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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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FEDERAL TRADE COMMISSION,

  Plaintiff,

   v.

COUNTRYWIDE HOME LOANS, Inc.,
a corporation, and

BAC HOME LOANS SERVICING, LP,
a limited partnership,

  Defendants.

Case No. 10-4193-JFW-SSX

**SUPPLEMENTAL CONSENT
JUDGMENT AND ORDER**

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  Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), and Defendant, BAC Home Loans Servicing, LP ("BAC Home Loans"), jointly stipulate to this Supplemental Consent Judgment and Order ("Supplemental Order"), which resolves Plaintiff's allegation that BAC Home Loans violated the Consent Judgment and Order ("Consent Order") entered by this Court on June 15, 2010. BAC Home Loans received notice of the Consent Order on June 17, 2010.

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NOW THEREFORE IT IS HEREBY ORDERED AS FOLLOWS:

FINDINGS

A.   This Court has jurisdiction over the subject matter of this case and over BAC Home Loans.

B.   Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

C.   The Court finds that entry of this Supplemental Order is in the public interest.

D.   Effective July 1, 2011, and after proper notice was provided to the FTC, BAC Home Loans merged with and into Bank of America, N.A., an entity not subject to the Consent Order and exempt from the FTC's jurisdiction. Therefore, upon entry of this Supplemental Order, all prospective injunctive provisions and other prospective requirements of the Consent Order shall terminate as to BAC Home Loans.

E.   From June 17, 2010, through June 30, 2011, the Consent Order, *inter alia*, prohibited BAC Home Loans from: (1) making misrepresentations about the Status of Loans or amounts owed on Loans (Paragraph I.A); (2) assessing and/or collecting any Fee for a service unless it is (a) authorized and Clearly and Prominently disclosed by the Loan Instruments and not prohibited by law, (b) expressly permitted by law and not prohibited by the Loan Instruments, or (c) for a service requested by a consumer after disclosure and consent (Paragraph II); (3) assessing and/or collecting title Fees that were not Clearly and Prominently disclosed on BAC Home Loans' Fee Schedule (Paragraph V); (4) initiating foreclosure actions or assessing Fees in connection with an actual or threatened foreclosure action prior to the review of Competent and Reliable Evidence demonstrating that the consumer is in default under the terms of the Loan (Paragraph VI); (5) consummating foreclosure sales without having investigated non-frivolous disputes by consumers (Paragraph VI); (6) filing proofs of claim in connection with consumers' Chapter 13 Bankruptcy proceedings without providing copies of Loan Instruments and a detailed itemization of all amounts claimed (Paragraph VII); (7) Servicing Loans without an adequate data integrity program in place (Paragraph XI); and (8) failing to provide all information reasonably required to administer redress within thirty (30) calendar days of a written request by the Commission

1   (Paragraph XIV).

2 F.   The FTC alleges that, during the period from June 17, 2010, through June 30, 2011, BAC Home

3   Loans has violated the provisions of the Consent Order enumerated in Paragraph E, as follows:

4   1.   BAC Home Loans misrepresented amounts owed on Loans in violation of Paragraphs I.A

5   and VI of the Consent Order through the submission to courts, and service on consumers,

6   of affidavits that contained Fees unsupported by Competent and Reliable Evidence;

7   2.   BAC Home Loans also misrepresented the status of Loans in violation of Paragraph I.A

8   of the Consent Order by improperly completing foreclosure sales where a material

9   change in the circumstances, such as a short-sale, loan modification, or bankruptcy, had

10   occurred before the sale was completed;

11   3.   BAC Home Loans assessed and/or collected Fees for Default-Related Services that were

12   not authorized and Clearly and Prominently disclosed by the Loan Instruments and/or not

13   permitted by law in violation of Paragraph II of the Consent Order;

14   4.   BAC Home Loans assessed and/or collected title Fees that were not Clearly and

15   Prominently disclosed on BAC Home Loans' Fee Schedule in violation of Paragraph V

16   of the Consent Order;

17   5.   BAC Home Loans filed proofs of claim in Chapter 13 Bankruptcy actions against

18   consumers without attaching copies of the Loan Instruments in violation of Paragraph VII

19   of the Consent Order;

20   6.   BAC Home Loans serviced Loans in Bankruptcy without an adequate data integrity

21   program, including without sufficient data integrity to ensure the accuracy of post-

22   petition payment amounts, interest amounts, and total amounts, included in proofs of

23   claim filed in Chapter 13 bankruptcy actions, in violation of Paragraph XI of the Consent

24   Order; and

25   7.   BAC Home Loans failed to provide all information reasonably required to administer

26   redress, in violation of Paragraph XIV of the Consent Order, which required BAC Home

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1   Loans to provide that information within 30 days of the Consent Order's entry.

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1 they might be known, but not including any Bank. Effective July 1, 2011, BAC Home Loans Servicing,

2 LP merged with and into Bank of America, N.A., an entity not subject to the Consent Order and exempt

3 from the FTC's jurisdiction. For purposes of this Supplemental Order only, Bank of America

4 Corporation agrees to assume the obligations of BAC Home Loans Servicing, LP, solely with respect to

5 any monetary liability arising from alleged violations of Home Loans of the Consent Order from June

6 17, 2010, through June 30, 2011.

7   2.   "Bank" shall mean a bank that is exempt from the FTC's jurisdiction pursuant to Section

8 5(a)(2) of the FTC Act, 15 U.S.C. § 45(a)(2), including Bank of America, N.A. "Bank" shall not

9 include any Person or entity controlled directly or indirectly by a bank that is not itself a bank, such as

10 an operating subsidiary or Affiliate of a bank that is not itself a bank.

11   3.   "First Declaration" shall mean the declaration made pursuant to Paragraph I.E of this

12 Supplemental Order.

13   4.   "Second Declaration" shall mean the declaration made pursuant to Paragraph I.F of this

14 Supplemental Order.

15   **I. MONETARY RELIEF**

16 IT IS HEREBY ORDERED that, in view of the FTC's allegations that BAC Home Loans assessed

17 and/or collected Fees of thirty-six million, one hundred thousand and thirty-four dollars ($36,100,034) in

18 violation of the Consent Decree, and BAC Home Loans' representation in the First Declaration that it

19 has remediated twenty-eight million, forty-two thousand and twenty-four dollars ($28,042,024) of such

20 Fees, resulting in unremediated consumer losses of up to eight million, fifty-eight thousand, and ten

21 dollars ($8,058,010):

22 A.   Judgment is entered in the amount of eight million, fifty-eight thousand, and ten dollars

23   ($8,058,010) to be paid by and through Bank of America Corporation to compensate consumers

24   for losses sustained as a result of BAC Home Loans' alleged violations of Paragraphs I.A, II, V,

25   VI, VII, and XI of the Consent Order.

26 B.   From June 17, 2010, through June 30, 2011, BAC Home Loans, as set forth in the First

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1   Fees for all consumers. Refund checks shall be valid for at least one hundred and

2   eighty (180) days from mailing. If BAC Home Loans or its successor is notified

3   that any checks are undeliverable to a borrower, BAC Home Loans or its

4   successor shall follow the procedures for the delivery of refund checks described

5   in the Subparagraph I.E.2;

6   2.   Made all payments, directly or through its successor, into an interest bearing escrow

7   account as required by Paragraph III.3 of the Consent Judgment filed in *United States v.*

8   *Bank of America Corporation,* CV 12-00361 (D.D.C.) (attached as **Exhibit A**); provided,

9   however, that, if the proposed Consent Judgment filed in *United States v. Bank of*

10   *America Corporation,* CV 12-00361 (D.D.C.), is not approved and ordered by that Court

11   within ninety (90) days of entry of this Supplemental Order, then the requirement of this

12   Subparagraph I.D.2 shall not be a necessary condition for BAC Home Loans to satisfy

13   the Judgment in Paragraph I.A; and

14   3.   Complying with the payment requirements of the remediation program administered

15   pursuant to Paragraphs 16, 19-25 of the Consent Order entered in the matter of *United*

16   *States v. BAC Home Loans Servicing,* CV 11-04534 (C.D. Cal. May 31, 2011) (the

17   "SCRA Consent Order" attached as **Exhibit B**).

18   E.   BAC Home Loans provided the FTC with a First Declaration, sworn to under penalty of perjury,

19   on February 16, 2012 explaining those steps it undertook to comply with Paragraph I.D.

20   1.   The First Declaration described in detail BAC Home Loans' process for the

21   compensation referenced in Paragraph I.D above, completed through February 1, 2012

22   including, but not limited to:

23   a.   The means used to identify borrowers eligible for a reversal or refund of Fees;

24   b.   The means used to notify borrowers that they were entitled to a reversal or refund

25   of Fees, including a sample copy of any notification sent to borrowers;

26   c.   The number of loan accounts eligible to receive a reversal or refund of a Fee;

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d.   The number of loan accounts that received a reversal of a Fee and the number that

                received a refund of a Fee; and

        e.   The total dollar amount of Fees identified for reversal and the total amount

                identified for refund.

2.   The First Declaration also certified that BAC Home Loans or its successor followed the

procedures below for the delivery of refund checks:

        a.   Mail all refund checks by first class mail to the last known address on the system

                of record for each relevant borrower with forwarding service requested;

        b.   Make each refund check issued valid for at least 180 days from mailing;

        c.   If any refund check is returned, use the telephone number in the system of record

                to contact the borrower and secure a correct address; and

        d.   If efforts to contact the borrower by phone are unsuccessful, after 180 days from

                the date the check was issued, turn over the unclaimed funds to the escheatment

                process in compliance with applicable state laws and regulations regarding

                unclaimed property.

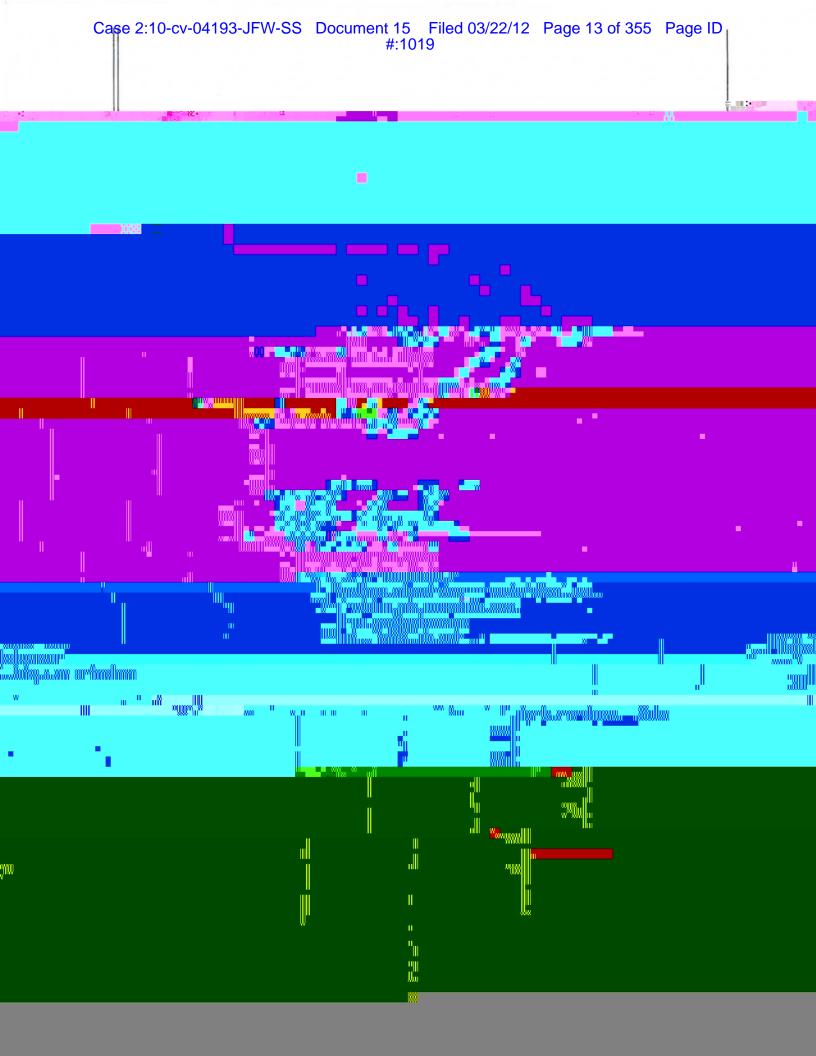3.   The First Declaration also provided document

confirming that:

1. The reversal and refund process described in the First Declaration has been completed;

2. BAC Home Loans or its successor followed the procedures described in Subparagraph I.E.2 for the delivery of refund checks;

3. All payments into an interest bearing escrow account as required by Paragraph III.3 of the Consent Judgment filed in *United States v. Bank of America Corporation,* CV 12-00361 (D.D.C.), have been made on behalf of Bank of America Corporation; provided, however, that, if the proposed Consent Judgment filed in *United States v. Bank of America Corporation,* CV 12-00361 (D.D.C.), is not approved and ordered by that Court within ninety (90) days of entry of this Supplemental Order, then the Second Declaration required by this Paragraph I.F need not include the confirmation called for in this Subparagraph I.F.3; and

4. BAC Home Loans or its successor has complied with all payment requirements due as of the date of the Second Declaration for the remediation program administered pursuant to Paragraphs 16, 19-25 of the SCRA Consent Order.

G. After submission of the Second Declaration described in Paragraph I.F, only with respect to remediation completed after February 1, 2012, BAC Home Loans must provide upon written request from the FTC, as needed to determine compliance with the Supplemental Order, documentation for specific payments identified by the FTC, or a random sampling of payments chosen by the FTC. Such documentation must be provided in an electronic format specified by the FTC and within thirty (30) days of receipt of the FTC's written notice. The documentation must be sufficient to identify for each payment:

1. the loan number for the loan assessed the Fee;

2. the type of Fee;

3. the amount of Fee; and

4. the total amount reversed or refunded.

H.   After providing the Second Declaration required by Paragraph I.F, w

1   APPROVED AS TO FORM AND CONTENT:

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5   FEDERAL TRADE COMMISSION

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7   WILLARD K. TOM
    General Counsel

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,	))))	
Plaintiffs,	)))	
v.	))	
BANK OF AMERICA CORP. *et al.*,	)))	Civil Action No. _____
Defendants.	))))))))))	

CONSENT JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska,

Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii,

Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota,

Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico,

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IV. ENFORCEMENT"

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