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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

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JOSEPH HABER and GINA HABER,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A. and
BAC HOME LOANS SERVICING, L.P.,

Defendants.

No. **10 3524**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FILED

JUL 17 2010

By _____ Dep. Clerk

Plaintiffs on behalf of themselves and all others similarly situated, hereby submit the following class action complaint, and upon personal knowledge as to their own acts and status, and upon information and belief as to all other matters, allege as follows against Defendants Bank of America, N.A. and its subsidiary BAC Home Loans Servicing, L.P. (hereinafter collectively "Bank of America" or "Defendants"):

NATURE OF THE ACTION

1. The United States is in the midst of an unprecedented foreclosure crisis. Almost 3.1 million homes have been seized by lenders since April 2005.¹

2. The crisis does not appear to be improving. May 2010 represented the second consecutive month in which foreclosures on U.S. homes reached a record rate.²

¹ <http://www.businessweek.com/news/2010-06-10/u-s-home-foreclosures-climb-44-to-record-in-may-update1-.html>

² *Id.*

*Joiss
Sinner
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3. In February 2009, the federal government instituted the Home Affordable Modification Program (“HAMP”) as part of an effort to help mortgage loan borrowers (“Borrowers”) save their homes and thereby slow the tide of foreclosures.

4. HAMP contains a number of measures to aid Borrowers, but its primary purpose is to insure that qualified Borrowers receive mortgage loan modifications designed to help them keep their homes.

5. Participation in HAMP is mandatory for banks which accepted federal money under the now-famous Troubled Asset Relief Program (“TARP”), 12 U.S.C. § 5211.

6. Defendant Bank of America has accepted at least \$25 billion in funds under TARP and, as it therefore must, has agreed to participate in HAMP.

7. Under HAMP, Bank of America is obligated to identify Borrowers, whose loans it services, that would benefit from loan modifications. Such identification is to be based on Bank of America’s own investigation, as well as requests from Borrowers themselves.

8. Once eligible Borrowers are identified, HAMP requires that Bank of America perform an analysis of a Borrower’s financial situation and, if it meets HAMP guidelines, offer the Borrower a Trial Period Plan (“Trial Plan”).

9. Under the Trial Plan, Borrowers are required to make three trial payments (“Trial Payments”) at a modified loan rate.

10. If Borrowers successfully make the Trial Payments, then HAMP requires and Bank of America, in fact, promises Borrowers that they will be approved for a permanent loan modification under HAMP.

11. Instead of complying with the aforementioned requirements of HAMP and its own agreements with Borrowers, Bank of America has failed to give permanent loan modifications to Borrowers who have satisfied the requirements of the Trial Plan by making their Trial Payments.

12. Instead, Bank of America has denied permanent loan modifications to Borrowers who are entitled to them under both HAMP and Bank of America's own agreements with Borrowers.

13. As detailed herein, Bank of America has significant financial incentives to deny Borrower's HAMP loan modifications and is actively engaged in pursuing these incentives, contrary to its obligations to the U.S. government and Borrowers.

14. Bank of America's wrongdoing extends far beyond its improper denials of HAMP modifications, however. Bank of America, among other actions, has also engaged in the following conduct, which is prohibited by HAMP and other laws:

- a. Instructing Borrowers that are current, or less than 60 days delinquent, in their mortgage payments that they cannot be evaluated for the HAMP modification until they become 60 days delinquent;
- b. Failing to timely evaluate Borrowers for HAMP eligibility;
- c. Failing to offer Trial Plans to eligible Borrowers;
- d. Assessing improper fees against Borrowers participating in HAMP;
- e. Allowing Borrowers to remain on Trial Plans for longer than the mandated three months before issuing them an improper denial of permanent HAMP modification; and

- f. Following its improper denials of HAMP modifications, Bank of America immediately demands balloon payments from Borrowers to cover the difference between Trial Payments and the Borrowers' standard monthly mortgage payments.

15. As a result, Plaintiffs bring this lawsuit against Bank of America on behalf of themselves and all other similarly situated Borrowers, alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, and violations of Pennsylvania's consumer protection law.

16. Indeed, Pennsylvania Borrowers are not alone in taking legal action against Bank of America, as class action suits have been filed on behalf of Borrowers in Washington, California, and Arizona. *See, e.g., Kahlo v. Bank of America, et al.*, No. 2:10-cv-488 (W.D. Wash.).

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. 1332(d)(2), since there are at least 100 class members in the proposed class, the combined claims of proposed class members exceed \$5,000,000 exclusive of interest and costs, and there are numerous class members who are citizens of states other than Bank of America's state of citizenship, which is Delaware.

18. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367 because the Plaintiffs are intended, third-party beneficiaries to a contract between Bank of America and the U.S. Treasury Department that was executed pursuant to TARP.

19. This Court has personal jurisdiction over Bank of America because a substantial portion of the wrongdoing alleged in this Complaint took place in this District, Bank of America is authorized to do business in this District, Bank of America has sufficient minimum contacts with this District, and/or Bank of America intentionally avails itself of markets in this District through the promotion, marketing and sale of its products and services to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because the named Plaintiffs reside here, because Bank of America has hundreds, if not thousands, of customers in this District, because Bank of America receives substantial fees from Borrowers in this District, because Bank of America maintains offices and branch banks in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

21. Plaintiffs Joseph and Gina Haber are married, over 18 years of age, and reside in Warminster, Pennsylvania.

22. Defendant Bank of America, N.A. is a national banking association, headquartered in Charlotte, North Carolina.

23. Defendant BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A., and is headquartered in Calabasas, California.

GENERAL FACTUAL ALLEGATIONS

I. FORECLOSURES IN PENNSYLVANIA

24. Pennsylvania has not been immune to the foreclosure problems being experienced by the rest of the United States.

25. The Associated Press reported on June 10, 2010, that “the number of Pennsylvania homes entering the foreclosure process over the past 12 months rose by more than 20 percent, despite a national rate that stayed flat over the same period. New figures out Thursday from foreclosure listing firm RealtyTrac Inc. showed almost 5,300 Pennsylvania homes received at least one foreclosure filing in May.”³

26. The same report also noted that “Pennsylvania's foreclosure rate in May was two-fifths the national rate, with approximately one in every 1,000 homes receiving a foreclosure filing last month. A year ago, the state's foreclosure rate was one-third the national rate, a sign that Pennsylvania's situation worsened while the nation's foreclosure crisis appeared to level off.”⁴

27. HAMP's most recent report on the performance of its participant loan servicers, current through April 2010, shows that between 5-10% of mortgage loans in Pennsylvania are at least 60 days delinquent.

II. THE HOME AFFORDABLE MODIFICATION PROGRAM (“HAMP”)

28. HAMP is one of two programs which make up the federal Making Home Affordable program (“MHA”).⁵

³http://www.pennlive.com/midstate/index.ssf/2010/06/pennsylvania_foreclosure_rate.htm.

⁴ *Id.*

⁵ The other MHA program is the Home Affordable Refinance Program, which is not relevant to this Complaint.

29. The creation of MHA was announced by the Treasury Department on February 18, 2009, pursuant to authority granted the Secretary of Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C.A. § 5201 *et seq.*, as amended by the American Recovery and Reinvestment Act of 2009.

30. HAMP is funded in large part by monies allocated from the Troubled Asset Relief Program (“TARP”).

31. The intent of HAMP is that loan servicers and lenders, such as Bank of America, will identify those of their Borrowers who might benefit from the Program and then take the steps set forth below to achieve loan modifications for this identified group.

A. A Loan Servicer’s Duties Under HAMP

i. The Servicer Participation Agreement

32. A loan servicer’s participation in HAMP is documented by a Servicer Participation Agreement (“SPA”), which is a contract between the servicer and the Federal National Mortgage Association (“Fannie Mae”), as financial agent of the United States.

33. On or about April 17, 2009, Bank of America entered into an SPA (“Bank of America SPA”) with Fannie Mae, attached hereto as Exhibit A.

34. Pursuant to the Bank of America SPA, a HAMP “Participating Servicer” (“Participating Servicer”) agrees to comply with all “Program Guidelines,” as set forth in the “Program Documentation (“Program Documentation”).” Exhibit A, Bank of America SPA, I(A), p. 2.

35. The SPA defines the “Program Documentation” as “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.” Exhibit A, Bank of America SPA, I(A), p. 2.

36. According to the SPA, Program Documentation also includes “Supplemental Directives” (“Supplemental Directives”). Exhibit A, Bank of America SPA, I(A), p. 2.

ii. **The Purpose of HAMP: To Benefit Borrowers**

37. On April 6, 2009 the United States Department of the Treasury (“Treasury”) issued its first Supplemental Directive, which states that HAMP is “aimed at helping 3 to 4 million at-risk homeowners – both those who are in default and those who are at imminent risk of default – by reducing monthly payments to sustainable levels.” Supplemental Directive 09-01, p. 1, attached hereto as Exhibit B.

38. Under the Program Documentation, Bank of America is required to evaluate all of its mortgage loans to determine whether they are eligible for HAMP. Exhibit B, Supplemental Directive 09-01, p. 4.

39. In addition, Bank of America is required to evaluate Borrowers for HAMP if such Borrowers contact Bank of America seeking a loan modification and are at risk of “imminent default” – a condition which must be evaluated by Bank of America. Exhibit B, Supplemental Directive 09-01, pp. 3-4.

iii. **HAMP Eligibility and Loan Modification**

40. Supplemental Directive 09-01 sets forth the eligibility criteria for HAMP, which include, among other requirements, that the loan be a first lien mortgage and that the Borrower's monthly mortgage payment is "greater than 31 percent" of the Borrower's monthly income. Exhibit B, Supplemental Directive 09-01, pp. 2-3. In addition to the other requirements, HAMP requires that a loan be either delinquent or that default on the loan is "reasonably foreseeable." *Id.* at p. 2. Loans in foreclosure are eligible for HAMP. *Id.*

41. If a Borrower is found to be HAMP-eligible, a series of steps must be taken by the Participating Servicer to reduce the Borrower's mortgage payment to 31% or less of the Borrower's monthly income (the "Modified Payment"). Exhibit B, Supplemental Directive 09-01, pp. 8-10.

iv. **The Trial Period Plan**

42. Once a Modified Payment is established for a Borrower, HAMP mandates that a Borrower then be placed on a Trial Period Plan ("Trial Plan"). Exhibit B, Supplemental Directive 09-01, pp. 17-18.

43. The Trial Plan requires the Borrower to make three consecutive Modified Payments, which are known as Trial Payments ("Trial Payments"). Exhibit B, Supplemental Directive 09-01, p. 17.

44. The purpose of the Trial Plan is presumably to demonstrate the Borrower's ability to make Modified Payments.

v. **Successful Completion of the Trial Plan Should Result in a Permanent Modification Under HAMP**

45. If a Borrower makes the three Trial Payments, HAMP mandates that the Borrower be given a permanent modification (“Permanent Modification”). Exhibit B, Supplemental Directive 09-01, p. 18; *see also* Exhibit C, HAMP Sample Offer Document for Servicers; Exhibit D, Bank of America HAMP Offer Sheet.

46. The Permanent Modification is fixed for five years in the amount of the Modified Payment. Exhibit B, Supplemental Directive 09-01, pp. 8-10.

vi. **Additional Requirements and Prohibitions Under HAMP**

47. In addition to the aforementioned requirements of HAMP, the program also imposes the following obligations, among others, on Participating Servicers:

- a. A Borrower may not be reported to credit reporting agencies without explanation while participating in HAMP (Exhibit B, Supplemental Directive 09-01, p. 22);
- b. “Servicers must have adequate staffing, resources, and facilities for receiving and processing the HAMP documents and any requested information that is submitted by borrowers. Servicers must also have procedures and systems in place to be able to respond to inquiries and complaints about the HAMP. Servicers should ensure that such inquiries and complaints are provided fair consideration, and timely and appropriate responses and resolution.” (Exhibit B, Supplemental Directive 09-01, p. 13); and

- c. A Borrower cannot be asked for a “good faith” payment prior to being placed on a Trial Plan. HAMP Supplemental Documentation dated January 8, 2010, at Q.83.⁶

III. BANK OF AMERICA’S VIOLATIONS OF HAMP

48. Bank of America has been systematically violating HAMP in at least the following ways:

- a. Denying Permanent Modifications to Borrowers who successfully comply with and complete Trial Plans;
- b. Imposing balloon payments on Borrowers who were improperly denied Permanent Modifications;
- c. Keeping Borrowers on Trial Plans far longer than three months;
- d. Instructing Borrowers that are current, or less than 60 days delinquent, in their mortgage payments that they cannot be evaluated for the HAMP modification until they become 60 days delinquent;
- e. Failing to adequately assess its loan portfolio to identify Borrowers who might be eligible for HAMP;
- f. Failing to respond in timely fashion to Borrowers who request loan modifications;
- g. Improperly reporting HAMP participants to credit reporting agencies;
- h. Proceeding with foreclosure actions against HAMP participants;
- i. Failing to maintain adequate staff to administrate HAMP;
- j. Charging improper fees and penalties to HAMP participants;

⁶ <https://www.hmpadmin.com/portal/programs/hamp/servicer.html>.

k. Demanding up-front payments from Borrowers before placing them in Trial Plans.

49. Bank of America's violations of HAMP are legion and, in many cases, deliberate. Bank of America's method of dealing with HAMP participants and would-be participants is to route them through endless phone calls with customer service representatives who give conflicting answers, are ignorant of the details of HAMP, and frequently attempt to bully Borrowers into making decisions which are not in their best interests and contrary to HAMP.

50. Bank of America's conduct constitutes a breach of its SPA with the federal government, a contract to which Plaintiffs and the Class are third-party beneficiaries.

IV. BANK OF AMERICA HAS CONTRACTED DIRECTLY WITH PLAINTIFFS AND THE CLASS

51. Bank of America, irrespective of HAMP, has made an offer to Plaintiffs and the Class to enter into a contract.

52. Bank of America sends an offer sheet ("Offer Sheet") to potential HAMP participants. A copy of an Offer Sheet is attached hereto as Exhibit D.

53. The Offer Sheet sets forth the terms of Bank of America's agreement with Plaintiff and the Class.

54. Specifically, the Offer Sheet states:

- a. You provide us with information to confirm your financial situation.
- b. We will review the information you provide and determine if you are eligible for the Home Affordable Modification Program.

- c. If the eligibility requirements are met, you will be offered a new affordable mortgage payment for a 3 month trial period.
- d. After the trial period is successfully completed, a new loan modification agreement will be sent to you.

Exhibit D, Offer Sheet.

55. The terms of Bank of America's Offer Sheet have been accepted by Plaintiffs and the Class in the following ways by: (1) signing a Trial Plan agreement (a sample of which is attached hereto as Exhibit E); (2) submitting documentation requested by the Offer Sheet; and/or (3) submitting Trial Payments.

56. Thus, Bank of America's Offer Sheet and the acceptance thereof by Plaintiffs and the Class have formed an enforceable contract between the parties.

VI. BANK OF AMERICA'S WRONGFUL DENIAL OF PLAINTIFFS' HAMP MODIFICATION

57. Plaintiffs Joseph and Gina Haber bought their home in 2005, taking a mortgage loan ("Mortgage") through Countrywide Financial.

58. When Bank of America acquired Countrywide Financial, Bank of America became the servicer of Plaintiffs' Mortgage.

59. The monthly payments on the Mortgage were \$2,276.94.

60. In or around March 2009, Plaintiffs became concerned that they might become delinquent on their mortgage due to several factors, including that one of their children had become ill with a condition requiring expensive medicines that were not entirely covered by insurance.

61. Plaintiffs contacted Bank of America by phone in order to seek a modification of their Mortgage.

62. During this phone call, a Bank of America representative told Plaintiffs that they could not be considered for a HAMP modification until they were 60 days delinquent on their Mortgage. The Bank of America representative further advised Plaintiffs to withhold Mortgage payments in order to reach this level of delinquency.

63. In reliance on the advice given by the Bank of America representative, Plaintiffs held the Mortgage payments they were capable of making until their Mortgage was 60 days delinquent. At this point, Plaintiffs contacted Bank of America again and requested a mortgage loan modification.

64. In response to this call, Bank of America sent Plaintiffs the HAMP Offer Sheet attached as Exhibit D hereto.

65. Plaintiffs complied with all documentation requested by Bank of America with respect to their HAMP application.

66. Plaintiffs were issued a Trial Plan agreement by Bank of America, attached hereto as Exhibit E, which set a starting date for the Trial Plan of June 12, 2009.

67. Plaintiffs executed the Trial Plan agreement (Exhibit E)⁷ and proceeded to make timely Trial Payments of \$1,832.12 beginning in June 2009.

68. After completing three months on the Trial Plan, Plaintiffs called Bank of America to ask when they would receive their Permanent Modification. A Bank of America representative replied that Plaintiffs would receive the Permanent Modification soon.

⁷ The signature pages of the Trial Plan agreement, attached as Exhibit E, is missing because Plaintiffs sent their original, executed signature pages to Bank of America but did not retain copies. These original signature pages are in Bank of America's possession and Bank of America's receipt of the signature pages is reflected by its issuance of a Trial Plan to Plaintiffs.

69. Plaintiffs continued to call Bank of America on at least a monthly basis between September 2009 and June 2010 and were continually told by Bank of America that they would receive a Permanent Modification.

70. During this period, Plaintiffs continued to make Trial Payments pursuant to their Trial Plan.

71. On June 7, 2010, nearly a full year after Plaintiffs began their Trial Plan, Bank of America sent Plaintiffs a letter informing them that they had been denied for a Permanent Modification under HAMP. This letter is attached hereto as Exhibit F.

72. Plaintiffs initiated a series of phone calls to Bank of America in the aftermath of Bank of America's June 7, 2010 letter.

73. Although they were told different and contradictory information by Bank of America over the course of this series of calls, it became clear that Bank of America was demanding that Plaintiffs make an immediate balloon payment to cover what Bank of America claimed was the purported total difference between Plaintiffs' Modified Payments and their previous Mortgage payments that had accrued over the course of the year in which Plaintiffs had been on the Trial Plan.

74. Bank of America variously represented the necessary balloon payment on this series of calls as roughly: \$10,000, \$12,000, or \$14,000. There is no way, however, that Plaintiffs could possibly owe even the smallest of these amounts to Bank of America, under either HAMP or their mortgage. Plaintiffs have attempted to point this out to Bank of America over the phone but, in return, have received nonsensical and differing explanations to justify the balloon payment. Apparently, however, Bank of America

assessed fees and penalties against Plaintiffs while they were in HAMP – a clear violation of HAMP and of the contract between Plaintiffs and Bank of America.

75. Plaintiffs also attempted to reach someone at Bank of America to negotiate a graduated payment agreement for the balloon amount but Bank of America representatives refused to put anyone on the phone who had the authority to discuss such an agreement.

76. However, a Bank of America representative did admit to Plaintiffs that Bank of America has put numerous Borrowers in very difficult financial positions due to the bank's illegal delay in acting on HAMP modifications.

77. Plaintiffs subsequently received a Notice of Intent to Foreclose on their home from Bank of America, dated June 29, 2010.

78. In sum, Bank of America has put Plaintiffs in a serious financial predicament by improperly denying their Permanent Modification, extending the Trial Period far longer than the mandated three months, and then demanding a balloon payment upon threat of foreclosure.

79. According to a Bank of America representative, Bank of America has done the same thing to many other Borrowers.

80. After accepting billions of dollars in U.S. taxpayer's money and, in return, agreeing to work diligently to modify mortgage loans, Bank of America's conduct is unconscionable and must be stopped.

VII. BANK OF AMERICA'S MOTIVE FOR NOT COMPLYING WITH HAMP

81. Due to the federal government's purchase of large numbers of residential mortgages through Fannie Mae, lenders such as Bank of America no longer own many of the loans they service.

82. Such banks do, however, derive significant revenues from servicing loans owned by other entities, including Fannie Mae.

83. The National Consumer Law Center has done significant research on why Participating Servicers such as Bank of America are far better served by foreclosing on Borrowers than from modifying their loans. See Diane E. Thompson, *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior: Servicer Compensation and its Consequences*, National Consumer Law Center (October 2009).

84. Based on an exhaustive analysis of the loan servicing industry, Ms. Thompson concludes: "Servicers, unlike investors or homeowners, do not generally lose money on a foreclosure. Servicers may even make money on a foreclosure. And, usually, a loan modification will cost the servicer something. A servicer deciding between a foreclosure and a loan modification faces the prospect of near certain loss if the loan is modified and no penalty, but potential profit, if the home is foreclosed." *Id.* at V.

85. Thus, Bank of America's motive for denying HAMP modifications is clear.

86. Statistics compiled by Treasury confirm Bank of America's failure to comply with HAMP. As of January 2010, Bank of America had 1,066,025 loans in its portfolio which were estimated to be candidates for HAMP. Trial Plans had been issued

on only 237,766 of those loans, and Bank of America had completed only 12, 761 Permanent Modifications.⁸

CLASS ALLEGATIONS

87. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and all others similarly situated (the “Class”), initially defined as:

All Pennsylvania Borrowers with residential mortgage loans which have been serviced by one or both Defendants and who, since April 17, 2009, have not received a Permanent Modification: (1) after complying with the 3-month Trial Plan prescribed by HAMP and Bank of America; or (2) after having requested or been otherwise eligible for a Trial Plan under HAMP’s Program Documentation, have not been offered a Trial Plan by Bank of America. The following persons shall be excluded from the Class: (1) Defendants and their subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom this case is assigned and any immediate family members thereof.

88. Plaintiff reserves the right to modify or amend the Class definition(s), as appropriate.

89. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

90. **Numerosity Under Rule 23(a)(1).** The members of the Class are so numerous that individual joinder of all the members is impracticable. Plaintiff is informed and believes that there are, at least, thousands of Bank of America Borrowers who have been damaged by Bank of America’s conduct, as alleged herein. The precise number of class members and their addresses are unknown to Plaintiff; however, they are readily available from Bank of America’s records. Class members may be notified of the

⁸ <https://www.hmpadmin.com/portal/news/press.html>.

pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

91. **Commonality and Predominance Under Rule 23(a)(2) and (b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual class members, including, but not limited to, the following:

- a. Whether Bank of America breached the Bank of America SPA;
- b. Whether Bank of America breached its contract with Plaintiff and members of the Class;
- c. Whether Bank of America breached the covenant of good faith and fair dealing with respect to Plaintiff and members of the Class;
- d. Whether Bank of America should be estopped from denying Plaintiffs the relief they seek;
- e. Whether Bank of America has been unjustly enriched as a result of the conduct complained of herein;
- f. Whether Bank of America has violated Pennsylvania's consumer protection law;
- g. Whether Class members are entitled to actual, statutory, or other forms of damages, and other monetary relief and, if so, in what amount; and
- h. Whether Class members are entitled to equitable relief, including but not limited to injunctive relief and restitution.

92. **Typicality Under Rule 23(a)(3).** The named Plaintiffs' claims are typical of the claims of the Class because, among other things, Plaintiffs accepted Bank of America's offer for a Trial Plan and complied with all requirements of Bank of

America's offer and with HAMP. Notwithstanding Plaintiffs' compliance, Bank of America nevertheless denied Plaintiffs a Permanent Modification.

93. **Adequacy of Representation Under Rule 23(a)(4).** Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class that they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

94. **Superiority Under Rule 23(b)(3).** A class action is superior to all other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Bank of America, so it would be impracticable for the members of the Class to individually seek redress for Bank of America's wrongful conduct. Even if the members of the Class could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

95. **Risk of Inconsistent Adjudication Under Rule 23(b)(1)(A).** The prosecution of separate actions by the individual members of the Class would create a

risk of inconsistent or varying adjudication with respect to individual Class members, which would establish incompatible standards of conduct for Bank of America.

96. **Incompatible Standards of Conduct Under Rule 23(b)(1)(B).** The prosecution of separate actions by individual Class members would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests.

97. **Declaratory and Injunctive Relief Under Rule 23(b)(2).** Bank of America has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the members of the Class as a whole.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Breach of Contract)

98. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

99. Bank of America's Offer Sheet constituted an offer to Plaintiffs and the Class. The terms of Bank of America's Offer Sheet have been accepted by Plaintiffs and the Class in the following ways by: (1) signing a Trial Plan agreement (a sample of which is attached hereto as Exhibit E); (2) submitting documentation requested by the Offer Sheet; and/or (3) submitting Trial Payments.

100. Thus, a contract was formed between Bank of America and Plaintiffs and the Class.

101. Plaintiffs and the Class gave consideration for the contract between them and Bank of America by providing the documentation requested by Bank of America, by foregoing alternative means of addressing issues with their mortgage loans, and/or by submitting Trial Payments.

102. Bank of America breached its contracts with Plaintiffs and the Class by failing to provide them with Permanent Modifications and/or Trial Plans.

103. As a result of Bank of America's breach, Plaintiff and the Class were damaged by being denied the Permanent Modifications to which they were entitled after completing Trial Plans, or the opportunity to secure such Permanent Modifications through completing Trial Plans which they were never given.

SECOND CLAIM FOR RELIEF
(Breach of Contract Based on Third-Party Beneficiary Status)

104. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

105. The HAMP Program Documentation makes plain that Plaintiffs and the Class are third-party beneficiaries to the Bank of America SPA, the contract between Bank of America and the United States.

106. As set forth herein, Bank of America has systematically breached the Bank of America SPA.

107. As a result of Bank of America's breach of the Bank of America SPA, Plaintiffs and the Class have been damaged by being denied the Permanent Modifications to which they were entitled after completing Trial Plans, or the opportunity to secure such Permanent Modifications through completing Trial Plans which they were never given.

THIRD CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing)

108. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

109. Under common law, a covenant of good faith and fair dealing is implied into every contract.

110. As a result of the conduct alleged herein, Bank of America breached the covenant of good faith and fair dealing both with respect to its contract with Plaintiffs and the Class, as well as with respect to its breach of the Bank of America SPA.

111. Plaintiffs and the Class have been damaged by Bank of America's breach of the covenant of good faith and fair dealing because this breach resulted in Plaintiffs and the Class being denied the Permanent Modifications to which they were entitled after completing Trial Plans, or the opportunity to secure such Permanent Modifications through completing Trial Plans which they were never given.

FOURTH CLAIM FOR RELIEF
(Promissory Estoppel)

112. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

113. Bank of America sent its Offer Sheet to Plaintiffs and the Class with the full and reasonable expectation that Plaintiffs and the Class would rely on the Offer Sheet's promise to allow Plaintiff and the Class to participate in HAMP, submit documentation, and, if eligible, participate in a Trial Plan.

114. Relying on Bank of America's promise to offer a Trial Plan and Permanent Modification upon successful completion of the Trial Plan, Plaintiffs and the Class submitted their documentation and/or made Trial Payments to Bank of America.

115. As a result of their reliance on Bank of America's promise, Plaintiffs and the Class have suffered harm because they have lost valuable time in receiving the HAMP modifications to which they are entitled along with consequent monetary damage and/or made Trial Payments in amounts which, but for their reliance, they could have used in other ways to improve their situations.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment/Restitution, in the Alternative)

116. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

117. By its deceptive, misleading, bad faith and unlawful conduct alleged herein, Bank of America unjustly received a benefit at the expense of Plaintiffs and the Class.

118. It is unjust to allow Bank of America to retain the monies from its deceptive, misleading, bad faith and unlawful conduct alleged herein without providing compensation to Plaintiffs and the Class.

119. Bank of America acted with conscious disregard for the rights of Plaintiff and the Class.

120. Plaintiff and members of the Class are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits,

and other compensation obtained by Bank of America from its deceptive, misleading, bad faith and unlawful conduct.

SIXTH CLAIM FOR RELIEF
(Violation of UTPCPL, 73 P.S. § 201-2(xxi))

121. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs as though alleged in full herein.

122. Plaintiffs allege that Bank of America's conduct, as set forth herein, is both fraudulent and deceptive and creates a likelihood of confusion or of misunderstanding and, therefore, violates Pennsylvania's consumer protection statute, 73 P.S. § 201-2(xxii).

123. Specifically, through its Offer Sheet and the oral representations made by its employees and agents, Bank of America fraudulently and deceptively led Plaintiffs and the Class to believe that Bank of America would comply with the terms of its Offer Sheet and with HAMP, if Plaintiffs and the Class fulfilled their obligations thereunder.

124. In fact, Bank of America knew at the time it sent its Offer Sheet and that its employees and agents made the oral representations set forth in paragraph 123 above, that it had no intention of complying with its obligations under the Offer Sheet and HAMP and, indeed, that it did not have the capability of complying due to inadequate and unknowledgeable staff.

125. In fact, despite compliance with the Offer Sheet and HAMP by Plaintiffs and the Class, Bank of America did not comply with its obligations under its Offer Sheet or with HAMP.

126. As a result of Bank of America's fraudulent and deceptive conduct as alleged herein, Plaintiffs and the Class have been damaged by being denied the Permanent Modifications to which they were entitled after completing Trial Plans, or the opportunity to secure such Permanent Modifications through completing Trial Plans which they were never given.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves and the Class, request that the Court order relief and enter judgment against Defendants Bank of America and BAC Home Loans Servicing, L.P. as follows:

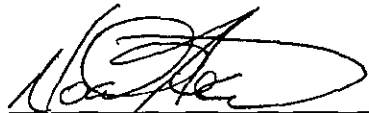
- i. An order certifying the proposed Class and appointing Plaintiff and Plaintiff's counsel to represent the Class;
- ii. An order that Bank of America be permanently enjoined from its improper and unlawful conduct and practices alleged herein;
- iii. An order establishing a date certain for Bank of America to comply with the provisions of HAMP;
- iv. An order directing specific performance by Bank of America with its contractual obligations, as set forth herein;
- v. A judgment directing Bank of America to offer Permanent Modifications to Plaintiffs and the Class;
- vi. A judgment awarding Plaintiffs and the Class actual and statutory damages in an amount according to proof for Bank of America's conduct alleged under all causes of action herein entitling Plaintiffs and members of the Class to actual and statutory damages;

- vii. Prejudgment and post-judgment interest;
- viii. Attorneys' fees, expenses, and the costs of this action; and
- ix. All other and further relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury for all issues so triable under the law.

Dated: July 19, 2010



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