STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG 2013 JUL 27 AM 10: Case No.: 13CVS14834

MECKLENBURG CO., C.S.C

BY

WANDA AND SPENCER BOWMAN, ESTER AND SAMUEL PERRY, GENALYN MOORE, ROGINA CARTER, ALAN AND KRISTEN WATERBURY, PHILLIP SMITH AND LEONARD MARCHAND, HECTOR AND MICHELLE LIMERES, SANDRA AND RANALD RINGHOFER, ALOURDES AND ERNST LOISEAU, CONNIE ADAMS AND TODD REED,	**COMPLAINT AND DEMAND FOR JURY TRIAL**
Plaintiffs,	
v.	
BANK OF AMERICA, N.A.,	
Defendant.	

NOW COME Plaintiffs, by and through undersigned counsel, complaining of Defendant Bank of America, N.A. as follows:

PARTIES

1. Plaintiffs are citizens and residents of Horry County, South Carolina; Houston County, Texas; Polk County, Oregon; Cobb County, Georgia; Mecklenburg County, North Carolina; Kitsap County, Washington; Osceola County, Florida and Seminole County, Florida; San Bernardino County, California; Lee County, Florida; Saint Paul, Minnesota.

2. Defendant, Bank of America, N.A. (hereinafter "BOA"), is a Delaware Corporation, with its principal place of business located at 101 S. Tryon Street, Charlotte, North Carolina.

JURISDICTION and VENUE

3. The Court has personal jurisdiction of the Defendant under N.C. Gen. Stat. §1-75.4.

4. The Court has subject matter jurisdiction under, inter alia, N.C. Gen. Stat. § 7A-240. The amount in controversy is in excess of $25,000 under N.C. Gen. Stat. §7A-243.

5. Venue, in this Court over this cause, is proper under N.C. Gen. Stat. §1-80.

GENERAL FACTUAL ALLEGATIONS

6. This complaint chronicles the fraudulent scheme exacted by BOA on homeowners seeking Home Affordable Modification Program ("HAMP") modifications. Plaintiffs were victims of this fraud.

7. In late 2008 and early 2009, the United States Government provided a total of $45 billion to BOA pursuant to the Troubled Asset Relief Program ("TARP"). It also extended to BOA an additional guarantee of over $100 billion. Having concluded that the costs of allowing BOA to fail were too high, the U.S. Government decided taxpayers would save the life of BOA, and they did.[1]

8. As the Congressional Oversight Panel ("Panel") described it, "almost overnight" U.S. taxpayers provided to several large financial institutions, including BOA, an infusion of over $200 billion.[2] This massive bailout allowed the continued existence of several institutions including BOA.

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[1] United States Department of Treasury, Troubled Asset Relief Program Transactions Report, ("Treasury Transaction Report"), available at: https://www.treasury.gov/initiatives/financial-stability/reports/Pages/default.aspx

[2] Congressional Oversight Panel, The Final Report of the Congressional Oversight Panel, March 16, 2011, ("Final Report"), available at http://www.senate.gov/general/common/generic/COP_redirect.htm.

BOA Agrees to the Home Affordable Modification Program ("HAMP") in Exchange for Billions from Taxpayers

9. Because the stated purpose of the financial bailout was to help the American people and homeowners in particular, HAMP was implemented in March of 2009 to assist the millions of American homeowners facing foreclosure.

10. Knowing all eyes were on it, and on the billions of dollars it had been given by the government, on April 17, 2009, BOA, the nation's largest mortgage servicer, signed a "Servicer Participation Agreement" (the "Agreement" or "HAMP Agreement") with the Federal Government requiring it to use "reasonable efforts" to "effectuate any modification of a mortgage loan under the Program." *See* **Exhibit 1** at Sec. 2A.

11. BOA signed this Agreement in exchange for a commitment by the Federal Government to provide BOA hundreds of millions of taxpayers' dollars for its promise and obligation to comprehensively provide HAMP screening for all homeowners serviced by BOA.[3]

12. Once approved for HAMP modification, a homeowner who agrees to participate typically begins a three-month Trial Payment Period during which mortgage payments are made under the terms of the modification. If timely payments are made during those three months (i.e., not more than 30 days overdue during any month), the homeowner must be offered a permanent modification, with the terms in effect during the Trial Payment Period extended for 5 years.

13. After a homeowner completes a period of 5 years under the terms of the modification, lenders may increase the interest rate on the loan by 1% annually up to the prevailing Freddie Mac interest rate at the time the modification was made.

14. The Agreement indicates that BOA "shall perform the services for all mortgage loans it services, whether it services such mortgage loans for its own account or for the account of

[3] Treasury Transaction Report at 27.

another party," and "shall use reasonable efforts to remove all prohibitions or impediments to its authority, and use reasonable efforts to obtain all third-party consents and waivers that are required, by contract or in law, in order to effectuate any modification of a mortgage loan under the Program." *See* **Exhibit 1** at Sec. 2A. Servicers, including BOA, received incentive payments to complete HAMP modifications and in March 2010, the incentive was increased to $2,000.00.

BOA Develops and Orchestrates a Fraudulent Scheme to Avoid HAMP Modifications in Order to Increase Profits

15. Despite signing the Agreement and accepting billions of dollars, BOA knew conforming to the requirements of the Agreement in providing screening for HAMP applications and accepting homeowners who meet the requirements would cost the bank millions of dollars.

16. For that reason, instead of honoring its contract with the Federal Government to, in good faith, help as many distressed homeowners as possible, it made a calculated decision. BOA decided to permit just enough HAMP modifications to occur to create a defense (however untenable) that it was making best efforts to comply with its Agreement. Simultaneously, however, BOA chose to develop secretive business practices designed to intentionally prevent thousands of eligible applicants from receiving permanent HAMP modifications.

Former BOA Employees Sign Sworn Declarations Outlining the Fraudulent HAMP Scheme

17. Only after Plaintiffs retained their attorneys in this matter did Plaintiffs learn of the facts contained in this section and in the sworn declarations of former BOA employees. Plaintiffs did not know and could not have reasonably discovered these facts until they retained their attorneys.

18. According to the February 22, 2017, Declaration of Rodrigo Heinle, (**Exhibit 2**) who worked for BOA in Charlotte, North Carolina from 2011 through 2012:

a. Bank of America employed a common strategy of delaying HAMP applications. Delay was achieved using tactics including claiming that documents were incomplete and/or missing when they were not, or simply claiming files were "under review" when they were not.

b. Homeowner applications were routinely shredded with no review by Bank of America and at times taken home by managers in order to conceal the fact they had been received by Bank of America.

c. Upon the instruction of my manager Jamal Brown, and other managers, I deleted thousands of homeowner HAMP application files from Bank of America computer databases, as many as six thousand (6,000) in one day.

19. According to the June 5, 2013 Declaration of William E. Wilson, Jr., **(Exhibit 3)** who worked for BOA in Charlotte, North Carolina from 2010 through 2012:

a. Individual BOA employees were given "approximately 400 HAMP files" at any given time.

b. "Though BOA required that applicants immediately provide financial documents, often on short notice, the bank intentionally allowed these documents to sit for months without ever reviewing them."

c. Bank of America instructed its employees to employ a common strategy of delaying HAMP applications, "claiming that documents were incomplete or missing when they were not, or simply claiming the file was 'under review' when it was not." This delay tactic allowed BOA to falsely claim homeowners had not provided the required documentation when in fact, the homeowner had sent in documents months earlier, often multiple times, and had made payments under a Trial Payment Period plan, but had not gotten a permanent modification or even a decision regarding their modification.

d. Next, BOA regularly employed a procedure called a "blitz." "Approximately twice a month, BOA ordered case managers and underwriters to 'clean out' the backlog of HAMP applications by denying any file in which the financial documents were more than 60 days old. These included files in which the homeowner had provided all required financial documents and fully complied with the terms of a Trial Period Plan" and were entitled to a HAMP modification.

e. "During a blitz, a single team would decline between 600 and 1,500 modification files at a time for no reason other than that the documents were more than 60 days old. BOA instructed its employees to enter into its computer systems a reason that would justify declining the modification to the Treasury Department. The justifications commonly included claiming that the homeowner had failed to return

requested documents or had failed to make payments. In reality, these justifications were untrue."

f. The "homeowners, who did not receive the permanent HAMP modification they were entitled to, ultimately lost their homes to foreclosure."

20. According to the May 23, 2013 Declaration of former BOA Senior Collector of Loss Mitigation employee, Simone Gordon (**Exhibit 4**):

a. Employees were given quotas for placing a specific number of accounts into foreclosure, including accounts in which the borrower fulfilled a HAMP Trial Period Plan. Employees who met quotas for placing "ten or more accounts into foreclosure in a given month received a $500 bonus. Bank of America also gave employees gift cards to retail stores like Target or Bed Bath and Beyond as rewards for placing accounts into foreclosure."

b. And that Employees were closely monitored by BOA "Team Leaders and Site Leaders who walked the call room floor throughout the day wearing headsets that they would use to plug in and listen into a call without warning. Employees who were caught not carrying out the delay strategies that BOA instituted were subject to discipline and termination."

c. "Employees who were caught admitting that BOA had received financial documents or that the borrower was actually entitled to a permanent loan modification were disciplined and often terminated without warning."

21. According to the May 15, 2013 Declaration of former BOA collection employee, Theresa Terrelonge (**Exhibit 5**):

a. BOA "was trying to prevent as many homeowners as possible from obtaining permanent HAMP loan modifications while leading the public and the government to believe that it was making efforts to comply with HAMP. It was well known among managers and many employees that the overriding goal was to extend as few HAMP loan modifications to homeowners as possible."

b. BOA employees "were called into group meetings with our supervisors on a regular basis. The information we received in group meetings showed me that Bank of America's deliberate practice was to string homeowners along with no intention of providing permanent modifications. We were instructed to inform every homeowner who called in that their file was "under review" - even where the computer system showed that the file had not been accessed in months or when the homeowner had been rejected for a modification."

c. BOA employees "were instructed to inform homeowners that modification documents were not received on time, not received at all, or that documents were missing, even when, in fact, all documents were received in full and on time."

d. She "witnessed employees and managers change and falsify information in the systems of record and remove documents from homeowners' files to make the account appear ineligible for a loan modification. This included falsifying electronic records so that the records would no longer show that the homeowner had sent in required documents or had made required payments. This was done so that the file could be closed, the homeowner's effort to obtain a loan modification could be rejected, and the manager could meet Bank of America's production goal for the given week or month."

e. She also observed that "Bank of America often avoided extending HAMP modifications by sending non- HAMP modifications to homeowners who had applied for a HAMP modification. These non- HAMP modifications were typically on worse terms for the homeowner than what they were eligible to receive under HAMP - but they were at higher interest rates and more profitable for Bank of America. I fielded dozens of calls from homeowners who had waited months for a HAMP modification and were confused, and often in tears, when they received a modification that appeared nothing like what they were led to expect."

22. According to the May 13, 2013 Declaration of former BOA underwriter Steven Cupples (**Exhibit 6**):

a. "Bank of America retained outside vendors to manage the documents being sent to and received from borrowers applying for HAMP modifications. Urban Lending Solutions was one of the vendors tasked to receive and upload financial documents from borrowers." Mr. Cupples "quickly realized that if the loan had documents that were sent to Urban, those documents would be scattered over various links in the computer systems. The documents were present, but they often could not be viewed using a single system. An underwriter would need to know to go to other systems such as IPORTAL, LMA, LMF, or HomeSaver to review documents the borrower had sent. Most underwriters did not know that they needed to look for documents in multiple systems and often assumed documents had not been sent. As a result, many borrowers were declined loan modifications they should have received."

b. Mr. Cupples "observed that Bank of America reported to the Treasury Department and made public statements regarding the volume of loans it was successfully modifying, and the efforts it was making to catch up with the volume. Often this involved double counting loans that were in different stages of the modification process. It also involved counting loans that were entitled to modifications as having been modified - only to foreclose on those same loans later. It was well known among Bank of America employees that the numbers Bank of America was

reporting to the government and to the public were simply not true."

23. BOA and its agents never properly hired, trained, or equipped a workforce to handle its obligation to provide HAMP modifications to the customers whose mortgages it serviced.

24. BOA contracted with Urban Lending Solutions, ("Urban") to handle a variety of services relating to its participation in HAMP under the Agreement.

25. Urban is a privately held company based in Pittsburgh, providing services to the mortgage industry. On its website, Urban indicates it is an industry leader in providing "a wide variety of outsourced services to its clients including mortgage fulfillment services, home retention solutions, appraisals and valuation services, title and settlement services, document fulfillment, call center and collection services."

26. However, the processes and procedures employed by BOA and Urban were diametrically opposed to the intent and purpose of HAMP, and Urban agreed and conspired to frustrate HAMP applicants.

27. As part of its complex scheme to defraud the Federal Government and taxpayers, BOA folded Urban employees into its HAMP operations and gave these employees misleading BOA titles. To the outside world of homeowners and regulators, Urban's workforce appeared indistinguishable from BOA's own employees.

28. BOA used this workforce to solicit and direct homeowners to return documents, via FedEx to Urban. HAMP modification applicants sent hundreds of thousands of FedEx packages to Urban. Urban hired scores of employees to accept and scan millions of pages of original documents, including homeowner financials, to be saved on the Urban Portal. Unfortunately for the applicants, as explained in this Complaint and declarations by former BOA

employees, the Urban Portal was designed to be and became a "black hole" for all those documents.

29. BOA's fraudulent scheme worked as intended. A January 27, 2017 Inspector General Report to Congress found BOA "[w]rongfully denying homeowners admission into HAMP" and "denied 79% of all who applied for HAMP" concluding in its report to Congress that "[t]his should be unacceptable given that Bank of America has already received about $2 billion from [the] Treasury for HAMP." **Exhibit 7.**

U.S. Department of Justice Sues BOA for the Fraudulent HAMP Scheme

30. Servicers, including BOA, received incentive payments to complete HAMP modifications and in March 2010, the incentive was increased to $2,000.00. Accordingly, the incentive for BOA to fraudulently report completed HAMP modifications is clear.

31. In a lawsuit by the Federal Government against BOA in the Eastern District of New York, initiated by a whistleblower, BOA agreed to pay back $1 billion under the Federal False Claims Act. *U.S. v. Bank of America NA et al.,* case number 1:11-cv-03270, (E.D.N.Y.) The August 2014 settlement also included BOA agreeing to "pay $7 billion in relief to struggling homeowners, borrowers and communities affected by the bank's conduct."[4]

Class Action Claims Denied in Favor of Individual Claims

32. The Multi District Litigation case *In re Bank of America Home Affordable Modification Program (HAMP) Contract Litigation,* M.D.L. No. 10–2193–RWZ was filed in 2011 and included class action cases from across the country. In denying class certification of the multi-district class, the Massachusetts District Court concluded:

[4] August 21, 2014 U.S Justice Department News Release dated August 21, 2014. ("Justice Department News Release"), available at https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department settlement-financial-fraud-leading

> This case demonstrates the vast frustration that many Americans have felt over the mismanagement of the HAMP modification process. Plaintiffs have plausibly alleged that Bank of America utterly failed to administer its HAMP modifications in a timely and efficient way; that in many cases it lost documents, or pretended it had not received them, or arbitrarily denied permanent modifications. *See* Third Am. Compl., ¶¶ 135–473 (describing the different experiences of each named plaintiff). Plaintiffs' claims may well be meritorious; but they rest on so many individual factual questions that they cannot sensibly be adjudicated on a classwide basis. Because plaintiffs have failed to meet the predominance and superiority requirements of Rule 23(b)(3), their motion for class certification (Docket # 208) is DENIED. *Goldman v. Bank of America, NA, et al.*, 2013 WL 4759649. **Exhibit 8**

33. It is now up to individual borrowers to file individual lawsuits to recover damages resulting from the systematic fraudulent practices of BOA with regard to HAMP.

FACTUAL ALLEGATIONS
PLAINTIFFS # 1 WANDA BOWMAN & SPENCER BOWMAN

34. Plaintiffs Wanda Bowman and Spencer Bowman are currently citizens of Horry County, South Carolina, residing at 4517 Kingfisher St., North Myrtle Beach, South Carolina.

35. Plaintiffs Wanda Bowman and Spencer Bowman will hereinafter be referred to as "Bowman Plaintiffs."

36. On September 14, 2006, Bowman Plaintiffs executed a mortgage and note with Countrywide Home Loans for their home located at 2902 Oak Ridge Rd., Oak Ridge, North Carolina, in the amount of $183,750.00 with regular monthly payments set at $1,161.42.[5] BOA serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

37. After experiencing financial hardship, due in part to the state of the economy, Bowman Plaintiffs contacted BOA in or about February 2010 to request a HAMP modification.

[5] The original loan documents list Spencer G. Bowman as Gary Bowman. Spencer G. Bowman is Plaintiff's legal name.

38. Although Bowman Plaintiffs were in imminent default, at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, they did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning Plaintiffs' HAMP Application by Defendant

39. In or about February 2010, BOA provided Bowman Plaintiffs a HAMP application and they properly completed the application and returned it to BOA by Federal Express and fax with the requested supporting financial documents.

40. However, as part of BOA's fraudulent scheme, in or about March 2010, a BOA representative falsely informed Bowman Plaintiffs over the phone that the documents they submitted were "missing" and they would need to send in the application and supporting documents again.[6] The same or similar statements were made on subsequent calls with multiple BOA employees over the months of April 2010 through February 2013. BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

41. Further, each time Bowman Plaintiffs called BOA for assistance, they would be directed to a new representative. Bowman Plaintiffs were routinely assigned a new account representative unfamiliar with the previous representative's work and they were forced to resubmit the application multiple times. Bowman Plaintiffs were forced to provide the same information

[6] The name of this BOA employee is within the exclusive possession of the Defendant and can be specifically identified through the bank's computer programs known as SIEBEL, LAMP, Homesaver, IPORTAL and AS/400 system, which log all calls from borrowers and identify the BOA employee taking the call by name. BOA representatives and employees identified, but not named, throughout this Complaint, can also be identified using the same resources listed here.

and answer the same questions repeatedly. Each BOA Customer Relation Manager (CRM) or other BOA representative would tell Bowman Plaintiffs something different about the status of their HAMP application. In fact, Bowman Plaintiffs spoke with more than twenty (20) different representatives over the application process.

42. BOA representatives made these false statements and misrepresentations made to Bowman Plaintiffs not for the purpose of processing Bowman Plaintiffs' application in good faith, but instead for the specific purpose of inducing them to resend their modification application over and over to frustrate the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** In fact, Plaintiff's applications were intentionally lost within BOA's databases or destroyed to prevent Plaintiff from receiving a HAMP modification.

43. Bowman Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via U.S. certified mail, fax, and Federal Express more than three (3) times throughout the trial payment period, described herein. As a direct result, Bowman Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

44. Bowman Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until she retained her attorneys in this matter in January 2018. Bowman Plaintiffs reasonably relied on the statements of Defendant's employees that Bowman Plaintiffs' HAMP application was not complete. Bowman Plaintiffs contacted Defendant

repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application, and there were no resources reasonably available to a non-attorney borrower such as Bowman Plaintiffs to contradict Defendant's false statements. BOA employees falsely told Bowman Plaintiffs that their application was incomplete or missing, even though the application was proper and complete, to further the scheme to delay the HAMP modification to ultimately deny it.

45. Bowman Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were incomplete.

46. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Plaintiff's modification application as was required under the Agreement the bank executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and proceeding to foreclose on Plaintiff's property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

47. In late March 2010, Bowman Plaintiffs contacted BOA by phone to ask for the status of their HAMP application and supporting documents. On this phone call, a BOA representative told Bowman Plaintiffs that their application was "approved" and requested they make "trial payments" of $636.85 pursuant to the Federal Government's Home Affordable Modification Program. The BOA representative told Bowman Plaintiffs to make the first two payments upfront to start the HAMP modification process and that their trial payments must be on time or they would be subsequently denied the modification. This BOA representative's statement on the phone call regarding approval of their modification was false as the application was not

approved. Instead, BOA did not approve, and never intended to approve, the application and this fact was fraudulently omitted from the Bowman Plaintiffs.

48. This false statement of fact and intentional omission was intended to cause Bowman Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Bowman Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

49. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. See July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Bowman Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Bowman Plaintiffs' account.

50. Relying on BOA's misrepresentations and omissions, Bowman Plaintiffs made more than seventeen (17) "trial payments" of $636.85 every month from April 2010 through August 2011, as instructed, hoping to save their home. Every month between April 2010 through August 2011, Bowman Plaintiffs called BOA to confirm that their payment was received and to ask if they should continue to make the "trial payments." On each phone call, BOA representatives instructed Bowman Plaintiffs to continue making payments of $636.85. For example, on a phone call in 2010, a BOA loan representative told Bowman Plaintiffs that they were in the modification and they should continue to pay the amount of $636.85. On another phone call, Bowman Plaintiffs asked the BOA representative on the phone if BOA could send them a document stating they were still under the modification and the BOA representative told Bowman Plaintiffs to continue to pay,

they were still in the modification, and not to worry about a document showing they were in the modification. Relying on these statements and omissions, Bowman Plaintiffs to continue to pay the trial payment amount of $636.85.

51. However, as a direct result of relying on BOA's misrepresentations and intentional omissions, in or about September 2011, BOA sent Bowman Plaintiffs a Notice of Foreclosure. Bowman Plaintiffs contacted BOA by phone call in late 2011 and a BOA representative told Bowman Plaintiffs that their modification was denied. On July 14, 2016, Bowman Plaintiffs' home was foreclosed.[7] Bowman Plaintiffs moved out of their home in December 2014.

52. Bowman Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

53. By making these misrepresentations, BOA profited by retaining Bowman Plaintiffs' trial payments for profit. BOA further profited by forcing Bowman Plaintiffs into foreclosure and avoiding the administrative costs of a good faith processing of Bowman Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Bowman Plaintiffs to prevent foreclosure, or alternative financing, while awaiting BOA's decision on the modification application. Bowman Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

[7] BOA initiated foreclosure proceedings beginning in 2011, but the foreclosure was not closed until July 2016.

54. Bowman Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in January 2018. Bowman Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Bowman Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

55. Even though Bowman Plaintiffs lived in their home until 2014, BOA charged their account for a "Property Inspection" on eighteen (18) occasions beginning May 1, 2009. Specifically, Bowman Plaintiffs were charged for Property Inspections on May 27, 2010, June 29, 2010, August 4, 2010, and many more occasions. Bowman Plaintiffs were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $180.00, with the last fee being charged on May 24, 2012. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Bowman Plaintiffs' account.

56. BOA committed fraud upon Bowman Plaintiffs when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

57. BOA committed fraud upon Bowman Plaintiffs when BOA requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Bowman Plaintiffs for trial payments to fraudulent inspection fees.

58. The fraudulent omission of the BOA's practice of applying trial payments to continuing inspection fees misled the Bowman Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Bowman Plaintiffs of this practice and intentionally refused to do so.

59. As a direct result of the omission, Bowman Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA profited by charging Bowman Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

60. Bowman Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in January 2018.

61. Upon information and belief, BOA further profited from its wrongdoing alleged as to Bowman Plaintiffs by using their HAMP application, and its other acts and omissions as to Bowman Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Bowman Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFFS # 2 ESTER PERRY & SAMUEL PERRY

62. Plaintiffs Ester Perry and Samuel Perry are currently citizens of Houston County, Texas, residing at 3503 Highway 7, Crockett, Texas.

63. Plaintiffs Ester Perry and Samuel Perry will hereinafter be referred to as "Perry Plaintiffs."

64. On March 12, 2004, Perry Plaintiffs executed a mortgage and note with CountryWide Home Loans for their home located at 237 Trinity Drive, Lancaster, Texas 75146, in the amount of $144,400.00 with regular monthly payments set at $1,097.00. BOA serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

65. After experiencing financial hardship, due in part to the state of the economy, Perry Plaintiffs contacted BOA in or about August 2009 to request a HAMP modification.

66. Although Perry Plaintiffs were in imminent default, at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Perry Plaintiffs did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

67. In or about August 2009, a BOA loan representative advised Perry Plaintiffs by phone to refrain from making their regular mortgage payments. Specifically, the BOA representative told Perry Plaintiffs that they were "not eligible [for HAMP] if current" on their payments.[8] Relying on this BOA representative's statement, Perry Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[9] BOA representatives told Perry Plaintiffs to remain in default and to stop making regular monthly mortgage payments on more than one occasion throughout the application process. Although Perry Plaintiffs did not know it until they contacted an attorney in February 2018, the BOA loan representatives omitted the fact that HAMP eligibility was also available to borrowers if default

[8] *See* footnote 6.
[9] The status of Plaintiff's loan at the time of this phone call is within the exclusive possession of the Defendant, pending discovery.

was reasonably foreseeable. Perry Plaintiffs were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

68. The BOA loan representative that spoke to Perry Plaintiffs knew the statement was false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements and omissions were made to induce Perry Plaintiffs to rely on them. The statements were specifically designed by BOA to set Perry Plaintiffs up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. BOA, by and through its employees and others, misled Perry Plaintiffs into believing that default was the only basis for HAMP eligibility because BOA intentionally omitted the fact that imminent default was an alternate basis for HAMP eligibility.

69. Relying on the false statement and omission, Perry Plaintiffs did not make their regular mortgage payments and also gave up on any mortgage foreclosure options from in or about August 2009 until in or about October 2009. As a direct result of BOA's actions, Perry Plaintiffs suffered damages when they subsequently made HAMP trial payments as instructed by BOA, as set forth elsewhere in the Complaint. However, BOA used Perry Plaintiffs' default status, and the other actions they took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to Perry Plaintiffs' account. BOA's actions resulted in further default and foreclosure of Perry Plaintiffs' home. Ultimately, Perry Plaintiffs lost their home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Perry Plaintiffs' trial payments.

70. Perry Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until she retained counsel in this matter in February 2018, nor could Perry Plaintiffs know or reasonably have discovered the orchestrated fraudulent scheme set forth in this

Complaint until they retained their attorneys. Perry Plaintiffs reasonably relied on the statements of Defendant's employees that Perry Plaintiffs must be in default in order to qualify for HAMP. Plaintiff reasonably relied on Defendant's representative's directive that they remain in default in order to qualify for HAMP. Perry Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Perry Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Plaintiffs' HAMP Application by Defendant

71. In or around September 2009, BOA provided Perry Plaintiffs a HAMP application and they properly completed the application and returned it to BOA via fax and FedEx with the requested supporting financial documents.

72. On October 7, 2009, BOA sent Perry Plaintiffs a letter stating that their request for assistance was received. However, as part of BOA's fraudulent scheme, in late October 2009, a BOA employee falsely informed Perry Plaintiffs over the phone that the documents they submitted were "not received" and they would need to re-send in the application and supporting documents. From October 2009 through January 2010, Perry Plaintiffs frequently contacted BOA Modification Department representatives by phone at 888-325-6430 including Francisco Rodney, Mary Carr, and David who falsely informed Perry Plaintiffs that documents were missing or "not received" or that their application was "being processed". BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

73. These false statements were made by BOA employees for the purpose of inducing Perry Plaintiffs to resend their modification application over and over in order frustrate the application process, when in fact, BOA had already received all of Perry Plaintiffs' documentation.

74. BOA loan modification representatives made these false statements to Perry Plaintiffs, not for the purpose of processing Perry Plaintiffs' application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** In fact, Perry Plaintiff's applications were intentionally lost within BOA's databases or destroyed in order to prevent Perry Plaintiff's from receiving a HAMP modification.

75. Perry Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via U. S. Mail, fax, and Federal Express more than four (4) times in or about October 2009 through January 2010. As a direct result, Perry Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

76. Perry Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in February 2018. Perry Plaintiffs reasonably relied on the statements of Defendant's representatives that Perry Plaintiffs' HAMP application was not complete or missing information. Perry Plaintiff contacted Defendant repeatedly throughout this process with weekly phone calls to ensure proper compliance with HAMP as evidenced by their repeated submission of the application, and there were no resources

reasonably available to non-attorney borrowers such as Perry Plaintiffs to contradict Defendant's false statements. Francisco Rodney, Mary Carr, David, and other BOA Loan Modification Department representatives falsely told Perry Plaintiffs that their application was incomplete or missing, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

77. Perry Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were not received.

78. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Perry Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and proceeding to foreclose on Perry Plaintiffs' property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

79. In late October 2009, BOA sent Perry Plaintiffs a letter stating their application was "approved" and requested they make "trial payments" of $771.51 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement in this letter regarding approval of their application was false as the application was not approved. Instead, BOA did not approve, and never intended to approve, the application and this fact was fraudulently omitted from the Perry Plaintiffs.

80. This false statement of fact and intentional omission was intended to cause Perry Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Perry Plaintiffs to send trial payments so BOA

could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

81. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA representatives fraudulently omitted this fact when requesting that Perry Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Perry Plaintiffs' account.

82. Relying on BOA's misrepresentations and omission regarding the trial payment period, Perry Plaintiffs made ten (10) trial payments in the amount of $771.51 in November 2009, December 2009, January 2010, March 2010 April 2010, May 2010, June 2010, July 2010, August 2010, and October 2010 as instructed, hoping to save their home. After making the first six (6) payments, Perry Plaintiffs contacted BOA by phone to inquire if they should continue paying the trial payment amount. A BOA loan modification representative told Perry Plaintiffs to continue paying the trial payment amount. Relying on this communication with this BOA loan modification representative, Perry Plaintiffs continued to pay the trial payment amount.

83. Despite making trial payments, BOA denied Perry Plaintiffs' HAMP modification. Subsequently, Perry Plaintiffs reapplied for a modification in or about August 2010. Despite Perry Plaintiffs' efforts, BOA restarted a cycle of requesting additional documents from Plaintiff and then denying her application or not responding. However, as a direct result of relying on BOA's misrepresentations and intentional omissions, Recontrust Company foreclosed on Perry Plaintiffs' home and it was sold at a trustee's sale on October 2, 2012 for $176.969.01. Perry Plaintiffs moved out of their home in 2012.

84. Perry Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

85. By making these misrepresentations, BOA profited by retaining Perry Plaintiffs' trial payments for profit. BOA further profited by forcing Perry Plaintiffs into foreclosure and avoiding the administrative costs of a good faith processing of Perry Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Perry Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Perry Plaintiffs to prevent foreclosure, or alternative financing, while awaiting BOA's decision on the modification application. Perry Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

86. Perry Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and that their payments were not applied to their account until they retained their attorneys in this matter in February 2018. Perry Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Perry Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

87. Even though Perry Plaintiffs lived in their home until late 2012, BOA charged their account for a "Property Inspection" on thirty-seven (37) occasions beginning October 21, 2009.

Perry Plaintiffs were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $550.00, with the last fee being charged on June 21, 2012. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Perry Plaintiffs' account.

88. BOA committed fraud upon Perry Plaintiffs when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

89. BOA committed fraud upon Perry Plaintiffs when the bank requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Perry Plaintiffs for trial payments to fraudulent inspection fees.

90. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Perry Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Perry Plaintiffs of this practice and intentionally refused to do so.

91. As a direct result of the omission, Perry Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA profited by charging Perry Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

92. Perry Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in February 2018.

93. Upon information and belief, BOA further profited from its wrongdoing alleged as to Perry Plaintiffs by using their HAMP application, and its other acts and omissions as to Perry Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Perry Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFF # 3 GENALYN MOORE

94. Plaintiff Genalyn Moore are currently citizens of Polk County, Oregon residing in Salem, Oregon.

95. Plaintiff Genalyn Moore will hereinafter be referred to as "Moore Plaintiff."

96. On November 19, 2007, Moore Plaintiff executed a mortgage and note with Quicken Loan, Inc. for their home located at 5289 Mango Ave. SE, Salem, Oregon in the amount of $179,900.00 with regular monthly payments set at $1,339.79. BOA serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

97. After experiencing financial hardship, due in part to the state of the economy, Moore Plaintiff contacted BOA in October 2009 to request a HAMP modification.

98. Although Moore Plaintiff was in imminent default at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Moore Plaintiff did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning Plaintiff's HAMP Eligibility by Defendant

99. In November 2009, a BOA loan modification department representative told Moore Plaintiff by phone to refrain from making their regular mortgage payments. Specifically, the BOA

representative told Moore Plaintiff that in order to be eligible for a HAMP modification, she would have to be behind in her mortgage payments.[10] This statement was false as default was not required for HAMP eligibility. Relying on this BOA representative's specific statements, Moore Plaintiff did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[11] Moore Plaintiff was told being behind in payments was a requirement of HAMP on more than one occasion throughout the application process. Although Moore Plaintiff did not know it until she contacted an attorney in March 2018, this BOA loan representative omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Moore Plaintiff were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent her from receiving a HAMP modification.

100. The BOA loan representative knew the statement was false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statement and omissions were made to induce Moore Plaintiff to rely on them. The statement was specifically designed by BOA to set Moore Plaintiff up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. BOA, by and through its employees and others, misled Moore Plaintiff into believing that default was the only basis for HAMP eligibility because BOA intentionally omitted the fact that imminent default was an alternate basis for HAMP eligibility.

101. Relying on the false statement and omission, Moore Plaintiff did not make her regular mortgage payments and also gave up on any mortgage foreclosure options. As a direct result of BOA's actions, Moore Plaintiff suffered damages when she subsequently made HAMP trial payments as instructed by BOA, as set forth elsewhere in the Complaint. However, BOA used

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[10] *See* footnote 6.
[11] *See* footnote 9.

Moore Plaintiff's default status, and the other actions she took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments Ultimately, Moore Plaintiff lost her family home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Moore Plaintiff' trial payments.

102. Moore Plaintiff did not know, and could not have reasonably discovered, that these statements were false until she retained counsel in this matter in March 2018, nor could Moore Plaintiff know or reasonably have discovered the orchestrated fraudulent scheme set forth in this Complaint until she retained her attorneys. Moore Plaintiff reasonably relied on the statements of Defendant's employees that she must be in default to qualify for HAMP. Moore Plaintiff reasonably relied on Defendant's representatives' directive that she remains in default to qualify for HAMP. Moore Plaintiff contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Moore Plaintiff to contradict Defendant's false statements.

False Statements of Fact Concerning Moore Plaintiff' HAMP Application by Defendant

103. In or about October 2009, BOA provided Moore Plaintiff a HAMP application and she properly completed the application and returned it to BOA via Federal Express with the requested supporting financial documents in early November 2009. On November 9, 2009 at 9:13 AM, BOA employee, Carey Mallory signed to accept the Federal Express package containing Moore Plaintiff's HAMP application and requested supporting financial documents.

104. However, as part of BOA's fraudulent scheme, in January 2010, a BOA loan representative falsely informed Moore Plaintiff over the phone that the HAMP application and supporting documents she submitted were "not received" and she would need to re-submit the application and supporting documents. On January 22, 2010, Moore Plaintiff resent the HAMP

application and supporting financial documents by U.S. mail. From January 2010 through September 2010, Moore Plaintiff frequently contacted BOA modification department representatives by phone who falsely informed Moore Plaintiff that documents were "missing", "not completed", or "not received." BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

105. These false statements were made by BOA employees for the purpose of inducing Moore Plaintiff to resend her modification application over and over in order frustrate the application process, when in fact, BOA had already received all of Moore Plaintiff's documentation.

106. BOA loan modification representatives made these false statements to Moore Plaintiff, not for the purpose of processing Moore Plaintiff's application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** However, Moore Plaintiff' applications and supporting documents were intentionally lost within BOA's databases or destroyed in order to prevent Plaintiff from receiving a HAMP modification.

107. Moore Plaintiff believed these statements were true, relied on them, and as a result, unnecessarily resubmitted her application and supporting information via U.S. Mail, fax, and Federal Express more than four (4) times on November 6, 2009, January 22, 2010, June 7, 2010, in August 2010, and others. As a direct result, Moore Plaintiff was damaged and suffered a loss

of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

108. Moore Plaintiff did not know, and could not have reasonably discovered, that these statements were false until she retained her attorneys in this matter in March 2018. Moore Plaintiff reasonably relied on the statements of Defendant's representatives that Moore Plaintiff's HAMP application was not complete or missing information. Moore Plaintiff contacted Defendant repeatedly throughout this process, from in or about January 2010 through September 2010, with frequent phone calls to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to a non-attorney borrower such as Moore Plaintiff to contradict Defendant's false statements. BOA representatives falsely told Moore Plaintiff that her application was incomplete or missing information, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

109. Moore Plaintiff qualified for HAMP, but ultimately, was wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that her applications were not received.

110. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Moore Plaintiff' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and initiating foreclosure of Moore Plaintiff's property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

111. In November 2009, BOA sent Moore Plaintiff a letter and Home Affordable Modification Program Trial Period Plan agreement stating her application was "approved" and requested she make four (4) "trial payments" of $830.48 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement in this letter regarding approval of her modification was false as the application as not approved. Instead, BOA did not approve, and never intended to approve, the application and this fact was fraudulently omitted from Moore Plaintiff. In November 2009, when she received the letter, Moore Plaintiff contacted BOA and a BOA loan representative told her to make the trial payments on time and the modification would continue to apply to their loan.

112. These false statements of fact and intentional omission were intended to cause Moore Plaintiff to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Moore Plaintiff to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

113. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA representatives fraudulently omitted this fact when requesting that Moore Plaintiff make trial payments. BOA retained these funds with no intention of applying these funds to Moore Plaintiff's account.

114. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Moore Plaintiff mailed four (4) trial payments of $830.48 with the trial period mortgage payment coupons to BOA. After making the four (4) payments as instructed, Moore Plaintiff

contacted BOA and a BOA representative again told her that she was approved for a modification and to continue making the payments of $830.48. As a result, Moore Plaintiff continued to make payments, making a total of twelve (12) trial payments in November2009, November 2009, December2009, January 2010, February 2010, March 2010, April 2010, May 2010, June 2010, July 2010, August 2010, and September 2010 as instructed, hoping to save their home.

115. Despite making their trial payments, BOA sent Moore Plaintiff a letter in or about October 2010 denying their HAMP modification falsely stating she was "not eligible." Upon receiving the letter, Moore Plaintiff contacted BOA by phone and a BOA representative told her the modification was denied and her loan was in default. As a result, Moore Plaintiff filed for Bankruptcy on October 15, 2010 to try to save their home. On October 25, 2010, BOA also sent Moore Plaintiff a letter stating her mortgage loan was in default status. As a direct result of relying on BOA's misrepresentations and intentional omissions about the HAMP modification process, Moore Plaintiff were forced to sell their home in a short sale on September 7, 2012.

116. Moore Plaintiff suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

117. By making these misrepresentations and omissions, BOA profited by retaining Moore Plaintiff's trial payments for profit. BOA further profited by forcing Moore Plaintiff into filing for Bankruptcy and selling their home in a short sale and avoiding the administrative costs of a good faith processing of Moore Plaintiff's modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Moore Plaintiff expended time and money and lost the opportunity to pursue

other loss mitigation options reasonably available to Moore Plaintiff to prevent bankruptcy and a short sale of her home, such as alternative financing, while awaiting BOA's decision on the modification application. Moore Plaintiff's lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

118. Moore Plaintiff did not know and could not have reasonably discovered that the statements herein were false and that her payments were not applied to their account until she retained her attorneys in this matter in March 2018. Moore Plaintiff contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by her repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrower such as Moore Plaintiff to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

119. Even though Moore Plaintiff lived in her home until September 2012, BOA charged their account for a "Property Inspection" on at least sixteen (16) occasions beginning September 21, 2010. Moore Plaintiff were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $224.00, with the last fee being charged on June 13, 2012. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Moore Plaintiff's account.

120. BOA committed fraud upon Moore Plaintiff when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

121. BOA committed fraud upon Moore Plaintiff when the bank requested she make trial payments during the HAMP application process and omitted the fact that it had no intention

of approving the application and intended to apply some of the funds sent by Moore Plaintiff for trial payments to fraudulent inspection fees.

122. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Moore Plaintiff into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Moore Plaintiff of this practice and intentionally refused to do so.

123. As a direct result of the omission, Moore Plaintiff lost some of the funds sent to BOA for trial payments she believed were for final approval of their HAMP application. BOA profited by charging Moore Plaintiff's account for the inspection fees and applying some of the trial payments received from her and retaining those funds for profit.

124. Moore Plaintiff did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until she retained her attorneys in this matter in March 2018.

125. Upon information and belief, BOA further profited from its wrongdoing alleged as to Moore Plaintiff by using her HAMP application, and its other acts and omissions as to Moore Plaintiff, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Moore Plaintiff as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFF # 4 ROGINA CARTER

126. Plaintiff Rogina Carter is currently a citizen of Cobb County, Georgia, residing at 5083 Huntcrest Dr. Southwest, Mableton, Georgia.

127. Plaintiff Rogina Carter will hereinafter be referred to as "Carter Plaintiff."

128. On February 15, 2007, Carter Plaintiff executed a mortgage and note with New Century Mortgages for her home located at 182 Wilhelmina Dr., Austell, Georgia, in the amount of $194,400.00 with regular monthly payments set at $1,462.22. BOA serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

129. After experiencing financial hardship, due in part to the state of the economy, Carter Plaintiff contacted BOA in October 2009 to request a HAMP modification.

130. Although Plaintiff was in imminent default, at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Carter Plaintiff did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

131. In October 2009, Carter Plaintiff contacted BOA by phone and by fax and a BOA loan representative, Kim, advised Carter Plaintiff to refrain from making her regular mortgage payments. BOA representative Kim told Carter Plaintiff being in default on her mortgage loan payments was a requirement for a HAMP modification and that she "needs to fall behind on payments to qualify for a modification." Relying on BOA representative Kim's statement, Carter Plaintiff did not make her regular mortgage payments and did not pursue any mortgage foreclosure options.[12] BOA representatives told Carter Plaintiff to stop making regular monthly mortgage payments and to remain in default on more than one occasion throughout the application process. Although Carter Plaintiff did not know it until she contacted an attorney in February 2018, this statement was false as default was not the only required basis for HAMP eligibility. BOA

[12] *See* footnote 9.

representatives including Kim omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Carter Plaintiff was told this false information as part of BOA's scheme, as outlined above, in an effort to prevent her from receiving a HAMP modification.

132. BOA representatives including Kim knew the statements were false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements and omissions were made to induce Carter Plaintiff to rely on them. The statements were specifically designed by BOA to set Carter Plaintiff up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. Carter Plaintiff reasonably believed she was required to be in default based on the statements and omissions of BOA representatives.

133. Relying on the false statement and omission, Carter Plaintiff did not make their regular mortgage payments and also gave up on any mortgage foreclosure options from in or about January 2010 until in or about April 2010. As a direct result of BOA's actions, Carter Plaintiff suffered damages when she subsequently made trial payments as instructed by BOA, as set forth elsewhere in the Complaint. However, BOA used Carter Plaintiff's default status, and the other actions Carter Plaintiff took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to her account, resulting in further default and the short sale of her home. Ultimately, Carter Plaintiff lost her home, the equity in her home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Carter Plaintiff's trial payments.

134. Carter Plaintiff did not know, and could not have reasonably discovered, that these statements were false until she retained counsel in this matter in February 2018, nor could Carter Plaintiff know or reasonably have discovered the orchestrated fraudulent scheme set forth in this

Complaint until she retained her attorney. Carter Plaintiff reasonably relied on the statements of Defendant's employees that Carter Plaintiff must be in default in order to qualify for HAMP. Carter Plaintiff reasonably relied on Defendant's representative's directive that she refrains from making her regular mortgage payments to qualify for HAMP. Carter Plaintiff contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Carter Plaintiff to contradict Defendant's false statements.

False Statements of Fact Concerning Carter Plaintiff's HAMP Application by Defendant

135. On December 10, 2009, after Carter Plaintiff provided financial information by fax and phone call to a BOA representative, provided BOA provided Carter Plaintiff a HAMP application and she properly completed the application and returned it to BOA via fax with additional requested supporting financial documents.

136. However, as part of BOA's fraudulent scheme, in late January 2010, a BOA employee falsely informed Carter Plaintiff over the phone that the documents she submitted were "not received" and she would need to re-send in the application and supporting documents.[13] From January 2010 through April 2011, Carter Plaintiff frequently contacted BOA Modification Department representatives by phone and BOA representatives falsely informed Carter Plaintiff that documents were missing or "not received" or that their application was "being processed". BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

137. Each time Carter Plaintiff called BOA for assistance, she would be directed to a new representative including Kim, Terry, Lydia, Christian, and Claudia. Carter Plaintiff was

[13] *See* footnote 6.

routinely assigned a new account representative unfamiliar with the previous representative's work and she was forced to resubmit the application and supporting documents multiple times. Each BOA Customer Relation Manager (CRM) or other BOA loan modification representative would tell Carter Plaintiff something different about the status of her HAMP application.

138. BOA loan modification representatives made these false statements to Carter Plaintiff, not for the purpose of processing Carter Plaintiff's application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** However, Carter Plaintiff's applications were intentionally lost within BOA's databases or destroyed in order to prevent Carter Plaintiff from receiving a HAMP modification.

139. Carter Plaintiff believed these statements were true, relied on them, and as a result, unnecessarily resubmitted her application and supporting information via U.S. Mail, fax, and Federal Express more than four (4) times including on December 15, 2009, January 3, 2010, November 26, 2010, and March 21, 2011. As a direct result, Carter Plaintiff was damaged and suffered a loss of the costs and time spent sending and resending her HAMP application on multiple occasions when BOA had no intention of reviewing it.

140. Carter Plaintiff did not know, and could not have reasonably discovered, that these statements were false until she retained her attorneys in this matter in February 2018. Carter Plaintiff reasonably relied on the statements of Defendant's representatives that Carter Plaintiff's HAMP application was not complete or missing information. Carter Plaintiff contacted Defendant repeatedly throughout this process with phone calls and faxes to ensure proper compliance with

HAMP as evidenced by her repeated submission of the application, and there were no resources reasonably available to a non-attorney borrower such as Carter Plaintiff to contradict Defendant's false statements. representatives falsely told Carter Plaintiff that her application was incomplete or missing, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

141. Carter Plaintiff qualified for HAMP, but ultimately, was wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that her applications were not received.

142. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Perry Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A.** BOA further profited by denying then modification and proceeding to foreclose on Carter Plaintiff's property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

143. In March 2010, BOA sent Carter Plaintiff a letter stating her application was "approved" and requested she make "trial payments" of $938.37 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement in this letter regarding approval was false as the application was not approved. Instead, BOA never intended to approve the application, and this fact was fraudulently omitted from Carter Plaintiff.

144. This false statement of fact and intentional omission was intended to cause Carter Plaintiff to make trial payments to BOA, not for the purpose of compliance with HAMP or processing her HAMP application, but to cause Carter Plaintiff to send trial payments so BOA

could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

145. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Carter Plaintiff make trial payments. BOA retained these funds with no intention of applying these funds to Carter Plaintiff's account.

146. Relying on BOA's misrepresentations and omission regarding the trial payment period, Carter Plaintiff made fifteen (15) trial payments in the amount of approximately $938.37 beginning on April 27, 2010 through June 2011 as instructed, hoping to save her home.

147. Despite making trial payments and timely submitted all required documents, BOA sent Carter Plaintiff a letter on April 11, 2011 denying her HAMP modification, wrongfully stating that she "did not provide [BOA] with the documents [BOA] requested. Subsequently, Plaintiff reapplied for a modification at least five (5) more times. Carter Plaintiff resubmitted her HAMP application and/or supporting documents on April 9, 2011, July 13, 2011, July 19, 2011, September 12, 2011, and October 24, 2011. Despite Plaintiff's efforts, BOA continued a cycle of requesting additional documents from Carter Plaintiff and then denying her application or not responding. For example, on July 21, 2011, Carter Plaintiff called BOA and spoke with Pat of the Home Retention Division who sated that she has a "complete file." However, on August 16, 2011, BOA sent Carter Plaintiff a letter returning Carter Plaintiff's payment. Further, as a direct result of relying on BOA's misrepresentations and intentional omissions, on August 24, 2012, Carter Plaintiff was forced to short sale her home.

148. Carter Plaintiff suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of her home and the equity in that home, as well as damage to her credit and the loss of some or all of the funds paid to BOA for trial payments.

149. By making these misrepresentations, BOA profited by retaining Carter Plaintiff's trial payments for profit. BOA further profited by forcing Carter Plaintiff to short sale her home and avoiding the administrative costs of a good faith processing of Carter Plaintiff's modification application as was required under the Agreement the bank executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Carter Plaintiff's expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Carter Plaintiff to prevent foreclosure, or alternative financing, while awaiting BOA's decision on the modification application. Carter Plaintiff's lost opportunity was a direct and proximate cause of the subsequent short sale from which Defendant benefited, as set forth herein.

150. Carter Plaintiff did not know and could not have reasonably discovered that the statements herein were false and that her payments were not applied to her account until she retained her attorneys in this matter in February 2018. Carter Plaintiff contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by her repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Carter Plaintiff to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

151. Even though Carter Plaintiff lived in her home until 2012, BOA charged her account for a "Property Inspection" on twenty-eight (28) occasions beginning January 2, 2009.

Carter Plaintiff was unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $420.00, with the last fee being charged on December 28, 2011. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Carter Plaintiff's account.

152. BOA committed fraud upon Carter Plaintiff when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on her home and charging her account inspection fees.

153. BOA committed fraud upon Carter Plaintiff when the bank requested she make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Carter Plaintiff for trial payments to fraudulent inspection fees.

154. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Carter Plaintiff into believing her trial payments would be applied to her mortgage and were for final approval of her HAMP application. BOA had a duty to inform Carter Plaintiff of this practice and intentionally refused to do so.

155. As a direct result of the omission, Carter Plaintiff lost some of the funds sent to BOA for trial payments she believed were for final approval of her HAMP application. BOA profited by charging Carter Plaintiff's account for the inspection fees and applying some of the trial payments received from her and retaining those funds for profit.

156. Carter Plaintiff did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of her trial payments to pay those fees until she retained her attorneys in this matter in February 2018.

157. Upon information and belief, BOA further profited from its wrongdoing alleged as to Carter Plaintiff by using her HAMP application, and its other acts and omissions as to Carter Plaintiff, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Carter Plaintiff as a pawn to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFFS # 5 ALAN WATERBURY JR. & KRISTEN WATERBURY

158. Plaintiffs Alan Waterbury Jr. and Kristen Waterbury are currently citizens of Mecklenburg County, North Carolina, residing at 304 Amir Circle, Matthews, North Carolina.

159. Plaintiffs Alan Waterbury Jr. and Kristen Waterbury will hereinafter be referred to as "Waterbury Plaintiffs."

160. On September 27, 2007, Waterbury Plaintiffs executed a mortgage and note with Bank of America for their home located at 383 White Pine Road, Torrington, Connecticut, in the amount of $175,000.00 with regular monthly payments set at $1,620.59. BOA also serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

161. After experiencing financial hardship, due in part to the state of the economy, Waterbury Plaintiffs contacted BOA on June 14, 2009 to request a HAMP modification.

162. Although Waterbury Plaintiffs were in default at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Waterbury Plaintiffs did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

163. In November 2009, a BOA loan modification department representative advised Waterbury Plaintiffs by phone to refrain from making their regular mortgage payments. Specifically, the BOA representative told Waterbury Plaintiffs that they "would not even qualify unless [they] were in danger of foreclosure."[14] This BOA loan modification representative also told Waterbury Plaintiffs that they were not eligible for any other type of refinance or modification of their mortgage. In January 2010, Waterbury Plaintiffs again contacted BOA by phone call and spoke with a male BOA loan modification department representative that BOA previously instructed them to contact, and the representative told them being a minimum of sixty (60) days behind on payments was required for HAMP. Relying on these BOA representatives' statements, Waterbury Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[15] Waterbury Plaintiffs were told to remain in default and to stop making regular monthly mortgage payments on more than one occasion throughout the application process. Although Waterbury Plaintiffs did not know it until they contacted an attorney in February 2018, the two BOA loan representatives omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Waterbury Plaintiffs were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

164. These BOA loan representatives that spoke to Waterbury Plaintifffs knew the statements were false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements and omissions were made to induce Waterbury Plaintiffs to rely on them. The statements were specifically designed by BOA to set Waterbury Plaintiffs up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. Waterbury

[14] *See* footnote 6.
[15] *See* footnote 9.

Plaintiffs reasonably believed they were required to be in default based on the statements and omissions of BOA representatives.

165. Relying on the false statements and omissions, Waterbury Plaintiffs did not make their regular mortgage payments and also gave up on any mortgage foreclosure options from in or about December 2009 until in or about February 2010. As a direct result of BOA's actions, Waterbury Plaintiffs suffered damages when they subsequently made HAMP trial payments as instructed by BOA, as set forth elsewhere in the Complaint. However, BOA used Perry Plaintiffs' default status, and the other actions they took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to Waterbury Plaintiffs' account. BOA's actions resulted in further default and foreclosure of Waterbury Plaintiffs' home. Ultimately, Waterbury Plaintiffs lost their home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Waterbury Plaintiffs' trial payments.

166. Waterbury Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained counsel in this matter in February 2018, nor could Waterbury Plaintiffs know or reasonably have discovered the orchestrated fraudulent scheme set forth in this Complaint until they retained their attorneys. Waterbury Plaintiffs reasonably relied on Defendant's representatives' directive that they refrain from making their regular mortgage payments to qualify for HAMP. Waterbury Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Waterbury Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Waterbury Plaintiffs' HAMP Application by Defendant

167. In or about December 2009, BOA provided Waterbury Plaintiffs a HAMP application and they properly completed the application and returned it to BOA via Federal Express with the requested supporting financial documents.

168. However, as part of BOA's fraudulent scheme, in late January 2010, a BOA representative falsely informed Waterbury Plaintiffs over the phone that the documents they submitted were "not received" and they would need to re-submit the application and supporting documents. From January 2010 through September 2010, Waterbury Plaintiffs frequently contacted BOA modification department representatives by phone who falsely informed Waterbury Plaintiffs that documents were missing or "not received." BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

169. Each time Waterbury Plaintiffs called BOA for assistance, they would be directed to a new representative. For example, Waterbury Plaintiffs were assigned a male loan representative when they received their HAMP application in December 2009. However, after speaking with him on two phone calls in December 2009, Waterbury Plaintiffs called BOA in January 2010 and another loan representative told them he was unavailable and to leave a message. The same or similar statements were made on subsequent phone calls with BOA representatives. On each phone call from January 2010 through September 2010, Waterbury Plaintiffs were not allowed or able to speak with the assigned loan representative again. Waterbury Plaintiffs were routinely directed to a new representative unfamiliar with the previous representative's work and they were forced to resubmit the application multiple times and repeat conversations. Each BOA loan modification representative would tell Waterbury Plaintiffs something different about the status of their HAMP application.

170. These false statements were made by BOA employees for the purpose of inducing Waterbury Plaintiffs to resend their modification application multiple times order frustrate the application process, when in fact, BOA had already received all of Waterbury Plaintiffs' documentation.

171. BOA loan modification representatives made these false statements to Waterbury Plaintiffs, not for the purpose of processing Waterbury Plaintiffs' application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** However, Waterbury Plaintiffs' applications and supporting documents were intentionally lost within BOA's databases or destroyed in order to prevent Plaintiff from receiving a HAMP modification.

172. Waterbury Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via U.S. Mail, fax, and Federal Express more than four (4) times. As a direct result, Waterbury Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

173. Waterbury Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in February 2018. Waterbury Plaintiffs reasonably relied on the statements of Defendant's representatives that Waterbury Plaintiffs' HAMP application was not complete or missing information. Waterbury Plaintiffs contacted Defendant repeatedly throughout this process, from December 2009 through

September 2010, with weekly phone calls at the end of each week to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to a non-attorney borrower such as Waterbury Plaintiffs to contradict Defendant's false statements. BOA representatives falsely told Waterbury Plaintiffs that their application was incomplete or missing information, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

174. Waterbury Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were not received.

175. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Waterbury Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and proceeding to foreclose on Waterbury Plaintiffs' property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

176. In January 2010, BOA sent Waterbury Plaintiffs a letter and Home Affordable Modification Program Trial Period Plan agreement stating their application was "approved" and requested they make "trial payments" of $1,550.00 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement in this letter regarding approval was false as the application as not approved. Further, in January 2010, Waterbury Plaintiffs spoke with a loan representative who also stated that their "modification was approved" and to make the trial payments. Instead, BOA never intended to approve the application, and this fact was fraudulently omitted from the Waterbury Plaintiffs.

177. This false statement of fact and intentional omission was intended to cause Waterbury Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Waterbury Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

178. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Waterbury Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Waterbury Plaintiffs' account.

179. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Waterbury Plaintiffs made six (6) trial payments in the amount of $1,550.00 in 2010, as instructed, hoping to save their home. Despite making their trial payments, BOA sent Waterbury Plaintiffs a letter on September 8, 2010 denying their HAMP modification falsely stating they were "not eligible."

180. In or about September 2010, BOA also sent Plaintiffs a Notice of Intent to Accelerate. Upon receiving the Notice of Intent to Accelerate, in or about September 2010, Waterbury Plaintiffs contacted BOA by phone call to speak with a BOA loan representative to again request loan assistance. The BOA loan representative told Waterbury Plaintiffs that they were behind on payments and they had to pay the unpaid past due balance of the mortgage. In an effort to save the home, Plaintiffs sold their vehicle and paid off the past due balance. However,

as a direct result of relying on BOA's misrepresentations and intentional omissions, on June 5, 2012, BOA foreclosed on Waterbury Plaintiffs' home.

181. Waterbury Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

182. By making these misrepresentations and omissions, BOA profited by retaining Waterbury Plaintiffs' trial payments for profit. BOA further profited by forcing Waterbury Plaintiffs into foreclosure and avoiding the administrative costs of a good faith processing of Waterbury Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Waterbury Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Waterbury Plaintiffs to prevent foreclosure such as alternative financing, while awaiting BOA's decision on the modification application. Waterbury Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

183. Waterbury Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in February 2018. Waterbury Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Waterbury Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

184. Even though Waterbury Plaintiffs lived in their home until May 2011, BOA charged their account for a "Property Inspection" on at least fourteen (14) occasions beginning November 27, 2009. Waterbury Plaintiffs were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $210.00, with the last fee being charged on November 17, 2010. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Waterbury Plaintiffs' account.

185. BOA committed fraud upon Waterbury Plaintiffs when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

186. BOA committed fraud upon Waterbury Plaintiffs when the bank requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Waterbury Plaintiffs for trial payments to fraudulent inspection fees.

187. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Waterbury Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Waterbury Plaintiffs of this practice and intentionally refused to do so.

188. As a direct result of the omission, Waterbury Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA profited by charging Waterbury Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

189. Waterbury Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in February 2018.

190. Upon information and belief, BOA further profited from its wrongdoing alleged as to Waterbury Plaintiffs by using their HAMP application, and its other acts and omissions as to Waterbury Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Waterbury Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFFS # 6 PHILLIP SMITH & LEONARD MARCHAND

191. Plaintiffs Phillip Smith/Marchand and Leonard Marchand are currently citizens of Kitsap County, Washington residing at 2418 North Wycoff Avenue, Bremerton, Washington.

192. Plaintiffs Phillip Smith/Marchand and Leonard Marchand will hereinafter be referred to as "Smith/Marchand Plaintiffs."

193. On May 23, 2003, Smith/Marchand Plaintiffs executed a mortgage and note with Eagle Home Mortgage, Inc. for their home located at 2419 North Wycoff Avenue, Bremerton, Washington in the amount of $126,400.00 with regular monthly payments set at $1,339.79. Subsequently, Smith/Marchand Plaintiffs refinanced this loan for $155,560.00 with Countrywide Home Loans.

194. Subsequently, BOA began servicing this loan and assigned the loan number: (redacted but known to BOA and available by request).

195. After experiencing financial hardship, due in part to the state of the economy, Smith/Marchand Plaintiffs contacted BOA in February 2010 to request a HAMP modification.

196. Although Smith/Marchand/ Plaintiffs were in imminent default, at all relevant times, Plaintiffs did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

197. In February 2010, a BOA loan modification department representative advised Smith/Marchand Plaintiffs by phone to refrain from making their regular mortgage payments. The representative told Smith/Marchand Plaintiffs that in order to be eligible for a HAMP modification, they would have to be three (3) payments behind in their mortgage payments.[16] The BOA representative told Smith/Marchand Plaintiffs that BOA would not talk to them further about a HAMP modification unless they were behind. Relying on this BOA representative's statement, Smith/Marchand Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[17] BOA representatives told Smith/Marchand Plaintiffs to remain in default and to stop making regular monthly mortgage payments on more than one occasion throughout the application process. Although Smith/Marchand Plaintiffs did not know it until they contacted an attorney in January 2018, the BOA loan representatives omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Smith/Marchand Plaintiffs were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

198. The BOA loan representative that spoke to Smith/Marchand Plaintiffs knew the statements were false when made and intentionally omitted that imminent default was also a basis

[16] *See* footnote 6.
[17] *See* footnote 9.

for HAMP eligibility. The statements and omissions were made to induce Smith/Marchand Plaintiffs to rely on them. The statements were specifically designed by BOA to set Smith/Marchand Plaintiffs up for foreclosure, so BOA could benefit by receiving HAMP payments, among other things. Smith/Marchand Plaintiffs reasonably believed they were required to be in default on their mortgage because the BOA loan representative told them to default on their mortgage and intentionally omitted the fact that only imminent default was an alternative edibility requirement.

199. Relying on the false statement and omission, Smith/Marchand Plaintiffs did not make their regular mortgage payments and also gave up on any mortgage foreclosure options from in or about March 2010 until in or about June 2010. As a direct result of BOA's actions, Smith/Marchand Plaintiffs suffered damages when they subsequently made HAMP trial payments as instructed by BOA, as set forth elsewhere in the Complaint. However, BOA used Smith/Marchand Plaintiffs' default status, and the other actions they took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to Smith/Marchand Plaintiffs' account. BOA's actions resulted in further default and foreclosure of Smith/Marchand Plaintiffs' home. Ultimately, Smith/Marchand Plaintiffs lost their home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Smith/Marchand Plaintiffs' trial payments.

200. Smith/Marchand Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained counsel in this matter in January 2018, nor could Smith/Marchand Plaintiffs know or reasonably have discovered the orchestrated fraudulent scheme set forth in this Complaint until they retained their attorneys. Smith/Marchand Plaintiffs reasonably relied on the statements of Defendant's employees that they must be in

default to qualify for HAMP. Smith/Marchand Plaintiffs reasonably relied on Defendant's representatives' directive that they default on their mortgage in order to qualify for HAMP. Smith/Marchand Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Smith/Marchand Plaintiffs to contradict Defendant's false statements.

False Statements of Fact of Approval and Request for Trial Payments by BOA

201. In May 2010, Smith/Marchand Plaintiffs contacted BOA by phone call and spoke with a loan modification representative. This loan modification representative told Smith/Marchand Plaintiffs that based on application information provided on the phone call, their application was "approved" and requested they make "trial payments" of $409.72 pursuant to the Federal Government's Home Affordable Modification Program. This loan representative specifically told Smith/Marchand Plaintiffs that they need to pay $409.72 because that amount was about 31% of their monthly income. This BOA representative's statement on the phone call regarding approval of their modification was false as the application was not approved. Instead, BOA did not approve, and never intended to approve, the application and this fact was fraudulently omitted from Smith/Marchand Plaintiffs.

202. This false statement of fact and intentional omission was intended to cause Smith/Marchand Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Smith/Marchand Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

203. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Smith/Marchand Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Plaintiff's account.

204. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Smith/Marchand Plaintiffs made eleven (11) trial payments of $409.73 from June 2010 through April 2011, hoping to save their home.

205. Despite making their trial payments, BOA sent Smith/Marchand Plaintiffs a letter on March 2, 2011 denying their HAMP modification falsely stating they were "not eligible." Upon receiving the denial letter in March 2011, Smith/Marchand Plaintiffs called BOA to inquire why they were denied a modification. A BOA loan representative told Smith/Marchand Plaintiffs that BOA did not have a record of them applying for a HAMP modification, but they could now apply by completing an application.

206. Smith/Marchand Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

207. By making these misrepresentations and omissions, BOA profited by retaining Smith/Marchand Plaintiffs' trial payments for profit. BOA further profited by forcing Smith/Marchand Plaintiffs into foreclosure, described herein, and avoiding the administrative

costs of a good faith processing of Smith/Marchand Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Smith/Marchand Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Smith/Marchand Plaintiffs to prevent foreclosure of their home, such as alternative financing, while awaiting BOA's decision on the modification application. Smith/Marchand Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

208. Smith/Marchand Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in January 2018. Smith/Marchand Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Smith/Marchand Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Smith/Marchand Plaintiffs' HAMP Application by Defendant

209. On June 4, 2010, BOA provided Smith/Marchand Plaintiffs a HAMP application and they properly completed the application and returned it to BOA via Federal Express with the requested supporting financial documents in June 2010.[18]

210. On June 18, 2010, BOA Home Retention Division sent Smith/Marchand Plaintiffs

[18] Smith/Marchand Plaintiffs were initially approved for a modification and given trial payment instructions by a BOA loan representative over the phone. BOA sent Smith/Marchand Plaintiffs both the trial payment instructions and a second application, as discussed in detail below.

a letter stating that BOA received Smith/Marchand Plaintiffs' financial documents for the HAMP program and that Smith/Marchand Plaintiffs would receive a response about their eligibility for the program within 30 days. However, as part of BOA's fraudulent scheme, in August 2010, a BOA loan representative falsely informed Smith/Marchand Plaintiffs over the phone that the HAMP application and supporting documents they submitted were "not received" and they would need to re-submit the application and supporting documents. BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

211. These false statements were made by BOA employees for the purpose of inducing Plaintiff to resend their modification application over and over in order frustrate the application process, when in fact, BOA had already received all of Smith/Marchand Plaintiffs' documentation.

212. BOA loan modification representatives made these false statements to Smith/Marchand Plaintiffs, not for the purpose of processing Smith/Marchand Plaintiffs' application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** In fact, Smith/Marchand Plaintiffs' applications and supporting documents were intentionally lost within BOA's databases or destroyed in order to prevent Plaintiff from receiving a HAMP modification.

213. Smith/Marchand Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via U.S. Mail, fax, and Federal Express more than three (3) times in or about June 2010, August 2010, and

November 2010. As a direct result, Smith/Marchand Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

214. Smith/Marchand Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were not received.

215. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Smith/Marchand Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and initiating foreclosure on Smith/Marchand Plaintiff's property.

216. Further, as a result of BOA representatives misrepresentations and omissions BOA also sent Smith/Marchand Plaintiffs a Notice of Intent to Accelerate. Further, as a direct result of relying on BOA's misrepresentations and intentional omissions about the HAMP modification process, and despite properly completed the HAMP application and trial payments, Smith/Marchand Plaintiffs' home was foreclosed. Smith/Marchand Plaintiffs moved out of their home in 2014, and their home was sold in a foreclosure sale on August 7, 2015.

217. As a result of BOA representatives' statements and omissions, Smith/Marchand Plaintiffs lost the opportunity to pursue other loss mitigation options reasonably available to Smith/Marchand Plaintiffs to prevent foreclosure of their home, such as alternative financing, while awaiting BOA's decision on the modification application. Smith/Marchand Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

218. Smith/Marchand Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in January 2018. Smith/Marchand Plaintiffs reasonably relied on the statements of Defendant's representatives that Smith/Marchand Plaintiffs' HAMP application was not complete or missing information. From in or about June 2010 through April 2011, Smith/Marchand Plaintiffs contacted Defendant repeatedly throughout this process, with frequent phone calls to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to non-attorney borrowers such as Smith/Marchand Plaintiffs to contradict Defendant's false statements. BOA representatives falsely told Smith/Marchand Plaintiffs that their application was missing information, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

FACTUAL ALLEGATIONS
PLAINTIFFS # 7 HECTOR LIMERES & MICHELLE LIMERES

219. Plaintiff Hector Limeres is currently a citizen of Osceola County, Florida and resides at 5027 Walker St., Saint Cloud, and Plaintiff Michelle Limeres is currently a citizen of Seminole County, Florida and resides at 129 Habersham Dr., Longwood, Florida.

220. Plaintiffs Hector Limeres and Michelle Limeres will hereinafter be referred to as "Limeres Plaintiffs."

221. On January 19, 2007, Limeres Plaintiffs executed a mortgage and note with Market Street Mortgage Corporation for their home located at 116 Milam Creed Road, Mableton, Georgia in the amount of $339,564.00 with regular monthly payments set at $2,244.94.

222. BOA serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

223. After experiencing financial hardship, due in part to the state of the economy, Limeres Plaintiffs contacted BOA in June 2009 to request a HAMP modification.

224. Although Limeres Plaintiffs were in imminent default at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Limeres Plaintiffs did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

225. In or about June 2009, a BOA loan modification department representative advised Limeres Plaintiffs by phone to refrain from making their regular mortgage payments because it was required to be eligible for a HAMP modification. Specifically, the BOA representative told Limeres Plaintiffs that they could not help them because they "were current and [they] needed to behind on [their] payments to get assistance.".[19] Relying on this BOA representative's specific statements, Limeres Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[20] Although Limeres Plaintiffs did not know it until they contacted an attorney in March 2018, these statements were false as default was not the only required basis for HAMP eligibility. The BOA loan representative omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Limeres Plaintiffs were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

226. The BOA loan representative knew the statements were false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements

[19] *See* footnote 6.
[20] *See* footnote 9.

and omissions were made to induce Limeres Plaintiffs to rely on them. The statements were specifically designed by BOA to set Limeres Plaintiffs up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. Limeres Plaintiffs reasonably believed they were required to be in default based on the statements and omissions of BOA representatives.

227. Relying on the false statement and omission, Limeres did not make their regular mortgage payments and also gave up on any mortgage foreclosure options from in or about October 2009 through in or about December 2009. As a direct result of BOA's actions, Limeres Plaintiffs suffered damages when they subsequently made trial payments as instructed by BOA, which BOA refused to apply to their account, resulting in further default and foreclosure of their home. Ultimately, Limeres Plaintiffs lost their home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Limeres Plaintiffs' trial payments and foreclosing on Plaintiff's home.

228. Limeres Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained counsel in this matter in March 2018, nor could Limeres Plaintiffs know or reasonably have discovered the orchestrated fraudulent scheme set forth in this Complaint until they retained their attorneys. Limeres Plaintiffs reasonably relied on the statements of Defendant's employees that they refrain from making their regular mortgage payments to qualify for HAMP. Limeres Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Limeres Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Limeres Plaintiffs' HAMP Application by Defendant

229. In late November 2009, Limeres Plaintiffs contacted BOA to complete their first HAMP modification application. On this phone call, Limeres Plaintiffs provided the information required to complete a HAMP application and the BOA representative told them that their application was approved. This BOA representative told them that BOA would send additional information and requested that they make trial payments.[21]

230. On December 7, 2009, BOA provided Limeres Plaintiffs a HAMP application and they properly completed their second application and returned it to BOA via Federal Express with the requested supporting financial documents.

231. However, as part of BOA's fraudulent scheme, in January 2010, a BOA loan representative falsely informed Limeres Plaintiffs over the phone that the supporting documents they submitted were "not received" and they would need to re-submit supporting documents. Subsequently, Limeres Plaintiffs resent the supporting financial documents. From January 2010 through January 2012, Limeres Plaintiffs frequently contacted BOA modification department representatives and BOA home retention representatives by phone who falsely informed Limeres Plaintiffs that documents were "missing" and "not completed". BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

232. These false statements were made by BOA employees for the purpose of inducing Limeres Plaintiffs to resend their documents multiple times to frustrate the application process when in fact, BOA had already received all of Limeres Plaintiffs' documentation.

[21] Limeres Plaintiffs were initially approved for a modification by a BOA loan representative over the phone. BOA sent Limeres Plaintiffs both the trial payment instructions and a second application in December 2009, as discussed in detail below.

233. BOA representatives made these false statements to Limeres Plaintiffs, not for the purpose of processing Limeres Plaintiffs' application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** However, Limeres Plaintiffs' applications, supporting documents, and details of phone calls were intentionally lost within BOA's databases or destroyed in order to prevent Limeres Plaintiffs from receiving a HAMP modification.

234. Limeres Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via U.S. Mail, fax, and Federal Express more than three (3) times from January 2010 through January 2012. As a direct result, Limeres Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

235. Limeres Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in March 2018. Limeres Plaintiffs reasonably relied on the statements of Defendant's representatives that Limeres Plaintiffs' HAMP application was not complete or missing information. Limeres Plaintiffs contacted Defendant repeatedly throughout this process, January 2010 through September 2010, with frequent phone calls to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to a non-attorney borrower such as Limeres Plaintiffs to contradict Defendant's false statements. BOA

representatives falsely told Limeres Plaintiffs that their application was incomplete or missing information, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

236. Limeres Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were not received.

237. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Limeres Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and proceeding to foreclose on Limeres Plaintiffs' property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

238. As described above, on the late November 2009 phone call, Limeres Plaintiffs provided the information required to complete a HAMP application and the BOA representative told them that their application was "approved." This BOA representative told them that BOA would send additional information and requested that they make trial payments. Soon after, on December 2, 2009, BOA sent Limeres Plaintiffs a letter, confirming the late November 2009 phone conversation with the BOA representative, requesting they make three (3) "trial payments" of $1,215.00 pursuant to the Federal Government's Home Affordable Modification Program. The BOA representative's statement on this phone call regarding approval of their modification was false as the application was not approved. Instead, BOA never intended to approve the application, and this fact was fraudulently omitted from Limeres Plaintiffs.

239. This false statement of fact and intentional omission was intended to cause Limeres Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Limeres Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

240. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Limeres Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Limeres Plaintiffs' account.

241. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Limeres Plaintiffs made seven (7) trial payments of $1,215.00 in December 2009, January 2010, February 2010, March 2010, April 2010, May 2010, and June 2010 as instructed, hoping to save their home.

242. Despite making their trial payments, BOA sent Limeres Plaintiffs a letter on June 3, 2010 denying their HAMP modification falsely stating, "your loan is not eligible." Upon receiving the letter, on June 19, 2010, Plaintiffs called BOA's Mortgage Department at 800-669-6607 and spoke with BOA representative, Alice. Alice told Plaintiff Michelle Limeres that the "system shows they are still reviewing" their modification application and told them to "continue to pay the lower payment." As a result, Limeres Plaintiffs made an additional payment in July 2010 of $1,215.00.

243. From July 2010 through January 2012, Limeres Plaintiffs continued to reapply for loan assistance with BOA and BOA continued a cycle of requesting additional documents and then denying their application or offering alternatives to foreclosure and then denying them. In July 2010, Limeres Plaintiffs contacted a realtor to short sale their home, but BOA rejected the short sale. Then on August 24, 2010, BOA sent Limeres Plaintiffs a Deed in Lieu of Foreclosure agreement, which Limeres Plaintiffs signed and returned to BOA. On September 29, 2010, BOA sent Plaintiffs a letter saying they may be eligible for Home Affordable Foreclosure Alternatives (HAFA) or a short sale or Deed in Lieu of Foreclosure. However, soon after, on October 18, 2010, BOA sent Plaintiffs a letter denying these foreclosure alternatives. Limeres Plaintiffs again contacted BOA to request for a Deed in Lieu of Foreclosure, which BOA again denied on February 28, 2011.

244. On September 26, 2011, BOA sent Limeres Plaintiffs a letter stating they may be eligible for a Deed in Lieu of Foreclosure and told them to respond to the offer by October 26, 2011. On October 4, 2011, Limeres Plaintiffs called and spoke with Jasmine and she directed them to call back on October 12, 2011 to determine their eligibility. At the direction of the BOA loan representatives, on November 21, 2011, Limeres Plaintiffs reapplied for a modification and resubmitted documents by fax to 888-740-3832 to BOA representative, Zipporah Lucre. Despite Limeres Plaintiffs' efforts relying on the direction of statements from BOA letters and phone calls with BOA representatives, on January 3, 2012, BOA foreclosed on Limeres Plaintiffs' home.

245. Limeres Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their

home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

246. By making these misrepresentations and omissions, BOA profited by retaining Limeres Plaintiffs' trial payments for profit. BOA further profited by forcing Limeres Plaintiffs into foreclosure and avoiding the administrative costs of a good faith processing of Limeres Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Limeres Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Limeres Plaintiffs to prevent foreclosure of their home, such as alternative financing, while awaiting BOA's decision on the modification application. Limeres Plaintiffs' lost opportunity, caused by Bank of America's actions, was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

247. Limeres Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in March 2018. Limeres Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Limeres Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

248. Even though Limeres Plaintiffs lived in their home until the end of October 2010, BOA charged their account for a "Property Inspection" on at least two (2) occasions beginning in 2010. Limeres Plaintiffs were unaware that BOA was conducting these fraudulent inspections.

These fees amounted to more than $30.00. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Limeres Plaintiffs' account.

249. BOA committed fraud upon Limeres Plaintiffs when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

250. BOA committed fraud upon Limeres Plaintiffs when the bank requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Plaintiffs for trial payments to fraudulent inspection fees.

251. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Limeres Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Limeres Plaintiffs of this practice and intentionally refused to do so.

252. As a direct result of the omission, Limeres Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA profited by charging Limeres Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

253. Limeres Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in March 2018.

254. Upon information and belief, BOA further profited from its wrongdoing alleged as to Limeres Plaintiffs by using their HAMP application, and its other acts and omissions as to

Limeres Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Limeres Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFFS # 8 SANDRA RINGHOFER & RANALD RINGHOFER

255. Plaintiffs Sandra Ringhofer and Ranald Ringhofer are currently citizens of San Bernardino, California.

256. Plaintiffs Sandra Ringhofer and Ranald Ringhofer will hereinafter be referred to as "Ringhofer Plaintiffs."

257. On May 15, 2007, Ringhofer Plaintiffs executed a mortgage and note with Bank of America for their home located at 509 Woodsey Road, Crestline, California, in the amount of $165,000.00 with regular monthly payments set at $1,111.64. BOA also serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

258. After experiencing financial hardship, due in part to the state of the economy, Ringhofer Plaintiffs contacted BOA in September 2009 to request a HAMP modification.

259. Although Ringhofer Plaintiffs were in default at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Plaintiffs did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

260. In September 2009, a BOA representative, Chenoa Ramirez, advised Ringhofer Plaintiffs by phone to refrain from making their regular mortgage payments. Chenoa Ramirez

specifically told Ringhofer Plaintiffs that they would need to be behind on their mortgage loan payments to qualify for a HAMP modification. Relying on this statement, Ringhofer Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[22]Although Ringhofer Plaintiffs did not know it until they contacted an attorney in February 2018, these statements were false as default was not the only required basis for HAMP eligibility. Chenoa Ramirez omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Chenoa Ramirez told Ringhofer Plaintiffs this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

261. BOA representative, Chenoa Ramirez, knew the statement was false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements and omissions were made to induce Ringhofer Plaintiffs to rely on them. The statements were specifically designed by BOA to set Ringhofer Plaintiffs up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. Ringhofer Plaintiffs reasonably believed they were required to be in default based on the statement and omission of Chenoa Ramirez.

262. Relying on the false statement and omission, Ringhofer Plaintiffs did not make their regular mortgage payments and also gave up on any mortgage foreclosure options from in or about October 2009 until in or about January 2010. As a direct result of BOA's actions, as set forth elsewhere in the Complaint. However, BOA used Ringhofer Plaintiffs' default status, and the other actions they took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to Ringhofer Plaintiffs' account. Ultimately, Ringhofer Plaintiffs lost their

[22] *See* footnote 9.

home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Ringhofer Plaintiffs' trial payments.

263. Ringhofer Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained counsel in this matter in February 2018, nor could Ringhofer Plaintiffs know or reasonably have discovered the orchestrated fraudulent scheme set forth in this Complaint until they retained their attorneys. Ringhofer Plaintiffs reasonably relied on Defendant's representatives' directive that they refrain from making their regular mortgage payments to qualify for HAMP. Ringhofer Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to a non-attorney borrower such as Ringhofer Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Ringhofer Plaintiffs' HAMP Application by Defendant

264. In or about December 2009, BOA provided Ringhofer Plaintiffs a HAMP application and they properly completed the application and returned it to BOA via Federal Express with the requested supporting financial documents.

265. However, as part of BOA's fraudulent scheme, in January 2010, BOA representative, Chenoa Ramirez, falsely informed Ringhofer Plaintiffs over the phone that the documents they submitted were "not received" and they would need to re-submit the application and supporting documents. From January 2010 through November 2011, Ringhofer Plaintiffs frequently contacted BOA modification department representatives by phone including Chenoa Ramirez, Christine, and Rose who falsely informed Ringhofer Plaintiffs that documents were missing or "not received." BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

266. BOA loan modification representatives made these false statements to Ringhofer Plaintiffs, not for the purpose of processing Ringhofer Plaintiffs' application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** However, Ringhofer Plaintiffs' applications, supporting documents, and details of phone calls were intentionally lost within BOA's databases or destroyed in order to prevent Plaintiff from receiving a HAMP modification.

267. Ringhofer Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via fax or Federal Express more than eight (8) times from December 2009 to April 2012. As a direct result, Ringhofer Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

268. Ringhofer Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in February 2018. Ringhofer Plaintiffs reasonably relied on the statements of Defendant's representatives that Ringhofer Plaintiffs' HAMP application was not complete or missing information. Ringhofer Plaintiffs contacted Defendant repeatedly throughout this process from December 2009 through April 2012 by phone call and fax correspondence to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to a non-attorney borrower such as Ringhofer Plaintiffs to contradict Defendant's false statements. BOA representatives falsely told Ringhofer Plaintiffs that their

application was incomplete or missing information, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

269. Ringhofer Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were not received.

270. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Ringhofer Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and proceeding to foreclose on Ringhofer Plaintiffs' property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

271. In January 2010, BOA sent Ringhofer Plaintiffs a letter and Home Affordable Modification Program Trial Period Plan agreement with trial payment coupons stating their application was "approved" and requested they make four (4) "trial payments" of $1,092.00 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement in this letter regarding approval was false as the application as not approved. Instead, BOA never intended to approve the application, and this fact was fraudulently omitted from Ringhofer Plaintiffs.

272. This false statement of fact and intentional omission was intended to cause Ringhofer Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Ringhofer Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

273. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Ringhofer Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Ringhofer Plaintiffs' account.

274. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Ringhofer Plaintiffs made ten (10) trial payments in the amount of $1,550.00 from January 15, 2010 through November 12, 2010, as instructed, hoping to save their home. Further, as a direct result of relying on BOA's misrepresentatives and intentional omissions, on November 22, 2010, BOA sent Ringhofer Plaintiffs a Notice of Intent to Accelerate. On November 22, 2010, Ringhofer Plaintiffs contacted BOA and a BOA loan representative told them that the modification was that the HAMP modification was "still processing" and they should continue to pay the trial payment amount of $1,550.00.[23] As a result, Ringhofer Plaintiffs made five (5) additional payments of $1,550.00 from December 21, 2010 to April 14, 2011. Despite following the direction of BOA representatives to continue to make their trial payments, BOA sent Ringhofer Plaintiffs a letter in April 2011 denying their HAMP modification falsely stating they were "not eligible."

275. After receiving a letter on June 16, 2011 from BOA denying their appeal of their eligibility for HAMP, Ringhofer Plaintiffs contacted BOA by phone call to again request loan assistance. Sandra Ringhofer spoke with Gloria and her supervisor, Rosa, and these BOA representatives told Sandra Ringhofer to reapply for a modification. Despite Ringhofer Plaintiffs' efforts of sending the application and/or supporting documents on June 23, 2011, August 3, 2011,

[23] *See* footnote 6.

September 21, 2011, October 3, 2011, November 1, 2011, and November 7, 2011, BOA continued a cycle of requesting additional documents from Plaintiff and then denying her application or not responding. Further, as a direct result of relying on BOA's misrepresentations and intentional omissions, Recontrust Company foreclosed on Ringhofer Plaintiffs' home and the home was sold in a foreclosure sale on May 9, 2012.

276. Ringhofer Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

277. By making these misrepresentations and omissions, BOA profited by retaining Ringhofer Plaintiffs' trial payments for profit. BOA further profited by forcing Ringhofer Plaintiffs into foreclosure and avoiding the administrative costs of a good faith processing of Ringhofer Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Ringhofer Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Ringhofer Plaintiffs to prevent foreclosure such as alternative financing, while awaiting BOA's decision on the modification application. Ringhofer Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

278. Ringhofer Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in February 2018. Ringhofer Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as

evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Ringhofer Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

279. Even though Ringhofer Plaintiffs lived in their home until May 2012, BOA charged their account for a "Property Inspection" on at least twenty-four (24) occasions beginning November 25, 2009. Ringhofer Plaintiffs were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $360.00, with the last fee being charged on May 28, 2011. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Ringhofer Plaintiffs' account.

280. BOA committed fraud upon Ringhofer Plaintiffs when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

281. BOA committed fraud upon Ringhofer Plaintiffs when the bank requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Plaintiffs for trial payments to fraudulent inspection fees.

282. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Ringhofer Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Ringhofer Plaintiffs of this practice and intentionally refused to do so.

283. As a direct result of the omission, Ringhofer Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA

profited by charging Ringhofer Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

284. Ringhofer Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in February 2018.

285. Upon information and belief, BOA further profited from its wrongdoing alleged as to Ringhofer Plaintiffs by using their HAMP application, and its other acts and omissions as to Ringhofer Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Ringhofer Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFFS # 9 ALOURDES LOISEAU & ERNST LOISEAU

286. Plaintiffs Alourdes Loiseau and Ernst Loiseau are currently citizens of Lee County, Florida, residing at 562 Chamonix Avenue South, Lehigh Acres, Florida.

287. Plaintiffs Alourdes Loiseau and Ernst Loiseau will hereinafter be referred to as "Loiseau Plaintiffs."

288. On May 28, 1999, Loiseau Plaintiffs executed a mortgage and note with Nations Financial, Inc. for their home located at 2889 62nd Avenue South, St. Petersburg, Florida, in the amount of $92,000.00.

289. Subsequently in September 28, 2007, Loiseau Plaintiffs refinanced the loan with BOA for $209,600.00 with regular monthly payments set at $1,290.55. BOA also serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

290. After experiencing financial hardship, due in part to the state of the economy, Loiseau Plaintiffs contacted BOA in August 2009 to request a HAMP modification.

291. Although Loiseau Plaintiffs were in imminent default at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Plaintiffs did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

292. In September 2009, a BOA representative told Loiseau Plaintiffs by phone to refrain from making their regular mortgage payments. Specifically, this BOA representative told Loiseau Plaintiffs that they needed to stop making their regular mortgage payments in order to qualify for a HAMP modification.[24] Relying on this statement, Loiseau Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[25] Although Loiseau Plaintiffs did not know it until they contacted an attorney in March 2018, the BOA loan representative omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable. Loiseau Plaintiffs were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

293. This BOA representative and others knew the statements were false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements and omissions were made to induce Loiseau Plaintiffs to rely on them. The statements were specifically designed by BOA to set Loiseau Plaintiffs up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. BOA, by and through its employees and others,

[24] *See* footnote 6.
[25] *See* footnote 9.

misled Loiseau Plaintiffs into believing that default was the only basis for HAMP eligibility because BOA intentionally omitted the fact that imminent default was an alternate basis for HAMP eligibility.

294. Relying on the false statement and omission, Loiseau Plaintiffs did not make their regular mortgage payments and also gave up on any mortgage foreclosure options. As a direct result of BOA's actions, Loiseau Plaintiffs suffered damages when they subsequently made HAMP trial payments as instructed by BOA. BOA used Loiseau Plaintiffs' default status, and the other actions they took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to Loiseau Plaintiffs' account. BOA's actions resulted in further default and short sale of Loiseau Plaintiffs' home. Ultimately, Loiseau Plaintiffs lost their home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Loiseau Plaintiffs' trial payments.

295. Loiseau Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained counsel in this matter in March 2018, nor could Loiseau Plaintiffs know or reasonably have discovered the orchestrated fraudulent scheme set forth in this Complaint until they retained their attorneys. Loiseau Plaintiffs reasonably relied on the statements of Defendant's employees that they must be in default to qualify for HAMP. Loiseau Plaintiffs reasonably relied on Defendant's representatives' directive that they remain in default to qualify for HAMP. Loiseau Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to non-attorney borrowers such as Loiseau Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Plaintiffs' HAMP Application by Defendant

296. In or about September 2009, BOA provided Loiseau Plaintiffs a HAMP application and they properly completed the application and returned it to BOA with the requested supporting financial documents.

297. However, as part of BOA's fraudulent scheme, in October 2009, a BOA representative falsely informed Loiseau Plaintiffs over the phone that the documents they submitted were "incomplete" and they would need to re-submit the application and supporting documents. From October 2009 through July 2010, Loiseau Plaintiffs frequently contacted BOA representatives by phone who falsely informed Loiseau Plaintiffs that documents were missing or the application packet was "incomplete". Further, BOA sent Loiseau Plaintiffs letters on March 12, 2010, April 8, 2010, May 11, 2010, and June 26, 2010 requesting additional and missing information for their HAMP application. BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

298. These false statements were made by BOA employees for the purpose of inducing Loiseau Plaintiffs to resend their modification application over and over in order frustrate the application process, when in fact, BOA had already received all of Loiseau Plaintiffs' documentation.

299. BOA loan modification representatives made these false statements to Loiseau Plaintiffs, not for the purpose of processing Loiseau Plaintiffs' application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** In fact, Loiseau Plaintiffs' applications and supporting documents

were intentionally lost within BOA's databases or destroyed in order to prevent Plaintiff from receiving a HAMP modification.

300. Loiseau Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via fax or Federal Express more than seven (7) times in September 2009, October 2009, November 2009, December 2009, and on February 25, 2010, March 12, 2010, and April 14, 2010. As a direct result, Loiseau Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

301. Loiseau Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in March 2018. Loiseau Plaintiffs reasonably relied on the statements of Defendant's representatives that Loiseau Plaintiffs' HAMP application was not complete or missing information. Loiseau Plaintiffs contacted Defendant repeatedly throughout this process from December 2009 through April 2012 by phone call and fax correspondence to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to a non-attorney borrower such as Loiseau Plaintiffs to contradict Defendant's false statements. BOA representatives falsely told Loiseau Plaintiffs that their application was incomplete or missing information, even though the application was proper and complete, to further the scheme to delay the HAMP modification and to ultimately deny it.

302. Loiseau Plaintiffs qualified for HAMP, but ultimately, were wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA, including that their applications were not received, and documents were incomplete.

303. By making these misrepresentations, BOA profited by avoiding the administrative

costs of a good faith processing of Loiseau Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification and proceeding to foreclose on Loiseau Plaintiffs' property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

304. On February 5, 2010, BOA sent Loiseau Plaintiffs a letter and Home Affordable Modification Program Trial Period Plan agreement with trial payment coupons stating their application was "approved" and requested they make three (3) "trial payments" of $1,445.37 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement regarding approval was false as the application as not approved. Instead, BOA did not approve, and never intended to approve, the application and this fact was fraudulently omitted from the Loiseau Plaintiffs.

305. This false statement of fact and intentional omission was intended to cause Loiseau Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Loiseau Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

306. It was and is BOA's practice to place "trial period payments.... into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA employees fraudulently omitted this fact when requesting that Loiseau Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Loiseau Plaintiffs' account.

307. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Loiseau Plaintiffs made trial payments in the amount of $1,445.37 in March 2010, April 2010, May 2010, June 2010, July 2010, September 2010, and October 2010, as instructed, hoping to save their home. Despite Further, as a direct result Loiseau Plaintiffs' reliance on BOA's misrepresentations and intentional omissions, BOA sent Loiseau Plaintiffs three (3) Notices of Intent to Accelerate on October 4, 2010, October 19, 2010, and October 20, 2010.

308. Despite making trial payments as instructed and submitting the application properly, BOA informed Loiseau Plaintiffs that their modification was denied for incomplete documents. As a result, Loiseau Plaintiffs were forced to short sale their home on October 8, 2012, and Plaintiffs moved out of their home in 2012.

309. Loiseau Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

310. By making these misrepresentations and omissions, BOA profited by retaining Loiseau Plaintiffs' trial payments for profit. BOA further profited by forcing Loiseau Plaintiffs into foreclosure and avoiding the administrative costs of a good faith processing of Loiseau Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Loiseau Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Loiseau Plaintiffs to prevent foreclosure such as alternative financing, while awaiting BOA's decision on the modification application. Loiseau Plaintiffs' lost

opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

311. Loiseau Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in March 2018. Loiseau Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Loiseau Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

312. Even though Loiseau Plaintiffs lived in their home until 2012, BOA charged their account for a "Property Inspection" on at least seventeen (17) occasions beginning in October 2010. Loiseau Plaintiffs were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $165.00, with the last fee being charged on January 3, 2012. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Loiseau Plaintiffs' account.

313. BOA committed fraud upon Loiseau Plaintiffs when, throughout the HAMP application process, BOA employees omitted the fact that the bank was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

314. BOA committed fraud upon Loiseau Plaintiffs when the bank requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Plaintiffs for trial payments to fraudulent inspection fees.

315. The fraudulent omission of the BOA's practice of applying trial payments to continuing inspection fees misled the Loiseau Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Loiseau Plaintiffs of this practice and intentionally refused to do so.

316. As a direct result of the omission, Loiseau Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA profited by charging Loiseau Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

317. Loiseau Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in March 2018.

318. Upon information and belief, BOA further profited from its wrongdoing alleged as to Loiseau Plaintiffs by using their HAMP application, and its other acts and omissions as to Loiseau Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Loiseau Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.*, case number 1:11-cv-03270, (E.D.N.Y.).

FACTUAL ALLEGATIONS
PLAINTIFFS # 10 CONNIE ADAMS & TODD REED

319. Plaintiffs Connie Adams and Todd Reed are currently citizens of Ramsey County, Minnesota residing at 1072 Hatch Avenue West, Saint Paul, Minnesota.

320. Plaintiffs Connie Adams and Todd Reed will hereinafter be referred to as "Adams/Reed Plaintiffs."

321. On May 6, 2004, Adams/Reed Plaintiffs executed a mortgage and note with All Cities Mortgage & Financial, Corporation for their home located at 950 James Avenue, Saint Paul, Minnesota in the amount of $116,000.00 with regular monthly payments set at $691.75. BOA serviced the loan and assigned the loan number: (redacted but known to BOA and available by request).

322. After experiencing financial hardship, due in part to the state of the economy, Adams Plaintiff contacted BOA in or about August 2009 to request a HAMP modification.

323. Although Adams/Reed Plaintiffs were in imminent default at all relevant times, as a direct result of BOA's direction that default was a requirement for eligibility, Adams/Reed did not pursue viable and reasonable alternatives to foreclosure, such as alternative financing, and these alternatives were eliminated as a direct and proximate cause of Defendant's wrongful acts alleged in this Complaint.

False Statements of Fact Concerning HAMP Eligibility by Defendant

324. In or about August 2009, a BOA loan modification department representative advised Adams Plaintiff by phone to refrain from making their regular mortgage payments. This BOA representative told Adams Plaintiff that in order to be qualify for a HAMP modification, they would have to be behind in their mortgage payments.[26] Relying on this BOA representative's statements, Adams/Reed Plaintiffs did not make their regular mortgage payments and did not pursue any mortgage foreclosure options.[27] Although Adams/Reed Plaintiffs did not know it until they contacted an attorney in February 2018, this BOA loan representative omitted the fact that HAMP eligibility was also available to borrowers if default was reasonably foreseeable.

[26] *See* footnote 6.
[27] *See* footnote 9.

Adams/Reed Plaintiffs were told this false information as part of BOA's scheme, as outlined above, in an effort to prevent them from receiving a HAMP modification.

325. The BOA loan representative knew the statements were false when made and intentionally omitted that imminent default was also a basis for HAMP eligibility. The statements and omissions were made to induce Adams/Reed Plaintiffs to rely on them. The statements were specifically designed by BOA to set Adams/Reed Plaintiffs up for foreclosure, so BOA could benefit by, *inter alia*, receiving HAMP payments. BOA, by and through its employees and others, misled Adams/Reed Plaintiffs into believing that default was the only basis for HAMP eligibility because BOA intentionally omitted the fact that imminent default was an alternate basis for HAMP eligibility.

326. Relying on the false statement and omission, Adams/Reed Plaintiffs did not make their regular mortgage payments and also gave up on any mortgage foreclosure options. As a direct result of BOA's actions, Adams/Reed Plaintiffs suffered damages when they subsequently made HAMP trial payments as instructed by BOA, as set forth elsewhere in the Complaint. However, BOA used Adams/Reed Plaintiffs' default status, and the other actions Adams/Reed took as a result of the communication with BOA employees, as an excuse to refuse to apply these payments to Adams/Reed Plaintiffs' account. BOA's actions resulted in further default and foreclosure of Adams/Reed Plaintiffs' home. Ultimately, Adams/Reed Plaintiffs lost their home, the equity in their home, and money paid as trial payments as a direct result of BOA's fraudulent statements of fact. BOA profited by retaining Adams/Reed Plaintiffs' trial payments.

327. Adams/Reed Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained counsel in this matter in February 2018, nor could Adams/Reed Plaintiffs know or reasonably have discovered the orchestrated fraudulent

scheme set forth in this Complaint until they retained their attorneys. Adams/Reed Plaintiffs reasonably relied on the statements of Defendant's employees that they must be in default to qualify for HAMP. Adams/Reed Plaintiffs reasonably relied on Defendant's representatives' directive that they remain in default to qualify for HAMP. Adams/Reed Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP's requirements, and there were no resources reasonably available to non-attorney borrowers such as Adams/Reed Plaintiffs to contradict Defendant's false statements.

False Statements of Fact Concerning Adams/Reed Plaintiffs' HAMP Application by Defendant

328. In or about October 2009, BOA provided Adams/Reed Plaintiffs a HAMP application, and, with the assistance of a HUD representative, they properly completed the application and returned it to BOA with the requested supporting financial documents via fax.

329. However, as part of BOA's fraudulent scheme, in January 2010, Adams Plaintiff spoke with a BOA modification department representative who falsely informed Adams Plaintiff that the documents she faxed were "missing." Further, on February 22, 2010, BOA sent Adams/Reed a letter falsely stating that documents were incomplete and requested they resend the application and supporting documents. From January 2010 through September 2010, Adams Plaintiff frequently contacted BOA by phone and spoke with BOA modification department representatives who falsely informed Adams Plaintiffs that documents were "missing" and "not received." BOA employees knew these representations were false and this practice was policy and procedure at BOA. *See* **Exhibits 2, 3, 4, 5 and 6.**

330. These false statements were made by BOA employees for the purpose of inducing Adams/Reed Plaintiffs to resend their modification application over and over in order frustrate the application process.

331. BOA loan modification representatives made these false statements to Adams/Reed Plaintiffs, not for the purpose of processing their application in good faith, but instead for the specific purpose of frustrating the HAMP application process to ensure a modification was ultimately denied, resulting in foreclosure. BOA employees knew these statements were false and some employees were awarded cash incentives as well as restaurant and retail gift cards for meeting quotas for declining modification applications in a given day or week. *See* **Exhibits 2, 3, 4, 5 and 6.** However, Adams/Reed Plaintiffs' applications and supporting documents were intentionally lost within BOA's databases or destroyed in order to prevent them from receiving a HAMP modification.

332. Adams/Reed Plaintiffs believed these statements were true, relied on them, and as a result, unnecessarily resubmitted their application and supporting information via fax more than four (4) times on from January 2010 through August 2010, as a direct result, Adams/Reed Plaintiffs were damaged and suffered a loss of the costs and time spent sending and resending their HAMP application on multiple occasions when BOA had no intention of reviewing it.

333. Adams/Reed Plaintiffs did not know, and could not have reasonably discovered, that these statements were false until they retained their attorneys in this matter in February 2018. Adams/Reed Plaintiffs reasonably relied on the statements of Defendant's representatives that their HAMP application was not complete or missing information. Adams Plaintiff contacted Defendant repeatedly throughout this process, January 2010 through September 2010, with frequent phone calls to ensure proper compliance with HAMP as evidenced by their repeated submission of the application. Further, there were no resources reasonably available to non-attorney borrowers such as Adams/Reed Plaintiffs to contradict Defendant's false statements. BOA representatives falsely told Adams/Reed Plaintiffs that their application was incomplete or missing information, even

though the application was proper and complete; to further the scheme to delay the HAMP modification and to ultimately deny it.

334. Adams/Reed Plaintiffs qualified for HAMP, but ultimately, was wrongfully denied a HAMP modification because of the false and fraudulent statements made by BOA representatives, including that their applications were not received.

335. By making these misrepresentations, BOA profited by avoiding the administrative costs of a good faith processing of Adams/Reed Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA further profited by denying the modification initiating foreclosure on Adams/Reed Plaintiffs' property.

False Statements of Fact of Approval and Request for Trial Payments by BOA

336. On November 4, 2009, BOA sent Adams/Reed Plaintiffs a letter stating their application was "approved" and requested they make three (3) "trial payments" of $512.33 pursuant to the Federal Government's Home Affordable Modification Program. BOA's statement in this letter regarding approval of their modification was false as the application as not approved. BOA did not approve, and never intended to approve, the application and this fact was fraudulently omitted from Adams/Reed Plaintiffs.

337. This false statement of fact and intentional omission was intended to cause Adams/Reed Plaintiffs to make trial payments to BOA, not for the purpose of compliance with HAMP or processing their HAMP application, but to cause Adams/Reed Plaintiffs to send trial payments so BOA could retain those funds in an unapplied account for profit after foreclosure or apply the funds to fraudulent inspection and other fees BOA charged. *See* **Exhibits 2, 3, 4, 5 and 6.**

338. It was and is BOA's practice to place "trial period payments…. into an **unapplied account** until" BOA made a decision on the borrowers' HAMP application. *See* July 20, 2016 Deposition of BOA Representative, Lonnie S. Mills, pursuant to Rule 1.310(b)(6), *Noelia Ramirez v. Bank of America, N.A.*, Hillsborough County File No.: 16-CA-722. BOA, through its representatives, fraudulently omitted this fact when requesting that Adams/Reed Plaintiffs make trial payments. BOA retained these funds with no intention of applying these funds to Adams/Reed Plaintiffs account.

339. Relying on BOA's misrepresentations and omissions regarding the trial payment period, Adams/Reed Plaintiffs mailed four (4) trial payments of $512.33 with the trial period mortgage payment coupons to BOA. After making the four (4) payments in November 2009, and December 2009, and January 2010 as instructed, hoping to save their home. After making the three (3) trial payments, Adams Plaintiff contacted BOA and a BOA representative told them they were approved for a modification and "to continue making payments." As a result, Adams/Reed Plaintiffs continued to make monthly payments from February 2009 through May 2010. However, on June 2, 2010, despite making their trial payments, BOA sent Adams/Reed Plaintiffs a letter denying their HAMP modification falsely stating they were "not eligible." This was false, as a BOA representative told Adams/Reed Plaintiffs their application had been approved. Further, on July 29, 2010, BOA sent Adams/Reed Plaintiffs a Notice of Intent to Accelerate.

340. Subsequently, determined to save their home, Adams/Reed Plaintiffs reapplied for a modification at five (5) more times from August 2010 to November 2013 by writing letters to the Office of the CEO and President of BOA, calling BOA and speaking with loan modification representatives, and contacting BOA with the assistance of HUD and the Office of the Attorney General of Michigan. For instance, in August 2010, contacted BOA and spoke with BOA

representative Daniel who told them they were eligible for a modification and to reapply. As a result, Adams Plaintiffs reapplied for a modification and submitted all required documents, but soon after on September 20, 2010, Adams/Reed Plaintiffs were again denied a modification reasoning that documents were not received. Despite Adams/Reed Plaintiffs' efforts, BOA continued a cycle of telling Adams/Reed Plaintiffs documents were not received and requesting additional documents from Adams/Reed Plaintiffs and then denying their applications. Further, BOA sent Adams/Reed Plaintiffs a Notice of Foreclosure in November 2011.

341. As a direct result of relying on BOA's misrepresentations and intentional omissions about the HAMP modification process, Adams/Reed Plaintiffs' home was foreclosed, and they moved out of their home in 2016.

342. Adams/Reed Plaintiffs suffered damages in the amount of the trial payments when BOA placed those payments in an unapplied account and refused to credit their account, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments.

343. By making these misrepresentations and omissions, BOA profited by retaining Adams/Reed Plaintiffs' trial payments for profit. BOA further profited by initiating foreclosure on Adams/Reed Plaintiffs' home and avoiding the administrative costs of a good faith processing of Adams/Reed Plaintiffs' modification application as was required under the Agreement BOA executed with the Federal Government. *See* **Exhibit 1 at Sec. 2A**. BOA also profited because Adams/Reed Plaintiffs expended time and money and lost the opportunity to pursue other loss mitigation options reasonably available to Adams/Reed Plaintiffs to foreclosure, such as alternative financing, while awaiting BOA's decision on the modification application.

Adams/Reed Plaintiffs' lost opportunity was a direct and proximate cause of the subsequent foreclosure from which Defendant benefited, as set forth herein.

344. Adams/Reed Plaintiffs did not know and could not have reasonably discovered that the statements herein were false and/or that their payments were not applied to their account until they retained their attorneys in this matter in February 2018. Adams/Reed Plaintiffs contacted Defendant repeatedly throughout this process to ensure proper compliance with HAMP as evidenced by their repeated submission of the application and repeated contact with Defendant, and there were no resources reasonably available to non-attorney borrowers such as Adams/Reed Plaintiffs to contradict Defendant's false statements.

Fraudulent Omission of the Application of Inspection Fees by BOA

345. Even though Adams/Reed Plaintiffs lived in their home until 2016, BOA charged their account for a "Property Inspection" on at least thirty-seven (37) occasions beginning in August 2009. Adams/Reed Plaintiffs were unaware that BOA was conducting these fraudulent inspections. These fees amounted to more than $555.00, with the last fee being charged on October 16, 2013. These inspection fees are impermissible under the *HUD Servicing Guidelines* and are but one example of the fraudulent charges that BOA applied to Adams/Reed Plaintiffs' account.

346. BOA committed fraud upon Adams/Reed Plaintiffs when, throughout the HAMP application process, BOA representatives omitted the fact that BOA was conducting unnecessary and improper inspections on their home and charging their account inspection fees.

347. BOA committed fraud upon Adams/Reed Plaintiffs when the bank requested they make trial payments during the HAMP application process and omitted the fact that it had no intention of approving the application and intended to apply some of the funds sent by Plaintiffs for trial payments to fraudulent inspection fees.

348. The fraudulent omission of the bank's practice of applying trial payments to continuing inspection fees misled the Adams/Reed Plaintiffs into believing their trial payments would be applied to their mortgage and were for final approval of their HAMP application. BOA had a duty to inform Adams/Reed Plaintiffs of this practice and intentionally refused to do so.

349. As a direct result of the omission, Adams/Reed Plaintiffs lost some of the funds sent to BOA for trial payments they believed were for final approval of their HAMP application. BOA profited by charging Adams/Reed Plaintiffs' account for the inspection fees and applying some of the trial payments received from them and retaining those funds for profit.

350. Adams/Reed Plaintiffs did not know and could not have reasonably discovered that BOA was charging improper inspection fees and diverting a portion of their trial payments to pay those fees until they retained their attorneys in this matter in March 2018.

351. Upon information and belief, BOA further profited from its wrongdoing alleged as to Adams/Reed Plaintiffs by using their HAMP application, and its other acts and omissions as to Adams Plaintiffs, to make false claims for incentive payments to the United States Department of Treasury in the amount of $1,000.00 or $2,000.00, effectively using Adams/Reed Plaintiffs as pawns to defraud the Federal Government. *U.S. v. Bank of America NA et al.,* case number 1:11-cv-03270, (E.D.N.Y.).

BOA FRAUDULENTLY CONCEALED THE FACTS GIVING RISE TO THE PLAINTIFFS' CLAIMS

352. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

353. The running of any statute of limitations has been tolled by reason of Defendant's fraudulent concealment as set forth above in this Complaint. Defendant, through its affirmative misrepresentations and omissions, actively concealed from Plaintiffs the series of secretive and

deceptive acts set forth in this Complaint that caused Plaintiffs to be unable to obtain a HAMP mortgage modification, ultimately resulting in a foreclosure, bankruptcy, and/or short sale.

354. Plaintiffs were not aware and could not have reasonably discovered BOA's fraudulent behavior until they retained their attorneys in this matter.

355. Defendants elected to conceal the true nature of their scheme by adopting and implementing procedures to conceal the extent and nature of their HAMP mortgage modification scheme. For example, the February 2017 sworn declaration by former BOA employee, Rodrigo Heinle, explained BOA's strategy of borrowers submitting mortgage modification documents into a black hole' by informing homeowners that modification documents were "incomplete and/or missing when they were not, or simply claiming files were 'under review' when they were not". **Exhibit 2**. Further, this fraudulent scheme of concealment was continued by deleting HAMP applications, sometimes as much as "up to six thousand application files in a single day." **Exhibit 2.**

356. The nature of Plaintiffs' injuries and the relationship of such injuries to BOA's scheme were inherently undiscoverable prior to the time Plaintiffs retained their attorneys in this matter.

357. Because the Plaintiffs did not know and could not have reasonably discovered the facts that formed the basis of their fraud claims against BOA until they retained their attorneys in this matter, the time in which to file their claims under the applicable statute of limitations did not begin to run until Plaintiffs retained their attorneys in this matter.

358. Plaintiffs did not discover, and could not, through the exercise of reasonable care and due diligence, have discovered, BOA's fraudulent scheme that resulted in the notice of

foreclosure and ultimate short sale of Plaintiffs' homes until after they retained their attorneys in this matter.

359. The lack of awareness concerning the causal relationship between BOA's fraudulent scheme and Plaintiffs' foreclosures, short sales, or bankruptcies was not the result of silence or passive concealment. Defendants, engaged in deliberate acts (i.e. affirmative misrepresentations, shredding documents, etc.) to prevent subsequent discovery.

360. In the alternative, BOA's conduct made it impossible for Plaintiffs to discover that they had a claim against BOA within the applicable limitations period. In particular, Defendant's intentional misrepresentations, omissions, and systematic destruction of documents constituted active concealment regarding the true nature of BOA's HAMP practices that prevented Plaintiffs from discovering the wrongful acts on which the causes of action are based. Plaintiffs did not discover the existence of BOA's fraudulent HAMP mortgage modification denial scheme as the cause of their short sales and notices of foreclosure until around the time Plaintiffs retained their attorneys in this matter. Thus, while Plaintiffs acted diligently to determine both the nature and the cause of their injuries, Plaintiffs' efforts were thwarted by Defendant's fraudulent concealment. Plaintiffs filed this lawsuit within the applicable limitations period of the date Plaintiffs knew or through the exercise of reasonable care and due diligence should have known of their claims.

361. The running of any statute of limitations has been tolled by reason of Defendant's fraudulent conduct, as described in the preceding paragraphs. Defendant, through its affirmative misrepresentations and omissions, actively concealed from Plaintiffs BOA's fraudulent scheme to ultimately deny Plaintiffs a HAMP modification, foreclose on or short sale Plaintiffs' homes, and/or force Plaintiffs into bankruptcy.

362. As such, the running of any statute of limitations has been tolled by reason of Defendant's affirmative misrepresentations and omissions.

COUNT I
(Common Law Fraud)

363. The allegations in the preceding paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

364. BOA made false statements of fact to Plaintiffs as part and parcel of the fraudulent scheme described in this Complaint.

365. The false statements made by BOA to Plaintiffs include:

a. That Plaintiffs were required to be in default or delinquency on his/her mortgage in order to be eligible for HAMP;

b. That Plaintiffs' HAMP application documents were not received, not current, or were incomplete; and

c. That Plaintiffs were approved for and should make HAMP trial payments.

366. BOA made these false statements of fact with knowledge that they were false. In reality, default was not required for HAMP eligibility, Plaintiffs' applications were current and received, and BOA had not approved Plaintiffs for trial payment periods despite BOA's representations and Plaintiffs' right and entitlement to make trial payments.

367. Each Plaintiff qualified for HAMP, but ultimately, was wrongfully denied a HAMP modification.

368. BOA's false statements were reasonably calculated to deceive Plaintiffs and were made with the intent to deceive Plaintiffs.

369. BOA made these statements for the purpose of inducing Plaintiffs to rely on them.

370. Plaintiffs believed these statements were true, relied on them by:

a. Defaulting on their mortgages or purposely remaining in default on their mortgages;

b. Foregoing reasonable and available alternatives to default and foreclosure;

c. Unnecessarily resubmitting their HAMP applications and supporting information via U.S. Mail, fax, and Federal Express on multiple occasions; and

d. Making trial payments that were either retained for BOA's profits or applied to fraudulent inspection fees by BOA.

371. As a direct and proximate cause of the knowing misrepresentations and omissions by BOA described in the Complaint, Plaintiffs suffered damages including but not limited to the costs for sending their HAMP applications and financial documents on multiple occasions when BOA had no intention of reviewing it, the loss of time spent sending and re-sending the HAMP application and financial documents, the loss of their home and the equity in that home, as well as damage to their credit and the loss of some or all of the funds paid to BOA for trial payments for which BOA retained for profit after foreclosure.

372. Due to the intentional omissions, Plaintiffs were further unaware their trial payments were being used to pay fraudulent inspection fees by BOA that were impermissible.

373. For example, absent a specific finding of need by a local HUD office, the shortest period between inspections authorized by the HUD servicing guidelines is 25 days:

> Generally, reimbursement will be limited to one inspection for each 30-day cycle. This inspection should not be earlier than 25 days from the last inspection or later than 35 days after the last inspection. A distinction must be made between those items which are required and those which are merely recommended. Only where a local HUD Office has identified a need to inspect more frequently, and has made this a requirement, will a mortgagee be reimbursed for these additional inspections. *HUD Servicing Guidelines,*

Chapter 9, § 4330.1, 9-9 Inspection, Preservation and Protection Requirements, A. Inspections (c)(2)(a).

374. Further, multiple inspections are only allowed when the mortgaged property is vacant:

> Where the mortgage is in default and the mortgagee has established that the mortgaged property is vacant, mortgagees shall inspect the mortgaged property every 25 to 35 days. *HUD Servicing Guidelines, Chapter 9, § 4330.1, 9-9 Inspection, Preservation and Protection Requirements, A. Inspections (c).*

375. However, even before a series of inspections may begin, under HUD servicing guidelines, the mortgage must be in default, and the mortgagee is required to determine the Plaintiff's home was vacant/abandoned by making a phone call and performing a visual inspection to ensure the property had become vacant/abandoned:

> When the mortgage is in default and a payment is not received within 45 days of the due date and efforts to reach the mortgagor or occupant at least by telephone have been unsuccessful, the mortgagee must perform a visual inspection of the mortgaged property to determine if it has become vacant or abandoned. *HUD Servicing Guidelines, Chapter 9, § 4330.1, 9-9 Inspection, Preservation and Protection Requirements, A. Inspections (a)(1).*

376. BOA conducted inspection after inspection, all while Plaintiffs were living in their home. Although there is no private cause of action under the Guidelines for the Plaintiffs, these fees are but one example of the overall fraudulent mortgage servicing scheme BOA has operated for years and for which Plaintiffs have been victimized.

As a direct and proximate cause of the knowing omissions by BOA described in the Complaint, Plaintiffs suffered damages in the loss of funds paid to BOA for trial payments for which BOA applied to fraudulent inspection fees.

COUNT II
(Fraudulent Concealment)

377. The allegations in the preceding paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

378. BOA, intentionally, or with gross recklessness and with willful and wanton disregard for the right of Plaintiffs, concealed material facts from Plaintiffs with the intent that Plaintiffs would be deceived or would rely on BOA's false statements to their detriment. Among other things, BOA concealed the following material facts:

a. That default or delinquency on Plaintiffs' mortgages was not required for HAMP eligibility;

b. That BOA never intended to approve Plaintiffs for HAMP;

c. That Plaintiffs' "trial payments" would be applied to fraudulent inspection fees and/or retained for BOA's profit; and

d. That BOA conducted inspections of Plaintiffs' homes that were impermissible under *HUD Servicing Guidelines*.

379. The information withheld and concealed by BOA was material in that Plaintiffs would not have repeatedly applied for HAMP and would not have foregone other opportunities and alternatives to default and foreclosure if the information had been revealed.

380. As Plaintiffs' mortgage servicer and having undertaken the responsibility of guiding Plaintiffs through the HAMP application process, BOA and its aforementioned employees had a duty to reveal this information.

381. By withholding the aforementioned information, BOA profited by not issuing HAMP modifications, which were favorable to homeowners, by retaining Plaintiffs' trial

payments, and by using Plaintiff's application to make false claims for incentive payments to the United States Department of Treasury.

382. Plaintiffs' reliance on BOA's omissions was reasonable and detrimental, in that Plaintiffs acted as instructed by BOA employees, fell into default or further default at their instruction, and made trial payments, as instructed, that were not applied to Plaintiffs' accounts.

383. As a direct and proximate result of the knowing omissions and concealments of BOA, as described in the Complaint, Plaintiffs suffered damages including but not limited to costs incurred for sending their HAMP applications and financial documents on multiple occasions when BOA had no intention of reviewing them, time lost sending and re-sending HAMP applications and financial documents, the loss of Plaintiffs' homes and the equity in those homes, damage to Plaintiffs' credit, and loss of some or all of the funds paid to BOA for trial payments for which BOA retained for profit after foreclosure.

COUNT III
(Intentional Misrepresentation)

384. The allegations of the preceding and subsequent paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

385. Defendant intentionally made the representations as alleged herein.

386. Defendant made these representations without regard for the truth of the representations, when they knew or should have known that the representations were false.

387. Throughout the HAMP process, Defendant intentionally concealed important information from the Plaintiffs. This was done by BOA providing gift cards and other incentives to BOA employees to ensure they intentionally lied to and misled the Plaintiffs.

388. More specifically, BOA employees intentionally told Plaintiffs they must be in default in order to be eligible for a HAMP modification, in an effort to convince Plaintiffs to stop making their regular mortgage payments and fall further into default.

389. BOA employees intentionally told Plaintiffs they were approved for TPP when that was also false and stated in an effort to further mislead the Plaintiffs.

390. Defendants made the representations intending Plaintiffs to rely on them and knowing that Plaintiffs would rely on them.

391. Plaintiffs' reliance on BOA's omissions was reasonable and detrimental, in that Plaintiffs acted as instructed by BOA employees, fell into default or further default at their instruction, and made trial payments, as instructed, that were not applied to Plaintiffs' accounts.

392. Plaintiffs could not discover the truth about the condition and true nature of their modification by exercise of reasonable due diligence.

393. Plaintiffs have been, and continue to be, directly and indirectly injured and damaged as a result of Defendant's intentional misrepresentations concerning their HAMP modification application, and have suffered financial loss in an amount to be determined at trial.

COUNT IV
(Promissory Estoppel)

394. The allegations of the preceding and subsequent paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

395. At all material times, Plaintiffs reasonably relied on BOA employees' repeated assurances regarding their eligibility for HAMP, the representation that actual default was the only way to qualify for HAMP, the receipt of their HAMP application, and their approval for trial payments, as set forth above.

396. As a direct result of Defendant's assurances, and other conduct on its part to lead Plaintiffs to rely on them, Plaintiffs acted to their substantial detriment in discontinuing their regular mortgage payments and allowing Plaintiff's mortgage to go into default, repeatedly sending in their HAMP application, and making trial payments that were ultimately placed in an unapplied account, as set forth above.

397. As a result of the conduct of Defendant, Plaintiffs have suffered damages, including but not limited to, the foreclosure of their home, trial payments placed in an unapplied account, and the costs of repeatedly sending in their HAMP applications, as set forth above.

COUNT V
(Conversion)

398. The allegations of the preceding and subsequent paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

399. As set forth above, Plaintiff tendered trial payments to BOA based on BOA's false assertions that BOA had approved Plaintiff's HAMP application.

400. BOA had no intention of applying the trial payments to Plaintiffs' loans or mortgages.

401. Instead, BOA converted and otherwise assumed and exercised ownership of the Plaintiff's funds sent to BOA as trial payments for its own use rather than rightfully applying it to Plaintiff's mortgage and loan balance.

402. Among other things, BOA converted the funds by applying them to fraudulent inspection fees.

403. As a result of the conduct of Defendant, Plaintiffs have suffered damages, including but not limited to the loss of trial payments placed in an unapplied account, as set forth above.

COUNT VI
(Unjust enrichment)

404. The allegations of the preceding and subsequent paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

405. Plaintiff conferred a benefit on Defendant by tendering trial payments which Defendant retained.

406. Plaintiff tendered, and the Defendant retained, the trial payments based on Defendant's false claim that it had approved Plaintiff's HAMP application.

407. BOA was unjustly enriched by retaining the trial payments and, among other things, applying them to fraudulent inspection fees as a false pretense to retain the trial payments rather than rightfully applying the trial payments to Plaintiff's mortgage and loan balance.

408. Defendant BOA was also unjustly enriched by using Plaintiffs' HAMP application to make false claims for incentive payments to the United State Department of Treasury in the amount of $1,000.00 or $2,000.00.

409. BOA was also unjustly enriched because it benefitted from not granting HAMP modifications to homeowners. HAMP modifications were purposely favorable to homeowners, as they included lower interest rates. By wrongfully denying HAMP modifications, BOA was unjustly enriched by avoiding the conditions of HAMP that were favorable to homeowners.

410. Plaintiffs are entitled to damages as a result of the unjust enrichment BOA received in an amount to be proved at trial.

COUNT VII
(Violation of the North Carolina Unfair & Deceptive Trade Practices N.C.G.S. § 75-1, *et. seq.*)

411. The allegations of the preceding and subsequent paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

412. BOA's business practices are conducted in trade or commerce as defined by the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1, *et. seq.*

413. Defendant was at all times relevant hereto, engaged in commerce in the State of North Carolina by servicing mortgages, including loan modifications under HAMP, from Defendant's principal place of business in the State of North Carolina.

414. In addition to loan servicing, BOA also regularly solicits loan modifications of home mortgage loans from borrowers through mailings and customer service calls in the State of North Carolina.

415. Defendant violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§75-1, *et seq.*

416. Under North Carolina law, BOA's methodical scheme to avoid its responsibilities under the HAMP Agreement, through instruction and paying its employees incentives to make knowing material misrepresentations to borrowers to achieve this goal, all in an effort to increase the BOA's profits is the type of unfair and unscrupulous behavior which the North Carolina Unfair and Deceptive Trade Practices Act seeks to prevent. N.C. Gen. Stat. §§75-1, *et seq.*

417. BOA's actions, as alleged herein, go beyond any violation of agency directives that implement HAMP, but encompasses a knowing and willful fraudulent scheme that is likely to mislead the consumer who is acting reasonably under the circumstances.

418. Each Plaintiff is a "consumer" as that term is defined in N.C. Gen. Stat. §75-50 because they are "natural persons who [have] incurred a debt or alleged debtor for personal . . . purposes."

419. BOA was required to follow the directives under "Servicer Participation Agreement" which it agreed to and executed with the Federal Government requiring it to "use

reasonable efforts to remove all prohibitions or impediments to its authority, and use reasonable efforts to obtain all third-party consents and waivers that are required, by contract or in law, in order to effectuate any modification of a mortgage loan under the Program." *See* section 2A, **Exhibit 1**.

420. BOA did just the opposite and instituted a scheme to avoid its responsibilities under the HAMP Agreement and paid its employees incentives to make material misrepresentations to borrowers to achieve this goal, all in an effort to increase the BOA's profits.

421. In refusing to follow the directives under the HAMP Agreement, BOA has engaged in unconscionable acts or practices and has engaged in unfair or deceptive acts in the conduct of its trade and/or commerce in the State of North Carolina. BOA's actions resulted in material misrepresentations and omissions to the Plaintiffs.

422. The acts and conduct on the part of BOA constitute unfair and deceptive trade practices in that:

a. BOA's methodical scheme of dishonest representations to Plaintiffs concerning the receipt of their HAMP loan modification application documents was a deceptive act within the meaning of North Carolina UDTPA as the misrepresentations were deliberate acts to mislead and did in fact mislead Plaintiffs;

b. BOA's methodical scheme of dishonest representations to Plaintiffs concerning the receipt of their HAMP loan modification application documents was "unfair" within the meaning of North Carolina UDTPA as the misrepresentations were unethical and unscrupulous;

c. BOA's methodical scheme of dishonest representations to Plaintiffs concerning their HAMP application, the purpose of which was to deceive the Federal Government in order to increase the BOA's profits was "unfair" and "deceptive" and in violation of North Carolina UDTPA in that the practice is likely to mislead consumers acting under reasonable circumstances to the consumer's detriment;

d. BOA's acts of fraud, intentional misrepresentation, and conversion, as set forth in the preceding causes of action;

e. The acts of BOA complained of herein violate public policy, amount to an inequitable assertion of its power and position, are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiffs and other consumers;

f. The acts of BOA complained of herein are unconscionable; and

g. The actions of BOA complained of herein were committed willfully.

423. The policies, acts, and practices by BOA alleged herein were intended to result and did result in the loss of money for mail, fax, Fed Ex and hand delivery and time spent by Plaintiffs in sending applications and financial documents to BOA when BOA had no intention of processing the applications, damage to their credit, the loss of their home and the equity in that home, the loss of future equity in the home as well as the loss of some or all of the funds paid to BOA for trial payments for which BOA applied to fraudulent inspection fees, late fees and other wrongful fees for which BOA applied their trial payments and profited. These losses were a direct result of BOA's purposeful scheme to deceive the Federal Government in order to increase the BOA's profits by avoiding the directives and requirements of HAMP.

424. Pursuant to N.C. Gen. Stat § 75-16, Plaintiffs are entitled to recover, and herby request actual damages in the amount three times its actual injury.

425. Plaintiffs are further entitled to recover and hereby requests, an award of its reasonable attorneys' fees and all costs of this action pursuant to N.C. Gen. Stat § 75-16.1.

COUNT VIII
(Punitive Damages Pursuant to N.C.G.S. §1D-1 et. seq.)

426. The allegations of the preceding and subsequent paragraphs of Plaintiffs' Complaint are incorporated herein by reference as if fully set forth herein.

427. The conduct of Defendant BOA was wanton, gross, reckless and in complete disregard for the safety and rights of Plaintiffs and others.

428. This reckless indifference by BOA included the intentional decision to make false and misleading statements to Plaintiff that their application documents were not received were incomplete or were not current as part of the fraudulent scheme regarding HAMP modifications described herein.

429. BOA and/or the bank's officers, directors and/or managers participated in and/or condoned the fraud, malice, and/or willful or wanton conduct as described herein despite the clear and continuing violations of the North Carolina law.

430. As a result of the wanton and reckless conduct of BOA they are liable to Plaintiffs for punitive damages.

WHEREFORE, Plaintiffs pray:

1. The Court enter a judgment for Plaintiffs and against BOA in an amount to be determined by the Court at a trial in this matter;

2. Award Plaintiff general, economic, compensatory, special, punitive and/or treble damages as applicable for each cause of action, in amounts according to proof at trial, with interest thereon;

3. Award to Plaintiffs all other remedies provided for in the North Carolina Unfair and Deceptive Trade Practices Act and common law for the violations described in each cause of action, including treble damages pursuant to N.C. Gen. Stat. § 75-16;

4. Award Plaintiff its costs, disbursements, and attorneys' fees, incurred herein, and

5. Award Plaintiff such other and further relief as the Court may deem just and appropriate; and

6. The Court conduct a trial by jury on all issues.

This 24 day of July 2018.

ROBINSON ELLIOTT & SMITH

BY: _____

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TABLE OF CONTENTS FOR EXHIBITS

EXHIBIT NO. 1

COMMITMENT TO PURCHASE FINANCIAL INSTRUMENT
and
SERVICER PARTICIPATION AGREEMENT
for the
HOME AFFORDABLE MODIFICATION PROGRAM
under the
EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

This Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment") is entered into as of the Effective Date, by and between Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae"), and the undersigned party ("Servicer"). Capitalized terms used, but not defined contextually, shall have the meanings ascribed to them in Section 12 below.

Recitals

WHEREAS, the U.S. Department of the Treasury (the "Treasury") has established a Home Affordable Modification Program (the "Program") pursuant to section 101 and 109 of the Emergency Economic Stabilization Act of 2008 (the "Act"), as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009;

WHEREAS, the Program includes loan modification and other foreclosure prevention services;

WHEREAS, Fannie Mae has been designated by the Treasury as a financial agent of the United States in connection with the implementation of the Program;

WHEREAS, Fannie Mae will, in its capacity as a financial agent of the United States, fulfill the roles of administrator, record keeper and paying agent for the Program, and in conjunction therewith must standardize certain mortgage modification and foreclosure prevention practices and procedures as they relate to the Program, consistent with the Act and in accordance with the directives of, and guidance provided by, the Treasury;

WHEREAS, Federal Home Loan Mortgage Corporation ("Freddie Mac") has been designated by the Treasury as a financial agent of the United States and will, in its capacity as a financial agent of the United States, fulfill a compliance role in connection with the Program; all references to Freddie Mac in the Agreement shall be in its capacity as compliance agent of the Program;

WHEREAS, all Fannie Mae and Freddie Mac approved servicers are being directed through their respective servicing guides and bulletins to implement the Program with respect to mortgage loans owned, securitized, or guaranteed by Fannie Mae or Freddie Mac (the "GSE Loans"); accordingly, this Agreement does not apply to the GSE Loans;

WHEREAS, all other servicers, as well as Fannie Mae and Freddie Mac approved servicers, that wish to participate in the Program with respect to loans that are not GSE Loans (collectively, "Participating Servicers") must agree to certain terms and conditions relating to the respective roles and responsibilities of Program participants and other financial agents of the government; and

WHEREAS, Servicer wishes to participate in the Program as a Participating Servicer on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the representations, warranties, and mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fannie Mae and Servicer agree as follows.

Agreement

1. Services

A. Subject to Section 10.C., Servicer shall perform the loan modification and other foreclosure prevention services (collectively, the "Services") described in (i) the Financial Instrument attached hereto as Exhibit A (the "Financial Instrument"), (ii) the Program guidelines and procedures issued by the Treasury, including, without limitation, the net present value assessment requirements of the Program (the "Program Guidelines"); and (iii) any supplemental documentation, instructions, bulletins, letters, directives, or other communications, including, but not limited to, business continuity requirements, compliance requirements, performance requirements and related remedies, issued by the Treasury, Fannie Mae, or Freddie Mac in order to change, or further describe or clarify the scope of, the rights and duties of the Participating Servicers in connection with the Program (the "Supplemental Directives" and, together with the Program Guidelines, the "Program Documentation"). The Program Documentation will be available to all Participating Servicers at www.financialstability.gov. The Program Documentation, as the same may be modified or amended from time to time in accordance with Section 10 below, is hereby incorporated into the Commitment by this reference.

B. Servicer's representations and warranties, and acknowledgement of and agreement to fulfill or satisfy certain duties and obligations, with respect to its participation in the Program and under the Agreement are set forth in the Financial Instrument. Servicer's certification as to its continuing compliance with, and the truth and accuracy of, the representations and warranties set forth in the Financial Instrument will be provided annually in the form attached hereto as Exhibit B (the "Annual Certification"), beginning on June 1, 2010 and again on June 1 of each year thereafter during the Term (as defined below).

C. The recitals set forth above are hereby incorporated herein by this reference.

2. Authority and Agreement to Participate in Program

A. Servicer shall perform the Services for all mortgage loans its services, whether it services such mortgage loans for its own account or for the account of another party, including any holders of mortgage-backed securities (each such other party, an "Investor"). Servicer shall use reasonable efforts to remove all prohibitions or impediments to its authority, and use reasonable efforts to obtain all third party consents and waivers that are required, by contract or law, in order to effectuate any modification of a mortgage loan under the Program.

B. Notwithstanding subsection A., if (x) Servicer is unable to obtain all necessary consents and waivers for modifying a mortgage loan, or (y) the pooling and servicing agreement or other similar servicing contract governing Servicer's servicing of a mortgage loan prohibits Servicer from performing the Services for that mortgage loan, Servicer shall not be required to perform the Services with respect to that mortgage loan and shall not receive all or any portion of the Purchase Price (as defined below) otherwise payable with respect to such loan.

C. Notwithstanding anything to the contrary contained herein, the Agreement does not apply to GSE Loans. Servicers are directed to the servicing guides and bulletins issued by Fannie Mae and Freddie Mac, respectively, concerning the Program as applied to GSE Loans.

D. Servicer's performance of the Services and implementation of the Program shall be subject to review by Freddie Mac and its agents and designees as more fully set forth in the Agreement.

3. Set Up; Prerequisite to Payment

Servicer will provide to Fannie Mae: (a) the set up information required by the Program Documentation and any ancillary or administrative information requested by Fannie Mae in order to process Servicer's participation in the Program as a Participating Servicer on or before the Effective Date of the Commitment; and (b) the data elements for each mortgage eligible for the Program

as and when described in the Program Documentation and the Financial Instrument. Purchase Price payments will not be remitted pursuant to Section 4 with respect to any modified mortgage for which the required data elements have not been provided.

4. Agreement to Purchase Financial Instrument; Payment of Purchase Price

A. Fannie Mae, in its capacity as a financial agent of the United States, agrees to purchase, and Servicer agrees to sell to Fannie Mae, in such capacity, the Financial Instrument that is executed and delivered by Servicer to Fannie Mae in the form attached hereto as Exhibit A, in consideration for the payment by Fannie Mae, as agent, of the Purchase Price (defined below). The conditions precedent to the payment by Fannie Mae of the Purchase Price are: (a) the execution and delivery of the Commitment and the Financial Instrument by Servicer to Fannie Mae; (b) the execution and delivery by Fannie Mae of the Commitment to Servicer; (c) the delivery of copies of the fully executed Commitment and Financial Instrument to Treasury on the Effective Date; (d) the performance by Servicer of the Services described in the Agreement, in accordance with the terms and conditions thereof, to the reasonable satisfaction of Fannie Mae and Freddie Mac; and (e) the satisfaction by Servicer of such other obligations as are set forth in the Agreement.

B. Solely in its capacity as the financial agent of the United States, and subject to subsection C. below, Fannie Mae shall: (i) remit compensation payments to Servicer; (ii) remit incentive payments to Servicer for the account of Servicer and for the credit of borrowers under their respective mortgage loan obligations; and (iii) remit payments to Servicer for the account of Investors, in each case in accordance with the Program Documentation (all such payments, collectively, the "Purchase Price"). All payments remitted to Servicer for the credit of borrowers or for the account of Investors under the Program Documentation shall be applied by Servicer to the borrowers' respective mortgage loan obligations, or remitted by Servicer to Investors, as required by the Program Documentation. Fannie Mae shall have no liability to Servicer with respect to the payment of the Purchase Price, unless and until: (a) Servicer and all other interested parties have satisfied all pre-requisites set forth herein and in the Program Documentation relating to the Program payment structure, including, but not limited to, the delivery of all data elements required by Section 8 of this Commitment; and (b) the Treasury has provided funds to Fannie Mae for remittance to Servicer, together with written direction to remit the funds to Servicer in accordance with the Program Documentation.

C. The Purchase Price will be paid to Servicer by Fannie Mae as the financial agent of the United States as and when described herein and in the Program Documentation in consideration for the execution and delivery of the Financial Instrument by Servicer on or before the Effective Date of the Agreement, upon the satisfaction of the conditions precedent to payment described in subsections A. and B. above.

D. The value of the Agreement is limited to $798,200,000 (the "Program Participation Cap"). Accordingly, the aggregate Purchase Price payable to Servicer under the Agreement may not exceed the amount of the Program Participation Cap. For each loan modification that becomes effective, the aggregate remaining Purchase Price available to be paid to Servicer under the Agreement will be reduced by the maximum Purchase Price potentially payable with respect to that loan modification. In the event the Purchase Price actually paid with respect to that loan modification is less than the maximum Purchase Price potentially payable, the aggregate remaining Purchase Price available to be paid to Servicer under the Agreement will be increased by the difference between such amounts. Notwithstanding the foregoing, no agreements with borrowers intended to result in new loan modifications will be effected under the Agreement, and no payments will be made with respect to any new loan modifications from and after the date on which the aggregate Purchase Price paid or payable to Servicer under the Agreement equals the Program Participation Cap. Treasury may, from time to time in its sole discretion, adjust the amount of the Program Participation Cap. Servicer will be notified of all adjustments to the Program Participation Cap in writing by Fannie Mae.

E. Servicer shall maintain complete and accurate records of, and supporting documentation for, the borrower payment, including, but not limited to, PITIA (principal, interest, taxes, insurance (including homeowner's insurance and hazard and flood insurance) and homeowner's association and/or condo fees), and delinquency information and data provided to Fannie Mae regarding each agreement relating to a trial modification period and each loan modification agreement executed under the Program, which will be relied upon by Fannie Mae when calculating, as financial agent for the United States, the Purchase Price to be paid by the Treasury through Fannie Mae or any other financial agent. Servicer agrees to provide Fannie Mae and Freddie Mac with documentation and

other information with respect to any amounts paid by the Treasury as may be reasonably requested by such parties. In the event of a discrepancy or error in the amount of the Purchase Price paid hereunder, at Fannie Mae's election, (x) Servicer shall remit to Fannie Mae the amount of any overpayment within thirty (30) days of receiving a refund request from Fannie Mae, or (y) Fannie Mae may immediately offset the amount of the overpayment against other amounts due and payable to Servicer by Fannie Mae, as financial agent of the United States, upon written notice to Servicer. Servicer shall still be obligated to credit to the respective mortgage loan obligations of borrowers, and to the respective accounts of Investors, any portion of the Purchase Price to which they are entitled (if any) notwithstanding such offset unless otherwise directed by Fannie Mae.

F. At the election and upon the direction of the Treasury and with prior written notice to Servicer, Fannie Mae may deduct from any amount to be paid to Servicer any amount that Servicer, Investor, or borrower is obligated to reimburse or pay to the United States government, provided, however, that any amount withheld under this subsection F. will be withheld only from the amounts payable to, or for the account or credit of, the party which is liable for the obligation to the United States government.

G. In the event that the Agreement expires or is terminated pursuant to Section 5 or Section 6, and subject to Fannie Mae's rights under Section 6, Fannie Mae shall, solely in its capacity as the financial agent of the United States, continue to remit all amounts that are properly payable pursuant to subsection A. above to Servicer in accordance with the Program Documentation until paid in full, provided, however, that Purchase Price payments will be made only with respect to qualifying mortgage loan modifications that were submitted by Servicer and accepted by Fannie Mae for inclusion in the Program in accordance with the Program Documentation prior to the date of expiration or termination and that do not exceed the Program Participation Cap.

H. Notwithstanding anything to the contrary contained in subsection G. above, in the event that the Agreement is terminated pursuant to Section 6 B. in connection with an Event of Default by Servicer under Section 6 A., no compensation with respect to any loan will be paid to Servicer for the account of the Servicer subsequent to termination; subject to Fannie Mae's rights under Section 6, Fannie Mae's only continuing obligations as financial agent of the United States subsequent to termination will be to remit payments to Servicer (or, at Fannie Mae's discretion, an alternative provider) for the account of borrowers and investors, as provided in the Agreement.

I. Notwithstanding anything to the contrary contained in subsection F. above, in the event that the Agreement is terminated pursuant to Section 6 C. in connection with an Event of Default by an Investor or a borrower under Section 6 A., no compensation with respect to any loan will be paid to Servicer for the credit or account of the defaulting party subsequent to termination; subject to Fannie Mae's rights under Section 6, Fannie Mae's only continuing obligations as financial agent of the United States subsequent to termination will be to remit payments to Servicer for the credit or account of non-defaulting parties as described in the Program Documentation.

J. Notwithstanding anything to the contrary contained herein, Fannie Mae, in its capacity as the financial agent of the United States, may reduce the amounts payable to Servicer under Section 4.B., or obtain repayment of prior payments made under Section 4.B., in connection with an Event of Default by Servicer or in connection with an evaluation of performance that includes any specific findings by Freddie Mac that Servicer's performance under any performance criteria established pursuant to the Program Documentation is materially insufficient; provided, however, Fannie Mae will seek to obtain repayment of prior payments made under Section 4.B. only with respect to loan modifications that are determined by Fannie Mae or Freddie Mac to have been impacted by, or that Fannie Mae or Freddie Mac believes may have been, or may be, impacted, by the Event of Default or findings giving rise to this remedy. These remedies are not exclusive; they are available in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

K. Notwithstanding anything to the contrary contained herein, Fannie Mae, in its capacity as the financial agent of the United States, may reduce the amounts payable to Servicer for the credit or account of an Investor or a borrower under Section 4.B., or obtain repayment of prior payments made for the credit or account of such parties under Section 4.B., in connection with an Event of Default by an Investor or a borrower. Servicer will reasonably cooperate with, and provide reasonable support and assistance to, Fannie Mae and Freddie Mac in connection with their respective roles and, in Fannie Mae's case, in connection with its efforts to obtain repayment of prior payments made to Investors and borrowers as provided in this subsection. These remedies are not

exclusive; they are available in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

5. Term

A. Qualifying mortgage loans may be submitted by Servicer and accepted by Fannie Mae as described in the Financial Instrument and the Program Documentation from and after the Effective Date until December 31, 2012 (the "Initial Term"), subject to Program extensions by the Treasury or earlier termination of the Agreement by Fannie Mae pursuant to the provisions hereof or suspension or termination of the Program by the Treasury; provided, however, no new qualifying mortgage loans may be submitted by Servicer or accepted by Fannie Mae from and after the date on which the Program Participation Cap is reached.

B. Servicer shall perform the Services described in the Program Documentation in accordance with the terms and conditions of the Agreement during the Initial Term and any extensions thereof (the Initial Term, together with all extensions thereof, if any, the "Term"), and during such additional period as may be necessary to: (i) comply with all data collection, retention and reporting requirements specified in the Program Documentation during and for the periods set forth therein; and (ii) complete all Services that were initiated by Servicer, including, but not limited to, mortgage modifications and the completion of all documentation relating thereto, during the Term. Servicer agrees that it will work diligently to complete all Services as soon as reasonably possible after the end of the Term or earlier termination.

C. The Agreement may be terminated by Fannie Mae or Servicer prior to the end of the Term pursuant to Section 6 below.

6. Defaults and Early Termination

A. The following constitute events of default under the Agreement (each, an "Event of Default" and, collectively, "Events of Default"):

(1) Servicer fails to perform or comply with any of its material obligations under the Agreement, including, but not limited to, circumstances in which Servicer fails to ensure that all eligibility criteria and other conditions precedent to modification specified in the Program Documentation are satisfied prior to effectuating modifications under the Program.

(2) Servicer: (a) ceases to do business as a going concern; (b) makes a general assignment for the benefit of, or enters into any arrangement with creditors in lieu thereof; (c) admits in writing its inability to pay its debts as they become due; (d) files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions of the laws of the United States or any other jurisdiction; (e) authorizes, applies for or consents to the appointment of a trustee or liquidator of all or substantially all of its assets; (f) has any substantial part of its property subjected to a levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) enters into an agreement or resolution to take any of the foregoing actions.

(3) Servicer, any employee or contractor of Servicer, or any employee or contractor of Servicers' contractors, or any investor or borrower, commits a grossly negligent, willful or intentional, or reckless act (including, but not limited to, fraud) in connection with the Program or the Agreement.

(4) Any representation, warranty, or covenant made by Servicer in the Agreement or any Annual Certification is or becomes materially false, misleading, incorrect, or incomplete.

(5) An evaluation of performance that includes any specific findings by Freddie Mac, in its sole discretion, that Servicer's performance under any performance criteria established pursuant to the Program Documentation is materially insufficient, or any failure by Servicer to comply with any

directive issued by Fannie Mae or Freddie Mac with respect to documents or data requested, findings made, or remedies established, by Fannie Mae and/or Freddie Mac in conjunction with such performance criteria or other Program requirements.

B. Fannie Mae may take any, all, or none of the following actions upon an Event of Default by Servicer under the Agreement:

(1) Fannie Mae may: (i) withhold some or all of the Servicer's portion of the Purchase Price until, in Fannie Mae's determination, Servicer has cured the default; and (ii) choose to utilize alternative means of paying any portion of the Purchase Price for the credit or account of borrowers and investors and delay paying such portion pending adoption of such alternative means.

(2) Fannie Mae may: (i) reduce the amounts payable to Servicer under Section 4.B; and/or (ii) require repayment of prior payments made to Servicer under Section 4.B, provided, however, Fannie Mae will seek to obtain repayment of prior payments made under Section 4.B. only with respect to loan modifications that are determined by Fannie Mae or Freddie Mac to have been impacted, or that Fannie Mae or Freddie Mac believes may have been, or may be, impacted, by the Event of Default giving rise to the remedy.

(3) Fannie Mae may require Servicer to submit to additional Program administrator oversight, including, but not limited to, additional compliance controls and quality control reviews.

(4) Fannie Mae may terminate the Agreement and cease its performance hereunder as to some or all of the mortgage loans subject to the Agreement.

(5) Fannie Mae may require Servicer to submit to information and reporting with respect to its financial condition and ability to continue to meet its obligations under the Agreement.

C. Fannie Mae may take any, all, or none of the following actions upon an Event of Default involving an Investor or a borrower in connection with the Program:

(1) Fannie Mae may withhold all or any portion of the Purchase Price payable to, or for the credit or account of, the defaulting party until, in Fannie Mae's determination, the default has been cured or otherwise remedied to Fannie Mae's satisfaction.

(2) Fannie Mae may: (i) reduce the amounts payable to Servicer for the credit, or account of, the defaulting party under Section 4.B; and/or (ii) require repayment of prior payments made to the defaulting party under Section 4.B. Servicer will reasonably cooperate with, and provide reasonable support and assistance to, Fannie Mae and Freddie Mac in connection with their respective roles and, in Fannie Mae's case, in connection with its efforts to obtain repayment of prior payments made to Investors and borrowers as provided in this subsection.

(3) Fannie Mae may require Servicer to submit to additional Program administrator oversight, including, but not limited to, additional compliance controls and quality control reviews.

(4) Fannie Mae may cease its performance hereunder as to some or all of the mortgage loans subject to the Agreement that relate to the defaulting Investor or borrower.

D. In addition to the termination rights set forth above, Fannie Mae may terminate the Agreement immediately upon written notice to Servicer.

(1) at the direction of the Treasury;

(2) in the event of a merger, acquisition, or other change of control of Servicer;

(3) in the event that a receiver, liquidator, trustee, or other custodian is appointed for the Servicer; or

(4) in the event that a material term of the Agreement is determined to be prohibited or unenforceable as referred to in Section 11.C.

E. The Agreement will terminate automatically:

(1) in the event that the Financial Agency Agreement, dated February 18, 2009, by and between Fannie Mae and the Treasury is terminated; or

(2) upon the expiration or termination of the Program.

F. The remedies available to Fannie Mae upon an Event of Default under this Section are cumulative and not exclusive; further, these remedies are in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

G. In the event of termination of the Agreement under any circumstances, Servicer and Fannie Mae agree to cooperate with one another on an ongoing basis to ensure an effective and orderly transition or resolution of the Services, including the provision of any information, reporting, records and data required by Fannie Mae and Freddie Mac.

H. If an Event of Default under Section 6.A.1., Section 6.A.4., or Section 6.A.5. occurs and Fannie Mae determines, in its sole discretion, that the Event of Default is curable and elects to exercise its right to terminate the Agreement, Fannie Mae will provide written notice of the Event of Default to Servicer and the Agreement will terminate automatically thirty (30) days after Servicer's receipt of such notice, if the Event of Default is not cured by Servicer to the reasonable satisfaction of Fannie Mae prior to the end of such thirty (30) day period. If Fannie Mae determines, in its sole discretion, that an Event of Default under Section 6.A.1., Section 6.A.4, or Section 6.A. 5. is not curable, or if an Event of Default under Section 6.A.2. or Section 6.A.3. occurs, and Fannie Mae elects to exercise its right to terminate the Agreement under Section 6.B.4., Fannie Mae will provide written notice of termination to the Servicer on or before the effective date of the termination.

7. Disputes

Fannie Mae and Servicer agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises under the Agreement, the parties will use all reasonable efforts to promptly resolve the dispute by mutual agreement. If a dispute cannot be resolved informally by mutual agreement at the lowest possible level, the dispute shall be referred up the respective chain of command of each party in an attempt to resolve the matter. This will be done in an expeditious manner. Servicer shall continue diligent performance of the Services pending resolution of any dispute. Fannie Mae and Servicer reserve the right to pursue other legal or equitable rights they may have concerning any dispute. However, the parties agree to take all reasonable steps to resolve disputes internally before commencing legal proceedings.

8. Transfer or Assignment

A. Servicer must provide written notice to Fannie Mae and Freddie Mac pursuant to Section 9 below of: (i) any transfers or assignments of mortgage loans subject to this Agreement; and (ii) any other transfers or assignments of Servicer's rights and obligations under this Agreement. Such notice must include payment instructions for payments to be made to the transferee or assignee of the mortgage loans subject to the notice (if applicable), and evidence of the assumption by such transferee or assignee of the mortgage loans or other rights and obligations that are transferred, in the form of Exhibit C (the "Assignment and

Assumption Agreement"). Servicer acknowledges that Fannie Mae will continue to remit payments to Servicer in accordance with Section 4.B, with respect to mortgage loans that have been assigned or transferred, and that Servicer will be liable for underpayments, overpayments and misdirected payments, unless and until such notice and an executed Assignment and Assumption Agreement are provided to Fannie Mae and Freddie Mac. Any purported transfer or assignment of mortgage loans or other rights or obligations under the Agreement in violation of this Section is void.

B. Servicer shall notify Fannie Mae as soon as legally possible of any proposed merger, acquisition, or other change of control of Servicer, and of any financial and operational circumstances which may impair Servicer's ability to perform its obligations under the Agreement.

9. Notices

All legal notices under the Agreement shall be in writing and referred to each party's point of contact identified below at the address listed below, or to such other point of contact at such other address as may be designated in writing by such party. All such notices under the Agreement shall be considered received: (a) when personally delivered; (b) when delivered by commercial overnight courier with verification receipt; (c) when sent by confirmed facsimile; or (d) three (3) days after having been sent, postage prepaid, via certified mail, return receipt requested. Notices shall not be made or delivered in electronic form, except as provided in Section 12.B. below, provided, however, that the party giving the notice may send an e-mail to the party receiving the notice advising that party that a notice has been sent by means permitted under this Section.

To Servicer:

[redacted]
Bank of America
2900 Madera Road
Mail Code: CA6-920-01-07
Simi Valley, CA 93065
email: [redacted]
Facsimile: [redacted]

With copy to:

[redacted]
Bank of America
Bank of America Plaza
101 S. Tryon Street
Mail Code: NC1-002-29-01
Charlotte, NC 28255-0001
email: [redacted]
Facsimile: [redacted]

To Fannie Mae:

Fannie Mae
3900 Wisconsin Avenue, NW
Washington, DC 20016
Attention: General Counsel
Facsimile: [redacted]
email: [redacted]

To Treasury:

Chief
Office of Homeownership Preservation
Office of Financial Stability
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Facsimile: (202) 622-9219

To Freddie Mac:

Freddie Mac
8100 Jones Branch Drive
McLean, VA 22102
Attention: Vice President, Making Home Affordable -- Compliance
Facsimile: (703) 903-2544
Email to: MHA_Compliance@freddiemac.com

10. Modifications.

A. Subject to Sections 10.B. and 10.C., modifications to the Agreement shall be in writing and signed by Fannie Mae and Servicer.

B. Fannie Mae and the Treasury each reserve the right to unilaterally modify or supplement the terms and provisions of the Program Documentation that relate (as determined by Fannie Mae or the Treasury, in their reasonable discretion) to the compliance and performance requirements of the Program and related remedies established by Freddie Mac, and/or to technical, administrative, or procedural matters or compliance and reporting requirements that may impact the administration of the Program.

C. Notwithstanding Sections 10.A. and 10.B., any modification to the Program Documentation that materially impact the borrower eligibility requirements, the amount of payments of the Purchase Price to be made to Participating Servicers, Investors and borrowers under the Program, or the rights, duties, or obligations of Participating Servicers, Investors or borrowers in connection with the Program (each, a "Program Modification" and, collectively, the "Program Modifications") shall be effective only on a prospective basis; Participating Servicers will be afforded the opportunity to opt-out of the Program when Program Modifications are published with respect to some or all of the mortgage loans sought to be modified under the Program on or after the effective date of the Program Modification, at Servicer's discretion. Opt-out procedures, including, but not limited to, the time and process for notification of election to opt-out and the window for such election, will be set forth in the Program Documentation describing the Program Modification, provided, however, that Servicer will be given at least thirty (30) days to elect to opt-out of a Program Modification. For the avoidance of doubt, during the period during which Servicer may elect to opt-out of a Program Modification

and after any such opt-out is elected by Servicer, Servicer will continue to perform the Services described in the Financial Instrument and the Program Documentation (as the Program Documentation existed immediately prior to the publication of the Program modification prompting the opt-out) with respect to qualifying mortgage loan modifications that were submitted by Servicer and accepted by Fannie Mae prior to the opt-out.

11. Miscellaneous

A. The Agreement shall be governed by and construed under Federal law and not the law of any state or locality, without reference to or application of the conflicts of law principles. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the United States Federal courts located within the District of Columbia. Both parties consent to the jurisdiction and venue of such courts and irrevocably waive any objections thereto.

B. The Agreement is not a Federal procurement contract and is therefore not subject to the provisions of the Federal Property and Administrative Services Act (41 U.S.C. §§ 251-260), the Federal Acquisition Regulations (48 CFR Chapter 1), or any other Federal procurement law.

C. Any provision of the Agreement that is determined to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement, and no such prohibition or unenforceability in any jurisdiction shall invalidate such provision in any other jurisdiction.

D. Failure on the part of Fannie Mae to insist upon strict compliance with any of the terms hereof shall not be deemed a waiver, nor will any waiver hereunder at any time be deemed a waiver at any other time. No waiver will be valid unless in writing and signed by an authorized officer of Fannie Mae. No failure by Fannie Mae to exercise any right, remedy, or power hereunder will operate as a waiver thereof. The rights, remedies, and powers provided herein are cumulative and not exhaustive of any rights, remedies, and powers provided by law.

E. The Agreement shall inure to the benefit of and be binding upon the parties to the Agreement and their permitted successors-in-interest.

F. The Commitment and the Assignment and Assumption Agreement (if applicable) may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

G. The Commitment, together with the Financial Instrument, the Annual Certifications, the Assignment and Assumption Agreement (if applicable) and the Program Documentation, constitutes the entire agreement of the parties with respect to the subject matter hereof. In the event of a conflict between any of the foregoing documents and the Program Documentation, the Program Documentation shall prevail. In the event of a conflict between the Program Guidelines and the Supplemental Directives, the Program Guidelines shall prevail.

H. Any provisions of the Agreement (including all documents incorporated by reference thereto) that contemplate their continuing effectiveness, including, but not limited to, Sections 4, 5.B., 6.F., 6.G., 9, 11 and 12 of the Commitment, and Sections 2, 3, 5, 7, 8, 9 and 10 of the Financial Instrument, and any other provisions (or portions thereof) in the Agreement that relate to, or may impact, the ability of Fannie Mae and Freddie Mac to fulfill their responsibilities as agents of the United States in connection with the Program, shall survive the expiration or termination of the Agreement.

12. Defined Terms; Incorporation by Reference

A. All references to the "Agreement" necessarily include, in all instances, the Commitment and all documents incorporated into the Commitment by reference, whether or not so noted contextually, and all amendments and modifications thereto. Specific references

throughout the Agreement to individual documents that are incorporated by reference into the Commitment are not inclusive of any other documents that are incorporated by reference, unless so noted contextually.

B. The term "Effective Date" means the date on which Fannie Mae transmits a copy of the fully executed Commitment and Financial Instrument to Treasury and Servicer with a completed cover sheet, in the form attached hereto as Exhibit D (the "Cover Sheet"). The Commitment and Financial Instrument and accompanying Cover Sheet will be faxed, emailed, or made available through other electronic means to Treasury and Servicer in accordance with Section 9.

C. The Program Documentation and Exhibit A – Form of Financial Instrument, Exhibit B – Form of Annual Certification, Exhibit C – Form of Assignment and Assumption Agreement and Exhibit D – Form of Cover Sheet (in each case, in form and, upon completion, in substance), including all amendments and modifications thereto, are incorporated into this Commitment by this reference and given the same force and effect as though fully set forth herein.

[SIGNATURE PAGE FOLLOWS; REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In Witness Whereof, Servicer and Fannie Mae by their duly authorized officials hereby execute and deliver this Commitment to Purchase Financial Instrument and Servicer Participation Agreement as of the Effective Date.

SERVICER: Bank of America, N.A.

By: _____
Name: [illegible]
Title: Senior Vice President
Date: April 17, 2009

FANNIE MAE, solely as Financial Agent of the United States

By: _____
Name: Leslie Peeler
Title: Vice President
Date: 4/17/09

EXHIBITS

Exhibit A	Form of Financial Instrument
Exhibit B	Form of Annual Certification
Exhibit C	Form of Assignment and Assumption Agreement
Exhibit D	Form of Cover Sheet

EXHIBIT A

FORM OF FINANCIAL INSTRUMENT

FINANCIAL INSTRUMENT

This Financial Instrument is delivered as provided in Section 1 of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), entered into as of the Effective Date, by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"). This Financial Instrument is effective as of the Effective Date. All of the capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Commitment.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Servicer agrees as follows:

1. Purchase Price Consideration; Services. This Financial Instrument is being purchased by Fannie Mae pursuant to Section 4 of the Commitment in consideration for the payment by Fannie Mae, in its capacity as a financial agent of the United States, of various payments detailed in the Program Documentation and referred to collectively in the Commitment as the "Purchase Price." The conditions precedent to the payment by Fannie Mae of the Purchase Price are: (a) the execution and delivery of this Financial Instrument and the Commitment by Servicer to Fannie Mae; (b) the execution and delivery by Fannie Mae of the Commitment to Servicer; (c) the delivery of copies of the fully executed Commitment and Financial Instrument to Treasury on the Effective Date; (d) the performance by Servicer of the Services described in the Agreement; and (e) the satisfaction by Servicer of such other obligations as are set forth in the Agreement. Servicer shall perform all Services in consideration for the Purchase Price in accordance with the terms and conditions of the Agreement, to the reasonable satisfaction of Fannie Mae and Freddie Mac.

2. Authority and Agreement to Participate in Program. Subject to the limitations set forth in Section 2 of the Agreement, Servicer shall use reasonable efforts to remove all prohibitions or impediments to its authority and to obtain all third party consents and waivers that are required, by contract or law, in order to effectuate any loan modification under the Program.

3. Audits, Reporting and Data Retention.

   (a) Freddie Mac, the Federal Housing Finance Agency and other parties designated by the Treasury or applicable law shall have the right during normal business hours to conduct unannounced, informal onsite visits and to conduct formal onsite and offsite physical, personnel and information technology testing, security reviews, and audits of Servicer and to examine all books, records and data related to the Services provided and Purchase Price received in connection with the Program on thirty (30) days' prior written notice.

   (b) Servicer will collect, record, retain and provide to Treasury, Fannie Mae and Freddie Mac all data, information and documentation relating to the Program and borrowers, loans and loan modifications implemented, or potentially eligible for modification, under the Program and any trials conducted in connection with the Program, as required by the Program Documentation. All such data, information and documentation must be provided to the Treasury, Fannie Mae and Freddie Mac as, when and in the manner specified in the Program Documentation. In addition, Servicer shall provide copies of executed contracts and tapes of loan pools related to the Program for review upon request.

   (c) Servicer shall promptly take corrective and remedial actions associated with reporting and reviews as directed by Fannie Mae or Freddie Mac and provide to Fannie Mae and Freddie Mac such evidence of the effective implementation of corrective and remedial actions as Fannie Mae and Freddie Mac shall reasonably require. Freddie Mac may conduct additional reviews based on its findings and the corrective actions taken by Servicer.

(d) In addition to any other obligation to retain financial and accounting records that may be imposed by Federal or state law, Servicer shall retain all information described in Section 3(b), and all data, books, reports, documents, audit logs and records, including electronic records, related to the performance of Services in connection with the Program. In addition, Servicer shall maintain a copy of all computer systems and application software necessary to review and analyze these electronic records. Unless otherwise directed by Fannie Mae or Freddie Mac, Servicer shall retain these records for at least 7 years from the date the data or record was created, or for such longer period as may be required pursuant to applicable law. Fannie Mae or Freddie Mac may also notify Servicer from time to time of any additional record retention requirements resulting from litigation and regulatory investigations in which the Treasury or any agents of the United States may have an interest, and Servicer agrees to comply with these litigation and regulatory investigations requirements.

4. Internal Control Program.

(a) Servicer shall develop, enforce and review on a quarterly basis for effectiveness an internal control program designed to: (i) ensure effective delivery of Services in connection with the Program and compliance with the Program Documentation; (ii) effectively monitor and detect loan modification fraud; and (iii) effectively monitor compliance with applicable consumer protection and fair lending laws. The internal control program must include documentation of the control objectives for Program activities, the associated control techniques, and mechanisms for testing and validating the controls.

(b) Servicer shall provide Freddie Mac with access to all internal control reviews and reports that relate to Services under the Program performed by Servicer and its independent auditing firm to enable Freddie Mac to fulfill its duties as a compliance agent of the United States; a copy of the reviews and reports will be provided to Fannie Mae for record keeping and other administrative purposes.

5. Representations, Warranties, and Covenants. Servicer makes the following representations, warranties and covenants to Fannie Mae, Freddie Mac and the Treasury, the truth and accuracy of which are continuing obligations of Servicer. In the event that any of the representations, warranties, or covenants made herein cease to be true and correct, Servicer agrees to notify Fannie Mae and Freddie Mac immediately.

(a) Servicer is established under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia, and has significant operations in the United States. Servicer has full corporate power and authority to enter into, execute, and deliver the Agreement and to perform its obligations hereunder and has all licenses necessary to carry on its business as now being conducted and as contemplated by the Agreement.

(b) Servicer is in compliance with, and covenants that all Services will be performed in compliance with, all applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements, including, but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights. Subject to the following sentence, Servicer has obtained or made, or will obtain or make, all governmental approvals or registrations required under law and has obtained or will obtain all consents necessary to authorize the performance of its obligations under the Program and the Agreement. The performance of Services under the Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction by which Servicer is bound,

provided, however, that Fannie Mae acknowledges and agrees that this representation and warranty is qualified solely by and to the extent of any contractual limitations established under applicable servicing contracts to which Servicer is subject. Servicer is not aware of any other legal or financial impediments to performing its obligations under the Program or the Agreement and shall promptly notify Fannie Mae of any financial and/or operational impediments which may impair its ability to perform its obligations under the Program or the Agreement. Servicer is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others, excluding any debt or obligation that is being contested in good faith.

(c) Servicer covenants that: (i) it will perform its obligations in accordance with the Agreement and will promptly provide such performance reporting as Fannie Mae may reasonably require; (ii) all mortgage modifications and all trial period modifications will be offered to borrowers, fully documented and serviced in accordance with the Program Documentation; and (iii) all data, collection information and other information reported by Servicer to Fannie Mae and Freddie Mac under the Agreement, including, but not limited to, information that is relied upon by Fannie Mae or Freddie Mac in calculating the Purchase Price or in performing any compliance review will be true, complete and accurate in all material respects, and consistent with all relevant servicing records, as and when provided.

(d) Servicer covenants that it will: (i) perform the Services required under the Program Documentation and the Agreement in accordance with its practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances; and (ii) use qualified individuals with suitable training, education, experience and skills to perform the Services. Servicer acknowledges that Program participation may require changes to, or the augmentation of, its systems, staffing and procedures, and covenants and agrees to take all actions necessary to ensure it has the capacity to implement the Program in accordance with the Agreement.

(e) Servicer covenants that it will comply with all regulations on conflicts of interest that are applicable to Servicer in connection with the conduct of its business and all conflicts of interest and non-disclosure obligations and restrictions and related mitigation procedures set forth in the Program Documentation (if any).

(f) Servicer acknowledges that the provision of false or misleading information to Fannie Mae or Freddie Mac in connection with the Program or pursuant to the Agreement may constitute a violation of: (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§ 3729-3733). Servicer covenants to disclose to Fannie Mae and Freddie Mac any credible evidence, in connection with the Services, that a management official, employee, or contractor of Servicer has committed, or may have committed, a violation of the referenced statutes.

(g) Servicer covenants to disclose to Fannie Mae and Freddie Mac any other facts or information that the Treasury, Fannie Mae or Freddie Mac should reasonably expect to know about Servicer and its contractors to help protect the reputational interests of the Treasury, Fannie Mae and Freddie Mac in managing and monitoring the Program.

(h) Servicer covenants that it will timely inform Fannie Mae and Freddie Mac of any anticipated Event of Default.

(i) Servicer acknowledges that Fannie Mae or Freddie Mac may be required to assist the Treasury with responses to the Privacy Act of 1974 (the "Privacy Act"), 5 USC § 552a, inquiries from borrowers and Freedom of Information Act, 5 USC § 552, inquiries from other parties, as well as formal inquiries from Congressional committees and members, the Government Accounting Office, Inspectors General and other government entities, as well as media and consumer advocacy group inquiries about the Program and its effectiveness. Servicer covenants that it will respond promptly and accurately to all search requests made by Fannie Mae or Freddie Mac, comply with any related procedures which Fannie Mae or Freddie Mac may establish, and provide related training to employees and contractors. In connection with Privacy Act inquiries, Servicer covenants that it will provide updated and corrected information as appropriate about borrowers' records to ensure that any system of record maintained by Fannie Mae on behalf of the Treasury is accurate and complete.

(j) Servicer acknowledges that Fannie Mae is required to develop and implement customer service call centers to respond to borrowers' and other parties' inquiries regarding the Program, which may require additional support from Servicer. Servicer covenants that it will provide such additional customer service call support as Fannie Mae reasonably determines is necessary to support the Program.

(k) Servicer acknowledges that Fannie Mae and/or Freddie Mac are required to develop and implement practices to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws. Servicer covenants that it will fully and promptly cooperate with Fannie Mae's inquiries about loan modification fraud and legal compliance and comply with any anti-fraud and legal compliance procedures which Fannie Mae and/or Freddie Mac may require. Servicer covenants that it will develop and implement an internal control program to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws, among other things, as provided in Section 4 of this Financial Instrument and acknowledges that the internal control program will be monitored, as provided in such Section.

(l) Servicer shall sign and deliver an Annual Certification to Fannie Mae and Freddie Mac beginning on June 1, 2010 and again on June 1 of each year thereafter during the Term, in the form attached as Exhibit B to the Agreement.

6. Use of Contractors. Servicer is responsible for the supervision and management of any contractor that assists in the performance of Services in connection with the Program. Servicer shall remove and replace any contractor that fails to perform. Servicer shall ensure that all of its contractors comply with the terms and provisions of the Agreement. Servicer shall be responsible for the acts or omissions of its contractors as if the acts or omissions were by the Servicer.

7. Data Rights.

(a) For purposes of this Section, the following definitions apply:

(i) "Data" means any recorded information, regardless of form or the media on which it may be recorded, regarding any of the Services provided in connection with the Program.

(ii) "Limited Rights" means non-exclusive rights to, without limitation, use, copy, maintain, modify, enhance, disclose, reproduce, prepare derivative works, and distribute, in any manner, for any purpose related to the administration, activities, review, or audit of, or public reporting regarding, the Program and to permit others to do so in connection therewith.

(iii) "NPI" means nonpublic personal information, as defined under the GLB.

(iv) "GLB" means the Gramm-Leach-Bliley Act, 15 U.S.C. 6801-6809.

(b) Subject to Section 7(c) below, Treasury, Fannie Mae and Freddie Mac shall have Limited Rights, with respect to all Data produced, developed, or obtained by Servicer or a contractor of Servicer in connection with the Program, provided, however, that NPI will not be transferred by Fannie Mae in violation of the GLB and, provided, further, that Servicer acknowledges and agrees that any use of NPI by, the distribution of NPI to, or the transfer of NPI among; Federal, state and local government organizations and agencies does not constitute a violation of the GLB for purposes of the Agreement. If requested, such Data shall be made available to the Treasury, Fannie Mae, or Freddie Mac upon request, or as and when directed by the Program Documentation, in industry standard usable format.

(c) Servicer expressly consents to the publication of its name as a participant in the Program, and the use and publication of Servicer's Data, subject to applicable state and federal laws regarding confidentiality, in any form and on any media utilized by Treasury, Fannie Mae or Freddie Mac, including, but not limited to, on any website or webpage hosted by Treasury, Fannie Mae, or Freddie Mac, in connection with the Program, provided that no Data placed in the public domain will: (i) contain the name, social security number, or street address of any borrower or other information that would allow the borrower to be identified; or, (ii) if presented in a form that links the Servicer with the Data, include information other than program performance and participation related statistics such as the number of modifications, performance of modifications, characteristics of the modified loans, or program compensation or fees, with any information about any borrower limited to creditworthiness characteristics such as debt, income, and credit score. In any Data provided to an enforcement or supervisory agency with jurisdiction over the Servicer, these limitations on borrower information do not apply.

8. Publicity and Disclosure.

(a) Servicer shall not make use of any Treasury name, symbol, emblem, program name, or product name, in any advertising, signage, promotional material, press release, Web page, publication, or media interview, without the prior written consent of the Treasury.

(b) Servicer shall not publish, or cause to have published, or make public use of Fannie Mae's name, logos, trademarks, or any information about its relationship with Fannie Mae without the prior written permission of Fannie Mae, which permission may be withdrawn at any time in Fannie Mae's sole discretion.

(c) Servicer shall not publish, or cause to have published, or make public use of Freddie Mac's name (i.e., "Freddie Mac" or "Federal Home Loan Mortgage Corporation"), logos, trademarks, or any information about its relationship with Freddie Mac without the prior written permission of Freddie Mac, which permission may be withdrawn at any time in Freddie Mac's sole discretion.

9. Limitation of Liability. IN NO EVENT SHALL FANNIE MAE, THE TREASURY, OR FREDDIE MAC, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO SERVICER WITH RESPECT TO THE PROGRAM OR THE AGREEMENT, OR FOR ANY

ACT OR OMISSION OCCURRING IN CONNECTION WITH THE FOREGOING, FOR ANY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO DIRECT DAMAGES, INDIRECT DAMAGES, LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE OR UNDER ANY LEGAL THEORY WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORESEEABLE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT FANNIE MAE'S OBLIGATION TO REMIT PURCHASE PRICE PAYMENTS TO SERVICER IN ITS CAPACITY AS FINANCIAL AGENT OF THE UNITED STATES IN ACCORDANCE WITH THE AGREEMENT.

10. Indemnification. Servicer shall indemnify, hold harmless, and pay for the defense of Fannie Mae, the Treasury and Freddie Mac, and their respective officers, directors, employees, agents and affiliates against all claims, liabilities, costs, damages, judgments, suits, actions, losses and expenses, including reasonable attorneys' fees and costs of suit, arising out of or resulting from: (a) Servicer's breach of Section 6 (Representations, Warranties and Covenants) of this Financial Instrument; (b) Servicer's negligence, willful misconduct or failure to perform its obligations under the Agreement; or (c) any injuries to persons (including death) or damages to property caused by the negligent or willful acts or omissions of Servicer or its contractors. Servicer shall not settle any suit or claim regarding any of the foregoing without Fannie Mae's prior written consent if such settlement would be adverse to Fannie Mae's interest, or the interests of the Treasury or Freddie Mac. Servicer agrees to pay or reimburse all costs that may be incurred by Fannie Mae and Freddie Mac in enforcing this indemnity, including attorneys' fees.

IN WITNESS WHEREOF, Servicer hereby executes this Financial Instrument on the date set forth below.

Bank of America, N.A.

Steve R. Bailey
Senior Vice President, Mortgage Servicing Executive

April 17, 2009
Date

EXHIBIT B

FORM OF ANNUAL CERTIFICATION

ANNUAL CERTIFICATION

This Annual Certification is delivered as provided in Section 1.B. of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), effective as of [INSERT], by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"). All terms used, but not defined herein, shall have the meanings ascribed to them in the Commitment.

Servicer hereby certifies, as of [INSERT DATE ON WHICH CERTIFICATION IS GIVEN], that:

1. Servicer is established under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia, and has significant operations in the United States. Servicer has full corporate power and authority to enter into, execute, and deliver the Agreement and to perform its obligations hereunder and has all licenses necessary to carry on its business as now being conducted and as contemplated by the Agreement.

2. Servicer is in compliance with, and certifies that all Services have been performed in compliance with, all applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements, including, but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights. Subject to the following sentence, Servicer has obtained or made all governmental approvals or registrations required under law and has obtained all consents necessary to authorize the performance of its obligations under the Program and the Agreement. The performance of Services under the Agreement has not conflicted with, or been prohibited in any way by, any other agreement or statutory restriction by which Servicer is bound, except to the extent of any contractual limitations under applicable servicing contracts to which Servicer is subject. Servicer is not aware of any other legal or financial impediments to performing its obligations under the Program or the Agreement and has promptly notified Fannie Mae of any financial and/or operational impediments which may impair its ability to perform its obligations under the Program or the Agreement. Servicer is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others, excluding any debts or obligations that are being contested in good faith.

3. (i) Servicer has performed its obligations in accordance with the Agreement and has promptly provided such performance reporting as Fannie Mae and Freddie Mac have reasonably required; (ii) all mortgage modifications and all trial period modifications have been offered by Servicer to borrowers, fully documented and serviced by Servicer in accordance with the Program Documentation; and (iii) all data, collection information and other information reported by Servicer to Fannie Mae and Freddie Mac under the Agreement, including, but not limited to, information that was relied upon by Fannie Mae and Freddie Mac in calculating the Purchase Price and in performing any compliance review, was true, complete and accurate in all material respects, and consistent with all relevant servicing records, as and when provided.

4. Servicer has: (i) performed the Services required under the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances; and (ii) used qualified individuals with suitable training, education, experience and skills to perform the Services. Servicer acknowledges that Program participation required changes to, or the augmentation of, its systems, staffing and procedures; Servicer took all actions necessary to ensure that it had the capacity to implement the Program in accordance with the Agreement.

5. Servicer has complied with all regulations on conflicts of interest that are applicable to Servicer in connection with the conduct of its business and all conflicts of interest and non-disclosure obligations and restrictions and related mitigation procedures set forth in the Program Documentation (if any).

6. Servicer acknowledges that the provision of false or misleading information to Fannie Mae or Freddie Mac in connection with the Program or pursuant to the Agreement may constitute a violation of (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§ 3729-3733). Servicer has disclosed to Fannie Mae and Freddie Mac any credible evidence, in connection with the Services, that a management official, employee, or contractor of Servicer has committed, or may have committed, a violation of the aforementioned statutes.

7. Servicer has disclosed to Fannie Mae and Freddie Mac any other facts or information that the Treasury, Fannie Mae or Freddie Mac should reasonably expect to know about Servicer and its contractors to help protect the reputational interests of the Treasury, Fannie Mae and Freddie Mac in managing and monitoring the Program.

8. Servicer acknowledges that Fannie Mae and Freddie Mac may be required to assist the Treasury with responses to the Privacy Act of 1974 (the "Privacy Act"), 5 USC § 552a, inquiries from borrowers and Freedom of Information Act, 5 USC § 552, inquiries from other parties, as well as formal inquiries from Congressional committees and members, the Government Accounting Office, Inspectors General and other government entities, as well as media and consumer advocacy group inquiries about the Program and its effectiveness. Servicer has responded promptly and accurately to all search requests made by Fannie Mae and Freddie Mac, complied with any related procedures which Fannie Mae and Freddie Mac have established, and provided related training to employees and contractors. In connection with Privacy Act inquiries, Servicer has provided updated and corrected information as appropriate about borrowers' records to ensure that any system of record maintained by Fannie Mae on behalf of the Treasury is accurate and complete.

9. Servicer acknowledges that Fannie Mae is required to develop and implement customer service call centers to respond to borrowers' and other parties' inquiries regarding the Program, which may require additional support from Servicer. Servicer has provided such additional customer service call support as Fannie Mae has reasonably requested to support the Program.

10. Servicer acknowledges that Fannie Mae and/or Freddie Mac are required to develop and implement practices to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws. Servicer has fully and promptly cooperated with Fannie Mae's inquiries about loan modification fraud and legal compliance and has complied with any anti-fraud and legal compliance procedures which Fannie Mae and/or Freddie Mac have required. Servicer has developed and implemented an internal control program to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws, among other things, as provided in Section 4 of the Financial Instrument.

In the event that any of the certifications made herein are discovered not to be true and correct, Servicer agrees to notify Fannie Mae and Freddie Mac immediately.

[INSERT FULL LEGAL NAME OF SERVICER]:

_____ _____

[Name of Authorized Official] Date
[Title of Authorized Official]

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") is entered into as of [INSERT DATE] by and between [INSERT FULL LEGAL NAME OF ASSIGNOR] ("Assignor") and [INSERT FULL LEGAL NAME OF ASSIGNEE] ("Assignee"). All terms used, but not defined, herein shall have the meanings ascribed to them in the Underlying Agreement (defined below).

WHEREAS, Assignor and Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae"), are parties to a Commitment to Purchase Financial Instrument and Servicer Participation Agreement, a complete copy of which (including all exhibits, amendments and modifications thereto) is attached hereto and incorporated herein by this reference (the "Underlying Agreement");

WHEREAS, Assignor has agreed to assign to Assignee: (i) all of its rights and obligations under the Underlying Agreement with respect to the mortgage loans identified on the schedule attached hereto as Schedule 1 ("Schedule 1") and/or (ii) certain other rights and obligations under the Underlying Agreement that are identified on Schedule 1; and

WHEREAS, Assignee has agreed to assume the mortgage loans and other rights and obligations under the Underlying Agreement identified on Schedule 1.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's rights and obligations under the Underlying Agreement with respect to the mortgage loans identified on Schedule 1 and such other rights and obligations under the Underlying Agreement that are identified on Schedule 1.

2. Assumption. Assignee hereby accepts the foregoing assignment and assumes all of the rights and obligations of Assignor under the Underlying Agreement with respect to the mortgage loans identified on Schedule 1 and such other rights and obligations under the Underlying Agreement that are identified on Schedule 1.

3. Effective Date. The date on which the assignment and assumption of rights and obligations under the Underlying Agreement is effective is [INSERT EFFECTIVE DATE OF ASSIGNMENT/ASSUMPTION].

4. Successors. All future transfers and assignments of the mortgage loans, rights and obligations transferred and assigned hereby are subject to the transfer and assignment provisions of the Underlying Agreement. This Assignment and Assumption Agreement shall inure to the benefit of, and be binding upon, the permitted successors and assigns of the parties hereto.

5. Counterparts. This Assignment and Assumption Agreement may be executed in counterparts, each of which shall be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee, by their duly authorized officials, hereby execute and deliver this Assignment and Assumption Agreement, together with Schedule 1, effective as of the date set forth in Section 3 above.

ASSIGNOR: [INSERT FULL LEGAL NAME OF ASSIGNOR]

By:_____
Name:_____
Title:_____
Date:_____

ASSIGNEE: [INSERT FULL LEGAL NAME OF ASSIGNEE]

By:_____
Name:_____
Title:_____
Date:_____

SCHEDULE 1

To

ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT D

FORM OF COVER SHEET

Cover Sheet for Transmission of

Commitment to Purchase Financial Instrument and Servicer Participation Agreement

To: [INSERT FULL LEGAL NAME OF SERVICER] ("Servicer"), [INSERT SERVICER CONTACT]

From: Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae")

Copy To: The U.S. Department of the Treasury, [INSERT TREASURY CONTACT]

Date: [INSERT DATE OF TRANSMISSION]

Method of Transmission: [Facsimile to [INSERT FAX NUMBER OF SERVICER]] [[Email with PDF file attached to [INSERT SERVICER EMAIL ADDRESS]][Specify other method of electronic delivery]]

NOTICE

This transmission constitutes notice to Servicer that the Commitment to Purchase Financial Instrument and Servicer Participation Agreement, by and between Fannie Mae and Servicer (the "Commitment") and the Financial Instrument attached thereto have been fully executed and are effective as of the date of this transmission. The date of this transmission shall be the "Effective Date" of the Commitment and the Financial Instrument.

Copies of the fully executed Commitment and Financial Instrument are attached to this transmission for your records.

EXHIBIT NO. 2

IN RE BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) LITIGATION	:	DECLARATION OF RODRIGO W. HEINLE

I, Rodrigo W. Heinle, declare as follows:

1. I am over the age of 18 and I am otherwise competent to testify to the following based on my own personal knowledge.

2. From December 2011 through September 2012 I was employed by Bank of America in Charlotte, North Carolina through APC Workforce Solutions, LLC, an employment agency. During my employment, I held the title of "Customer Relationship Manager" ("CRM") and was under the direct supervision of Bank of America Employees, and in particular, Mr. Jamal Brown. My work primarily involved working with files of homeowners seeking loan modifications as part of the Home Affordable Modification Program (HAMP).

3. My job included working with homeowners to complete their HAMP modification applications and prepare the applications for review by underwriting. In my position as a CRM, I was required to use several computer programs, including HomeBase, HomeSaver, AS400, I-Portal and Salesforce.

4. Bank of America employed a common strategy of delaying HAMP applications. Delay was achieved using tactics including claiming that documents were incomplete and/or missing when they were not, or simply claiming files were "under review" when they were not.

5. During my employment, I was instructed by my manager Jamal Brown, to participate in what Bank of America called a "blitz." Approximately twice a month, Bank of America would order CRMs and underwriters "clean out" the backlog of HAMP applications by denying any file in which the financial documents were more than 60 days old. These included files in which the homeowner provided all required financial documents and fully complied with the terms of a Trial Period Plan. During a blitz, a single team would decline thousands of modification files at a time for no reason other than the documents were more than 60 days old.

6. During my employment, I personally witnessed my manager Jamal Brown, and other managers and employees physically destroy packages of documents sent by homeowners to our office via Fed Ex and other means, for their HAMP modification applications. Homeowner applications were routinely shredded with no review by Bank of America and at times taken home by managers in order to conceal the fact they had been received by Bank of America. Shredding of HAMP applications took place using shredders in our offices and via a company called "Shred It," a third-party vendor of Bank of America. Because these packages were

shredded without review, I have sufficient reason to believe borrower checks, money orders and other forms of payment were shredded along with the HAMP modification applications.

7. During my employment, and in particular during procedures Bank of America called the "blitz," I was also instructed by my manager Jamal Brown, and other managers, to delete thousands of homeowner HAMP application files from Bank of America computer databases. Upon the instruction of my manager Jamal Brown, and other managers, I deleted thousands of homeowner HAMP application files from Bank of America computer databases, as many as six thousand (6,000) in one day.

8. Employees who challenged or questioned the ethics of Bank of America's practices described herein and the resulting practice of declining modifications for false and fraudulent reasons, were often fired.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

EXECUTED this 22 day of February, 2017 at Charlotte, North Carolina

By _____
Rodrigo W. Heinle

Sworn to and subscribed before me this the 22 day of Feb, 2017.

THERESA M. MORENO NOTARY PUBLIC My Comm. Exp. UNION COUNTY, NC

_____
Notary Public

My Commission Expires: 3.30.21

EXHIBIT NO. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) CONTRACT LITIGATION	**MDL NO. 2193** **Centralized before the Honorable Rya W. Zobel**
This Document Relates To: **All Actions**	

DECLARATION OF William E. Wilson Jr.

I, William E. Wilson Jr., declare as follows:

1. I am over the age of 18 and I am otherwise competent to testify to the following based on my own personal knowledge.

2. From June 2010 through August 2012 I was employed by Bank of America in Charlotte, North Carolina. I was first employed as an underwriter. In July, 2011, I was promoted to Case Management Team Manager where I supervised a team of thirteen employees known as "Customer Relationship Managers" ("CRMs"). In both positions, my work primarily involved working with files of homeowners seeking loan modifications as part of the Home Affordable Modification Program (HAMP).

3. As an underwriter, I worked with a team of approximately 100 other underwriters. Each underwriter in our Charlotte location carried a load of approximately 400 HAMP modification files in their pipeline at any given time. This volume was many times the normal workload for an underwriter. It was impossible to sustain and Bank of America had a significant backlog of applications for HAMP loan modifications.

4. In July, 2011, Bank of America created a new department it termed the "Case Management Department" in response to reports that it was not meeting its HAMP

obligations. I was among those that opened the Charlotte division of this new department when it was created. This department was staffed by CRM's. Each was supposed to be a "single point of contact" for customers seeking HAMP modifications. I supervised a team of thirteen CRMs. I regularly reviewed the files each CRM was working on using electronic databases and computer systems. I also regularly spoke with customers inquiring about the status of their loan modification when calls were escalated to me.

5. As both an underwriter and as a Case Management Team Manager, I used Bank of America's computer systems to review the status of loans in the modification process. The computer systems I regularly used included HomeBase, HomeSaver, AS400, I-Portal, LMA, LMF, and Seibel. I primarily used HomeSaver and AS400. Using these systems, I was able to fully review terms of a homeowner's Trial Period Plan and the process that homeowner had undergone to that point. I could determine the payments due from the homeowner, the date and amount of each payment made, the documents requested from the homeowner, the documents provided and the dates the homeowner provided those documents. If needed, I could view the actual using Bank of America's "I-portal" system. Essentially, I could review any borrower's modification process from the start to the time I was reviewing the file on the computer system.

6. From the start of its participation in HAMP, Bank of America determined whether each applicant would receive a Trial Period Plan based on written financial documentation. Bank of America calculated each borrower's debt to income ratio ("DTI"), performed the HAMP Net Present Value ("NPV") test, and determined the amount of each borrower's trial payment by reviewing documents such as tax returns, pay stubs, bank statements, credit reports and other financial information the borrower provided. Bank of America required HAMP applicants to document their assets and income and would not issue a Trial Period Plan without a borrower first providing extensive financial documentation. Bank of America did not issue Trial Period Plans based on verbal estimates of income, debt, or assets at any time.

7. Though Bank of America required that applicants immediately provide financial documents -- often on short notice, Bank of America allowed these documents to sit for months without ever reviewing them. I regularly received calls from homeowners and reports from CRM's stating that the homeowner had sent in documents months earlier, often multiple times, made payments under a Trial Period Plan, but had not gotten a permanent modification or even a decision regarding their modification. I was able to confirm that homeowners had indeed sent in documents and made their payments using the HomeSaver and AS400 systems. I was able to actually view the documents using the I-Portal system. It was clear that Bank of America was regularly receiving time sensitive financial documents from homeowners seeking HAMP modifications and not acting on the documents for months on end.

8. Bank of America employed a common strategy of delaying HAMP applications. Delay was achieved using tactics including claiming that documents were incomplete or missing when they were not, or simply claiming the file was "under review" when it was not. We were instructed to delay and then push homeowners to accept an internal refinance so that Bank of America would profit. Once an applicant was finally rejected after a long delay, the bank would offer them an in-house alternative. Bank of America would charge a higher interest rate, ranging up to 5%, as compared to the 2% if the loan had been modified under HAMP. The unfortunate truth is that many and possibly most of these people were entitled to a HAMP loan modification, but had little choice but to accept a more expensive and less favorable in-house modification.

9. Upon joining the newly formed Case Management Department, I began to experience what Bank of America termed a "blitz." Approximately twice a month, Bank of America would order that case managers and underwriters "clean out" the backlog of HAMP applications by denying any file in which the financial documents were more than 60 days old. These included files in which the homeowner had provided all required financial documents and fully complied with the terms of a Trial Period Plan.

10. During a blitz, a single team would decline between 600 and 1,500 modification files at a time for no reason other than that the documents were more than 60 days old. Bank of America instructed its CRMs, underwriters and other employees to enter a reason that would justify declining the modification to the Treasury Department. Justifications commonly included claiming that the homeowner had failed to return requested documents or had failed to make payments. In reality, these justifications were untrue. I personally reviewed hundreds of files in which the computer systems showed that the homeowner had fulfilled a Trial Period Plan and was entitled to a permanent loan modification, but was nevertheless declined for a permanent modification during a blitz.

11. On many occasions, homeowners who did not receive the permanent modification that they were entitled to, ultimately lost their homes to foreclosure.

12. The delay and rejection programs within Bank of America were methodically carried out under the overall direction of Patrick Kerry, a Vice President who oversaw the entire eastern region's loan modification process. Discussions took place in meetings, some of which I attended, in which Mr. Kerry outlined how certain percentages to reduce the backlog had to be met by certain dates – no matter what.

13. Employees who challenged or questioned the ethics of Bank of America's practice of declining modifications for false and fraudulent reasons were often fired. There was an extremely high level of turnover in every HAMP related Bank of America department that I saw. Employees worked in fear of losing their jobs if they called any of Bank of America's practices into question.

14. I told my supervisors that these practices were ridiculous and immoral. People who had done everything that Bank of America had asked of them were losing their homes to foreclosure because Bank of America had chosen not to hire enough underwriters and was reducing its backlog with unethical and even fraudulent methods. I raised these concerns several times in 2011 and 2012. These practices did not change. Eventually I was fired despite having excellent performance results.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

EXECUTED this June 5 day of May, 2013 at Charlotte, North Carolina

By William E. Wilson

William E. Wilson, Jr.

EXHIBIT NO. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) CONTRACT LITIGATION	**MDL NO. 2193** **Centralized before the Honorable Rya W. Zobel**
This Document Relates To: **All Actions**	

DECLARATION OF SIMONE GORDON

I, Simone Gordon, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am over the age of 18, am otherwise competent to testify, and could testify if called upon to the following facts that are based on my own personal knowledge.

2. I was employed by Bank of America from July 2007 until February 2012. I was a Senior Collector of Loss Mitigation / Mortgage. Beginning in 2009 a significant portion of my job duties and my time consisted of dealing with homeowners that had applied for a loan modification as part of the Home Affordable Modification Program ("HAMP").

3. From the start of the HAMP program, Bank of America calculated the amount of the trial payment in a Trial Period Plan based on a borrower's monthly income and other factors including the borrower's debt to income ratio ("DTI") and to performed the Net Present Value ("NPV") test that HAMP required. Before issuing a Trial Period Plan, Bank of America calculated the borrower's DTI and performed the NPV test by reviewing documents such as tax returns, pay stubs, bank statements, a credit report and other financial information the borrower provided. Bank of America required people applying for a HAMP modification to document their assets and income and would not issue a trial period plan without full documentation. Throughout the time I worked there, including in 2009 and 2010, Bank of America did not issue Trial Period Plans based on oral representations or estimates regarding income, assets, or debts. All such information had to be fully documented.

4. In the course of my work, I regularly spoke to homeowners who were inquiring about the status of their HAMP loan modification. I regularly pulled up the information regarding the borrower on Bank of America computer systems such as HomeSaver and AS400. These computer systems allowed me to view terms of a Trial Period Plan including amounts of trial payments and the dates they were due, the date and amount of each payment the homeowner made to Bank of America, and the date each payment was logged as having been received. The computer systems also allowed me to view each document that had been requested from the borrower and the date the borrower had sent each document to Bank of America. If needed, I

could also view the actual document the borrower had sent electronically using Bank of America's "i-portal" computer system.

5. Beginning in 2009, I regularly spoke to people who had received HAMP Trial Period Plans, made their trial payments, and who were calling to inquire about the status of their expected permanent loan modification. Using the Bank of America computer systems I saw that hundreds of customers had made their required trial payments, sent the documents requested of them, but had not received permanent modifications. I also saw records showing that Bank of America employees had told people that documents had not been received when, in fact, the computer system showed that Bank of America had received the documents. This was consistent with the instructions my colleagues and I were given. We were told to lie to customers and claim that Bank of America had not received documents it had requested, and that it had not received trial payments (when in fact it had). We were told that admitting that the Bank received documents would "open a can of worms" since the Bank was required to underwrite the loan modification within 30 days of receiving those documents, and it did not have sufficient underwriting staff to complete the underwriting in that time.

6. My colleagues and I were supervised by "Team Leaders" who were, in turn, supervised by "Site Leaders." Site leaders regularly told us that the more we delayed the HAMP modification process, the more fees Bank of America would collect. We were regularly drilled that it was our job to maximize fees for the Bank by fostering and extending delay of the HAMP modification process by any means we could – this included by lying to customers. For example, we were instructed by our supervisors at Bank of America to delay modifications by telling homeowners who called in that their documents were "under review," when, in fact, there had been no review or any other work done on the file.

7. Bank of America Site Leaders specifically ordered my colleagues and me to hold financial documents borrowers submitted for at least thirty days. Once thirty days passed, Bank of America would consider many of these documents, such as pay stubs or bank statements to be "stale" and the homeowner would have to re-apply for a modification.

8. These and other similar instructions often came in monthly meetings that were conducted by Site Leaders and attended by 60-70 employees. At these meetings, my colleagues and I were also given performance "goals" and quotas. Employees were rewarded by meeting a quota of placing a specific number of accounts into foreclosure, including accounts in which the borrower fulfilled a HAMP Trial Period Plan. For example, a Collector who placed ten or more accounts into foreclosure in a given month received a $500 bonus. Bank of America also gave employees gift cards to retail stores like Target or Bed Bath and Beyond as rewards for placing accounts into foreclosure.

9. Bank of America Collectors and other employees who did not meet their quotas by not placing a sufficient number of accounts into foreclosure each month were subject to termination. Several of my colleagues were terminated on that basis.

10. Bank of America monitored my colleagues and me very closely. Team Leaders and Site Leaders walked the call room floor throughout the day wearing headsets that they would use to plug in and listen into a call without warning. Employees who were caught not carrying out the delay strategies that Bank of America instructed were subject to discipline including termination. Employees who were caught admitting that Bank of America had received financial documents or that the borrower was actually entitled to a permanent loan modification were disciplined and often terminated without warning.

EXECUTED May 23 2013, at Orange, New Jersey

By: Simone Gordon
Simone Gordon

EXHIBIT NO. 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) CONTRACT LITIGATION	**MDL NO. 2193** **Centralized before the Honorable Rya W. Zobel**
This Document Relates To: **All Actions**	

DECLARATION OF Theresa Terrelonge

I, Theresa Terrelonge, declare as follows:

1. I am over the age of 18 and I am otherwise competent to testify to the following based on my own personal knowledge.

2. From June 2009 through June 2010 I was employed by Bank of America as a "collector." Most of my job consisted of speaking on the telephone with homeowners who were calling regarding a loan modification that they had applied for as part of Home Affordable Modification Program (HAMP). My job could be accurately described as a loan level servicing representative.

3. I regularly reviewed the HAMP requirements and procedures on the U.S. Treasury Department website (http://makinghomeaffordable.gov). I did this on my own as Bank of America provided no training or information regarding HAMP and I wanted to know what I was talking about to homeowners calling in. Most, if not all of my colleagues and supervisors did not have suitable training, education, or experience in modifying mortgages, and certainly not regarding HAMP requirements and procedures. Loan level service representatives had to undergo some kind of training at least every six weeks. Almost all of these trainings included written materials. Most of the training I recall involved the use of systems and other ministerial work. Bank of America did not provide me or anyone I knew with training regarding HAMP requirements, applicable mortgage or lending laws, or the substance of what we were talking to homeowners about.

4. In the course of my work, I regularly spoke to homeowners who were inquiring about the status of their HAMP loan modification. I reviewed information regarding the borrower on Bank of America computer systems such as HomeSaver and AS400. These computer systems allowed me to view terms of a Trial Period Plan including amounts of trial payments and the dates they were due, the date and amount of each payment the homeowner made to Bank of America, and the date each payment was logged as having been received. The computer systems also allowed me to view the date the borrower had sent each financial

document to Bank of America. If needed, I could also view the actual document the borrower had sent electronically using Bank of America's "i-portal" computer system.

5. Although HAMP allowed a servicer to issue a Trial Period Plan based on "unverified" verbal representations from applicants, this was not Bank of America's practice. Throughout the time I worked there in 2009 and 2010, Bank of America determined whether applicants would receive a HAMP Trial Period Plan and calculated the amount of the trial payment based on the borrower's monthly income and other factors including the borrower's debt to income ratio. Bank of America also performed the Net Present Value test that HAMP required before deciding whether to issue the borrower a Trial Period Plan. Bank of America calculated the borrower's debt to income ration and performed the Net Present Value test by reviewing financial documents the borrower provided. Bank of America required HAMP applicants to document their assets and income and would not issue a Trial Period Plan without a borrower providing extensive financial documentation.

6. Based on what I observed, Bank of America was trying to prevent as many homeowners as possible from obtaining permanent HAMP loan modifications while leading the public and the government to believe that it was making efforts to comply with HAMP. It was well known among managers and many employees that the overriding goal was to extend as few HAMP loan modifications to homeowners as possible.

7. Much of my job consisted of speaking to people who received HAMP Trial Period Plans, made their trial payments, and who were calling to inquire about the status of their expected permanent loan modification. Using the Bank of America computer systems I saw that hundreds of customers had made their required trial payments and sent in the required documents, but had not received permanent modifications.

8. My colleagues and I were called into group meetings with our supervisors on a regular basis. The information we received in group meetings showed me that Bank of America's deliberate practice was to string homeowners along with no intention of providing permanent modifications. We were instructed to inform every homeowner who called in that

their file was "under review" – even where the computer system showed that the file had not been accessed in months or when the homeowner had been rejected for a modification.

9. My colleagues and I were instructed to inform homeowners that modification documents were not received on time, not received at all, or that documents were missing, even when, in fact, all documents were received in full and on time.

10. One tactic Bank of America used to delay the modification process involved telling homeowners who applied for a HAMP modification or who were in a Trial Period Plan to resubmit financial information each time they called to inquire about a pending modification. Bank of America then treated any change in financial information as justification for considering the homeowner to have restarted the HAMP process. Even a small change to financial information or correcting an error that Bank of America made will cause Bank of America to restart the application process under the pretext of changed financial information.

11. When Bank of America purchased loans from other servicers, including when it bought the servicer itself – as it did with Wilshire Credit, Bank of America forced the homeowners to restart the modification process. When a homeowner called regarding a modification started with another servicer, my co-workers and I were instructed to say that Bank of America had no record of the modification or of the payments the homeowner already made under the modification. We were instructed to make this statement even when Bank of America's system showed the homeowners' modification and previous payments, and even when the system showed that the homeowner had completed the trial process with the previous servicer and should have received a permanent modification.

12. Bank of America regularly ignored completed loan modifications and did not treat the loan as having been modified in its computer system. Even after a homeowner signed and returned modification documents (both trial modifications and permanent modifications), Bank of America's system continued to show the loan as delinquent. Bank of America continued to send delinquency notices, continued to report homeowners as delinquent to credit reporting

agencies, and pursued foreclosure. I saw multiple instances of people who had lost their homes to foreclosure despite having fulfilled all requirements of their Trial Period Plans.

13. When an account or attempted modification was considered "closed" it meant that the homeowner would not be receiving a modification and would often be facing collections or foreclosure. The production goals Bank of America placed on its managers were based on how many accounts they could "close" – meaning how many homeowners they could reject for the loan modifications rather than how many modifications they could successfully complete. Managers received bonuses if their teams met or exceeded production goals.

14. Managers, in turn, pushed their production goals on the loan level employees. Employees were awarded incentives such as $25 in cash, or as a restaurant gift card based on the number of accounts they could close in a given day or week – meaning how many applications for loan modifications they could decline.

15. I personally witnessed employees and managers close loan accounts based on information that was obviously wrong. This included closing accounts, and declining loan modifications based on the homeowner's failure to provide certain documents or information when, in fact, it was apparent from the loan file and from the electronic system of record (electronic databases including AS400, HomeSaver, HomeBase, and others) that the homeowner had provided the very information claimed to be missing.

16. I witnessed employees and managers change and falsify information in the systems of record, and remove documents from homeowners' files to make the account appear ineligible for a loan modification. This included falsifying electronic records so that the records would no longer show that the homeowner had sent in required documents or had made required payments. This was done so that the file could be closed, the homeowner's effort to obtain a loan modification could be rejected, and the manager could meet Bank of America's production goal for the given week or month.

17. Bank of America often avoided extending HAMP modifications by sending non-HAMP modifications to homeowners who had applied for a HAMP modification. These non-

HAMP modifications were typically on worse terms for the homeowner than what they were eligible to receive under HAMP – but they were at higher interest rates and more profitable for Bank of America. I fielded dozens of calls from homeowners who had waited months for a HAMP modification and were confused, and often in tears, when they received a modification that appeared nothing like what they were led to expect.

18. Bank of America used group meetings to convey production goals, adjustments to protocol for speaking to homeowners, adjustments to information we were expected to give (or not give) homeowners, and other information regarding the jobs of loan level representatives. These group meetings were conducted by a manager. The agenda and itinerary for the meetings were sent to the manager via e mail. The manager, in turn, conveyed the information to loan level representatives verbally, but often showed us the E mail he received with a summary of the content he was supposed to convey in the meeting. In addition to group meetings, loan level service representatives received information regarding general policies and procedures, new programs, and certain clarifications to programs via e mail.

19. Throughout my tenure at Bank of America, loan level servicing representatives were constantly being evaluated. We received written evaluations known as "scorecards" on a weekly basis via e mail. These scorecards evaluated employees based on criteria including the number of customer calls they took each day, the number of minutes they spent on each call, and whether they gave the homeowner too much information. Employees received negative evaluations and negative comments if they spent too much time on the phone with a particular homeowner in an effort to answer their questions or if they gave what Bank of America considered to be too much information about the modification process.

20. Loan level servicing representatives regularly conducted much of their work via e mail and used e mail extensively both regarding general policies and procedures and regarding particular loan files. We regularly e mailed with supervisors and managers, other departments, and customers regarding particular loans. While some information that was contained in some of the E mails could be reflected in electronic systems such as AS400, HomeSaver, or HomeBase, it

is not accurate to say all E-mail or the full content of virtually any E-mail was captured on the electronic systems. These systems would not capture the entire content of an e-mail or all the e-mails loan level representatives sent regarding a particular file. I do not know what Bank of America's policy was regarding deleting e-mail. But I regularly looked back over e-mails that were several months old. Toward the end of my tenure, I recall that I was able to look back over e-mails that were nearly a year old.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

EXECUTED this 15 day of May, 2013 at Grand Prairie, Texas.

By: _____

Theresa Terelonge

EXHIBIT NO. 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) CONTRACT LITIGATION	**MDL NO. 2193** **Centralized before the Honorable Rya W. Zobel**
This Document Relates To: **All Actions**	

Declaration of Steven Cupples.

I, Steven Cupples, declare as follows:

1. I am over the age of 18 and I am otherwise competent to testify to the following based on my own personal knowledge.

2. I was employed by Bank of America until June, 2012. I worked for Countrywide Home Loans as a Loan Originator and a Loan Officer and became a Bank of America employee when Bank of America acquired Countrywide.

3. Beginning in 2009, my work involved Bank of America's efforts to modify mortgages under the Home Affordable Modification Program (HAMP). I was titled an Underwriter throughout the time I was employed by Bank of America. In June, 2011 I was promoted to a Team Leader where I supervised a team of 11 to 15 underwriters. At various times, my job included certain special projects regarding Bank of America's efforts under HAMP.

4. In April, 2009, I was assigned to a special project in which a team of employees identified customers who were in default on their mortgage and solicited them for internal Bank of America refinances. I worked on this project for approximately five months.

5. In September, 2009 I was among a team of underwriters to receive training to underwrite HAMP loan modifications. This training lasted for a week. It covered basic underwriting topics such as the documents used to verify income and basic methods to calculate a borrower's monthly income. This training did not cover substantive HAMP requirements, or basic information needed to underwrite a HAMP application. The other underwriters and I did not receive even basic training on how to use the HAMP waterfall formula, how or when to use the NPV test, the guidelines set out in Treasury directives, or other basic aspects of HAMP.

6. Beginning in September, 2009, my job consisted of underwriting HAMP loan modifications. I learned the guidelines on the job. Underwriters could access document images using Bank of America's IPortal document system. However, all pertinent information was recorded as data points in one of Bank of America's computer systems. Using these computer systems, I was able to view virtually all relevant information regarding a borrower's loan and loan modification including the modified payments due under a Trial Period Plan, the dates payments were due, all documents the borrower sent in an effort to obtain a HAMP modification, and all information needed to determine whether a borrower was eligible for a HAMP Trial Period plan, and whether they fulfilled a Trial Period Plan and should be receiving a permanent loan modification.

7. At the time I was underwriting loans, it was clear that Bank of America had not dedicated sufficient underwriters, staff, or even basic supplies like the printers or hardware needed to keep up with the volume of HAMP loan modifications. Bank of America executives including Rebecca Mairone, John Berens, and Patricia Feltch were made aware of some of the most obvious shortcomings, but Bank of America made no substantial effort that I saw to fulfill its obligations under HAMP in anything that could be described as a good faith or honest effort.

8. An obvious problem I noticed almost immediately was that Bank of America had not changed its regular loan servicing programs to account for HAMP. A delinquent loan would progress from regular servicing, to collections, loss mitigation, and to foreclosure, just as it had before HAMP started. If Bank of America intended to use HAMP to reduce the number of defaults and foreclosures as it claimed, it would have inserted HAMP as a mandatory step in the loan servicing program across the board. Instead, Bank of America was running HAMP as an ad-hoc, parallel program. Loans that were eligible to be considered under HAMP, and even loans in which the borrowers fulfilled Trial Period Plans, were still sent to the foreclosure department. The system

Bank of America used either made no sense, or was nothing more than an effort to give a false appearance of complying with HAMP requirements when it was not.

9. From the start, Bank of America determined whether an applicant would receive a HAMP Trial Period Plan based on written financial documentation. Bank of America calculated each borrower's debt to income ratio, performed the HAMP Net Present Value test, and determined the amount of the trial payments due by reviewing a borrower's tax returns, pay stubs, credit reports and other financial documents. Bank of America would not issue a Trial Period Plan without a borrower first providing extensive financial documentation, and it did not issue Trial Period Plans based on verbal estimates of income, debt, or assets at any time.

10. Bank of America retained outside vendors to manage the documents being sent to and received from borrowers applying for HAMP modifications. Urban Lending Solutions was one of the vendors tasked to receive and upload financial documents from borrowers. I quickly realized that if the loan had documents that were sent to Urban, those documents would be scattered over various links in the computer systems. The documents were present, but they often could not be viewed using a single system. An underwriter would need to know to go to other systems such as IPORTAL, LMA, LMF, or HomeSaver to review documents the borrower had sent. Most underwriters did not know that they needed to look for documents in multiple systems and often assumed documents had not been sent. As a result, many borrowers were declined loan modifications they should have received.

11. For approximately six months in the first half of 2010, I was placed on a special project to help analyze Bank of America's performance under HAMP. This involved generating a variety of reports to measure various facets of Bank of America's HAMP processes. Much of this analysis involved trial and error to generate the types of reports that would be most useful. For example, we had reports generated that would measure the number of HAMP applications received, number of loans in stages of

delinquency, how long loans sat in each stage of the HAMP process, the number of trial payments customers had returned, the number of loans assigned to each underwriter, the particular types of documents customers had been asked to return and the documents they had returned, performance by region, department, and by individual employee, and a host of other topics. Information could be tracked by region, subject matter, individual loan number, and by dozens of other categories. I regularly submitted requests to Bank of America's offices in Plano, Texas for reports to be generated regarding any of these topics. Typically the reports were returned in a matter of hours or days – depending on how busy the Plano office was at a particular time. I found that Bank of America's systems captured and stored the data needed to perform just about any report I could think of and was able to generate reports quickly by putting all sorts of data points on excel spreadsheets.

12. I observed that Bank of America reported to the Treasury department and made public statements regarding the volume of loans it was successfully modifying, and the efforts it was making to catch up with the volume. Often this involved double counting loans that were in different stages of the modification process. It also involved counting loans that were entitled to modifications as having been modified – only to foreclose on those same loans later. It was well known among Bank of America employees that the numbers Bank of America was reporting to the government and to the public were simply not true.

13. Employees who challenged or questioned the ethics of Bank of America's practice for any reason were often fired. There was an extremely high level of turnover in every HAMP related Bank of America department that I saw. Employees worked in fear of losing their jobs if they called any of Bank of America's practices into question.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

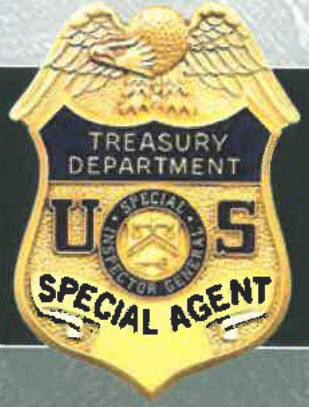
EXECUTED this 15 day of May, 2013 at Fort Worth, Texas

By _____

Steven Cupples

EXHIBIT NO. 7

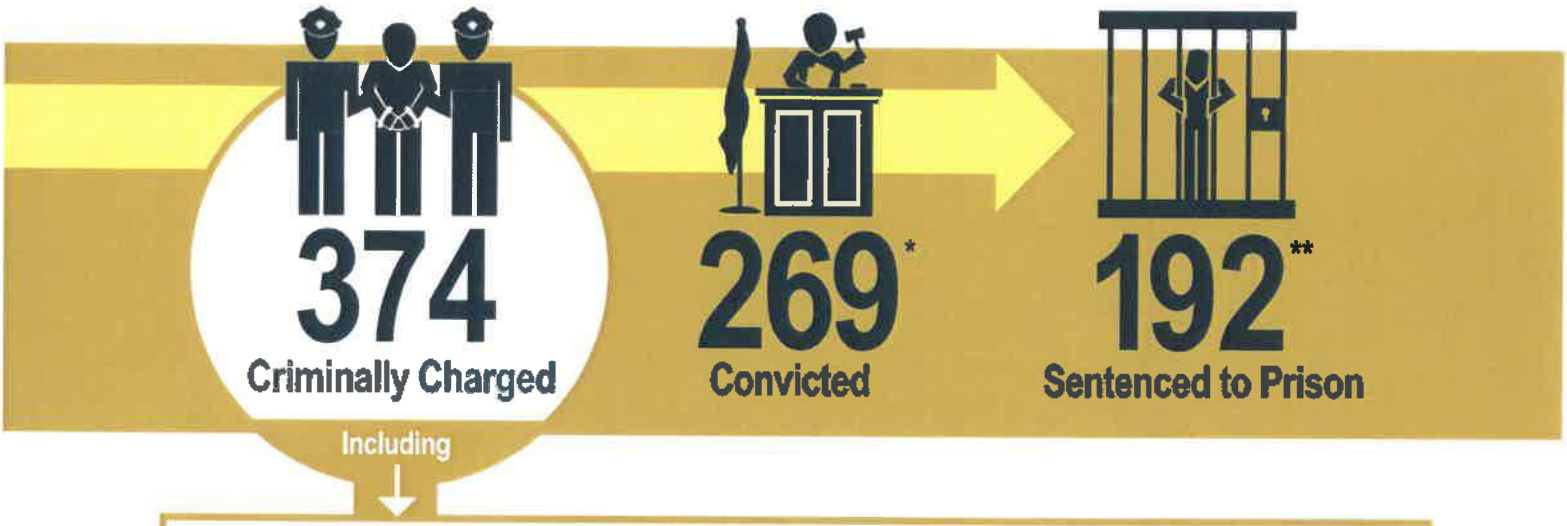
SIGTARP



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM

QUARTERLY REPORT TO CONGRESS
JANUARY 27, 2017

SIGTARP BY THE NUMBERS



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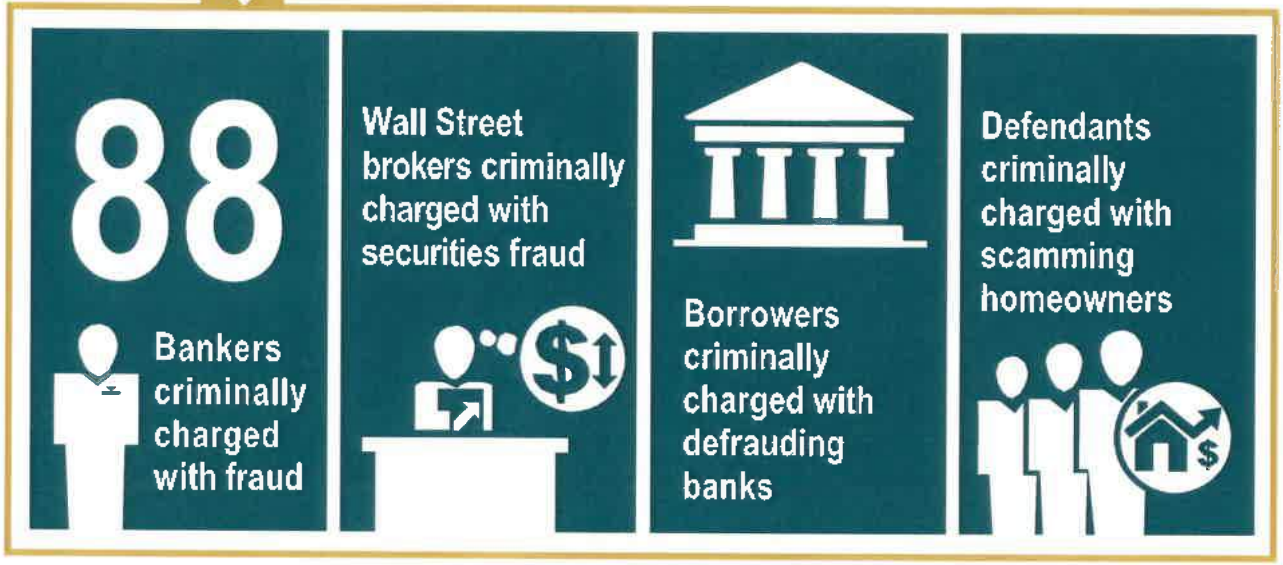


$10 Billion

Recovered from JP Morgan, General Motors, Goldman Sachs, Morgan Stanley + Others

$2 Billion

In Government Cost Savings If SIGTARP Recommendations Are Implemented

Recoveries include homeowner relief
Charges are not evidence of guilt | Many defendants await trial and sentencing

*Includes two reversed on appeal and two vacated due to death or cooperation
**Includes two reversed on appeal

As of January 4, 2017.

LETTER FROM THE SPECIAL INSPECTOR GENERAL

Protecting taxpayer dollars and programs drives SIGTARP's mission

I am excited and honored to introduce you to SIGTARP. We are special agents, investigators, auditors, and forensic specialists conducting oversight through audits and criminal investigations. Unlike most inspectors general, we conduct oversight not of an agency but a program: TARP—a program that goes beyond the bank bailout of 2008 and is far from over. Congress requires a dedicated or "special" inspector general because of TARP's massive size and unprecedented nature. Under current TARP programs, Treasury will pay up to $14 billion through 2023. As a watchdog over these dollars, we will investigate and audit harmful and costly fraud, waste, and abuse. We will find crime, identify cost savings, and recover money lost to fraud.

SIGTARP IS A 40 TIMES RETURN ON INVESTMENT

SIGTARP has already had a significant, positive impact—far greater than would be expected for our small size—and we will continue that positive impact in 2017.

We will stand guard over the more than $10 billion Treasury will pay through 2023, to 139 mortgage servicers (like Ocwen and Wells Fargo), and to 19 state agencies, 390 cities and other local partners, and hundreds of contractors.

This year, as a law enforcement agency, we will also work to recover TARP funds lost to fraud. And we will not be a burden on taxpayers. With $10 billion in recoveries from our investigations (nearly $9 billion of which was recovered last year), we have already generated a **40 times return on investment compared to our annual budget.**[i] Already in fiscal 2017, the Government recovered $52 million from our investigation with the Department of Justice into Ally Financial (formerly GMAC). This recovery exceeds our 2017 budget request, and helps offset the $2.47 billion in losses that Treasury suffered on the principal TARP investment into Ally.[ii]

We also save the Government money as SIGTARP auditors have identified $2 billion in cost savings since 2013. Each quarter, Treasury spends approximately $1 billion on TARP housing programs, so in 2017, we will be looking for waste, mismanagement, inefficiency, and situations where dollars are at risk of being lost to fraud. Already this year, we identified costs savings in the $811 million blight demolition program. We recommended protections from overcharging and back room contracts, which Treasury is implementing, which will save up to $161 million.

Right now, we are auditing how 19 state agencies spent nearly $700 million in administrative expenses paid by Treasury. If there is waste, we will find it. Already in this fiscal year, we have caught and exposed $8.2 million in waste by a Nevada state agency contractor who spent federal dollars earmarked for homeowners on parties, a cocktail bar, employee gifts, a Mercedes Benz for the CEO and more. SIGTARP recommended that Treasury fire the contractor and require the state agency to pay Treasury $8.2 million. Treasury has not taken this action.

We achieve additional Government cost savings by **deterring** fraud and waste. Our exposure of waste in Nevada, and our publicly announced audit, serves to deter waste and fraud for the approximately $30 million a quarter Treasury pays to state agencies for their expenses in administering a TARP program.

[i] As of end of fiscal year 2016, recovery number includes full homeowner relief by Goldman Sachs.
[ii] Ally Financial paid Treasury TARP dividends and interest for Treasury taking on risk. Treasury wrote off the loss on the principal investment.

SIGTARP makes Government better and our nation's banking, housing, automobile, and securities industries safer and stronger

In addition to returning money lost to fraud or waste, SIGTARP's work keeps our nation's industries safe. The bank fraud that we have found, and continue to find, hurts bank lending. We shut down homeowner abuse in all 50 states. The fraudulent sales tactics we have found, and continue to find, in the mortgage-backed securities industry fraudulently drives up traders' sales commissions. One example of how we made the auto industry safer is the result of our investigation with U.S. Attorney Preet Bharara, where we found criminal conduct by TARP recipient General Motors that led to deaths and injuries.[iii] In the wake of our investigation, GM's federal regulator changed its practices, and auto manufacturers now have a quicker response to rectify defects, with vehicle recalls skyrocketing from 20 million in 2013, to 50+ million in 2014, and 51+ million in 2015.

Our past record shows that **SIGTARP delivers**, and we are poised to deliver **equally strong results in the future**. We deliver through targeted law enforcement and audit strategies. Sworn to protect TARP programs funded by Americans, we guard these dollars from fraud, waste, and abuse **by not following precedent**. Instead, we design our own oversight techniques – techniques that leverage best practices with data analytics and trend analysis. Right now, we are analyzing data and conducting trend analysis to find crime proactively in the $811 million demolition program, rather than solely relying on tips and referrals.

As a result of SIGTARP investigations
88 bankers criminally charged, including 2 this quarter

44 bankers already sentenced to prison*

Although most banks are now out of TARP, our special agents continue to investigate crime in those banks, particularly where Treasury took a loss. In 2017, we anticipate more bankers indicted and convicted, based on this quarter's results:

- ***A failed TARP bank chairman was sentenced to five years in federal prison.*** He was the 42nd banker (and 186th defendant) we investigated to be sentenced to prison. His fraud took down the bank causing $7 million in Treasury losses.
- ***An officer at a bank currently in TARP was sentenced to 18 months in federal prison.*** His fraud nearly caused the bank to fail, hurt its ability to repay Treasury for TARP, and hurt its ability to lend to the community.

* Includes one reversed on appeal.

[iii] His office deferred prosecution of GM. GM: (1) admitted failing to disclose a safety defect to the National Highway Traffic Safety Administration and misleading U.S. consumers about that defect; (2) agreed to significant corporate changes to prevent the criminal conduct from repeating; and (3) paid $900 million to the Government.

- ***The CEO and vice president of a failed TARP bank were indicted.*** Both were criminally charged in a fraud scheme.[iv]

Our special agents and investigators continue to investigate crime in prior (and current) TARP banks because it hurts lending, and causes Treasury and taxpayer losses. Just as a bank robber must be prosecuted even if he repays what he stole, so must a banker who defrauded a bank that is now out of TARP. The reason is clear: they are more likely to repeat their crime if not stopped, and to hurt bank lending in the future. We have a significant number of open bank investigations, as well as investigating serious crime in the TARP-demolition program, and other areas.

With our new investigative method of finding bank fraud, prosecutions are moving quickly compared to the past, and we recoup Treasury and FDIC lost funds – money then available for the government to spend or reduce the federal budget.

I am excited to work with you, and would welcome an opportunity to talk to your further about how SIGTARP can add value in the upcoming year.

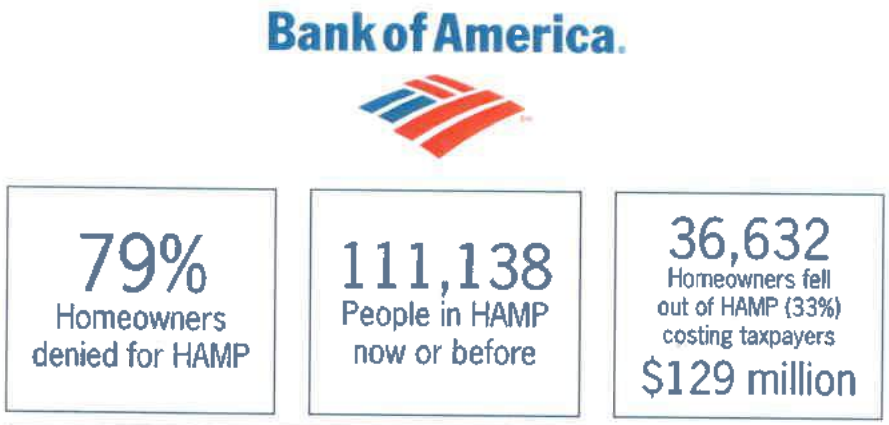
Respectfully,

CHRISTY GOLDSMITH ROMERO
Special Inspector General

[iv] An indictment contains an allegation that a defendant committed a crime. Every defendant is presumed innocent until and unless proven guilty.

15,000 applications and a process rate of only 2,575 applications per month, JPMorgan will be rushing to review applications through the September 2017 deadline, which could lead to improper evaluation of homeowner applications.[66]

One rule that JPMorgan has been breaking is the Treasury rule to provide homeowners the opportunity to re-amortize their mortgage which could lower their mortgage payment after six years to bring their monthly payment goes down. Treasury has found that JPMorgan failed to notify homeowners in HAMP that they were eligible to re-amortize their mortgage and lower their payments.



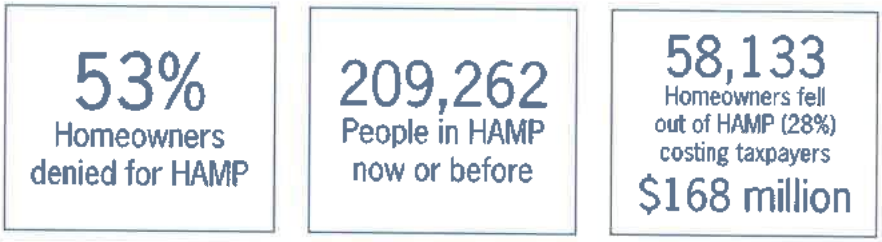
Source: Treasury, IMP Program Volumes - December 2016, accessed 1/19/2017; Treasury, Response to SIGTARP data call 1/17/2017; SIGTARP analysis of Treasury HAMP data.

Bank of America also has one of the worst track records in HAMP. SIGTARP's investigation of Bank of America defrauding HAMP led to a 2012 Department of Justice agreement with Bank of America.[67] Treasury found that Bank of America needed substantial improvement in complying with HAMP's rules in 5 of the last 6 quarters. This should be unacceptable given that Bank of America has already received about $2 billion from Treasury for HAMP.[68]

- ***Risk of Waste — Overcharging Treasury:*** In 2016,Treasury found that Bank of America has overcharged Treasury by hundreds of thousands of dollars found in Treasury's sample. Bank of America reported incorrect information about the delinquency status of several second liens that were extinguished through the HAMP Second Lien program, resulting in more than $400,000 in wasted tax dollars, including almost $150,000 on a single loan. Treasury requested that Bank of America perform a lookback analysis to determine whether there were other instances of misreporting.
- ***Wrongfully denying homeowners admission into HAMP:*** Bank of America denied 79% of all who applied for HAMP, which requires deeper Treasury scrutiny on whether Bank of America is properly evaluating homeowners. In the second quarter 2016, Treasury found more instances of Bank of America wrongfully denying homeowners for HAMP. With a backlog of 29,075

applications and a process rate of only 3,285 applications per month, Bank of America will be rushing to review applications through the September 2017 deadline, which could lead to improper evaluation of homeowner applications.[69]

- ***Miscalculation of income:*** Bank of America has one of the worst track records of any large servicer on miscalculating homeowner income. Miscalculation can lead to Bank of America denying a qualified homeowner for HAMP or set a higher mortgage payment for people in HAMP.
- ***Risk of waste—Failing to reduce principal despite being paid by Treasury to do so:*** In the HAMP principal reduction program, Treasury pays servicers typically several thousand tax dollars per loan to reduce the outstanding balance of underwater mortgages. Treasury found that Bank of America failed to reduce the principal despite being paid by Treasury about $4,500 on average to do so. Bank of America did not reduce these homeowners' underwater balances until Treasury later inquired about the status of these loans, showing the risk of waste, and the power of oversight.



Source: Treasury, 1MP Program Volumes - December 2016, accessed 1/19/2017; Treasury, Response to SIGTARP data call 1/17/2017; SIGTARP analysis of Treasury HAMP data.

Nationstar also has one of the worst track record in HAMP. Nationstar's violations of Treasury rules have been widespread spanning multiple quarters. Nationstar has shown little improvement and, even appears to be getting worse.

- ***Wrongful denying or failing to offer homeowners HAMP admission:*** Of all large HAMP servicers, Nationstar has the worst recent track record in wrongfully denying or failing to offer homeowners admission into HAMP.
- ***Wrongful cancellation of homeowners out of HAMP:*** More than 58,000 homeowners whose mortgages are serviced by Nationstar have fallen out of HAMP, representing taxpayer payments of $168 million to Nationstar. Nationstar has wrongfully cancelled homeowners out of HAMP. This has serious consequences, as 47% of homeowners who have fallen out of HAMP through Nationstar have gone into foreclosure or otherwise lost their homes

EXHIBIT NO. 8

2013 WL 4759649
Only the Westlaw citation is currently available.
United States District Court,
D. Massachusetts.

In re BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) CONTRACT LITIGATION.

M.D.L. No. 10–2193–RWZ.
|
Sept. 4, 2013.

MEMORANDUM OF DECISION

ZOBEL, District Judge.

*1 In this consolidated litigation, individual borrowers from around the country claim that Bank of America[1] mismanaged their requests for loan modifications under the Home Affordable Modification Program ("HAMP"). Plaintiffs now seek to resolve the issue of liability on a classwide basis. They move to certify twenty-six classes, one for each state in which named plaintiffs reside.

I. Background

HAMP is a federal government program designed to prevent mortgage foreclosures. Through HAMP, the government has encouraged mortgage lenders and servicers to provide loan modifications for eligible borrowers. The U.S. Department of the Treasury has administered HAMP by issuing regulations in the form of HAMP Guidelines and Supplemental Directives. *See* Program Guidance, *Home Affordable Modification Program*, https://www.hmpadmin.com/portal/programs/guidance.jsp (last visited Aug. 22, 2013).

The HAMP modification process begins with a preliminary evaluation by the mortgage servicer of the borrower's eligibility. From April 2009 through early 2010, under the Treasury Department's Supplemental Directive 09–01, the servicer could use a borrower's unverified statements about her financial situation to do that preliminary evaluation. *See* U.S. Dep't of the Treasury, Supplemental Directive 09–01, at 5 (Apr. 6, 2009), *available at* https:// www.hmpadmin.com//portal/programs/docs/hamp_servicer/sd0901.pdf. If the preliminary evaluation indicated the borrower was eligible for a HAMP modification, the servicer would then offer the borrower a Trial Period Plan ("TPP"). Each TPP established a trial modification period, usually lasting three months. During that trial period, the borrower was obligated to make reduced monthly payments, provide any required financial documents, and meet other stated conditions. If the borrower complied with the required terms and remained otherwise eligible, then (according to each TPP) the servicer would provide a permanent HAMP modification. That permanent modification would become effective on the Modification Effective Date, the first day of the month after the last trial period payment was due.

Bank of America is one of many mortgage lenders and servicers that participated in HAMP and issued TPPs. Plaintiffs are a number of individual borrowers who claim that they entered into TPPs serviced by Bank of America and made all the required trial payments, but did not receive either a permanent loan modification or a written denial of eligibility by the Modification Effective Date. They assert claims for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and unfair and deceptive acts and practices.

The named plaintiffs include forty-three individuals and couples from twenty-six different states. They now seek to certify twenty-six different classes, one from each state they represent,[2] on the issue of liability. They propose the following class definition:

*2 All individuals with home mortgage loans on properties in [state] whose loans have been serviced by Bank of America and who, since April 13, 2009, have entered into a Trial Period Plan Agreement with Bank of America and made all trial payments required by their Trial Period Plan Agreement, other than borrowers to whom Bank of America tendered either:

(a) A Home Affordable Mortgage Agreement sent to the borrower prior to the Modification Effective Date specified in the Trial Period Plan Agreement; or

(b) A written denial of eligibility sent to the borrower prior to the Modification Effective Date specified in the Trial Period Plan Agreement.

Docket # 208 (Mot.) at 1. The term "Trial Period Plan Agreement" is defined to include only TPPs issued under Supplemental Directive 09–01. *Id.* at 2.[3]

II. Legal Standard

Federal Rule of Civil Procedure 23 governs class certification. The district court may only certify a class after a "rigorous analysis of the prerequisites established by Rule 23." *Smilow v. Sw. Bell Mobile Tel. Sys.*, 323 F.3d 32, 38 (1st Cir.2003); *see also Wal–Mart Stores, Inc. v. Dukes*, —— U.S. ——, ——, 131 S.Ct. 2541, 2551, 180 L.Ed.2d 374 (2011). Under Rule 23(a), a party seeking class certification must show that:

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). These four requirements are known as numerosity, commonality, typicality, and adequacy. *See Smilow*, 323 F.3d at 38.

In addition, the party seeking certification must show that one of the requirements of Rule 23(b) is met. Plaintiffs seek to proceed under Rule 23(b)(3), which allows a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed.R.Civ.P. 23(b)(3)

"When appropriate, an action may be brought or maintained as a class action with respect to particular issues." Fed.R.Civ.P. 23(c)(4). Here, plaintiffs seek to certify their twenty-six classes only as to liability; they propose that damages should be resolved separately in subsequent proceedings. *Cf. Smilow*, 323 F.3d at 41 ("[E]ven if individualized determinations were necessary to calculate damages, Rule 23(c)(4) ... would still allow the court to maintain the class action with respect to other issues.").

III. Analysis

To achieve certification, plaintiffs must "affirmatively demonstrate" that they have met the requirements of Rule 23. *Wal–Mart*, 131 S.Ct. at 2551. "[T]hat is, [they] must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.*

A. Ascertainability

*3 Although not explicitly mentioned in Rule 23, one essential prerequisite for class certification is that any proposed class must be ascertainable. In other words, the class must be defined by objective criteria that make it "administratively feasible for the court to determine whether a particular individual is a member." 7A Charles Alan Wright et al., *Federal Practice & Procedure* § 1760 (West 2013); *Matamoras v. Starbucks Corp.*, 699 F.3d 129, 139 (1st Cir.2012); *Donovan v. Philip Morris USA, Inc.*, 268 F.R.D. 1, 9 (D.Mass.2010). Plaintiffs' proposed classes are defined by objective criteria—primarily the state where the individual's property was located, the identity of the servicer, the type of TPP the individual received, whether the individual made trial payments, and whether Bank of America sent a loan modification or a written denial by the specified date. Plaintiffs have presented expert testimony showing that individuals meeting these objective criteria can be identified by relatively efficient searches on a Bank of America internal database called "MHA Summary." *See* Docket # 240, Ex. 13 (Ayres Report), ¶¶ 69–80. The information in the MHA Summary database can apparently be supplemented by and cross-checked against other internal Bank of America databases. *See id.* ¶¶ 85–100.

Bank of America notes that plaintiffs' class definition depends on when Bank of America *sent* permanent loan modification offers, but the MHA Summary database only shows when permanent loan modifications were *implemented*. That distinction would make a difference in cases where Bank of America sent an individual borrower a permanent loan modification offer before the Modification Effective Date, but the borrower did not accept it (or Bank of America did not implement it) until after that date. *See* Docket # 224, Ex. 14 (Ayres Dep.) at 80. Plaintiffs' expert testified, however, that it appeared there were relatively few borrowers in that situation, and that they could be identified and removed from the proposed classes by adjusting the search algorithm. *See id.* In any case, "the class does not have to be so ascertainable that every potential member can be identified at the commencement of the action." Wright et al., *supra*, § 1760; *see Donovan*, 268 F.R.D. at 9. The criteria that plaintiffs have set forth are sufficiently stable

and objective that "the general outlines of the membership of the class are determinable." Wright et al., *supra*, § 1760. Plaintiffs have therefore satisfied the threshold requirement of ascertainability.

B. Rule 23(a)

As described above, Rule 23(a) sets forth four mandatory requirements for class certification. I discuss each in turn.

1. Numerosity

The numerosity requirement is met if "the class is so numerous that joinder of all members is impracticable." Fed.R.Civ.P. 23(a)(1). This standard "does not impose a precise numerical requirement," but classes of forty or more are generally considered sufficiently numerous. *Connor B. ex rel. Vigurs v. Patrick*, 272 F.R.D. 288, 292 (D.Mass.2011).

*4 Plaintiffs' expert examined a random sample of 3,000 loans out of approximately 375,000 that were given trial modifications by Bank of America. Within that sample, 2,264 loans (about 75%) received TPPs meeting the class definition (i.e., TPPs issued under Supplemental Directive 09–01). Out of those 2,264 loans, plaintiffs' expert found that 1,814 (about 80%) met the class definition assuming a uniform three-month trial period length. By state, the number of observed class members in the 3,000–loan sample ranged from 26 in Alaska to 298 in California, with a median value of 62 observed class members per state. Ayres Report at app. 4. Extrapolating from that sample, the smallest expected class (Alaska's) should have some 123 borrowers in it.[4] I conclude that plaintiffs' showing is sufficient to satisfy the "relatively 'low threshold' " of the numerosity requirement. *Connor B.*, 272 F.R.D. at 292 (quoting *Garcia–Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir.2009)).

2. Commonality

Commonality asks whether there are "questions of law or fact common to the class." Fed.R.Civ.P 23(a)(2) It requires the party seeking certification to show a "common contention" that is "capable of classwide resolution-which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal–Mart*, 131 S.Ct. at 2551. Even a single common question can be enough to satisfy Rule 23(a)(2), as long as answering that question will "drive the resolution of the litigation." *Id.* (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L.Rev. 97, 132 (2009)); *see also id.* at 2556.

The primary common question that plaintiffs advance is whether Bank of America breached the TPPs it issued to each class member by failing to send either a permanent modification offer or a written denial of eligibility by the Modification Effective Date. Plaintiffs argue that the TPPs contractually required Bank of America to send either a permanent modification or a written denial by that date; Bank of America argues they did not.

While each individual class member had a separate TPP, it appears the relevant terms of each TPP were essentially the same; only the amount of the trial payments and the timing of the trial period changed. *See* Docket # 240, Ex. 20 (named plaintiffs' TPPs). The court could therefore interpret the common terms of these form contracts on a classwide basis. *See Smilow*, 323 F.3d 32, 39 (1st Cir.2003) ("The common factual basis is found in the terms of the contract, which are identical for all class members. The common question of law is [how to interpret that contract]."); *see also Schumacher v. AK Steel Corp. Ret. Accumulation Pension Plan*, 711 F.3d 675, 684 (6th Cir.2013) ("The determination of the scope and validity of the agreements involved common questions of law that lend themselves well for class certification.").

*5 Bank of America argues there is no common question because plaintiffs cannot succeed on their breach of contract claim without prevailing on other individualized questions, such as each plaintiff's own performance and damages. But Rule 23(a)(2) "does not require that all questions of law or fact raised in the litigation be common." *George v. Nat'l Water Main Cleaning Co.*, 286 F.R.D. 168, 174 (D.Mass.2012); *see also* Wright et al., *supra*, § 1763. While plaintiffs' case certainly raises a number of individualized questions, it also raises at least one common one: how to interpret the TPPs. That is enough to satisfy Rule 23(a)(2).

Likewise, Bank of America argues that interpreting the TPPs will not "drive the resolution of the litigation," *Wal–Mart*, 131 S.Ct. at 2551 (quoting Nagareda, *supra*, at 132), because individual questions about plaintiffs' performance and damages will remain even if plaintiffs establish their interpretation of the TPPs' terms is correct. That argument fails for two reasons. First, if Bank of America's interpretation of the TPPs prevails, then the entire breach of contract claim fails, which would surely drive the resolution of the litigation. Second, and more importantly, plaintiffs need not show that answering their common question will completely end the litigation; they

need only show that it will "resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* The correct interpretation of the TPPs is surely central to the validity of each class member's contract claims, and it can be resolved for each class member in a single decision. It therefore presents a sufficient common issue. *See Gaudin v. Saxon Mortg. Servs.*, Civil Action No. 11–1663–JST, 2013 WL 4029043, at *5 (N.D.Cal. Aug.5, 2013) ("By determining whether the TPP is an enforceable contract and whether the parties' performance obligations are fully contained within it, the Court can resolve an issue central to the viability of the Proposed Class Members' claims."). *But see Campusano v. BAC Home Loans Servicing LP*, 2013 WL 2302676, at *6 (C.D.Cal. Apr.29, 2013) (finding a lack of commonality in part because interpreting the contracts at issue might not completely resolve the parties' dispute).

This same issue of how the TPPs should be interpreted is also central to the validity of plaintiffs' other claims. Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing depends on their contention that the contract required Bank of America to provide either a permanent modification or a written denial by the Modification Effective Date, since the implied covenant "may not ... be invoked to create rights and duties not otherwise provided for in the existing contractual relationship." *Latson v. Plaza Home Mortg.*, 708 F.3d 324, 326 (1st Cir.2013) (omission in original) (quoting *Uno Rests. v. Bos. Kenmore Realty Corp.*, 441 Mass. 376, 805 N.E.2d 957, 964 (Mass.2004)).[5] Their alternative claim for promissory estoppel insists that Bank of America promised in each TPP to provide a permanent modification or a written denial by the Modification Effective Date—the same interpretive question raised in the breach of contract claim. As for plaintiffs' claim of unfair and deceptive acts and practices, it is not entirely clear what acts and practices form the basis for that claim; but to the extent plaintiffs claim that Bank of America acted unfairly by breaching their TPPs intentionally and in bad faith, they raise the same common interpretive issue of what Bank of America's duties were under the TPPs.[6]

*6 Bank of America also argues that differences among the laws of the twenty-six different states at issue defeat commonality. But plaintiffs seek to certify a separate class for each state, meaning that the same state law applies to all persons within each class. Of course, "a court must be careful not to certify too many groups ." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1262 (11th Cir.2004). The problems that arise from certifying many different classes in a single case, however, are problems of class adjudication that are more appropriately addressed under the superiority requirement of Rule 23(b)(3). *Cf. In re Am. Med. Sys.*, 75 F.3d 1069, 1085 (6th Cir.1996) (finding plaintiffs had failed to show superiority for a nationwide class because "[i]f more than a few of the laws of the fifty states differ, the district judge would face an impossible task of instructing a jury on the relevant law"); 7AA Wright et al., *supra*, § 1780.1. The asserted differences in state law across the different proposed classes do not prevent commonality within each class.

I therefore conclude plaintiffs have shown their proposed classes meet Rule 23(a)(2)'s commonality requirement.

3. Typicality

The typicality requirement is satisfied if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed.R.Civ.P. 23(a)(3). "The claims of the entire class need not be identical, but the class representatives must generally 'possess the same interests and suffer the same injury' as the unnamed class members." *Connor B.*, 272 F.R.D. at 296 (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 156, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982)). In general, a representative plaintiff is sufficiently typical if his claims and the class members' claims (1) arise from the same event, practice, or course of conduct, and (2) are based on the same legal theory. *See Garcia–Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir.2009)

At the broadest level, all of the named plaintiffs' claims arise from the same allegedly wrongful practice—Bank of America's failure to provide a permanent modification or a written denial by the Modification Effective Date—and are based on the same legal theories. However, Bank of America raises a number of particular issues with respect to certain named plaintiffs.

First, Bank of America argues that plaintiff Kimberley George and plaintiffs Matthew Nelson and Angelica Huato–Nelson ("the Nelsons") are not actually members of the proposed classes. Specifically, it claims they did not make all of their trial period payments in a timely fashion. *See* Mot. at 1 (defining the classes to include only borrowers who "made all trial payments required by their Trial Plan Period Agreement"). Bank of America's argument plainly fails as to George, who timely made all three of the trial payments required by her TPP. Bank of America only tasks George with nonpayment because she fell behind after Bank of America granted her a "Trial Offer Extension," which extended her trial plan by an additional month beyond the Modification Effective Date specified in her TPP. Docket # 223 (Schoolitz Decl.), ¶ 10

& Ex. 24. But George asserts—like the other members of her proposed class—that she had fully complied with her TPP by making the three payments it specified. Any subsequent late or missed payment is not directly relevant to her claim. As for the Nelsons, the record shows a disputed issue of fact over whether they made their third trial payment in a timely fashion. *Compare* Schoolitz Decl., ¶ 31 & Exs. 127–128 (indicating the Nelsons' first three trial payments were those that posted on June 18, July 10, and September 15, 2009, making the third trial payment late), *with* Docket # 248, Ex. 65 (Ayres Decl.), ¶ 12 & n. 16 (indicating the Nelsons' first three trial payments were those that posted on May 5, June 18, and July 10, 2009, making all three payments timely). Plaintiffs' evidence on this disputed question is sufficient to show the Nelsons' typicality for present purposes. If further factual development were to demonstrate that the Nelsons did not make their third trial payment on time, the Nelsons could be replaced by a different class representative.'

*7 Bank of America next argues that named plaintiffs Magali and Manuel Alvarenga, Donald and Maria Hall, Marie Freeman, and Jason Volpe are not typical because they entered into TPPs with Wilshire Credit Corporation ("Wilshire"), not Bank of America. Wilshire is described in the complaint as a "subsidiary or sister company" of Bank of America. Third Am Compl., ¶ 167. Loans previously serviced by Wilshire are apparently now serviced by Bank of America, and the standard terms of the TPPs issued by Wilshire are apparently identical to those issued by Bank of America. However, the Modification Effective Date on the Alvarengas' TPP, the Halls' TPP, and Freeman's TPP had already passed before Bank of America began servicing their loans. (The Modification Effective Date on Volpe's TPP occurred about a month after Bank of America began servicing his loan.)

Although the typicality requirement "may be satisfied even though varying fact patterns support the claims or defenses of individual class members," Wright et al., *supra*, § 1764, I conclude Bank of America is correct to argue that named plaintiffs whose TPPs were issued by Wilshire are not typical of the proposed classes. In the first place, they are outside the plain meaning of the class definition, which explicitly limits the proposed classes to individuals who "have entered into a Trial Plan Period Agreement with Bank of America." Mot. at 1. The Alvarengas, the Halls, Freeman, and Volpe entered into TPPs with Wilshire, not with Bank of America. And this issue cannot be avoided by simply redefining the classes: To pursue their claims, these plaintiffs would have to explain the relationship between Wilshire and Bank of America, and show why Bank of America should be liable for the alleged breach of Wilshire's TPPs. That showing may be simple, but it may not—especially where the alleged breach was committed by Wilshire (which failed to send a permanent modification or a written denial before the Modification Effective Date) well before Bank of America began servicing the loan. These individual issues frustrate any confidence in the ability of these named plaintiffs to represent the proposed classes. *See Swanson v. Lord & Taylor LLC*, 278 F.R.D. 36, 41 (D.Mass.2011) ("[T]ypicality and adequacy may be defeated where the class representatives are subject to unique defenses which threaten to become the focus of the litigation." (quoting *In re Credit Suisse-AOL Sec. Litig.*, 253 F.R.D. 17, 23 (D.Mass.2008)). I therefore find the Alvarengas, the Halls, Freeman, and Volpe do not meet Rule 23(a)(3)'s typicality requirement.

Finally, Bank of America argues that most of the remaining named plaintiffs are unique in various ways. For instance, Bank of America asserts that many named plaintiffs themselves failed to perform as required by their TPPs: some because they made untrue representations in their TPPs, others because they failed to provide documents as required by their TPPs, and still others because they failed to complete credit counseling as required by their TPPs. Likewise, Bank of America asserts that some named plaintiffs have no damages or have failed to mitigate their damages. It also argues that some named plaintiffs have other unique circumstances: for instance, one named plaintiff filed for bankruptcy during her trial period, and another named plaintiff claims he had an oral agreement with Bank of America in addition to his TPP. Because of these individual issues, Bank of America argues, most of the named plaintiffs are not typical of the proposed classes.

*8 Bank of America's arguments do cast substantial doubt on whether class action treatment is appropriate here. Nevertheless, I conclude that the remaining named plaintiffs have adequately shown typicality. No two individual class members in any class are exactly identical; the typicality requirement may be satisfied despite some variation in the individual situations of the named plaintiffs and the class members. Wright et al., *supra*, § 1764. At bottom, the typicality requirement seeks to illuminate "whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff[s'] claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Wal–Mart*, 131 S.Ct. at 2551 n. 5 (quoting *Falcon*, 457 U.S. at 158 n. 13). Here, the claim that the named plaintiffs seek to advance on behalf of their respective

classes is that the TPPs required Bank of America to provide a permanent modification or a written denial by the Modification Effective Date, and that Bank of America is liable for damages if and when it failed to do so. As regards that claim, the remaining named plaintiffs are typical of their classes; they each received a TPP from Bank of America with terms like those of the other class members, and Bank of America failed to send them either a permanent modification or a written denial by their respective Modification Effective Dates. Beyond that, any individual differences between the remaining named plaintiffs and the class members are primarily relevant to the predominance requirement of Rule 23(b)(3) rather than the typicality requirement of Rule 23(a)(3). *See Gaudin*, 2013 WL 4029043 at *5–6 (finding typicality satisfied in a similar case).

I therefore find that the named plaintiffs other than the Alvarengas, the Halls, Freeman, and Volpe raise claims that are typical of the proposed classes.

4. Adequacy

Adequacy of representation requires that "the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). This prerequisite has two parts: "(1) the attorneys representing the class must be qualified and competent; and (2) the class representatives must not have interests antagonistic to or in conflict with the unnamed members of the class." *Connor B.*, 272 F.R.D. at 297 (citing *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir.1985)). Plaintiffs' counsel here are experienced litigators with years of experience in class action work; I have no difficulty concluding that they can adequately represent the proposed classes. I also see no conflict of interest, and Bank of America has identified none, between the remaining named plaintiffs and the other members of the proposed classes. The adequacy requirement is thus satisfied.

C. Rule 23(b)(3)

Plaintiffs seek to certify their proposed classes under Rule 23(b)(3), which authorizes a class action where "the questions of law or fact common to class members predominate over any questions affecting only individual members, and ... a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed.R.Civ.P. 23(b)(3).' Certifying a class under Rule 23(b)(3) requires "a close look at the case before it is accepted as a class action." *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 522 F.3d 6, 18 (1st Cir.2008) (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 615, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997)).

1. Predominance

*9 The predominance requirement determines "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. Common questions may predominate despite the existence of individual differences, as long as "a sufficient constellation of common issues binds class members together." *Waste Mgmt. Holdings v. Mowbray*, 208 F.3d 288, 296 (1st Cir.2000). However, the predominance standard is "far more demanding" than the commonality requirement of Rule 23(a)(2). *In re New Motor Vehicles*, 522 F.3d at 20 (quoting *Amchem*, 521 U.S. at 624). Deciding what questions predominate requires the court to "formulate some prediction as to how specific issues will play out." *Waste Mgmt.*, 208 F.3d at 298

The predominance analysis is somewhat nuanced in this case because plaintiffs seek to certify their proposed classes only for adjudication of liability. *See* Fed.R.Civ.P 23(c)(4) ("When appropriate, an action may be brought or maintained as a class action with respect to particular issues."). The Second and Ninth Circuits have held that when plaintiffs seek to certify a class on a particular issue, they need only show that common questions predominate as to that issue. *See In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 226–27 (2d Cir.2006); *Valentino v. Carter–Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.1996) The Fifth Circuit, on the other hand, has held that "a cause of action, as a whole, must satisfy the predominance requirement" in order for plaintiffs to certify a class on any issue. *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n. 21 (5th Cir.1996). I need not decide which position is correct. Even assuming plaintiffs need only show common questions predominate on the specific issue of liability, not the entire cause of action, they have failed to make that showing.

a. Breach of Contract

Plaintiffs' primary theory of liability is that each TPP represented an enforceable contract between the individual borrower and Bank of America, and Bank of America breached those contracts by failing to send either a permanent modification or a written denial by the modification effective date. I have previously determined that plaintiffs' TPPs were enforceable contracts supported by consideration. *See* Docket # 66 (Mem. of Decision) at

8–11. That decision is supported by a number of recent circuit court cases. *See Corvello v. Wells Fargo Bank*, Nos. 11–16234 & 11–16242, 2013 WL 4017279, at *4–6 (9th Cir. Aug.8, 2013); *Young v. Wells Fargo Bank*, 717 F.3d 224, 233–36 (1st Cir.2013); *Wigod v. Wells Fargo Bank*, 673 F.3d 547, 560–66 (7th Cir.2012).

The TPPs do not explicitly state that Bank of America is required to send either a permanent modification agreement or a written denial by the Modification Effective Date. Nevertheless, plaintiffs argue that the contracts implicitly impose that obligation on Bank of America. The First Circuit recently accepted a similar argument; in *Young v. Wells Fargo Bank*, it held that another TPP could plausibly be read to require the servicer to offer a permanent modification by the Modification Effective Date if the borrower met her obligations under the agreement. *Young*, 717 F.3d at 233–36. That TPP used somewhat different language from the TPPs at issue here, *see id.* at 234–35, so *Young*'s holding is not directly applicable. Still, *Young* indicates that plaintiffs have raised a plausible common question about Bank of America's duties under the TPPs.

*10 But that common question is outweighed by the numerous individual questions affecting liability. In order to show that Bank of America is liable for a breach of contract, each plaintiff must show that a contract existed, that he performed as required by that contract, and that Bank of America breached the contract.[9] *See, e.g., Amicas, Inc. v. GMG Health Sys.*, 676 F.3d 227, 231 (1st Cir.2012).[10] The second element—plaintiffs' own performance—poses the difficulty here. The TPPs placed numerous obligations on borrowers who sought a modification. Each borrower had to "provid[e] confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income." Docket # 240, Ex. 20 ("TPP") at 1. Each borrower had to "certify, represent ... and agree" that he was "unable to afford his mortgage payments," *id.* § 1.A; that he "live[d] in the Property" and it was his "principal residence," *id.* § 1.B; that there had been no change in the ownership of the property, *id.* § 1.C; that he would "provide [ ] documentation for all income," *id.* § 1.D; that all the documents and information he had provided were true and correct, *id.* § 1.E; and that he would obtain credit counseling if required to do so, *id.* § 1.F. In addition, each borrower had to make the required trial payments on a timely basis. *Id.* § 2. The new obligations imposed on plaintiffs by their TPPs are the consideration that they provided to Bank of America. *See* Mem. of Decision at 9–10; Third Am. Compl., ¶ 520; *see also Bosque v. Wells Fargo Bank*, 762 F.Supp.2d 342, 351–52 (D.Mass.2011); *Durmic v. J.P. Morgan Chase Bank*, Civil Action No. 10–10380–RGS, 2010 WL 4825632, at *3 (D.Mass. Nov.24, 2010) (noting that similar TPPs required plaintiffs to "provide documentation of their current income, make legal representations about their personal circumstances, and agree to undergo credit counseling if requested to do so").[11]

Deciding whether each plaintiff fulfilled his obligations under his TPP depends on a nearly endless series of individual questions: "Did Plaintiff A provide accurate documents permitting verification of all his income? Did Plaintiff A live in the property as his principal residence? Did Plaintiff A obtain credit counseling if required to do so? Did Plaintiff A make his trial payments on a timely basis? Did Plaintiff B provide accurate documents permitting verification of all his income? Did Plaintiff B live in the property as his principal residence? ..." And so on, and so on, and so on, for each obligation of each member of each of the twenty-six classes.

Of course, the mere existence of these individual questions is not enough to show that they predominate. Predominance is not "determined simply by counting noses: that is, by determining whether there are more common issues or more individual issues." *Butler v. Sears, Roebuck & Co.*, Nos. 11–8029 & 12–8030, 2013 WL 4478200, at *4 (7th Cir. Aug.22, 2013). Common questions may still predominate over numerous individual questions where "individual factual determinations can be accomplished using computer records, clerical assistance, and objective criteria—thus rendering unnecessary an evidentiary hearing on each claim." *Smilow*, 323 F.3d at 40. But the present record shows that the individual questions presented in this case are not susceptible to simple, routine resolution. They will instead require separate factual inquiries that will overwhelm any common questions.

*11 A brief survey of the named plaintiffs' claims shows how individual questions will predominate. Borrowers entering a TPP were required to make their trial payments in a timely fashion; the class definition purportedly eliminates any individual questions here, since the proposed classes include only borrowers who met that requirement. But we have already seen an individual factual question arise over whether two named plaintiffs, the Nelsons, actually met that obligation. *See supra* Part III.B.3. *Compare* Schoolitz Decl., ¶ 31 & Exs. 127–128, *with* Docket # 248, Ex. 65 (Ayres Decl.), ¶ 12 & n. 16. Borrowers were also required to certify that they were unable to afford their mortgage payments; the record shows an individual factual question over whether named plaintiff Heather Galasso could in fact afford her mortgage payments before beginning her TPP. *Compare*

Docket # 224, Ex. 4 at 71–72, 76–77, 135 (indicating Galasso had the financial ability to make her full mortgage payments), *with* Docket # 248, Ex. 79 (indicating Galasso's credit card debt was excessive). Borrowers were required to certify that they lived in the mortgaged property as their principal residence. Bank of America's records indicate that named plaintiff Darren Kunsky did not live in the mortgaged property as his principal residence, *see* Docket # 223, Ex. 92; but Kunsky himself has testified that he did live in the property at the relevant time, *see* Docket # 248, Ex. 84. Borrowers were required to obtain credit counseling if Bank of America asked them to do so; named plaintiff Aisanou Balde was asked to obtain credit counseling, but never did, because (she testified) the phone number that Bank of America gave her did not work. *See* Docket # 224, Ex. 15. Finally, borrowers were required to provide documents permitting verification of all of their income. This is the individual question that arises most frequently, given the Kafkaesque bureaucracy that decided which documents were required of which borrowers. Bank of America asserts that more than a quarter of the proposed class representatives failed to return the necessary documents, and has produced some evidence in each case to back its assertions. Plaintiffs dispute Bank of America's assertions with respect to each borrower. But those disputes, like all the others discussed above, can only be decided by individual inquiries into each plaintiff's performance. Factual questions like these cannot be resolved by just "computer records, clerical assistance, and objective criteria." *Smilow*, 323 F.3d at 40. Instead, they will require separate evidentiary hearings for many if not all of the proposed class members. These individual factual disputes will predominate in determining Bank of America's liability as to each plaintiff.

Plaintiffs raise several arguments that seek to avoid these individual questions. First, they argue that Bank of America would only issue a TPP when it was satisfied that the borrower receiving the TPP already met the criteria set out in Section 1 of the agreement (financial hardship, residence in the mortgaged property, documentation of income, etc.). According to plaintiffs, the fact that each class member received a TPP is itself enough to show they had each satisfied all obligations under Section 1; the only remaining obligation was to make the trial payments. But that argument plainly fails. The TPPs explicitly contemplate that borrowers may be required to provide documentation or meet other obligations after they enter into their TPPs. *See, e.g.*, TPP, pmbl. ("If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all my income ...."); *id.* § 1.D ("I am providing or already have provided documentation for all income that I receive ...."); *id.* § 1.F ("If Servicer requires me to obtain credit counseling, I will do so."). Moreover, the first sentence of each TPP indicates that Bank of America is only required to provide a permanent modification if the borrower's "representations in Section 1 continue to be true in all material respects." *Id.* pmbl. In other words, each borrower had ongoing obligations that continued after she entered into her TPP.[15] The mere fact that each class member received a TPP is not enough to show that they each complied with all obligations under the TPPs—especially since Bank of America has adduced some evidence indicating that many class members did not in fact comply with their obligations.

*12 Next, plaintiffs claim Bank of America has waived any objection to individual borrowers' nonperformance, thereby obviating any relevant individual questions. Plaintiffs rest largely on Section 2 .F of the TPPs, which states (as relevant): "If prior to the Modification Effective Date ... the Servicer [Bank of America] determines that [the borrower's] representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Plan will terminate." TPP, § 2.F. Plaintiffs characterize this provision as placing a duty on Bank of America to verify the borrower's representations, and to raise any objections to those representations, before the Modification Effective Date. Another federal district court recently accepted a similar argument regarding a similar TPP, holding that under this provision the court was not required to consider whether the individual borrowers actually performed but only whether the defendant mortgage servicer determined that they performed. *See Gaudin*, 2013 WL 4029043 at *7–8.

I do not find that argument persuasive. Plaintiffs' individual performance is a necessary part of their breach of contract claim; unless plaintiffs actually performed, Bank of America is not liable under the contract. *See* TPP, pmbl. (stating Bank of America will provide a permanent modification only if the borrower is "in compliance with this [TPP]"). Section 2.F does nothing to change that. It says that if Bank of America *does* determine the borrower's representations are false before the Modification Effective Date, the borrower *will not* receive a permanent modification. But it nowhere explicitly requires Bank of America to object to a borrower's nonperformance before the Modification Effective Date or else waive that objection forever.[16]

Moreover, plaintiffs' interpretation would "render large swaths of the TPP nugatory," *Young*, 717 F.3d at 235. It would mean plaintiffs were not actually required to perform *any* of their obligations under Section 1, as long

as Bank of America failed to discover the nonperformance before the Modification Effective Date. While I need not conclusively interpret this provision of the contract now, I consider plaintiffs' interpretation of Section 2.F so unlikely to succeed that it does not cause common questions to predominate. *See Waste Mgmt.*, 208 F.3d at 298 (deciding predominance requires "some prediction as to how specific issues will play out"). I reach the same conclusion with respect to plaintiffs' alternative argument that Bank of America waived plaintiffs' nonperformance by simply accepting plaintiffs' trial payments. *Cf. Basque*, 762 F.Supp.2d at 351–52 (noting borrowers' trial payments were already required by "their undisputed pre-existing mortgage loan obligations").

In sum, whether Bank of America is liable for breach of contract depends on numerous individual questions about each class member's performance. Those individual questions predominate over the questions common to the proposed classes. Plaintiffs' breach of contract claim therefore cannot be certified under Rule 23(b)(3).[13]

b. Breach of the Implied Covenant

*13 Individual questions will likewise predominate in the adjudication of plaintiffs' claim for breach of the implied covenant of good faith and fair dealing. That implied covenant "may not ... be invoked to create rights and duties not otherwise provided for in the existing contractual relationship, as the purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance." *Latson*, 708 F.3d at 326 (omission in original) (quoting *Uno Rests.*, 805 N.E.2d at 964). As discussed above, each TPP makes clear that Bank of America's duties are predicated on plaintiffs' performance of their own obligations. *See, e.g.*, TPP, pmbl. ("If I am in compliance with this [TPP] and my representations in Section 1 continue to be true in all material respects, then [Bank of America] will provide me with a [permanent modification]."). If plaintiffs did not perform, then Bank of America did not violate the intended and agreed expectations of the parties by failing to perform in turn. Moreover, insofar as plaintiffs base their implied covenant claim on other misdeeds beyond the failure to provide a permanent modification or a written denial by the Modification Effective Date, they raise further individual questions as to which of these alleged misdeeds affected which individual class members. *See supra* note 5; *cf.* Third Am. Compl., ¶ 530.

c. Promissory Estoppel

For their promissory estoppel claim (pled in the alternative), plaintiffs allege that Bank of America "by way of its TPP Agreements, made representations to Plaintiffs that if they returned the TPP Agreements executed and with supporting documentation, and made their TPP payments, they would receive permanent HAMP modifications." Third Am. Compl., ¶ 543. In other words, the alleged promise was a conditional one—that if plaintiffs complied with their obligations under their TPPs, Bank of America would provide them permanent loan modifications. Like the breach of contract claim and the implied covenant claim, then, this promissory estoppel claim raises the same individual questions as to whether each plaintiff performed under her TPP. Once again, these individual performance questions predominate over the relevant common questions.

d. Unfair and Deceptive Acts and Practices

Finally, individual questions also predominate on plaintiffs' claims regarding Bank of America's allegedly unfair and deceptive acts and practices. To the extent these claims are based on Bank of America's alleged breach of the TPPs, they raise the same individual questions of plaintiffs' performance discussed above. *See Campusano*, 2013 WL 2302676, at *7 ("Whether [Bank of America's] conduct was unfair depends on whether the conduct breached the loan modification agreements. Because plaintiffs have not shown that there are questions capable of classwide resolution relating to the breach of the modification agreements, neither is the alleged fairness of those supposed breaches.") To the extent these claims are based on other unfair practices, there are individual factual issues as to whether each plaintiff was actually affected by the same alleged practices. *See supra* notes 5 & 6; *cf. Wal-Mart*, 131 S.Ct. at 2551 (no commonality where plaintiffs did not suffer the same injury from the same practice).

2. Superiority

*14 As well as failing the predominance requirement, plaintiffs' proposed classes also fail the superiority requirement. Superiority looks to whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed.R.Civ.P. 23(b)(3). Plaintiffs argue that liability can be more efficiently determined on a classwide basis rather than on an individual basis. *See Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 273 (D.Mass.2005) (superiority is met where "the piecemeal adjudication of numerous separate lawsuits covering the same or substantially

similar issues ... would be an inefficient allocation of limited court resources"). Likewise, plaintiffs argue that many class members would lack "the financial incentives or wherewithal to seek legal redress for their injuries." *Id.; cf. Gintis v. Bouchard Transp. Co.*, 596 F.3d 64, 67–68 (noting "the very reason for Rule 23(b)(3)" is "to make room for claims that plaintiffs could never afford to press one by one"). These arguments are certainly forceful; but they are outweighed by the unmanageable difficulty that would attend plaintiffs' twenty-six proposed class actions. As described above, plaintiffs' claims depend predominantly on individual factual questions. A class action cannot sensibly adjudicate those individual questions. It would either ignore them, denying the parties a fair trial on the merits of each plaintiff's claim; or it would attempt to resolve them all, and wind up hopelessly entangled in each plaintiff's idiosyncratic facts. Neither option is acceptable. *See Wal–Mart*, 131 S.Ct. at 2560–61 (defendant is entitled to litigate its defenses to individual claims); Fed.R.Civ.P. 23(b)(3)(D) (superiority depends in part on "the likely difficulties in managing a class action"). Moreover, as the many mortgage-related cases in the federal courts attest, individual plaintiffs are normally well-motivated to bring any claims they might have in order to save their homes. This is not a case where class action treatment is required "to vindicate the claims of consumers and other groups of people whose individual claims would be too small to warrant litigation." *Smilow*, 323 F.3d at 41; *see* Fed.R.Civ.P 23(b)(3)(B) (superiority depends in part on "the extent and nature of any litigation concerning the controversy already begun by or against class members"). Under these circumstances, separate individual actions would more fairly and efficiently resolve the liability issues that plaintiffs seek to certify for classwide adjudication.

IV. Conclusion

This case demonstrates the vast frustration that many Americans have felt over the mismanagement of the HAMP modification process. Plaintiffs have plausibly alleged that Bank of America utterly failed to administer its HAMP modifications in a timely and efficient way; that in many cases it lost documents, or pretended it had not received them, or arbitrarily denied permanent modifications. *See* Third Am. Compl., ¶¶ 135–473 (describing the different experiences of each named plaintiff). Plaintiffs' claims may well be meritorious; but they rest on so many individual factual questions that they cannot sensibly be adjudicated on a classwide basis. Because plaintiffs have failed to meet the predominance and superiority requirements of Rule 23(b)(3), their motion for class certification (Docket # 208) is DENIED.

*15 Plaintiffs' motions to compel discovery (Docket91 & 126) and their motions to strike (Docket242 & 263) are also DENIED.

All Citations

Slip Copy, 2013 WL 4759649

Footnotes

1 I use "Bank of America" to refer collectively to defendant Bank of America, N.A. and its subsidiary, defendant BAC Home Loans Servicing, LP.

2 The states involved are Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and Wisconsin. Plaintiffs seek to certify their breach of contract claim and their implied covenant claim in every state listed, either separately or as a single claim. They seek to certify their promissory estoppel claim in every state listed except for North Carolina and Virginia, and their unfair and deceptive acts and practices claim in every state listed except for Alabama, Georgia, Ohio, Texas, and Virginia. See Docket # 210, Ex. 10.

3 Supplemental Directive 09–01 was superseded by Supplemental Directive 10–01, which required servicers to obtain fully verified financial information to determine eligibility before issuing any TPP with an effective date after June 1, 2010. See U.S. Dep't of the Treasury, Supplemental Directive 10–01 (Jan. 28, 2010), *available at* https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1001.pdf.

4 Expanding the mathematics somewhat: Plaintiffs' expert reports that there are 241 mortgage loans in Alaska to which Bank of America provided trial modifications. The random sample produced a total of 51 such loans from Alaska, of which 35 (about 69%) received TPPs under Supplemental Directive 09–01. Out of those 35 loans, according to plaintiffs' expert, 26 (about 74%) were class loans (i.e., their borrowers did not receive either a permanent modification or a written denial before the Modification Effective Date). The best available inference, then, is that about 241 x 69% x

74% 123 Alaska loans belong to borrowers meeting the class definition.
Of course, these statistics rest on a number of questionable assumptions. For example, the sample of 3,000 loans, which the parties describe as "random," included 51 loans from Alaska (about 21% of the asserted total of 241 such loans) but only 516 loans from California (about 0.5% of the asserted total of 99,654 such loans). That distribution would be highly unlikely in a truly random sample. I nevertheless conclude plaintiffs have produced sufficient evidence to meet their burden.

5 Plaintiffs allege a number of unscrupulous practices by Bank of America that they claim are evidence of bad faith. For instance, they describe deliberate delays in reviewing borrowers' documents, lies about whether required documents had been received, lies about whether borrowers' modifications were actually under review, baseless denials intended only to reduce the TPP backlog, etc. Plaintiffs' claim for breach of the implied covenant, however, only allows them to recover insofar as they were denied their intended and expected benefits from the contract. The only such benefit that plaintiffs claim all class members were denied is the right to either a permanent modification or a written denial by the Modification Effective Date. To the extent plaintiffs claim some class members were harmed in other ways by Bank of America's unscrupulous practices, they have failed to show—indeed, they do not even attempt to show—that any one of those unscrupulous practices affected each class member individually and so raises an issue common to each proposed class. *See Wal-Mart*, 131 S.Ct. at 2551 ("Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.' This does not mean merely that they have all suffered a violation of the same provision of law." (citation omitted) (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147 157 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982)).

6 Plaintiffs' currently active complaint, the third amended complaint, refers only to Bank of America's "conduct as set forth herein and as alleged in the underlying complaints" and its "false, deceptive and misleading statements and omissions" in describing the grounds for the claim of unfair and deceptive acts and practices. Docket # 84 (Third Am. Compl.), ¶¶ 555–95. Of course, the third amended complaint describes a wide array of allegedly unfair conduct, much of which was only experienced by some plaintiffs and not by others. *See id.* at ¶¶ 135–473 (describing the different experiences of each named plaintiff). As with plaintiffs' implied covenant claim, to the extent plaintiffs' unfair and deceptive acts and practices claim rests on the different individual experiences of the named plaintiffs, it does not raise a common issue appropriate for class treatment. *See Wal-Mart*, 131 S.Ct. at 2551; *cf. Smilow*, 323 F.3d at 42 (plaintiffs relying on individual oral misrepresentations "risk losing class status").

7 The Nelsons currently represent the proposed California class, which is also represented by Magali and Manuel Alvarenga and by Jesus Carillo. Because Carillo appears to meet the typicality requirement, the proposed California class could be certified even without the Nelsons.

8 The Alvarengas intended to represent the proposed California class; Freeman intended to represent the proposed New York class; and the Halls and Volpe intended to represent the proposed Pennsylvania class. Each of these proposed state classes is represented by other named plaintiffs who meet the typicality requirement, so the disqualification of these named plaintiffs does not bar certification of any of these classes.

9 In a single footnote, plaintiffs also mention Rule 23(b)(2), which allows certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed.R.Civ.P. 23(b)(2). But plaintiffs' motion explicitly seeks to certify twenty-six classes only on the issue of liability; it does not describe any proposed injunctive relief or corresponding declaratory relief. *See* 7AA Wright et al., *supra*, § 1775 ("[A]n action seeking a declaration concerning defendant's conduct that appears designed simply to lay the basis for a damage award rather than injunctive relief would not qualify under Rule 23(b)(2) ."). In any case, classwide declaratory relief would be inappropriate here; given the individualized issues described below, plaintiffs have failed to make the required preliminary showing that Bank of America has acted or refused to act on grounds that apply generally to the proposed classes. *See Wal-Mart*, 131 S.Ct. at 2557–61 (holding that Rule 23(b)(2) cannot be used to deprive a defendant of individualized defenses).

10 Although plaintiffs bring their contract claims under the laws of several different states, the contract principles at issue here do not vary materially.

11 If a plaintiff seeks damages, he must also show causation and the amount of damages. *See Amicas*, 676 F.3d at 231. But those elements are distinct from the issue of liability, and plaintiffs seek certification only on liability. *Cf. In re Nassau Cnty.*, 461 F.3d at 226–27; *Valentino*, 97 F.3d at 1234.

12 The parties do not discuss whether the representations in Section 1 constitute duties imposed on the borrower, conditions precedent to Bank of America's duties, or both. *See Restatement (Second) of Contracts* § 227 (West 2013); 13 *Williston on Contracts* § 38:7 (West 2013); *cf.* Mem. of Decision at 9–10 (considering both obligations and

