IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAROLINE HERRON **4236 Mathewson Drive NW** **Washington, D.C. 20011** **Plaintiff,** **v.** **FANNIE MAE** **3900 Wisconsin Avenue, N.W.** **Washington, D.C. 20016,** **ERIC SCHUPPENHAUER** **43286 Warwick Hills Court** **Leesburg, VA 20176,** **NANCY JARDINI,** **4614 Langdrum Lane** **Chevy Chase, MD 20815,** **ALANNA SCOTT BROWN,** **1451 Belmont Street NW, Apt. 113** **Washington, D.C. 20009, and** **JOHN DOES ONE THROUGH FOUR,** **Defendants.**	**Civil No. _____**

COMPLAINT FOR DECLARATORY, INJUNCTIVE,
AND MONETARY RELIEF AND JURY DEMAND

Preliminary Statement

1. Plaintiff, Caroline Herron, files this action against her former employer, Fannie Mae, and Fannie Mae officials, for terminating her because she raised criticisms about how Fannie Mae was (1) implementing its role to assist the Department of the Treasury ("Treasury") in modifications of home mortgage loans, (2) engaging in a gross waste of public

funds, and (3) violating its contract with Treasury. If Fannie Mae is considered a private employer, Ms. Herron has claims for wrongful termination in violation of public policy and tortious interference with prospective business advantage. If, in the alternative, Fannie Mae is considered to be a government employer, Ms. Herron has a claim regarding the violation of her constitutional rights under the First Amendment.

Jurisdiction and Venue

2. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

3. Venue is proper in this jurisdiction under 28 U.S.C. § 1391.

Parties

4. Plaintiff Caroline Herron, a District of Columbia resident, resides at 4236 Mathewson Drive N.W., Washington, D.C. 20011.

5. Defendant Fannie Mae is a government-sponsored entity located at 3900 Wisconsin Avenue, N.W., Washington, D.C. 20016.

6. Defendant Eric Schuppenhauer is a citizen of the state of Virginia who currently resides at 43286 Warwick Hills Court, Leesburg, VA 20176. Mr. Schuppenhauer served as Senior Vice President of Credit Initiatives at Fannie Mae during the period at issue. At all times relevant to this Complaint, Mr. Schuppenhauer was doing and transacting business in the District of Columbia.

7. Defendant Nancy Jardini is a citizen of the state of Maryland who currently resides at 4614 Langdrum Lane, Chevy Chase, MD 20815. Ms. Jardini is the Vice President of Compliance for Fannie Mae. At all times relevant to this Complaint, Ms. Jardini was doing and transacting business in the District of Columbia.

8. Defendant Alanna Scott Brown is a citizen of the District of Columbia who

currently resides at 1451 Belmont Street NW, Apartment 113, Washington, D.C. 20009. At all times relevant to this complaint Ms. Brown was Ms. Herron's direct supervisor, and was doing and transacting business in the District of Columbia.

9. Defendants John/Jane Does are Fannie Mae officials who, at all times relevant to this Complaint, were doing and transacting business in the District of Columbia.

Overview

10. Ms. Herron had a successful career at Fannie Mae, first as an employee, and later as a contractor. She was employed with Fannie Mae from 2000 to 2007, working her way up to the position of Vice President. As an employee, she was engaged in leadership roles in some of Fannie Mae's most critical projects, earning the highest possible performance reviews. In 2007, Ms. Herron voluntarily accepted a severance "package" as part of a company-wide downsizing, and left the company on good terms.

11. In late 2009, in the middle of that year's financial crisis, Mr. Schuppenhauer, a Senior Vice President of Fannie Mae, asked Ms. Herron to return to Fannie Mae as a consultant to work on projects related to the Federal government's efforts to prevent mortgage foreclosures. Again, Ms. Herron worked on some of the most critical projects at Fannie Mae, and assumed a leadership position in several key areas, including projects directly overseen by Treasury.

12. In the course of her work on Treasury-related projects, Ms. Herron became aware of several instances in which Fannie Mae refused to pursue projects that were requested by Treasury, or that would have efficiently implemented Treasury priority programs. It appeared that Fannie Mae officers were focused on maximizing incentive payments available to Fannie Mae under various federal programs – even if this meant wasting taxpayer money and delaying the implementation of high-priority Treasury programs. Ms. Herron reported her concerns about

these problems, both to senior Fannie Mae officials, and to her counterparts at Treasury who were responsible for overseeing Fannie Mae's participation in the programs.

13. Ms. Herron stated to Mr. Schuppenhauer and others at Fannie Mae, including her immediate supervisor, Alanna Scott Brown, that she was interested in obtaining a position with Treasury. Mr. Schuppenhauer initially fully supported Ms. Herron in this regard, contacting senior officials at Treasury, providing his recommendation, and taking other actions to assist Ms. Herron's move to Treasury. Treasury and Ms. Herron made arrangements for her to take up her new position at Treasury: she coordinated with Ms. Brown to transition her duties at Fannie Mae, and Treasury completed preparations for her move to Treasury. Ms. Herron was scheduled to begin her new duties at Treasury in the first week of January 2010.

14. However, on January 4, 2010, prior to her official start date at Treasury, the Fannie Mae Compliance and Legal Departments raised alleged concerns over whether Ms. Herron's paperwork had been completed properly. When Treasury found that an issue raised by the Compliance and Legal Departments was irrelevant, Fannie Mae came up with a new justification, which delayed Ms. Herron's move to Treasury by two weeks. Finally, in an attempt to resolve these spurious issues, Ms. Herron informed Mr. Schuppenhauer that she intended to escalate her hiring directly to Terry Edwards, Fannie Mae Executive Vice President of Credit Portfolio Management, and to Michael Williams, Fannie Mae CEO. Only two days later, John Wilhelmy, a member of the Fannie Mae in-house legal staff, informed Ms. Herron that she was fired, and had her escorted out of the building.

15. Mr. Wilhelmy and other Fannie Mae officials never provided a reason for Ms. Herron's termination, other than that her "projects had ended." This statement was false, as demonstrated by the fact that Ms. Herron had numerous outstanding projects at the time, was

scheduled to deliver a policy presentation to Treasury staff on the day she was fired, and was to lead several project-related meetings the following week. Ms. Herron's immediate supervisor, her co-workers, and Treasury staff, were not aware of her termination until after the fact.

16. Immediately following her termination, Ms. Herron learned that she was "blackballed" at Fannie Mae and in the industry. Despite the fact that other senior officers at Fannie Mae, who did not work on Treasury-related projects, were actively soliciting her to work on their projects, other Fannie Mae managers and the contractor manager told Ms. Herron that she could no longer work at Fannie Mae in any capacity. She learned from friends and former co-workers that her termination could not be discussed within Fannie Mae, and no reason for it was given to her former co-workers.

17. As a result of Ms. Herron's reports to both Fannie Mae and Treasury, senior Fannie Mae officials, including Defendants Schuppenhauer, Jardini, Brown, and John Doe, blocked her from working on Fannie Mae programs that were high Treasury priorities, terminated her employment so that she could not continue reporting problems to Treasury, blocked her from working at Treasury, and then blackballed her from any further employment at Fannie Mae in any capacity. Moreover, by refusing to describe the truthful circumstances of her termination, Defendants damaged Ms. Herron's reputation in the industry, interfered with her ability to pursue employment outside of Fannie Mae, and caused her emotional distress.

Factual Allegations

18. Ms. Herron has an extensive professional background in advising top management and policymakers. Before coming to work at Fannie Mae, she was Director of Public Policy, Policy and Planning for the Pharmaceutical Research and Manufacturers of America; Assistant Director of Public Policy for Hoffmann-LaRoche; and Senior Project

Manager of the e-Business Delivery for AppNet.

Ms. Herron's Initial Employment at Fannie Mae

19. Fannie Mae first employed Ms. Herron from August 2000 to November 2007, in positions of increasing responsibility. She started as a Level 5 employee, and completed her career at Fannie Mae as Vice President. She typically worked on the highest profile and most critical projects for Fannie Mae's strategic future or rebuilding efforts, including the "Dedicated Channel" online loan origination platform, the Restatement of Fannie Mae's earnings, and the Sarbanes-Oxley ("SOX") compliance program.

20. Ms. Herron always received favorable ratings on her annual performance reviews, including the highest rating of "far exceeds expectations" in 2007.

21. Ms. Herron's last position at Fannie Mae was Vice President of SOX Strategy and Execution, from June 2006 until October 2007. The SOX [Sarbanes-Oxley] compliance program, including the associated Restatement of earnings, was the highest-profile project for Fannie Mae at that time, and one in which the company restated a total of $6.3 billion in retained earnings. Daniel Mudd, then-President and CEO, described the completion of the Restatement as a "critical milestone" for Fannie Mae. In her role as Vice President of SOX Strategy and Execution, Ms. Herron achieved the highest performance rating possible ("far exceeds expectations") and earned approximately $400,000 annually in compensation and benefits.

22. In the second quarter of 2007, Ms. Herron advocated to Fannie Mae's executive managers that the four internal teams that managed Fannie Mae's compliance program should be streamlined and consolidated into one organization, even though it would eliminate her position. Executive management moved forward with the recommended consolidation in July 2007.

23. In July 2007, Fannie Mae asked Ms. Herron to stay on for an additional three

months to lead the remediation of Fannie Mae's final material weakness that was also identified by the SOX compliance program.

24. Fannie Mae voluntarily offered Ms. Herron a severance package as part of the organization-wide reduction in force efforts in November 2007, which she voluntarily accepted. She also received an early pay-out in full of her final Restatement/SOX bonus award. Ms. Herron left the employ of Fannie Mae on November 2, 2007.

Ms. Herron's Return to Fannie Mae

25. The Emergency Economic Stabilization Act of 2008 permitted the U.S Department of the Treasury ("Treasury") to designate financial institutions as agents of the United States to implement the Act. Treasury established a Homeownership Preservation Program ("HPP"), which was designed to prevent foreclosures of residential mortgages. As part of HPP, Treasury designated Fannie Mae as a "financial agent of the United States" to provide related services including loan modifications, foreclosure prevention, and loss mitigation. To formalize this relationship, Treasury and Fannie Mae entered into a "Financial Agency Agreement" on February 18, 2009 ("the Contract") (online at: http://www.financialstability.gov/impact/contractDetail2.html).

26. In the second quarter of 2009, Defendant Eric Schuppenhauer, Senior Vice President of Credit Initiatives at Fannie Mae, asked Ms. Herron to consult for Fannie Mae on the Making Home Affordable Program ("MHA"), which was part of the HPP. Defendant Schuppenhauer needed senior staff with strong strategic and analytical skills, the ability to work with senior government officials and servicer management, and a solid implementation track record, in order to design and implement MHA initiatives effectively. Because of her background and previous stellar performance at Fannie Mae, Defendant Schuppenhauer offered

Ms. Herron a position working for Fannie Mae full time (i.e., 40 hours per week) for $200 an hour as a "W2 contractor" under an open-ended contract, and reporting to Defendant Alanna Scott Brown, Director of Government Programs and New Initiatives. As a "W2 contractor," Ms. Herron was paid depending on the number of hours she worked multiplied by her hourly rate. A company named ICon Professional Services withheld and paid all federal and state income taxes, and employment taxes for Ms. Herron, but ICon was otherwise uninvolved with her hire, or in assigning, monitoring, or supervising her work for Fannie Mae.

27. When Ms. Herron expressed her interest in this position, Defendant Schuppenhauer agreed that as a condition of her accepting the position, he would introduce her to Herb Allison, Assistant Secretary for Financial Stability, and other managers at Treasury, so that she could seek potential future employment opportunities at Treasury.

28. While Ms. Herron worked as a "W2 contractor," Fannie Mae furnished the equipment used in Ms. Herron's job and the place of work; Ms. Herron was paid by the time rather than by the job; her work was assigned and supervised by Fannie Mae executives; her work was an integral part of Fannie Mae's business; and Fannie Mae paid the employer's portion of the Federal Insurance Contribution Act ("FICA") tax. Finally, Fannie Mae controlled the means and manner of Ms. Herron's employment. In fact, Ms. Herron's role in the company and her working relationships within Fannie Mae did not change when she underwent the administrative change from being an employee of Fannie Mae to a "W2 contractor."

Ms. Herron's Work on the MHA and Related Programs

29. Ms. Herron had a pivotal role in the Making Home Affordable Program starting in June 2009, as the Fannie Mae Product Manager for the Second Lien Modification Program, the Federal Housing Administration Home Affordable Modification Program ("FHA-HAMP"), and

the Borrower Portal initiative. She worked directly with senior staff at Treasury, the Federal Housing Administration ("FHA"), the Federal Housing Finance Agency ("FHFA"), and other Federal agencies, on policy development and implementation design for each initiative. She also coordinated internally with the following MHA-specific teams within Fannie Mae: Legal, Credit Policy, Technology, Operations, Servicer Integration, Servicer Registration, Chief Financial Officer, Account Management, and Procurement, on implementation design and rollout of these programs. In addition, Ms. Herron consulted with the largest loan servicers, including Bank of America, Citi, GMAC, JP Morgan Chase, and Wells Fargo, on pending policy and programs to integrate their feedback, ensure they understood the policy and technical requirements for effective adoption, and facilitate quick resolution of policy and operational issues that emerged after launch of the programs.

30. In fulfilling her duties as Product Manager for these programs, Ms. Herron had to make policy recommendations that were sometimes inconsistent with practices and policies that were established by other Fannie Mae personnel.

31. One example of Ms. Herron's policy recommendations concerns the Second Lien (Mortgage) Modification Program, publicly introduced by Treasury on August 13, 2009 ("Second Lien Modification Program Details Announced," online at: https://www.hmpadmin.com/portal/docs/news/2009/hampupdate081409.pdf). This Program was designed to work in tandem with HAMP, by lowering payments on a second mortgage, when a homeowner had two separate mortgage loans. This Program required Fannie Mae to develop a process for ensuring that homeowners' consent was received prior to sharing their first mortgage loan information with the servicer of the second mortgage loan, so that the second mortgage could be modified, and foreclosure avoided. By this time, Treasury had announced a goal of

completing 500,000 trial mortgage modifications by November 1, 2009 (Treasury, "Making Home Affordable Program on Pace to Offer Help to Millions of Homeowners; Public Release of Data Provides Transparency on Servicer Performance," online at: http://www.treas.gov/press/releases/tg252.htm), and Fannie Mae executive management supported this goal.

32. In addressing the homeowner consent issue, Ms. Herron and another Fannie Mae employee proposed redefining the date for determining when the homeowner's consent was effective, but Defendant Schuppenhauer refused to let anyone but himself talk to Treasury about the issue.

33. While rolling out the initial Second Lien Modification Program in August 2009, servicing banks continuously brought up unresolved questions, and requests for waivers related to HAMP, that impacted the implementation of the Second Lien Modification Program. To improve the timeliness of responses, Ms. Herron strenuously advocated that all policy questions and waivers be managed and tracked centrally, that specific timeframes be set by which to have a final response to the servicers, and that the principal decision-making parties meet in person on a weekly basis to review issues and finalize responses to the servicers.

34. Instead, Defendant Brown's team created a cumbersome waiver review process via email that did not manage all policy issues and could take up to four months for a waiver to be granted, even when the policy change did not require a Fannie Mae system change or compromise program eligibility or financial standards, but only served to reduce servicer implementation costs. As a result of these inadequate processes, a significant number of policy issues remained unresolved, which prevented many borrower modification requests and trial modifications from being finalized, and converted into permanent modifications toward the end

of 2009. This situation was one of the key factors that necessitated the intensive and costly mortgage modification conversion campaign led by Treasury and Fannie Mae, in which both organizations had representatives on-site at the largest servicing organizations, and a significant, central support team in Washington, D.C., to collect and resolve outstanding policy issues so that final modification decisions could be made.

35. A third example occurred in late September or early October 2009, when Ms. Herron attended the HOPE NOW Alliance's kick-off meeting for their counselor portal which enables a credit counselor to work directly with struggling homeowners to help the homeowners avoid foreclosure and apply online for a mortgage modification. Present were servicers and counselors who were participating in the pilot program. During the meeting, the participants reviewed the Home Affordable Modification Program ("HAMP") documentation requirements. In that review, a number of servicing banks complained that different documents were used by Fannie Mae and Freddie Mac, and that this created confusion and delay in processing the mortgage modifications. Ms. Herron told the servicers that both Fannie Mae and Freddie Mac accepted the uniform MHA Hardship Affidavit, and that Fannie Mae accepted the Freddie Mac Financial Form – by doing so, all servicing banks would be using the same documents for the same transactions, and realize significant efficiencies. Two servicers at the meeting indicated that they had received conflicting instructions from Fannie Mae account managers.

36. After the meeting, Ms. Herron sent a note to Fannie Mae managers, including Defendants Schuppenhauer and Brown, in which she recommended that Fannie Mae instruct all account managers about the need to use the MHA Hardship Affidavit and the Freddie Mac Financial Form when necessary, and that the goal of streamlining of documentation be reinforced in account manager training. Instead of attempting to resolve the problem, Defendant Brown

wanted to know which servicers had complained about the confusion, and incorrectly insisted that there was no problem with the account managers' understanding of the documentation.

37. Because streamlining documentation was the biggest concern with HAMP at that time, and Fannie Mae was refusing to acknowledge that the problems in its organization existed, Ms. Herron was forced to discuss the matter with Treasury, and she asked Laurie Maggiano, Director of Policy, Homeownership Preservation Office of the Treasury, to put pressure on Fannie Mae to ensure that Fannie Mae account managers were communicating appropriately with servicers.

38. Another conflict occurred starting in September 2009, when Seth Wheeler, Senior Policy Advisor, Domestic Finance, Treasury, asked Fannie Mae to consider changing the borrower incentive structure under Fannie Mae's proposed Second Lien Modification Program to match Treasury's structure (i.e., applying the incentive to reduce the principal on the first mortgage instead of the second mortgage). Defendant Schuppenhauer agreed to look into it, and he asked Ms. Herron to determine the impact of making this change on the system development schedule and operations workload. Ms. Herron strenuously objected to this change because it would add a significant amount of operational complexity for a $250 annual payment on a very small number of loans. She reported her objection internally at Fannie Mae, and then told Treasury officials about her objections.

39. After Mr. Wheeler indicated that Troubled Asset Relief Program ("TARP") funds would be used to pay the incentive to Fannie Mae, Defendant Schuppenhauer discounted the operational complexity and decided that Fannie Mae would change its borrower incentive structure. Defendant Schuppenhauer instructed Ms. Herron to inform Treasury of the decision and work with Treasury staff on the implementation details. After extensive discussions, staff

from Treasury's Office of Financial Stability and Homeownership Preservation Office concluded that the complexity in system development and ongoing operations and monitoring was expensive and risky for such a small number of loans, and Treasury agreed with Ms. Herron's original analysis that Fannie Mae's original policy on borrower incentives should stay in place. Ms. Herron's analysis also prompted Treasury to streamline and update the borrower incentive structure under the Treasury Second Lien Modification Program.

40. Although the Troubled Asset Relief Program was originally scheduled to end on December 31, 2009, the Treasury Secretary requested an extension from Congress on December 9, 2009. Congress granted the extension, with a new expiration date of October 3, 2010. In his request, the Treasury Secretary specifically indicated that the extension was needed for the implementation of programs that addressed housing markets. See Treasury, Press Release (online at: http://www.financialstability.gov/latest/pr_12092009.html).

41. In mid-December 2009, Ms. Herron told Defendant Schuppenhauer that Fannie Mae needed to inform the servicing banks about the Treasury's extension of the enrollment date. Servicers had been asking questions that indicated they were rushing to meet the old deadline. In addition, Ms. Gertz and Phyllis Caldwell, Chief of the Homeownership Preservation Office at Treasury, had both told Ms. Herron and others at Fannie Mae that there should be public notice about the enrollment extension.

42. However, Defendant Schuppenhauer refused to inform servicers of the extension in a timely manner because he said he wanted as many servicers as possible to enroll by the old deadline. In this way, Fannie Mae secured its financial incentives tied to servicer enrollment targets set for December 31, 2009. Although Ms. Herron explained that not giving the correct information to servicers in a timely manner would cause them to lose confidence in Fannie Mae

and Treasury, Defendant Schuppenhauer would not do so. It is clear from this and other exchanges that Defendant Schuppenhauer had Fannie Mae's short-term financial interest uppermost in his mind, and not the interest of Treasury or the United States taxpayers, as Fannie Mae's contract with Treasury required.

43. In September 2009, Ms. Herron began working with Cindy Gertz, Director of Operations for the Homeownership Preservation Office at Treasury, on various MHA projects. Ms. Herron started talking to Ms. Gertz about problems with the program. Soon after that, Ms. Herron became a valuable and independent source of accurate information for Ms. Gertz and others at Treasury.

44. Ms. Herron spoke at the regular Fannie Mae management meetings at 8:30 a.m. about the extremely low trial modification conversion rates that servicers had reported to her. In November 2009, Ms. Gertz told Ms. Herron that she wanted to check in with Ms. Herron before Mr. Allison's staff meetings, so that she had the latest information from Fannie Mae.

45. Ms. Herron told Ms. Gertz by telephone, and possibly by email, that the servicers thought the best improvement that could be made to the program was for the homeowners to provide documentation prior to the trials so that their eligibility could be appropriately evaluated – a process called "verified trials." Ms. Herron also communicated this to Fannie Mae managers via email, and during at least one 8:30 a.m. meeting.

46. By November 2009, Ms. Gertz told Ms. Herron that Treasury was receptive to verified trials, the approach suggested by Ms. Herron, based on feedback that Mr. Allison gathered from servicers that same week in California.

47. Upon information and belief, Defendant Schuppenhauer, however, did not want verified trials, at least until 2010, because under the contract between Fannie Mae and Treasury,

Fannie Mae could receive an incentive payment for each of the trial modifications that was processed before the end of the year, regardless of whether those trial modifications were ultimately converted to permanent modifications. Specifically, under Fannie Mae's Agreement with the Treasury Department (Exhibit B to the Agreement, page 2), Fannie Mae was able to receive performance incentive payments of up to 20 percent of compensation levels based on servicer enrollment and completed modifications on a quarterly basis.

48. Fannie Mae officials knew, or should have known, that many trial modifications would never become permanent, because homeowners were ineligible to participate in the MHA program or because they would fail to provide the required documentation.

49. As Ms. Herron discussed within Fannie Mae, requiring borrowers to provide documentation before the modification of their mortgages would stop the drain of resources of managing and following up on the many trial modifications that were likely never to become permanent. But, upon information and belief, because of the goals for trial modifications in Fannie Mae's contract and the monetary incentives provided for processing these trial modifications, Defendant Schuppenhauer and other Fannie Mae officials decided to push through the trial modifications before the end of the year, even though he knew that many of these would never convert, leading to a gross waste of public funds.

50. In trying to protect Fannie Mae's incentive under its contract with Treasury, Fannie Mae was violating the contract, since Recital 5 of the Agreement (at pages 3-4) required Fannie Mae to act as a fiduciary to the Treasury Department, and promote only the agency's interest and the interest of the United States taxpayers, and not its own financial interest. Yet, Defendant Schuppenhauer and other Fannie Mae executives made the decision to push through the greatest number of trial modifications, despite the mounting evidence, and protests of Ms.

Herron, that this was not in the best interest of the United States.

51. At the same time that Fannie Mae was attempting to process as many trial modifications as possible before the end of 2009, company executives were delaying or quashing other efforts to streamline a process in which borrowers could provide documentation up front before a trial loan modification is processed. If borrowers were required to provide documents up front, fewer trial loan modifications would be processed, which would decrease the incentive payments Fannie Mae received under the Contract with Treasury.

52. Fannie Mae had resisted an assignment from Treasury to create a Borrower Portal, which was a concept to build one place where homeowners would submit documentation directly to servicing banks, and servicers could electronically communicate with them about what documentation they had received. Treasury first requested the development of a Borrower Portal as early as mid-summer 2009. Fannie Mae did not agree with the concept, and stalled, first advocating that the industry would develop its own solutions to managing borrower documentation and that Treasury and Fannie Mae would have to resolve significant privacy and liability issues. Finally, in October 2009, Mr. Wheeler directed Fannie Mae to proceed with a Borrower Portal.

53. After receiving an explicit direction from Treasury, Fannie Mae assigned Ms. Herron to work on the Borrower Portal project. She brought in Tom Macdonald as the Project Manager for the project. Ms. Herron and Mr. Macdonald worked together to draft a Request for Proposals ("RFP"), and collaborated with Treasury to determine the scope of work and review demonstrations of vendors. The RFP went out on November 19, 2009, and bids were received right after the Thanksgiving holiday. At that time, Fannie Mae management was still actively working against the proposal, and cited privacy issues and other alleged risks involved in

implementing the Borrower Portal. (In April 2010, the Congressional Oversight Panel released its investigative report that publicly discussed the improper delays in implementing the Borrower Portal. See Congressional Oversight Panel, "April Oversight Report: Evaluating Progress on TARP Foreclosure Mitigation Programs," at 84-86 (Apr. 14, 2010) (online at: http://cop.senate.gov/documents/cop-041410-report.pdf)).

54. Ms. Gertz asked Ms. Herron to attend a meeting on December 9, 2009 with another vendor with counseling capabilities, to discuss their counselor portal in order to determine whether it could be used as the basis for the Borrower Portal. After a more detailed implementation meeting with all parties on December 18, 2009, Treasury decided to change course, cancel the RFP, and pursue a project with this new vendor for use of its portal as the Borrower Portal.

55. In early January 2010, Ms. Gertz asked Ms. Herron to prepare a slide presentation that would frame the key policy issues Treasury needed to address in order to implement the Borrower Portal. Jack Welch, Treasury Homeownership Program Specialist in the Office of Financial Accountability ("OFA") of Treasury, coordinated with Ms. Herron on preparation of a project briefing for the review and approval of the Treasury Budget Committee to commit funds to the project.

56. At the same time, Jack Guttentag, a University of Pennsylvania Wharton School professor who writes the popular consumer advocate column *Mortgage Professor*, sent multiple emails to Treasury Assistant Secretary Michael Barr that were very critical of Fannie Mae. These emails contended that Fannie Mae had not followed a competitive bidding process for the project and had been stalling the Borrower Portal and cited Defendant Schuppenhauer by name. Fannie Mae directed Ms. Herron to work with Treasury on responding to the emails, which she

did, addressing the very specific issue as to whether Fannie Mae circumvented its competitive bidding rules. In the meantime, Ms. Herron continued to work with various Fannie Mae teams trying to move the Borrower Portal project forward through the contracting process with the vendors and defining how the portal would work, how it would be managed by Fannie Mae and the vendors, and how the consumers' private data would stay secure.

57. Despite Ms. Herron's efforts to move the Borrower Portal forward, Mr. Guttentag's criticism that Fannie Mae was trying to stall the Borrower Portal was accurate.

58. Fannie Mae terminated Ms. Herron's contract on January 15, 2010. By doing so, Fannie Mae effectively stopped any progress on the project that Treasury had repeatedly directed Fannie Mae to implement and administer as the MHA Program Administrator, in violation of the Contract. Moreover, Fannie Mae's obstruction of the building of the Borrower Portal allowed Fannie Mae to continue to argue against a program of requiring borrowers to provide documentation prior to the offer of trial loan modifications.

59. Two weeks after Fannie Mae fired Ms. Herron, it terminated Mr. Macdonald's employment as well.

60. At about the same time, Treasury announced that it would require the servicers to obtain documentation before the trial modification process begins, on the ground that "this more robust requirement of upfront documentation will make it easier and quicker to convert trial modifications to permanent modifications and enable servicers to use their resources more effectively." See Treasury, "Administration Updates Documentation Collection Process and Releases Guidance to Expedite Permanent Modifications" (Jan. 28, 2010) (online at: http://www.financialstability.gov/latest/pr_01282010.html). However, it was difficult for Fannie Mae to implement this change without the Borrower Portal or a similar program. Ms. Herron

learned that Ms. Gertz was not happy with Fannie Mae's failure to implement the Borrower Portal as directed. Upon information and belief, a Borrower Portal still has not been established as of this date.

Fannie Mae Executives at First Support, and Then Sabotage, Ms. Herron's Move to the Treasury Department

61. Fannie Mae executives explicitly encouraged Ms. Herron to pursue employment with Treasury throughout the Summer and early Fall of 2009. Upon information and belief, Fannie Mae executives began to change their minds about supporting Ms. Herron's transfer to Treasury in mid-December 2009, because Ms. Herron knew too much about the inner workings of Fannie Mae, and was raising concerns about Fannie Mae's mismanagement and gross waste of public funds. Due to a concern that Ms. Herron would continue to report Fannie Mae's mismanagement, gross waste of public funds, and possibly contract violations, Fannie Mae began to delay Ms. Herron's move to work at Treasury, restricted her access to Treasury officials, and ultimately stopped her transfer to work at Treasury altogether.

62. In December 2009, Ms. Gertz contacted Ms. Herron to gauge her interest in working on-site at Treasury. On December 16, 2009, Ms. Herron, via email, asked Defendant Schuppenhauer whether Fannie Mae would agree to have her continue as a Fannie Mae consultant, but working at Treasury and receiving direction directly from Treasury. Defendant Schuppenhauer agreed to such a move, and said he supported the idea of her being "embedded" at Treasury while working for Fannie Mae. After receiving Defendant Schuppenhauer's approval, Ms. Herron emailed Ms. Gertz, and said that Fannie Mae management supported this type of arrangement, and that Ms. Gertz should contact Defendant Schuppenhauer directly to work through the details.

63. On December 18, 2009, Ms. Gertz, who expressed eagerness to have Ms. Herron

come to Treasury, told Ms. Herron that she had cleared the working arrangement with teams at Treasury, and hoped to have her working at Treasury starting in January 2010. When Ms. Herron informed Defendant Schuppenhauer of Treasury's clearance, he reiterated that he was fine with the arrangement. However, he also suggested that he did not want Ms. Herron "to be mean to Fannie Mae" when she went over to Treasury.

64. In addition to Ms. Herron's criticism regarding the inefficient waiver process Fannie Mae had set up, Fannie Mae also was concerned about Ms. Herron having any involvement at Treasury with the servicers of the home mortgage loans. Ms. Herron had built up strong relationships with the servicing banks, which she would have brought with her to Treasury to improve the program. Upon information and belief, once Fannie Mae executives understood that the effect of moving Ms. Herron to Treasury would have been to build up stronger ties between Treasury and the servicers, and marginalize Fannie Mae, which had frayed relationships with some of the servicers, Fannie Mae obstructed her from moving to Treasury.

65. Over the next few days, Ms. Gertz, Defendant Schuppenhauer, Marcel Bryar, Vice President of the MHA Program Management Office of Fannie Mae, and Ms. Herron exchanged emails regarding completing the transition to the new working arrangement. During the last week of December 2009, the Fannie Mae Contractor Resource Center also seemed to be involved in the transition, as they urgently requested copies of the MHA-related Non-Disclosure Agreements that Ms. Herron had signed when Fannie Mae originally hired her to work on the MHA program.

66. On January 4, 2010, Defendant Jardini claimed that Fannie Mae and Treasury needed to work through and agree to an organizational conflicts of interest "mitigation plan," even though no such "plan" was required under the Contract between Fannie Mae and Treasury.

67. Ms. Herron asked Defendant Jardini if she (Herron) could participate in an internal Treasury 2010 strategy planning session that Ms. Gertz had invited her to attend on January 4, 2010, but Defendant Jardini did not allow her to do so until a mitigation plan was implemented. Defendant Jardini said that John Wilhelmy, the Fannie Mae attorney working on matters related to the Fiscal Agency Agreement (FAA) between Treasury and Fannie Mae, including all legal, contractual, and compliance issues, was working with outside counsel on the first draft of the mitigation plan to share with Treasury.

68. Fannie Mae's claim that a conflict of interest mitigation plan was needed was false, and was invoked solely to delay Ms. Herron going to Treasury, as Ms. Herron did not fall within the categories of "key individual" or "management official" under the contract, for whom a conflicts of interest mitigation plan had to be completed. Even if Ms. Herron were considered a covered employee, the type of conflict contemplated by the contract between Fannie Mae and the Treasury Department is specifically related to whether Ms. Herron's personal financial investments create such conflict. Such a clause is normal in the financial industry and should not have posed an issue for employment by the Treasury Department. Nor should Fannie Mae have been concerned about any "organizational conflict of interest" under 31 C.F.R. § 31.211. If Fannie Mae had any legitimate concern about that kind of conflict of interest, it should have resolved that conflict before Fannie Mae contracted with Ms. Herron in June 2009, because she was working for Treasury in that position as well.

69. Fannie Mae's second excuse for delaying Ms. Herron's employment with Treasury was also unfounded. Ms. Gertz indicated that Treasury had done everything necessary to bring over Ms. Herron, which directly contradicted Fannie Mae's contention that Treasury had not completed the necessary paperwork. Defendant Schuppenhauer and other Fannie Mae

officials had previously supported Ms. Herron's attempts to go to Treasury, and had no reason to change their minds, except for a suspicion that Ms. Herron would, in the words of Defendant Schuppenhauer, "be mean to Fannie Mae" when she went to Treasury.

70. By the first week of January 2010, Treasury had assigned a cubicle, procured a computer and arranged for a facilities access badge for Ms. Herron in anticipation of her working on-site. On January 6, 2010, after receiving the Fannie Mae draft mitigation plan, Ms. Gertz said to Ms. Herron that Fannie Mae was "overthinking" this arrangement. On January 8, 2010, Ms. Gertz and Mr. Welch told Ms. Herron that the last of the Treasury hurdles had been worked through, that Treasury had agreed to the Fannie Mae mitigation plan, and that Ms. Herron should receive an email that afternoon indicating that the arrangement had been finalized.

71. However, Fannie Mae unexpectedly created further hurdles to prevent Ms. Herron from working at Treasury. Ms. Gertz told Ms. Herron on January 11, 2010 that Defendant Schuppenhauer had later met with her in person on January 8, 2010, and claimed that the arrangement to have Ms. Herron work at Treasury would be a "gift of services" to Treasury, and that Fannie Mae "could not get comfortable with the arrangement." After her conversation with Ms. Gertz, Ms. Herron emailed Defendant Jardini, Mr. Wilhelmy, Defendant Schuppenhauer, and Mr. Bryar to ask them to confirm that Fannie Mae would not approve the arrangement for her to work for Treasury. Mr. Wilhelmy replied, without justification, that Treasury had not responded to a list of questions about the organizational conflicts of interest mitigation plan, even though that was not a problem according to Ms. Gertz.

72. In sum, Fannie Mae delayed Ms. Herron's move to Treasury, first by claiming that a conflict of interest mitigation plan was needed, and then by asserting that the arrangement would be a "gift of services" that Fannie Mae "could not get comfortable with." On January 13,

2010, Ms. Herron sent an email to Defendant Schuppenhauer regarding the needless impediments to her starting her position with Treasury. In her email, Ms. Herron informed Defendant Schuppenhauer that she would escalate the matter to Terry Edwards (Executive Vice President of Credit Portfolio Management for Fannie Mae) and Michael Williams, the Fannie Mae CEO, in order to get the matter resolved.

73. On January 15, 2010, Mr. Wilhelmy terminated Ms. Herron's consulting contract effective immediately, and told her that her services were no longer needed. He had a Procurement representative escort her off the premises. When she asked Mr. Wilhelmy for the reason that Fannie Mae was letting her go, he told her that her W2 payroll vendor, ICon Professional Services, had the details.

74. Later that day, Ms. Herron contacted David Troia, Fannie Mae account manager at ICon Professional Services, and asked why she was terminated. Mr. Troia responded that he was not given a reason by Fannie Mae, other than her project had "ended," which was clearly false, since significant work continued to be done on initiatives such as the Borrower Portal, FHA-HAMP, and the Second Lien Modification Program. Furthermore, Ms. Herron had deliverables due to Treasury that afternoon, and was slated to participate in or run meetings scheduled for the following week related to these initiatives.

75. Ms. Herron asked Mr. Troia to confirm that she would be able to work on other non-Treasury related Fannie Mae projects, since other Fannie Mae executives had expressed interest in Ms. Herron working on their initiatives, including Rich McGhee, a Senior Vice President of Fannie Mae, and Patricia Fulcher, a Vice President, who discussed having her work on various National Servicing Organization technology projects for Fannie Mae. Mr. Troia told her that Fannie Mae had told ICon that Fannie Mae would not re-engage Ms. Herron for any

other work, but gave no reason.

76. Upon information and belief, Fannie Mae fired Ms. Herron and prevented her from remaining at Fannie Mae, where she would continue to speak to Treasury officials, because she would continue to report that Fannie Mae engaged in mismanagement, gross waste of public funds, and possible contract violations in its implementation of Treasury programs under the Contract with Treasury. Moreover, Fannie Mae "blackballed" Ms. Herron, by preventing her from obtaining other work within Fannie Mae – despite multiple requests for her services – in order to send a signal to other Fannie Mae employees not to get too close to Treasury, or to provide Treasury with an independent source of unbiased advice and information.

77. On January 21, 2010, Ms. Herron asked Defendant Schuppenhauer, her executive manager, why she had been terminated. Defendant Schuppenhauer told her that he did not have details, and even if he did, he had been instructed that he could not provide details to her. He told her that the termination was not a reflection of her work, which had always been excellent. He also said that he was surprised that she could not work for Fannie Mae on non-Treasury related work.

78. Ms. Herron has since discovered that Fannie Mae personnel stated that they do not know, or cannot divulge, the reasons that Ms. Herron has been terminated to any internal or external inquiries, including from Treasury staff or other consulting firms that may be interested in hiring Ms. Herron. These comments have severely damaged Ms. Herron's reputation, and interfered with her attempts to secure a new job, since her last job was working for Fannie Mae at a high level on the Treasury Contract.

79. Ms. Herron has also discovered that while other managers at Fannie Mae wanted her to work with them, including Mr. McGhee and Ms. Fulcher, senior Fannie Mae management

would not let them hire her, even for non-Treasury related work.

80. On January 28, 2010, Fannie Mae terminated Mr. Macdonald's contract. As the only remaining Fannie Mae contractor working on the Borrower Portal, his termination led to a stoppage of all significant work on the project. Treasury was subsequently informed that Fannie Mae was not going to do further work on the Borrower Portal project, despite Treasury's request for its implementation. Fannie Mae gave Treasury no advance notice of this stoppage of work.

81. Up to the current time, no one at Fannie Mae has explained the reason for Ms. Herron's exclusion from working on Fannie Mae projects of any sort – either Treasury work or non-Treasury work.

82. A March 25, 2010 report by the Office of the Special Inspector General for the Troubled Asset Relief Program, "Factors Affecting Implementation of the Home Affordable Modification Program," found that there have been only 168,708 permanent modifications to date, even though more than one million trial modifications have been initiated; a success rate of less than 17 percent. This report found that the focus on trial modifications rendered the definition of success utilized by the Home Affordable Modification Program "essentially meaningless." This report also found that only 2.8 percent of the six million borrowers with loans delinquent more than 60 days have had their loan modifications made permanent through February 2010. The report concluded: "If HAMP ends up being a foreclosure mitigation program that merely delays foreclosures rather than preventing them, the program will be of questionable value, particularly in light of the huge investment of taxpayer funds."

COUNT I

WRONGFUL DISCHARGE AGAINST DEFENDANT FANNIE MAE

83. Plaintiff incorporates as though fully restated herein each of the allegations stated

in paragraphs 1 through 82 above.

84. For purposes of this claim, Fannie Mae is considered a private employer, in light of the fact that it is a publicly traded corporation that is now in conservatorship, and in light of the fact that Fannie Mae was a joint employer of Ms. Herron with ICon Professional Services.

85. The Emergency Economic Stabilization Act of 2008 requires that those exercising the authorities granted under that Act (including the authority to administer the TARP program), must consider both of the following: "protecting the interests of taxpayers by maximizing overall returns" and "the need to help families keep their homes and to stabilize communities." *See* Pub. L. 110-343, § 103; 12 U.S.C. § 5213. In addition, the very purposes of the Act include to "preserve[] homeownership and promote[] jobs and economic growth;" to "maximize[] overall returns to the taxpayers of the United States;" and to "provide[] public accountability for the exercise of such authority." *See* Pub. L. 110-343, § 2; 12 U.S.C. §§ 5213 and 5201.

86. Fannie Mae's Contract with Treasury (at pages 3-4) stated that Fannie Mae "owes a fiduciary duty of loyalty and fair dealing to the United States," and Fannie Mae "agree[d] to act at all times in the best interests of the United States under this [Contract] and in all matters connected with this agency relationship." Fannie Mae was in violation of the Contract each time it made a decision that would increase financial incentives to Fannie Mae while not necessarily benefiting the public.

87. Fannie Mae also grossly wasted public funds by pushing through loan modifications that Fannie Mae officials knew would never be converted.

88. Fannie Mae repeatedly failed to follow Treasury's directives under the Contract because its officials were looking out for Fannie Mae's financial interests by receiving substantive incentive payments under the Contract, if it processed a large number of trial loan

modifications, regardless of whether they became permanent conversions or were otherwise successful, and enrolled a certain number of servicers by set deadlines, regardless of program integrity, the program's requirements, or inconvenience to the servicers.

89. Ms. Herron was an employee of Fannie Mae, since Fannie Mae hired her to work on the MHA and other projects; she worked and was paid on an hourly basis, not a project basis; Fannie Mae senior managers supervised and directed her daily work; Fannie Mae paid a portion of the employer's FICA taxes; and Fannie Mae terminated her employment and prevented her re-hire. ICon Professional Services was not advised of Ms. Herron's termination until the day she was terminated.

90. Defendant Fannie Mae terminated Ms. Herron's employment solely because she opposed Fannie Mae's contract violations, gross waste of public funds, and gross mismanagement, which violated its legal duties to the United States government.

91. As a direct and proximate result of Fannie Mae's termination of her employment, Ms. Herron has suffered lost earnings and benefits. In addition, Fannie Mae's actions have caused Ms. Herron great public embarrassment, pain and suffering, emotional distress, public humiliation, and damage to her professional reputation.

92. Defendant Fannie Mae's actions described above were taken in willful and wanton disregard of Ms. Herron's rights, and were taken in order specifically to injure her for her refusal to condone and participate in Fannie Mae's illegal actions.

93. Defendant Fannie Mae's conduct, as described herein, was done maliciously, with unlawful purpose to cause such damage and loss, and without right or justifiable cause, and to intimidate other employees of Fannie Mae from working with Treasury, thereby warranting punitive damages.

94. Defendant Fannie Mae's wrongful discharge of plaintiff directly and proximately caused plaintiff loss of income and other economic benefits, job search costs and the loss of future employment opportunities; impaired her future earning capacity; damaged her professional reputation and caused her emotional pain and suffering.

COUNT II

CIVIL CONSPIRACY TO TERMINATE MS. HERRON AND IMPEDE HER FUTURE EMPLOYMENT ELSEWHERE IN FANNIE MAE OR TREASURY AGAINST ALL DEFENDANTS

95. Plaintiff incorporates as though fully restated herein each of the allegations stated in paragraphs 1 through 94 above.

96. For purposes of this claim, Fannie Mae is considered a private employer, since it is a publicly traded corporation that is now in conservatorship, and in light of the fact that Fannie Mae was a joint employer of Ms. Herron with ICon Professional Services.

97. Upon information and belief, during the period from December 2009 to January 15, 2010, Defendants Fannie Mae, Schuppenhauer, Jardini, Brown, and John/Jane Doe combined together, agreed and conspired with each other and various other agents of Fannie Mae to wrongfully terminate Ms. Herron's employment because she opposed Fannie Mae's contract violations, gross waste of public funds, and gross mismanagement, which violated its legal duties to the United States government.

98. Defendants committed overt unlawful acts in furtherance of the conspiracy as described above, including but not limited to Fannie Mae's wrongful and tortious termination of Ms. Herron's employment, and prohibition of her employment elsewhere in Fannie Mae or at Treasury.

99. Through the conspiracy as described above, and through overt acts committed in

furtherance of that conspiracy, Defendants directly and proximately caused Ms. Herron to suffer loss of income and other economic benefits, impaired her future earning capacity, damaged her professional reputation, and caused her pain and suffering.

100. Defendants' actions described above were taken in willful and wanton disregard of Ms. Herron's rights, and were taken in order specifically to injure her for complying with her legal obligations, and to intimidate other Fannie Mae employees from working with Treasury, which justifies the award of punitive damages to her.

COUNT III

TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS AGAINST ALL DEFENDANTS

101. Plaintiff hereby incorporates as though restated each of the allegations in paragraphs 1 through 100 above.

102. For purposes of this claim, Fannie Mae is considered a private employer, since it is a publicly traded corporation that is now in conservatorship, and in light of the fact that Fannie Mae was a joint employer of Ms. Herron with ICon Professional Services.

103. Ms. Herron had a valid business expectancy in working at the Department of Treasury. Defendant Schuppenhauer brought Ms. Herron in as a consultant on the MHA program on the express understanding that he would assist her in obtaining a job at Treasury, and he later approved her plan to be "embedded" at Treasury as a Fannie Mae consultant.

104. Treasury managers were eager to have Ms. Herron work for them, either as a direct employee, or as a Fannie Mae employee working on Treasury premises, as evidenced by Ms. Gertz's request in mid-December to have Ms. Herron work on-site and by the quick transition Ms. Gertz had tried to facilitate by procuring equipment, desk space, and a facility

badge for Ms. Herron by the first week of January 2010.

105. Defendants Fannie Mae, Schuppenhauer, Jardini, Brown, and Doe had full knowledge of Ms. Herron's expectancy in working at the Department of Treasury, and, in fact, helped to create her expectancy of working at Treasury.

106. Fannie Mae and the individual Defendants intentionally interfered with Ms. Herron's business expectancy, by preventing Ms. Herron's hiring by Treasury, by advocating a longer transition time than Treasury wanted, by failing to timely resolve logistical issues related to the transition, by requiring an unnecessary organizational conflict of interest plan, by preventing Ms. Herron from participating in Treasury meetings during the transition period, and by raising concerns about the time Ms. Herron was spending on work directed by Treasury rather than Fannie Mae. Defendant Brown demanded a longer transition period than Treasury wanted, and refused to act on resolving logistical issues, and on January 8, 2010, she raised alleged concerns about the time Ms. Herron was spending on Treasury-directed work as opposed to Fannie Mae directed work, even though Ms. Herron told her that all work was Fannie Mae directed until the transition was approved. In addition, just as Treasury was about to sign off on the compliance plan, on January 8, 2010, Defendant Schuppenhauer met in person with Ms. Gertz and told her that the arrangement to have Ms. Herron work at Treasury would be a "gift of services" to Treasury, and that Fannie Mae "could not get comfortable with the arrangement." Finally, Defendants fired Ms. Herron on January 15, 2010.

107. As a direct and proximate result of Defendants' tortious interference with plaintiff's business expectancy, Ms. Herron was unable to obtain employment as an employee of Fannie Mae working at Treasury, or working at Fannie Mae on non-Treasury related projects. Defendants Fannie Mae, Schuppenhauer, Jardini, Brown, and Doe took the actions described

above intending and calculating that this would be the result.

108. Ms. Herron also had a valid business expectancy in working on non-Treasury related Fannie Mae projects, as other Fannie Mae executives had expressed interest in Ms. Herron working on their initiatives, and she had extensive experience in those areas, and extensive experience working at Fannie Mae. For example, during the second week of January 2010, Ms. Herron had started talking to Rich McGhee, a Senior Vice President of Fannie Mae, and Patricia Fulcher, a Vice President, about working on various National Servicing Organization technology projects for Fannie Mae.

109. Fannie Mae and the individual Defendants had full knowledge of this expectancy, as they gave explicit instructions to Ms. Herron's vendor that she could not be re-engaged by Fannie Mae, but gave the vendor no reason, which demonstrated their knowledge that other Fannie Mae managers wanted to hire Ms. Herron on non-Treasury-related projects.

110. Fannie Mae and the individual Defendants intentionally interfered with Ms. Herron's business expectancy in working on non-Treasury related Fannie Mae projects.

111. As a direct and proximate result of Defendants' tortious interference with plaintiff's business expectancy, Ms. Herron has not been permitted to work on other non-Treasury related Fannie Mae projects, such as National Servicing Organization technology projects, for which Fannie Mae managers wanted to hire her. Defendants Fannie Mae, Schuppenhauer, Jardini, Brown, and Doe took the actions described above intending that this would be the result.

112. The actions of Defendants Fannie Mae, Schuppenhauer, Jardini, Brown, and Doe as described herein, directly and proximately caused Ms. Herron loss of income and other economic benefits; cost her job search expenses and the loss of future employment opportunities;

impaired her future earning capacity; damaged her professional reputation and caused her pain and suffering.

113. The conduct of Defendants Fannie Mae, Schuppenhauer, Jardini, Brown, and Doe were done intentionally, maliciously, with unlawful purpose to cause such damage and loss, and without right or justifiable cause, thereby warranting punitive damages. Defendants' improper and illegal purposes included preventing Ms. Herron's further opposition to Fannie Mae's wasteful conduct, which violated Fannie Mae's legal duties to the United States government.

COUNT IV

BIVENS FIRST AMENDMENT ACTION AGAINST INDIVIDUAL DEFENDANTS SCHUPPENHAUER, JARDINI, BROWN, AND JOHN DOES

114. Plaintiff incorporates as though fully restated herein each of the allegations stated in paragraphs 1 through 113 above.

115. For purposes of this claim, Fannie Mae is considered a federal government entity, since it is now in conservatorship under the direct control and supervision of the federal government, which owns eighty percent of its stock. Fannie Mae is, therefore, a government entity. Fannie Mae's employment of Ms. Herron was funded and made possible under its contract with the Department of Treasury. All of Ms. Herron's work related to projects contracted out to Fannie Mae by the Department of Treasury, under the Department's direct supervision, and with the express understanding that Fannie Mae perform the work in the best interests of the agency and the American taxpayers.

116. Ms. Herron was an employee of Fannie Mae, since Fannie Mae hired her to work on the MHA and other projects; Fannie Mae senior managers supervised and directed her daily work; and Fannie Mae terminated her employment and prevented her re-hire.

117. As an employee of a federal employer, Ms. Herron has a right guaranteed by the First Amendment to the United States Constitution to speak freely on matters of public concern.

118. Ms. Herron's right to speak on matters of public concern was clearly established under the First Amendment and by judicial precedent at all times relevant to this Complaint. Defendants Schuppenhauer, Jardini, Brown, and Doe knew, or should have known, that retaliation against a current or former public employee for disclosing matters of public concern is illegal.

119. Ms. Herron lawfully exercised her First Amendment right to speak on the following matters of public concern to Treasury: Fannie Mae's gross misuse of federal funds, gross mismanagement, violation of its fiduciary duty to the United States government, its pursuit of economic motives to the disadvantage of the United States government, and its violation of the Contract with Treasury. Specifically, Ms. Herron's reports or protests to Treasury include but are not limited to (1) Fannie Mae did not want full documentation prior to the trial modifications; (2) Fannie Mae obstructed the development of a borrower portal because that would expedite documented trial modifications; and (3) Fannie Mae withheld information from Treasury in order to influence Treasury's decision as to its future plans for Fannie Mae, which at the time were to be implemented in early 2010. Upon information and belief, Fannie Mae objected to Ms. Herron's and some servicers' proposals because Fannie Mae wanted to get incentive payments to do large numbers of trial modifications regardless of whether they would convert to permanent modifications or whether the individuals were eligible for these modifications.

120. Ms. Herron's disclosures were made to officials at Treasury and were outside the scope of her job duties at Fannie Mae. These are matters of social and political concern to the

public because the agencies involved are tasked with working for the public benefit in matters of great national importance. In addition, public awareness of the policies of the Department of the Treasury and other governmental actors evidenced by these actions will affect the public's decisions in matters of public importance, including but not limited to decisions about how to respond to the current housing crisis, including many homeowners' inability to pay on their existing mortgages.

121. Defendants Schuppenhauer, Jardini, Brown, and Doe retaliated against Ms. Herron because of her speech to Treasury officials by terminating her employment and interfering with her prospective business expectancies with the Treasury Department and other projects for Fannie Mae.

122. By retaliating against Ms. Herron for her speech to Treasury officials, Defendants Schuppenhauer, Jardini, Brown, and Doe exhibited an extreme reckless disregard of, and callous indifference to, Ms. Herron's constitutionally protected First Amendment rights.

123. Defendants Schuppenhauer, Jardini, Brown, and Doe were officers of the United States government at the times of the actions ascribed to them in this Complaint. Defendants Schuppenhauer, Jardini, Brown, and Doe and other government officials, agreed and conspired to deprive Ms. Herron of her First Amendment rights. Such conspiracy is evidenced by, but is not limited to, the individual defendants' refusal to follow the Contract, Defendants' insistence that trial loan modifications be processed as quickly as possible, with full knowledge that these loan modifications would be unlikely to convert to permanent modifications, and Defendants' actions to terminate Ms. Herron's employment and prohibit her from working on any project at Fannie Mae – under the Treasury Contract or on non-Treasury contracts. These actions furthered the Defendants' conspiracy by injuring and retaliating against Ms. Herron for the exercise of her

First Amendment rights, in order to prevent her from providing complete and accurate information to Treasury officials about Fannie Mae's mismanagement and gross waste of public funds.

124. The totality of the allegations contained herein and the various retaliatory actions taken against Ms. Herron, as well as the timing of such actions demonstrate that Defendants Schuppenhauer, Jardini, Brown, and Doe were acting by agreement to unlawfully injure her.

125. Defendants' conspiracy was for the purpose of retaliating against Ms. Herron for exercise of her First Amendment rights in challenging Fannie Mae's gross misuse of federal funds, gross mismanagement, violation of its fiduciary duty to the United States government, its pursuit of economic motives to the disadvantage of the United States government, and its violation of the Contract with Treasury.

126. Defendants' conspiracy was also to continue to engage in misconduct and gross waste of public funds, and to withhold relevant information from Treasury about Fannie Mae's performance on the Contract.

127. Ms. Herron's interest in exercising her First Amendment rights, and the public's right to be informed about the misconduct of public officials exposed by Ms. Herron, far outweigh any interest of Fannie Mae in suppressing her speech on a matter of public concern.

128. Defendants' actions described above have injured Ms. Herron by causing her great public embarrassment, pain and suffering and public humiliation; damaging her professional reputation, and inflicting extreme emotional distress.

129. Defendants' actions described above were in willful and wanton disregard of Ms. Herron's rights, and were taken maliciously to injure her.

130. Defendants' actions described above directly and proximately caused Ms. Herron

injury, including loss of economic opportunities, pain and suffering, damage to her professional reputation, and loss of future income and benefits.

Prayer for Relief

WHEREFORE, Plaintiff Caroline Herron respectfully requests that this Court grant her the following relief:

1. Issue a declaratory judgment declaring that Defendants wrongfully discharged Ms. Herron in violation of the public policy of the District of Columbia;

2. Issue a declaratory judgment that Defendants tortiously interfered with Ms. Herron's prospective business expectancies;

3. Issue an injunction against Defendants to ensure that they will not restrict Ms. Herron from working at Fannie Mae, Treasury, or any vendor engaged by Fannie Mae;

4. Issue a declaratory judgment declaring that Fannie Mae officials retaliated against Ms. Herron in violation of her First Amendment right to free speech;

5. Award Ms. Herron compensatory and consequential damages to redress injuries suffered as a result of her termination from Fannie Mae, including back pay for lost wages and benefits, front pay for denial of plaintiff's expected future earnings, pain and suffering, emotional distress, public humiliation, and damage to her professional reputation, in an amount appropriate to the proof presented at trial, but in no event less than $1.2 million;

6. Award Ms. Herron punitive damages for Defendants' reckless disregard of, and callous indifference to, her rights in an amount appropriate to the proof presented at trial, but in no event not less than $1.2 million;

7. Award Ms. Herron the attorneys' fees and costs she has incurred in bringing this action; and

8. Grant such other relief as this court deems just and necessary.

Respectfully submitted,

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Attorneys for Plaintiff Caroline Herron

Dated: June 8, 2010

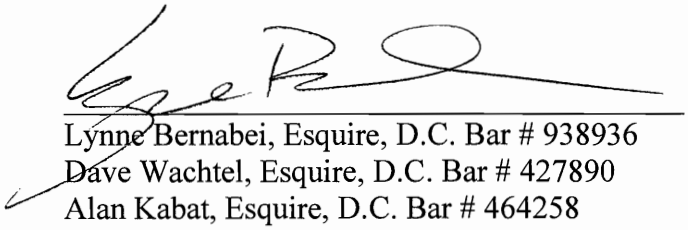
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAROLINE HERRON **4236 Mathewson Drive NW** **Washington, D.C. 20011** **Plaintiff,** **v.** **FANNIE MAE** **3900 Wisconsin Avenue, N.W.** **Washington, D.C. 20016,** **ERIC SCHUPPENHAUER** **43286 Warwick Hills Court** **Leesburg, VA 20176,** **NANCY JARDINI,** **4614 Langdrum Lane** **Chevy Chase, MD 20815,** **ALANNA SCOTT BROWN,** **1451 Belmont Street NW, Apt. 113** **Washington, D.C. 20009, and** **JOHN DOES ONE THROUGH FOUR,** **Defendants.**	**Civil No. _____**

PLAINTIFF'S JURY DEMAND

Plaintiff Caroline Herron, through undersigned counsel, demands a jury trial on all issues so triable.

Respectfully submitted,



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DATED: June 8, 2010