasonable opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker prior to any adverse action is a violation of their rights to procedural due process; and
- iii. Whether Defendants failure to promulgate regulations, guidelines or rules providing an administrative or legal mechanism to undo a Sheriff's Sale that occurred related to a homeowner who was eligible and qualified for HAMP is a violation of the their rights to procedural due process.

169. Typicality and Adequacy: The claims and defenses of the Plaintiffs are typical of the claims and defenses of the Plaintiff Class and the subclasses they represent. The Plaintiffs and all class members are subject to the same unconstitutional conduct of the Defendants, except the Plaintiffs in subclass (2) will be specifically benefited by relief related to the failure to provide an administrative or legal mechanism to undo a Sheriff's Sale that occurred related to a homeowner who was eligible and qualified for HAMP. Plaintiffs have retained counsel competent and experienced in class action and consumer litigation. Neither the Plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action.

170. The class action is maintainable, pursuant to Fed. R. Civ. P. 23(b)(2) because the Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

171. Subclass (1) is properly certified as a class pursuant to Fed. R. Civ. P 23(c). The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

172. Subclass (2) is properly certified as a class pursuant to Fed. R. Civ. P 23(c). The Defendants have acted and refused to act on grounds 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:  
VIOLATION OF DUE PROCESS  
FAILURE TO PROMULGATE RULES REQUIRING  
SERVICERS TO PROVIDE NOTICE OF DENIAL**

173. Plaintiffs individually and representing subclass 1 and 2, re-allege all prior paragraphs of this Complaint.

174. The Fifth Amendment to the United State Constitution commands the federal government: “No person shall...be deprived of life, liberty, or property, without due process of law....”

175. HAMP is an entitlement program such that its benefits cannot be administered arbitrarily and without procedural due process.

176. Procedural due process requires meaningful notice of a specific reason why a person has been denied.

177. Procedural due process further requires an opportunity to correct mistakes or appeal an adverse decision as well as notice of such an opportunity.

178. Government entities administering entitlement programs such as Defendants are constitutionally obligated to provide program regulations, guidelines, or rules which comport with procedural due process.

179. In violation of the Fifth Amendment, Defendants are required to have promulgated regulations, guidelines or rules that require servicers of Defendants’ mortgage loans or participants in the HAMP to provide a written notice stating the reason for denial and showing proper application of the “loss mitigation waterfall” and Net Present Value determination as well as the procedure to appeal an adverse decision.

**COUNT II:  
VIOLATION OF DUE PROCESS  
FAILURE TO PROMULGATE RULES REQUIRING  
SERVICERS TO PROVIDE A RIGHT TO APPEAL**

180. Plaintiffs individually and representing subclass 1 and 2, re-allege all prior paragraphs of this Complaint.

181. The Fifth Amendment to the United State Constitution commands the federal government: “No person shall...be deprived of life, liberty, or property, without due process of law....”

182. HAMP is an entitlement program such that its benefits cannot be administered arbitrarily and without procedural due process.

183. Procedural due process requires meaningful notice of the specific reason why a person has been denied, and, in order to be meaningful, procedural due process further requires an opportunity to correct mistakes or appeal an adverse decision as well notice of such an opportunity.

184. Government entities administering entitlement programs such as Defendants are constitutionally obligated to provide program regulations, guidelines, or rules which comport with procedural due process.

185. In violation of the Fifth Amendment, Defendants are required to have promulgated regulations that create a uniform process to provide homeowners an unbiased and uniform process to evaluate and reverse adverse decisions related to HAMP

and undo adverse actions, such as a Sheriff's sale, and provide a written decision related to the appeal.

**RELIEF**

186. For violations of Counts I and II, Plaintiffs Nichole Williams and Carrie Strohmayer individually and for subclass 1 asks this Court to:

A. Declare Defendants conduct is a violation of procedural due process;

B. Enjoin Defendants and their agents, nominees, attorneys, employees, representatives or anyone acting in concert or participation with Defendants from accelerating mortgage payments or the amount due, authorizing a foreclosure or Sheriff's sale, requesting or scheduling a Sheriff's sale, foreclosing, publishing a notice of foreclosure or Sheriff's sale, or filing a lawsuit or initiating a foreclosure sale unless or until:

- i. Promulgating regulations, guidelines, or rules that require mortgage loan servicers to notify, in writing, that a homeowner has been denied access to participate in HAMP and other loan modification or loss mitigation programs offered by the servicer;
- ii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers provide a written decision stating the reason for denial, and showing proper application of the "loss mitigation waterfall;"

- iii. Promulgating regulations, guidelines, or rules that require notice of an opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker;
- iv. Promulgating regulations, guidelines, or rules that require the disclosure of the factors and specific formula used to determine a “positive” or “negative” result by the Net Present Value calculator; and
- v. Promulgating regulations, guidelines, or rules that provide a reasonable opportunity for a homeowner to appeal to an unbiased decision-maker;

C. Award all costs and attorneys’ fees pursuant to 28 U.S.C. § 2412

(2008); and

D. Such other and further relief, including equitable relief, as the Court deemed just and appropriate.

187. For violations of Counts I and II, Plaintiff Johnson Sendolo and Carey Koppenberg individually and for subclass 2 asks this Court to:

A. Declare that Defendants conduct is a violation of procedural due process;

B. Enjoin all Defendants and their agents, nominees, attorneys, employees, representatives or anyone acting in concert or participation with Defendants from liquidating, selling, transferring, repossessing, or in any other way proceeding against or depriving Plaintiffs’ of their property unless and until:

- i. Defendants identify all Minnesota homeowners who are eligible for HAMP and were foreclosed upon from March 4, 2009 to the present;
- ii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers to notify, in writing, that a homeowner has been denied access to participate in HAMP and other loan modification or loss mitigation programs offered by the servicer;
- iii. Promulgating regulations, guidelines, or rules that require mortgage loan servicers provide a written decision stating the reason for denial, and showing proper application of the “loss mitigation waterfall;”
- iv. Promulgating regulations, guidelines, or rules that require notice of an opportunity for the homeowner to appeal or provide additional information to a neutral decision-maker;
- v. Promulgating regulations, guidelines, or rules that require the disclosure of the factors and specific formula used to determine a “positive” or “negative” result by the Net Present Value calculator;
- vi. Promulgating regulations, guidelines, or rules that provide a reasonable opportunity for a homeowner to appeal to an unbiased decision-maker; and

vii. Promulgating regulations, guidelines, or rules that create a process for the foreclosure sale or Sheriff's sale to be avoided, the foreclosure lawsuit or foreclosure by action dismissed, and the homeowner's property rights restored if the homeowner is eligible and qualified for HAMP and chooses to avail themselves of HAMP or other loan modification or loss mitigation programs offered by the servicer.

C. All costs and attorneys' fees pursuant to 28 U.S.C. § 2412 (2008);

and

D. Such other and further relief, including equitable relief, as the Court deemed just and appropriate.

Dated: August 17, 2009

/s/ Mark Ireland  
Mark Ireland (303690)  
Jane Bowman (388598)  
Timothy Thompson (0109447)

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