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THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MARION COUNTY

PLAINTIFF

v.

DEFENDANTS.

)
)
) Case No.

) COMPLAINT

) Claim Amount over \$10,000; Injunctive
) Relief Requested Not Subject to
) Mandatory Arbitration
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Plaintiff, , alleges the following:

1. is an individual who at all relevant times resides in Keizer, Oregon. The home and the home loan that are the subject of this action are for plaintiff's personal and family use. Plaintiff is a consumer as that term is used in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(3) and is a consumer as defined by the UDCPA, ORS 646.639.

2. Defendant has alleged that it is the servicer of the debt that plaintiff owes on the mortgage he executed on his property. is a debt

1 COMPLAINT

1 collector as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6) and is a debt collector as
2 defined by the UDCPA, ORS 646.639.

3 3. _____, Inc. _____ is the agent for the
4 mortgagee of plaintiff's property. _____ is a debt collector as that term is defined by the
5 FDCPA, 15 U.S.C. § 1692a(6) and the UDCPA, ORS 646.639.

7 4. _____ is the trustee who executed
8 the deed that wrongfully removed plaintiff from the title of his property. _____ is a debt
9 collector as defined by the FDCPA, 15 U.S.C. § 1692a(6) and the UDCPA, ORS 646.639.

11 5. _____ is the trustee for the trust that is plaintiff's
12 mortgagee.

13 6. _____ Trust 2007-SD1 ("Trust" or "the trust"), is
14 plaintiff's mortgagee and is a debt collector as that term is defined by the UDCPA, ORS
15 646.639(1)(g).

17 7. _____, Corp, _____ is the foreclosure trustee that is
18 currently foreclosing in plaintiff's home.

19 FACTUAL ALLEGATIONS

20 8. Plaintiff is the owner of the property located at _____, Keizer,
21 Oregon with a real property description of _____ ESTATES, LOT 1, ACRES 1.56.

23 9. Plaintiff and his wife and children use the property as their residence.

24 10. Plaintiff executed a mortgage when he purchased his home.

25 11. EMC alleges that it is the current loan servicer that is collecting the mortgage
26 payments that plaintiff is required to make under the mortgage.

27 12. In 2008 Cal-Western commenced a foreclosure on plaintiff's home.

28 2 COMPLAINT

1 13. Plaintiff and : agreed that plaintiff would cure the default by making one
2 payment of \$20,000 and making ongoing payments to .

3 14. Plaintiff performed by making his one-time payment of \$20,000 and began
4 making ongoing payments to ; however, without plaintiff's knowledge
5 completed the foreclosure and issued a deed to
6

7 15. foreclosed at the direction of and .

8 16. While plaintiff was residing in his home and making payments to ,
9 held the title to the property.
10

11 17. While held title to the property, was sued and had a default
12 judgment entered against it.

13 18. Plaintiff learned that he did not hold the title to the property when the Marion
14 County Sheriff posted a notice in November 2009 when the Sheriff notified plaintiff and his
15 family that the plaintiff's home would be sold at a sale to satisfy the debt that owed on
16 the default judgment.
17

18 19. Plaintiff incurred attorney fees and costs to defend against the Sheriff's execution
19 sale.

20 20. Plaintiff successfully defended the execution sale and he was able to keep his
21 home.
22

23 21. In December 200 obtained an order vacating the trustee's deed to
24 thereby placing plaintiff on the title to the property.

25 22. has failed to give proper credit of the payments that plaintiff has made for
26 the mortgage.
27

28
3 COMPLAINT

1 23. Upon information and belief, plaintiff is not in default under the terms of the
2 mortgage if and when a proper accounting has been made.
3
4

5 CLAIM ONE

6 BREACH OF CONTRACT

7 COUNT I

8 Breach of Express Provisions
9

10 ()

11 24. Plaintiff incorporates by reference the above allegations.

12 25. is the collection agent for and the trust.

13 26. actions of agreeing not to foreclose, accepting plaintiff's cure payments
14 and then foreclosing is a breach of the agreement not to foreclose and a breach of the underlying
15 mortgage contract.
16

17 27. Plaintiff has suffered damages in the amount of \$100,000 plus his attorney fees
18 and costs as a result of ; actions.

19 COUNT II

20 Breach of Contract - Vicarious Liability

21 (, Trust)

22 28. Plaintiff incorporates by reference the above allegations.

23 29. action to foreclose were taken on behalf of and the trust.

24 30. Citibank and the trust are liable for the actions of because is the
25 agent of and the trust.
26
27

1 31. Citibank and the trust are vicariously liable for the actions of because these
2 defendants were engaged in a joint venture.

3 32. Citibank and the trust's actions in authorizing to foreclose is a breach of
4 the mortgage agreement.
5

6 33. Alternatively, bank and the trust are vicariously liable because of agency
7 liability and joint venture liability in the amount of \$100,000 plus his attorney fees and costs.

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COUNT III

PROMISSORY ESTOPPEL

(, , TRUST)

34. Plaintiff incorporates by reference the above allegations.

35. Plaintiff relied upon statement that it would not foreclose when he made
14 payments to

36. Plaintiff further relied on statement that the one-time payment of \$20,000
16 would stop the foreclosure when he chose to forego other cure opportunities to keep his home.

37. Plaintiff was injured by defendants' actions in the amount of \$100,000 plus
19 attorney fees and costs.

COUNT IV

Breach of Contract- Breach of Covenant of Good Faith and Fair Dealing

(, , TRUST)

38. Plaintiff incorporates by reference the above allegations.

39. Defendants' actions in foreclosing and holding title to the property, accepting
26 payments when held title to the property, failing to accurately apply payments, causing
27

5 COMPLAINT

1 plaintiff's home to be subject to a Sheriff's execution sale and commencing a second
2 foreclosure is a breach of the covenant of good faith and fair dealing.

3 40. Defendants' actions have damaged plaintiff in the amount of \$100,000 plus
4 attorney fees and costs.
5

6
7 CLAIM TWO

8 SLANDER OF TITLE

9 (, , , TRUST)

10
11 41. Plaintiff incorporates by reference the above allegations.

12 42. , , and jointly agreed to sell plaintiff's property by a
13 foreclosure sale after he had cured the default that the defendant's alleged.

14 43. bank on behalf of the trust took title to the property through the foreclosure
15 sale after plaintiff cured the default the defendant's alleged.

16 44. , , and bank's action in removing plaintiff from the
17 title of the property when he had cured the default is slander of title.

18
19 45. Defendants' actions caused plaintiff damages in the amount of \$100,000.

20 CLAIM THREE

21 UNLAWFUL DEBT COLLECTION PRACTICES ACT

22 (, , ,)

23
24 46. Plaintiff incorporates by reference the above allegations.

25 47. , , and bank's action in foreclosing when plaintiff and
26 have come to an agreement to cure the loan is a violation of the Unlawful Debt Collection
27 Practices Act, ORS 646.639(2)(k).
28

6 COMPLAINT

1 48. Defendants' actions have caused plaintiff damages in the amount of \$150,000
2 plus attorney fees and costs.

3 CLAIM FOUR

4 FAIR DEBT COLLECTION PRACTICES ACT

5 (,)

6
7 49. Plaintiff incorporates by reference the above allegations.

8 50. and foreclosure is based on incorrect amounts that plaintiff
9 allegedly owes.

10
11 51. Defendants' action in foreclosing for amounts that plaintiff does not owe is a
12 violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e, 1692e(2), 1692f,
13 1692f(1), 1692f(6).

14 52. Defendants' action have damaged plaintiff in the amount of \$150,000 plus
15 statutory damages in the amount of \$1,000 per defendant, and attorney fees and costs.

16 CLAIM FIVE

17 ACCOUNTING

18
19 53. Plaintiff incorporates by reference the above allegations.

20 54. Plaintiff hereby seeks an accounting for the payments he has made, for charges to
21 the loan, and for a determination of the amount that is owed under the mortgage.

22 CLAIM SIX

23 INJUNCTIVE RELIEF

24
25 55. Plaintiff incorporates by reference the above allegations.

1 56. Plaintiff seeks preliminary and permanent injunctive relief enjoining defendants
 2 or anyone acting in concert with defendants from foreclosing his home during the pendency of
 3 this action or when he is adjudged to be current on his mortgage.
 4

5 WHEREFORE, plaintiff prays that the Court enter judgment against defendants on:

6 CLAIM ONE

7 COUNT I

8 Damages against in the amount of \$100,000 plus attorney fees and costs.

9 COUNT II

10 Damages against BANK and

11 in the amount of \$100,000 plus attorney fees and costs.

12 COUNT III

13 Damages against , , and

14 in the amount of \$100,000 plus attorney fees and costs.

15 COUNT IV

16 Damages against , BANK, and

17 in the amount of \$100,000 plus attorney fees and costs.

18 CLAIM TWO

19 Damages against , ,

20 , and in the amount of \$100,000.

21 CLAIM THREE

22 Damages against , , and BANK in the amount of \$150,000

23 plus attorney fees and costs.

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8 COMPLAINT

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CLAIM FOUR

Damages against and in the amount of \$150,000 plus statutory damages in the amount of \$1,000 each plus attorney fees and costs.

CLAIM FIVE

An accounting of this mortgage loan.

CLAIM SIX

An order preliminarily and permanently enjoining defendants or anyone acting in concert with defendants from foreclosing unless and until plaintiff is adjudged to be in default.

DATED: _____

OSB # _____

Salem, OR 97309
Tel:
Fax:

1 VERIFICATION OF COMPLAINT AND CERTIFICATION BY PLAINTIFF

2 I, _____, declare under penalty of perjury:

3 1. I am the Plaintiff in this civil proceeding.

4
5 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
6 that all of the facts contained in it are true, to the best of my knowledge, information and belief
7 formed after reasonable inquiry.

8 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
9 law or by a good faith argument for the extension, modification, or reversal of existing law.

10 4. I believe that this civil Complaint is not interposed for any improper purpose, such
11 as to harass any Defendants, cause unnecessary delay to any Defendants, or create a needless
12 increase in the cost of litigation to any Defendants, named in the Complaint.

13 5. I have filed this civil Complaint in good faith and solely for the purposes set forth
14 in it.

15 6. I have provided my attorneys with true and correct copies of each and every exhibit
16 which has been attached to this Complaint.

17 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST
18 OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR
19 USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY:

20 DATED _____

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28
29 plaintiff

10 COMPLAINT