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14  
15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17

18  
19 FEDERAL TRADE COMMISSION, )  
20 Plaintiff, )  
21 v. )  
22 COUNTRYWIDE HOME LOANS, INC., )  
a corporation, and )  
23 BAC HOME LOANS SERVICING, LP, )  
24 a limited partnership, )  
25 Defendants. )  
26

Case No.

**CONSENT JUDGMENT AND ORDER**

27  
28 IT IS HEREBY ORDERED, ADJUDGED and DECREED, pursuant to and in  
accordance with the Stipulation for Entry of Consent Judgment and

1 Order entered into by and between plaintiff the Federal Trade  
2 Commission ("FTC" or "Commission") and defendants Countrywide Home  
3 Loans, Inc. and BAC Home Loans Servicing LP (plaintiff and  
4 defendants are collectively referred to as "the parties"), as  
5 follows:

6 **Findings**

7 1. This Court has jurisdiction over Defendants and the  
8 subject matter of this action. Venue in the Central District of  
9 California is proper.

10 2. The Complaint states a claim upon which relief may be  
11 granted against Defendants under Sections 5(a) and 13(b) of the FTC  
12 Act, 15 U.S.C. §§ 45(a) and 53(b).

13 3. The activities of Defendants are in or affecting commerce,  
14 as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.  
15 § 44.

16 4. Defendants have not admitted any of the allegations of  
17 wrongdoing set forth in the Complaint, and entry of this Order is  
18 not an admission of any such allegations of wrongdoing or violation  
19 of law. Nonetheless, Defendants stipulate and agree to entry of  
20 this Order in order to settle and resolve these disputes. The  
21 Complaint does not allege any wrongdoing by Bank of America, N.A.

22 5. Plaintiff and Defendants waive all rights to seek judicial  
23 review or otherwise contest the validity of this Order, and  
24 Defendants waive any right that may arise under the Equal Access to  
25 Justice Act, 28 U.S.C. § 2412.

26 6. Entry of this Order is in the public interest.

27 7. The parties, by and through their counsel, have agreed  
28 that entry of this Order resolves all matters in dispute between

1 them arising from the facts and circumstances alleged in the  
2 Complaint in this action, up to the date of entry of this Order.

3 **Definitions**

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

6 1. "Affiliate" shall mean an organization that owns or  
7 controls, is owned or controlled by, or is under common ownership or  
8 control with, another organization;

9 2. "BAC Home Loans Servicing" shall mean BAC Home Loans  
10 Servicing, LP, formerly doing business as Countrywide Home Loans  
11 Servicing, LP, and its successors and assigns, by whatever names  
12 they might be known, but not including any Bank;

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

19 4. "Chapter 13 Bankruptcy" shall mean any bankruptcy case  
20 filed under Chapter 13 of Title 11 of the United States Code, 11  
21 U.S.C. §§ 1301-1330;

22 5. "Clear and Prominent" or "Clearly and Prominently" shall  
23 mean that information is displayed in a manner that is readily  
24 noticeable, readable, and understandable;

25 6. "Competent and Reliable Evidence" shall mean tests,  
26 analyses, research, studies, or other evidence, including a data  
27 integrity program that complies with Section XI of this Order, based  
28 on the expertise of professionals in the relevant area, that has

1 been conducted and evaluated in an objective manner by Persons  
2 qualified to do so, using procedures generally accepted in the  
3 profession to yield accurate and reliable results;

4 7. "Countrywide Home Loans" shall mean Countrywide Home  
5 Loans, Inc. and its successors and assigns, by whatever names they  
6 might be known, but not including any Bank;

7 8. "Default-Related Service" shall mean any service ordered  
8 as a result of a consumer's payment default on a Loan, for the  
9 purpose of protecting the note holder's interest in the property and  
10 rights under the security instrument, for which the Loan account is  
11 charged a Fee (e.g., services of a type currently or in the future  
12 provided by BAC Field Services Corporation, Landsafe Default, Inc.,  
13 and the trustee-services business of ReconTrust Company, N.A., such  
14 as property inspections, property preservation, broker's price  
15 opinions, title searches and reports, and foreclosure trustee  
16 services);

17 9. "Defendants" shall mean BAC Home Loans Servicing and  
18 Countrywide Home Loans, individually, collectively, or in any  
19 combination;

20 10. "Escrow Deficiency" shall have the meaning set forth in 24  
21 C.F.R. § 3500.17;

22 11. "Escrow Shortage" shall have the meaning set forth in 24  
23 C.F.R. § 3500.17;

24 12. "FTC Act" shall mean the Federal Trade Commission Act, 15  
25 U.S.C. §§ 41-58;

26 13. "Fees" shall mean all fees and charges, including but not  
27 limited to fees for late payments, property inspections, property  
28 preservation, broker's price opinions, appraisals, legal services,

1 court costs, reinstatement, modification, and any other fees or  
2 charges that a consumer is or was assessed by Defendants in  
3 connection with the Servicing of any Loan;

4 14. "Loan" shall mean a residential mortgage loan, *i.e.*, a  
5 loan secured by a lien on real property taken as security for the  
6 repayment of the loan;

7 15. "Loan Instruments" shall mean the security instrument and  
8 promissory note signed by the consumer to consummate his or her  
9 Loan;

10 16. "Monthly Payment" shall mean a monthly or other periodic  
11 payment a consumer must make under the Loan Instruments to repay the  
12 Loan principal, pay interest on the principal, and, if necessary,  
13 fund escrow accounts for insurance and/or real estate taxes;

14 17. "Person" shall mean any individual, group, unincorporated  
15 association, limited or general partnership, corporation, trust, or  
16 other business entity; and

17 18. "Servicing" shall mean receiving any payments from (or  
18 for) a consumer pursuant to the terms of any Loan, including amounts  
19 for escrow accounts, and applying the payments of principal and  
20 interest and such other payments with respect to the amounts  
21 received from (or for) the consumer as may be required pursuant to  
22 the terms of the Loan. "Servicing" shall also include any related  
23 Loan servicing activity such as the administration of Loan accounts,  
24 sending periodic billing statements to a consumer, maintaining  
25 records of the status of the consumer's Loan accounts, providing  
26 information to and resolving disputes with the consumers regarding  
27 Loan accounts, the collection of Loan payments, the foreclosure of  
28 real property, the use of consumer reports and the furnishing of

1 information to consumer reporting agencies, and the collection or  
2 imposition of Fees in relation to any of the foregoing.

3 **INJUNCTIVE RELIEF**

4 **Prohibited Business Practices**

5 **I.**

6 IT IS THEREFORE ORDERED that Defendants, their officers,  
7 employees, agents, representatives, and all other Persons or  
8 entities in active concert or participation with them who receive  
9 actual notice of this Order by personal service or otherwise,  
10 directly or through any corporation, subsidiary, division, or other  
11 device, are hereby permanently restrained and enjoined, in  
12 connection with the Servicing of any Loan in default or Chapter 13  
13 Bankruptcy, from:

- 14 A. Misrepresenting, expressly or by implication, the status  
15 of the Loan or amounts owed on the Loan, including but not  
16 limited to the amount of any Monthly Payment, Fee claimed  
17 or assessed, Escrow Shortage, or Escrow Deficiency;
- 18 B. Misrepresenting, expressly or by implication, that any  
19 payment or Fee is allowed under the Loan Instruments or  
20 permitted by law;
- 21 C. Misrepresenting, expressly or by implication, the amount,  
22 nature, or terms of any Fee or other condition or  
23 requirement of any Loan; and
- 24 D. Making any representation, expressly or by implication,  
25 about the status of the Loan, amounts owed on the Loan  
26 (including but not limited to the amount of any Monthly  
27 Payment, Fee claimed or assessed, Escrow Shortage, or  
28 Escrow Deficiency), the date that any payment or Fee is

1 due, or any other information regarding the terms or  
2 conditions of a Loan, unless, at the time of making such  
3 representation, such Persons possess and rely on Competent  
4 and Reliable Evidence that substantiates that the  
5 representation is true.

6 **II.**

7 IT IS FURTHER ORDERED that Defendants, their officers,  
8 employees, agents, representatives, and all other Persons or  
9 entities in active concert or participation with them who receive  
10 actual notice of this Order by personal service or otherwise,  
11 directly or through any corporation, subsidiary, division, or other  
12 device, are hereby permanently restrained and enjoined, in  
13 connection with the Servicing of any Loan, from assessing and/or  
14 collecting any Fee for a service unless it is for services actually  
15 rendered and is (a) authorized and Clearly and Prominently disclosed  
16 by the Loan Instruments, and not prohibited by law; (b) expressly  
17 permitted by law and not prohibited by the Loan Instruments; or  
18 (c) a reasonable Fee for a specific service requested by a consumer  
19 that is assessed and/or collected only after Clear and Prominent  
20 disclosure of the Fee is provided to the consumer and explicit  
21 consent is obtained from the consumer to pay the Fee in exchange for  
22 the service, and such Fee is not otherwise prohibited by law or the  
23 Loan Instruments.

24 **III.**

25 IT IS FURTHER ORDERED that Defendants, their officers,  
26 employees, agents, representatives, and all other Persons or  
27 entities in active concert or participation with them who receive  
28 actual notice of this Order by personal service or otherwise,

1 directly or through any corporation, subsidiary, division, or other  
2 device, are hereby permanently restrained and enjoined, in  
3 connection with the Servicing of any Loan, from assessing and/or  
4 collecting any Fee for a Default-Related Service unless it is a  
5 reasonable Fee charged by a third-party service provider, including  
6 an Affiliate of Defendants, for a Default-Related Service that is  
7 actually performed.

8 **IV.**

9 IT IS FURTHER ORDERED that Defendants, their officers,  
10 employees, agents, representatives, and all other Persons or  
11 entities in active concert or participation with them who receive  
12 actual notice of this Order by personal service or otherwise,  
13 directly or through any corporation, subsidiary, division, or other  
14 device, are hereby permanently restrained and enjoined, in  
15 connection with the Servicing of any Loan, from assessing and/or  
16 collecting any Fee for a Default-Related Service performed by an  
17 Affiliate of any Defendant, unless the Fee complies with Sections II  
18 and III of this Order and the amount of the Fee does not exceed the  
19 lesser of (1) any Fee limitation or allowable amount for the service  
20 under applicable state law, (2) any published, pre-established Fee  
21 limitation or allowable amount for the service under the guidelines  
22 for the applicable government-sponsored enterprise investing in the  
23 Loan or the government agency insuring the Loan (for all other  
24 Loans, Federal National Mortgage Association ("Fannie Mae")  
25 guidelines shall apply), and (3) the market rate for the service.  
26 To determine the market rate, Defendants shall obtain annual market  
27 reviews of their Affiliates' pricing for Default-Related Services;  
28 such market reviews shall be performed by a qualified, objective,



1 independent third-party professional, using procedures and standards  
2 generally accepted in the industry to yield accurate and reliable  
3 results.

4 **V.**

5 IT IS FURTHER ORDERED that, within one-hundred fifty (150) days  
6 from the date of entry of this Order, Defendants, their officers,  
7 employees, agents, representatives, and all other Persons or  
8 entities in active concert or participation with them who receive  
9 actual notice of this Order by personal service or otherwise,  
10 directly or through any corporation, subsidiary, division, or other  
11 device, are hereby permanently restrained and enjoined, in  
12 connection with the Servicing of any Loan, from failing to disclose  
13 Clearly and Prominently the following information:

14 A. At Loan origination or upon acquiring the Servicing rights  
15 to the consumer's Loan, Defendants shall disclose any use  
16 of Affiliates for Default-Related Services and if Fees are  
17 assessed for those services;

18 B. If the consumer's Loan goes into default and prior to  
19 assessing any Fees for Default-Related Services,  
20 Defendants' notice of default shall disclose (1) any use  
21 of Affiliates for Default-Related Services; (2) if Fees  
22 are assessed for those services; and (3) a link to a  
23 schedule of Fees for those services ("Fee Schedule") on  
24 Defendants' website(s). This Fee Schedule shall include a  
25 description of the Fees that may be charged, the amount  
26 or, where applicable, the range of each Fee, and, if the  
27 Fee will or may be paid to an Affiliate, a disclosure of  
28

1 that fact and the names of the affiliated service  
2 providers; and

3 C. The Fee Schedule shall be posted and available on the  
4 Defendants' website(s) and a copy of the Fee Schedule  
5 shall be mailed or delivered to the consumer upon request,  
6 at no cost to the consumer.

7 **VI.**

8 IT IS FURTHER ORDERED that, for eight (8) years after the date  
9 of entry of this Order, Defendants, their officers, employees,  
10 agents, representatives, and all other Persons or entities in active  
11 concert or participation with them who receive actual notice of this  
12 Order by personal service or otherwise, directly or through any  
13 corporation, subsidiary, division, or other device, are hereby  
14 permanently restrained and enjoined, in connection with the  
15 Servicing of any Loan, from (1) initiating a foreclosure action, or  
16 assessing Fees in connection with an actual or threatened  
17 foreclosure action, until the Defendants have reviewed Competent and  
18 Reliable Evidence that substantiates that the consumer is in default  
19 under the terms of the Loan Instruments; and (2) consummating a  
20 foreclosure sale until Defendants have investigated any  
21 non-frivolous disputes by the consumer and informed the consumer of  
22 the results of the investigation.

23 **Bankruptcy Servicing Requirements**

24 **VII.**

25 IT IS FURTHER ORDERED that, within thirty (30) days of the date  
26 of entry of this Order, Defendants, their officers, employees,  
27 agents, representatives, and all other Persons or entities in active  
28 concert or participation with them who receive actual notice of this

1 Order by personal service or otherwise, directly or through any  
2 corporation, subsidiary, division, or other device, are hereby  
3 permanently restrained and enjoined, in connection with the filing  
4 of any proof of claim in a Chapter 13 Bankruptcy case for a Loan  
5 serviced by any Defendant, from failing to file with the proof of  
6 claim (1) a copy of the Loan Instruments or, if a Loan Instrument  
7 has been lost or destroyed, a sworn statement of the circumstances  
8 of the loss or destruction; and (2) a detailed itemization of all  
9 amounts claimed. **Provided, however,** that nothing in this Section  
10 shall require Defendants to do anything prohibited by the United  
11 States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure,  
12 or any local rule or court order in a Chapter 13 Bankruptcy.

13 **VIII.**

14 IT IS FURTHER ORDERED that, within two-hundred seventy (270)  
15 days of the date of entry of this Order (or as otherwise agreed to  
16 by Commission counsel), Defendants, their officers, employees,  
17 agents, representatives, and all other Persons or entities in active  
18 concert or participation with them who receive actual notice of this  
19 Order by personal service or otherwise, directly or through any  
20 corporation, subsidiary, division, or other device, are hereby  
21 permanently restrained and enjoined, in connection with the  
22 Servicing of any Loan for a consumer in Chapter 13 Bankruptcy, from  
23 failing to provide the consumer and the Chapter 13 trustee with an  
24 informational notice on a monthly basis, in writing and at no cost  
25 to the consumer or the trustee, that contains the following  
26 information in a Clear and Prominent manner:

- 27 A. the unpaid principal balance;  
28 B. the post-petition Monthly Payment amount;

1 C. if there are changes in the post-petition Monthly Payment  
2 amount, the reason for and amount of the change;

3 D. a complete itemization of each and every Fee assessed  
4 during the prior month, including the amount of each Fee,  
5 a description of each Fee, and the date that each Fee was  
6 assessed;

7 E. a complete itemization of all payments received during the  
8 prior month, a total of any amounts held in suspense or  
9 otherwise not applied to the Loan account, and an  
10 itemization and description of any Fee amounts that remain  
11 outstanding on the Loan account; and

12 F. the toll-free telephone number and address for the  
13 consumer and the trustee to use to contact the Defendants  
14 with Loan account questions.

15 **Provided, however,** that nothing in this Section shall require  
16 Defendants to do anything prohibited by the United States Bankruptcy  
17 Code, the Federal Rules of Bankruptcy Procedure, or any local rule  
18 or court order in a Chapter 13 Bankruptcy.

19 **IX.**

20 IT IS FURTHER ORDERED that Defendants, their officers,  
21 employees, agents, representatives, and all other Persons or  
22 entities in active concert or participation with them who receive  
23 actual notice of this Order by personal service or otherwise,  
24 directly or through any corporation, subsidiary, division, or other  
25 device, are hereby permanently restrained and enjoined, in  
26 connection with the Servicing of any Loan for a consumer in Chapter  
27 13 Bankruptcy, from failing to provide the consumer and the Chapter  
28 13 trustee with an informational notice on an annual basis, in

1 writing and at no cost to the consumer or the trustee, that  
2 discloses, Clearly and Prominently, the amount and nature of any  
3 accrued Escrow Shortage and/or Escrow Deficiency. Such notice shall  
4 be in a form consistent with the requirements of 24 C.F.R. § 3500.17  
5 and may be provided along with the monthly informational notice  
6 required under Section VIII of this Order. **Provided, however,** that  
7 nothing in this Section shall require Defendants to do anything  
8 prohibited by the United States Bankruptcy Code, the Federal Rules  
9 of Bankruptcy Procedure, or any local rule or court order in a  
10 Chapter 13 Bankruptcy.

11 **X.**

12 IT IS FURTHER ORDERED that Defendants, their officers,  
13 employees, agents, representatives, and all other Persons or  
14 entities in active concert or participation with them who receive  
15 actual notice of this Order by personal service or otherwise,  
16 directly or through any corporation, subsidiary, division, or other  
17 device, are hereby permanently restrained and enjoined, in  
18 connection with the Servicing of any Loan that incurred any Fee,  
19 Escrow Shortage, and/or Escrow Deficiency during a Chapter 13  
20 Bankruptcy, from collecting any such Fee, Escrow Shortage, and/or  
21 Escrow Deficiency after Defendants obtain relief from the bankruptcy  
22 stay or, if relief from stay is not sought or granted, after the  
23 debtor is discharged or the bankruptcy case is dismissed, unless  
24 Defendants (1) obtained specific court approval for the charges  
25 during the Chapter 13 Bankruptcy case, or (2) provided to the  
26 consumer the notices required under Sections VIII and IX of this  
27 Order.

1                                   **Data Integrity Requirements**

2   **XI.**

3                 IT IS FURTHER ORDERED that Defendants, in connection with the  
4 Servicing of any Loan in Chapter 13 Bankruptcy, shall, no later than  
5 ninety (90) days after the date of entry of this Order, establish  
6 and implement, and thereafter maintain, a comprehensive data  
7 integrity program that is reasonably designed to ensure the accuracy  
8 and completeness of data and other information regarding such Loans  
9 prior to and while Servicing them ("data integrity program"). Such  
10 data integrity program, the content and implementation of which must  
11 be fully documented in writing, shall be appropriate to the nature,  
12 size, complexity, and scope of Defendants' activities, and shall  
13 include:

- 14                 A.     the designation of an employee or employees to be  
15                         accountable for the data integrity program;
- 16                 B.     the regular testing or monitoring of the effectiveness of  
17                         the data integrity program; and
- 18                 C.     the evaluation and adjustment of the data integrity  
19                         program in light of the results of the testing and  
20                         monitoring required by Subsection B, any material changes  
21                         to Defendants' operations or business arrangements, or any  
22                         other circumstances that Defendants know or have reason to  
23                         know may have a material impact on the effectiveness of  
24                         the data integrity program.

25   **XII.**

26                 IT IS FURTHER ORDERED that Defendants obtain an assessment and  
27 report (an "Assessment") from a qualified, objective, independent  
28 third-party professional, using procedures and standards generally

1 accepted in the profession, within two hundred seventy (270) days  
2 after the date of entry of the Order, and biennially thereafter for  
3 eight (8) years after entry of the Order, that:

4 A. sets forth the specific data integrity program that  
5 Defendants have implemented and maintained during the  
6 reporting period;

7 B. explains how such data integrity program is appropriate to  
8 Defendants' size and complexity, and the nature and scope  
9 of Defendants' activities; and

10 C. explains how the data integrity program meets or exceeds  
11 the protections required by Section XI of this Order.

12 Defendants shall provide a copy of the first Assessment to the  
13 Commission within ten (10) days after the Assessment is delivered to  
14 Defendants. Defendants shall provide a copy of all: plans, reports,  
15 studies, reviews, audits, audit trails, policies, training  
16 materials, and assessments, whether prepared by or on behalf of  
17 Defendants, relied upon to prepare such Assessment, to the  
18 Commission within thirty (30) days of request. All subsequent  
19 biennial Assessments shall be retained by Defendants and a copy  
20 provided to the Commission within thirty (30) days of request.

21 **Monetary Relief**

22 **XIII.**

23 IT IS FURTHER ORDERED that:

24 A. Defendants, without admitting any violation of law, shall  
25 pay the amount of one hundred eight million dollars  
26 (\$108,000,000.00) to remedy the violations of law alleged  
27 by the FTC. On or before five (5) business days after the  
28 date of entry of this Order, Defendants shall wire

1 transfer the sum of one hundred eight million dollars  
2 (\$108,000,000.00) to the Commission or such agent as the  
3 Commission may direct, pursuant to instructions provided  
4 by the Commission. All funds paid pursuant to this Order  
5 shall be deposited into a fund administered by the  
6 Commission or its agent to be used for equitable relief  
7 for consumers whose Loans were serviced by Defendants  
8 prior to their acquisition by Bank of America, including  
9 but not limited to consumer redress and any attendant  
10 expenses for the administration of the redress program.  
11 In the event that direct redress to consumers is wholly or  
12 partially impracticable or funds remain after redress is  
13 completed, the Commission may apply any remaining funds  
14 for such other equitable relief (including consumer  
15 information remedies) as it determines to be reasonably  
16 related to the Defendants' practices alleged in the  
17 Complaint. Any funds not used for such equitable relief  
18 shall be deposited as equitable disgorgement into the  
19 United States Treasury. Defendants shall have no right to  
20 challenge the FTC's choice of remedies under this Section.

21 B. In the event that Defendants default on any obligation to  
22 make any payment set forth in this Order, which default  
23 continues for ten (10) days beyond the due date of the  
24 payment, the entire unpaid amount together with interest,  
25 computed pursuant to 28 U.S.C. § 1961(a) from the date of  
26 default to the date of payment, shall immediately become  
27 due and payable. Notwithstanding any other provision of  
28 this Order, Defendants agree that if they fail to meet any



1 payment obligations set forth in this Order, Defendants  
2 shall pay the costs and attorneys' fees incurred by the  
3 Commission or its agents in any attempts to collect  
4 amounts due pursuant to this Order.

5 C. Defendants relinquish all dominion, control, and title to  
6 the funds paid to the fullest extent permitted by law.  
7 Defendants shall make no claim to or demand for return of  
8 the funds, directly or indirectly, through counsel or  
9 otherwise.

10 D. Defendants agree that the facts as alleged in the  
11 Complaint filed in this action shall be taken as true  
12 without further proof in any bankruptcy case of either of  
13 the Defendants or subsequent civil litigation pursued by  
14 the Commission to enforce its rights to any payment or  
15 money judgment pursuant to this Order. For the purpose of  
16 any subsequent proceeding to enforce payments required by  
17 this Section of this Order, including any action filed in  
18 a bankruptcy case of either of the Defendants, the  
19 Defendants waive any right to contest the allegations in  
20 the Commission's Complaint.

21 **Data**

22 **XIV.**

23 IT IS FURTHER ORDERED that, subject to the FTC's certification  
24 of compliance with the Right to Financial Privacy Act, to facilitate  
25 redress under Section XIII above, the Defendants shall provide the  
26 Commission and/or its designated agent, within thirty (30) calendar  
27 days after receiving a written request by the Commission or its  
28 designated agent, with all information reasonably required to

1 administer redress. Defendants shall provide a complete  
2 electronically stored data set in a compatible format (as reasonably  
3 determined by the FTC and/or its agent).

4 **Compliance Monitoring**

5 **XV.**

6 IT IS FURTHER ORDERED that, for the purpose of monitoring and  
7 investigating compliance with any provision of this Order,

8 A. Within thirty (30) days of receipt of written notice from  
9 a representative of the Commission, Defendants each shall  
10 submit additional written reports, which are true and  
11 accurate and sworn to under penalty of perjury; produce  
12 documents for inspection and copying; appear for  
13 deposition; and provide entry during normal business hours  
14 to any business location in each Defendant's possession or  
15 direct or indirect control to inspect the business  
16 operation;

17 B. In addition, the Commission is authorized to use all other  
18 lawful means, including but not limited to:

- 19 1. obtaining discovery from any Person, without further  
20 leave of court, using the procedures prescribed by  
21 Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69; and
- 22 2. having its representatives pose as consumers and  
23 suppliers to Defendants, their employees, or any  
24 other entity managed or controlled in whole or in  
25 part by any Defendant, without the necessity of  
26 identification or prior notice;

27 C. Defendants each shall permit representatives of the  
28 Commission to interview any employer, consultant,

1 independent contractor, representative, agent, or employee  
2 who has agreed to such an interview, relating in any way  
3 to any conduct subject to this Order. The Person  
4 interviewed may have counsel present.

5 **Provided however,** that nothing in this Order shall limit the  
6 Commission's lawful use of compulsory process, pursuant to Sections  
7 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any  
8 documentary material, tangible things, testimony, or information  
9 relevant to unfair or deceptive acts or practices in or affecting  
10 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

#### 11 **Compliance Reporting**

#### 12 **XVI.**

13 IT IS FURTHER ORDERED that, in order that compliance with the  
14 provisions of this Order may be monitored:

- 15 A. For a period of five (5) years from the date of entry of  
16 this Order, Defendants shall notify the Commission of any  
17 changes in structure of any Defendant or any business  
18 entity that any Defendant directly or indirectly controls,  
19 or has an ownership interest in, that may affect  
20 compliance obligations arising under this Order, including  
21 but not limited to: incorporation or other organization; a  
22 dissolution, assignment, sale, merger, or other action;  
23 the creation or dissolution of a subsidiary, parent, or  
24 Affiliate that engages in any acts or practices subject to  
25 this Order, or a change in the business name or address,  
26 at least thirty (30) days prior to such change, *provided*  
27 that, with respect to any such change in the business  
28 entity about which a Defendant learns less than thirty

1 (30) days prior to the date such action is to take place,  
2 such Defendant shall notify the Commission as soon as  
3 practicable after obtaining such knowledge.

4 B. One hundred eighty (180) days after the date of entry of  
5 this Order and annually thereafter for a period of three  
6 (3) years, Defendants each shall provide a written report  
7 to the FTC, which is true and accurate and sworn to under  
8 penalty of perjury, setting forth in detail the manner and  
9 form in which they have complied and are complying with  
10 this Order. This report shall include, but not be limited  
11 to:

12 1. A copy of each acknowledgment of receipt of this  
13 Order, obtained pursuant to the Section titled  
14 "Distribution of Order;"

15 2. Any changes required to be reported under Subsection  
16 A of this Section.

17 C. Each Defendant shall notify the Commission of the filing  
18 of a bankruptcy petition by such Defendant within fifteen  
19 (15) days of filing.

20 D. For the purposes of this Order, Defendants shall, unless  
21 otherwise directed by the Commission's authorized  
22 representatives, send by overnight courier all reports and  
23 notifications required by this Order to the Commission, to  
24 the following address:

25 Associate Director for Enforcement  
26 Bureau of Consumer Protection  
27 Federal Trade Commission  
28 600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
RE: FTC v. Countrywide Home Loans, Inc., et al.

1 *Provided* that, in lieu of overnight courier, Defendants  
2 may send such reports or notifications by first-class  
3 mail, but only if Defendants contemporaneously send an  
4 electronic version of such report or notification to the  
5 Commission at: DEBrief@ftc.gov.

6 E. For purposes of the compliance reporting and monitoring  
7 required by this Order, the Commission is authorized to  
8 communicate directly with each Defendant.

### 9 **Recordkeeping**

#### 10 **XVII.**

11 IT IS FURTHER ORDERED that, for a period of eight (8) years  
12 from the date of entry of this Order, Defendants are hereby  
13 restrained and enjoined, in connection with the Servicing of any  
14 Loan, from failing to create and retain, for a period of three (3)  
15 years after the date of preparation of the record, the following  
16 records:

17 A. Accounting records that reflect the cost of Loans acquired  
18 and/or sold; revenues generated from Servicing Fees and/or  
19 Fees paid by and/or imposed on consumers; and the  
20 disbursement of such revenues;

21 B. Personnel records accurately reflecting: the name,  
22 address, and telephone number of each Person employed in  
23 any capacity by such business, including as an independent  
24 contractor; that Person's job title or position; the date  
25 upon which the Person commenced work; and the date and  
26 reason for the Person's termination, if applicable;  
27  
28

- 1 C. Consumer files containing the names, addresses, phone  
2 numbers, dollar amounts paid, and description of Fees or  
3 other charges imposed;
- 4 D. Written complaints or disputes and Qualified Written  
5 Requests, as defined in 12 U.S.C. § 2605(e)(1)(B), from  
6 consumers (whether received directly, indirectly or  
7 through any third party) and responses to those  
8 complaints, disputes, or requests;
- 9 E. Copies of all training materials and policy manuals; and
- 10 F. All records and documents necessary to demonstrate full  
11 compliance with each provision of this Order, including  
12 but not limited to, copies of acknowledgments of receipt  
13 of this Order required by the Sections titled  
14 "Distribution of Order" and "Acknowledgment of Receipt of  
15 Order" and all reports submitted to the FTC pursuant to  
16 the Section titled "Compliance Reporting."

17 **Distribution of Order**

18 **XVIII.**

19 IT IS FURTHER ORDERED that, for a period of five (5) years from  
20 the date of entry of this Order, Defendants shall deliver copies of  
21 the Order as directed below:

- 22 A. Each Defendant shall deliver a copy of this Order to (1)  
23 all of its principals, officers, directors, and managers;  
24 (2) all of its employees, agents, and representatives who  
25 engage in conduct related to the subject matter of this  
26 Order; and (3) any business entity resulting from any  
27 change in structure set forth in Subsection A of the  
28 Section titled "Compliance Reporting." For current

1 personnel, delivery should be within thirty (30) days of  
2 service of this Order upon such Defendant. For new  
3 personnel, delivery shall occur prior to them assuming  
4 their responsibilities. For any business entity resulting  
5 from any change in structure set forth in Subsection A of  
6 the Section titled "Compliance Reporting," delivery shall  
7 be at least ten (10) days prior to the change in  
8 structure.

9 B. Defendants must secure a signed and dated statement  
10 acknowledging receipt of the Order, within thirty (30)  
11 days of delivery, from all Persons receiving a copy of the  
12 Order pursuant to this Section.

13 **Acknowledgment of Receipt of Order**

14 **XIX.**

15 IT IS FURTHER ORDERED that each Defendant, within five (5)  
16 business days of receipt of this Order as entered by the Court, must  
17 submit to the Commission a truthful sworn statement acknowledging  
18 receipt of this Order.

19 **Retention of Jurisdiction**

20 **XX.**

21 IT IS FURTHER ORDERED that this Court shall retain jurisdiction  
22 of this matter for purposes of construction, modification, and  
23 enforcement of this Order.

24  
25 **IT IS SO ORDERED.**

26  
27 DATED: \_\_\_\_\_

28 \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

1 APPROVED AS TO FORM AND CONTENT:

2

3

4

FEDERAL TRADE COMMISSION

5

6 WILLARD K. TOM  
General Counsel

7

8

*Lucy E.* \_\_\_\_\_

9 LUCY E. MORRIS

HEATHER ALLEN

10 LYNETTE HOTCHKISS

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11 Federal Trade Commission

600 Pennsylvania Avenue

12 Washington, D.C. 20580

Tel: (202) 326-3224

13 Fax: (202) 326-3768

14 John D. Jacobs (Local Counsel)

jjacobs@ftc.gov

15 California Bar No. 134154

Federal Trade Commission

16 10877 Wilshire Blvd., Ste. 700

Los Angeles, CA 90024

17 Tel: (310) 824-4343

Fax: (310) 824-4380

18

Attorneys for Plaintiff

19 Federal Trade Commission

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DATED: June 7, 2010

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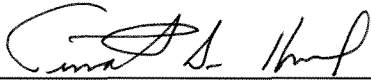
27

28



1 DEFENDANTS

2  
3 FOR DEFENDANTS COUNTRYWIDE HOME LOANS, INC. AND BAC HOME LOANS  
4 SERVICING LP

5 

6 \_\_\_\_\_  
7 Timothy S. Huval  
8 Senior Vice President  
9 Home Loans Servicing Executive

10  
11 DATED: May 3<sup>rd</sup>, 2010

12 

13 \_\_\_\_\_  
14 JEFFREY SPIGEL, ESQ.  
15 PETER TODARO, ESQ.  
16 BRANDT LEIBE, ESQ.  
17 King & Spalding LLP  
18 1700 Pennsylvania Avenue, NW, Suite 200  
19 Washington, DC 20006-4706  
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21 Fax: (202) 626-3737  
22 jspigel@kslaw.com

23  
24 Attorney for Defendants

25  
26 DATED: MAY 14, 2010  
27  
28