

DEFENDANT'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO VERIFIED
COMPLAINT FOR FORECLOSURE OF MORTGAGE AND
DEFENDANT'S COUNTERCLAIMS AND ADDITIONAL PARTY CLAIMS

The Defendant, by and through her undersigned counsel hereby files this Amended Answer and Affirmative Defenses in response to Plaintiff's Complaint for Foreclosure of Mortgage (the "Complaint") and states:

ANSWER

1. As to Paragraph 1 of the Complaint, Defendant admits the allegations contained in this Paragraph for jurisdictional purposes only, however, does not admit Plaintiff is entitled to the relief sought therein.

2. Defendant denies the allegations contained in Paragraphs 2, 4, and 6 of Plaintiff's Complaint.

3. As to the allegations contained in Paragraph 3 of the Complaint, Defendant admits she signed the subject note and mortgage, neither of which were executed in favor of the Plaintiff. Defendant denies the remainder of the allegations of the Complaint.

4. As to Paragraph 5 of the allegations of the Complaint, Defendant denies Plaintiff is the holder of the original note and is entitled to enforce the note pursuant to §§673.3011, 673.3081 and 673.2031, *Fla. Stat.* Defendant demands strict proof of Plaintiff's allegations of its right to enforce the subject debt and demands strict proof that Plaintiff had the right to bring the subject lawsuit at the time it was filed. Defendant specifically denies the endorsements contained on the note confer ownership or transfers of the note to the plaintiff or otherwise gave Plaintiff or its predecessors in interest the right to bring the subject lawsuit at the time it was filed or at present.

5. The 2010 loan modification agreement attached to the Complaint, indicates that the loan is payable to Finance, Inc. The 2016 loan modification document was payable to other parties. Another entity filed a foreclosure lawsuit on February 12, 2016 claiming it was the owner and holder. There is no indication that this is no longer the case. There is no apparent paper trail from the various entities that have an apparent association with the subject loan - just gaps in Plaintiffs chain of transfers.

6. As to the allegations contained in Paragraphs 7, 8, 9 and 12 of Plaintiff's Complaint, Defendant denies she is in default and further denies Plaintiff has the right to declare the full amount due under the Note and Mortgage, to receive reimbursement for fees, costs or advances and did not properly accelerate payment pursuant to the terms of the mortgage and is not entitled to payment of any sums pursuant to the subject note and mortgage.

7. As to the allegations contained in Paragraph 10 of Plaintiff's Complaint, Defendant admits she owns the subject property and denies the remainder of the allegations.

8. As to the allegations contained in Paragraph 11 of Plaintiff's Complaint, Defendant denies Plaintiff has satisfied all conditions precedent or that these conditions have occurred or been waived. Specifically, Plaintiff failed to provide proper notices of transfer (per Paragraph 20 of the mortgage) and of acceleration (Paragraph 22).

9. Defendant is without knowledge and, therefore, denies the allegations contained in Paragraphs 13, 14, 15, 16 and 17.

WHEREFORE, Defendant respectfully requests that this Court enter judgment in her favor, and denying Plaintiff's requested relief. Defendant also requests this Court enter an order awarding her attorneys' fees and costs and such other and further relief as this court deems just.

FIRST AFFIRMATIVE DEFENSE
PLAINTIFF LACKS STANDING AND IS NOT THE REAL PARTY IN INTEREST

10. The originating lender for the subject loan dated April 19, 2007 was Bank. Another document filed with the Court is an April 5, 2010 mortgage modification agreement referencing the subject mortgage but payable to another entity. Then a third document attached to the Complaint is a December 12, 2016 loan modification agreement payable to another entity. Another institution filed a foreclosure lawsuit on February 12, 2016 claiming it was the owner and holder. There is no indication that this is no longer the case. In fact, the latest correspondence, attached hereto as Exhibit "A", provides that Servicer is involved in some form to the subject loan.

11. Even though Plaintiff claims to hold the note, documents of record do not support this claim.

12. Rule 1.210(a), *Fla.R.Civ.P.* provides, in pertinent part:

Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought.

13. In Florida, the prosecution of a residential mortgage foreclosure action must be by the owner and holder of the mortgage and the note. A plaintiffs' lack of standing at the commencement of a case is a fault that cannot be cured by gaining standing after the case has been filed. *See Lindsey v. Wells Fargo Bank, N.A.*, 139 So.3d 903 (Fla. 1st DCA 2013).

14. Based upon the foregoing, Plaintiff is not the owner, holder or entitled to enforce the subject debt at the time the lawsuit was filed and is not entitled to foreclose or obtain any other form of relief as to Defendant's home.

SECOND AFFIRMATIVE DEFENSE
UNCLEAN HANDS

15. Plaintiff filed the subject lawsuit on August 14, 2020. In or around April 2020, Defendant was approved for a Trial Modification Plan. She made each of her payments due pursuant to the agreement, in May, June and July, 2020. When she did not receive the permanent loan modification, Defendant sent a letter to Servicer, the purported servicer for the subject loan.

16. When Servicer responded on September 22, 2020, Defendant learned it had misapplied her May payment to her escrow account and misapplied her June payment to a completely different account. Instead of providing a loan modification, Plaintiff filed the subject mortgage foreclosure.

17. As a result of the purported servicer for Plaintiff's sloppy accounting leading to two of Defendant's trial modification payments being diverted to the wrong account, Plaintiff is not entitled to the equitable remedy of foreclosure.

WHEREFORE, Defendant requests this Court enter a judgment in her favor and against the Plaintiff in the above-styled case.

AMENDED ADDITIONAL PARTY COUNTERCLAIMS

Counterclaim Plaintiff, by and through her undersigned counsel, pursuant to Rule 1.190(h), Florida Rules of Civil Procedure, files this, her amended pleading, specifically, these Amended Additional Party Counterclaims against Additional Party Defendant and states:

JURISDICTION

1. This is a lawsuit brought pursuant to 12 C.F.R. § 1024.41(f)(2) of Regulation X of the Real Estate Settlement Procedures Act and 26 U.S.C. § 2605, which sets forth default servicing and loss mitigation procedures for federally related mortgage loans and 15 U.S.C. §§ 1692, *et seq.*, the Federal Fair Debt Collection Practices Act ("FDCPA") which prohibits debt collectors from engaging in any conduct which is false, deceptive, misleading or unfair.

2. This Court has jurisdiction over the Additional Party Defendant, as its presence is required to grant complete relief in the determination of the above-styled foreclosure lawsuit and counterclaims Defendant's Joinder of Servicer will not deprive the court of jurisdiction of the action. Rules 1.250, Florida Rules of Civil Procedure. See Rule 1.190(h), Florida Rules of Civil Procedure.

3. Defendant is an individual seeking statutory and actual damages.

PARTIES

4. Defendant is a consumer borrower residing in Jacksonville, Duval County, Florida and is *sui juris*.

5. Defendant, a corporation which engages in mortgage loan default servicing, including reviewing loss mitigation applications and the collection of mortgage debt which was delinquent when Servicer's servicing began in Jacksonville, Duval County, Florida.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Servicer in all matters relating to its mortgage servicing actions and collection procedures because it routinely and purposefully does business in the State of Florida.

7. Venue is proper in Jacksonville, Florida, because that is where the causes of action arose.

FACTUAL ALLEGATIONS RELATING TO DEFENDANT'S CLAIMS

8. Defendant's mortgage loan is serviced by Servicer. The mortgage loan in question is the subject of the above-referenced foreclosure action filed by Plaintiff against Defendant in Duval County, Florida.

9. In or around April or May 2020, the servicer employee contacted Defendant to notify her she had been accepted for a Trial Period Plan ("TPP"). Pursuant to this TPP, Defendant was required to make three payments of \$249.53 beginning on May 1, 2020 and continuing on June 1 and July 1, 2020.

10. Defendant made her May payment on May 1, 2020 and timely made her June 2020 payment. She timely made her final TPP payment on July 3, 2020.

11. As required by her TPP, she was then entitled to execute a final loan modification document. Instead, Servicer directed Plaintiff to file the subject mortgage foreclosure lawsuit.

12. Servicer failed to recognize Defendant's right to a loan modification.

13. Defendant has since learned that her May 1, 2020 payment was improperly diverted to her escrow account. To compound this error, servicer diverted Defendant's June payment to a completely unrelated account.

14. Defendant was initially notified to start making her TPP payments on May 1, 2020, which she did. Servicer later sent the attached June 23, 2020 letter informing her she needed to sign and return the TPP offer on or before July 7, 2020. She executed this document and returned it to Servicer on or about July 1, 2020.

15. Instead of sending Defendant's loan modification documents, Servicer referred the above-styled case for foreclosure. Plaintiff then filed a mortgage foreclosure lawsuit against Defendant on August 14, 2020.

COUNT ONE
VIOLATION OF RESPA - LOSS MITIGATION

16. The Counterclaim Plaintiff, sues Additional Party Defendant Servicer, pursuant to 12 C.F.R. § 1024.41(f)(2) of Regulation X of the Real Estate Settlement Procedures Act and 12 U.S.C. § 2605, and says:

17. Defendant realleges the allegations contained in Paragraphs 7 through 15 of her factual allegations above, inclusive, and incorporates the same herein by reference.

18. Defendant brings this action against Servicer seeking actual and statutory damages for its violations of Regulation X of the Real Estate Settlement Procedures Act, 12 C.F.R. § 1024.41(g) and 12 U.S.C. § 2605(f). All conditions precedent to the filing of this action have been performed or have occurred as Defendant tried to resolve the issues relating to the misapplied payments prior to filing these subject claim Servicer responded to Defendant's complaint but did so after filing the subject lawsuit. Therefore, Defendant did provide Servicer with pre-suit notice.

19. Regulation X, 12 C.F.R. § 1024.41 was enacted to ensure homeowners are provided effective, efficient and meaningful loss mitigation opportunities and practices and to address consumer harm that took place in the mortgage servicing market. 78 Fed. Reg. 10696, 10700 (February 14, 2013).

20. Servicer is a servicer governed by 12 C.F.R. § 1024.41.

21. 12 C.F.R. § 1024.41(f) states the following, in pertinent part:

(f) Prohibition on foreclosure referral -

(1) Pre-foreclosure review period. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i)** A borrower's mortgage loan obligation is more than 120 days delinquent;
- (ii)** The foreclosure is based on a borrower's violation of a due-on-sale clause; or
- (iii)** The servicer is joining the foreclosure action of a superior or subordinate lienholder.

(2) Application received before foreclosure referral. If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i)** The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;
- (ii)** The borrower rejects all loss mitigation options offered by the servicer; or
- (iii)** The borrower fails to perform under an agreement on a loss mitigation option.

22. Once offered by Servicer, Defendant is entitled to "loss mitigation" options as a result of her execution of a "federally related mortgage" as those terms are defined in 12 C.F.R. § 1024.31 and 12 U.S.C.A. § 2602(1).

23. Specifically, 12 C.F.R. § 1024.31 states the following, in pertinent part “[l]oss mitigation option means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.”

24. 12 U.S.C. §2602(1) states the following, in pertinent part:

(1) the term “**federally related mortgage loan**” includes any loan (other than temporary financing such as a construction loan) which--

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any “creditor”, as defined in section 1602(f) of Title 15, who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year, except that for the purpose of this chapter, the term “creditor” does not include any agency or instrumentality of any State.

25. Defendant alleges this loan is a federally related mortgage loan covered under Regulation X of the Real Estate Settlement Procedures Act, as defined by 12 U.S.C.A § 2602(1)(A). The term federally-related loans is a much broader category of loans than the federally-backed loan category. The party alleging it is the owner and Servicer, both received federal Troubled Asset Relief Program funds, the Plaintiff/Counterclaim Defendant’s accounts are federally insured and is federally regulated. Both Counterclaim Defendant and Additional Party defendant are regulated by federal agencies and have more than \$1,000,000.00 annually.

26. As is more particularly described above in Paragraphs 7 through 15, Servicer wrongfully filed this mortgage foreclosure lawsuit against Defendant and failed and refused to honor the TPP agreement and modify her mortgage loan. Instead, Servicer referred Defendant's loan for the first filing in the above-styled foreclosure lawsuit on August 14, 2020.

27. In or around April or May 2020, Plaintiff, through its servicing agent acting within its authority provided by Plaintiff, contacted Defendant to notify her she had been accepted for a Trial Period Plan (“TPP”). Pursuant to this TPP, Defendant was required to make three payments of \$249.53 beginning on May 1, 2020 and continuing on June 1 and July 1, 2020.

28. Defendant then received a June 23, 2020 letter informing her she needed to sign and return the TPP offer on or before July 7, 2020. She executed this document and returned it to Servicer on or about July 1, 2020.

29. Defendant made her May payment on May 1, 2020 and timely made her June 2020 payment. She made her final TPP payment on July 3, 2020.

30. As required by her TPP, she was then entitled to execute a final loan modification document. Instead, WSFS filed the subject mortgage foreclosure lawsuit.

31. Plaintiff failed to recognize Defendant’s right to a loan modification even though she made all of the required payments timely.

32. Defendant has since learned that her May 1, 2020 payment was improperly diverted to her escrow account. To compound this error, Plaintiff’s agent for servicing acting within the scope of its authority diverted Defendant’s June payments to a completely unrelated account. See September 20, 2020 letter from Plaintiff’s agent acting within the scope of its authority attached hereto as Exhibit “A” and is by this reference incorporated herein.

33. As a result of these violations of Regulation X, Defendant has been deprived of her right to the loan modification to which she was entitled and the amounts needed to reinstate her mortgage or modify her loan have unnecessarily increased as a result of late fees, interest, attorney's fees and costs, appraisals, inspection fees and various other fees and costs that have

been imposed after the improper referral to foreclosure. Servicer has admitted its errors yet this foreclosure and its resulting litigation-related expenses continue. See Exhibit "A".

34. Servicer has shown a pattern and practice of noncompliance with Regulation X of the Real Estate Settlement Procedures Act in connection with Defendant's loan. It has failed and refused to correct its error and has been actively prosecuting the subject foreclosure compounding the, at least, two errors already made with respect to Defendant's account. It has also failed to deny Defendant's loan modification. It just ignored the fact that it was required and proceeded with the filing and prosecution of this case.

35. It has been necessary for Defendant to retain Jacksonville Area Legal Aid, Inc. to prosecute civil litigation based upon the Act. Her counsel has incurred and will continue to incur costs and other related expenses in prosecuting this action and her counsel is entitled to reimbursement of their costs and attorneys' fees pursuant to 12 U.S.C. § 2605(f).

WHEREFORE, Defendant requests this Court to enter a judgment against Servicer as follows:

- A. Award actual and statutory damages pursuant to 12 U.S.C. § 2605(f) against Servicer for its violations of the Real Estate Settlement Procedures Act;
- B. Award attorneys' fees and costs against Servicer pursuant to 12 U.S.C. § 2605(f); and for
- C. Other and further relief as this Court may deem just and proper.

COUNT TWO

VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

36. Defendant realleges the allegations contained in Paragraphs 7 through 15 above, and incorporates the same herein by reference.

37. Defendant brings this action against Servicer seeking statutory damages for its violations of the Federal Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"). All conditions precedent to the filing of this action have been performed or have occurred.

38. The FDCPA was enacted to protect all consumers from debt collectors who seek to collect debts through illegal means and who engage in unfair and/or deceptive practices during the collection of a debt. Defendant is a "consumer" within the meaning of FDCPA, 15 U.S.C. § 1692a(3). Servicer has engaged in collection of "debt", as this phrase is defined by 15 U.S.C. § 1692a(5).

39. Servicer is a "debt collector" within the meaning of FDCPA, 15 U.S.C. § 1692a(6). Servicer regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, in this case, Plaintiff. In the above-styled mortgage foreclosure lawsuit filed in state court in Duval County, Florida on August 14, 2020, Plaintiff alleged Defendant's mortgage loan was in default status and that it became the owner of the mortgage loan. Servicer also began servicing the mortgage loan after that date.

40. The FDCPA provides a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. § 1692f. The FDCPA also forbids debt collectors from using unfair or unconscionable means to collect or attempt to collect any debt. 15 U.S.C. § 1692f.

41. As is more particularly described above in Paragraphs 7 through 15, Servicer wrongfully, falsely, deceptively, and unfairly failed to comply with the TPP it offered to Defendant. Servicer offered Defendant a TPP which she accepted on July 1, 2020.

42. Pursuant to this TPP, Defendant was required to make three payments of \$249.53 beginning on May 1, 2020 and continuing on June 1 and July 1, 2020.

43. Defendant made her May payment on May 1, 2020 and timely made her June 2020 payment. She made her final TPP payment on July 3, 2020.

44. As required by her TPP, she was then entitled to execute a final loan modification document. Instead, Plaintiff filed the subject mortgage foreclosure lawsuit.

45. Plaintiff failed to recognize Defendant's right to a loan modification even though she made all of the required payments timely.

46. Defendant has since learned that her May 1, 2020 payment was improperly diverted to her escrow account. To compound this error, Plaintiff's agent for servicing acting within the scope of its authority diverted Defendant's June payments to a completely unrelated account.

47. Servicer admitted it made two errors in applying Defendant's TPP May and June 2020 payments. See attached Exhibit "A".

48. Servicer also contributed to the wrongful, deceptive and unfair referral and filing of the above-styled lawsuit, also a violation of the FDCPA.

49. As a result of these violations of the FDCPA, Defendant has been deprived of her right to modify the loan based upon her successful TPP. The sums owed on her loan have been falsely, wrongfully, deceptively and unfairly increased as a result of expense related to the wrongful filing of the above-styled foreclosure lawsuit and she has been subjected to false and illegal collection activities, and has therefore been harmed.

50. It has been necessary for Defendant to retain Jacksonville Area Legal Aid, Inc. to prosecute civil litigation based upon the Act. Her counsel has incurred and will continue to incur

costs and other related expenses in prosecuting this action and her counsel is entitled to reimbursement of their costs and attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3).

WHEREFORE, Defendant requests this Court to enter a judgment against Servicer as follows:

- A. Award actual and statutory damages pursuant to 15 U.S.C. § 1692k(a) against Servicer for violations of the Federal Fair Debt Collection Practices Act;
- B. Award attorneys' fees and costs against Servicer pursuant to 15 U.S.C. § 1692k(a)(3); and for
- C. Other and further relief as this Court may deem just and proper.

AMENDED COUNTERCLAIMS

Counterclaim Plaintiff, by and through her undersigned counsel, pursuant to Rule 1.190(a), Florida Rules of Civil Procedures files this, her amended pleading, specifically, these Counterclaims against Plaintiff and states:

JURISDICTION

51. Defendant brings this action against Plaintiff for breach of contract and pursuant to 15 U.S.C. §§ 1692, *et seq.*, the Federal Fair Debt Collection Practices Act (“FDCPA”) which prohibits debt collectors from engaging in any conduct which is false, deceptive, misleading or unfair and for breach of contract. This Court has jurisdiction over the federal claims.

52. Defendant is an individual seeking statutory and actual damages.

PARTIES

53. Defendant is a consumer borrower residing in Jacksonville, Duval County, Florida and is *sui juris*.

54. Defendant, Plaintiff, is a foreign corporation which engages in mortgage loan default servicing, including the collection of mortgage debt which was delinquent when it became the purported owner of the subject loan.

JURISDICTION AND VENUE

56. This Court has jurisdiction over Plaintiff in the above-styled lawsuit in all matters relating to its claims raised in the above-styled lawsuit.

FACTUAL ALLEGATIONS RELATING TO DEFENDANT'S CLAIMS

57. Defendant's mortgage loan is serviced by Servicer Finance ("Servicer") and purportedly owned or held by Plaintiff. The mortgage loan in question is the subject of the above-referenced foreclosure action filed by Plaintiff against Defendant in Duval County, Florida.

58. In or around April or May 2020, Plaintiff, through its servicing agent acting within its authority provided by Plaintiff, contacted Defendant to notify her she had been accepted for a Trial Period Plan ("TPP"). Pursuant to this TPP, Defendant was required to make three payments of \$249.53 beginning on May 1, 2020 and continuing on June 1 and July 1, 2020.

59. Defendant made her May payment on May 1, 2020 and timely made her June 2020 payment. She made her final TPP payment on July 3, 2020.

60. As required by her TPP, she was then entitled to execute a final loan modification document. Instead, Plaintiff filed the subject mortgage foreclosure lawsuit.

61. Plaintiff failed to recognize Defendant's right to a loan modification even though she made all of the required payments timely.

62. Defendant has since learned that her May 1, 2020 payment was improperly diverted to her escrow account. To compound this error, Plaintiff's agent for servicing acting

within the scope of its authority diverted Defendant's June payments to a completely unrelated account.

62. Defendant was notified she was accepted for a streamline loan modification in March or April of 2020. She was required to start her TPP payments on May 1, 2020 - which she did. Defendant then received a June 23, 2020 letter informing her she needed to sign and return the TPP offer on or before July 7, 2020. She executed this document and returned it to Servicer on or about July 1, 2020.

63. Instead of sending Defendant's loan modification documents, the above-styled Plaintiff filed a mortgage foreclosure lawsuit against Defendant on August 14, 2020.

COUNT ONE
BREACH OF CONTRACT

64. The Counterclaim Plaintiff sues Counterclaim Defendant for breach of contract.

65. Defendant realleges the allegations contained in Paragraphs 40 through 47 of her factual allegations above, inclusive, and incorporates the same herein by reference.

66. Defendant complied with all material terms of the subject contract attached hereto as Exhibit "B" and Plaintiff failed and refused to offer the required permanent loan modification.

67. Specifically, in or around April or May 2020, Plaintiff, through its servicing agent acting within its authority provided by Plaintiff, contacted Defendant to notify her she had been accepted for a Trial Period Plan ("TPP"). Pursuant to this TPP, Defendant was required to make three payments of \$249.53 beginning on May 1, 2020 and continuing on June 1 and July 1, 2020.

68. Defendant made her May payment on May 1, 2020 and timely made her June 2020 payment. She made her final TPP payment on July 3, 2020.

69. As required by her TPP, she was then entitled to execute a final loan modification document. Instead, Plaintiff filed the subject mortgage foreclosure lawsuit.

70. Plaintiff failed to recognize Defendant's right to a loan modification even though she made all of the required payments timely.

71. Defendant has since learned that her May 1, 2020 payment was improperly diverted to her escrow account. To compound this error, Plaintiff's agent for servicing acting within the scope of its authority diverted Defendant's June payments to a completely unrelated account.

72. Defendant contacted Plaintiff to find out why it wrongfully denied her loss mitigation efforts. Instead of responding, Plaintiff filed the subject foreclosure lawsuit which is the exact opposite of its responsibility to provide a permanent loan modification to Defendant.

73. As a result of Plaintiff's breach of contract, Defendant has been deprived of her right to the loan modification to which she was entitled and the amounts needed to reinstate her mortgage or modify her loan have unnecessarily increased as a result of law fees, interest, attorney's fees and costs, appraisals, inspection fees and various other fees and costs that have been imposed after the improper referral to foreclosure.

74. It has been necessary for Defendant to retain Jacksonville Area Legal Aid, Inc. to prosecute her breach of contract claim, Defendant's counsel has incurred and will incur costs and other related expenses in prosecuting this action and her counsel is entitled to reimbursement of their costs and attorneys' fees pursuant to § 57.105(7), *Fla. Stat.*

WHEREFORE, Defendant requests this Court to enter a judgment against Plaintiff as follows:

A. Requires Plaintiff to provide Defendant with the permanent loan modification to which she is entitled and to dismiss the subject lawsuit which was wrongfully filed and prosecuted;

B. Award attorneys' fees and costs against Plaintiff pursuant to § 57.105(7); and for

C. Other and further relief as this Court may deem just and proper.

COUNT TWO
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

75. Defendant realleges the allegations contained in Paragraphs 40 through 47 above, and incorporates the same herein by reference.

76. Defendant brings this action against Plaintiff seeking statutory damages for its violations of the Federal Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"). All conditions precedent to the filing of this action have been performed or have occurred.

77. The FDCPA was enacted to protect all consumers from debt collectors who seek to collect debts through illegal means and who engage in unfair and/or deceptive practices during the collection of a debt. Defendant is a "consumer" within the meaning of FDCPA, 15 U.S.C. § 1692a(3). Plaintiff has engaged in collection of "debt," as this phrase is defined by 15 U.S.C. § 1692a(5).

76. Plaintiff is a "debt collector" within the meaning of FDCPA, 15 U.S.C. §1692a(6). Plaintiff regularly collects or attempts to collect, directly or indirectly, debts owed which were in default when Plaintiff became the owner. In the above-styled mortgage foreclosure lawsuit filed in state court in Duval County, Florida on August 14, 2020, Plaintiff alleged Defendant's mortgage loan was in default status and it became the owner of the

mortgage loan. Plaintiff also became the purported owner or holder of the loan when it was in default.

79. The FDCPA provides a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. § 1692f. The FDCPA also forbids debt collectors from using unfair or unconscionable means to collect or attempt to collect any debt. 15 U.S.C. § 1692f.

80. As is more particularly described above in Paragraphs 40 through 47, Plaintiff wrongfully, falsely, deceptively, and unfairly failed to comply with the TPP it offered to Defendant through its authorized agent, Servicer. Defendant was offered a TPP which she accepted on July 1, 2020.

81. Defendant. Servicer offered Defendant a TPP which she accepted on July 1, 2020.

82. Pursuant to this TPP, Defendant was required to make three payments of \$249.53 beginning on May 1, 2020 and continuing on June 1 and July 1, 2020.

83. Defendant made her May payment on May 1, 2020 and timely made her June 2020 payment. She made her final TPP payment on July 3, 2020.

84. As required by her TPP, she was then entitled to execute a final loan modification document. Instead, Plaintiff filed the subject mortgage foreclosure lawsuit.

85. Plaintiff failed to recognize Defendant's right to a loan modification even though she made all of the required payments timely.

86. Defendant has since learned that her May 1, 2020 payment was improperly diverted to her escrow account. To compound this error, Plaintiff's agent for servicing acting within the scope of its authority diverted Defendant's June payments to a completely unrelated account.

87. Servicer admitted it made two errors in applying Defendant's TPP May and June 2020 payments. See attached Exhibit "A".

88. Plaintiff wrongfully, deceptively and unfairly filed the above-styled lawsuit in violation of the FDCPA.

89. As a result of these violations of the FDCPA, Defendant has been deprived of her right to modify the loan based upon her successful TPP. The sums owed on her loan have been falsely, wrongfully, deceptively and unfairly increased as a result of expense related to the wrongful filing of the above-styled foreclosure lawsuit and she has been subjected to false and illegal collection activities, and has therefore been harmed.

90. It has been necessary for Defendant to retain Jacksonville Area Legal Aid, Inc. to prosecute civil litigation based upon the Act. Her counsel has incurred and will continue to incur costs and other related expenses in prosecuting this action and her counsel is entitled to reimbursement of their costs and attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3).

WHEREFORE, Defendant requests this Court to enter a judgment against Plaintiff as follows:

A. Award her actual and statutory damages pursuant to 15 U.S.C. § 1692k(a) against WSFS for violations of the Federal Fair Debt Collection Practices Act;

B. Award attorneys' fees and costs against WSFS pursuant to 15 U.S.C. § 1692k(a)(3); and for

C. Other and further relief as this Court may deem just and proper.

Defendant demands a trial by jury on all claims so triable.