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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**RICHARD and JILL BETTENCOURT,**

Case No. 6:12-cv-2187

Plaintiffs,

**COMPLAINT FOR BREACH OF  
CONTRACT, DECEIT, AND  
NEGLIGENCE**

v.

**JURY TRIAL DEMANDED**

**PNMAC MORTGAGE CO., LLC,**  
a foreign limited liability company.

Defendant.

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**COMPLAINT** - Page 1

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1.

### **INTRODUCTION**

In 2011 Plaintiffs brought claims arising at law and equity against Defendant in state court. Plaintiffs then filed bankruptcy to avoid a wrongful foreclosure and PNMAC filed a secured claim of \$148,373.95 alleging an arrearage of \$23,894.60 on the mortgage contract. Plaintiffs filed a complaint against Defendant in bankruptcy court and objected to Defendant's proof of claim. Upon Defendant's motion, the bankruptcy court abstained adjudicating the matter, leaving Plaintiffs to re-file in district court.

Plaintiffs, by and through their trial attorney, Michael Fuller, allege the following:

2.

### **JURISDICTION AND THE PARTIES**

This court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because true diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.

3.

This is an action for actual damages, punitive damages, declaratory relief, injunctive relief, attorneys fees and costs brought by Richard and Jill Bettencourt ("Plaintiffs") against PNMAC MORTGAGE CO., LLC ("PNMAC").

4.

Plaintiffs resided at 690 N. River Bend Rd, Otis, Oregon 97368 (their "home") during all times material.

5.

PNMAC is a foreign limited liability company which transacted business in Oregon during all times material.

6.

**FACTUAL ALLEGATIONS**

On or around March 2000, Plaintiffs purchased their home and made an initial down payment of approximately \$10,000.

7.

On or around December 2005, Plaintiffs refinanced their home and entered a mortgage contract with Ameriquest Mortgage Company (“Ameriquest”).

8.

The mortgage contract imposed a duty of good faith upon the parties.

9.

The duty of good faith required the parties to avoid making choices which would frustrate the objectively reasonable expectations of the other party.

10.

Pursuant to the mortgage contract, Plaintiffs received a loan in the amount of \$136,000 which was secured by a Deed of Trust between Plaintiffs as “Grantors” and Ameriquest as the “Lender” and “Beneficiary” and LandAmerica OneStop. Inc. as “Trustee.”

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11.

The Deed of Trust from Plaintiffs to Ameriquest was later altered in handwriting without Plaintiffs permission or consent to replace the Trustee's name with "Commonwealth Land Title Company".

12.

The Deed of Trust from Plaintiffs to Ameriquest was recorded in the official records of Lincoln County, Oregon, as document #2006-600956.

13.

Upon information and belief, Ameriquest assigned the Deed of Trust to a securitized mortgage pool without recording the assignment of the Deed of Trust to the pool as is required under ORS 86.175(1).

14.

On or around July 2006 Ameriquest assigned the Deed of Trust to CITIMORTGAGES, INC. ("CITI"). The assignment was recorded in the official records of Lincoln County, Oregon on or around July 31, 2006.

15.

CITI is a foreign corporation which transacted business in Oregon during all times material.

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16.

In April 2011 CITI entered a consent order to cease and desist with the Federal Reserve based on CITI's repeated failure to properly service its mortgage contracts.

17.

In 2007 CITI materially breached the mortgage contract with Plaintiffs by failing to timely pay property taxes on Plaintiffs' home. CITI's material breach resulted in an Escrow accounting error in CITI's favor and against Plaintiffs. CITI's material breach also injured Plaintiffs by causing them to incur interest and penalties.

18.

In or around January 2009 and again in or around March 2009, CITI materially breached the mortgage contract with Plaintiffs by unilaterally altering the interest rate.

19.

Despite these material breaches of contract by CITI, Plaintiffs always remained current on their monthly mortgage payments under the mortgage contract.

20.

Plaintiffs made each and every monthly mortgage payment under the mortgage contract on time to CITI from 2006 until summer of 2009.

21.

In or around March 2009 Plaintiffs and CITI discussed the possibility of making changes to certain terms of the mortgage contract.

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22.

CITI represented to Plaintiffs that the mortgage contract terms may be modified through CITI's loan modification program.

23.

CITI represented to Plaintiffs that CITI would contact Plaintiffs regarding the loan modification program within 30 business days.

24.

CITI represented to Plaintiffs that CITI's goal was to assist them on a personal basis and determine the best solutions for Plaintiffs personally.

25.

CITI represented to Plaintiffs that CITI's goal was to modify its portfolio of mortgage contracts and to avoid foreclosure of its mortgage contracts.

26.

CITI had little or no financial incentive to making changes to certain terms of Plaintiffs' mortgage contract as CITI had represented.

27.

CITI had little or no financial incentive to modify Plaintiffs mortgage contract through its loan modification program as CITI had represented.

28.

CITI had little or no financial incentive to contact Plaintiffs regarding its loan modification program as CITI had represented.

29.

CITI had little or no financial incentive to assist Plaintiffs on a personal basis and determine the best solutions for Plaintiffs personally as CITI had represented.

30.

CITI had little or no financial incentive to modify its portfolio of mortgage contracts and avoid foreclose of its mortgage contracts as CITI had represented.

31.

CITI had little or no financial incentive to avoid foreclosure of its mortgage contracts as CITI had represented.

32.

CITI's representations as alleged above were false and motivated by an attempt to illegally profit.

33.

CITI intentionally deceived Plaintiffs through its representations as alleged above.

34.

CITI breached its duty of good faith to Plaintiffs by intentionally deceiving Plaintiffs though its representations as alleged above.

35.

CITI failed to contact Plaintiffs within 30 days as CITI represented it would.

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36.

In or around July 2009 CITI eventually contacted Plaintiffs and again discussed the possibility of modifying the terms of the mortgage contract.

37.

CITI requested documents from Plaintiffs and Plaintiffs provided the documents the same day.

38.

CITI represented to Plaintiffs that their account was being fast tracked.

39.

CITI then verbally agreed to deliver Plaintiffs a written offer to permanently modify the terms of their mortgage contract and CITI agreed the modified mortgage contract payments would be \$550.26 per month.

40.

CITI represented to Plaintiffs that it would take a couple of months for CITI to send Plaintiffs the offer documents and that until Plaintiffs received the documents, Plaintiffs should not make any loan payments under the existing mortgage contract.

41.

At all times relevant, Plaintiffs stood ready, willing, and able to make each and every timely mortgage payments and otherwise perform their duties under the mortgage contract.

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42.

CITI expressly waived its contract right to payments for the months of August and September 2009.

43.

CITI consciously relinquished its contractual right to payments in August and September 2009 and Plaintiffs' duty to make August and September 2009 payments was excused by CITI's waiver.

44.

On or around September 2009, CITI provided Plaintiffs the written binding unilateral offer titled "Home Affordable Modification Trial Period Plan" ("written unilateral offer").

45.

CITI's written unilateral offer stated "HELPING YOU STAY IN YOUR HOME" in large font at the top of the first page.

46.

CITI's written unilateral offer stated CITI would provide Plaintiffs permanent loan modification paperwork ("paperwork") if Plaintiffs performed the conditions under the written unilateral offer.

47.

The condition on page two of CITI's written unilateral offer required Plaintiffs to make three trial period payments of \$550.26.

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48.

Plaintiffs timely accepted CITI's written unilateral offer, through and not limited to the following performance: signing and executing the unilateral written offer and by submitting the required monthly payments pursuant to the conditions of the unilateral written offer.

49.

Plaintiffs timely made the three trial period payments for October, November, and December of 2009.

50.

After making their first three payments, Plaintiffs contacted CITI and asked about the paperwork CITI was required to send Plaintiffs.

51.

CITI represented to Plaintiffs it would send the paperwork within 30 days.

52.

CITI materially breached its mortgage contract with Plaintiffs by refusing to send the paperwork.

53.

Plaintiffs continued to perform under the terms of CITI's written unilateral offer and subsequent modifications to their mortgage contract by timely making payments at the \$550.26 amount until September 2010.

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54.

CITI's representations concerning its loan modification program as alleged above were false and motivated by an attempt to illegally profit.

55.

CITI intentionally deceived Plaintiffs through its representations concerning its loan modification program as alleged above.

56.

CITI breached its duty of good faith to Plaintiffs by intentionally deceiving Plaintiffs though its representations concerning its loan modification program as alleged above.

57.

Despite CITI's representations concerning its loan modification program as alleged above, CITI intended to modify as few of its mortgage contracts as possible and intended to increase fees and otherwise illegally profit through its loan modification program.

58.

On or around September 2010, CITI "assigned" the Deed of Trust to PNMAC. This document was recorded on or around October 2010 in the official records of Lincoln County, Oregon.

59.

CITI's transfer to PNMAC breached its duty of good faith to Plaintiffs.

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60.

CITI transferred the Deed of Trust to PNMAC for less than fair consideration in an attempt to illegally profit.

61.

CITI's agreement with PNMAC operated to assign money to be earned and obligations and burdens of the mortgage contract to PNMAC. Upon assignment, PNMAC became bound to carry out the terms of the mortgage contract.

62.

Upon assignment, PNMAC stood in the shoes of CITI and acquired no greater interest in rights under the mortgage contract than CITI had.

63.

As assignee, PNMAC immediately became subject to any defenses and claims Plaintiffs could have asserted against the assignor, CITI.

64.

CITI breached its duty of good faith to Plaintiffs by failing to oversee PNMAC's performance under the terms of the mortgage contract and by encouraging PNMAC to materially breach the terms of the mortgage contract with Plaintiffs.

65.

In 2008 after Countrywide Financial collapsed, a group of its high ranking officers founded PNMAC in an attempt to profit during America's mortgage crisis.

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66.

PNMAC represents to the public that its mission is to keep borrowers in their homes while providing attractive risk-adjusted returns to its investors over the long-term.

67.

CITI's "assignment" of the Deed of Trust to PNMAC was initialed by Brian Bly on behalf of CITI. Mr. Bly is not an officer or employee of CITI but rather is a so called "robot-signer." His actual employer is National Title Clearing, Inc. Mr. Bly or his actual employer has testified under oath that his primary responsibility in this position was to "sign" up to 5,000 mortgage assignments a day on behalf of 20 financial service companies. Despite having held this position for 10 years he has testified that he has virtually no understanding of the documents he is signing or their importance.

68.

Several of the statements in this "assignment" are false. Neither CITI's nor Mr. Bly's address is 1000 Technology Drive, O'Fallon, MO 63368. This address was used in order to make it appear that Mr. Bly and his employer had complied with the corporate formalities needed to enable him to sign the document as an officer of CITI. This information is false. In addition, no "note" was ever transferred to Defendant as is stated in the "assignment" as is represented in the "assignment." This information is also false.

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69.

PNMAC purchased CITI's contract rights with Plaintiffs for a substantial discount and then breached its duty of good faith to Plaintiffs by declaring default under the mortgage contract when PNMAC knew or had reason to know the mortgage contract was not in default.

70.

In or around September 2010, Plaintiffs again contacted CITI to request their paperwork pursuant to CITI's unilateral written offer. It was at that time Plaintiffs were informed their "loan had been sold" to PNMAC. On or about September 2010 PNMAC sent Plaintiffs a letter stating Plaintiffs' loan had been transferred to it from CITI.

71.

Also in or about September 2010 Plaintiffs contacted PNMAC to tender their next payment pursuant to the mortgage contract, as previously modified by CITI.

72.

PNMAC refused Plaintiffs payment.

73.

In an attempt to illegally profit, PNMAC demanded Plaintiffs pay over \$12,000 to bring payments under the mortgage contract current when PNMAC knew or had reason to believe Plaintiffs' payments under the mortgage contract were current.

74.

PNMAC had actual notice that this deceitful breach of contract and duty of good faith caused Plaintiffs emotional distress.

75.

On or about February 2011 PNMAC appointed Christopher C. Dorr, LLC (“Dorr”) as the successor trustee. The documentation was not notarized until seven days after it was signed. The documentation was recorded in the public record on February 25, 2011 as document 2011-02083.

76.

On or about February 17, 2011 Dorr purported to issue a Notice of Default and Election to Sell (the “notice”) Plaintiffs’ home on June 27, 2011. The Notice of Default and Election to Sell was not sent until March 3, 2011 and was received by Plaintiffs around March 5, 2011.

77.

Since the issuance of the notice, PNMAC has refused to accept payment from Plaintiffs. Despite repeated efforts by Plaintiffs to communicate with PNMAC, they continued to proceed with the foreclosure on Plaintiffs’ home.

78.

In 2011 PNMAC sought to remedy its breach of contract and duty of good faith by modifying the mortgage contract. Plaintiffs submitted all documents requested of them and PNMAC wrote to Plaintiffs on April 19, 2011 and told them they had “received a complete set of documents as requested of you for the Trial Period.”

79.

On May 24, 2011 PNMAC wrote Plaintiffs a second letter which told them that they had not submitted the required paperwork for modification.

80.

PNMAC's May 24, 2011 letter intentionally deceived Plaintiffs and breached PNMAC's duty of good faith to Plaintiffs.

81.

PNMAC breached the terms of the mortgage contract by falsely asserting a right to a second mortgage.

82.

PNMAC breached the mortgage contract by failing to timely pay property taxes on Plaintiffs' home.

83.

On or around June 16, 2011, Plaintiffs' attorney Terry Scannell talked by phone and email with Dorr, the trustee, about the key facts contained in Plaintiffs' original state court complaint and requested that the trustee sale scheduled for June 27, 2011 be postponed as the Plaintiffs' home was going to be improperly foreclosed upon. The sale was postponed until July 15, 2011 but was not rescinded.

84.

On or around October 2011 Plaintiffs filed for chapter 13 bankruptcy protection in the District of Oregon to avoid wrongful foreclosure of their home by PNMAC.

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85.

PNMAC submitted documents purporting to represent the terms of CITI's written unilateral offer to the Oregon Department of Justice. The documents submitted by PNMAC contained forgeries.

86.

Upon information and belief, the wrongdoing of CITI was in furtherance of PNMAC's illegal profits and the wrongdoing of PNMAC was in furtherance of CITI's illegal profits.

87.

CITI and PNMAC have given substantial assistance to each other in accomplishing the result of failing to honor CITI's binding unilateral offer to modify Plaintiffs' mortgage contract and CITI and PNMAC's actions, separately considered, constitute deceitful breaches of contract and duty of good faith which are owed to Plaintiffs.

88.

As a direct and proximate result of PNMAC's deceitful breaches of contract and duty of good faith, Plaintiffs suffered foreseeable severe ongoing emotion harm to be proved at trial. Plaintiffs' emotional harm worsened over months in duration.

89.

As a direct and proximate result of PNMAC's deceitful breaches of contract and duty of good faith, Plaintiffs suffered foreseeable actual damages, including and not limited to monetary loss, time spent and expenses including attorneys fees and costs to be proved at trial.

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90.

PNMAC’s choices to breach their mortgage contract with Plaintiffs and corresponding duty of good faith gives PNMAC an unfair advantage over mortgage servicers that choose to responsibly conduct themselves within the bounds of the law.

91.

PNMAC’s choices constitute extraordinary transgressions of socially tolerable behavior based on the social standards in Plaintiffs’ community.

92.

Plaintiffs are entitled to and so seek punitive damages against PNMAC.

93.

Plaintiffs are entitled to and so demand a trial by jury.

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94.

**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

Plaintiffs re-allege the above by reference.

95.

PNMAC deceitfully breached its mortgage contract and duty of good faith with Plaintiffs as alleged above.

96.

As a direct, proximate, foreseeable result of PNMAC's various material breaches of contract, Plaintiffs are entitled recover foreseeable damages and reasonable expenses including attorneys fees and costs in amounts to be proved at trial.

97.

At the discretion of this Honorable Court, Plaintiffs seek the equitable remedy of specific performance because no adequate remedy at law exists.

98.

Specifically, Plaintiffs seek an Order requiring PNMAC file an amended Proof of Claim in Plaintiffs' Bankruptcy Case which accurately represents the terms of the mortgage contract.

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99.

**SECOND CLAIM FOR RELIEF**

**(Deceit)**

Plaintiffs re-allege the above by reference.

100.

PNMAC committed fraud against Plaintiffs through its deceitful acts and omissions as alleged above.

101.

As a direct, proximate, foreseeable result of PNMAC's various deceitful acts and omissions, Plaintiffs are entitled recover foreseeable damages, punitive damages, and reasonable expenses including attorneys fees and costs in amounts to be proved at trial.

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102.

**THIRD CLAIM FOR RELIEF**

**(Negligence)**

Plaintiffs re-allege the above by reference.

103.

PNMAC owed Plaintiffs a general duty of care to avoid causing foreseeable injury to Plaintiffs.

104.

PNMAC owed Plaintiffs additional duties of good faith and fair dealing based on Plaintiffs special relationship with PNMAC resulting from the mortgage contract.

105.

PNMAC had notice their continued deceitful breaches of contract and duty of good faith were directly causing Plaintiffs monetary loss and severe ongoing emotional distress.

106.

PNMAC's choices to systematically and deceitfully breach their contract and duty of good faith with Plaintiffs were unreasonable and motivated by illegal profits.

107.

PNMAC's negligence as detailed above directly and proximately caused Plaintiffs damages including monetary loss and severe ongoing emotional distress.

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108.

Oregon law protects Plaintiffs' right to perform under their mortgage contract free from deceitful breaches of contract and duty of good faith by PNMAC.

109.

PNMAC negligently chose to conduct itself unreasonably by causing foreseeable monetary damages and severe ongoing emotional distress to Plaintiffs through deceitful breaches of contract and duty of good faith as detailed above.

110.

As a direct, proximate, foreseeable result of PNMAC's negligence, Plaintiffs are entitled recover foreseeable damages and reasonable expenses including attorneys fees and costs in amounts to be proved at trial.

111.

Plaintiffs are entitled to and so demand a trial by jury.

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**WHEREFORE**, Plaintiffs request judgment against PNMAC as follows:

- A. For declaratory judgment that PNMAC deceitfully breached the terms of the mortgage contract with Plaintiffs;
- B. For actual damages;
- C. For punitive damages of \$10,000,000.00;
- D. For an award of reasonable attorneys fees and costs;
- E. For injunctive relief ordering PNMAC to file an amended Proof of Claim in Plaintiffs' Bankruptcy Case in accordance with the factual determinations made in this case;
- F. For such other and further relief as this Court may deem just and proper.

DATED: December 3, 2012

s/ Michael Fuller  
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