Ca	se 2:10-cv-04193-JFW-SS	Document 15	Filed 03/22/12	Page 1 of 355	Page ID #:1007			
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7	UNITED STATES DISTRICT COURT							
8		CENTRAL DIS	TRICT OF CALI	FORNIA				
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10	FEDERAL TRADE COMMIS	SION,						
11	Disintiff							
12	Plaintiff,							
13	V.		Case	No. 10-4193-JFW	Z-SSX			
14	COUNTRYWIDE HOME LO a corporation, and	ANS, Inc.,	CUDI					
15	BAC HOME LOANS SERVI		SUPPLEMENTAL CONSENT JUDGMENT AND ORDER					
16 17	a limited partnership,							
17 18	Defendants.							
10 19	Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), and Defendant, BAC Home							
20	Loans Servicing, LP ("BAC Home Loans"), jointly stipulate to this Supplemental Consent Judgment							
20	and Order ("Supplemental Order"), which resolves Plaintiff's allegation that BAC Home Loans violated							
21	the Consent Judgment and Order ("Consent Order") entered by this Court on June 15, 2010. BAC							
23	Home Loans received notice of the Consent Order on June 17, 2010.							
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## NOW THEREFORE IT IS HEREBY ORDERED AS FOLLOWS: FINDINGS

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

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

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

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

11 E. From June 17, 2010, through June 30, 2011, the Consent Order, inter alia, prohibited BAC 12 Home Loans from: (1) making misrepresentations about the Status of Loans or amounts owed 13 on Loans (Paragraph I.A); (2) assessing and/or collecting any Fee for a service unless it is (a) 14 authorized and Clearly and Prominently disclosed by the Loan Instruments and not prohibited by 15 law, (b) expressly permitted by law and not prohibited by the Loan Instruments, or (c) for a 16 service requested by a consumer after disclosure and consent (Paragraph II); (3) assessing and/or 17 collecting title Fees that were not Clearly and Prominently disclosed on BAC Home Loans' Fee 18 Schedule (Paragraph V); (4) initiating foreclosure actions or assessing Fees in connection with 19 an actual or threatened foreclosure action prior to the review of Competent and Reliable 20 Evidence demonstrating that the consumer is in default under the terms of the Loan (Paragraph 21 VI); (5) consummating foreclosure sales without having investigated non-frivolous disputes by 22 consumers (Paragraph VI); (6) filing proofs of claim in connection with consumers' Chapter 13 23 Bankruptcy proceedings without providing copies of Loan Instruments and a detailed itemization 24 of all amounts claimed (Paragraph VII); (7) Servicing Loans without an adequate data integrity 25 program in place (Paragraph XI); and (8) failing to provide all information reasonably required 26 to administer redress within thirty (30) calendar days of a written request by the Commission

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(Paragraph XIV).

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2 F. The FTC alleges that, during the period from June 17, 2010, through June 30, 2011, BAC Home 3 Loans has violated the provisions of the Consent Order enumerated in Paragraph E, as follows: 4 1. BAC Home Loans misrepresented amounts owed on Loans in violation of Paragraphs I.A 5 and VI of the Consent Order through the submission to courts, and service on consumers, 6 of affidavits that contained Fees unsupported by Competent and Reliable Evidence; 7 2. BAC Home Loans also misrepresented the status of Loans in violation of Paragraph I.A 8 of the Consent Order by improperly completing foreclosure sales where a material 9 change in the circumstances, such as a short-sale, loan modification, or bankruptcy, had 10 occurred before the sale was completed; 11 3. BAC Home Loans assessed and/or collected Fees for Default-Related Services that were 12 not authorized and Clearly and Prominently disclosed by the Loan Instruments and/or not 13 permitted by law in violation of Paragraph II of the Consent Order; 14 4. BAC Home Loans assessed and/or collected title Fees that were not Clearly and 15 Prominently disclosed on BAC Home Loans' Fee Schedule in violation of Paragraph V 16 of the Consent Order; 17 5. BAC Home Loans filed proofs of claim in Chapter 13 Bankruptcy actions against 18 consumers without attaching copies of the Loan Instruments in violation of Paragraph VII 19 of the Consent Order; 20 6. BAC Home Loans serviced Loans in Bankruptcy without an adequate data integrity 21 program, including without sufficient data integrity to ensure the accuracy of post-22 petition payment amounts, interest amounts, and total amounts, included in proofs of 23 claim filed in Chapter 13 bankruptcy actions, in violation of Paragraph XI of the Consent 24 Order; and 25 7. BAC Home Loans failed to provide all information reasonably required to administer 26 redress, in violation of Paragraph XIV of the Consent Order, which required BAC Home 27 3 28

Loans to provide that information within 30 days of the Consent Order's entry. Specifically, on June 22, 2010, the Commission requested information from BAC Home Loans that would enable the Commission to determine the identities of consumers entitled to redress and the amounts necessary to compensate those consumers. BAC Home Loans did not provide complete and accurate information in response to that request until May 2011.

G. BAC Home Loans does not admit to any of the allegations set forth herein, and entry of this
Supplemental Order is not an admission of any such allegations of wrongdoing or violation of
law. Nonetheless, BAC Home Loans stipulates and agrees to entry of this Supplemental Order
to settle and resolve these disputes.

- H. BAC Home Loans waives: (a) all rights to seek appellate review or otherwise challenge or
  contest the validity of this Supplemental Order; (b) any claim BAC Home Loans may have
  against the Commission, its employees, representatives, or agents that relate to the matter stated
  herein; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by
  Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorneys' fees that may
  arise under said provision of law.
- I. The parties, by and through their counsel, have agreed that entry of this Supplemental Order
  resolves all matters in dispute between them concerning Defendants' compliance with the
  Consent Order up to the date of entry of this Supplemental Order. All claims by the FTC against
  BAC Home Loans related to the Consent Order shall be settled and resolved, and the FTC
  relinquishes and releases any right it may have to bring any further enforcement action under the
  Consent Order as to BAC Home Loans, except as provided below.

#### DEFINITIONS

For purposes of this Supplemental Order, the following definitions shall apply:

1."BAC Home Loans" shall mean BAC Home Loans Servicing, LP, formerly doingbusiness as Countrywide Home Loans Servicing, LP, and its successors and assigns, by whatever names

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they might be known, but not including any Bank. Effective July 1, 2011, BAC Home Loans Servicing,
LP merged with and into Bank of America, N.A., an entity not subject to the Consent Order and exempt
from the FTC's jurisdiction. For purposes of this Supplemental Order only, Bank of America
Corporation agrees to assume the obligations of BAC Home Loans Servicing, LP, solely with respect to
any monetary liability arising from alleged violations of Home Loans of the Consent Order from June
17, 2010, through June 30, 2011.

7 2. "Bank" shall mean a bank that is exempt from the FTC's jurisdiction pursuant to Section
8 5(a)(2) of the FTC Act, 15 U.S.C. § 45(a)(2), including Bank of America, N.A. "Bank" shall not
9 include any Person or entity controlled directly or indirectly by a bank that is not itself a bank, such as
10 an operating subsidiary or Affiliate of a bank that is not itself a bank.

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

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

I. MONETARY RELIEF

IT IS HEREBY ORDERED that, in view of the FTC's allegations that BAC Home Loans assessed
and/or collected Fees of thirty-six million, one hundred thousand and thirty-four dollars (\$36,100,034) in
violation of the Consent Decree, and BAC Home Loans' representation in the First Declaration that it
has remediated twenty-eight million, forty-two thousand and twenty-four dollars (\$28,042,024) of such
Fees, resulting in unremediated consumer losses of up to eight million, fifty-eight thousand, and ten
dollars (\$8,058,010):

A. Judgment is entered in the amount of eight million, fifty-eight thousand, and ten dollars
(\$8,058,010) to be paid by and through Bank of America Corporation to compensate consumers
for losses sustained as a result of BAC Home Loans' alleged violations of Paragraphs I.A, II, V,
VI, VII, and XI of the Consent Order.

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

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Declaration, assessed and/or collected Fees of thirty-six million, one hundred thousand and thirty-four dollars (\$36,100,034) that the FTC alleges caused violations of Paragraphs II and V of the Consent Order, as set forth in the allegations in Paragraphs F.3 and F.4 of the Findings section. This includes Fees BAC Home Loans assessed and/or collected for Default-Related Services that the FTC alleges are prohibited by the Consent Order, including:

- 1.Title Fees that the FTC alleges were not Clearly and Prominently disclosed on BACHome Loans' Fee Schedule in violation of Paragraph V of the Consent Order; and
  - Fees for Default-Related Services that the FTC alleges were not authorized and Clearly and Prominently disclosed by the loan instruments and/or not permitted by law, in violation of Paragraph II of the Consent Order.
- C. As set forth in the First Declaration, BAC Home Loans has remediated twenty-eight million,
  forty-two thousand and twenty-four dollars (\$28,042,024) of the Fees set forth in Paragraph I.B
  by reversing or refunding all such Fees that were assessed to and/or collected from any
  consumers.

# 15 D. BAC Home Loans shall satisfy the judgment in Paragraph I.A by providing to the FTC the First 16 Declaration required by Paragraph I.E and the Second Declaration required by Paragraph I.F that 17 collectively demonstrate it met each of the following conditions:

- Compensated consumers for all Fees BAC Home Loans assessed and/or collected for
   Default-Related Services that the FTC has identified and alleges were prohibited by the
   Consent Order, from June 17, 2010, through June 30, 2011, including:
  - a. Title Fees that the FTC alleges were not Clearly and Prominently disclosed on
     BAC Home Loans' Fee Schedule;
    - Fees for Default-Related Services that the FTC alleges were not authorized and Clearly and Prominently disclosed by the loan instruments and/or not permitted by law.
      - c. Such compensation shall include, at a minimum, reversal or refund of all such

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Fees for all consumers. Refund checks shall be valid for at least one hundred and
eighty (180) days from mailing. If BAC Home Loans or its successor is notified
that any checks are undeliverable to a borrower, BAC Home Loans or its
successor shall follow the procedures for the delivery of refund checks described
in the Subparagraph I.E.2;

- 2. Made all payments, directly or through its successor, into an interest bearing escrow account as required by Paragraph III.3 of the Consent Judgment filed in *United States v. Bank of America Corporation*, CV 12-00361 (D.D.C.) (attached as **Exhibit A**); provided, however, that, if the proposed Consent Judgment filed in *United States v. Bank of America Corporation*, CV 12-00361 (D.D.C.), is not approved and ordered by that Court within ninety (90) days of entry of this Supplemental Order, then the requirement of this Subparagraph I.D.2 shall not be a necessary condition for BAC Home Loans to satisfy the Judgment in Paragraph I.A; and
- 3. Complying with the payment requirements of the remediation program administered pursuant to Paragraphs 16, 19-25 of the Consent Order entered in the matter of *United States v. BAC Home Loans Servicing*, CV 11-04534 (C.D. Cal. May 31, 2011) (the "SCRA Consent Order" attached as **Exhibit B**).
- 18 E. BAC Home Loans provided the FTC with a First Declaration, sworn to under penalty of perjury,
  19 on February 16, 2012 explaining those steps it undertook to comply with Paragraph I.D.
  - The First Declaration described in detail BAC Home Loans' process for the compensation referenced in Paragraph I.D above, completed through February 1, 2012 including, but not limited to:
    - a. The means used to identify borrowers eligible for a reversal or refund of Fees;
    - b. The means used to notify borrowers that they were entitled to a reversal or refund of Fees, including a sample copy of any notification sent to borrowers;
    - c. The number of loan accounts eligible to receive a reversal or refund of a Fee;

1			d.	The number of loan accounts that received a reversal of a Fee and the number that
2				received a refund of a Fee; and
3			e.	The total dollar amount of Fees identified for reversal and the total amount
4				identified for refund.
5		2.	The F	irst Declaration also certified that BAC Home Loans or its successor followed the
6			procee	dures below for the delivery of refund checks:
7			a.	Mail all refund checks by first class mail to the last known address on the system
8				of record for each relevant borrower with forwarding service requested;
9			b.	Make each refund check issued valid for at least 180 days from mailing;
10			c.	If any refund check is returned, use the telephone number in the system of record
11				to contact the borrower and secure a correct address; and
12			d.	If efforts to contact the borrower by phone are unsuccessful, after 180 days from
13				the date the check was issued, turn over the unclaimed funds to the escheatment
14				process in compliance with applicable state laws and regulations regarding
15				unclaimed property.
16		3.	The F	irst Declaration also provided documentation in an electronic format specified by
17			the FI	TC for all compensation reversals or refunds, completed through February 1, 2012,
18			which	was sufficient to identify for each reversal or refund:
19			a.	the loan number for the loan assessed the Fee;
20			b.	the type of Fee;
21			c.	the amount of Fee; and
22			d.	the total amount reversed and the total amount refunded.
23		4.	The F	TC has accepted this First Declaration as satisfying the requirements of this
24			Parag	raph I.E.
25	F.	Withir	n one hi	undred and eighty (180) days from entry of this Supplemental Order, BAC Home
26		Loans	shall p	rovide to the FTC a Second Declaration, sworn to under penalty of perjury,
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confirming that:

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- The reversal and refund process described in the First Declaration has been completed;
   BAC Home Loans or its successor followed the procedures described in Subparagraph I.E.2 for the delivery of refund checks;
- 5 3. All payments into an interest bearing escrow account as required by Paragraph III.3 of 6 the Consent Judgment filed in United States v. Bank of America Corporation, CV 12-7 00361 (D.D.C.), have been made on behalf of Bank of America Corporation; provided, 8 however, that, if the proposed Consent Judgment filed in United States v. Bank of 9 America Corporation, CV 12-00361 (D.D.C.), is not approved and ordered by that Court 10 within ninety (90) days of entry of this Supplemental Order, then the Second Declaration 11 required by this Paragraph I.F need not include the confirmation called for in this 12 Subparagraph I.F.3; and
  - BAC Home Loans or its successor has complied with all payment requirements due as of the date of the Second Declaration for the remediation program administered pursuant to Paragraphs 16, 19-25 of the SCRA Consent Order.
- G. After submission of the Second Declaration described in Paragraph I.F, only with respect to
  remediation completed after February 1, 2012, BAC Home Loans must provide upon written
  request from the FTC, as needed to determine compliance with the Supplemental Order,
  documentation for specific payments identified by the FTC, or a random sampling of payments
  chosen by the FTC. Such documentation must be provided in an electronic format specified by
  the FTC and within thirty (30) days of receipt of the FTC's written notice. The documentation
  must be sufficient to identify for each payment:

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- 1. the loan number for the loan assessed the Fee;
- 2. the type of Fee;

3. the amount of Fee; and

4. the total amount reversed or refunded.

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1 H. After providing the Second Declaration required by Paragraph I.F, within one (1) year after entry 2 of this Supplemental Order, BAC Home Loans shall move the Court for an order: (a) certifying 3 that BAC Home Loans has complied with Paragraphs I.D, I.E, I.F, and I.G; and (b) terminating 4 the Consent Order as to BAC Home Loans and this Supplemental Order. In moving for such an 5 order, BAC Home Loans must demonstrate that it has met all of the conditions of Paragraph I.D. 6 including, but not limited to, reversing or refunding all prohibited Fees for all consumers and 7 making all payments required by the Consent Judgment filed in United States v. Bank of America 8 Corporation, CV 12-00361 (D.D.C.), and by the SCRA Consent Order; provided, however, that 9 if the proposed Consent Judgment filed in United States v. Bank of America Corporation, CV 12-10 00361 (D.D.C.) is not approved and ordered by that Court within ninety (90) days of entry of this 11 Supplemental Order, then payments under the proposed Consent Judgment filed in United States 12 v. Bank of America Corporation, CV 12-00361 (D.D.C.), are not required under this 13 Supplemental Order. The FTC shall have 30 days to object to the motion and submit a 14 memorandum explaining why the order should not be issued.

15 I. In addition to the judgment entered pursuant to Paragraph I.A of this Supplemental Order, 16 judgment is entered against BAC Home Loans in the amount of one hundred and thirty thousand 17 dollars (\$130,000.00), to be paid by and through Bank of America Corporation, to compensate 18 for BAC Home Loans' violations of Paragraph XIV of the Consent Order. On or before five (5) 19 business days after the date of entry of this Supplemental Order, BAC Home Loans, by and 20 through Bank of America Corporation, shall wire transfer the sum of one hundred and thirty 21 thousand dollars (\$130,000.00) to the Commission or such agent as the Commission may direct, 22 pursuant to the instructions provided by the Commission. All funds paid pursuant to this 23 Supplemental Order shall be deposited into a fund administered by the Commission or its agent 24 to be used to compensate consumers for injury associated with violations of Paragraph XIV of 25 the Consent Order. In the event that direct redress to consumers is wholly or partially 26 impracticable or funds remain after redress is completed, any remaining funds shall be deposited

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	Case 2:10-cv-04193-JFW-SS Document 15 #:101	Filed 03/22/12 Page 11 of 355 Page ID 7			
1	as equitable disgorgement into the United S	tates Treasury. BAC Home Loans shall have no right			
2	to challenge the FTC's choice of remedies u				
3		OF JURISDICTION			
4	(Supersedes Paragraph XX of the Consent Order)				
5	IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes				
6	of construction, modification, and enforcement of the Consent Order and this Supplemental Order.				
7	IT IS SO ORDERED.				
8		Lot. J. Walt			
9	DATED: <u>March 22, 2012</u>				
10		UNITED STATES DISTRICT JUDGE			
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	Case 2:10-cv-04193-JFW-SS Document 15 Filed 03/22/12 Page 12 of 355 Page ID #:1018
1	APPROVED AS TO FORM AND CONTENT:
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3	
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5	FEDERAL TRADE COMMISSION
6 7	WILLARD K. TOM General Counsel
8	
9	John D. Jacobs (Local Counsel)
10	jjacobs@ftc.gov
11	California Bar No. 134154 Federal Trade Commission
12	10877 Wilshire Blvd., Ste. 700 Los Angeles, CA 90024
13	Tel: (310) 824-4343 Fax: (310) 824-4380
14	
15	Attorney for Plaintiff Federal Trade Commission
16	
17	AMANDA C. BASTA MATTHEW J. WILSHIRE
18	abasta@ftc.gov, mwilshire@ftc.gov
19	Federal Trade Commission 600 Pennsylvania Avenue
20	Washington, D.C. 20580 Tel: (202) 326-2340 (Basta); (202) 326-2976 (Wilshire)
21	Fax: (202) 326-2558
22	Of Counsel
23	Federal Trade Commission
24	Dated: Mor. 19, 2012
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25	
20	
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Case 2:10-cv-04193-JFW-SS Document 15 Filed 03/22/12 Page 13 of 355 Page ID #:1019 DEFENDANTS For Defendant BAC Home Loans Servicing, LP Name: Jana J. Litsey Title: Deputy General Counsel Dated March JEFFREY S. SPIGEL PETER M. TODARO King & Spalding LLP 1700 Pennsylvania Avenue, NW, Suite 200 Washington, DC 20006-4706 Tel: (202) 737-0500 Fax: (202) 626-3737 jspigel@kslaw.com Attorneys for Defendants Dated: March 2012 2.8

#### Case 2Clase v1042-89-0636-58MDocDocembe5t 1 F4 lec F08c/203/22/P2gePage11 33531Page ID #:1020

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, <i>et al.</i> ,	) ) )	
Plaintiffs,	)	
	)	
V.	)	
	) Civil Action No.	
BANK OF AMERICA CORP. et al.,	)	
	)	
Defendants.	)	
	)	
	)	
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	)	
	)	
	)	

#### **CONSENT JUDGMENT**

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on March 12, 2012, alleging that Bank of America Corporation, Bank of America, N.A., BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Countrywide Home Loans, Inc., Countrywide Financial Corporation, Countrywide Mortgage Ventures, LLC, and Countrywide Bank, FSB (collectively, for the sake

#### Case 2Clase v10421-89-0636-58MDodDorcemh65t 1F4ledF08/2203/22/P2geP235531Page ID #:1021

of convenience only, "Defendant") violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States, the False Claims Act, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Servicemembers Civil Relief Act, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;

WHEREAS, Defendant has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of this Court;

WHEREAS, the intention of the United States and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant;

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issue of fact or law, without this Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

#### I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), and 1367, and under 31 U.S.C. § 3732(a) and (b), and over

#### Case 2Clase v10421-99-0036-58 MD odDorcemh65t 1 F4 led F08/2203/22/P2 gePage B33531 Page ID #:1022

Defendant. The Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 31 U.S.C. § 3732(a).

#### II. SERVICING STANDARDS

2. Bank of America, N.A. shall comply with the Servicing Standards, attached hereto as Exhibit A, in accordance with their terms and Section A of Exhibit E, attached hereto.

#### III. FINANCIAL TERMS

3. Payment Settlement Amounts. Bank of America Corporation and/or its affiliated entities shall pay or cause to be paid into an interest bearing escrow account to be established for this purpose the sum of \$2,382,415,075, which sum shall be added to funds being paid by other institutions resolving claims in this litigation (which sum shall be known as the "Direct Payment Settlement Amount") and which sum shall be distributed in the manner and for the purposes specified in Exhibit B. Payment shall be made by electronic funds transfer no later than seven days after the Effective Date of this Consent Judgment, pursuant to written instructions to be provided by the United States Department of Justice. After the required payment has been made, Defendant shall no longer have any property right, title, interest or other legal claim in any funds held in escrow. The interest bearing escrow account established by this Paragraph 3 is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended. The Monitoring Committee established in Paragraph 8 shall, in its sole discretion, appoint an escrow agent ("Escrow Agent") who shall hold and distribute funds as provided herein. All costs and expenses of the Escrow Agent, including taxes, if any, shall be paid from the funds under its control, including any interest earned on the funds.

#### Case 2Clase v1:0421-89-0636-58MD octooreum 465t 1 F4 lec F08/2203/22/P2 geP3ge0433531P age ID #:1023

4. *Payments to Foreclosed Borrowers*. In accordance with written instructions from the State members of the Monitoring Committee, for the purposes set forth in Exhibit C, the Escrow Agent shall transfer from the escrow account to the Administrator appointed under Exhibit C \$1,489,813,925.00 (the "Borrower Payment Amount") to enable the Administrator to provide cash payments to borrowers whose homes were finally sold or taken in foreclosure between and including January 1, 2008 and December 31, 2011; who submit claims for harm allegedly arising from the Covered Conduct (as that term is defined in Exhibit G hereto); and who otherwise meet criteria set forth by the State members of the Monitoring Committee. The Borrower Payment Amount and any other funds provided to the Administrator for these purposes shall be administered in accordance with the terms set forth in Exhibit C.

5. *Consumer Relief.* Defendant shall provide \$7,626,200,000 of relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraphs 1-8 of Exhibit D, and \$948,000,000 of refinancing relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraph 9 of Exhibit D, to remediate harms allegedly caused by the alleged unlawful conduct of Defendant. Defendant shall receive credit towards such obligation as described in Exhibit D.

#### **IV. ENFORCEMENT**

6. The Servicing Standards and Consumer Relief Requirements, attached as Exhibits A and D, are incorporated herein as the judgment of this Court and shall be enforced in accordance with the authorities provided in the Enforcement Terms, attached hereto as Exhibit E.

7. The Parties agree that Joseph A. Smith, Jr. shall be the Monitor and shall have the authorities and perform the duties described in the Enforcement Terms, attached hereto as Exhibit E.

#### Case 2Clase v10421-89-0636-58 MD odDorcemhet 1 F4 led F08/22/P2 gePage 535531 Page ID #:1024

8. Within fifteen (15) days of the Effective Date of this Consent Judgment, the participating state and federal agencies shall designate an Administration and Monitoring Committee (the "Monitoring Committee") as described in the Enforcement Terms. The Monitoring Committee shall serve as the representative of the participating state and federal agencies in the administration of all aspects of this and all similar Consent Judgments and the monitoring of compliance with it by the Defendant.

#### V. RELEASES

9. The United States and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the Federal Release, attached hereto as Exhibit F. The United States and Defendant have also agreed that certain claims, and remedies are not released, as provided in Paragraph 11 of Exhibit F. The releases contained in Exhibit F shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

10. The State Parties and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the State Release, attached hereto as Exhibit G. The State Parties and Defendant have also agreed that certain claims, and remedies are not released, as provided in Part IV of Exhibit G. The releases contained in Exhibit G shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

#### VI. SERVICEMEMBERS CIVIL RELIEF ACT

11. The United States and Defendant have agreed to resolve certain claims arising under the Servicemembers Civil Relief Act ("SCRA") in accordance with the terms provided in Exhibit H. Any obligations undertaken pursuant to the terms provided in Exhibit H, including

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any obligation to provide monetary compensation to servicemembers, are in addition to the obligations undertaken pursuant to the other terms of this Consent Judgment. Only a payment to an individual for a wrongful foreclosure pursuant to the terms of Exhibit H shall be reduced by the amount of any payment from the Borrower Payment Amount.

#### VII. OTHER TERMS

12. The United States and any State Party may withdraw from the Consent Judgment and declare it null and void with respect to that party if the Consumer Relief Payments (as that term is defined in Exhibit F (Federal Release)) required under this Consent Judgment are not made and such non-payment is not cured within thirty days of written notice by the party.

13. This Court retains jurisdiction for the duration of this Consent Judgment to enforce its terms. The parties may jointly seek to modify the terms of this Consent Judgment, subject to the approval of this Court. This Consent Judgment may be modified only by order of this Court.

14. The Effective Date of this Consent Judgment shall be the date on which the Consent Judgment has been entered by the Court and has become final and non-appealable. An order entering the Consent Judgment shall be deemed final and non-appealable for this purpose if there is no party with a right to appeal the order on the day it is entered.

15. This Consent Judgment shall remain in full force and effect for three and one-half years from the date it is entered ("the Term"), at which time Defendant's obligations under the Consent Judgment shall expire, except that, pursuant to Exhibit E, Bank of America, N.A. shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term and cooperate with the Monitor's review of said report, which shall be concluded no later than six months after the end of the Term. Defendant shall have no further obligations under this

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Consent Judgment six months after the expiration of the Term, but the Court shall retain jurisdiction for purposes of enforcing or remedying any outstanding violations that are identified in the final Monitor Report and that have occurred but not been cured during the Term.

16. Except as otherwise agreed in Exhibit B, each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

17. Nothing in this Consent Judgment shall relieve Defendant of its obligation to comply with applicable state and federal law.

18. The United States and Defendant further agree to the additional terms contained in Exhibit I hereto.

19. The sum and substance of the parties' agreement and of this Consent Judgment are reflected herein and in the Exhibits attached hereto. In the event of a conflict between the terms of the Exhibits and paragraphs 1-18 of this summary document, the terms of the Exhibits shall govern.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_\_, 2012

### UNITED STATES DISTRICT JUDGE