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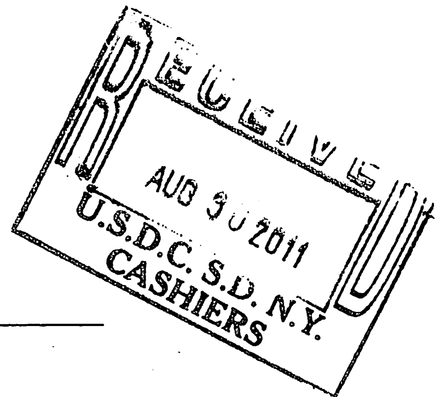
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MARY ELLEN IESU, MILDRED BARRETT, CHERYL G. PHILLIPS and MICHAEL P. CARY, on behalf of themselves and all those similarly situated,

Plaintiffs,

- against -

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures); BAC HOME LOANS SERVICING, LP; BANK OF AMERICA CORPORATION; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS, INC.,

Defendants.

Civil No.________

CLASS ACTION COMPLAINT

Plaintiffs Mary Ellen Iesu, Mildred Barrett, Cheryl Phillips and Michael P. Cary (collectively "Plaintiffs") are a group of homeowners whose mortgages are contained within the 530 residential mortgage-securitization trusts ("Covered Trusts") that are part of the June 28, 2011 proposed Settlement Agreement ("Settlement Agreement") entered into by and between the Defendants Bank of New York Mellon, BAC Home Loans Servicing, LP, Bank of America Corporation, Countrywide Financial Corporation and Countrywide Home Loans, Inc. A copy of the Settlement Agreement is attached hereto as Exhibit A. A copy of the Bank of New York Mellon's Verified Petition which started the Article 77 proceeding is attached as Exhibit B.

Plaintiffs seek to enjoin the implementation of this settlement and to require Defendants to properly service the loans within the Covered Trusts.

Plaintiffs bring this Class Action Complaint for breach of contract, negligence, gross negligence and/or intentional tort, and declaratory and injunctive relief, individually, and on behalf of a Rule 23(b)(2) Class of all other similarly situated borrowers, defined below. Plaintiffs allege the following upon information and belief, except as to the allegations which pertain to them, which allegations are based upon personal knowledge:

PARTIES

1. Defendant Bank of New York Mellon ("BNY Mellon") is a New York state chartered bank with its principal place of business located at One Wall Street, New York, New York 10286. BNY Mellon is Trustee of the 530 Covered Trusts created by Defendants Countrywide Financial Corporation and Countrywide Home Loans, Inc. between 2004 and 2008. These Covered Trusts include hundreds of thousands of mortgage loans (the "Mortgage Loans") that were placed within these Covered Trusts during this time period. BNY Mellon is, as Trustee, responsible for servicing of the Mortgage Loans including hiring, monitoring and/or terminating the service providers. The 530 Covered Trusts beneficially own the Mortgage Loans and BNY Mellon, as Trustee, holds the loans as assets for the benefit of the Covered Trusts.

2. Defendant BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing, LP) is a Texas limited partnership with its principal place of business in California. BAC Home Loans Servicing, LP merged into Bank of America, N.A. on July

2, 2011. BAC Home Loans Servicing, LP conducts continuous and substantial business in New York. BAC Home Loan Servicing, LP was, until the merger, the "Master Servicer" for the Mortgage Loans contained in the Covered Trusts. As the Master Servicer, BAC Home Loans Servicing, LP was either hired by and/or controlled, and is the agent of, the Trustee for all 530 Covered Trusts, Defendant BNY Mellon. As the agent of Defendant BNY Mellon, BAC Home Loans Servicing, LP's acts or omissions are imputed to Defendant BNY Mellon.

3. Defendant Bank of America Corporation is a Delaware corporation that conducts continuous and substantial business in New York.

4. Defendant BAC Home Loans Servicing, LP and its parent, Defendant Bank of America Corporation, are collectively referred to as "Bank of America."

5. Defendant Countrywide Financial Corporation is a Delaware corporation that conducts continuous and substantial business in New York. Countrywide Financial Corporation is the parent company of Countrywide Home Loans, Inc.

6. Defendant Countrywide Home Loans, Inc. is a New York corporation with its principal place of business in California. Countrywide Home Loans, Inc. conducts continuous and substantial business in New York. Countrywide Home Loans, Inc. and its affiliates were the "Sellers" of the Mortgage Loans in each of the Covered Trusts.

7. Countrywide Financial Corporation and Countrywide Home Loans, Inc. are collectively referred to as "Countrywide." Bank of America purchased Countrywide on or before July 1, 2008.

8. Plaintiff Mary Ellen Iesu ("Iesu") is a resident of Staten Island, New York. Iesu is the mortgagor on a home mortgage loan that was taken on 47 Hemlock Street, Staten Island, New York 10309. That mortgage loan originated and began to be serviced by Countrywide on April 14, 2004. Iesu's loan, according to the BNY Mellon's website, is not beneficially owned by the investors in a loan trust listed in Exhibit A to the Settlement Agreement as CWHL 2004-15, with BNY Mellon as trustee, and serviced by Bank of America following the Bank of America purchase of Countrywide. Iesu's loan is one of the thousands of Mortgage Loans included with the five hundred and thirty (530) Covered Trusts at issue before this Court.

9. Iesu had mortgage servicing problems caused by Bank of America. In 2009, a divorce and a non-paying tenant left Iesu in difficult financial condition. In an effort to correct her problems, Iesu began working with a housing counselor in the summer of 2009 in order to apply for a loan modification. In December 2009, Bank of America told her housing counselor that she had been approved for a trial loan modification. Bank of America, for some unknown reason, never sent Iesu a written approval however. It was only after Iesu had been served with a Summons and Complaint by Bank of America, did Iesu learn that her loan modification had been purportedly denied. Iesu now faces foreclosure.

10. Plaintiff Mildred Barrett ("Barrett") is a resident of Houston, Texas. Barrett is the mortgagor on a first mortgage loan that was taken on 6007 Diamond Bay Ct., Houston, Texas 77041. Barrett is the mortgagor on a home mortgage loan that originated and began to be serviced by Countrywide on July 11, 2005. Barrett's loan,

according to a MERS and BNY Mellon website is now beneficially owned by the investors in one of the 530 Covered Trusts, with BNY Mellon as trustee, and serviced by Bank of America following the Bank of America purchase of Countrywide. Barrett's loan is one of the thousands of Mortgage Loans included with the Covered Trusts at issue before this Court. A copy of Barrett's Deed of Trust is attached hereto as Exhibit C.

11. Barrett had mortgage servicing problems caused by Bank of America. Barrett has never missed a payment on her Bank of America loan. In spite of that, however, in November 2009 Bank of America began automatically withdrawing more money from Barrett's bank account than was due from Barrett. For example, in January 2010, Bank of America withdrew three times the amount that Barrett owed on her mortgage. Barrett informed Bank of America of this problem but Bank of America did not take any corrective action. Barrett was constantly harassed for money she did not owe. Barrett grossly overpaid Bank of America because Bank of America took the money from Barrett's bank account.

12. On August 21, 2010, Barrett received a letter from BOA that she owed over $20,000.00 in mortgage payments and $4,128.68 for property taxes and insurance premiums. Bank of America made this last request even though Barrett had always paid her own taxes and insurance. BOA has never paid those bills for Barrett. That same day, Bank of America called Barrett seven times from the Bank of America collection department to tell Barrett that she was in default. On August 25, 2010, Bank of America sent a truck to Barrett's development to do a home inspection. On September 13, 2010, Barrett had an alert on her Credit Bureau Report that BOA has reported to the Bureau that

Barrett is 120 days late on her mortgage payments. In summer 2011, Bank of America started foreclosure proceedings against Barrett even though Barrett has never missed a payment since the inception of the loan and has always been current on the obligations of the loan. A few days prior to the scheduled foreclosure sale, Barrett received a letter from Bank of America stating that Bank of America would no longer speak to Barrett through her counsel. This left Barrett without representation on the eve of foreclosure.

13. Plaintiff Cheryl G. Phillips ("Phillips") is a resident of Murfreesboro, Tennessee. Phillips is the mortgagor on a first and second home mortgage loans that were taken on 440 Compton Road, Murfreesboro, Tennessee 37130. The loan numbers are 136764770 and 136764762. These mortgage loans originated and began to be serviced by Countrywide May 17, 2006. Phillips' loans, according to a BNY Mellon website, are now beneficially owned by the investors in the CWALT 2006-19CB trust, with BNY Mellon as trustee, and serviced by Bank of America following the Bank of America purchase of Countrywide. Phillips loan numbered 136764762 is one of the thousands of Mortgage Loans included with the five hundred and thirty (530) Covered Trusts at issue before this Court. A copy of Phillips' Deed of Trust is attached hereto as Exhibit D.

14. Phillips had many mortgage servicing problems caused by Bank of America. Phillips went through the loan modification process with Bank of America while at the same time Bank of America threatened Phillips with foreclosure. Phillips was dual tracked, a Bank of America servicing tactic described below. Bank of America

has now informed Phillips that she did not qualify for a loan modification and that she faces the threatened foreclosure.

15. Throughout the loan modification process, among other servicing problems, Bank of America refused to properly answer Phillips' questions, demanded that Phillips repeatedly send Bank of America the same paperwork over and over, would send Phillips multiple bills the same month demanding different amounts, charged Phillips unidentifiable fees, and would repeatedly fail to apply her payment correctly to her account.

16. Plaintiff Michael P. Cary ("Cary") is a resident of Niceville, Florida. Cary is the mortgagor on a home mortgage loan that was taken on 2428 Martin Drive, Niceville, Florida 32578. Cary's loan is now beneficially owned by the investors in the CWHL 2005-HYB10 trust, with BNY Mellon as trustee, and serviced by Bank of America following the Bank of America purchase of Countrywide. Cary's loan is one of the thousands of Mortgage Loans included with the five hundred and thirty (530) Covered Trusts at issue before this Court. A copy of Cary's Mortgage is attached hereto as Exhibit E.

17. Cary had mortgage servicing problems caused by Bank of America. Cary purchased his home in August 2005. Cary and his wife started facing financial difficulties several years ago. Due to these financial problems, Cary decided to request a loan modification. Cary was subjected to repeated servicing problems caused by Bank of America. Cary has been unable to make any progress with Bank of America regarding modification of Cary's loan. For example, Cary is never able to speak to the same Bank

of America service spokesman on the telephone and even when Cary does get a person to speak with him that person inevitably tells Cary he needs to speak with someone else at Bank of America. For Cary this frustrating process has been the normal manner in which his loan is serviced.

18. Plaintiffs do not have sufficient information available to determine the true actual or beneficial owners of the Mortgage Loans or the security interest therein. Regardless, Plaintiffs will suffer harm when the Settlement Agreement is implemented because of the servicing problems discussed herein. Plaintiffs do not have information regarding the accuracy (or reasons for inaccuracies) of their mortgage loan histories as recorded by Defendants or any sub-servicer or vendor in order to know how said entities have recorded Plaintiffs loan status for purposes of including them as High Risk mortgage loans under the terms and conditions of the Settlement Agreement. Plaintiffs have received default notices and other documents from Bank of America. Based on these notices, Plaintiffs' mortgages have been, or will soon be, categorized as "high risk" and Plaintiffs are subject to losing their homes as a result of this Settlement Agreement.

19. Plaintiffs bring this action for breach of contract, negligence, gross negligence and/or intentional tort, and declaratory and injunctive relief on behalf of themselves and a Class of mortgage loan borrowers defined as all borrowers: (i) whose mortgage loans were originated by Countrywide between 2004 and 2008; (ii) whose loans were included in within the five hundred and thirty (530) Covered Trusts; (iii) whose loans have not been repaid in full; and (iv) whose loans are now being serviced by Bank of America.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds Five Million Dollars ($5,000,000) and there is diversity of citizenship between Plaintiffs, the Class and the Defendants.

21. Venue is proper pursuant to 28 U.S.C. § 1391 because the events that give rise to the claims occurred, in substantial part, in this District. A substantial part of the activity giving rise to Plaintiffs' claims for breach of contract, negligence, gross negligence and/or intentional tort, and declaratory and injunctive relief including the securitization of the mortgage loans at issue, occurred in this District, including the negotiating and execution of the Settlement Agreement. Each of the Defendants also maintains offices, derives substantial revenue from, and/or regularly transacts or have transacted business within this District.

SUMMARY OF CLAIMS

22. Plaintiffs bring four claims against Defendants: breach of contract, negligence, gross negligence and/or intentional tort, and declaratory and injunctive relief.

23. The first claim is breach of contract. The contracts at issue are the mortgages and/or deeds of trust where the parties are Plaintiffs and the Class, as mortgagors, and Defendants who purport to own the Plaintiffs' mortgages as well as the mortgages of all Class members. Defendants are parties to these Mortgage Loans.

24. These contracts are uniform across the Covered Trusts with regard to the terms and conditions relevant to the claims and all contain the same implied duty of good

faith and fair dealing that require Defendants to service, and to have serviced, the Mortgage Loans in a reasonable and prudent manner.

25. As part of this implied duty of good faith and fair dealing, Defendants, as mortgagees and Trustee, are obligated to service, or have serviced, the Mortgage Loans in a reasonable, prudent and lawful manner and to use a level of service that a reasonably, prudent mortgage loan servicer would use under similar circumstances. By entering into the Settlement Agreement, an agreement which will substantially reduce the already low level of servicing provided to the Mortgage Loans and will ensure that Plaintiffs and the Class will face unnecessary foreclosures, fees (described in detail below), etc. Defendants have violated this duty of good faith and fair dealing.

26. The second claim is for negligence. Defendants, as mortgagees and Trustee, have failed to abide by even the most basic and minimum standards for servicing of the Mortgage Loans. This standard is to service the Mortgage Loans in a reasonable and prudent manner and to use a level of service that a reasonably, prudent mortgage loan servicer would use under similar circumstances. These Defendants have failed in this duty to Plaintiffs and Class members.

27. The third claim is for gross negligence and/or intentional tort against all Defendants. All Defendants, including BNY Mellon, acted with gross negligence, recklessly, deliberate indifference, and/or intentionally towards Plaintiffs and Class members in that (1) Defendants utterly failed to properly service the Mortgage Loans and (2) Defendants entered into this Settlement Agreement knowing full well that the quality of servicing of the Mortgage Loans would be seriously damaged and compromised by the

new standards set forth in the Settlement Agreement. Defendants systematic failure is grossly negligent, willful, wanton, in total disregard for the rights of Plaintiffs and Class members, and/or intentional.

28. The fourth claim is for declaratory relief and an injunction against all Defendants.

BACKGROUND

A. The Settlement Agreement and its Procedural Status

29. On June 28, 2011, Defendants entered into the Settlement Agreement. The following day, June 29, 2011, BNY Mellon as Trustee, filed a Verified Petition in this New York state court in order to have the Settlement Approved under CPLR § 7701. That case was assigned to Judge Kapnick (Index No. 651786/11). That same day, a large group of twenty-two institutional investors including Metropolitan Life Insurance Company and BlackRock Financial Management, Inc. filed a petition to intervene in order to argue on the settlement's behalf.[1] It was this group of investors that helped negotiate the Settlement Agreement. Since that time various other investors have intervened in order to oppose the settlement. The Attorney Generals for New York and

[1] The "Institutional Investors" are holders of certain securities and/or investment managers for holders of certain securities issued by the Covered Trusts. The investors include Transamerica Life Insurance Company, AEGON Financial, Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio, Bayerische Landesbank, BlackRock Financial Management, Inc., Federal Home Loan Bank of Atlanta Goldman Sachs Asset Management L.P., ING Investment Management L.L.C., ING Bank fsb, ING Capital LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Landesbank Baden-Wuerttemberg and LBBW Asset Management (Ireland) PLC, Dublin, Maiden Lane, LLC, Maiden Lane II, LLC, Maiden Lane III, LLC, Metropolitan Life Insurance Company, Nationwide Mutual Insurance Company, New York Life Investment Management LLC, Neuberger Berman Europe Limited, Pacific Investment Management Company LLC, Prudential Investment Management, Inc., Teachers Insurance and Annuity Association of America, Thrivent Financial for Lutherans, Trust Company of the West and the affiliated companies controlled by The TCW Group, Inc., and Western Asset Management Company.

Delaware have also filed intervention motions in order object to the settlement's approval. On August 26, 2011, this case was removed to this Court from New York Supreme Court by trust investor and intervenor Walnut Place, LLC.

B. History of the Mortgage Loan Securities Market

30. In the 1990's, the mortgage loan market changed from a fairly simple market wherein a lender either retained an originated loan in its own loan portfolio to a securitization market where most loans were pooled, placed into a loan trust, and interests in a portion of the pooled loans was sold to institutional investors – primarily public pension funds, hedge funds and insurance companies selling and managing retirement investment products.

31. The documents which govern the loan trusts are referred to as Pooling and Servicing Agreements ("PSA") and Sales and Servicing Agreements ("SSA"). The PSA and SSA are the trust instruments which define the rights, duties, powers and obligations of the parties. All residential mortgage-backed securities are governed by New York common law.

32. Securitized pools of loans were divided into "tranches," as many as 20 loan pools per deal. The highest tranche paid the investor the lowest interest rate on their investment but was paid off first, lowering the risk. The Institutional Investors were the highest tranche participants. The credit rating agencies, such as Standard & Poor's, gave the highest tranche the highest credit rating of AAA. Regulators believed that the ratings would be sufficient to educate investors about the risk they were taking and ensure proper underwriting of loans because the ratings bestowed upon tranches by the credit rating

agencies were believed to be the most reliable form of "regulation" of risk and also because the lenders usually retained for themselves the tranche with the lowest interest rates but the highest rate of return.

33. Banks around the country started pooling tranches of loans across many different loan pools and selling them. Since banks were the entities that most often owned the lowest tranches, the ability to sell their lowest tranches meant the banks – just like the loan originators – had little financial incentive to regulate or monitor the quality and type of loan that were underwritten and placed into the loan trusts.

34. In the late 1990's, Wall Street began what is referred to as a "vertical integration of the industry." Vertical integration meant that large investment banks and other banks began to acquire "subprime" lenders and mortgage loan servicers which allowed these banks to fund and service the loans directly. Lehman Brothers was one of the first to make such an acquisition by acquiring BNC Mortgage and Finance America, increasing their subprime originations from approximately $3 billion in 2001 to $24 billion by 2005.

35. Other large lenders followed suit including Bank of America, Bear Stearns, Deutsche Bank, Morgan Stanley, Merrill Lynch and Barclay's. All of these banks expanded into the subprime business and began to sell dubious loan products, including interest only loans, stated income loans, and pick-a-payment loans.

36. Bank of America announced the purchase of Countrywide in July 2008, and negotiations for this purchase began years before that date, possibly as early as 2004.

37. Specialty finance companies, Countrywide for example, quickly followed into the market. At this point, the entire financial services industry had shifted to the mortgage loan industry as a core focus of their business models. There were multiple reasons for this enormous shift in the financial services industry including the ability to lower warehouse loan and capital costs and guarantee a source of production of mortgage loans to feed their highly lucrative securitization machine.

38. With vertical integration came an enormous concentration of profit and risk from the mortgage market. For example, as alleged by several investors in the Article 77 proceeding, Bank of America (and Countrywide) engaged in zip code by zip code appraisal fraud to create false equity and induce consumers, including Class members, to borrow more money against their homes.

C. The 530 Covered Trusts

39. The Covered Trusts were created by Countrywide between 2004 and 2008 through securitization. Countrywide and its affiliates, the loan sellers, sold portfolios of loans secured by mortgages on residential properties to an entity called the "Depositor." The Mortgage Loans were then conveyed to BNY Mellon, as Trustee. Ownership interests in the Trusts were then sold to investors, including the Institutional Investors.

40. Countrywide, and now Bank of America, was the Master Servicer charged with responsibility for, among other things, collecting debt service payments on the Mortgage Loans and taking any necessary enforcement action against borrowers including foreclosure. All of the Covered Trusts are controlled by Pooling and Servicing

Agreements or Sale and Servicing Agreements (the "Agreements") under which BNY Mellon is the Trustee or indenture trustee.

41. Although the Agreements for each of these Covered Trusts are separate agreements, the terms pertinent to this litigation are substantively similar. These terms are significant to both the investors as well as the homeowners. The Agreements each contain a series of representations and warranties made by Countrywide and/or its affiliates including representations that the collection practices of the Seller and Master Servicer have been legal, prudent and customary in the mortgage lending and servicing business.

42. The Agreements impose servicing obligations on the Master Servicer, requiring, among other things, that the Master Servicer service and administer the Mortgage Loans in accordance with the terms of the Governing Agreements and the customary and usual standards of practice of prudent mortgage loan servicer.

43. In October 2010, the Institutional Investors asserted a notice of non-performance to Bank of America for breaches of several provisions of the Agreements including, among other things, failing to maintain accurate and adequate loan and collateral files in a manner consistent with prudent mortgage servicing standards and failing to demand that the Sellers cure deficiencies in mortgage records.

44. Beginning in November 2010, the Institutional Investors engaged in negotiations with Countrywide and Bank of America in an attempt to reach a settlement for the benefit of the Covered Trusts. At no point were any Class members engaged in the negotiations.

SUMMARY OF THE SETTLEMENT AGREEMENT TERMS RELATED TO MORTAGE SERVICING

45. According to the Settlement Agreement, Bank of America has agreed to, within thirty days after the execution of the Settlement Agreement, devise a list of 8-10 qualified "subservicers" to service loans within the Trusts deemed "high-risk loans." These High-Risk Loans are defined as:

i. Mortgage Loans that are 45 + days past due without right party contact (*i.e.*, the Master Servicer has not succeeded in speaking with the borrower about resolution of a delinquency);

ii. Mortgage Loans that are 60 + days past due and that have been delinquent more than once in any rolling twelve (12) month period;

iii. Mortgage Loans that are 90 + days past due and have not been in the foreclosure process for more than 90 days and that are not actively performing on trial modification or in the underwriting process of modification;

iv. Mortgage Loans in the foreclosure process that do not yet have a scheduled sale date; and

v. Mortgage Loans where the borrower has declared bankruptcy regardless of days past due.

46. The agreed list shall be submitted to BNY Mellon which may within forty-five days (i) object and remove any of the selected subservicers from the list or (ii) limit the number of loans the subservicer may service at any one time.

47. The servicing component of the Settlement Agreement also applies to loans beyond those deemed "High-Risk." For all other loans in the Covered Trusts, Bank of America has agreed to (i) compare in a monthly report its servicing performance against "specific industry standards" and send to the BNY Mellon on a monthly basis

statistics comparing Bank of America's performance to these industry standards and (ii) if Bank of America fails to meet these industry standards, calculate and include in its monthly statement a master servicing fee adjustment payable by it to BNY Mellon.

48. The Settlement Agreement also contains "loss mitigation provisions" that apply to all mortgage loans in the Covered Trusts. They include, among other things, factors for Bank of America and all of the newly hired subservicers to consider in deciding whether to modify a loan or to apply any other loss mitigation strategies like foreclosures. There is a gross lack of detail, however, in the Settlement Agreement on what precisely the loss mitigation provisions mean. There is also a gross lack of detail regarding sub-servicing compensation.

49. The Settlement Agreement includes procedures which purport to cure certain document deficiencies in the loan files of the Class members including who or what entity actually own the Mortgage Loans and who has the right to receive payment. These procedures cannot and will not be able to cure these deficiencies in the Class members' loan files, however.

THE SETTLMENT AGREEMENT WILL CAUSE IMMEDIATE INJURY TO PLAINTIFFS AND THE CLASS

50. Plaintiffs and Class members, homeowners whose mortgage loans are serviced by Bank of America, will be harmed if the Settlement Agreement is approved and fully implemented. The Settlement Agreement will speed up foreclosures, perpetuate existing servicing abuses in the system, and undermine federal programs designed to stabilize the housing market. The Settlement Agreement will cause immediate and material damage to Plaintiffs and the Class for five reasons.

51. First, the touted servicing "improvements" only aim to accelerate the rate and speed of foreclosures but fail to set standards to protect homeowners from wrongful or unnecessary foreclosure or abusive servicing. The new servicing "improvements" will speed up foreclosures without protecting homeowners. At the heart of the servicing "improvements" are two proposals: (1) referral of loans in default to specialty subservicers and (2) compensatory fees, i.e., penalties, should Bank of America not ensure that loans are moved to foreclosure sale quickly enough. Neither of these proposals helps homeowners and, if left unaddressed, both proposals will exacerbate the illegal harm being done to homeowners right now.

52. Second, the referral to subservicers will not protect homeowners from Bank of America's current illegal and abusive servicing. Although the referral of loans to specialty subservicers seems designed to increase Bank of America's incentives to keep loans performing because it will reduce its ability to profit from default-related fees, nothing in the proposed Settlement Agreement actually requires the responsible servicing of loans by subservicers. Provisions for responsible servicing by subservicers are critical to protect the interests of homeowners. Transfer to subservicers will increase the risk of errors in loan accounting, abusive debt collection practices, and confusion on the part of homeowners accustomed to dealing with one entity. While subservicers, under paragraph 5(a)(iii) of the proposed Settlement Agreement, must meet certain standards, such as state licensing, these standards provide no assurance that the subservicers will perform better than Bank of America has in the past. There are no standards applicable to these subservicers that require, or even measure, success implementing loss mitigation

strategies or loan modification net present value analyses ("NPV"), or even commitment to maximizing income to the investor in the decision of whether to pursue foreclosure or permit home retention loss mitigation strategies.

53. Third, the compensatory fee structure within the Settlement Agreement speeds up foreclosures without protecting homeowners from wrongful foreclosure. This compensatory fee structure is for defaulted loans either retained by Bank of America or for loans that have not yet been assigned to subservicers. Paragraph 5(c)(iii) of the Settlement Agreement, however, provides very significant financial incentives for Bank of America to speed up the foreclosure process. Consequently, the accelerated foreclosure process is likely to impede any meaningful review of foreclosure alternatives, and therefore will result in unnecessary foreclosures and sales of homes. Homes will be sold while homeowners await the results of their loan modification application, and the accelerated process will cause homeowners to incur unnecessary foreclosure fees, which further price modifications out of reach. Referring loans to foreclosure add additional fees added to a homeowner's account. There are many documented instances where these fees have prevented a homeowner from being able to afford a loan modification.

54. The compensatory fee structure set forth in paragraph 5(c)(iii) applies to loans retained for servicing by Bank of America. Under this structure, should Bank of America fail to refer a loan to foreclosure in a timely way, or fail to liquidate the property at a foreclosure sale quickly enough, Bank of America faces the prospect of paying to the Covered Trust an amount equivalent to the monthly interest due on that loan. There are no corresponding penalties for errors in servicing that harm homeowners. This lopsided

incentive structure will foster foreclosures at the expense of homeowners. Moreover, these accelerations will not even permit the evaluation of loss mitigation strategies that would protect investors, let alone homeowners.

55. This system, as designed in the Settlement Agreement, provides no exceptions for instances when a homeowner and a servicer are in the midst of negotiating a loan modification or when the borrower is performing under any loan modification for the initial referral or performing under a proprietary loan modification or any other non-Home Affordable Modification Program ("HAMP") loan modification not mandated by law for a foreclosure sale. The result is that the dual track system, of proceeding with foreclosures while negotiating loan modifications, a system repudiated by HAMP and by the Federal Housing Finance Authority in the recent servicing alignment, is encouraged and even mandated, with the predictable result of an increase in wrongful foreclosures.

56. The cumulative impact of the Settlement Agreement's acceleration of the foreclosure process is a de-emphasis on modifications or other loss mitigation strategies, with a consequent weakening of the incentives to prevent foreclosure.

57. Fourth, the Settlement Agreement does nothing to end existing abuses. In addition to the dual track problem discussed above, where homes are foreclosed on while the homeowner is negotiating or actually making payments under a loan modification agreement, Bank of America has engaged in the placement of illegal fees, including force-placed insurance, improper accounting for payments, and failure to evaluate homeowners for loan modifications. Nothing in the Settlement Agreement addresses any of these abuses.

58. Indeed, the standards enunciated for the evaluation of loan modifications and loss mitigation generally by both servicers and subservicers in paragraph 5(e) leave the servicers with virtually unlimited discretion, far more discretion than servicers are currently permitted to exercise under most federal loss mitigation programs. While servicers are required to consider a net present value analysis of a loan modification as compared to foreclosure (s*ee* ¶ 5(e)), this required consideration is virtually meaningless for the following reasons:

- No standards for the modification are offered (e.g., interest rate reduction, extended terms, principal reductions, income ratios) nor are the terms of the NPV analysis (e.g., expected redefault rate, Real Estate Owned ("REO") discount, expected time to sale) specified. As such these standards appear to be left entirely to the discretion of the servicers (or subservicers) conducting the analysis (s*ee* ¶ 5(e)).

- Servicers are only required to "consider" the NPV analysis. They are not required to use its results.

- Among the other criteria servicers and subservicers are permitted to consider is their subjective belief that the homeowner is engaged in "strategic default."

- Servicers may refuse to perform a loan modification, even one that is projected to return a benefit to the investor for any factor the servicer deems "prudent" in its judgment.

59. Similarly, Bank of America, its affiliates, and its subservicers are permitted to continue to accrue post-default fees, directly and through third-party vendors, without limitation or oversight. (*see* ¶¶ 5(a)(iv) and (a)(xi).) These fees often provide an incentive to servicers to pursue foreclosure over modification.

60. The Settlement Agreement leaves Bank of America and its subservicers to continue business as usual with regard to excessive and illegal fees, improper accounting, and failure to evaluate homeowners for loss mitigation.

61. Fifth, the Settlement Agreement undermines existing efforts to stabilize the housing markets. The standards required by HAMP, enunciated by the government sponsored enterprises – Fannie Mae and Freddie Mac – and created by federal law in the Farmers Home Administration, Veterans Administration, and Rental Housing Support programs, all mandate that servicers follow a standard loss mitigation evaluation process and, under certain circumstances, offer a loan modification. The proposed Settlement Agreement neither mandates a standard process, nor standard modification terms, nor the offer of a loan modification where appropriate. The lack of standards guarantees that fewer modifications will be done and more homeowners will lose their homes.

62. Among the terms in the Settlement Agreement that may result in a direct conflict between existing federal programs and the Settlement Agreement are the following:

- The "simultaneous" evaluation of the homeowner for all modification programs. If this is interpreted to include loss mitigation activities such as a short sale, this is in direct conflict with existing federal guidance. Even if this merely allows evaluation for proprietary modifications at the same time as HAMP or other federal modifications, the simultaneous evaluation undermines the federal programs. Servicers routinely steer homeowners to proprietary modifications, and away from HAMP modifications or other government-sponsored modification programs, with disastrous results for homeowners. Proprietary modifications have failure rates significantly higher than HAMP, even when they reduce the payment to an affordable level. Since the Settlement Agreement does not require that the modifications offered be affordable or sustainable, we can expect that the

modifications offered will fail at levels perhaps twice the rate of HAMP modification.

- The limitation on principal reductions to the current market value, measured without regard to REO sales, (¶ 5(e)), is both counter to HAMP and sound economic decision making. The potential losses incurred by investors will be based on the REO sale, not on the current market value of a home freely sold. HAMP permits and underwrites principal reductions in a greater amount; capping principal reductions at this artificially inflated rate harms homeowners.

63. Conspicuously absent from the Settlement Agreement servicer guidelines is a requirement to perform loan modifications when a standard analysis predicts that the investors will benefit more from a modified loan than a foreclosure. The settlement will thus set a standard of loan servicing which is thus lower than HAMP, and other guidelines. The failure to include an explicit requirement permits the servicers to continue to profit from those activities that promote foreclosure rather than home retention, or even reduction of post home-loss debt. The failure to conform the Settlement Agreement with HAMP undermines HAMP in that HAMP allows servicers not to perform modifications to the extent HAMP is in conflict with guidance from investors. The Settlement Agreement, with its broad grant of discretion to servicers, its caps on principal reduction, and its tight foreclosure timeline could be used by Bank of America to assert that investor restrictions prohibit it from participating in HAMP.

PAST AND CURRENT MORTGAGE LOAN SERVICING ABUSES

64. Beside the servicing problems experienced by Plaintiffs, Countrywide and Bank of America have engaged in a widespread pattern of illegal and wrongful mortgage

servicing practices for many years and in many different ways. The acts described herein have caused substantial damage to borrowers that make up the Covered Trusts.

65. The abuses are well known and documented. For example, in 2010, the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board undertook a coordinated horizontal examination of foreclosure processing at the nation's 14 largest federally regulated mortgage servicers, including the Master Servicer.

66. On February 17, 2011, John Walsh, Acting Comptroller of the Currency, testified before the Senate Committee on Banking, Housing, and Urban Affairs. There he testified:

> In general, the examinations found critical deficiencies and shortcomings in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors. These deficiencies have resulted in violations of state and local foreclosure laws, regulations, or rules and have had an adverse affect on the functioning of the mortgage markets and the U.S. economy as a whole. By emphasizing timeliness and cost efficiency over quality and accuracy, examined institutions fostered an operational environment that is not consistent with conducting foreclosure processes in a safe and sound manner.

67. On April 13, 2011, the Office of the Comptroller of the Currency "announced formal enforcement actions against eight national bank mortgage servicers and two third-party servicer providers for unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing." The eight servicers included the Master Servicer in this case, Bank of America.

68. Again on April 13, 2011, the OCC signed and published a consent order styled *In the Matter of Bank of America, N.A.* which found "the OCC had identified certain deficiencies and unsafe or unsound practices in residential mortgage servicing and in the Bank's initiation and handling of foreclosure proceedings." The OCC cited the following conduct as examples of unsound banking practices by Bank of America in servicing: (a) filing or causing to be filed in state and federal courts affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records; (b) filing or causing to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary; (c) litigating foreclosure proceedings and initiating non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time; (d) failing to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes; (e) failing to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and

training; and (f) failing to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

69. The OCC stated that due to the conduct alleged above, "the Bank engaged in unsafe or unsound banking practices."

70. On June 7, 2010, the FTC filed a complaint against both Countrywide and Bank of America in the Central District of California. In that complaint, the FTC alleged, in relevant part:

> In addition, this action is brought to remedy unlawful acts and practices by Defendants in servicing loans for borrowers who are seeking to save their homes through a Chapter 13 bankruptcy. In connection with these bankruptcy cases, Defendants have made various representations to borrowers about their mortgage loans that are false or lack a reasonable basis. Defendants also have failed to disclose to borrowers during their bankruptcy case when fees and escrow shortages and deficiencies have accrued on their loan. After the bankruptcy cases have closed and borrowers no longer have the protection of the bankruptcy court, Defendants unfairly seek to collect those amounts, ***including through foreclosure actions*** (emphasis added)(*FTC v. Countrywide, et al.*, Complaint, ¶ 11)

> When a borrower becomes delinquent on a mortgage loan, mortgage servicers order various default-related services that are intended to protect the lender's interest in the property. For example, a mortgage servicer may order a property inspection for the purpose of verifying the occupancy status of the home. In its mortgage servicing operation, Countrywide follows a so-called "vertical integration strategy to generate default-related fee income. Rather than obtain default-related services directly from third-party vendors and charge borrowers for the actual cost of these services, Countrywide formed subsidiaries to act as middle-men in the default services process ("default subsidiaries"). The default subsidiaries exist solely to generate revenues for Countrywide and do not operate at arms length with Defendants. *Id.* ¶ 14.

> The scheme works as follows. Defendants order default-related services from the default subsidiaries, which in turn obtain the services from third-party vendors. The default subsidiaries then charge Defendants a fee significantly marked up from the third-party vendors' fee for the service, and the Defendants, in turn, assess and collect these marked-up fees from borrowers… *Id.* ¶ 15.
>
> In addition, Defendants have charged borrowers for the performance of default services, such as property inspections and title reports, that in some instances were not reasonable and appropriate to protect the note holder's interest in the property and rights under the security instrument. *Id.* ¶ 17.
>
> In the course and conduct of their loan servicing and collection, Defendants in numerous instances have assessed and collected default-related fees that they were not legally authorized to assess and collect pursuant to the mortgage contract. *Id.* p. 26.

71. The OCC and FTC are obviously not alone in their complaints for mortgage servicing abuses by Bank of America and Countrywide. Class members have an untold number of examples of servicing abuses.

CLASS ACTION ALLEGATIONS

72. Plaintiffs bring this class action pursuant to the Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of a Class defined previously as mortgage loan borrowers: (i) whose mortgage loans were originated by Countrywide between 2004 and 2008; (ii) whose loans are included within the five hundred and thirty (530) Covered Trusts; (iii) whose loans have not been repaid in full; and (iv) whose loans are now being serviced by Bank of America.

73. Excluded from the Class are all present and former agents of Bank of America, BNY Mellon as Trustee, Countrywide, the Institutional Investors, or any other investors in the Covered Trusts. Also excluded are all present and former employees of

these parties; any Class member who timely elects to be excluded from the Class; the judge to whom this case is assigned, and any member of his or her immediate family.

74. Plaintiffs are members of the Class and allege that all Class members will sustain injury in fact as a result of implementation of the Settlement Agreement.

75. Membership in the Class is so numerous as to make it impractical to bring all Class members before the Court. The exact number of Class members is unknown, but Plaintiffs reasonably estimate and believe that there are hundreds of thousands of persons in the Class. The identity of the Class members is readily ascertainable using information with Defendants' possession.

76. There are questions of law and fact common to the Class which predominate over any questions which may affect only individual members of the Class, including but not limited to whether or not Plaintiffs' claims for breach of contract, negligence, gross negligence and/or intentional tort, and declaratory and injunctive relief should be sustained against the parties to the Settlement Agreement

77. Plaintiffs are members of the Class they seek to represent. Plaintiffs' claims are typical of the Class members' claims. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs' claims are typical and representative of the Class.

78. There are no unique defenses which may be asserted against Plaintiffs individually, as distinguished from the Class. The claims of Plaintiffs are the same as those of the Class.

79. There exist no conflicts of interest as between Plaintiffs and the other Class members. Plaintiffs have retained counsel that is competent and experienced in complex class action litigation. Plaintiffs and their counsel will fairly and adequately represent and protect the interests of the Class.

80. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiffs are aware of the fiduciary responsibilities to the Class and agree to diligently discharge those duties.

81. The questions of law and/or fact common to the members of the Class predominate over questions that may affect only individual members. The common nucleus of operative fact herein centers on the implementation of the Settlement Agreement and the servicing problems described herein.

82. This class action is superior to any other method for the fair and efficient adjudication of this dispute. There will be no extraordinary difficulty in the management of this class action.

COUNT I

BREACH OF CONTRACT

83. Plaintiffs reallege the allegations set forth above as is fully set forth herein.

84. Each of the Covered Trusts contains thousands of Mortgage Loans as assets. Each Mortgage Loan is an enforceable contract between Plaintiffs and Class members and Defendants BNY Mellon (as Trustee), BAC Home Loans Servicing, LP; Bank of America Corporation; Countrywide Financial Corporation; Countrywide Home

Loans, Inc. The contract between a particular class member and Defendants are the mortgage and/or deed of trust. These contracts all contain the same implied duty of good faith and fair dealing on behalf of the parties.

85. Part of this duty of good faith and fair dealing is the duty of Defendants to service the mortgage loans in a reasonable, prudent, and lawful manner. This duty is uniform to all Plaintiffs and Class members in the Covered Trusts. The implied duty of good faith is necessary to effectuate the bargain of the parties so that if there was no such implied covenant, Plaintiffs and Defendants would be deprived of the fruits of their bargain.

86. Defendants have violated this duty of good faith and fair dealing by entering into, and attempting to consummate, the Settlement Agreement as described herein. The Settlement Agreement entered into by Defendants does not improve mortgage loan servicing, but instead ensures that the quality of Mortgage Loan servicing will worsen.

87. As part of the duty of good faith and fair dealing is the duty to employ prudent and reasonable loan servicing practices that are at least as good as current industry standards including the obligation to hire, and properly train, adequate staff.

88. This duty also includes refraining from conduct (i) which deprives the other party of reasonable opportunity to perform its contractual obligations, (ii) which deprives the other party the opportunity to perform under the contract, and (iii) which deprives the other party of the opportunity to enjoy benefits of contract.

89. These Defendants breached the implied duty within each contract by, among other actions, entering into the Settlement Agreement (i) which requires the use of a servicing standard which is less than the current industry standard, (ii) which requires the use of a loan servicing standard which seeks to lower the current industry standards, (iii) which is in direct conflict with standards articulated by the U.S. Treasury Department's Home Affordable Modification Program, (iv) which is in direct conflict with standards articulated by the Servicer Alignment Initiative governing the activities of the two government entities Fannie Mae and Freddie Mac, (v) which incentivizes and even mandates foreclosure; (vi) which imposes no duty on either the Master Servicer of Sub-Servicer to assure that homeowners will be protected from well-documented illegal and abusing servicing and inappropriate foreclosures, (vii) which imposes no duty on either the Master Servicer of Sub-Servicer to assure that homeowners rights under TILA/RESPA/Dodd Frank are respected including prompt and timely response to request for identification of the current owner of mortgage loan, (viii) which requires the transfer of loans to a sub-servicer prior to determining whether a deficiency exists with regard to the ownership of a loan and right to collect payments on said loan, (ix) which fails to require sub-servicer to adhere to current industry standard and standards articulated by HAMP, Fannie Mae/Freddie Mac Servicer Alignment Initiative and duties imposed under federal and state consent decrees, and (x) which does not require proper compensating sub-servicer for undertaking policies and procedures which will protect the homeowners.

90. Plaintiffs and the Class seek declaratory and injunctive relief only on this cause of action for breach of contract.

COUNT II

NEGLIGENCE

91. Plaintiffs reallege the allegations set forth above as is fully set forth herein.

92. Defendants have a duty to each Plaintiff and Class member to service the Mortgage Loans in a reasonably prudent manner and to abide by minimum servicing standards for the mortgage servicing industry. Defendants have breached this duty of care to Plaintiffs and Class members in that these Defendants have completely failed to service the Mortgage Loans at even the most basic level. This failure and breach of duty is the direct and proximate cause of injury to Plaintiffs and Class members.

93. As a result of this breach of duty, Plaintiffs and the Class have suffered damages.

94. Plaintiffs and the Class seek declaratory and injunctive relief on this cause of action for negligence.

COUNT III

GROSS NEGLIGENCE AND/OR INTENTIONAL TORT

95. Plaintiffs reallege the allegations set forth above as is fully set forth herein.

96. Defendants, including BNY Mellon, acted with gross negligence, recklessly, deliberate indifference, and/or intentionally towards Plaintiffs and Class members in that (1) Defendants utterly failed to use any reasonable standards to properly service the Mortgage Loans and (2) Defendants entered into this Settlement Agreement

knowing full well that the quality of servicing of the Mortgage Loans would be seriously damaged and compromised by the new standards set forth in the Settlement Agreement.

97. Defendants systematic failure in their servicing obligations as described herein was, and remains, grossly negligent, willful, wanton, in total disregard for the rights of Plaintiffs and Class members, and/or intentional.

98. Defendants Settlement Agreement was an intentional attempt to reduce and/or eliminate any standards by which the Mortgage Loans would be serviced. This conduct was designed to benefit all parties except Plaintiffs and the Class who will be damaged as a result of the Settlement Agreement. As a result of this gross negligence and/or intentional tort, Plaintiffs and the Class have suffered injury.

99. Plaintiffs and the Class seek declaratory and injunctive relief on this cause of action for gross negligence and/or intentional tort.

COUNT IV

DECLARATORY RELIEF AND INJUNCTION

100. Plaintiffs reallege the allegations set forth above as is fully set forth herein.

101. Plaintiffs seek declaratory relief and injunction from Defendants. Plaintiffs have no adequate remedy at law. Monetary damages will not provide the relief required by Plaintiffs.

102. Plaintiffs are likely to have ultimate success on the merits of this case. The Settlement Agreement, as written and implemented, materially impacts Plaintiffs and

the Class. If this relief is not granted, Plaintiffs and the Class face the prospect of irreparable injury.

103. A balance of equities weighs in favor of an injunction. There are no other remedies available to Plaintiffs aside from the declaratory and injunctive relief as described herein.

104. The Settlement Agreement does not "improve" servicing on the mortgage loans, but in fact, it affirmatively injures Plaintiffs and the Class and described herein. An injunction stopping Defendants from further implementation of the Settlement Agreement to prevent injury to Plaintiffs and the Class.

PRAYER FOR RELIEF

105. Based on the foregoing, Plaintiff respectfully prays that this Court grant the following relief:

A. Issue a Declaratory Judgment that Defendants have violated the duty of good faith and fair dealing in the mortgage contracts with Plaintiffs and the Class;

B. Issue an injunction stopping Defendants from continuing to implement the Settlement Agreement;

C. Issue an injunction requiring Defendants (i) to comply with current industry standards of mortgage servicing, (ii) implement mortgage servicing standards that are higher than current industry standards, and (iii) implement procedures that will require compliance with these standards;

D. Attorneys' fees and costs in bringing this action;

E. Incidental damages related to any injunctive relief granted by the Court; and

F. Any such further relief as the court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: August 30, 2011.

Respectfully submitted,

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