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STATE OF MICHIGAN  
WAYNE COUNTY CIRCUIT COURT

ISSA, ZEINAB , et al. v GMAC INC  
Hon. John H. Gillis, Jr. 04/15/2010



10-004439-CZ

ZEINAB ISSA and ALI BARAKAT, husband  
and wife, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

GMAC, INC., a Delaware corporation; and  
GMAC MORTGAGE, L.L.C., a Delaware  
corporation,

Defendants.

FIRST AMENDED COMPLAINT

CLASS ACTION  
&  
JURY DEMAND

(Honorable John H. Gillis, Jr.)

FILED  
CLERK OF COURT  
WAYNE COUNTY  
DETROIT, MICHIGAN  
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20  
21 **PLAINTIFFS COMPLAINT FOR BREACH OF CONTRACT, BREACH OF DUTY OF**  
22 **GOOD FAITH AND FAIR DEALING, PROMISSORY ESTOPPEL, VIOLATION OF**  
23 **THE MICHIGAN CONSUMER MORTGAGE PROTECTION ACT, DEFAMATION,**  
24 **SPECIFIC PERFORMANCE, UNJUST ENRICHMENT AND NEGLIGENT**  
25 **INFLECTION OF EMOTIONAL DISTRESS,**

1  
2 **NOW COME** the Plaintiffs ZEINAB ISSA and ALI BARAKAT, husband and wife, on  
3 behalf of themselves and all others similarly situated (collectively, "Plaintiffs"), by and through  
4 their attorneys HADOUSCO. PLLC and THE LAW FIRM OF PUCKETT AND FARAJ, PC,  
5 and in accordance with Michigan Court Rule 2.118 for their First Amended Complaint against  
6 Defendant GMAC, INC.; and GMAC MORTGAGE, L.L.C. ("GMAC"), alleging the following:

7 **INTRODUCTION**

8 1. The Troubled Asset Relief Program ("TARP") was implemented in 2008 to "bail  
9 out" failing banks and lenders. At the time, GMAC, the financing arm of General Motors  
10 Corporation, was not eligible to receive TARP funds. GMAC accessed TARP funds by altering  
11 its capital structure to become a bank holding company in late 2008.

12 2. Since becoming a bank holding company, GMAC has accepted approximately  
13 Sixteen Billion Three Hundred Million Dollars (\$16,300,000,000.00) in TARP funds from the  
14 United States Government. By accepting these funds, GMAC agreed that it would participate in  
15 one or more programs that TARP authorized the Secretary of the Treasury to establish to  
16 minimize foreclosures.

17 3. In accordance with the TARP mandate, the United States Treasury implemented  
18 the Home Affordable Modification Program ("HAMP"), a program to stem the foreclosure crisis  
19 by providing affordable mortgage loan modifications to eligible borrowers. Banks who accepted  
20 TARP funds are subject to mandatory inclusion in HAMP as are certain classes of mortgage  
21 loans, namely those held by the Federal National Mortgage Association ("Fannie Mae") and the  
22 Federal Home Loan Mortgage Corporation ("Freddie Mac").

23 4. GMAC signed a contract with the United States Treasury on April 13, 2009  
24 (attached as *Exhibit 1* and included by reference) agreeing to comply with the HAMP  
25 requirements and to perform loan modification and other foreclosure prevention services  
26 included in the HAMP guidelines. These guidelines required GMAC to:

- 27 - Identify loans that are eligible for HAMP, through both internal review  
28 and in response to homeowner requests.

- 1 - Collect financial and other pertinent information from homeowners to  
2 evaluate whether the homeowner is eligible for a loan modification under  
3 HAMP.
- 4 - Institute a modified loan with a reduced payment amount pursuant to a  
5 mandatory formula that is effective for a three-month trial period for  
6 homeowners that are eligible for a modification.
- 7 - Provide a permanent loan modification to homeowners who comply with  
8 the requirement during the trial period. Whether the homeowner qualifies  
9 for a loan modification or not, participating servicers are also required to  
10 provide written notices to every mortgage borrower that has been  
11 evaluated for a loan modification, whether or not the borrower has been  
12 found eligible.

13 5. Though GMAC has accepted approximately Sixteen Billion Three Hundred  
14 Million Dollars (\$16,300,000,000.00) in TARP funds and entered into a contract with the United  
15 States Treasury binding itself to comply with the HAMP directives, GMAC has systematically  
16 failed to comply with the terms of HAMP directives and has regularly and repeatedly violated  
17 several of its prohibitions.

18 6. Under HAMP, the federal government incentivizes participating servicers to make  
19 adjustments to existing mortgage obligations to minimize home foreclosures.

20 7. Servicers receive One Thousand Dollars (\$1,000.00) for each HAMP  
21 modification. This incentive is countered by a number of financial factors that make it more  
22 profitable for a mortgage servicer such as GMAC to avoid permanent modifications and to keep  
23 mortgages in a state of default or distress and to push loans into foreclosure. This is especially  
24 true in cases where the mortgage is owned by a third-party investor and is merely serviced by the  
25 servicer such as GMAC. Upon information and belief, GMAC does not own a significant  
26 majority of the loans on which it functions as a servicer. Upon further information and belief,  
27 this in part, is because banks and lenders had access to a secondary market which permitted them  
28 to sell inflated, sub-prime loans to investors, freeing up capital to write more loans and to profit  
29 from the mortgage loan commission, the sale of the mortgage, and servicing the loan.

1 8. Economic factors that discourage GMAC from honoring its contractual  
2 obligations under HAMP include the following<sup>1</sup>:

- 3 - GMAC may be required to repurchase loans from the investor to  
4 permanently modify the mortgage. This presents a substantial cost and  
5 loss of revenue that can be avoided by keeping the loan in a state of  
6 temporary modification or lingering default.
- 7 - The monthly service fee that GMAC collects as a servicer of a pool of  
8 loans is calculated as a fixed percentage of the unpaid principal balance of  
9 the loans in the pool. Consequently, modifying a loan to reduce principal  
10 balance results in a lower monthly fee to the servicer.
- 11 - Fees that GMAC charges borrowers in default constitute a significant  
12 source of revenue. Aside from the income directly received, late fees and  
13 "process management fees" are typically added to the principal balance  
14 thereby increasing the unpaid principal balance and increasing the  
15 servicer's monthly service fee.
- 16 - Entering into a permanent modification will often delay a servicer's ability  
17 to recover advances it is required to make to investors of the unpaid  
18 principal and interest payment of a non-performing loan. The servicer's  
19 right to recover expenses from an investor in a loan modification, rather  
20 than a foreclosure, is less clear and less generous.
- 21 - Fixed overhead costs in performing permanent modifications involve up-  
22 front costs such as staff, infrastructure, property valuation, credit reports,  
23 and financing costs.

24 9. Rather than allocating adequate resources and working to reduce the number of  
25 loans in danger of default or by entering into permanent modifications, GMAC has serially  
26 strung out, delayed, and otherwise impeded the loan modification objective that it undertook to  
27 meet when it was granted bank holding company status by the Federal Reserve Bank and

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<sup>1</sup> See Thompson, Diane E., *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior*, National Consumer Law Center (October 2009).

1 accepted billions of dollars in TARP funds from the United States Treasury. GMAC's delay and  
2 obstruction tactics have taken various forms with the common result that homeowners with loans  
3 serviced by GMAC, who are eligible for permanent loan modifications, and who have met the  
4 HAMP requirements, have not received the permanent loan modifications to which they are  
5 entitled.

6 10. In addition to its contractual obligations with the United States Treasury, GMAC  
7 has entered into written agreements with individual homeowners, including Plaintiffs, for  
8 temporary loan modifications that must be converted to permanent loan modifications. Plaintiffs  
9 and a similar class of borrowers have complied with the agreements by submitting the  
10 documentation asked of them and, when requested, by making payments. Despite Plaintiffs'  
11 efforts, GMAC has ignored its contractual obligation to permanently modify their loans  
12 permanently.

13 11. Because GMAC is not meeting its contractual obligations, at least hundreds of  
14 Michigan homeowners are wrongfully being deprived of an opportunity to cure their  
15 delinquencies, pay their mortgage loans, and to save their homes. By failing to live up to its  
16 contractual obligations with the United States Treasury as well as the terms of the contracts it  
17 formed with individual homeowners, GMAC has left thousands of borrowers in a state of  
18 limbo—often worse off than they were before they sought a loan modification from GMAC.  
19 GMAC's actions violate their contractual obligations, thwart the purpose of HAMP, and are  
20 illegal under Michigan law.

21 12. Plaintiff Issa and Plaintiff Barakat bring this suit on behalf of themselves and a  
22 Class of similarly situated Michigan residents ("Plaintiffs") to challenge the failure of Defendant  
23 GMAC ("Defendant" or "GMAC") to honor the terms of their agreement with the United States  
24 Treasury for the intended benefit of homeowners, their failure to honor loan modification  
25 agreements entered into directly with individual homeowners, and to recover any illegally  
26 collected upfront fees.

### 27 PARTIES AND JURISDICTIONAL ALLEGATIONS

28 13. Plaintiff Issa and Plaintiff Barakat reside at 1322 Plainfield, Dearborn Heights,  
29 Michigan 48127.

1 14. Defendant GMAC, Inc. is a Delaware corporation doing business in the State of  
2 Michigan.

3 15. Defendant GMAC Mortgage, L.L.C. is a Delaware limited liability company  
4 doing business in the State of Michigan.

5 16. The matters alleged herein occurred in Wayne County in the State of Michigan.

6 17. The amount in controversy, excluding costs and attorney fees, is in excess of  
7 Twenty-Five Thousand Dollars (\$25,000.00).

8 18. Jurisdiction and venue are proper with this court.

9 19. There is no other pending or resolved civil action arising out of the transaction or  
10 occurrence alleged in the complaint.

11 20. Plaintiffs hereby demand a trial by jury in this matter.

### 12 **FACTUAL BACKGROUND**

#### 13 **A. The Mortgage Crisis**

14 21. The United States has experienced a foreclosure crisis over the past three years.  
15 A congressional oversight panel has recently noted that one in eight U.S. mortgages is currently  
16 in foreclosure or default<sup>2</sup>.

17 22. Michigan has been no exception. Michigan ranked eighth among states in  
18 foreclosures in 2009.<sup>3</sup> Foreclosure rates in April 2010 were 77% higher than in April 2009.<sup>4</sup>

19 23. Economists predict that the interest rate resets on the riskiest of lending products  
20 will not peak until sometime in 2011. See Eric Tymoigne, *Securitization, Deregulation,*  
21 *Economic Stability, and Financial Crisis*, Working Paper No. 573.2 at 9, Figure 30, available at

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<sup>2</sup> Congressional Oversight Panel, Oct. 9, 2009 report at 3. Available at <http://cop.senate.gov/reports/library/report100909-cop.cfin>.

<sup>3</sup> *Michigan Foreclosures Reflected Highest Unemployment Rates*. Available at <http://Bankforeclosuresale.com>

<sup>4</sup> Steve Carmody, Michigan Radio, *Foreclosure Rates Rising In Michigan Again* (May 13, 2010). Available at <http://www.publicbroadcasting.net/michigan/news.newsmain/article/5/0/1649006/Business/Foreclosure.Rate.Rising.in.Michigan.Again>.

1 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1458413](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1458413) (citing a Credit Suisse study  
2 showing monthly mortgage rate resets).

3 **B. Creation Of The Home Affordable Modification Plan**

4 24. Congress passed the Emergency Economic Stabilization Act of 2008 on October  
5 3, 2008 and amended it with the American Recovery and Reinvestment Act of 2009 on February  
6 17, 2009 (collectively, the "Act"). 12 U.S.C.A. § 5201 *et seq.* (2009)

7 25. Congress intended to grant the Secretary of the Treasury the authority to restore  
8 liquidity and stability to the financial system, and to ensure that such authority would be used in  
9 a manner that "protects home values" and "preserves homeownership." *Id.*

10 26. The Act grants the Secretary the authority to establish the Troubled Asset Relief  
11 Program ("TARP"). 12 U.S.C. § 5211. Under TARP, the Secretary may purchase or make  
12 commitments to purchase troubled assets from financial institutions. *Id.*

13 27. The United States Department of the Treasury was allocated up to Seven Hundred  
14 Billion Dollars (\$700,000,000,000.00) in federal funds for TARP. 12 U.S.C. § 5225.

15 28. In exercising its authority to administer TARP, the Act mandates that the  
16 Secretary shall consider the "need to help families keep their homes and to stabilize  
17 communities." 12 U.S.C. § 5213(3).

18 29. The Act further mandates, regarding assets acquired by the Secretary that are  
19 backed by residential real estate, that the Secretary "shall implement a plan that seeks to  
20 maximize assistance for homeowners" and use the Secretary's authority over servicers to  
21 encourage them to take advantage of programs to "minimize foreclosures." 12 U.S.C. § 5219.  
22 The Act grants authority to the Secretary of the Treasury to use credit enhancement and loan  
23 guarantees to "facilitate loan modifications to prevent avoidable foreclosures." *Id.*

24 30. On February 18, 2009, pursuant to their authority under the Act, the Secretary and  
25 the Director of the Federal Housing Finance Agency announced the Making Home Affordable  
26 program.

27 31. The Making Home Affordable program consists of two subprograms. The first  
28 relates to the creation of refinancing products for individuals with minimum or negative equity in  
29 their home, and is now known as the Making Home Affordable Refinance Program ("HARP").

1 The second relates to the creation and implementation of a uniform loan modification protocol,  
2 and is now known as the Home Affordable Modification Program ("HAMP"). It is HAMP that  
3 is at issue in this case.

4 32. The United States government funds HAMP, primarily with TARP funds. The  
5 Treasury Department has allocated at least Seventy-five Billion Dollars (\$75,000,000,000.00) to  
6 HAMP, of which approximately Fifty Billion (\$50,000,000,000.00) is TARP funds.

7 **C. Duties Of A Participating Loan Servicer Under HAMP**

8 33. Because GMAC accepted Sixteen Billion Two Hundred Ninety Million Dollars  
9 (\$16,290,000,000.00) in federal funds and additional loan guarantees, it was required to  
10 participate in HAMP for the loans on which it functions as a "loan servicer." On April 13, 2009,  
11 Joseph A. Pensabene, Executive Vice President and Chief Servicing Officer of GMAC,  
12 Mortgage, LLC, executed a Servicer Participation Agreement ("SPA") with the federal  
13 government. (A copy of the GMAC Servicer Participation Agreement is attached hereto as  
14 *Exhibit 1*).

15 34. The SPA executed by Mr. Pensabene incorporates all "guidelines," "procedures,"  
16 and "supplemental documentation, instructions, bulletins, frequently asked questions, letters,  
17 directives, or other communications," referred to as "Supplemental Directives" issued by the  
18 Treasury, Fannie Mae, or Freddie Mac in connection with the duties of Participating Servicers.  
19 These documents together are known as the "Program Documentation" (SPA I.A.), and are  
20 incorporated by reference herein. The SPA mandates that a Participating Servicer "shall  
21 perform" the activities described in the Program Documentation "for all mortgage loans it  
22 services." SPA I.A., 2.A.<sup>5</sup>

23 35. The First Supplemental Directive ("SD") was issued on April 6, 2009, and states  
24 that the national mortgage modification program was "aimed at helping 3 to 4 million at-risk  
25 homeowners (homeowners in default and those who are at imminent risk of default) by reducing  
26 monthly payments to sustainable levels." See SD 09-01 (Ex. 2) at p. 1. This directive and the

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<sup>5</sup> The Program Documentation also includes Supplemental Directive 09-01 ("SD-09-01," attached hereto as *Exhibit 2*)



1 directives to follow were issued to provide guidelines for adoption and implementation of  
2 HAMP “to provide a borrower with sustainable monthly payments.” *Id.*

3 36. The Program Documentation requires Participating Servicers to evaluate all loans  
4 which are 60 or more days delinquent or appear to be in imminent default (as defined by the  
5 Program Documentation), to determine which loans meet HAMP eligibility criteria. *See* SD 09-  
6 01 (Ex. 2) at p. 4. In addition, if a borrower contacts a Participating Servicer regarding a HAMP  
7 modification, the Participating Servicer must collect income and hardship information to  
8 determine if the borrower is eligible for a HAMP modification. *Id.* at pp. 3-4.

9 37. A HAMP modification consists of two stages. First, a participating Servicer is  
10 required to gather information and, if appropriate, offer the homeowner a Trial Period Plan (a  
11 “TPP” or “Workout Plan”). Second, upon successful completion of the TPP, the Servicer must  
12 offer the homeowner a permanent modification.<sup>6</sup>

13 38. A Mortgage is eligible for HAMP if criteria enumerated in the Program  
14 Documentation are met. Aside from criteria that require that the loan be a first lien mortgage  
15 originated before 2009, that the property be occupied, and that it be the borrower’s principal  
16 residence, the most salient conditions are that the loan is delinquent or default is reasonably  
17 foreseeable; that the borrower documents a financial hardship (as defined in the Program  
18 Documentation); and that the “borrower has a monthly mortgage payment ratio of greater than  
19 thirty-one percent (31%)” of the borrower’s monthly income.

20 39. Once the Participating Servicer has determined a mortgage borrower’s eligibility  
21 for a HAMP modification, the servicer must apply the modification steps enumerated in the  
22 Program Documentation, in the stated order of succession until the borrower’s monthly mortgage  
23 payment ratio is reduced to thirty-one percent (31%) of the borrower’s monthly income. These  
24 steps include capitalizing accrued interest and escrow advances, reducing the interest rate,  
25 extending the term and re-amortizing the loan (if necessary), and providing a principal  
26 forbearance (if necessary). *See* SD 09-01 (Ex. 2) pp. 8-10.

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<sup>6</sup> The eligibility criteria for HAMP, as well as the formula used to calculate monthly mortgage payments under the modification are explained in SD-09-01 (Ex. 2).

1           40. After applying the enumerated modification steps to calculate the modified  
2 payment amount, a servicer must offer the borrower a TPP. The TPP consists of a three-month  
3 period in which the homeowner makes mortgage payments based on the modification formula  
4 stated in the Program Documentation. GMAC uses a standard form agreement to offer TPPs to  
5 eligible homeowners. This agreement describes the homeowner's duties and obligations under  
6 the plan and promises a permanent HAMP modification for those homeowners that execute the  
7 agreement and fulfill the documentation and trial period payment requirements.

8           41. If the homeowner executes the TPP Agreement, complies with all documentation  
9 requirements and makes all three TPP monthly payments, the second stage of the HAMP process  
10 is triggered, in which the homeowner must be offered a permanent modification. The payment  
11 amount and interest rate in the modified loan are fixed for five years and equal to the payment  
12 amount and interest rate in the TPP. Thereafter, the rate may escalate annually by up to one  
13 percent (1%) until it reaches an interest cap which is the lesser of: (i) the fully indexed and fully  
14 amortized contract rate or (ii) the Freddie Mac Primary Mortgage market Survey rate for 30-year  
15 fixed mortgage rate loans on the date the modification is prepared. Once capped, the rate is fixed  
16 for the remainder of the term. *See* SD 09-01 (Ex. 2) at p. 9.

17           42. HAMP prohibits a Participating Servicer from engaging in the following:  
18           - Proceeding with a foreclosure sale. Any foreclosure sale must be  
19           suspended and no new foreclosure action may be initiated during the Trial  
20           Period. *See* SD 09-01 (Ex. 2) at p.14.  
21           - Requiring the borrower to make an initial contribution payment pending  
22           the processing of a trial period plan before the plan starts.  
23           - Reporting borrowers as delinquent to credit reporting bureaus without  
24           explanation. For borrowers who are current when they enter a trial period,  
25           the servicer should report the borrower current but on modified payment if  
26           the borrower makes timely payments during the trial period. For  
27           borrowers who are delinquent when they enter the trial period, the servicer  
28           should report in such manner that accurately reflects the borrower's  
29           current workout status. *See* SD 09-01 (Ex. 2) at p. 22.

1           - Assessing prepayment penalties for full or partial prepayment as part of  
2           the modification.

3           43.    The HAMP requires a Participating Servicer to send a Borrower Notice to every  
4 borrower that has been evaluated for HAMP but is not offered a TPP, is not offered an official  
5 HAMP modification, or is at risk of losing eligibility for HAMP because they have failed to  
6 provide required financial documentation.

7           44.    The HAMP presumes that final modifications will be extended and finalized upon  
8 completion of a TPP or shortly thereafter. HAMP Supplemental Documentation dated  
9 December 22, 2009 addresses situations in which the borrower has completed the TPP but has  
10 not yet received a permanent modification.

11                   In situations where an eligible borrower successfully completed the  
12 trial period and should have been converted to a permanent  
13 modification, but for reasons beyond their control were not timely  
14 evaluated for a permanent modification, the servicer must  
15 promptly make a determination whether the borrower is eligible  
16 for a permanent modification. If a borrower is eligible, then the  
17 servicer must offer the borrower a permanent HAMP modification  
18 as soon as possible, but in no event later than sixty days after  
19 discovering the error.

20  
21           *See* HAMP Supplemental Directive 09-08 (attached hereto as *Exhibit 3*).

22           45.    By entering into the SPA, GMAC covenanted that all services would be in  
23 compliance with all applicable Federal, state and local laws, specifically including state laws  
24 designed to prevent unfair, discriminatory, or predatory lending practices. *See* SPA, (Ex. 1) at  
25 paragraph 5(b).

26           46.    Under the SPA, GMAC also covenanted that it would perform the services  
27 required under the Program Documentation in accordance with the practices, high professional  
28 standards of care, and degrees of attention used in a well managed operation, and no less than  
29 which GMAC exercises for itself under similar circumstances, and that GMAC would use  
30 qualified individuals with suitable training, education, experience, and skills to perform the  
31 Services. *Id.* at paragraph 5(d).

32           47.    GMAC has routinely failed to meet its obligations under the Program Directive.  
33 Mortgage borrowers who request to be evaluated for a HAMP modification routinely face

1 unexplained delays and go weeks or months with no communication from GMAC after  
2 providing the requested information. Borrowers who attempt to contact GMAC by telephone  
3 face long periods of time on hold and are transferred between service representatives in a  
4 deliberate effort to cause the borrower to give up and terminate the call. GMAC regularly falsely  
5 informs borrowers that it did not receive requested information and demands that documents be  
6 re-sent or re-submitted.

7 48. GMAC has routinely failed to live up to its end of the TPP Agreement to offer  
8 permanent modifications to homeowners. In January 2010, the Treasury Department reported  
9 that GMAC had 65,751 HAMP-eligible loans in its portfolio. Of those, just 11,494, or  
10 approximately 17%, have resulted in permanent modifications. (A copy of the Treasury  
11 Department report through January 2010 is attached hereto as *Exhibit 4*).

12 49. By failing to live up to the TPP Agreement and convert TPPs into permanent  
13 modifications, GMAC is leaving homeowners in limbo, worried whether they will lose their  
14 home and preventing homeowners from pursuing other avenues of relief, including using money  
15 they are putting toward TPP payments to fund bankruptcy, relocation costs, short sales or other  
16 means of curing their default.

17 **D. Michigan's Response To The Foreclosure Crisis**

18 50. In an effort to stem the foreclosure pandemic that has plagued the State of  
19 Michigan, municipalities, and state residents, Governor Jennifer Granholm signed Public Act 29  
20 of 2009, Public Act 30 of 2009, and Public Act 31 of 2009 into law on May 21, 2009  
21 (collectively, the "Public Act of 2009," codified as M.C.L. 600.3205 *et seq.*)

22 51. The Public Act of 2009 is intended to help financially distressed homeowners by  
23 encouraging lenders to mediate and/or negotiate a loan modification/workout to reduce  
24 foreclosures.

25 52. Under the Public Act of 2009, an eligible borrower has the right to request a  
26 meeting with the lender to attempt a loan modification/workout. This has the effect of delaying  
27 foreclosure proceedings for a period of 90 days from the date the lender mailed notice of default  
28 to the borrower and is meant to encourage/facilitate loan modifications/workouts between  
29 lenders and borrowers. *Id.*

1 **E. Plaintiffs' Effort To Obtain A HAMP Loan Modification**

2 53. Plaintiffs purchased their home in or about April 1, 2008, borrowing funds from  
3 GMAC and securing the foregoing with a mortgage.

4 54. Plaintiffs' monthly mortgage payment was approximately One Thousand One  
5 Hundred Twelve Dollars (\$1,112.00) per month exclusive of insurance and taxes.

6 55. Plaintiffs made regularly scheduled payments on their loan and remained current  
7 until April 2009.

8 56. In or about April 2009, Plaintiff Barakat's hours were reduced by his employer  
9 and Plaintiffs suffered corresponding loss of income. This prompted Plaintiffs to contact GMAC  
10 to inquire about obtaining a loan modification.

11 57. GMAC advised Plaintiffs that they would not qualify for a loan modification  
12 unless and until they were delinquent on the note secured by their mortgage. Further to this,  
13 GMAC instructed Plaintiffs to fall behind on their mortgage payments if they wished to be  
14 considered for a loan modification.

15 58. GMAC further instructed Plaintiffs to complete and submit a financial analysis  
16 form to GMAC's loan modification department for approval, which Plaintiffs did on or about  
17 April 10, 2009.

18 59. On or about April 22, 2009, GMAC notified Plaintiffs that they qualified for a  
19 loan modification and offered Plaintiffs a Workout Plan pursuant to HAMP.

20 60. At GMAC's instruction, Plaintiffs missed their May 2009 mortgage payment.

21 61. The Workout Plan provided that GMAC would enter into a Permanent  
22 Modification Agreement with Plaintiffs that would amend and supplement (1) the Mortgage on  
23 the Property, and (2) the Note secured by the Mortgage (the "Permanent Modification") if: (i)  
24 Plaintiffs complied with the terms of the Workout Plan; and (ii) the certain Representations  
25 contained in Section 1 of the Workout Plan (the "Section 1 Representations") continued to be  
26 true in all material respects.

27 62. The Section 1 Representations were as follows:

- 1           - The Plaintiffs were experiencing a financial hardship and as a result were  
2           unable to afford their mortgage and were in default or believe they would  
3           be in default under the mortgage loan;
- 4           - The Plaintiffs use the Property as their principal residence;
- 5           - There has not been a change in ownership of the Property since the  
6           mortgage loan was signed;
- 7           - The Plaintiffs have provided or will provide documentation for all income  
8           received;
- 9           - The Plaintiffs submit under penalty of perjury that all documents and  
10          information submitted to the lender pursuant to the Plan are true and  
11          correct; and
- 12          - The Plaintiffs will obtain credit counseling if required to do so by the  
13          Lender.

14          63. Paragraph 2 of the Workout Plan provided that the Trial Period would commence  
15 on June 1, 2009 and continue until September 1, 2009. During the Trial Period, Plaintiffs would  
16 be required to pay the Defendant pursuant to the following schedule:

<u>Month</u>	<u>Amount</u>
6/1/2009:	\$1,007.50
7/1/2009:	\$1,007.50
8/1/2009:	\$1007.50
9/1/2009:	\$1,007.50

22          64. Paragraph 2 of the Workout Plan further provided that the Trial Period would  
23 conclude on the earlier of: (i) the first day of the month following the month in which the last  
24 Trial Period payment was due (*i.e.*, October 1, 2009 or the *Modification Effective Date*), or (ii)  
25 upon termination of the Workout Plan and that upon conclusion of the Workout Plan, Plaintiff's  
26 modified mortgage payment would be approximately One Thousand Seven Dollars and Fifty  
27 Cents (\$1007.50) inclusive of taxes and insurance.

28          65. As an acknowledgment of their acceptance of GMAC's offer, Plaintiffs were to  
29 submit the (1) first Trial Period Payment of One Thousand Seven Dollars and Fifty Cents

1 (\$1,007.50) and (2) supporting documentation (the supporting documentation requested was: (i)  
2 two signed copies of the Workout Plan; (ii) Plaintiffs' most recent tax return and tax return  
3 schedules; and (iii) a completed and signed Authorization Agreement for Electronic Funds  
4 Payment Processing to GMAC).

5 66. On or before June 1, 2009, Plaintiffs submitted the first Trial Period payment to  
6 GMAC along with the supporting documentation requested, thereby acknowledging their  
7 acceptance of GMAC's offer.

8 67. Plaintiffs made the remaining Trial Period payments pursuant to the Workout  
9 Plan with the final payment occurring in or about September 2009.

10 68. On or about September 15, 2009, Plaintiffs contacted GMAC regarding their  
11 completion of Trial Period. GMAC assured Plaintiffs that they were approved for a permanent  
12 loan modification and instructed Plaintiffs to wait for their Permanent Modification Agreement.  
13 Plaintiffs were instructed to sign, date, and return the Permanent Modification Agreement to  
14 GMAC upon their receipt of the same.

15 69. By September 25, 2009, Plaintiffs had not received the Permanent Modification  
16 Agreement they were told to expect. Plaintiffs contacted GMAC regarding the whereabouts of  
17 the promised Agreement and were assured that it was in transit. Plaintiffs offered to make their  
18 October mortgage payment over the telephone that day but were instructed not to do so.

19 70. By October 1, 2009, the *Modification Effective Date*, Plaintiffs still had not  
20 received the Permanent Modification Agreement they were told to expect.

21 71. On or about October 5, 2009, Plaintiffs contacted GMAC to follow-up a second  
22 time regarding the whereabouts of the promised Permanent Modification Agreement. GMAC  
23 insisted that the Permanent Modification Agreement was mailed to Plaintiffs' home address.  
24 Plaintiffs insisted on making the October mortgage payment and paid Defendant the October  
25 mortgage payment of One Thousand Eight Dollars (\$1,008.00) over the telephone.

26 72. On or about October 29, 2009, Plaintiffs contacted GMAC to follow-up a third  
27 time regarding the whereabouts of the promised Permanent Modification and were told yet again  
28 that the Agreement had been mailed to Plaintiffs' home address. Fed up, Plaintiffs insisted that  
29 GMAC fax the Permanent Modification Agreement to them.

1 73. GMAC faxed a Permanent Modification Agreement dated as of September 18,  
2 2009 to Plaintiffs.

3 74. Plaintiffs executed the Agreement the following day and returned it to GMAC on  
4 November 4, 2009 via FedEx overnight delivery. Enclosed with the fully executed Agreement  
5 was a check for the November 2009 mortgage payment in the amount of One Thousand Eight  
6 Dollars (\$1,008.00).

7 75. FedEx confirmed the November 5, 2009 delivery of Plaintiffs' package to  
8 GMAC<sup>7</sup>.

9 76. As of November 14, 2009, GMAC had not deposited Plaintiffs' check for the  
10 November 2009 mortgage payment. Plaintiffs contacted GMAC to inquire about this and to  
11 request payment coupons from GMAC evidencing Plaintiffs' mortgage payments. GMAC  
12 replied that its loan modification department was "swamped" and promised to deposit and credit  
13 Plaintiffs' November 2009 mortgage payment and to send Plaintiffs the requested payment  
14 coupons.

15 77. By November 29, 2009, GMAC still had not deposited Plaintiffs' check for the  
16 November 2009 mortgage payment nor sent Plaintiffs the requested payment coupons.

17 78. Plaintiffs contacted GMAC to follow-up a second time regarding Plaintiffs'  
18 November 2009 mortgage payment and to request payment coupons. On or about November 29,  
19 2009, Plaintiffs made the December 2009 mortgage payment of One Thousand Eight Dollars  
20 (\$1,008.00) over the telephone and were assured by GMAC that the check for the November  
21 2009 mortgage payment would be deposited and properly credited to their account.

22 79. On or about December 14, 2009, GMAC contacted Plaintiffs and informed them  
23 that their Permanent Modification was been denied because GMAC had not received a signed  
24 copy of the Agreement from them. Plaintiffs requested to speak to a supervisor. Plaintiffs  
25 informed the Supervisor that they had returned a fully executed Permanent Modification to  
26 GMAC via FedEx overnight on November 4, 2009 and that FedEx confirmed the November 5,  
27 2009 delivery of the foregoing.

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<sup>7</sup> K. Bashourn, on behalf of GMAC, accepted delivery on behalf of GMAC.



1           80.     The Supervisor assured Plaintiffs that he would review their file. Following a  
2 purported review, the Supervisor assured Plaintiffs that everything would be "okay," affirming  
3 that Plaintiffs had successfully completed the Trial Period and timely remitted the Permanent  
4 Modification Agreement to GMAC. Plaintiffs were told to be patient while he helped them  
5 straighten out the "mix-up."

6           81.     In or about December 2009, GMAC contacted Plaintiffs and instructed them to  
7 resubmit an application for a HAMP Modification along with a copy of the fully executed  
8 Permanent Modification Agreement Plaintiffs had sent to GMAC in November 2009. Plaintiffs  
9 questioned why they were being asked to submit a new application since they had already  
10 completed the Trial Period, had been approved for a Permanent Modification, and had returned a  
11 fully executed Permanent Modification Agreement to GMAC. GMAC insisted that this was  
12 standard and necessary for Plaintiffs' Permanent Modification to be finalized. After repeated  
13 assurances from GMAC that a Permanent Modification would be finalized, Plaintiffs faxed the  
14 foregoing, along with proof of delivery of the Permanent Modification Agreement from FedEx,  
15 to GMAC.

16           82.     In or about December 2009, GMAC assured Plaintiffs that everything would be  
17 "fixed" after the Christmas and New Years holidays.

18           83.     On or about January 4, 2010, Plaintiffs contacted GMAC to follow-up yet again  
19 on the Permanent Modification. GMAC informed Plaintiffs that their Permanent Modification  
20 was being "processed."

21           84.     On or about January 5, 2010 Plaintiffs were denied a loan for a new car. Plaintiffs  
22 obtained a credit report that same day and discovered that GMAC had reported their  
23 *Conventional Real Estate Loan* account 150 days past due.

24           85.     Plaintiffs contacted GMAC by telephone the next day to inquire about their  
25 account status as reported. GMAC informed Plaintiffs that their Permanent Modification had  
26 been denied. GMAC further informed Plaintiffs that they had incurred nearly Thirteen Thousand  
27 Dollars (\$13,000.00) in arrearages and that GMAC would commence foreclosure proceedings if  
28 Plaintiffs did not remit monthly mortgage payments in the amount of One Thousand Eight  
29 Hundred Twenty-Seven Dollar (\$1,827.00) to satisfy the arrearages.

1 86. Under tremendous duress, Plaintiffs pay GMAC One Thousand Eight Hundred  
2 Dollars (\$1,827.00) over the telephone that same day.

3 87. That night, Plaintiff Issa suffered numbing of her arms and chest pains and was  
4 taken to the family doctor after her husband noticed considerable drooping on the left side of her  
5 face.

6 88. Plaintiff Issa was diagnosed as having suffered Bell's palsy, a temporary form of  
7 facial paralysis, widely believed to be stress-induced.

8 89. Plaintiff Issa visited a specialist for a second opinion and the specialist indicates  
9 that Plaintiff Issa may have suffered a mild stroke and not Bell's palsy, given the absence of  
10 certain viruses believed to cause Bell's palsy.

11 90. In a written correspondence dated January 7, 2010, GMAC threatened Plaintiffs  
12 with foreclosure. GMAC further threatened to report the foreclosure to the credit reporting  
13 agencies and to hold Plaintiffs personally liable for any deficiency as well as GMAC's attorneys'  
14 fees.

15 91. In a written correspondence dated January 20, 2010, GMAC demanded that  
16 Plaintiffs pay them Six Thousand Six Dollars And Twenty-Two Cents (\$6,006.22); GMAC  
17 threatened to accelerate Plaintiffs' loan and to commence foreclosure proceedings if Plaintiffs  
18 did not pay them this amount within thirty 30 days.

19 92. On or about January 21, 2010, Plaintiffs contacted GMAC and paid them One  
20 Thousand Eight Hundred Twenty-Seven Dollar (\$1,827.00) over the telephone.

21 93. In a written correspondence dated January 29, 2010, GMAC indicated that  
22 Plaintiffs' Permanent Modification had been denied because "Signed HAMP Modification  
23 Agreement was not returned by customer."

24 94. In a written correspondence dated February 3, 2010, GMAC indicated that  
25 Plaintiffs' Permanent Modification was denied because "1st trial payment not received on time."

26 95. In a written correspondence dated February 10, 2010, GMAC indicated that  
27 Plaintiffs' Permanent Modification was denied because "HAMP Program denied due to  
28 insufficient income" and "Account is in review for another workout."



1           104. Plaintiffs bring this action under Michigan Court Rule 3.501 on behalf of  
2 themselves and a Class consisting of:

3           All Michigan homeowners whose loans have been serviced by one  
4 or both Defendants and who, since April 9, 2009, have requested  
5 or been otherwise eligible for a TPP under the terms of HAMP  
6 Program Documentation and who have not received a permanent  
7 loan modification either because they have not been offered a TPP  
8 by GMAC or because they did not receive a permanent loan  
9 modification after they complied with their obligations under  
10 HAMP as conveyed to them by GMAC, as required by HAMP. All  
11 Michigan homeowners who paid GMAC an upfront fee in order to  
12 be evaluated for loan modification.  
13

14           105. Excluded from the Class are governmental entities, Defendants, their affiliates  
15 and subsidiaries, Defendants' current or former employees, officers, directors, agents,  
16 representatives, their family members, the members of this Court and its staff.

17           106. Plaintiffs do not know the exact size or identities of the members of the proposed  
18 class, since such information is in the exclusive control of Defendants. Plaintiffs believe that the  
19 Class encompasses many hundreds and perhaps thousands of individuals whose identities can be  
20 readily ascertained from Defendants' books and records. Therefore, the proposed Class is so  
21 numerous that joinder of all members is impracticable.

22           107. All members of the Class have been subject to and affected by the same conduct.  
23 The claims are based on the terms of a single unifying contract between GMAC and Fannie Mae,  
24 acting as agent for the United States Treasury, and on form contracts and uniform loan  
25 modification processing requirements. There are questions of law and fact that are common to  
26 the class, and predominate over any questions affecting only individual members of the Class.  
27 These questions include, but are not limited to the following:

- 28           - The nature, scope and operation of GMAC's obligations to homeowners  
29           under HAMP;  
30           - Whether GMAC breached its duties under HAMP that were intended for  
31           the benefit of Class members;

- 1 - Whether the manner in which GMAC has executed the duties it undertook  
2 as part of the HAMP program violates its duty of good faith and fair  
3 dealing;
- 4 - Whether GMAC's receipt of an executed TPP Agreement, along with  
5 supporting documentation and three monthly payments, creates a binding  
6 contract or otherwise legally obligates GMAC to offer Class members a  
7 permanent HAMP modification;
- 8 - Whether GMAC's failure to provide permanent HAMP modifications in  
9 these circumstances amounts to a breach of contract and/or a breach of the  
10 implied covenant of good faith and fair dealing;
- 11 - Whether GMAC demanded and collected initial payments from eligible  
12 homeowners in violation of HAMP provisions;
- 13 - Whether GMAC's written representations to homeowners stating that they  
14 would receive permanent loan modifications upon successful completion  
15 of the trial period and then failing to deliver such permanent modification  
16 constitutes a "false, deceptive, or misleading statement or representation in  
17 connection with a mortgage loan;"
- 18 - Whether GMAC violated the MCMPPA by failing to comply with all  
19 applicable state and federal laws;
- 20 - Whether GMAC has in good faith offered eligible borrowers a  
21 modification agreement pursuant to M.C.L. 600.3205(c).
- 22 - Whether the above practices caused Class members to suffer injury; and  
23 - The proper measure of damages and appropriate injunctive relief.

24 108. The claims of the individual named Plaintiffs are typical of the claims of the Class  
25 and do not conflict with the interests of any other members of the Class in that both the Plaintiffs  
26 and the other members of the Class were subject to the same conduct, were subject to the terms  
27 of the same agreement and were met with the same absence of permanent modification.

1 109. The individual named Plaintiffs will fairly and adequately assert, protect, and  
2 represent the interests of the Class. They are committed to the vigorous prosecution of the  
3 Class's claims and have retained attorneys who are qualified to pursue this litigation.

4 110. A class action is superior to other methods for the fast and efficient adjudication  
5 of this controversy. A class action regarding the issues in this case does not create any problems  
6 of manageability.

7 111. GMAC has acted or refused to act on grounds that apply generally to the Class so  
8 that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class  
9 as a whole.

10 **COUNT ONE**

11 **(Breach Of Contract)**

12 **(The "SPA")**

13 112. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-11 as though  
14 fully set forth herein.

15 113. Plaintiffs bring this claim on their own behalf and on behalf of each member of  
16 the Class described above.

17 114. The SPA and its explicitly incorporated Program Documentation constitute a  
18 contract for which the Plaintiffs and the Class are the intended beneficiaries, and under which  
19 GMAC undertook duties to act for the benefit of Plaintiffs and the Class.

20 115. By entering into the SPA and accepting valuable consideration including  
21 approximately Sixteen Billion Three Hundred Million Dollars (\$16,300,000,000.00) in TARP  
22 funds from the United States Treasury, GMAC covenanted to comply with the SPA and its  
23 expressly incorporated Program Documentation.

24 116. GMAC has breached its contractual duties by failing to provide eligible borrowers  
25 with the opportunity to accept permanent loan modifications.

26 117. GMAC routinely and regularly breaches its duties under both the SPA and their  
27 contracts with individuals by failing to retain, employ, and supervise adequately trained staff;  
28 instituting and/or continuing with foreclosure proceedings against borrowers in a trial program;  
29 failing to provide written notices required by HAMP; by deliberately acting to delay/frustrate

1 loan modification processes; routinely demanding information already in its files; making  
2 inaccurate calculations and determinations of Plaintiffs' eligibility for HAMP; sending  
3 conflicting/inconsistent notices to homeowners regarding their eligibility for HAMP; and by  
4 failing to follow through on written and implied promises.

5 118. Plaintiffs have suffered harm and are threatened with additional harm from  
6 GMAC's breach. By making TPP payments both during and after the TPP, Plaintiffs forego  
7 other remedies that might be pursued to save their homes, such as restructuring their debt under  
8 the bankruptcy code, or pursuing strategies to handle default such as a short sale, or saving the  
9 money spent during the TPP to offset relocation expenses. Upon information and belief, some  
10 putative Class members have suffered additional harm in the form of foreclosure activity against  
11 their home.

## 12 COUNT TWO

### 13 (Breach Of Contract)

#### 14 (The Individual "Workout Plans" and "Trial Period Plans")

15 119. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-118 as  
16 though fully set forth herein.

17 120. Plaintiffs bring this claim on their own behalf and on behalf of each member of  
18 the Class described above.

19 121. In addition to duties owed to Plaintiffs based on their status as third-party  
20 beneficiaries of the SPA, GMAC entered into individual contracts directly with Plaintiffs.

21 122. The Agreement sent by GMAC to Plaintiffs constitutes a valid offer.

22 123. By executing the Agreement and returning it to GMAC, along with the supporting  
23 documentation, Plaintiffs accepted GMAC's offer.

24 124. Alternatively, Plaintiffs' return of the Agreement constitutes an offer. Acceptance  
25 of this offer occurred when GMAC accepted Plaintiffs' Trial Period payment.

26 125. Plaintiffs' Trial Period payments to GMAC constitute consideration. By making  
27 those payments, Plaintiffs gave up the ability to pursue other means of saving their home.

28 126. Plaintiffs and GMAC thereby formed valid contracts.

1 127. By failing to offer Plaintiffs permanent HAMP modifications, GMAC breached  
2 those contracts.

3 128. GMAC routinely and regularly breaches its duties under both the SPA and their  
4 contracts with individuals by failing to retain, employ, and supervise adequately trained staff;  
5 instituting and/or continuing with foreclosure proceedings against borrowers in a trial program;  
6 failing to provide written notices required by HAMP; by deliberately acting to delay/frustrate  
7 loan modification processes; routinely demanding information already in its files; making  
8 inaccurate calculations and determinations of Plaintiffs' eligibility for HAMP; sending  
9 conflicting/inconsistent notices to homeowners regarding their eligibility for HAMP; and by  
10 failing to follow through on written and implied promises.

11 129. Plaintiffs have suffered harm and are threatened with additional harm from  
12 GMAC's breach. By making Trial Period payments both during and after the Trial Period,  
13 Plaintiffs forego other remedies that might be pursued to save their homes, such as restructuring  
14 their debt under the bankruptcy code, or pursuing strategies to handle default such as a short sale,  
15 or saving the money spent during the Trial Period to offset relocation expenses. Upon  
16 information and belief, some putative Class members have suffered additional harm in the form  
17 of foreclosure activity against their home.

18 **COUNT THREE**

19 **(Breach of Duty of Good Faith and Fair Dealing)**

20 130. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-129 as  
21 though fully set forth herein.

22 131. Plaintiffs bring this claim on their own behalf and on behalf of each member of  
23 the Class described above.

24 132. By entering into the SPA and accepting valuable consideration including  
25 approximately Sixteen Billion Three Hundred Million Dollars (\$16,300,000,000.00) in TARP  
26 funds from the United States Treasury, GMAC covenanted to administer its contractual  
27 obligations with principles of good faith and fair dealing.

28 133. By entering into individual contracts with Plaintiffs and accepting valuable  
29 consideration including Plaintiffs Trial Period payments both during and after the Trial Period,



1 GMAC covenanted to administer its contractual obligations with principles of good faith and fair  
2 dealing.

3 **COUNT FOUR**

4 **(Promissory Estoppel)**

5 134. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-133 as  
6 though fully set forth herein.

7 135. Plaintiffs bring this claim on their own behalf and on behalf of each member of  
8 the Class described above.

9 136. **At GMAC's instruction**, Plaintiffs act to their detriment, including falling behind  
10 on mortgage loan payments to qualify for a HAMP modification.

11 137. GMAC promised and represented that it would enter into a Permanent  
12 Modification Agreements with Plaintiffs if Plaintiffs executed and returned the Workout  
13 Agreements to GMAC along with supporting documentation and made all Trial Period payments  
14 pursuant to their Workout Plans.

15 138. GMAC's promises/representations to enter into a Permanent Modification  
16 Agreements with Plaintiffs and execution of individual Workout Agreements were intended to  
17 induce Plaintiffs' reliance and/or GMAC should have reasonably expected to induce Plaintiffs'  
18 reliance thereon.

19 139. Plaintiffs relied on GMAC's promises/representations regarding entering into  
20 Permanent Modification Agreements and further relied on their Workout Agreements by missing  
21 one or more monthly mortgage loan payments and/or making all Trial Period payments pursuant  
22 to their Workout Plans.

23 140. Given the language of the Workout Agreements, Plaintiffs' reliance was  
24 reasonable.

25 141. Plaintiffs' reliance was to their detriment. Plaintiffs have yet to receive  
26 permanent HAMP modifications and have lost the opportunity to fund other strategies to deal  
27 with their mortgage and to avoid foreclosure.

28 142. Unless Defendants honor their verbal and written promises to Plaintiffs, Plaintiffs  
29 will continue to suffer injustice.

**COUNT FIVE****(Violation of the "Michigan Consumer Mortgage Protection Act")**

143. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-142 as though fully set forth herein.

144. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

145. GMAC's conduct as set forth herein constitutes false, deceptive, or misleading statements or representations in connection with a mortgage loan, including its practice of leading borrowers to believe that it will permanently modify their mortgage loans upon successful completion of a trial program.

146. GMAC is liable to Plaintiffs and Class members for damages in an amount to be determined at trial, including attorneys' fees, costs and statutory damages, and should be enjoined from continuing to engage in these unlawful, deceptive, unreasonable and unlawful practices as alleged herein.

**COUNT SIX****(Defamation)**

147. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-146 as though fully set forth herein.

148. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

149. GMAC reported Plaintiffs to the credit reporting bureaus as 150 days past due late on their *Conventional Real Estate Loan* account.

150. Upon information and belief, GMAC has remarked that some putative Class members are past due on their real estate loan accounts.

151. GMAC's remarks are false.

152. GMAC published such remark to the various credit reporting bureaus with knowledge of the falsity of the statements and/or in reckless disregard of truth of their falsity.

153. The publication of this remark has resulted in damage to Plaintiffs' credit rating as well as economic and other losses, including but not limited to:

- 1 i. Denial of credit;
- 2 ii. Increased interest rates imposed by creditors;
- 3 iii. Emotional distress;
- 4 iv. Humiliation, mortification and embarrassment;
- 5 v. Sleeplessness and anxiety; and
- 6 vi. Other damages that may arise during the course of discovery and the
- 7 course of this trial.

8 **COUNT SEVEN**

9 **(Specific Performance)**

10 154. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-153 as  
11 though fully set forth herein.

12 155. Plaintiffs bring this claim on their own behalf and on behalf of each member of  
13 the Class described above.

14 156. The SPA and the individual contracts between Plaintiffs and GMAC are binding  
15 agreements with certain, definite terms.

16 157. The United States Treasury, with Plaintiffs the intended beneficiaries, performed  
17 under the SPA and provided valuable consideration to GMAC in the form of approximately  
18 Sixteen Billion Three Hundred Million Dollars (\$16,300,000,000.00).

19 158. Plaintiffs performed under their individual contracts with GMAC and provided  
20 valuable consideration to GMAC by making monthly payments pursuant to the TPP.

21 159. Plaintiffs face the real and imminent danger of losing their homes unless GMAC  
22 is ordered to honor the terms of the SPA and its individual contracts with Plaintiffs.

23 160. Justice requires that GMAC honor its commitments and obligations under the  
24 SPA and its individual contracts with Plaintiffs.

25 161. There is no adequate remedy at law other than the enforcement of the SPA and  
26 the Plaintiffs individual contracts with GMAC.

**COUNT EIGHT****(Unjust Enrichment – In The Alternative)**

1  
2  
3 162. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-161 as  
4 though fully set forth herein.

5 163. Plaintiffs bring this claim on their own behalf and on behalf of each member of  
6 the Class described above.

7 164. To the extent that no breach of contract claim is sustained, this Count is pled in  
8 the alternative.

9 165. GMAC collected payments from Plaintiffs during the Trial Period without  
10 performing a permanent loan modification. As such, GMAC has been unjustly enriched.

**COUNT NINE****(Negligent Infliction of Emotional Distress)**

11  
12  
13 166. Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-165 as  
14 though fully set forth herein.

15 167. GMAC owed Plaintiffs a duty of care.

16 168. GMAC breached the duty of care owed to Plaintiffs by making false assertions  
17 regarding Plaintiff's *Conventional Real Estate Loan* account.

18 169. GMAC further breached the duty of care owed to Plaintiff by purposefully and  
19 wrongfully reporting Plaintiffs *Conventional Real Estate Loan* account as 150 days past due to  
20 the credit reporting bureaus.

21 170. GMAC further breached the duty of care owed to Plaintiffs by purposefully and  
22 wrongfully threatening to foreclose Plaintiffs' home.

23 171. As a direct and proximate result of GMAC's negligent and wrongful conduct,  
24 Plaintiff Issa has suffered emotional distress, which has physically manifested, culminating in the  
25 mild stroke/Bell's Palsy she suffered. GMAC's negligent and wrongful conduct was the cause in  
26 fact and proximate cause of Plaintiff Issa's injuries.

27 172. As a direct and proximate result of GMAC's negligent and wrongful conduct  
28 Plaintiff Issa has suffered anxiety, embarrassment, mental pain and suffering, sleeplessness, and  
29 other damages that may arise during the course of discovery and the course of this trial.

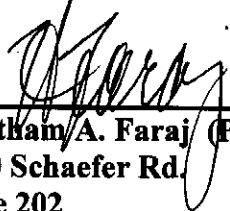
**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request the following relief:

1. Certify this case as a Class Action and appoint the named Plaintiffs to be Class representatives and their counsel to be Class Counsel;
2. Enter a judgment declaring the acts and practices of GMAC complained of herein to constitute a breach of contract and a breach of the covenant of good faith and fair dealing, as well as a declaration that GMAC is required by the doctrine of promissory estoppel to offer permanent modifications to Class members;
3. Grant a permanent and final injunction enjoining GMAC's agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiffs and the members of the Class;
4. Order GMAC to adopt and enforce a policy that requires appropriate training of their employees and agents regarding their duties under HAMP;
5. Order specific performance of GMAC's contractual obligations together with other relief required by contract law;
6. Award actual and statutory damages to Plaintiffs and the Class in amounts to be proven at trial;
7. Award Plaintiffs the cost of this action, including the fees and costs of experts, together with reasonable attorneys' fees; and
8. Grant Plaintiffs and the Class such other and further relief as may be just, proper, and allowable.

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RESPECTFULLY SUBMITTED this 1 st day of July, 2010

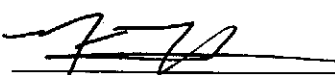
  
\_\_\_\_\_  
Haytham A. Faraj (P72581)  
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Suite 202  
Dearborn, Michigan 48126  
ATTORNEY FOR PLAINTIFFS

ORIGINAL of the foregoing filed  
this 1<sup>st</sup> day of July, 2010 with:

Clerk of the Court  
Wayne County Circuit Court

COPY of the foregoing delivered by email  
and by first-class mail this 1<sup>st</sup>, day of July, 2010 to:

Thomas M. Schehr  
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Dykema Gossett, PLLC  
400 Renaissance Center, 35<sup>th</sup> Floor  
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*Attorneys for Defendants GMAC Inc, and  
GMAC Mortgage, LLC.*

By:   
\_\_\_\_\_