

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.: 1:17-cv-23193-JEM

JEAN EMMANUEL DORVIL,

Plaintiff,

vs.

NATIONSTAR MORTGAGE LLC,

Defendant.

_____ /

AMENDED COMPLAINT

Plaintiff, Jean Emmanuel Dorvil (“Plaintiff”), sues Defendant Nationstar Mortgage, LLC, for damages and other relief, and alleges as follows:

A. Parties and Jurisdiction

1. Plaintiff Jean Emmanuel Dorvil is a resident in Miami-Dade County, Florida and entered into the subject contract in Miami-Dade County.
2. Defendant Nationstar Mortgage LLC is a foreign limited liability company registered in Florida and doing business in Miami-Dade County.
3. This is an action for damages exceeding \$15,000, exclusive of interest, attorney’s fees and costs.

B. Background

4. Plaintiff purchased property located at 19430 W. Oakmont Drive, Hialeah, Florida 33015 on September 29, 1994. He entered into a Note and Mortgage with Chase Federal Bank to secure the purchase of the home. See Note at Exh. A and Mortgage at Exh. B.
5. The Note and Mortgage were eventually transferred to Nationstar.

6. Nationstar claims that it is the “largest non-bank servicer in the US” and it services and originates home loans throughout the United States. See Nationstar Website Printout at Exh. C.
7. On May 30, 2013, Nationstar filed a Mortgage Foreclosure Complaint against Plaintiff and the Subject Property in the Eleventh Judicial Circuit Court in and for Miami Dade County at Case No. 13-019197-CA-01. See Verified Complaint at Exh. D
8. On July 23, 2013, Plaintiff filed a pro se answer, in that case, stating that he was attempting to enter into a loan modification with Nationstar.
9. Plaintiff, who had not retained counsel and believed Nationstar would in good faith continue to process his loan modification paperwork, entered into a consent final judgment with Nationstar on May 16, 2014.
10. The initial sale was scheduled for September 16, 2014.
11. The sale was eventually rescheduled for July 29, 2015.
12. On May 8, 2015, Nationstar sent Dorvil a letter stating that he had been approved for a “Trial Period Plan” for a mortgage modification. See Trial Modification Exh. E.
13. The letter stated that if Appellant wished to enter into the trial modification plan (“Trial Modification”) he would need to make payments in the amount of \$1,254.94 in the months of June, July and August 2015.
14. Per Nationstar’s letter, if Dorvil successfully completed the Trial Period Plan by making the three payments, he would be approved for a permanent loan modification.
15. Dorvil then promptly made payments in June (two payments), July, August and September 2015 all in the amount of \$1,254.94 each. See Bank Statements at Exh. F.
16. Nationstar accepted all of the payments; even a payment made after the sale of the property,

and retained them.

17. On July 15, 2015, Nationstar sent Dorvil a Freddie Mac Standard Modification Agreement (“Permanent Modification”), which stated that Dorvil had been approved for a permanent loan modification. See Permanent Modification at Exh. G.
18. In the letter accompanying the Permanent Modification, Nationstar represented that it was an offer and had clear terms by which the offer could be accepted. Nationstar stated, “to accept this offer,” Dorvil was required to “Sign and return both copies of the Loan Modification Agreement back to us in the enclosed, pre-paid envelope by July 25.”
19. Dorvil accepted the offer, signed the permanent loan modification on July 23, 2015 and sent it back to Nationstar pursuant the instructions.
20. Nationstar executed the permanent loan modification on August 18, 2015.
21. On July 23, 2015, the same day that Dorvil executed the permanent loan modification, Nationstar filed a Motion to Cancel and Not Reschedule Foreclosure Sale, which stated that the parties were actively involved in loss mitigation. The Motion failed to mention that all of the terms of the Trial Modification had been complied with and that the Permanent Modification had been offered and accepted.
22. Despite Dorvil’s acceptance and execution of the permanent loan modification agreement, Nationstar did not move to vacate the judgment and dismiss the case.
23. Plaintiff did not attach the Final Loan Modification Agreement to Motion to Cancel Sale.
24. Further, Nationstar accepted payments and still failed to vacate the judgment and dismiss the case.
25. Despite receiving the signed permanent modification agreement before the July 29th sale date, Nationstar did not even execute the document until August 18, 2015.

26. The Honorable Jacqueline Hogan Scola denied the motion to cancel sale on July 28th, and the sale took place on July 29, 2015, and Certificate of Sale was issued to Pioneer Investment Enterprises Inc. as Trustee of the 13-19197 Land Trust Dated 07/29-15 (“Third Party Purchaser”).
27. Both Nationstar and Dorvil agreed that Dorvil had been approved for a permanent loan modification prior to the sale occurring.
28. Nationstar accepted loan payments from Dorvil on September 30, 2015.
29. The writ of possession was executed and the Third Party Purchaser, with the assistance of the Miami Dade Sheriff’s Office, took possession of the property on November 7, 2015.
30. Dorvil and his family were forced to leave their home, pack up whatever belongings they could, abandon other belongings, and vacate the property.
31. At the time of the foreclosure sale the property was worth substantially more than it sold for at auction.
32. As a direct and proximate cause of Nationstar’s wrongful acts Dorvil was forced from his home, suffered emotional distress, lost his belongings, as well as any profits from the sale of his house on the open market, as well as other damages.

COUNT I - WRONGFUL FORECLOSURE

33. Plaintiff realleges paragraphs 1 through 32.
34. On July 23, 2016, Dorvil had accepted the permanent loan modification agreement offered by Nationstar.
35. Nationstar clearly knew that the sale was set for July 29, 2016.
36. Nationstar knew or should have known accepted the permanent loan modification before the time of the sale on July 29, 2016. Based on that knowledge, Nationstar should have moved to

dismiss the foreclosure lawsuit and vacate the judgment rather than allowing the sale to take place.

37. Further, Nationstar wrongfully waited until August, after the sale had taken place, to execute the permanent loan modification agreement.

38. As a result of Nationstar's wrongful acts, Dorvil suffered general and special damages in an amount to be determined at trial, including loss and the payment of attorney's fees associated with the wrongful foreclosure, as well as relocation expense damages, emotional distress damages, damage to his credit, amounts paid and retained by Nationstar pursuant to the trial and permanent loan modification agreements, lost opportunity to resolve the foreclosure lawsuit by a restructuring under the bankruptcy code or sale of the property, and lost profits from the sale of the Subject Property.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT II – BREACH OF CONTRACT (TRIAL MODIFICATION)

39. Plaintiff realleges paragraphs 1 through 32.

40. As described above, the Trial Modification sent to Plaintiff constitutes a valid offer.

41. By making all of the trial plan payments, Plaintiff accepted Defendant's offer.

42. Alternatively, Plaintiff's Trial Modification payments constituted offers and Defendants' acceptances of these offers occurred when Defendant accepted Plaintiff's payments.

43. Plaintiff's payments to Defendant constitute consideration.

44. Also, by making those payments, Plaintiff gave up the ability to pursue other means of saving his home, and Defendants received payments it might otherwise not have.

45. Defendants' failure to dismiss the case once the payments had been made and/or accepted is a breach of the agreement that Plaintiff would be entitled to a permanent loan modification.

46. As a result of Nationstar's wrongful acts, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.

47. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.

48. Plaintiff suffered further harm because by making Trial Modification payments, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT III – BREACH OF CONTRACT (PERMANENT MODIFICATION)

49. Plaintiff realleges paragraphs 1 through 32.

50. Once Plaintiff accepted the Final Modification offer by signing the contract, a new loan was in place and foreclosure should not have taken place.

51. Defendant breached the agreement by allowing the sale to take place.
52. As a result of Nationstar's wrongful acts, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.
53. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.
54. Plaintiff suffered further harm because by making Trial Modification payments and/or relying on the Permanent Modification, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT IV - BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

55. Plaintiff realleges paragraphs 1 through 32.
56. Defendant was obligated to act in good faith and to deal fairly with Plaintiff.
57. Plaintiff and Defendants were parties to two different contracts, the Trial Modification and the Permanent Modification.
58. Defendant failed to suspend foreclosure proceedings pursuant to the Trial Modification.

59. Defendant also failed to permanently modify the loan pursuant to the Permanent Modification by allowing the sale to take place.
60. Plaintiff deliberately failed to dismiss the foreclosure lawsuit once the Trial Modification and/or Permanent Modification were entered into. This unfairly frustrated the purpose of the both contracts which was to modify the loan, cease the foreclosure lawsuit, avoid entry of a final judgment, and allow Plaintiff to retain his home.
61. Defendant's breach of the Trail Modification and breach of the Permanent Modification deprived Plaintiff of the retaining his home and modifying the loan.
62. As a result of Nationstar's wrongful acts, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.
63. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.
64. Plaintiff suffered further harm because by making Trial Modification payments and/or relying on the Permanent Modification, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT V - PROMISSORY ESTOPPEL

65. Plaintiff realleges paragraphs 1 through 32.
66. Defendant promised to suspend foreclosure proceedings when it offered, and Defendant accepted, the Trial Modification.
67. Defendant promised to permanently modify Plaintiff's loan and that he would retain his home by virtue of the Permanent Modification.
68. Plaintiff relied on Defendant's promises to his detriment.
69. As a result of Nationstar's wrongful acts, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.
70. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.
71. Plaintiff suffered further harm because by making Trial Modification payments and/or relying on receiving a permanent modification, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT VI – NEGLIGENT MISREPRESENTATION (TRIAL MODIFICATION)

72. Plaintiff realleges paragraphs 1 through 32.
73. Nationstar falsely represented to Dorvil that his loan would be modified, the foreclosure proceedings would be suspended, and that he would retain his home if he complied with the terms of the Trial Modification.
74. Nationstar knew or should have known that there representations were false.
75. Nationstar intended to induce Plaintiff to make payments pursuant to the Trial Modification and/or to enter a consent judgment based on the representation that his home would be saved and the loan would be modified. Plaintiff further intended to induce Plaintiff to rely on the Trial Modification, rather than finding alternate ways to save his home.
76. As a result of Plaintiff's justifiable reliance on Defendant's misrepresentations, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.
77. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.
78. Plaintiff suffered further harm because by making Trial Modification payments, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for

any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

**COUNT VII – NEGLIGENT MISREPRESENTATION (PERMANENT
MODIFICATION)**

79. Plaintiff realleges paragraphs 1 through 32.

80. Nationstar falsely represented to Dorvil that his loan would be modified, the foreclosure proceedings would be suspended/dismissed, and that he would retain his home if he complied with the terms of the Permanent Modification.

81. Nationstar knew or should have known that these representations were false.

82. Nationstar intended to induce Plaintiff to make payments pursuant to the Trial Modification and/or to enter a consent judgment based on the representation that his home would be saved and the loan would be modified. Plaintiff further intended to induce Plaintiff to rely on the Permanent Modification, rather than finding alternate ways to save his home.

83. As a result of Plaintiff's justifiable reliance on Defendant's misrepresentations, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.

84. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.

85. Plaintiff suffered further harm because by relying on a modification, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as

selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT VII – FRAUDULENT MISREPRESENTATION (TRIAL MODIFICATION)

86. Plaintiff realleges paragraphs 1 through 32.

87. Nationstar falsely represented to Dorvil that his loan would be modified, the foreclosure proceedings would be suspended, that he would retain his home if he complied with the terms of the Trial Modification, and receive a permanent modification of his loan.

88. Nationstar knew that these representations were false.

89. Nationstar intended to induce Plaintiff to make payments pursuant to the Trial Modification and/or to enter a consent judgment based on the representation that his home would be saved and the loan would be modified. Plaintiff further intended to induce Plaintiff to rely on the Trial Modification, rather than finding alternate ways to save his home.

90. Plaintiff relied on these representations to his detriment.

91. As a result of Plaintiff's justifiable reliance on Defendant's misrepresentations, Dorvil suffered general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.

92. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting

against his credit profiles as well as a final judgment against him.

93. Plaintiff suffered further harm, because, by making Trial Modification payments, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

COUNT VIII – FRAUDULENT MISREPRESENTATION (PERMANENT MODIFICATION)

94. Plaintiff realleges paragraphs 1 through 32.

95. Nationstar falsely represented to Dorvil that his loan would be modified, the foreclosure proceedings would be suspended/dismissed, and that he would retain his home if he complied with the terms of the Permanent Modification.

96. Nationstar knew that these representations were false.

97. Nationstar intended to induce Plaintiff to make payments pursuant to the Trial Modification and/or to enter a consent judgment, and/or accept the Permanent Modification based on the representation that his home would be saved, the loan would be modified, and the case would be dismissed. Plaintiff further intended to induce Plaintiff to rely on the Permanent Modification, rather than finding alternate ways to save his home.

98. As a result of Plaintiff's justifiable reliance on Defendant's misrepresentations, Dorvil suffered general and special damages in an amount to be determined at trial, including the

loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.

99. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.

100. Plaintiff suffered further harm because by making Trial Modification payments and entering the Permanent Modification, Plaintiff forewent other remedies that might have been pursued to save his home, such as restructuring the debt under the bankruptcy code, or pursuing other strategies to deal with the foreclosure lawsuit, such as selling his home.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

NEGLIGENCE

101. Plaintiff realleges paragraphs 1 through 32.

102. Nationstar had a duty pursuant to Regulation X 12 C.F.R. § 1024(g) to not conduct a foreclosure sale once a complete loss mitigation application was received more than thirty-seven days before a foreclosure sale.

103. Here, Nationstar failed to perform this duty by not dismissing the foreclosure case.

104. Nationstar actively participated in the litigation, and it was foreseeable that Dorvil's property would be sold.

105. In the alternative, Nationstar had a duty to inform the state court of the modification when it sought leave to cancel the sale, and/or in its objection to the sale.

106. Nationstar completely breached this duty by failing to even mention that they had already accepted modification payments and had modified the loan.

107. Nationstar's failure to stop the sale by dismissing the case and/or Nationstar's failure to truthfully inform the court about the payments and modification caused Dorvil to lose his home and suffer general and special damages in an amount to be determined at trial, including the loss of his home, lost profits from the sale of his home, relocation expense damages, loss of personal belongings, attorney's fees and costs in the foreclosure lawsuit, and emotional distress damages.

108. In addition, Plaintiff has suffered the additional harm of having improper adverse reporting against his credit profiles as well as a final judgment against him.

109. Further, Defendant acted in reckless disregard and/or with gross negligence of Plaintiff's rights. Defendant had full knowledge of the modification, was accepting and retaining payments, yet, allowed Plaintiff's home to be sold, resulting in injury to Plaintiff.

Wherefore, Plaintiff requests that this Court enter judgment for damages against Defendant, including nominal and special damages, for costs and expenses of this action and for any further relief deemed fit and proper. Plaintiff further requests that the Court award attorney's fees and costs incurred as a result of the filing of this action. Plaintiff further requests that punitive damages be awarded.

PRAYER FOR PUNITIVE DAMAGES

110. Plaintiff realleges paragraphs 1 through 109.

111. Defendant acted in reckless disregard and/or with gross negligence of Plaintiff's rights.

Defendant had full knowledge of the modification, was accepting and retaining payments, yet, allowed Plaintiff's home to be sold, resulting in injury to Plaintiff.

112. In the alternative, Defendant intentionally failed and/or refused to file a voluntary dismissal, closing the case. Defendant was an active participant in post-judgment litigation and knew that Plaintiff's property would be sold if the case was not dismissed, yet allowed the sale to go forward, resulting in injury to Plaintiff. Defendant had actual knowledge of the wrongfulness of its conduct and that there was a high probability of injury or damage to Plaintiff, and despite that knowledge, Defendant intentionally pursued that course of conduct, resulting in injury or damage to Plaintiff.

Wherefore, Plaintiff requests the imposition of punitive damages in addition to damages prayed for herein.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a jury trial of each and every issue so triable in this action by jury.

Dated this 15th day of December, 2017.

Respectfully Submitted,

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