

JUDGE SCHEINDLIN

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIAN COSTIGAN, on behalf of himself and all  
others similarly situated,

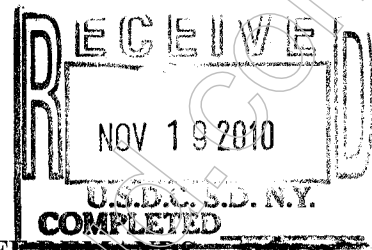
Plaintiff,

v.

CITIGROUP Inc. and CITIMORTGAGE, INC.,

Defendants.

Civ. No.:



PLAINTIFF DEMANDS  
A TRIAL BY JURY

### CLASS ACTION COMPLAINT

1. This is a putative class action on behalf of the plaintiff and a class of all others similarly situated against CitiGroup, Inc. and CitiMortgage, Inc. (together, "Defendants" or "Citi"). The plaintiff, Brian Costigan ("Plaintiff"), individually and on behalf of all others similarly situated, alleges as follows upon personal knowledge as to his actions and upon information and belief based upon investigation of his attorneys as to all other facts alleged in the Class Action Complaint.

### PARTIES

2. Plaintiff Brian Costigan resides at ~~425 East 12th Street, New York, New York 10003~~
3. Defendant CitiGroup, Inc. Delaware corporation headquartered at 399 Park Avenue, New York, New York, 10043. Citi originates and services residential mortgages throughout the United States.

4. Defendant CitiMortgage,, Inc. is a member of CitiGroup, Inc., and services Citi mortgages. CitiMortgage is incorporated in Florida and headquartered at 1000 Technology Drive, Mailstop 730, O'Fallon, Missouri 63368.

### **JURISDICTION AND VENUE**

5. This is a proposed nationwide class action. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the Plaintiff and Defendants are of diverse citizenship and the matter in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and pursuant to 28 U.S.C. § 1332(d)(2), because the Plaintiff and the vast majority of the putative class (each individual member a "Class Member" and collectively the "Class Members") are of diverse citizenship from the Defendants and the aggregate amount in controversy exceeds five million dollars (\$5,000,000.00) exclusive of interest and costs.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here and Defendants regularly transact business in this District and are subject to personal jurisdiction in this District.

### **FACTUAL BACKGROUND**

#### **Troubled Asset Relief Program**

7. On October 3, 2008, the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261, 31 U.S.C. §1105, and scattered sections of 26 U.S.C.), (the "EESA") became law. Developed in response to the financial crisis facing the nation, EESA provided immediate authority and facilities that the United States Department of the Treasury could use to restore liquidity and stability to the financial system. In this regard, EESA authorized the Secretary of the Treasury to establish the

Troubled Asset Relief Program (“TARP”) to “purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary.”

8. Citi received \$45 billion in federal funds under the TARP program.

9. As part of the TARP program, the Department of the Treasury introduced the Home Affordable Modification Program (“HAMP”), which provides guidelines for mortgage services to adopt to modify loans for homeowners in financial need.

10. Citi signed the Servicer Participation Agreement for HAMP in mid-April 2009.

11. HAMP is a shared debt reduction program between the lender and the government. Initially the lender reduces the homeowner’s monthly mortgage payments to reflect no more than 31% of their gross income. Thereafter, the Treasury Department steps in and offers financial incentives to the lender.

12. The benefit to the homeowner is a reduction in monthly mortgage payments.

13. In order to encourage lenders and banks to take part in the program, the lender also receives various financial benefits.

14. Both the homeowner and mortgage itself must qualify to participate in HAMP.

15. The HAMP protocol starts with homeowners providing the lender with required documentation and information. The lender must determine 31% of the homeowner's gross income and must then follow a three-step process to reduce the monthly payment to that 31% amount. The lender may reduce the interest rate to as low as 2%, extend the loan terms up to 40 years, and finally defer a portion of the principal if necessary until the loan is paid off.

16. The first step in the loan modification approval process is for the homeowner to take part in a 90-day trial period based upon the new loan modification monthly payment. The borrower must remain current for the first three months or 90-day period. If the borrower's total monthly debt exceeds 55% of their gross income, the lender or bank must notify the borrower in writing of HUD approved credit counselors. The borrower must complete a credit counseling program and obtain a certificate. If the homeowner's debt does not rise to the 55% level, the foregoing is not required.

17. The lender must waive any late fees upon completion of the 90-day trial period if the borrower successfully completes the trial.

18. Subsequent to a modification agreement being entered into by the homeowner and the lender, any foreclosure action will be temporarily suspended during the 90-day trial period. In the event that the HAMP or alternative foreclosure prevention options fail, the foreclosure action may be resumed. However, pursuant to HAMP, should the modification fail, banks and lenders are required to consider other programs before foreclosure, including but not limited to short sales and deed in lieu of debt.

**Slipshod Practices Take Hold at Citi  
With Respect to Documentation and Processing Foreclosures**

19. Defendants owe a duty of good faith and fair dealing with respect to their borrowers, including Plaintiff and Class Members.

20. As a result of the economic crisis and ongoing high unemployment rates, Citi had to deal with an unprecedented number of foreclosures.<sup>1</sup>

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<sup>1</sup> According to LPS Applied Analytics, a mortgage data firm, 2 million households are now in foreclosure and another 2.37 million households are seriously delinquent and waiting for their lenders to take action.

21. Note holders and mortgage holders have the right to collect amounts due under a delinquent note and mortgage. However, they have the duty and responsibility, and indeed have contracted, to do so within the confines of the law and the judicial foreclosure process.

22. In part because it was overwhelmed by the number of defaults foreclosures that have had to be processed, slipshod practices took hold at Citi, notwithstanding its statutory obligations under various statutory schemes, including N.Y.R.P.A.P.L. §1300 *et seq*<sup>2</sup> and/or the and/or the New Jersey Fair Foreclosure Act (“FFA”), N.J. Stat. Ann. 2A:50-53 *et seq*.<sup>3</sup>

23. Citi engaged in a course of fraudulent and unconscionable conduct with respect to its borrowers in connection with foreclosure procedures in order to accelerate the foreclosure process to obtain title over foreclosed property through unlawful means.

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<sup>2</sup> Judicial foreclosure is the process almost universally used in New York. The lender must sue the borrower in court and obtain a judgment of foreclosure.

- To begin the process a summons and complaint is filed along with a lis pendens. The borrower has 20 days in which to appear in court to answer. If no action is taken by the borrower, the lender will move for a summary judgment.
- If granted, the court will appoint a referee who will determine the amount owed and how the property shall be sold. The referee files his report with the court. The court confirms the report and enters a judgment of sale. This stage of the process may take from 12-18 months.
- The notice of sale is published weekly for four to six weeks. The sheriff or referee may conduct the sale at the time and place designated in the notice of sale.
- The officer conducting the sale will execute a deed to the successful bidder when the sale is complete. The successful bidder must deposit 10% of the bid price at the time of sale, and close with the balance due within 30 days. The officer shall then submit a report of sale to the court for confirmation. The lender may bid the total amount due. If no one else bids, the property reverts to the lender.
- A motion for a deficiency judgment, if applicable, must be filed with the court within 90 days of the date of sale. The court will determine the market value of the property and award the greater of market value or auction price to the lender.

<sup>3</sup> The FFA is a comprehensive statutory scheme that establishes uniform sheriff's sale procedures to be used in all mortgage foreclosure actions in New Jersey, a uniform sheriff's deed, an optional or strict mortgage foreclosure procedure without sale, as well as other provisions. Among other things, the FFA gives the residential mortgage debtor the right to cure the mortgage default prior to final judgment in a conventional mortgage foreclosure action with sale, and prior to the redemption order in the optional or strict mortgage foreclosure procedure without sale.

24. Motivated by speed and profits rather than obligatory attention to detail, Citi failed to record necessary documents to legally foreclose.

25. To remedy the deficiencies in documentation and efficiency, Citi engaged in a systematic scheme of fabricating evidence in the form of fraudulent pleadings, affidavits and other documents that were used in foreclosure proceedings against homeowners.

26. Citi employees issued fraudulent affidavits which purportedly proved Citi's control of a mortgage and, if necessary, outsourced tasks to outside entities without adequate oversight. As a result, Citi and its agents failed to verify amounts borrowed and to determine which institutions had a right to foreclose prior to filling these fraudulent affidavits.

27. Citi "robo-signers" signed affidavits so quickly that Citi could not possibly have verified the information in the documents being reviewed. Document signers did not review the affidavits to determine whether all exhibits cited in the affidavit are attached to the affidavit, and Citi employees failed to verify the accuracy of the contents of the affidavits before the document signer executed the affidavit. The affidavits were not actually executed on personal knowledge of the document signer.

28. It is unlawful for the affiant to assume the facts contained in a draft affidavit are accurate without any independent knowledge, research, or verification, and then swear to having personal knowledge of the accuracy of those facts.

29. Citi has routinely disregarded procedural safeguards provided to borrowers and has failed to properly review documentation submitted or relied upon in connection with foreclosure proceedings.

30. Defective documentation is routinely sent to Citi foreclosure attorneys for use in judicial foreclosure proceedings.

31. Citi engaged in this misconduct despite the fact that it knew that these policies were improper, sanctionable, and unlawful.

32. Citi breached its obligations to Plaintiff and Class Members by misrepresenting and/or failing to disclose the nature and scope of its egregious loan processing errors to Plaintiff and Class Members.

33. As a result of its systematic failure to properly document and process paperwork, Citi has wrongfully foreclosed on thousands of properties throughout the United States.

34. Citi engaged in a pattern and practice of failing to review borrowers' documentation until several months after the initial institution of foreclosure proceedings.

35. Citi has initiated foreclosure proceedings on mortgages without holding the necessary rights as the mortgagee or assignee at the time of foreclosure, thereby forcing Class Members to defend against illegitimate lawsuits.

36. Citi has initiated foreclosure proceedings on mortgages even when the mortgagor was not in default, thereby forcing Class Members to defend against illegitimate lawsuits.

37. The misconduct described above is the standard practice, policy and procedure of Defendants.

38. Defendants have engaged in a systematic effort to employ the legal process to further their abusive, fraudulent, unfair, and deceptive goal of obtaining title to property through fabricated and fraudulent statements and legal documents that are not properly notarized, in violation of law.

39. Defendants had intent and knowledge prior to filing, as well as during and after, a foreclosure proceeding, that Defendants would be submitting fraudulent affidavits and other unlawful documents to wrongfully obtain title to a foreclosed property. In other words, Citi

knew foreclosure actions were filed that would be seeking to obtain title through fraud. Such knowledge and intent, which has been systemized inside Citi's organization, renders those foreclosure proceedings fraudulent.

40. Citi has acted in a negligent, reckless, malicious, and/or fraudulent manner in initiating and/or continuing foreclosure proceedings when it knew or should have known that it could not sustain its burden of proof.

41. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class Members have suffered damages. Specifically, Plaintiff and the Class Members have suffered, among other things, wrongfully being placed in imminent danger of losing their homes, harm to their credit scores, depressed home values, impairment of the ability to sell their property, and attorneys' fees involved in defending the fraudulent foreclosure proceedings. Moreover, Plaintiff and Class Members have suffered damages, including, but not limited to, uncertainty of clear title, which causes a smaller pool of potential buyers, lower home values, real estate owned sales resulting in a higher deficiency judgment, and decreased time to negotiate a modification or workout of the loan.

**Citi's Unlawful Business Practices**  
**With Respect to HAMP and Citi Internal "Proprietary" Modifications**

42. Citi engaged in a course of fraudulent and unconscionable conduct with respect to its borrowers in connection with loan modification applications.

43. Citi advertises and discusses its various homeowner assistance programs on its website.

44. In a November 11, 2008 press release, Citi "announced a series of initiatives designed to proactively help potential at-risk borrowers remain current on their payments and ultimately in their homes." Among the initiatives were Citi launching a Homeowner Assistance



program and extending Citi's moratorium practice. Citi also claimed that it "streamlined its existing loan modification program."

45. In a March 3, 2009 press release, Citi claimed to have rolled out an "innovative initiative" whereby an unemployed homeowner could make significantly lowered mortgage payments for a three-month period. Within the same timeframe a, the average length of unemployment in the United States was nearly six months.

46. Citi is a founding member of the "Hope Now" alliance, and touts its ability to help homeowners stay in their homes when "life happens."

47. In an August 25, 2009 press release, Citi quoted Sanjiv Das, CEO of CitiMortgage, who stated that "CitiMortgage's main concern is to help as many of our distressed customers as we can with a solution that is appropriate for their individual financial circumstances and needs. We are encouraged by the success of our initiatives, and are dedicated to doing more. Many Americans are still struggling which is why Citi remains committed to working with home owners and partnering with national and local community leaders to provide the programs, resources, and information necessary to keep distressed borrowers in their homes."

48. The August 25, 2009 press release also acknowledged that "[HAMP], as well as other loss mitigation initiatives, were unexpectedly challenging to put in place. Rapidly escalating and unprecedented volumes of customer calls led Citi to quickly expand its response capabilities during recent months. Citi's constant goal is to continuously improve its customers' experience when dealing with Citi."

49. In a March 4, 2010 press release which recounts the prepared testimony of Mr. Pandit before the Congressional Oversight Panel, Mr. Pandit stated that "Citi today is fundamentally different from the company we inherited when I became CEO two years ago."

Mr. Pandit stated: “[w]ith regard to financial institution reform, we at Citi believe that banks should operate as banks, focused completely on serving their clients,” and “[w]ith regard to consumer market reform, a key lesson of the financial crisis is that what starts as an issue that affects consumers can become an issue for the entire financial system. Recent experience reinforces the truism that what is best for consumers is also best for the financial system and the economy.”

50. In the first quarter of 2010, Citi reported net income of \$4.4 billion, its highest net income since the second quarter of 2007. In the second quarter of 2010, Citi reported a net income of \$2.7 billion, and third quarter net income of \$2.2 billion.

51. A distressed borrower who is in danger of defaulting upon their loan can negotiate a loan modification with Citi. Citi will send the borrower a modification package which requires the borrower to fill out paperwork and supply certain proofs.

52. Citi has engaged in a pattern and practice of routinely claiming that it has not received a borrower’s paperwork, or that it was lost. As a result, borrowers, who have been forestalled from attempting to pursue other options to prevent delinquency on their mortgage payments, end up in default through no fault of their own.

53. Citi reports these borrowers, who were making modified payments during a trial period, as late or in default to credit bureaus. As a result, Class Members credit scores have been detrimentally affected, and significantly so, which substantially and negatively impacts their ability to rent if they lose their homes, among other problems.

54. Defendants have a duty of honesty and disclosure to borrowers with respect to processing loan modification applications and foreclosures.

55. Despite Citi's promises and assurances, Citi failed to adhere to its agreements by negligently and/or recklessly rejecting loan modification applications and/or treating Plaintiff and Class Members as being in default of their loans, notwithstanding that Plaintiff and Class Members tendered agreed upon payments, which Citi accepted.

56. Citi has a financial interest in avoiding loan modifications and keeping mortgages in default in part because doing so generates more fees than modifying a loan to decrease its principal.

57. Homeowners like Plaintiff and Class Members, who are denied a modification after making several months of trial payments, are worse off than if they had never started the trial at all, because the process damages their credit scores and they have expended funds which could have been used for other purposes.

58. Citi breached its obligations to Plaintiff and Class Members by misrepresenting and/or failing to disclose, among other things, that Plaintiff and Class Members were placed in trial modification programs pursuant to which they tendered modified payments, yet those payments were improperly applied and Plaintiff and Class Members were foreclosed upon nonetheless.

59. Citi and its authorized agents made the previously described material misrepresentations and/or omissions with the intent and purpose of misleading borrowers, including Plaintiff and Class Members. Defendants knew or should have known that their representations regarding the status of Plaintiff and Class Members' loans, as well as the status of any purported modification were inaccurate and that Plaintiff and Class Members would act in accordance with and in reliance on Citi's representations.

60. Upon information and belief, the decision to engage in this deceptive scheme was made through the headquarters of Citi, in New York.

61. Citi's misrepresentations and omissions were material to the transactions at hand.

62. Citi's omissions and misrepresentations were made with the knowledge of their falsity, or with utter disregard and recklessness as to whether they were true or false, with the intent of inducing Plaintiff and Class Members into relying upon them.

63. Had Citi provided borrowers with accurate information regarding the status of borrower loans, purported defaults, and what measures could be taken to cure the defaults or modify the loans, Plaintiff and the Class Members would have pursued other measures to cure a potential default, would not have defaulted, and/or would not have been led to believe that Citi would assist the Plaintiff and Class Members in order to avoid default and be able to keep their homes.

64. As a direct and proximate result of Defendants' misconduct, Plaintiff and the Class Members have suffered damages. Specifically, Plaintiff and the Class Members have suffered, among other things, wrongfully being placed in imminent danger of losing their homes, harm to their credit scores, depressed home values, impairment of the ability to sell their property, and attorneys' fees involved in defending the fraudulent foreclosure proceedings. Moreover, Plaintiff and Class Members have suffered damages, including, but not limited to, uncertainty of clear title, which causes a smaller pool of potential buyers, lower home values, real estate owned sales resulting in a higher deficiency judgment, and decreased time to negotiate a modification or workout of the loan.

### **The Experiences of Brian Costigan**

65. Plaintiff Brian Costigan received a loan secured by a mortgage on his home, located in New Jersey. Mr. Costigan was required to make monthly payments of approximately \$2,400 including taxes and insurance.

66. Due to economic difficulties, Mr. Costigan contacted Citi in approximately April of 2009, in order to obtain a loan modification. At that time, Mr. Costigan had never missed a payment.

67. Pursuant to a Citi trial loan modification, Mr. Costigan and Citi agreed upon a restructured payment plan whereby Mr. Costigan would make payments of \$1,475 for four months: September through December 2009.

68. Mr. Costigan made timely payments in September 2009, October 2009, November 2009, and December 2009. Throughout this period, Mr. Costigan regularly contacted Citi representatives who assured Mr. Costigan that everything was progressing smoothly and that Mr. Costigan would obtain a permanent modification at the end of the trial period.

69. When Mr. Costigan contacted Citi in January 2010, Mr. Costigan was told that his modification was still being reviewed and that he should make another trial payment. Citi advised Mr. Costigan that this payment would be treated as "unapplied funds."

70. When Mr. Costigan contacted Citi in February 2010, Citi informed Mr. Costigan, for the first time, that Mr. Costigan's request for a HAMP modification had been rejected in December 2009 and that he would not receive the agreed upon loan modification.

71. At this time, an agent from Citi's loss mitigation department informed Mr. Costigan that there was a large amount of unapplied funds in his account equaling his HAMP

modification payments, demonstrating that Plaintiff's modification payments were not properly applied by Defendants.

72. Subsequently, Mr. Costigan was told that because he was denied for a HAMP modification, he was ineligible to apply again, but that he should apply for the Citi's internal, or proprietary, loan modification program. Mr. Costigan was told to resume making full payments, which he did in March 2010, by a portion of the unapplied funds to his account.

73. Mr. Costigan applied for Citi's internal loan modification program and regularly called to inquire about the status, but Citi did not provide any answers to his questions.

74. Ultimately, Mr. Costigan could not afford his full monthly payments and filed Chapter 7 bankruptcy as a direct and proximate cause of being misled by Citi throughout the trial modification/HAMP process. On August 4, 2010, almost immediately upon discharge of the bankruptcy, Citi filed a foreclosure complaint against Mr. Costigan.

75. Mr. Costigan has suffered damages as a result of Defendants' deceptive practices as described above, including but not limited to damages to her credit score and having to defend against a wrongfully instituted foreclosure proceeding.

#### **Class Action Allegations**

76. Plaintiff brings this suit as a class action on behalf of himself and all others similarly situated (the "Class") pursuant to Fed.R.Civ.P. 23. Plaintiff seeks to represent the following class:

All persons who are or have been obligors on notes and/or mortgages, and/or whose spouses or domestic partners have been obligors on notes and/or mortgages, on property located in the United States serviced by Citi and/or one of its named servicers. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to

whom this case is assigned and any Member of the judge's immediate family.

77. In the alternative, Plaintiff brings this suit as a class action on behalf of himself and all others similarly situated pursuant to Fed.R.Civ.P. 23, within certain, but not all, of the United States, as may be more specifically identified in subsequent motions to certify a Class, defined as follows:

All persons who are or have been obligors on notes and/or mortgages, and/or whose spouses or domestic partners have been obligors on notes and/or mortgages, on property located in certain, but not all, of the United States serviced by Citi and/or one of its named servicers. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any Member of the judge's immediate family.

78. In the alternative, Plaintiff brings this suit as a class action on behalf of himself and all others similarly situated within the State of New York, pursuant to Fed.R.Civ.P. 23, defined as follows:

All persons who are or have been obligors on notes and/or mortgages, and/or whose spouses or domestic partners have been obligors on notes and/or mortgages, on property located in the State of New York serviced by Citi and/or one of its named servicers. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

79. In the alternative, Plaintiff brings this suit as a class action on behalf of himself and all others similarly situated within the State of New Jersey, pursuant to Fed.R.Civ.P. 23, defined as follows:

All persons who are or have been obligors on notes and/or mortgages, and/or whose spouses or domestic partners have been obligors on notes

and/or mortgages, on property located in the State of New Jersey serviced by Citi and/or one of its named servicers. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

80. Plaintiff reserves the right to re-define the Class prior to moving for class certification.

81. Plaintiff does not know the exact size or identities of the proposed Class, since such information is in the exclusive control of Defendants. Plaintiff, however, believes that the Class encompasses thousands of individuals who are geographically dispersed throughout the United States. Therefore, the number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

82. Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a. The nature, scope and operations of Defendants' wrongful practices;
- b. Whether Defendants engaged in fraudulent practices as to Class Members;
- c. Whether Defendants' conduct amounts to a violation of the New York General Business Law §349 and/or the New Jersey Consumer Fraud Act;
- d. Whether Defendants breached their contracts, actual or implied, with Class Members;
- e. Whether Defendants breached the covenant of good faith and fair dealing with Class Members;



- f. Whether Defendants negligently processed loan modification applications and foreclosures;
- g. Whether Defendants had a policy and uniform practice of violating N.Y.R.P.A.P.L. §1300 *et seq.* and/or the New Jersey FFA, NJ Stat. Ann. 2A:50-52 *et seq.*;
- h. Whether Defendants are liable for violations of 42 U.S.C. §1983; and
- i. Whether Plaintiff and the Class Members suffered damages as a result of Defendants' misconduct and, if so, the proper measure of damages.

83. Plaintiff's claims are typical of the Class Members because Plaintiff and all Members of the Class were injured by the same wrongful practices of Defendants as described in this Complaint. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class Members, and are based on the same legal theories. Plaintiff has no interests that are contrary to or in conflict with those of the Class he seeks to represent.

84. Questions of law or fact common to the Class Members predominate and a class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by Class Members are likely to be in the millions of dollars, the individual damages incurred by each Class Member resulting from Defendants' wrongful conduct are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class Members prosecuting separate claims is remote and, even if every Class Member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would

magnify the delay and expense to all parties and to the court system resulting from multiple trials on the same factual issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action and certification of the Class under Rule 23(b)(3) is proper.

85. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. 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 regard to Class Members as a whole and certification of the Class under Rule 23(b)(2) is proper.

**FIRST COUNT**  
**(Breach of Contract)**

86. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

87. Plaintiff and Class Members entered into binding residential mortgage agreements with Defendants.

88. The agreements provided that the Defendants could foreclose on the loans in the event of default by Plaintiff and Class Members.

89. Defendants breached their agreements with Plaintiff and Class Members by foreclosing on loans that were not in default.

90. As a direct and proximate result of the aforementioned wrongful conduct committed by Defendants, Plaintiff and the Class Members have suffered and will continue to suffer damages and economic loss in an amount to be proven at trial. Plaintiff and Class Members are entitled to damages and injunctive and declaratory relief as claimed below.

**SECOND COUNT**  
**(Breach of Covenant of Good Faith and Fair Dealing)**

91. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

92. Defendants have a duty of good faith and fair dealing with respect to their dealings with borrowers, including Plaintiff and the Class Members.

93. There is an implied duty of good faith and fair dealing in every contract, and Defendants had an implied duty to insure that their loan modification and foreclosure procedures were not fraudulent or unconscionable with respect to borrowers.

94. Plaintiff and Class Members negotiated their loan and modification agreements with Defendants from a position of unequal bargaining power.

95. By virtue of their contractual relationship, Defendants had an implied duty to Plaintiff and the Class Members to take reasonable steps insure that all sums that they collected or attempted to collect under the loan and modification agreements with Plaintiff and the Class Members were legally due.

96. Defendants breached the covenant of good faith and fair dealing by failing to take reasonable measures to insure that they collected and/or attempted to collect the proper sums from Plaintiff and Class Members; by failing to make good faith efforts to provide the loan servicing functions owed to Plaintiff and the Class Members in connection with their review and retention of documentation; by initiating foreclosure proceedings without cause as described above.

97. In so doing, Defendants acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff and the Class Members from receiving their reasonably expected benefits under the contract.

98. Plaintiff and Class Members relied to their detriment upon misleading assertions and conduct of Defendants, and such reliance may be presumed based on the Defendants' unlawful conduct.

99. As a direct and proximate result of the aforementioned wrongful conduct committed by Defendants, Plaintiff and the Class Members have suffered and will continue to suffer damages and economic loss in an amount to be proven at trial. Plaintiff and Class Members are entitled to damages and injunctive and declaratory relief as claimed below.

**THIRD COUNT**  
**(Fraud/Intentional Misrepresentation)**

100. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

101. Defendants knowingly and/or recklessly misrepresented and/or failed to disclose material facts relating to Citi's loan modification and foreclosure processes to Plaintiff and Class Members as described above, including but not limited to that Plaintiff and Class Members were placed in trial modification programs pursuant to which they tendered modified payments, yet those payments were improperly applied and Plaintiff and Class Members were foreclosed upon nonetheless

102. Defendants knew that Plaintiff and the Class Members were unaware of these material facts and could not reasonably discover the undisclosed facts independently.

103. Defendants knew that their representations regarding the nature of their loan modification and foreclosure processes were false when made or made the misrepresentations recklessly, without any regard for their truth.

104. Defendants misrepresented and/or failed to disclose the true nature of the loan modification and foreclosure processes with the intention that Plaintiff and Class Members rely on their representations.

105. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform basis.

106. Plaintiff and Class Members reasonably and actually relied upon Defendants' representations omissions and concealments. Had Plaintiff and the Class Members been aware of the true nature of Defendants' business practices, they would have pursued other options to prevent delinquency on their mortgage payments to avoid foreclosure. Such reliance may also be imputed, based upon the materiality of Defendants' wrongful conduct.

107. Defendants' acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice, entitling Plaintiff and the Class Members to an award of punitive damages to the extent allowed in an amount appropriate to punish or set an example of Defendant.

108. As a direct and proximate result of the aforementioned wrongful conduct committed by Defendants, Plaintiff and the Class Members have suffered and will continue to suffer damages and economic loss in an amount to be proven at trial. Plaintiff and Class Members are entitled to damages and injunctive and declaratory relief as claimed below.

**FOURTH COUNT**  
**(Constructive Fraud/Negligent Misrepresentation)**

109. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

110. Defendants have a duty of good faith and fair dealing with respect to their dealings with borrowers, including Plaintiff and the Class Members.

111. Defendants negligently and/or recklessly misrepresented and/or failed to disclose material facts relating to Citi's loan modification and foreclosure processes to Plaintiff and Class Members as described above, including but not limited to that Plaintiff and Class Members were placed in trial modification programs pursuant to which they tendered modified payments, yet those payments were improperly applied and Plaintiff and Class Members were foreclosed upon nonetheless.

112. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform basis.

113. Plaintiff and Class Members reasonably and actually relied upon Defendants' misrepresentations and omissions. Had Plaintiff and the Class Members been aware of the true nature of Defendants' business practices, they would have pursued other options to prevent delinquency on their mortgage payments and would not have defaulted. Such reliance may also be imputed, based upon the materiality of Defendants' wrongful conduct.

114. As a direct and proximate result of the aforementioned wrongful conduct committed by Defendants, Plaintiff and the Class Members have suffered and will continue to suffer damages and economic loss in an amount to be proven at trial. Plaintiff and Class Members are entitled to damages and injunctive and declaratory relief as claimed below.

**FIFTH COUNT**  
**(Negligent Processing of Loan Modifications and Foreclosures)**

115. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

116. Defendants owed Plaintiff and Class Members a duty of reasonable care in the processing and determination of their loan modification applications and the processing of their foreclosures.

117. Defendants breached this duty by failing to properly evaluate Plaintiff and Class Members' loan modification applications and foreclosures.

118. As a direct and proximate result of the aforementioned wrongful conduct committed by Defendants, Plaintiff and the Class Members have suffered and will continue to suffer damages and economic loss in an amount to be proven at trial. Plaintiff and Class Members are entitled to damages and injunctive and declaratory relief as claimed below.

#### **SIXTH COUNT**

#### **(Violation of the New York Deceptive Practices Act, N.Y. Gen. Bus. Law §349, et. seq.)**

119. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

120. The acts and practices of Defendants, as set forth above, relate to consumer-oriented conduct and have directly, foreseeably, and proximately caused damages and injury consumers across the United States, including Plaintiff and Class Members.

121. The acts and practices of Defendants as set forth above are deceptive regarding material facts.

122. Defendants' misconduct has caused damages to Plaintiff and Class Members in amounts yet to be determined as described in greater detail above, including but not limited to having been compelled to pay amounts in excess of their legal obligations to retain their properties and avoid foreclosure, having to retain counsel to challenge inaccurate and otherwise illegal impositions and charges, incurring additional late fees and charges while the improper fees and charges are challenged, and/or being reported to credit bureaus without cause.

123. The actions of Defendants constitute consumer-oriented deceptive acts or practices in violation of New York General Business Law §349.

124. As a result of Defendants unlawful acts or practices, Plaintiff and the Class Members have been injured in amounts to be proven at trial, and Defendants should be ordered to pay, as damages to Plaintiff and the Class Members, the ascertainable losses suffered by Plaintiff and Class Members, and such amounts should be trebled pursuant to the terms of §349, attorneys' fees and costs, and Defendants should be enjoined from continuing to violate the law hereafter, as well as ordered to provide the other relief set forth below.

**SEVENTH COUNT**

**(Violation of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. § 56.8-1, et. seq.)**

125. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

126. The acts and practices of Defendants as set forth above, have directly, foreseeably, and proximately caused ascertainable damages and injury to Plaintiffs and Class members in amounts yet to be determined as described in greater detail above, including but not limited to having been compelled to pay amounts in excess of their legal obligations to retain their properties and avoid foreclosure, having to retain counsel to challenge inaccurate and otherwise illegal impositions and charges, incurring additional late fees and charges while the improper fees and charges are challenged, and/or being reported to credit bureaus without cause.

127. The actions of Defendants constitute acts, uses, or employment of unconscionable commercial practices, deception, fraud, false pretenses, false promises, misrepresentations, or the knowing concealment, suppression or omission of material facts with the intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of merchandise or real estate in violation of the CFA.

128. As a result of Defendants unlawful acts or practices, Plaintiffs and the Class have been injured in amounts to be proven at trial, and Defendants should be ordered to pay, as



damages to Plaintiffs and the Class members, attorneys' fees and costs, the ascertainable losses suffered by Plaintiffs and Class members, and such amounts should be trebled pursuant to the terms of the CFA, and Defendants should be enjoined from continuing to violate the law hereafter, as well as ordered to provide the other relief set forth below.

**EIGHTH COUNT**

**(Violation of Constitutional Rights Under Color of State Law, 42 U.S.C. §1983)**

129. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

130. Citi's scheme to artificially accelerate the foreclosure process to obtain title over foreclosed property through unlawful means was conducted through the use of judicial foreclosure statutes and judicial proceedings throughout the United States, including the States of New York and New Jersey. As set forth above, this scheme was intended to deprive the Plaintiff and the Class Members of their Constitutional right to due process before losing possession of their properties.

131. By knowingly utilizing the foreclosure statutes, and engaging the services of state officers to effectuate the foreclosure proceedings, Defendants acted under color of state law.

132. Courts across the United States have been overwhelmed by the number of foreclosure proceedings filed by Defendants and Defendants have been able to file inaccurate, incomplete, and fraudulent documentation during the course of pursuing foreclosures.

133. Defendants' ability to use the state's foreclosure proceedings and foreclose on the homes of the Plaintiff and Class Members is dependent upon significant assistance from state officials, including, ultimately, the use of state officials to conduct auctions of the foreclosed properties.

134. This conduct on the part of Defendants represents a violation of 42 U.S.C. §1983, given that their actions were taken under color of state law.

135. As a direct and proximate result of the unconstitutional acts described above, Plaintiff and Class Members have been irreparably injured.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that this case be certified and maintained as a class action and for judgment to be entered upon Defendants as follows:

- A. For economic and compensatory damages on behalf of Plaintiff and all Class Members;
- B. For actual damages sustained;
- C. For treble damages, as applicable;
- D. For punitive damages, as otherwise applicable;
- E. For declaratory relief, declaring that Defendants' actions violate N.Y. Gen. Bus. Law §349, N.Y.R.P.A.P.L. §1300 *et seq.*, the New Jersey FFA, and the New Jersey CFA;
- F. For injunctive relief, compelling Defendants to cease their actions that violate the law;
- G. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- H. For such other and further relief as this Court deems just and appropriate.

**DEMAND FOR TRIAL BY JURY**

Plaintiff respectfully demands a trial by jury on all issues within the instant action so triable.

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Friscia & Associates, LLC,  
Liddle & Robinson, LLP,

Attorneys for Plaintiff,

Dated: November 19, 2010

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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIAN COSTIGAN, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

CITIGROUP Inc. and CITIMORTGAGE, INC.,

Defendants.

Civ. No.:

VERIFICATION

I, Brian Costigan, hereby declare and verify as follows:

I am the plaintiff in the above-captioned case. I have read the contents of the foregoing  
Complaint. I am informed and believe that the facts related therein are true, based upon  
facts as related to me by my counsel, on that ground, I verify that the facts therein are  
true.



Brian Costigan