

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO.:

STATE OF NORTH CAROLINA, *ex rel.*  
ROY COOPER, Attorney General,

Plaintiff,

v.

TIDEWATER FINANCIAL SOLUTIONS, LLC,  
and ELAINE M. MADEJ, individually and in her  
capacity as Manager of Tidewater Financial  
Solutions, LLC,

Defendants.

**AFFIDAVITS**

In support of the allegations in the State's Complaint filed on September 21, 2012, the State hereby submits the attached affidavits of consumer victims Eulogio De La Cruz and Diana Paluck.

This the 21<sup>st</sup> day of September, 2012.

STATE OF NORTH CAROLINA *ex rel.* ROY COOPER,  
ATTORNEY GENERAL

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**STATE OF NORTH CAROLINA**

**NEW HANOVER COUNTY**

**AFFIDAVIT OF EULOGIO DE LA CRUZ**

I, Eulogio de la Cruz, being duly sworn, state as follows:

1. I am a resident of Wilmington, North Carolina.
2. In or about February 2000, I obtained a mortgage for a home located at 2815 Chappell Avenue, Wilmington, North Carolina. It had been my dream to own a home, and I loved this small home.
3. In 2009, my business, Port City Marble and Granite, was struggling to survive. I was forced to lay off seven of the business's nine employees, leaving only myself and my assistant. I began reaching out to Bank of America to try to modify my mortgage. At first, I was informed that I could not obtain a loan modification because I was still current on my payments. By September 2009, however, I had fallen 5 months behind on my mortgage. I wrote to Bank of America on September 28, 2009, again requesting a loan modification, however, I was told that I was too far behind to qualify.
4. By April 2010, my financial struggles had only worsened. I sent Bank of America a check for my mortgage payment on April 12, 2010, only for it to be returned on April 19, 2010. I was informed a few days later that foreclosure proceedings were underway.
5. In or about April 2010, at the suggestion of one of my business's customers, I called Elaine Madej at Tidewater Financial Solutions, LLC. ("Tidewater"). When I met with her later that month at her office and explained my situation, Ms. Madej represented that she was

optimistic that she could modify my loan and prevent the foreclosure. She said that Tidewater routinely helped similarly-situated individuals obtain loan modifications and prevent foreclosure. She told me that she could reduced my payments from about \$480 a month to about \$300 a month.

6. At this meeting, Ms. Madej told me that I would have to pay a fee of \$500 before she would pursue a mortgage modification or otherwise assist me in avoiding foreclosure.

7. In early May 2010, a few days after our initial meeting, I paid Tidewater \$500 in cash so that they would begin working to modify my mortgage. After I paid Tidewater, I waited while Ms. Madej made a phone call to my bank in my presence. After talking to the bank, she told me that I was qualified for a mortgage modification. She represented that I did not have to make payments on my mortgage while she was negotiating with the bank and that she would handle all communication with the bank on my behalf.

8. In late June 2010, I received a notice from a law firm that my house would be sold at foreclosure on July 20, 2010 at 10:00 AM. I immediately called Ms. Madej, but she told me that this was "standard procedure" and that Tidewater was in control of the situation. She reassured me that I would not lose my home because I would soon receive a loan modification.

9. On July 23, 2010, my girlfriend, who was living in my home with my son and me, and I came home from work to discover that a notice to remove my personal belongings from my home had been posted on my front door. We immediately called Ms. Madej, who reassured us that Tidewater was going to modify my mortgage and prevent foreclosure, again saying that this was all just "standard procedure."

10. In early August 2010, I was shocked when I received a legal notice from the courts to

vacate my home within 10 days. The notice said that on July 20, 2010, my home had, in fact, been foreclosed on. This was despite Ms. Madej's assurances that it would not be. When my girlfriend and I contacted Ms. Madej, she again reassured us that she would stick by us and could prevent me from losing my home. She said that the bank could not take my home from me, and that if they did she and I would sue them.

11. Throughout August 2010, I continued to receive numerous notices that I would not be able to keep my home. Among these were a notice from Fannie Mae that they now owned my house, an application for the "cash-for-keys/relocation assistance" program, and a notice of a writ of possession. My girlfriend and I informed Ms. Madej and Tidewater each time we received such a document. She continued to reassure us that I was going to be able to keep my home.

12. On September 1, 2010, my worst fears were realized when a sheriff served me with a notice of eviction. I learned that I had to leave my home within a week to avoid criminal charges. I feared for the well-being of my family, including my young son, as we had only a few days to find a new place to live. I had to sell many of my belongings over the next few days through a yard sale. I was initially too ashamed to tell my son and my family that we were being evicted. For two years, I could not bring myself to admit to my mother and sister that I had lost my home.

13. When my girlfriend and I informed Ms. Madej that we had been forced to leave my home, she said that she was attempting to remedy the situation by emailing and calling Bank of America and contacting law firms on my behalf. However, any efforts she may have taken to save my home were unsuccessful. After the eviction, my family and I had to go from place to place, staying with friends or renting single rooms.

14. On October 1, 2010, my girlfriend and I received an email from Ms. Madej stating that

she was still working to reverse the foreclosure. She said that she had filed a complaint with the CEO's office at Bank of America. In another email on October 19, 2010, she said she was corresponding with Bank of America "behind the scenes." She also implied that there was still hope that I could get my home back, saying "the jury is still out."

15. At one point after I had lost my home, my girlfriend and I told Ms. Madej we were frustrated and were going to hire an attorney. However, she advised us against this, saying that she would refer our case to a real estate attorney for review. However, we never heard from any attorney.

16. Since about late October 2010, my girlfriend and I have received no further communication from Ms. Madej. We have emailed, texted, and called her, but she will not respond to our messages or answer our phone calls.

17. As a result of my dealings with Tidewater and Ms. Madej, I not only lost the \$500 I paid to have my mortgage modified, I also lost the chance to save my home from foreclosure. I believed Ms. Madej's representations that she was capable of helping me and relied upon her advice and expertise. However, her advice and expertise did nothing to prevent the foreclosure on my home and the eviction of my family.

Eulogio A. De la Cruz 06-28-12  
Eulogio de la Cruz Date

Sworn to and subscribed before me

This the ~~twenty eighth~~ day of June, 2012.

Lynette T Farmer  
(Notary Public)

My Commission Expires: 04/05/2016

STATE OF NORTH CAROLINA

PENDER COUNTY

AFFIDAVIT OF DIANA PALUCK

I, Diana Paluck, being duly sworn, state as follows:

1. I am a resident of Burgaw, North Carolina.
2. In late 2010, my husband's hauling business began to struggle due to weak demand. As a result, we were struggling to make our mortgage payments. We tried to refinance our mortgage, but we were unable to do so.
3. In February 2011, we met with a woman named Elaine Madej who claimed to be the owner of a company called Tidewater Financial Solutions, LLC ("Tidewater"). We were referred to Ms. Madej through an acquaintance of my husband. Ms. Madej said she would be able to help us obtain a loan modification with our lender. We met with Ms. Madej at her office located at 4022 Shipyard Boulevard, Wilmington, North Carolina.
4. At the time of our meeting with Ms. Madej, we had missed a single payment on our mortgage loan. Due to the decline in my husband's business, it had become more difficult for us to meet our financial obligations and keep our home.
5. At the meeting, Ms. Madej explained her company's loan modification assistance program, called "Mortgage Menders," and recommended that we enroll in the program to pursue a loan modification with our lender, Wells Fargo. Ms. Madej said she had years of experience in the mortgage business and that this experience, along with her personal and professional contacts, would help us get a more affordable mortgage with a

significantly lower interest rate. Ms. Madej further explained that the entire process would take only a few months to complete.

6. Based on the representations made to us by Ms. Madej, my husband and I signed a contract for loan modification assistance with Tidewater. We were not given a copy of the contract at the meeting, but were told we could receive one later. Ms. Madej told us she required an initial payment of \$199 before she could begin the loan modification process, and that an additional fee of \$500 would be due when the loan modification was approved.
7. Per Ms. Madej's request, we paid her \$199 to begin the loan modification process. We also provided her with our financial information, including tax documents, payroll stubs, business income statements, and other financial documents. Ms. Madej then told us that while our loan was under loan modification review, we no longer had to make our mortgage payments. Based on this advice, we ceased sending mortgage payments to our lender.
8. Over the next seven to nine months, from February 2011 through the fall of 2011, my husband and I continued to send updated financial information to Tidewater. Although we received periodic updates from Tidewater regarding our loan modification request, we were always told by Ms. Madej that our package was still under review by Wells Fargo and that no final decision had been made.
9. In the fall of 2011, Ms. Madej sent me an email detailing a new payment plan in which we would have to pay the fee of \$500 before my husband and I could get our loan modification approved. Ms. Madej said that Tidewater was forced to change its payment

policy and start charging fees upfront due to collection issues with some of their clients. Ms. Madej agreed to accept three monthly installment payments from us in the amount of \$175. My husband and I then signed an addendum to the original contract with Tidewater stating that our payments would be placed in a separate trust account held by Tidewater until a suitable alternative to foreclosure was obtained. We were assured that our funds would be returned to us in the event that Tidewater were unable to obtain us a loan modification.

10. By ~~December~~ <sup>July</sup> 2011, my husband and I had filed for Chapter 13 bankruptcy in an effort to save our home from foreclosure. Prior to filing Chapter 13, we continued to receive foreclosure notices from our lender, despite assurances from Ms. Madej that our loan modification request was already approved and "in underwriting."
11. When we informed Ms. Madej of our bankruptcy filing, she again reassured us that we could still obtain a modification on our mortgage loan. In February 2012, a few months after my husband and I filed for bankruptcy, Ms. Madej informed us once again that our loan modification had been approved but was still "in underwriting." She said the only remaining step in the process was for investor approval from Fannie Mae or Freddie Mac.
12. By March 28, 2012, my husband and I still had not obtained a loan modification. I then informed Ms. Madej that if Tidewater were unable to secure a loan modification for us from our lender, Wells Fargo, by April 5, 2012, I would seek a refund of our money. Ms. Madej told me that Tidewater was very close to obtaining a loan modification; however, it was our fault for the delay due to our filing for bankruptcy. Ms. Madej also reminded me of Tidewater's refund policy and that we would not receive a

refund if we cancelled the contract. Ms. Madej then stated she simply needed more time for the loan modification to be approved, and also refused to return our money to us.

13. In an e-mail to Ms. Madej, dated March 31, 2012, I asked for a copy of the initial contract I had signed with Tidewater and all the paperwork submitted with my loan modification package. Two days later, Ms. Madej replied stating that the paperwork file was "too large" to send electronically. She also reiterated her position that we would not be receiving a refund, stating, "I have been working very hard and it's not fair to me if you decide to quit. This is how I earn my living and I am not in control of how long the process takes."
14. By April 1, 2012, my husband and I had yet to receive a loan modification from our lender. I called Wells Fargo and was informed that our request for a loan modification had not been approved, nor had it been submitted to their underwriting department. I was shocked upon hearing this news, because Ms. Madej had constantly assured me that everything was fine and she was only waiting for the investors to sign off on the loan modification approval.
15. On April 5, 2012, I met with Ms. Madej one last time at her office. She told me again that our loan modification had been approved by our lender but was still needing approval by Fannie Mae or Freddie Mac. When I demanded a refund of the money we had paid to her for loan modification assistance that we never received, Ms. Madej said it was our fault due to filing for bankruptcy and that she would not give us a refund. She also refused to give me a copy of our contact with Tidewater, saying she was afraid it would fall into the wrong hands for unauthorized purposes.

16. In May 2012, after almost sixteen months of dealing with Elaine Madej and Tidewater, my husband and I decided to move out of our home. We could no longer deal with the emotional and financial stress of not knowing whether we would ever be approved for a loan modification, or worse, be served by the sheriff with an eviction notice. My husband and I grew tired of constantly being misled by Tidewater that we had been approved for a loan modification. Due to the Tidewater's misrepresentations, we lost a lot of valuable time which forced us into bankruptcy. In the end, we have lost our home, our money, and our ability to improve our financial future.

Diana Paluck      6-5-12  
Diana Paluck      Date

Sworn to and subscribed before me

This the 5th day of June

Brenda Whiteside  
(Notary Public)



My Commission Expires: 01-04-2014