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15 **UNITED STATES DISTRICT COURT**  
 16 **DISTRICT OF NEVADA**

17 STATE OF NEVADA, )  
 )  
 18 Plaintiffs, )  
 )  
 19 vs. )  
 )  
 20 BANK OF AMERICA CORPORATION, )  
 BANK OF AMERICA, N.A., )  
 21 BAC HOME LOANS SERVICING, LP; )  
 RECONTRUST COMPANY, N.A.; )  
 22 COUNTRYWIDE FINANCIAL )  
 CORPORATION; COUNTRYWIDE )  
 23 HOME LOANS, INC; and FULL )  
 SPECTRUM LENDING, INC. )  
 )  
 24 Defendants.

Case No. 3:11-cv-00135-RCJ (RAM)

**STATE’S OF NEVADA’S SECOND  
 AMENDED COMPLAINT**

(Assigned to the Honorable Robert C. Jones)

25 **I. NATURE AND SUMMARY OF THE ACTION**

26 1. Defendants Bank of America Corporation (“Bank of America Corp.”); Bank of America,  
 27 National Association (“Bank of America, NA”); ReconTrust Company, N.A. (“ReconTrust”); BAC Home  
 28 Loans Servicing, LP (“BAC Home Loans” and collectively with Bank of America Corp., and Bank of

1 America NA, ReconTrust, and Countrywide, “Bank of America”); Countrywide Financial Corporation  
2 (“Countrywide Financial”), Countrywide Home Loans, Inc. (“Countrywide Home” or “CHL”), Full  
3 Spectrum Lending, Inc. (“Full Spectrum”), Countrywide Home Loans Servicing, L.P. (“Countrywide  
4 Servicing” and collectively with Countrywide Financial, Countrywide Home and Full Spectrum,  
5 “Countrywide”) engaged in a pattern and practice of deceptive conduct in violation of the Nevada  
6 Deceptive Trade Practices Act (“DTPA”), Nev. Rev. Stat. §§ 598 *et seq.* Their misconduct cut across  
7 virtually every aspect of Defendants’ operations – from originating to servicing and, all too often, to  
8 foreclosing on the loans and homes of Nevada consumers. Countrywide misrepresented the nature and  
9 terms of their mortgage loans, ensnaring Nevada consumers in loans that they did not understand and  
10 could not repay. When consumers defaulted on these loans, Defendants misrepresented whether, when,  
11 and how they would modify these loans. And when they failed to deliver this promised relief, Defendants  
12 provided to Nevada consumers, recorded, and filed with Nevada courts fraudulent documents as they  
13 moved, sometimes without authority, to collect mortgages and foreclose on homes that never should have  
14 been bought.

15 2. First, the State alleges that Countrywide engaged in a broad range of deceptive practices to  
16 sell and service mortgage loans to Nevada consumers. During the height of the mortgage boom,  
17 Countrywide originated 262,622 loans in Nevada making it one of the biggest – and almost certainly the  
18 most dangerous – mortgage lenders in the State. From 2004 until Countrywide stopped lending and  
19 servicing loans in July 2008, Countrywide:

- 20       ▪ structured mortgage loans that relied on deceptive terms and underwriting to artificially
- 21       lower borrowers’ initial mortgage payments;
- 22       ▪ engaged in misleading marketing and sales techniques to convince Nevada consumers to
- 23       take out these risky loans;
- 24       ▪ misrepresented to investors the characteristics and therefore the riskiness of the mortgages
- 25       they sold them; and
- 26
- 27
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- 1           ▪       falsely represented that Nevada consumers in default or foreclosure owed fees that  
2           were inflated and improper under their mortgages.

3           3.       In the alternative, the State continues to allege that Defendants materially and almost  
4 immediately violated the Consent Judgment that Countrywide entered with the State on February 24, 2009  
5 to resolve the State’s claims (summarized above) regarding Countrywide’s deceptive origination,  
6 marketing, and servicing practices, Consent Judgment, *State of Nevada v. Countrywide Financial*  
7 *Corporation*, No. A583442 (Dist. Ct., Clark Cnty, Nev.) (“Consent Judgment”), by:

- 8           ▪       failing to provide loan modifications to Eligible Borrowers;
- 9           ▪       failing to make decisions on loan modifications within sixty days of receiving requests from  
10           Nevada consumers;
- 11           ▪       initiating or proceeding with foreclosures while consumers’ modification requests were  
12           pending;
- 13           ▪       requiring Nevada consumers to submit full documentation of their income despite the  
14           Consent Judgment’s promise of “streamlined” modifications; and  
15           ▪       increasing the interest rates on the loans of Nevada consumers, despite Defendants’ clear  
16           commitment to *decrease* their rates.

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18  
19           4.       Beginning in 2009, Bank of America also violated the Nevada DTPA by engaging in a  
20 pattern and practice of misrepresentations in their loan modification programs. Specifically, Defendants  
21 misled consumers by:

- 22           ▪       promising to act upon requests for mortgage modifications within a specific period of time,  
23           usually one or two months, but instead stranding consumers without answers for more than  
24           six months or even a year;
- 25           ▪       falsely promising consumers that their initial, trial modifications would be made permanent  
26           if and when they made the required three payments on those plans, but then failing to  
27

1 convert those modifications;

- 2       ▪ falsely assuring them that their homes would not be foreclosed while their requests for
- 3       modifications were pending, but sending foreclosure notices, scheduling auction dates, and
- 4       even selling consumers' homes while they waited for decisions;
- 5       ▪ misrepresenting the eligibility criteria for modifications and providing consumers with
- 6       inaccurate and deceptive reasons for denying their requests for modifications;
- 7       ▪ falsely notifying consumers or credit reporting agencies that consumers were in default
- 8       when they were not; and
- 9       ▪ offering modifications on one set of terms, but then providing them with agreements on
- 10      different terms, or misrepresenting that consumers have been approved for modifications.

11  
12       5. Bank of America's misconduct in misrepresenting its mortgage modification program  
13 continues through the present and has been confirmed in interviews with consumers, former employees,  
14 and other third parties and through review of relevant documents. Bank of America's own former  
15 employees describe an environment in which the Bank failed to staff its modification functions with  
16 employees with the training, skills, experience, authority, and information necessary to carry out the  
17 Bank's commitments. According to the employees, the modification process was chaotic, understaffed,  
18 wrought with technical problems, and not oriented to customers. According to at least one former  
19 employee, Bank of America reprimanded them for spending too much time with individual customers and  
20 directed them to limit call times with consumers to an average of seven to ten minutes – leaving them  
21 almost no time to fully or accurately answer questions or provide explanations, correct or update relevant  
22 information, or offer assistance. *See, e.g.,* Examination before Trial of Ryan Quinn (attached as Exhibit  
23 A).

24       6. In addition, Bank of America misrepresented, both in communications with Nevada  
25 consumers and in documents they recorded and filed, that they had authority to foreclose upon consumers'  
26 homes as servicer for the trusts that held these mortgages. Defendants knew (and were on notice) that they  
27 had never properly transferred [REDACTED] these mortgages to those trusts, failing to deliver  
28 properly endorsed or assigned mortgage notes as required by the relevant legal contracts and state law.

1 Because the trusts never became holders of these mortgages, Defendants lacked authority to collect or  
2 foreclose on their behalf and never should have represented they could.

3 7. The course of unlawful conduct described in this Complaint began with Countrywide. As  
4 successor in interest to Countrywide, Bank of America is liable for its violations of Nevada law. After  
5 acquiring Countrywide, Bank of America engaged in new, repeated, and systemic violations of Nevada  
6 law for which the State seeks to hold it responsible.

7 8. Taken together and separately, Defendants' deceptive practices have resulted in an  
8 explosion of delinquencies and unauthorized and unnecessary foreclosures in the State of Nevada. These  
9 foreclosures have had a devastating impact on Nevada's homeowners, communities, and economy,  
10 stripping homeowners of their assets (including those who do not have loans originated or serviced by  
11 Defendants, but whose property values have fallen dramatically), dislocating families, blighting  
12 neighborhoods, and deeply disrupting the State's housing market. *See* Ctr. for Responsible Lending, *The*  
13 *Cost of Bad Lending in Nevada* (Aug. 2010), [http://www.Responsiblelending.org/mortgage-lending/tools-](http://www.Responsiblelending.org/mortgage-lending/tools-resources/factsheets/nevada.html)  
14 [resources/factsheets/ nevada.html](http://www.Responsiblelending.org/mortgage-lending/tools-resources/factsheets/nevada.html) (estimating total loss of home equity wealth in Nevada due to nearby  
15 foreclosures at \$54.4 billion for 2009-2012).

16 **II. PARTIES AND VENUE**

17 9. Plaintiff is the State of Nevada, ex rel. Catherine Cortez Masto, the Attorney General of  
18 Nevada, who is authorized to bring this action under the Nevada Deceptive Trade Practices Act ("DTPA"),  
19 Nev. Rev. Stat. §§ 598 *et seq.*, and the terms of the Consent Judgment.

20 10. Defendant Bank of America Corp. is a foreign corporation that is incorporated in Delaware,  
21 with its principal place of business located in Charlotte, North Carolina. At all times material to this  
22 Complaint, Bank of America Corp. was doing business in the State of Nevada. Bank of America Corp. is  
23 the parent corporation of Bank of America, NA and a successor in interest to Countrywide Financial.

24 11. Defendant Bank of America, NA is a national bank with its principal place of business  
25 located in Charlotte, North Carolina. At all times material to this Complaint, Bank of America, N.A. was  
26 doing business in the State of Nevada. Bank of America, N.A. is the parent of BAC Home Loans and  
27 ReconTrust.

28 ///

1           12. Defendant BAC Home Loans services loans and is a subsidiary of Bank of America, with  
2 its principal place of business in Texas. On July 1, 2011, BAC Home Loans Servicing was merged into  
3 Bank of America, NA. At all times material to this Complaint, BAC Home Loans was doing business in  
4 the State of Nevada.

5           13. Defendant ReconTrust is a wholly-owned subsidiary of Bank of America, N.A. that  
6 services defaulted mortgages. At all times material hereto, ReconTrust's principal place of business was  
7 located in California and ReconTrust was doing business in the State of Nevada.

8           14. Defendant Countrywide Financial is a Delaware corporation and a thrift holding company  
9 doing business in Nevada.

10           15. Defendant Countrywide Home is a New York corporation licensed to do business in  
11 Nevada, is a wholly owned subsidiary of Countrywide Financial, and is or was a licensed mortgage  
12 banking organization.

13           16. Defendant Full Spectrum Lending, Inc. is or was a California corporation, is or was a  
14 wholly-owned subsidiary of CFC, and is or was a licensed mortgage banking organization.

15           17. At all relevant times, defendant Countrywide Servicing is or was a Texas limited  
16 partnership directly owned by two wholly-owned subsidiaries of Countrywide Home. Countrywide  
17 Servicing serviced loans originated by Countrywide Home and for government and private entities.

18           18. On July 1, 2008, Bank of America completed its purchase of Countrywide in an all-stock  
19 transaction that Bank of America has described as a merger. Former Countrywide shareholders were  
20 compensated with shares of a Bank of America subsidiary that was created solely for the transaction.

21           19. In a press release issued that month, Bank of America touted the cost savings that would  
22 result from merging the two companies' operations.<sup>1</sup> See Ex. B at 1. The savings would be generated by  
23 eliminating duplicative jobs, technology, vendors, and marketing expenses. *Id.* Countrywide's press  
24 release announced that "the combination of Countrywide and Bank of America will create one of the most  
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28 <sup>1</sup> Press Release, Bank of America, Bank of America Completes Countrywide Financial Purchase (July 1, 2008), attached as Exhibit B.

1 powerful mortgage franchises in the world.”<sup>2</sup> See Ex. C at 1. Bank of America’s 2008 Annual Report  
2 described the “combined company.”<sup>3</sup> See Ex. D at 14.

3 20. Since Countrywide’s acquisition, Bank of America has taken over servicing loans  
4 previously serviced by Countrywide, along with its own servicing portfolio. Former Countrywide  
5 customers now use Bank of America customer service resources, including Bank of America service  
6 centers and website (to which they are redirected from Countrywide’s website). Former Countrywide  
7 customers receive mortgage statements from Bank of America, make their mortgage payments to Bank of  
8 America, and apply to Bank of America if they wish to modify their mortgages. The combined mortgage  
9 lending operations of Bank of America and Countrywide, including Countrywide’s branch network and  
10 origination platform, now operate under the name Bank of America Home Loans. The servicing operations  
11 of Bank of America and Countrywide were merged into BAC Home Loans Servicing, LP.

12 21. As part of the merger, Bank of America assumed Countrywide’s liabilities. For example,  
13 Bank of America agreed on Countrywide’s behalf to modify certain Countrywide home loans as a part of  
14 an \$8.4 billion consumer fraud settlement with state attorneys general. (The Consent Judgment was  
15 entered into as part of that multi-state settlement.) In an interview published on February 22, 2008 in  
16 Corporate Counsel, Bank of America acknowledged: “We bought the company and all of its assets and  
17 liabilities, spokesman Scott Silvestri says. We are aware of the claims and potential claims against the  
18 company and have factored these into the purchase.”<sup>4</sup> See Ex. E at 1. Kenneth D. Lewis, then Chairman  
19 and Chief Executive Officer of Bank of America, was quoted in a January 23, 2008 New York Times  
20 article noting that: “We looked at every aspect of the deal, from [Countrywide’s] assets to potential  
21 lawsuits and we think we have a price that is a good price.”<sup>5</sup> See Ex. F at 2.

22 22. Countrywide has been completely integrated into Bank of America and has virtually ceased  
23 to exist. In November 2008, Countrywide’s assets were transferred to Bank of America. Countrywide has  
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25 \_\_\_\_\_  
26 <sup>2</sup> Press Release, Bank of America, Bank of America Agrees to Purchase Countrywide Financial  
27 Corporation (Jan. 11, 2008), attached as Exhibit C.

28 <sup>3</sup> Bank of America Corp., 2008 Annual Report 14 (2009), attached as Exhibit D (in relevant part).

<sup>4</sup> Amy Miller, *Countrywide in Crosshairs as Mortgage Crisis Fuels Litigation*, Corporate Counsel, Feb. 22, 2008, attached as Exhibit E.

<sup>5</sup> Julie Creswell, *Bank of America Woes Go Beyond Mortgages*, N.Y. Times, Jan. 23, 2008, attached as Exhibit F.

1 stopped independently filing financial statements. Instead, Countrywide's assets and liabilities are  
2 reported on Bank of America's financial statements. On April 27, 2009 Bank of America announced that  
3 "the Countrywide brand has been retired."<sup>6</sup> See Ex. G at 2.

### 4 **III. JURISDICTION AND VENUE**

5 23. The State originally filed this case on December 17, 2010 in the District Court of Clark  
6 County where jurisdiction and venue were proper pursuant to the DTPA, Nev. Rev. Stat. § 598.0989, as  
7 well as the Consent Judgment. See Consent Judgment § 10.4 (ordering that the Clark County District  
8 Court "retain jurisdiction over this matter for the purposes of (a) enabling the Office of the Attorney  
9 General of the State of Nevada to apply, at any time, for enforcement of any provision of this Judgment").

10 24. On February 23, 2011, Defendants filed a Notice of Removal in Reno, removing the case to  
11 the Federal District Court for the District of Nevada. Notice of Removal, Feb. 23, 2011, ECF No. 1. The  
12 State moved to remand the action, which this Court denied on July 5, 2011. Order, July 5, 2011, ECF No.  
13 52. The State has requested that the Court of Appeals for the Ninth Circuit grant it leave to appeal that  
14 decision. Appl. for Leave to Appeal Order Den. Remand, July 15, 2011, ECF No. 57. On July 11, 2011  
15 the State moved to transfer this action to the District of Nevada's courts in Las Vegas for the convenience  
16 of the potential witnesses and parties. State's Mot. Transfer of Venue, July 20, 2011, ECF No. 56. That  
17 motion is currently pending.

### 18 **IV. COUNTRYWIDE'S DECEPTIVELY STRUCTURED, UNDERWRITTEN, AND** 19 **MARKETED MORTGAGES**

20 25. Countrywide, which billed itself as "America's #1 Home Loan Lender," was, until its near  
21 collapse and acquisition by Bank of America, the largest mortgage lender and home loan servicer in the  
22 United States.

23 26. Until 2003, Countrywide primarily made traditional first-lien home loans to individuals  
24 with strong credit. Such "conforming" loans are generally safer for lenders and consumers, as they must  
25 meet the guidelines of government sponsored enterprises ("GSE") Fannie Mae and Freddie Mac, which  
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27 <sup>6</sup> Press Release, Bank of America, Bank of America Responds to Consumer Desire for Increased  
28 Transparency in Home Loan Process with Tools that Clarify Mortgage Terms and Foster Informed  
Homeownership (Apr. 27, 2009), attached as Exhibit G.

1 include maximum loan amounts, debt-to-income ratio limits and documentation requirements.

2 “Nonconforming” loans are all loans that do not meet GSE guidelines because they are too large, have  
3 debt-to-income ratios that are too high, or do not satisfy GSE documentation requirements.

4 27. Beginning in 2003, a significant culture change began at Countrywide. With a stated goal  
5 of doubling its market share to 30 percent in three to four years, Countrywide began to originate more  
6 nonconforming loans,<sup>7</sup> As part of this shift, Countrywide transitioned from making traditional, fixed-rate  
7 mortgages to originating new and far riskier loan products, such as hybrid adjustable rate mortgages  
8 (“Hybrid ARMs”), pay-option adjustable-rate mortgages (“Option ARMs”); and Home Equity Lines of  
9 Credit (“HELOCs”). These loans were attractive to Countrywide for two reasons: (1) they generated  
10 artificially low monthly payments, which allowed it to reach less creditworthy consumers and increase its  
11 loan volume; and (2) they allowed it to charge consumers higher fees and included features that generated  
12 a higher return in the secondary market.<sup>8</sup> As explained below and described in the illustrative consumer  
13 stories attached in Exhibit H, Countrywide structured and marketed these mortgages in a manner that  
14 would and did deceive consumers.

15 **A. Countrywide’s Deceptive Mortgage Products**

16 28. Several of Countrywide’s mortgage products were structured and underwritten in ways that  
17 seemed designed to mislead consumers. For the reasons described below, the most deceptive of these  
18 products were the Option ARM (or Pay Option ARM), Hybrid ARM, and Home Equity Line of Credit  
19 (“HELOC”).

20 **1. “Option” ARMs/ “Pay Option” ARMs**

21 29. Countrywide first originated Option ARMs in 2004. One year later, 21 percent of  
22 Countrywide’s loans were Option ARMS.

23 30. Option ARMs had three core features that lent themselves to deception. First, an Option  
24 ARM offered a “teaser rate” – often as low as 1 percent – for an introductory period of one to three  
25

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26 <sup>7</sup> In 2002, Countrywide originated about \$250 billion in mortgages; three years later, that number jumped  
27 to almost \$500 billion. Countrywide Fin. Corp., 2005 Annual Report (Form 10-K), at \*2 (Feb. 28, 2006).  
28 In 2002, approximately 25 percent of loans originated by Countrywide were nonconforming, but by 2005,  
over 45 percent of loan originations were nonconforming. *Id.* at \*24.

<sup>8</sup> Investors tended to pay premiums for riskier or nonconforming loans, as they contained features, such as  
prepayment penalties, which produced higher payouts to investors.

1 months. At the end of this initial period, the interest rate, and thus the interest owed, increased  
2 dramatically. Second, the Option ARM allowed borrowers to make minimum payments that did not cover  
3 the full interest (or any of the principal) due for the month.<sup>9</sup> As a result, Option ARMs could produce  
4 negative amortization as the amount of accrued interest not paid each month was added to the consumer's  
5 loan balance (yielding even higher monthly interest owed). Third, when negative amortization caused the  
6 loan balance to reach a ceiling – typically 115 percent of the loan's value – or after five years, the loan  
7 recast. After recast, the borrower could no longer make a minimum payment and had to begin making  
8 fully-amortizing principal and interest payments that were often double the minimum payment.<sup>10</sup> See  
9 Mara Der Hovanesian, *Nightmare Mortgages*, Bloomberg Businessweek (Sept. 11, 2006).

10 31. For example: the monthly payment on a typical Nevada Option ARM with a term of 30  
11 years, an initial principal balance of \$235,000, a teaser rate of 1 percent and an interest rate based on the  
12 12-month moving Treasury Average of 4.28 percent plus a margin of 3.075 percent,<sup>11</sup> would increase from  
13 \$755.85 per month in the first year to \$1,946.13 per month after it recast, a payment level that reflects  
14 almost \$35,000 in negative amortization.<sup>12</sup>

15 32. Most Countrywide borrowers made only the minimum payment on their loans. As of  
16 December 31, 2006, almost 88 percent of Countrywide's Option ARM portfolio had experienced some  
17 negative amortization; a year later, that percentage reached 91 percent. Countrywide carried the negative  
18 amortization accrued by borrowers who made minimum payments as uncollected income; in 2007, the  
19 value of the negative amortization had reached \$1.215 billion. Countrywide Fin. Corp., 2007 Annual  
20 Report (Form 10-K), at \*126 (Feb. 29, 2008).

21 33. Countrywide generally coupled its Option ARM loans with three-year prepayment  
22 penalties. A consumer seeking to refinance his or her loan within the first three years would be required to  
23 pay the equivalent of six months' accrued interest on the loan. Thus, even if consumers became aware of

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24 <sup>9</sup> The minimum payment was the payment owed at the initial 1 percent teaser rate (or "payment rate"),  
25 even once the interest rate had adjusted well above that rate, which is why the payment did not represent  
the actual amount owed.

26 <sup>10</sup> A borrower making the minimum payment most likely hit the negative amortization cap and suffered  
payment shock well before the standard five year recast date.

27 <sup>11</sup> Countrywide's Option and Hybrid ARMs both set the interest rate (after the initial period) at the rate set  
28 by a specific index plus an additional margin.

<sup>12</sup> Borrowers who made the interest-only payment option also would experience payment shock, though  
not as steep.

1 the risky features of their mortgage, they were effectively trapped in their loans and could not refinance to  
2 avoid increasing loan payments and balances.<sup>13</sup>

3 34. As explained below, Countrywide failed to adequately disclose and/or affirmatively  
4 misrepresented to borrowers that: (1) the teaser rate was not the actual interest rate in effect for most of  
5 the term of the loan; (2) the minimum payment was not a full payment and would result in negative  
6 amortization; (3) they would experience payment shock when their loans recast and they were required to  
7 make a fully-amortizing payment; and (4) borrowers could (and would have to) refinance their loans in  
8 order to avoid defaulting when the higher payment kicked in.

## 9 2. Hybrid ARMs

10 35. Hybrid ARMs, another large and growing segment of Countrywide's lending, were often  
11 referred to as "2/28" or "3/27" loans, given that the loans had low initial interest rates for the first two or  
12 three years (the "2" in "2/28," for example), which adjusted every six months for the remaining term of the  
13 loan. Sometimes, the payment during the initial fixed period was interest-only.

14 36. Once the initial fixed-rate period expired, the increase in payment, particularly if the  
15 payment became fully amortizing, could be dramatic. A consumer whose loan had an initial rate of 8.5  
16 percent, for example, would see the interest rate increase to the index rate plus a margin of 6.5 percent in  
17 the 25th month of the loan. While Countrywide would cap the interest rate at 11.5 percent on the first  
18 change date and the lifetime maximum interest rate at 14.5 percent, the interest rate could never fall below  
19 the initial rate no matter how low the rate index. Thus, consumers assumed all of the interest rate  
20 risk: their rates and payments would almost certainly increase and could never decrease below a set floor.

21 37. A Nevada consumer who borrowed \$250,000 could expect to see his or her monthly  
22 payment of principal and interest increase from \$1,922.28 per month in the initial two year period with a  
23 fixed "teaser" rate to \$2,550.01 per month in the third year of the loan after the rate began to adjust.  
24 Because Countrywide underwrote these Hybrid ARMs based on the payment required while the initial rate  
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26 <sup>13</sup> Although prepayment penalties are touted by lenders as a bargaining tool for consumers, analysis has  
27 revealed that borrowers generally received no appreciable benefit in exchange for this penalty; it appears  
28 the main point of this risky feature was to generate additional profit for Countrywide. See Keith S. Ernst,  
Ctr. for Responsible Lending, *Borrowers Gain No Interest Rate Benefits from Prepayment Penalties on  
Subprime Mortgages* (Jan. 2005), [http://www.responsiblelending.org/mortgage-lending/research-  
analysis/rr005-PP\\_Interest\\_Rate-0105.pdf](http://www.responsiblelending.org/mortgage-lending/research-analysis/rr005-PP_Interest_Rate-0105.pdf).

1 was in effect, Countrywide was able to extend loans to borrowers who could not have afforded its fully  
2 indexed payment. Further, many of the Hybrid ARMs were written to subprime borrowers – meaning that  
3 the loans were higher priced and made to less creditworthy borrowers. Therefore, it was even less likely  
4 that borrowers would have the capacity to pay the substantially higher payments in effect for most of the  
5 loans’ terms.

6 38. As with Option ARMS, Countrywide deceptively marketed Hybrid ARMs. Countrywide  
7 emphasized the low monthly payment and low “fixed” interest rate, without disclosing that the interest rate  
8 was fixed only temporarily and then became adjustable and that, when it did, consumers would experience  
9 payment shock. And, as with Option ARMs, Countrywide misrepresented that borrowers could refinance  
10 their loans to avoid payment increases.

### 11 3. Home Equity Lines of Credit (“HELOCs”)

12 39. Countrywide aggressively marketed HELOCs, often in connection with first mortgages  
13 taken out by borrowers. Countrywide referred to a home equity line of credit as a “piggyback loan.” The  
14 first loan typically covered 80 percent of the appraised value of the home, while the HELOC rested atop  
15 the first loan and covered any of the home’s remaining value up to 20 percent. Because Countrywide  
16 offered HELOCs with Option and Hybrid ARMs, borrowers could obtain 100 percent financing on loans  
17 that were subject to negative amortization or interest-only payments, which added layers of complexity  
18 and risk that borrowers were unlikely to understand or manage.

19 40. Countrywide not only failed to disclose these risks to borrowers, but typically urged  
20 borrowers to draw down the full line of credit when funding HELOCs. This meant that borrowers would  
21 make the maximum interest payments under the loan, which increased the value of the loan to the  
22 secondary market, but drove the borrower deeper into debt.

23 41. Piggyback HELOCs typically required only interest-only payments for the first five years  
24 of the loan (or ten years, at Countrywide’s option), also known as the “draw period.” Countrywide did not  
25 disclose or explain the amount of the monthly payment that would be due after the interest-only period  
26 expired. Yet, as with Countrywide’s other high-risk mortgage products, borrowers faced significant  
27 payment increases after the draw period due to Countrywide’s formula requiring repayment of principal in  
28 equal installments during the 15 year “repayment period.” For example, a consumer with a fully drawn

1 \$75,000 HELOC at a 7 percent interest rate would have initial monthly payments of approximately  
2 \$437.50. At the end of a five year, interest-only draw period, the borrower would have to pay \$846.43 per  
3 month (on top of likely increases to the borrower's first mortgage payments).

4 42. Like the Hybrid ARMs, Countrywide originated HELOCs at discounted "teaser" rates,  
5 which adjusted after three (3) to six (6) months to a fully-indexed rate based on an interest rate index (such  
6 as the prime rate) plus a margin, a structure that also hid the true cost of the credit line.

7 **B. Countrywide's Deceptive Steering**

8 43. Countrywide not only offered deceptive mortgage products, but pushed these products on  
9 unwitting borrowers who could have qualified for less expensive and more stable mortgages. As outlined  
10 in a *New York Times* piece on August 26, 2007, Countrywide's subprime unit chose not to offer Federal  
11 Housing Administration ("FHA") loans because of a desire to generate higher fees and returns.<sup>14</sup> Gretchen  
12 Morgenson, *Inside the Countrywide Lending Spree*, N.Y. Times, Aug. 26, 2007. A former senior  
13 executive quoted in the article remembered one instance when he priced a \$275,000 loan with a 30-year  
14 term for a borrower who put down 10 percent, with fully documented income and credit score of 620, at  
15 the subprime interest rate of 9.875 percent, even though the borrower was eligible for a FHA loan at  
16 approximately 7 percent. *Id.* The monthly payment of the FHA loan would have been \$1,829, while  
17 Countrywide's subprime loan generated a \$2,387 monthly payment. *Id.* Countrywide never disclosed this  
18 less expensive alternative to eligible borrowers.

19 44. Countrywide's bonus system created incentives for employees to steer borrowers into  
20 subprime and nonconforming Option ARMs, Hybrid ARMs, and HELOCs and to say whatever it took to  
21 close the sale. For example, the company paid a yield spread premium to brokers if a loan was made at a  
22 higher interest rate than the rate for which the borrower qualified, encouraging brokers to place consumers  
23 in higher margin Option ARMs, for example. According to one Countrywide sales representative quoted  
24 in the *New York Times*, adding a three-year prepayment penalty to a loan generated an extra 1 percent of  
25 the loan's value in a commission. *Id.* Other features offered similar returns:

26 \_\_\_\_\_  
27 <sup>14</sup> According to a November 2007 *New York Times* article, internal company documents indicate that  
28 Countrywide made gross profit margins of more than 4 percent for Option ARMs, compared with 2  
percent on FHA loans. On subprime loans with riskier features, like three-year prepayment penalties,  
Countrywide's margins could reach 15 percent. Gretchen Morgenson & Geraldine Fabrikant,  
*Countrywide's Chief Salesman and Defender*, N.Y. Times, Nov. 11, 2007.

- 1           ▪ “the higher the rate at reset, the greater the commission earned.” *Id.*
- 2           ▪ “Persuading someone to add a home equity line of credit to a loan carried extra
- 3           commissions of 0.25 percent...” *Id.*
- 4           ▪ Brokers who persuaded consumers to take out subprime loans received commissions of .50
- 5           percent of the loan’s value, versus .20 percent on loans one step up the quality ladder ... *Id.*
- 6

7           45.     These incentives were not limited to Countrywide’s sales force and brokers. On  
8 information and belief, Countrywide compensated underwriters for their loan volumes and rewarded  
9 managers with bonuses and other compensation when their units produced high risk loans and features that  
10 increased Countrywide’s return in the secondary market. Neither these incentives nor their impact on  
11 borrowers’ loan options were disclosed to consumers.

12     **C.     Countrywide’s Deceptive Underwriting**

13           46.     Countrywide used risky and deceptive underwriting to qualify borrowers for these risky and  
14 deceptive loans. More than 75 percent of the Option ARMs and the majority of all ARMs originated by  
15 Countrywide were reduced or no documentation loans (known internally as liars’ loans), which did not  
16 require Countrywide to confirm the borrower’s income and allowed borrowers’ income to be  
17 misrepresented. While some borrowers misreported their incomes, brokers also made up borrowers’  
18 income on loan applications and coached borrowers to claim the incomes required to qualify for their  
19 loans.<sup>15</sup> On information and belief, Countrywide’s own audits informed them that the income provided for  
20 many of these no and low documentation loans had been fraudulently inflated.

21           47.     In order to reach more borrowers and increase the price of its loans in the secondary  
22 market, Countrywide also combined multiple risk factors in the loans it originated. By offering a stated  
23 income, piggyback Hybrid ARM, for example, Countrywide was able to make loans to borrowers who  
24

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25  
26 <sup>15</sup> See the Testimony of Audrey Sweet, before the U.S. Congress Joint Economic Committee, on July 25,  
27 2007 (testifying that Countrywide falsified her income, bank balance, and tax payment on her loan  
28 documents); Glenn R. Simpson and James R. Hagerty, *Countrywide Loss Focuses Attention on Underwriting – Evidence of Abuses by Outside Brokers*, *The Wall Street Journal*, April 30, 2008 (while working for Countrywide, broker misrepresented borrower’s income and bank account balance so that it appeared that borrower qualified and avoided further review).

1 could not make a down payment or qualify at fully-amortizing payments. While each of those features  
2 was dangerous and hard to understand on their own, together, they were toxic.

3 48. On information and belief, Countrywide also engaged in deceptive practices with regard to  
4 its appraisals. First, Countrywide encouraged appraisers to inflate appraisal values by as much as 6  
5 percent, to “roll up” closing costs. This misled consumers about both the value of their homes and the cost  
6 of their loans. *See Zachary v. Countrywide Fin. Corp.*, No. 08-cv-00214 (S.D. Tex. Oct. 7, 2008). For  
7 borrowers who took out loans at or near 100 percent LTVs the inflated appraised values made buyers  
8 unwittingly upside down on their homes immediately after purchasing them. Second, Countrywide loan  
9 officers were permitted to hire appraisers of their own choosing and could discard appraisals that did not  
10 support loan transactions and substitute more favorable replacement appraisers when necessary.  
11 Consumers with these so-called “shopped for” appraisals had no idea that their home’s actual value was  
12 not its appraised value. Further, according to at least one lawsuit, appraisers who did not come in “on bid”  
13 and provide an appraisal value that justified the sale price would find themselves on Countrywide’s  
14 blacklist, which meant that a second appraisal had to be obtained. *Capitol West Appraisals, LLC v.*  
15 *Countrywide Fin. Corp.*, 759 F. Supp.2d 1267, 1270 (W.D. Wash. 2010). This additional hurdle caused  
16 many brokers to avoid blacklisted firms and choose appraisers who would support an inflated valuation.  
17 *Id.*

18 49. Countrywide had among the most aggressive underwriting guidelines in the industry, due  
19 largely to the fact that its leadership demanded that Countrywide match its competitors by offering any  
20 product or program they did. *See* Complaint at 18-19, *Allstate Ins. Co. v. Countrywide Fin. Corp.*, No. 10-  
21 CIV-9591 (S.D.N.Y. Dec. 27, 2010) (quoting a former Countrywide executive as saying: “To the extent  
22 more than 5 percent of the [mortgage] market was originating a particular product, any new alternative  
23 mortgage product, then Countrywide would originate it . . . . [I]t’s the proverbial race to the bottom.”).  
24 But even those guidelines did not provide the lender enough leeway. Countrywide approved many of its  
25 loans as “exceptions” that did not meet its underwriting guidelines. Through a special Exception  
26 Processing System, Countrywide approved tens of thousands of loans that should not have been made.

27 50. The manner in which Countrywide underwrote its loans not only enabled it to make high-  
28 risk, deceptive loans to consumers, but also to mislead investors who purchased the loans in the secondary

1 market. According to a complaint filed by the SEC, Countrywide did not disclose – and, often,  
2 affirmatively misrepresented – that its loans did not meet its guidelines, were based on inaccurate incomes  
3 and appraisals (which also made inaccurate the debt-to-income and loan-to-value ratios disclosed by  
4 Countrywide in connection with its securitizations), and included multiple layers of risks.

5 51. Countrywide also did not disclose that the product features and terms discussed in Section  
6 IV(A), *supra*, made its loans especially susceptible to default once the loans recast or reset. For example,  
7 Countrywide described its Option ARMs as high quality, a “sound investment” and “prudently  
8 underwritten,” but did not disclose the high expected default rate for its Option ARMs. Countrywide Fin.  
9 Corp., 2006 Annual Report (Form 10-K) (Mar. 1, 2007); Complaint at 36-37, *SEC v. Mozilo*, No. CV09-  
10 03994, 2009 WL 1549287 (C.D. Cal. June 4, 2009) (“SEC Complaint”). Countrywide was well aware of  
11 the risks of Option ARMs; in one internal email from Countrywide’s CEO, Angelo Mozilo, he noted that  
12 Option ARM borrowers “are going to experience a payment shock which is going to be difficult if not  
13 impossible for them to manage.” SEC Complaint at 27; see also SEC Complaint at 37 (“It is just a matter  
14 of time that we will be faced with much higher resets and therefore much higher delinquencies”).

15 52. Despite its drive to riskier loan features and underwriting, Countrywide executives  
16 continued to represent that there had been “no compromise” on loan quality. In its Forms 10-K for 2005,  
17 2006, and 2007, Countrywide misrepresented that it “manage[d] credit risk through credit policy,  
18 underwriting, quality control and surveillance activities.” Countrywide Fin. Corp., 2005 Annual Report  
19 (Form 10-K), at \*92 (Feb. 28, 2006); Countrywide Fin. Corp., 2006 Annual Report (Form 10-K), at \*100  
20 (Mar. 1, 2007); Countrywide Fin. Corp., 2007 Annual Report (Form 10-K), at \*117 (Feb. 28, 2008). Its  
21 2005 and 2006 Forms noted that Countrywide is “consistently producing quality mortgages.” 2005  
22 Annual Report at \*101; 2006 Annual Report at \*16. At the same time, as the Securities and Exchange  
23 Commission wrote in its Complaint against Countrywide officers:

24  
25 [T]he credit risk that Countrywide was taking was so alarming to Mozilo  
26 that he internally issued a series of increasingly dire assessments of various  
27 Countrywide loan products and the risks to Countrywide in continuing to  
28 offer and hold those loans, while at the same time he [and other officers]  
continued to make public statements obscuring Countrywide’s risk profile  
and attempting to differentiate it from other lenders. In one internal email,

1 Mozilo referred to a particularly profitable subprime product as ‘toxic,’<sup>16</sup>  
2 and in another he stated that the company was ‘flying blind,’ and had ‘no  
3 way’ to predict the performance of its heralded product, the Pay-Option  
4 ARM loan. Mozilo believed that the risk was so high and that the secondary  
5 market had so mispriced Pay-Option ARM loans that he repeatedly urged  
6 that Countywide sell its entire portfolio of those loans.

7 SEC Complaint at 4.

8 53. In addition, Countrywide did not disclose to investors that it failed to properly transfer  
9 mortgages to the securitization trusts from which they were sold. *See* Section VII, *infra*. Based on reports  
10 produced by the trustees for these trusts, [REDACTED] had flaws – [REDACTED]  
11 [REDACTED] – that prevented their transfer.

12 Because Countrywide was provided copies of these reports, it had specific, detailed knowledge that the  
13 transfers were invalid. This meant that investors would not have an enforceable or secured interest in the  
14 mortgages. Countrywide should have made this significant information available to investors.

15 54. Countrywide’s affirmative misrepresentations and material omissions constitute deceptions  
16 under the DTPA. Nev. Rev. Stat. § 598.092(5)(a) (making it a deceptive trade practice to represent that an  
17 investment “is guaranteed, secured or protected in a manner which he or she knows or has reason to know  
18 is false or misleading”).

19 **D. Countrywide’s Deceptive Marketing**

20 55. To promote its aggressive loan origination practices, Countrywide engaged in unfair and  
21 deceptive sales practices through telemarketing, direct mailings, newspaper advertisements and television  
22 and radio commercials. On information and belief, Countrywide’s advertisements to consumers hid or  
23 obscured the risks associated with different mortgage products. Countrywide even reportedly instructed  
24 employees to court customers with a pitch that purposely underplayed risks associated with various loan  
25 products and falsely assured unsuspecting borrowers that Countrywide was looking out for their best  
26 interests and would obtain for them the best possible loan terms.

27 56. In its advertisements, Countrywide encouraged consumers’ to defer to its recommendations  
28 by emphasizing its experience, professional qualifications, and its devotion to consumers’ financial needs.  
On information and belief, Countrywide promoted itself as “the company you can trust,” and urged

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<sup>16</sup> This was Countrywide’s 100 percent financed subprime mortgage.

1 consumers to “join the millions of homeowners who have trusted Countrywide.” *See, e.g.*, Complaint at  
2 27, *People v. Countrywide Fin. Corp.*, No. LC081846 (Cal. Super. Ct. L.A. Cnty June 24, 2008) (“CA  
3 Complaint”). Countrywide claimed that it “had years to perfect [its] craft” and “is an expert at finding  
4 solutions for all kinds of situations.” *Id.* Countrywide claimed it “would go the distance with you to help  
5 secure a loan program to fit your financial needs and goals.” *Id.* Loans officers were directed to describe  
6 themselves to potential customers as “experienced mortgage lending professional[s]” who specialized “in  
7 helping people improve their financial situation.” *Id.* at 28.

8 57. Countrywide not only misled consumers about its motives, but its mortgages. In its  
9 marketing, Countrywide both purposefully omitted key mortgage terms and affirmatively misrepresented  
10 others.

11 58. On information and belief, Countrywide urged loan officers, when handling initial calls  
12 from prospective customers, to defer discussing interest rates, to “overcome objections” regarding  
13 potential rates, costs and “equity drain” and to focus on the “emotional reasons” each individual customer  
14 may want or need to own a new home loan. As one manual noted, “[a]t this point in the sales cycle, rates,  
15 points, and fees are not discussed.”

16 59. While downplaying the rate, Countrywide instructed loan officers “to sell the payment.”  
17 Loan officers contrasted the minimum monthly payments for ARM products with other, less risky (and  
18 ultimately, less expensive) loan products with larger initial payments. Then, loan officers would ask  
19 which payment the borrower preferred, without discussing other important differences between the loan  
20 products. Loan officers were not to discuss the payment shock and negative amortization that would result  
21 when borrowers made minimum payments.

22 60. Countrywide ran television commercials for its Option ARMs that promoted a payment rate  
23 as low as 1 percent. Print advertisements promised that the loans’ low payments would allow borrowers to  
24 set aside “extra cash.” These ads did not explain that the payment rate was based on the initial teaser rate,  
25 and not the interest rate in effect for most of the life of the loan. As a result, borrowers would not know  
26 that their payment did not cover the full payment due and would produce negative amortization.  
27 Countrywide also failed to disclose that, while making the minimum payment would leave borrowers with  
28 more cash, it also would leave them with more debt. Countrywide’s written disclosures failed to correct

1 these misrepresentations – for example, burying any mention of negative amortization in dense, small print  
2 and listing the minimum payment in disclosure documents as the initial monthly payment amount. As a  
3 result, consumers would not know of the actual interest rate (and corresponding monthly payment) until  
4 they received their first statement after the expiration of the teaser rate, after the loan documents were  
5 signed.

6 61. The misrepresentations described above, which would have reached tens of thousands of  
7 Nevada consumers, violated the DTPA and explains how so many consumers ended up in mortgage loans  
8 they did not understand and could never repay.

9 62. On information and belief, Countrywide’s deceptive origination practices also demonstrate  
10 their intent to gain an unfair advantage over their competitors and hurt competition in the Nevada  
11 mortgage industry.

12 **E. Countrywide’s Deceptive Servicing Practices**

13 **1. Loan Modification and Workout Abuses**

14  
15 63. Countrywide was the largest servicer in the United States, administering collections on \$1.5  
16 trillion dollars in loans, including loans it originated and loans that it serviced for others.

17 64. On information and belief, Countrywide engaged in deceptive trade practices by seeking to  
18 collect impermissible and inflated fees and payments from Nevada consumers in default, foreclosure, and  
19 bankruptcy. These fees included, but were not limited to, inaccurate balance and payment amounts,  
20 multiple, unnecessary inspections and property valuations and unwarranted and unjustified foreclosure  
21 fees. These fees were not permitted by borrowers’ mortgage agreements, were not disclosed to borrowers,  
22 and exceeded the actual or reasonable cost of the services. In addition, Countrywide inaccurately  
23 accounted for borrowers’ payments and misrepresented the amounts owed by borrowers.

24 65. United States Bankruptcy Trustees (“U.S. Trustee”) have taken action against Countrywide  
25 for unlawful servicing fees in four states, suggesting an institutional practice or failure. *See* J. Seth Moore  
26 & Vincent P. Slusher, *U.S. Trustee Takes on Big Lender*, National Law Journal, Mar. 3, 2008 (describing  
27 actions by the U.S. Trustee against Countrywide in Florida, Pennsylvania, and Texas); *In re McLeod*, No.  
28 10-21364-LBR (Bankr. D. Nev. filed June 18, 2010). These trustees alleged, among other things, that

1 Countrywide Servicing filed inaccurate proofs of claims, inaccurately accounted for borrowers' payments,  
2 and made payment demands to consumers after discharge of their bankruptcy, which misrepresented the  
3 amount (if any) owed to Countrywide. *See, e.g., In re Chadwick*, No.05-37014-BKC-PGH (Bankr. S.D.  
4 Fla. May 27, 2009) (claiming that Countrywide failed to justify a claim for \$2,396.29 in arrearages); *see*  
5 *also In re O'Neal*, No. 08-5031 (Bankr. N.D. Ohio May 1, 2009) (alleging that Countrywide had no  
6 factual basis for filing a claim). When referring borrowers' loans to foreclosure counsel, Countrywide  
7 Servicing inflated reinstatement figures – the amount of principal, interest, legal and loan fees and costs  
8 required to bring the loan current. *See Nev. Rev. Stat. § 107.080(3)(a)* (requiring, inter alia, the provision  
9 of a description of the deficiency amount in the Notice of Default and Election to Sell). Despite  
10 representing that the reinstatement figures were accurate, or at least reasonable estimates, Countrywide  
11 assessed legal fees over and above those it legitimately or actually incurred. Countrywide Servicing hid  
12 these unwarranted legal fees in lump sum demands that did not itemize fees and costs unless the consumer  
13 requested them.

14         66. Countrywide Servicing's behavior led U.S. Bankruptcy Judge Bohm in the Southern  
15 District of Texas to state in exasperation, "How many times do I have to listen to that before I conclude,  
16 'You know, there's got to be some kind of reckoning' when I keep hearing time after time, 'we made a  
17 mistake, we made a mistake, we made a mistake, we made a mistake?'" Peter Lattman, *Judges Raising*  
18 *Eyebrows Over Countrywide*, Wall St. J. L. Blog (Jan. 14, 2008, 9:17 AM),  
19 <http://blogs.wsj.com/law/2008/01/14/is-there-something-rotten-in-the-state-of-countrywide>.

20         67. Countrywide Home Loans and BAC Home Loans last year paid \$108 million to settle  
21 claims by the Federal Trade Commission ("FTC") that they purposefully inflated fees sought from and  
22 paid by 450,000 distressed homeowners, including Nevada homeowners. Consent Judgment and Order,  
23 *Federal Trade Commission v. Countrywide Home Loans, Inc.*, No. 2:10-cv-04193-JFW-SS (C.D. Cal.  
24 June 15, 2010). The FTC alleged that Countrywide Home Loans and BAC Home Loans sought to profit  
25 from default-related fees by inflating the costs of home inspections, property maintenance, and other fees  
26 related to protecting a lender's interest in troubled properties. Complaint at 4, *Federal Trade Commission*  
27 *v. Countrywide Home Loans, Inc.*, No. 2:10-cv-04193-JFW-SS (C.D. Cal. June 7, 2010).

28 ///

1           68.     More recently, the U.S. Trustee intervened in several Nevada bankruptcies in which Bank  
2 of America filed proof of claims with seemingly inaccurate fees. *See In re McLeod*, No. 10-21364-LBR  
3 (Bankr. D. Nev.) (claiming Bank of America filed an improper claim for homeowners fees it may not have  
4 in fact paid); *In re Medrano*, No. 10-22780-BAM (Bankr. D. Nev.) (same); *In re Degomez*, No. 10-22769-  
5 LBR (Bankr. D. Nev.) (same); *In re Gaudet*, No. 10-23473-BTB (Bankr. D. Nev.) (same). The Trustee  
6 requested discovery in each of these cases.

7           69.     On information and belief, Countrywide violated the DTPA by charging Nevada consumers  
8 impermissible and inflated fees and misrepresenting the amounts that they owed on their mortgages.

9           70.     On information and belief, Countrywide's deceptive servicing practices show their intent to  
10 gain an unfair advantage over their competitors and hurt competition in the Nevada mortgage industry.

11 **F.     State's Basis for Asserting Origination, Marketing, and Servicing Claims**

12           71.     Soon after Bank of America acquired Countrywide, it negotiated, on Countrywide's behalf,  
13 a multi-state settlement of charges that Countrywide had engaged in widespread consumer fraud in its  
14 origination, marketing, and servicing practices. The State of Nevada resolved its claims by entering into  
15 the Consent Judgment with Countrywide on February 24, 2009.

16           72.     On December 17, 2010, the State of Nevada filed suit against Bank of America and  
17 Countrywide, alleging violations of the Deceptive Trade Practices Act for their deceptive loss mitigation  
18 and foreclosure practices. Complaint, *State of Nevada v. Bank of America Corp.*, No. A631557 (Dist. Ct.,  
19 Clark Cnty., Nev. Dec. 17, 2010) (attached as Exhibit A to Notice of Removal, ECF No. 1). On January  
20 19, 2011, the State amended its complaint to include violations of the Consent Judgment. Amended  
21 Complaint, *State of Nevada v. Bank of America Corp.*, No. A631557 (Dist. Ct., Clark Cnty., Nev. Jan. 19,  
22 2011) (attached as Exhibit B to Notice of Removal, ECF No. 1).

23           73.     As the State began discovery, it found in Bank of America's policies and procedures  
24 practices that it believes constitute additional, serious violations of the Consent Judgment, including  
25 Countrywide's requirement that borrowers submit full applications for modifications under the Consent  
26 Judgment, despite its promise of "streamlined" modifications. *See* Consent Judgment § 3.1(d). It also  
27 noticed that Countrywide increased the interest rate (and payments) of some borrowers who received  
28 modifications under the Consent Judgment, despite its promise that modifications would decrease

1 borrowers' interest rate. *See, e.g.*, Consent Judgment §§ 4.3(a)(iii)(A), (a)(iv)(B), (b)(ii)(C), (agreeing to  
2 offer modifications with interest rate reductions). The State notified Countrywide of these additional  
3 grounds of breach by letter on June 1, 2011. Countrywide has neither corrected nor satisfactorily  
4 explained its violations.

5 74. Given Countrywide's immediate, egregious, and repeated violations of the Consent  
6 Judgment, the State seeks to exercise its rights under the Consent Judgment to terminate the Judgment,  
7 dissolve its release, and to bring the claims originally available to the State prior to the entry of the  
8 Consent Judgment. Consent Judgment §§ 2.3, 4.12 (allowing the Attorney General to terminate the  
9 settlement "if there is a material failure to satisfy this commitment"). Therefore, in its Prayer for Relief,  
10 the State requests a declaratory judgment that Bank of America materially breached the Consent  
11 Judgment.

12 75. These claims are timely as they were tolled by the entry of the Consent Judgment and  
13 Defendants are equitably stopped from raising statute of limitation defenses. Having failed to abide by the  
14 terms of the Consent Judgment, on which the State relied, and given the Consent Judgment's express  
15 provisions allowing the State to terminate the agreement and be released from its own releases and  
16 preventing the waiver of a party's claims, Defendants cannot maintain that they are entitled to avoid  
17 liability for their original misconduct or would be prejudiced in defending against these claims.

18 **V. DEFENDANTS' VIOLATIONS OF THE CONSENT JUDGMENT WITH THE STATE OF**  
19 **NEVADA**

20 76. In the event that the Court does not find that Defendants have materially breached the  
21 Consent Judgment, precluding the State from terminating the Judgment, the State alleges the violations of  
22 the Consent Judgment laid out below.

23 77. Under the Consent Judgment entered into among the Attorney General and the  
24 Countrywide Defendants, Countrywide undertook several obligations, including to:

25 ///

26 ///

27 ///

28 ///

- provide National Homeownership Retention Program (“NHRP”) modifications to “Eligible Borrowers”<sup>17</sup> in “Qualifying Mortgages”<sup>18</sup> on the terms laid out in the Consent Judgment;
- not initiate or advance foreclosures for Eligible Borrowers who are being evaluated for loan modifications;<sup>19</sup>
- make decisions on modification requests, on average, within 60 days of receiving complete applications from Eligible Borrowers;<sup>20</sup> and
- make streamlined modifications consistent with the programs outlined in the Consent Judgment.

78. Based on numerous complaints reviewed by the Attorney General’s Office, some of which are described in Exhibit I, Bank of America has:

- failed to provide modifications to Eligible Borrowers;
- proceeded with foreclosures while Eligible Borrowers were awaiting decisions on their modification requests;
- failed to make decisions on modification requests within 60 days, on average;
- raised Eligible Borrowers’ interest rates despite their commitment to lowering them; and
- failed to provide Eligible Borrowers with streamlined modifications by requiring them to submit extensive documentation.

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<sup>17</sup> An Eligible Borrower is a borrower with a first mortgage payment due on or before December 31, 2007, secured by an owner-occupied 1-to-4-unit residential property, and serviced by a Countrywide servicer or its affiliate. Consent Judgment § 4.1.

<sup>18</sup> A Qualifying Mortgage is defined in the Consent Judgment as a Subprime Mortgage or Pay Option Adjustable Rate Mortgage where the Eligible Borrower is either “Delinquent” or “Seriously Delinquent” and the ratio between the value of the mortgage and the value of the home (“LTV” or “Loan-to-Value”) is 75 percent or more. Consent Judgment § 4.2. A Seriously Delinquent Borrower is 60 days or more behind on his or her payments. A Delinquent Borrower is Seriously Delinquent or subject to an imminent reset or recast and, as a result, likely to become Seriously Delinquent on or before June 30, 2012. Consent Judgment § 1.2.

<sup>19</sup> Consent Judgment § 4.6(a).

<sup>20</sup> Consent Judgment § 4.9.

1           79. Consumers with Qualifying Mortgages were unable to obtain decisions on modifications or  
2 were wrongly denied NHRP modifications. Bank of America denied one couple a modification because  
3 they failed to complete their application, though the homeowners and their credit counseling agency had  
4 repeatedly re-sent all of the documents requested by Bank of America; there are many other examples.  
5 *See infra* § 89. Bank of America also told Eligible Borrowers that they would not receive modifications  
6 because they were not 60 days delinquent, even though the borrowers faced resets or recasts that made  
7 imminent default reasonably likely. Therefore, these consumers were eligible under the Consent  
8 Judgment.

9           80. In addition, Bank of America delayed decisions on Eligible Borrowers' requests for  
10 modifications for far more than 60 days. Though Bank of America exclusively possesses the information  
11 necessary to calculate the average wait time for decisions, the number of Eligible Borrowers who waited  
12 for six months, a year, or more for decisions supports the conclusion that Bank of America did not make  
13 decisions, on average, within the time period required by the Consent Judgment. Further, Countrywide's  
14 improper requirement that consumers submit applications that documented their incomes meant that it  
15 deferred consideration of Eligible Borrowers whose applications should have been deemed complete.  
16 Upon information and belief, this additional delay extended the time to consider many consumers beyond  
17 the time permitted by the Consent Judgment.

18           81. Bank of America also initiated foreclosures on Eligible Borrowers even though the Bank  
19 had failed to decide their active requests for modifications. Bank of America sent Notices of Default and  
20 Elections to Sell to Eligible Borrowers, even triggering their rights to mediation, in instances where the  
21 homeowners' modification requests were pending.

22           82. Bank of America increased – and sometimes as much as doubled – the interest rates of  
23 borrowers who received modifications under the Consent Judgment, despite its clear commitment that it  
24 would decrease their interest rates. *See* Consent Judgment §§ 4.3(a)(iii)(A), (a)(iv)(B), (b)(ii)(C),  
25 (agreeing to offer modifications with interest rate reductions). Nowhere among the modification programs  
26 is the option to raise borrowers' interest rate. Yet, the Attorney General's Office found numerous  
27 consumers whose interest rates and payments went up – also sometimes as much as double – after they  
28 received modifications – a perverse outcome for borrowers who were to receive help pursuant to a

1 settlement to redress their lender's wrongdoing.

2 83. Finally, in order to be considered for modifications under the Consent Judgment, Bank of  
3 America required borrowers to submit full, verified application packages. This rendered meaningless the  
4 Consent Judgment's promise of "streamlined" modifications. *See* Consent Judgment §§ 4.3(a)(iii), (a)(iv),  
5 (b)(ii), (c)(ii) (affording respective Eligible Borrowers "streamlined" modifications). Bank of America  
6 could abandon streamlined modifications and require "objective prequalification" of borrowers only if it  
7 found that there had been "material levels of intentional nonperformance by Eligible Borrowers." Consent  
8 Judgment § 4.10. The Consent Judgment notes that obtaining "verification of all sources of income" under  
9 those circumstances would "inhibit streamlined solutions, and could otherwise significantly slow  
10 implementation of the loan modification process." Consent Judgment § 4.10.

11 84. Bank of America's policies and procedures describe the documentation required from  
12 borrowers to be considered for NHRP: proof of borrowers' incomes, including permission to obtain the  
13 borrower's latest tax return, and hardships. Specifically borrowers had to produce:

- 14       ▪ A signed Internal Revenue Service form 4506-T, requesting a tax transcript;
- 15       ▪ A signed affidavit requesting a modification;
- 16       ▪ Verification of income; and
- 17       ▪ Other documents that can verify HAMP eligibility.

18 85. Furthermore, in order to verify their income, Bank of America required borrowers to  
19 produce:  
20

- 21       ▪ Two recent consecutive year-to-date pay stubs documenting at least 30 days of income that  
22       are not more than 90 days old (meaning 2 pay stubs for bi-weekly or 4 pay stubs for people  
23       paid weekly); or
- 24       ▪ Most recently quarterly year-to-date profit and loss statement for a self-employed borrower,  
25       and:
- 26       ▪ A copy of the most recent year's tax return with all schedules.
- 27

28 ///

1 While borrowers could take out a Countrywide loan without ever documenting their income, in  
2 order to modify that loan, they were required to provide multiple documents to confirm their income, even  
3 when Bank of America promised a less burdensome process.

4 86. On information and belief, Bank of America never found that borrowers were strategically  
5 defaulting on their loans in order to seek modifications. No such finding was ever communicated to the  
6 Attorney General's Office, either in Bank of America's quarterly reports or its response to the State's  
7 notice of breach, or any other manner. Further, because it appears that these rigorous documentation  
8 requirements were in place from the beginning of NHRP, there could not yet have been any pattern of  
9 strategic default justifying Bank of America's demand for full documentation to objectively prequalify  
10 borrowers.

11 87. Whatever streamlined means – and the Consent Judgment did not define the term – it could  
12 not have meant that Defendants would require the same documentation under the Consent Judgment that it  
13 required of every other modification applicant. Yet, Bank of America required eligible applicants to  
14 provide the same documentation required to be considered for the Home Affordable Mortgage Program  
15 (“HAMP”) and, on information and belief, its other proprietary modification programs.

16 88. Further, among the full documentation package, Bank of America required borrowers to  
17 provide a letter laying out the hardship that created the need for the modification. However, the Consent  
18 Judgment does not require borrowers to have experienced hardships; they simply have to be Delinquent  
19 (not in default yet, but facing imminent reset or recast) or Seriously Delinquent (at least 60 days past due  
20 on payments of interest or principal). Consent Judgment § 1.2. Therefore, Bank of America improperly  
21 required all Eligible Borrowers to provide documentation of their hardships.

22 89. According to Bank of America's reporting to the State under the Consent Judgment, [REDACTED]

23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]. Putting aside whether documents were actually missing, or were  
28 missing because of the Bank's failure to manage their documents, rather than borrowers' failures to submit

1 them, it is clear that this non-streamlined modification process excluded many Nevada borrowers from  
2 receiving the help to which they were entitled under the Consent Judgment and constitutes another  
3 material breach of that Judgment.

4 90. The Consent Judgment specifically allows for on-going enforcement with the ultimate  
5 remedy being its dissolution and litigation of the original claims. See generally Consent Judgment. The  
6 Consent Judgment allows the Attorney General to apply “at any time, for enforcement of any provision of  
7 this Judgment.” Consent Judgment § 10.4. The Consent Judgment does not require that a notice of breach  
8 be made within a certain period of time; the only time limitation is the 45-day notice required before a  
9 party can seek relief. Consent Judgment § 10.4(b). Further, the Consent Judgment has a “no waiver”  
10 provision, which affirms that the failure of any party to enforce a right does not constitute waiver of that  
11 right. Consent Judgment § 10.8. Therefore, the State’s request to amend this Complaint to assert the  
12 additional reasons that Defendants failed to meet their obligations under the Consent Judgment is entirely  
13 proper.

14  
15 **VI. BANK OF AMERICA’S DECEPTIVE LOSS MITIGATION AND FORECLOSURE PRACTICES.**

16 91. As detailed below, Bank of America has violated the Nevada DTPA by misleading  
17 consumers in connection with their loss mitigation and foreclosure programs. Complaints received by the  
18 Attorney General’s Office, some of which are described in Exhibit K, and its own investigation  
19 demonstrate that Bank of America has engaged, and continues to engage, in a pattern and practice of  
20 misleading consumers about its mortgage modification program.

21 **A. Time for Deciding Consumers’ Modifications.**

22  
23 92. On its website, in form letters, and in its interactions with individual consumers, Bank of  
24 America repeatedly promised consumers answers on their modification requests within a specific time  
25 frame, typically 30 or 60 days. Many consumers have waited six months or even a year and still have not  
26 received decisions.

27 93. Bank of America’s website indicates that it will “typically” take 30 to 45 calendar days  
28 from the receipt of a consumer’s documents to make a decision on a loan modification request. *See Ex.*

1 L.<sup>21</sup> In addition, Bank of America promises on its website that: “You can expect to hear back from us  
2 within 10 business days from when we receive all your required documents. The purpose of contacting  
3 you is to confirm receipt of your information, as well as let you know how the evaluation process works  
4 and how long it takes.” Ex. L.

5 94. Bank of America sent consumers seeking modifications a document with “Frequently  
6 Asked Questions.”<sup>22</sup> One question asks how long it will take for Bank of America to process consumers’  
7 modification request. The answer: “up to 45 days.” See Ex. M.

8 95. These assurances are reinforced in one-on-one conversations between Nevada consumers  
9 and Bank of America representatives, attested to by consumers and notes in consumers’ servicing files, in  
10 which Bank of America promises that consumers will have an answer on their requests within 30, 60, or  
11 90 days.

12 96. Despite its representations, Bank of America kept Nevada consumers waiting for six  
13 months, one year, or longer for decisions. These consumers have suffered delay, anxiety, and often  
14 foreclosure while trying to secure an affordable payment that allows them to meet their obligations and  
15 keep their homes.

16 97. One critical source of delay is Bank of America’s routine loss of consumer documents.  
17 Bank of America consistently has lost consumers’ documents; causing delays while consumers re-sent—  
18 sometimes more than half a dozen times—the same documents. Bank of America has publicly  
19 acknowledged “shortcomings” in its document maintenance.<sup>23</sup> See Ex. N at 3. Also on information and  
20 belief, consumers were deceptively denied modifications because of “missing” paperwork that Bank of  
21 America had received.

22 98. Bank of America routinely fails to notify consumers of missing documents. In fact, many  
23 consumers found out that their documents were missing or incomplete months after they submitted their

---

24 <sup>21</sup> <http://homeloanhelp.bankofamerica.com/en/fha-home-affordable-modification.html> (Next Steps:  
25 Documents) (visited May 27, 2010, last visited Dec. 14, 2010), attached as Exhibit L.

26 <sup>22</sup> Although this document includes several answers relating to the Home Affordable Mortgage Program,  
27 on information and belief, the Frequently Asked Questions was sent to all consumers seeking  
28 modifications. The 45 day commitment does not relate to any HAMP requirement.

<sup>23</sup> *The Private Sector and Government Response to the Mortgage Foreclosure Crisis Before H. Fin. Servs.*  
*Comm.*, 111<sup>th</sup> Cong. 142 (Dec. 8, 2009) (statement of Jack Schakett, Bank of America Credit Loss  
Mitigation Strategies Exec.), attached as Exhibit N.

1 modification requests, and only upon calling Bank of America. In many instances, Bank of America told  
2 consumers that documents were missing after previously assuring them, often repeatedly, that their files  
3 were complete and under review.

4 99. While waiting for answers, consumers called Bank of America regularly to check on the  
5 status of their modification requests. They were promised calls or letters with updates, which almost never  
6 came, or decisions by a specific date or within a set number of days. Instead, many received multiple  
7 foreclosure-related communications, including collection calls. This long waiting period is not only  
8 inconsistent with Bank of America's oral and written commitments to consumers, but extremely trying for  
9 homeowners who do not know from day to day whether they will get help or lose their homes.

10 100. Bank of America knew, or should have known, that its statements were false because its  
11 employees were aware that consumers often suffer delays of more than three months while waiting for  
12 action on their modification requests.

13  
14 **B. Bank of America Misrepresented to Consumers that their Trial Modifications would be  
Converted to Permanent Modifications if they made their Trial Payments.**

15 101. HAMP sets up a two tier framework. Borrowers first must qualify for an initial, three-  
16 month trial modification. Consumers who make each of the three payments on time will receive  
17 permanent modifications.  
18

19 102. Bank of America has made unequivocal promises that consumers who successfully  
20 complete trial plans would receive permanent modifications. For example, its website announced:

- 21
- 22 ■ “If you successfully make all your Trial Period Plan payments, you will receive a  
23 Modification Agreement defining the changes. After this document has been signed,  
24 notarized and returned to us, your modification will be officially made permanent.”  
25 *See Ex. O, P.*
  - 26 ■ “If you successfully make your Trial Period Plan payments during the trial period, you  
27 will be approved for a permanent modification of your loan.” *See Ex. Q.*

28 ///

1           103. In addition, Bank of America led consumers to believe that it would convert them to  
2 permanent modifications after three or four months on trial periods. Consumers received three payment  
3 coupons with their modification agreement, and report being confused about what to do when they reach  
4 the fourth month but have not heard from Bank of America. Some consumers called the Bank and were  
5 told at that time, or were told at the time the trial modification was offered, that they would receive a  
6 permanent modification within a month of completing their trial periods.

7           104. Bank of America's website again confirms its oral representations: "Your trial period will  
8 last 3 or 4 months, depending on your circumstances."<sup>24</sup> See Ex. R. Bank of America certainly did not  
9 advise consumers that they would wait six months or more.

10           105. Bank of America's trial modification offer assures consumers, "[i]f you make all of your  
11 trial period plan payments ... and return any additional documents that may be required, you may receive a  
12 Modification Agreement." See Ex. S.

13           106. One Nevada consumer made six payments on his first trial modification. He then received  
14 documents for a different loan modification. When he called Bank of America for an explanation, Bank of  
15 America told him that he would have to restart the modification process and complete another trial period  
16 before receiving a permanent modification. After he made those payments, he received yet another trial  
17 modification with different terms.

18           107. Bank of America knew, or should have known, that its promise that it would make  
19 decisions on permanent modifications within a month of completing their trial modifications was  
20 deceptive. Bank of America tracked the "age" of trial periods, and knew that many consumers waited  
21 more than four (or even six or nine) months for their modifications to be made permanent (or declined).

22           108. Though consumers benefit from temporarily lower payments during their trial modification,  
23 consumers who are not converted to a permanent modification may end up worse off. In his most recent  
24 report, the Inspector General of the Troubled Assets Relief Program, which oversees HAMP, discussed the  
25 fate of borrowers in failed trial modifications who "even in circumstances where they never missed a  
26 payment, ... may face back payments, penalties, and even late fees that suddenly become due on their  
27

28 

---

<sup>24</sup> <http://homeloanhelp.bankofamerica.com/en/fha-home-affordable-modification.html> (Next Steps: Trial Period) (viewed May 27, 2010, last viewed Dec. 14, 2010), attached as Exhibit R.

1 ‘modified’ mortgages and that they are unable to pay, thus resulting in the very loss of their homes that  
2 HAMP is meant to prevent.”

3 **C. Foreclosures while Modifications were Pending**

4 109. As noted above, consumers waiting for decisions on their modifications often received  
5 foreclosure-related notices. Upon receiving these communications, many consumers called the number  
6 provided by Bank of America on the notices to find out what they mean. Bank of America has repeatedly  
7 and deceptively assured Nevada consumers that they should not worry, their modifications are still in  
8 review, and their homes will not be sold while their modification requests were pending.

9 110. This promise is reinforced by commitments on Bank of America’s website. Under  
10 “Frequently Asked Questions,” Bank of America represents to homeowners that their homes will not be  
11 sold while they are awaiting decisions on their modification requests or on modification plans:

12 I want to try to get a home loan modification under the Making Home Affordable  
13 program, but I’m afraid that my lender will go ahead with the foreclosure while I’m  
14 trying to make it happen. Can I get more time to explore this option?

15 Yes. While we review your eligibility for the program, your loan will not go to  
16 foreclosure sale. When you enter a trial plan under the program, your loan will not  
17 be referred to foreclosure, and any pending foreclosure proceeding will not go to  
18 sale.<sup>25</sup>

19 *See Ex. T, U, V.*

20 111. Despite these assurances, Bank of America has pursued or completed foreclosures while  
21 homeowners were awaiting decisions upon loan modifications. In some cases, homeowners incurred  
22 foreclosure fees even though the foreclosure process should never have started or proceeded.

23 112. Bank of America knew, or should have known, that its statements were false and  
24 misleading. Its employees regularly encountered consumers whose homes were wrongfully foreclosed  
25 while their modifications were still under review. Interviews with former Bank of America call center

26  
27 <sup>25</sup> <http://homeloanhelp.bankofamerica.com/en/frequently-asked-questions.html?documentstate=Foreclosure> (visited May 27, 2010), attached as Exhibit T; (last visited Dec. 14, 2010), attached as  
28 Exhibit U; Help for Homeowners, *Supplemental Directive 10-02, Home Affordable Modification Program – Borrower Outreach and Communication* at 3, 5-7 (Mar. 24, 2010), available at:  
[https://www.hmpadmin.com/portal/programs/docs/hamp\\_servicer/sd1002.pdf](https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1002.pdf), attached as Exhibit V.

1 employees indicate that foreclosures while consumers were awaiting decisions on their modifications were  
2 common.

3 **D. Reporting to Credit Agencies**

4  
5 113. In addition, Bank of America notified consumers or credit agencies that consumers are in  
6 default when they are not. Bank of America indicates on its website that consumers in trial modifications  
7 will be reported to the credit agencies because they are not making their full, original mortgage payment.  
8 However, Bank of America does not disclose that even consumers making full payments may be the  
9 subject of negative reporting.

10 114. One Las Vegas homeowner, who suffered a heart attack that caused him to incur substantial  
11 medical expenses and a loss in his income, applied to Bank of America for a modification even though he  
12 was current on his mortgage payments. He continued to pay both his first and second mortgages with  
13 Bank of America in full while he waited for a decision on his request. However, for six months, Bank of  
14 America reported to credit agencies that he was delinquent on his loans. Despite being current, he also  
15 received a Notice of Intent to Accelerate.

16 115. These false credit reports make it harder and more expensive for consumers to obtain credit.  
17 In addition, misrepresenting the delinquency status of consumers' loans allows Bank of America to impose  
18 late fees and other charges to which it is not entitled and which make it even harder for a consumer to  
19 remain or become current on their mortgages.

20 116. Such misrepresentations about the consumer's payment status violate the Fair Debt  
21 Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e(2)(A) & (8), and, as a result, the DTPA. Nev.  
22 Rev. Stat. § 598.0923(3).

23 **E. Eligibility for and Denials of Modifications**

24 117. Bank of America represents publicly, and federal rules require, that consumers need not be  
25 delinquent to be eligible for a modification.

26 118. Bank of America's website notes: "If you've suffered a hardship that is affecting your  
27 ability to make your mortgage payments or have already missed a payment, you may be able to receive a  
28 more affordable mortgage payment under the Home Affordable Modification Program." See Ex. W; see

1 *also*, Ex. X at 19, Treasury Department’s MHA Handbook. (“A loan is eligible for HAMP if the servicer  
2 verifies that all of the following criteria are met: . . . The mortgage loan is delinquent or default is  
3 reasonably foreseeable.”)

4 119. Yet Bank of America representatives frequently advised consumers that they must miss  
5 payments in order to be considered for loan modifications. One Nevada consumer received a letter  
6 advising: “One of the guidelines under the MHA [or HAMP] program requires the loan be 60 days  
7 delinquent.” Ex. Y. This letter—likely a form document--was inaccurate and deceptive; HAMP never  
8 required a loan to be delinquent in order to be eligible for a modification.

9 120. Bank of America told consumers, by letter and often by phone, the reasons that their  
10 requests for modifications were denied. Among the commonly cited reasons for denying Nevada  
11 consumers’ applications were:

- 12           ▪ investor denial: the owner of the loan with authority to approve the modification would  
13           not permit the modification;
- 14           ▪ inability to reach the consumer or to obtain missing documents needed to review the  
15           request;
- 16           ▪ previous modification;
- 17           ▪ consumer’s income insufficient to support the modified payment;
- 18           ▪ failure to make payments or to accept previous modification; and
- 19           ▪ current on mortgage payments.

20  
21  
22 121. In several cases reviewed by the Attorney General’s Office, the reasons offered by Bank of  
23 America for denying modifications were inaccurate and misleading.

24 122. For instance, Bank of America told some consumers that it had denied their modifications  
25 because it was unable to reach them. However, the borrowers regularly called Bank of America to obtain  
26 updates on their status and/or resubmit their documents. In addition, none of these consumers reported  
27 ever receiving calls from Bank of America but, instead, noted that they were unable to reach their assigned  
28 contacts, even after multiple attempts. In other cases, Bank of America claimed that it was missing

1 documents, even though consumers had repeatedly sent in their documents and/or were told by Bank of  
2 America that their files were complete and being reviewed for modifications.

3 123. Bank of America's authority to offer modifications is defined by the Pooling and Servicing  
4 Agreement ("PSA") that governs the servicing of specific pools of loans. In some instances, the investor  
5 or owner of the loans delegates to Bank of America full authority to make modification decisions  
6 consistent with the investor's best interest. Under some PSA's, only certain types of loans can be  
7 modified or certain types of modifications made. Other investors do not permit modifications or require  
8 Bank of America to seek approval before offering modifications.

9 124. On information and belief, Bank of America notified consumers that their modifications  
10 were declined by the investors in instances where Bank of America had full authority, without the  
11 investors' approval, to offer modifications.

12 125. In another case, Bank of America denied a loan modification, claiming that a consumer  
13 previously received a modification when the consumer had instead rejected a modification based on  
14 inaccurate income figures.

15 126. Bank of America turned away another consumer for the stated reason that the consumer had  
16 failed to make her payments during a three month trial modification when, in fact, the consumer had made  
17 (and Bank of America had cashed) all of her payments.

18 127. Bank of America knew or should have known that these representations regarding the  
19 reasons for denying consumers' modification requests were untrue and deceptive.

20 **F. Changing the Terms of Modifications, Failing to Deliver Promised Modifications, or**  
21 **Ignoring or Repudiating Existing Modifications.**

22 128. For consumers who were able to secure modification commitments, Bank of America  
23 misrepresented whether and on what terms their modification requests had been approved.

24 129. Bank of America told consumers that their modifications had been approved, but then  
25 notified them that they had never received modifications. Often, this news came only after consumers had  
26 made several payments.

27 130. Nev. Rev. Stat. § 107.086, passed by the Nevada Legislature on May 22, 2009, allows  
28 homeowners who receive Notices of Default to participate in a pre-foreclosure mediation with their

1 servicers. *See* Nev. Rev. Stat. § 107.086(2)(a)(3) (requiring a trustee to send with every Notice of Default  
2 a form where the homeowner “may indicate an election to enter into mediation”). If a homeowner sends  
3 in the required election form, the servicer must appear at an assigned mediation date with all required  
4 documents and the authority to negotiate an appropriate agreement with the borrower. Nev. Rev. Stat. §  
5 107.086(4) (requiring the servicer to bring “the deed of trust, the mortgage note and each assignment of  
6 the deed of trust or mortgage note” and “have authority to negotiate a loan modification”). Participation in  
7 good faith in the mediation is prerequisite to moving forward with the foreclosure. Nev. Rev. Stat. §  
8 107.086(2)(c)(2) (requiring a certification under Nev. Rev. Stat. § 107.086(7), which requires the parties  
9 act in “good faith”).

10 131. Often, Bank of America representatives did not show up at assigned mediation dates or did  
11 not have the documents or negotiating authority required by law. As a result, in a number of instances,  
12 mediators issued findings that Bank of America had acted in bad faith.

13 132. One mediator’s findings issued in January 2010 regarding a Bank of America mediation  
14 illustrate the problems:

15 Lender initiated foreclosure procedure, did not respond rationally or  
16 reasonably in mediation, and under stressful conditions obtained an  
17 agreement from HOs [homeowners] to allow foreclosure sale to proceed on  
18 May 7. In sum, the attached SSA [short sale agreement] was entered into by  
19 HOs under the duress of “Boulware-like” bargaining strategy and a “take it  
20 or leave it” basis of Lender that does not allow HOs to retain their residence  
21 even temporarily, but will dispossess the HOs as soon as possible... I find  
22 that the Lender failed to participate in mediation in good faith as evidenced  
23 by its failure to produce required documentation and information, the lack of  
24 serious retention proposal, and the nature of and take-it-or-leave-it basis for  
25 its non-retention proposals....

26 Addendum to Mediator’s Statement (Feb. 6, 2010); attached as Exhibit Z.

27 133. A number of consumers were promised modifications on a set of terms worked out with  
28 (and witnessed by) the mediators. In one case, Bank of America offered a modification at mediation and  
promised to send the consumer an agreement reflecting its terms. Bank of America did not provide the  
consumer the promised modification agreement. When Bank of America, after repeated calls, finally  
provided the agreement, its terms were materially different than those offered at the mediation.

///

1           134. For example, Bank of America told one recently widowed, elderly Las Vegas homeowner  
2 at her mediation that she was approved for a trial modification and promised to send her the modification  
3 agreement in two to four weeks. The homeowner never received the documents. When she called Bank of  
4 America to follow up, the representative said her file was still being reviewed and told her to send in  
5 updated financial information. She submitted the documents and kept calling. On one call, a Bank of  
6 America representative suggested she re-start the application process. Bank of America also explained  
7 that an employee had failed to enter the results of the mediation into her account. The homeowner  
8 received multiple foreclosure notices. In June 2010, Bank of America offered the homeowner a permanent  
9 modification increasing her payments to more than half her income. She accepted the modification despite  
10 the financial strain because, as she explained, “my nerves, my blood pressure, my state of mind could not  
11 stand another 3 months, 6 months, or however long it would have taken of living in fear of thinking this  
12 might be the day or the week I lose my home.”

13           135. Finally, Bank of America provided modifications to consumers and then either attempted  
14 to revoke such modifications or failed to honor their terms. For example, though consumers signed  
15 modification agreements, Bank of America failed to implement their terms and continued to seek to collect  
16 the original, unmodified payments.

17           136. Bank of America’s promises of modifications that it failed to provide or refused to honor  
18 constitute a deceptive practice.

19 **VII. BANK OF AMERICA’S DECEPTIONS WITH REGARD TO ITS AUTHORITY TO**  
20 **COLLECT AND FORECLOSE.**

21           137. As noted above, the primary driver of Countrywide’s origination volume and loan types and  
22 features was the demand and price for these loans in the secondary market. *See supra* ¶ 27. Virtually all  
23 of the loans originated by Countrywide were securitized – grouped into collateral pools and sold to trusts  
24 pursuant to Pooling and Servicing Agreements (“PSA”), which governed, among other things, how the  
25 mortgages were to be delivered to the trusts. The trusts raised cash to pay for the loans by selling bonds or  
26 certificates to investors. Countrywide Servicing typically retained the rights to service (for a fee), the  
27 mortgages they sold in the secondary market.

28 ///

1           138. The PSA's for Countrywide mortgages typically required Countrywide to endorse the  
2 mortgage note ("Note") and deliver the original Note to the trustee ("Trustee") of the securitization trust  
3 ("Trust"). In order for the transfer to be valid, the properly endorsed, original Note had to be delivered  
4 before the trust closed; any transfer outside of that period would violate the governing instrument of the  
5 Trust. The failure to follow the terms of the PSA in transferring a Note would invalidate the transfer and  
6 mean that the Note never became part of the Trust.

7           139. There is mounting evidence that Countrywide failed to follow the steps required to transfer  
8 its Notes into securitization Trusts. First, Countrywide failed to ensure that these Notes were properly  
9 assigned or endorsed. Second, Countrywide failed to deliver the original Notes to the Trusts, or provided  
10 Notes with incorrect terms, missing riders, or missing notary seals.

11           140. The recent case of *Kemp v. Countrywide* provides a window into Countrywide's practices.  
12 440 B.R. 624 (D.N.J. Nov. 16, 2010). In *Kemp*, Countrywide attempted to transfer certain mortgages it  
13 originated to a Trust for which Bank of New York served as Trustee. *Id.* at 627. The PSA required  
14 Countrywide to deliver the original mortgage Notes, endorsed in blank. *Id.* at 627. The Note that was the  
15 subject of the *Kemp* litigation was not endorsed in blank nor delivered to Bank of New York. *Id.* at 629.  
16 The only evidence of an endorsement was an undated Allonge, created only weeks before trial in the case  
17 (and not at the time of securitization), which purported to endorse the Note to Bank of New York as  
18 Trustee; the Allonge also was never attached to the Note. *Id.* at 628. An employee, Linda DeMartini  
19 testified that Mr. Kemp's original Note never left Countrywide's possession and that Countrywide  
20 customarily held onto the original Notes. *Id.* at 628.

21           141. The Court held that under New Jersey State rules (virtually identical to Nevada's)  
22 governing negotiable instruments, because Bank of New York did not have the original Note or a proper  
23 endorsement, it never became the duly negotiated holder of the Note. *Id.* at 631; *see also Leyva v. Nat'l*  
24 *Default Servicing Inc.*, 255 P.3d 1275, at \*9-10 (Nev. 2011). Therefore, Bank of New York did not have  
25 authority to enforce the Note and foreclose. While Countrywide may have remained the holder of the  
26 Note, it filed its claim for repayment as servicer to the Trust, and not as the holder. The Court concluded:  
27 "Because the Bank of New York has no right to enforce the note, Countrywide as its agent and servicer  
28 cannot enforce the note." *Id.* at 634.

1           142. In the wake of this testimony, CNN identified and reviewed foreclosures filed in two New  
2 York counties between 2006 and 2010 in which Bank of New York was foreclosing on behalf of a  
3 Countrywide securitization trust. Abigail Field, *At Bank of America, More Incomplete Mortgage Docs*  
4 *Raise More Questions*, Fort., (June 3, 2011), [http://finance.fortune.cnn.com/2011/06/03/at-bank-of-](http://finance.fortune.cnn.com/2011/06/03/at-bank-of-america-more-incomplete-mortgage-docs-and-more-questions/)  
5 [america-more-incomplete-mortgage-docs-and-more-questions/](http://finance.fortune.cnn.com/2011/06/03/at-bank-of-america-more-incomplete-mortgage-docs-and-more-questions/). None of the 104 Countrywide loans CNN  
6 examined were endorsed by Countrywide: "These notes ostensibly belong to over 100 different  
7 Countrywide securities ... If the lack of endorsement on these notes is typical – and 104 out of 104  
8 suggests it is – the problem occurs across Countrywide securities ..." *Id.*

9           143. On information and belief, as servicer, Bank of America and its subsidiaries and agents  
10 similarly sought to enforce mortgage Notes in Nevada, engaged in collection activity in Nevada, pursued  
11 nonjudicial foreclosure proceedings in Nevada, defended foreclosure actions in Nevada, and filed proofs  
12 of claim in bankruptcy in Nevada in instances in which Bank of America did not have authority to act. In  
13 so doing, Bank of America misrepresented its authority, in violation of the DTPA. *See Nev. Rev. Stat. §*  
14 *598.0915(15)* ("Knowingly makes any other false representation in a transaction.").

15           144. As servicer, Bank of America and its agents was responsible for recording and sending to  
16 borrowers Notices of Default/Notices of Election to Sell, notarized documents that indicate that it is acting  
17 as agent for the beneficiary of the mortgage to "cause the trust property to be sold to satisfy the obligations  
18 secured thereby." Bank of America also recorded and sent to consumers Notices of Trustee Sales, which  
19 announced the particulars of the sale of the property, and made filings in foreclosure and bankruptcy  
20 actions in Nevada courts. These documents (among others) were deceptive in that they misrepresented the  
21 parties authorized to foreclose and indicated that Countrywide had the authority to take or sell the  
22 borrowers' properties as a result of default on those Notes. As explained above, Countrywide did not have  
23 that authority.

24           145. Countrywide knew that it did not have authority as servicer for the Trusts to enforce  
25 invalidly transferred Notes. Deficiencies in transfers to securitization Trusts were noted in discrepancy  
26 reports issued by Trustees, such as Bank of New York ("BNY"), and shared with Countrywide.<sup>26</sup> Among

---

27  
28 <sup>26</sup> A Trust's governing instrument requires the trustee to review the loan documents on or before the closing date. The trustee must review the documents and, if anything is missing or materially defective, the trustee must notify the servicer and sponsor of the trust.

1 the shortcomings specifically identified was Countrywide's failure to deliver original Notes with proper  
2 assignments or endorsements, missing documents, incorrect terms, missing title policies, and other defects.  
3 Despite this warning, Countrywide did not remedy many of the ineffective transfers. In fact,  
4 Countrywide's botched transfers of mortgage Notes was one ground for a proposed \$8.5 billion settlement  
5 between Bank of America and various investors who bought certificates in 530 Countrywide  
6 securitizations for which Bank of New York was trustee. Verified Petition at 1, *In re The Bank of New*  
7 *York Mellon*, No. 651786/2011 (N.Y. Sup. Ct. June 29, 2011).<sup>27</sup>

8 146. These are not mere technicalities. The PSA's spelled out a specific procedure in order to  
9 ensure a proper transfer, protect the Trusts as the holders in due course, and avoid subjecting the Trusts to  
10 taxation. In addition, borrowers need to know the actual holders of their mortgages so that, for example,  
11 they can investigate and any assert available defenses in foreclosures, including that the agent of the  
12 trustee lacks authority or standing under the Note.<sup>28</sup>

13 147. A number of cases interpreting N.R.S. § 107.080, which governs foreclosures in Nevada,  
14 recently have held that a party could institute a trustee sale without proving that it was a real party in  
15 interest with respect to the relevant mortgage Note. *See Lasao v. Stearns Lending Co.*, No. 2:10-CV-  
16 01864-KJD-LRL, 2011 WL 3273923 (D. Nev. July 29, 2011); *Villa v. Silver State Fin. Servs., Inc.*, No.  
17 2:10-cv-02024-LDG-LRL, 2011 WL 1979868 (D. Nev. May 20, 2011); *Vega v. CTX Mortg. Co., LLC*,  
18 761 F. Supp.2d 1095, 1098-99 (D. Nev. 2011); *Ritter v. Countrywide Home Loans*, No. 2:10-cv-00634-

19 <sup>27</sup> On August 4, 2011, the New York Attorney General filed an objection to that settlement. Mem. of Eric  
20 T. Schneiderman, Attorney General of the State of New York, In Supp. of Mot. to Intervene, *In re The*  
21 *Bank of New York Mellon*, No. 6517856/2011. The settlement, if approved by the court, would release  
22 BNY from liability as Trustee for ensuring that Notes were properly deposited into the Trusts. *Id.* at n.1.  
23 The New York Attorney General claimed that Countrywide's failures to properly convey its interests into  
24 the securitization Trusts was so pervasive that BNY must have known about them. Verified Pleading in  
25 Intervention, Ex. A to Affirmation of Amir Weinberg, *In re The Bank of New York Mellon*, No.  
26 6517856/2011 (N.Y. Sup. Ct. Aug. 5, 2011). Moreover, the New York Attorney General noted that the  
27 ineffective transfers raised questions about BNY's authority to foreclose: "[Countrywide's] ultimate  
28 failure...to transfer complete mortgage loan documentation to the Trusts hampered the Trusts' ability to  
foreclose on delinquent mortgages, thereby impairing the value of the notes secured by those mortgages.  
These circumstances apparently triggered widespread fraud, including BoA's fabrication of missing  
documentation." *Id.* at 10.

<sup>28</sup> *See Leyva*, 255 P.3d at \*4 (citing N.R.S. §104.3301 to note that the obligor has the right to know the  
identity of the entity that is entitled to enforce the mortgage note; otherwise the homeowner may pay funds  
to a stranger in the case"; and *In re Veal*, 450 B.R. 897, at 921 (B.A.P. 9th Cir. June 10, 2011) (AHMSI  
not entitled to enforce the mortgage note because if "presented no evidence as to who possessed the  
original Note" and no evidence showing endorsement of the note in its favor or servicer's)).

1 RLH-RJJ, 2010 WL 3829378 (D. Nev. Sept. 24, 2010). However, the Nevada Supreme Court's decision  
2 in *Foust v. Wells Fargo* seems to upend those decisions. No. 55520, 2011 WL 3298915 (Nev. July 29,  
3 2011). "To enforce a debt secured by a deed of trust and mortgage note, a person must be entitled to  
4 enforce the note pursuant to Article 2 of the Uniform Commercial Code." *Id.* at \*5. In that case, the  
5 Supreme Court remanded the case to the district court to determine whether Wells Fargo, the assignee of  
6 the deed of trust, was entitled to enforce the Note.

7 148. Further, in two recent decisions arising out of the State's foreclosure mediation program,  
8 the Nevada Supreme Court made clear that, for any subsequent holder to enforce the Note, the deed of  
9 trust must have been properly assigned and the Note must have been either properly negotiated (which  
10 requires possession of a Note endorsed to the holder) or validly transferred (possession of the Note plus an  
11 assignment or other evidence of a transfer). See *Leyva*, 255 P.3d at \*6 (citing Nev. Rev. Stat. §  
12 104.3201(2) and 3203(2)); *Pasillas v. HSBC Bank USA*, 255 P.3d 1281, 1286 n.9 (Nev. 2011) (citing *U.S.*  
13 *Bank Nat'l Ass'n v. Ibanez*, 941 N.E.2d 40, 53 (Mass. 2011)) (assignment of a mortgage Note executed  
14 without the name of the assignee is defective and does not establish the putative assignee's authority with  
15 regard to the Note).

16 149. Countrywide's misrepresentations, and the misrepresentations made by its agents and  
17 successors in interest, about the true holders of Nevada mortgage Notes and its authority to pursue  
18 collections or foreclosures as a matter of law constitute deceptive practices where and because  
19 Countrywide failed to properly transfer these Notes to the securitization Trusts on whose behalf it serviced  
20 the debts.

21 150. In addition, Defendants misrepresented their authority to collect payments from borrowers  
22 in bankruptcy. Several consumers reported to the Attorney General's Office that they continued to receive  
23 collection calls from Bank of America even after they reminded Bank of America of their bankruptcy  
24 status and, in one case, even after they repeatedly directed Bank of America to contact their attorney. By  
25 sending collection letters and making collection calls to Nevada consumers, Defendants misrepresented  
26 both that it had authority to seek payments from these consumers and that consumers had an obligation to  
27 make those payments.

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1 151. On information and belief, some or all Defendants have initiated foreclosure proceedings  
2 against active-duty service members in violation of the Servicemembers' Civil Relief Act ("SCRA"), 50  
3 U.S.C. app. §§ 501 *et seq.* On May, 26 2011 the United States Department of Justice announced a  
4 settlement with Defendants for foreclosing on the pre-service residences of persons in active military  
5 service. Proposed Consent Order at 2, *U.S. v. BAC Home Loans Servicing, LP*, CV1104534 (C.D.Cal.  
6 May 26, 2011). According to the settlement, Nevada consumers were among the service members who  
7 were improperly foreclosed upon.

8 **COUNT I – VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT**

9 152. The State re-alleges all preceding paragraphs in their entirety.

10 153. Countywide engaged in deceptive acts or practices by originating mortgage loans that  
11 misled consumers, among other things, about (a) the actual interest rate and the interest and monthly  
12 payment owed on their loans; (b) the likelihood that the borrower would experience negative amortization;  
13 (c) the likelihood of payment shock when the loan reset or recast; and (d) their ability to refinance their  
14 loans to avoid unsustainably higher payments.

15 154. Countrywide engaged in deceptive acts or practices by steering consumers, without their  
16 knowledge, into more expensive and risky products than those for which they would have qualified.

17 155. Countrywide engaged in deceptive acts or practices by failing to disclose and affirmatively  
18 misrepresenting to investors the characteristics and riskiness of the mortgages that backed the securities  
19 they purchased. Countrywide assured investors of their "high quality" loans while failing to disclose,  
20 among other things, that: (a) borrowers' incomes and property appraisals often were inflated; (b)  
21 Countrywide used multiple layers of risk to qualify uncreditworthy borrowers; (c) Countrywide eroded  
22 and regularly departed from underwriting guidelines to approve loans to borrowers; and (d) Countrywide  
23 failed to effectively transfer mortgage Notes to the securitization Trusts, creating a significant risk that  
24 investors would not be able to enforce the Notes.

25 156. Countywide engaged in deceptive acts or practices by deceptively marketing and  
26 advertising its mortgage loans by, among other things: (a) leading borrowers to believe that Countrywide  
27 would obtain for them the best possible loans terms, when, in fact it did not; (b) emphasizing the initial  
28 "teaser" rate and minimum payment and failing to disclose the long-term interest rates and payments owed

1 for ARM loans products; (c) misrepresenting that refinancing into certain riskier loan products could save  
2 the borrower money; (d) failing to inform borrowers of the likelihood of negative amortization and  
3 payment shock; and (e) suggesting that borrowers could refinance to avoid higher payments.

4 157. Countrywide engaged in deceptive acts or practices during the servicing of residential  
5 mortgage loans, including, but not limited to, the following: (a) seeking to collect impermissible and  
6 inflated fees and payments from Nevada consumers in default, foreclosure and bankruptcy; and (b)  
7 misrepresenting the amount paid or owed by Nevada consumers.

8 158. Bank of America engaged in deceptive acts or practices during the servicing of residential  
9 mortgage loans, including but not limited to, the following: (a) promising to act upon requests for  
10 mortgage modifications within a specific period of time, and then failing to do so; (b) promising  
11 consumers that they would provide permanent modifications upon successful completion of trial  
12 modifications that then failing to do so; (c) falsely assuring consumers that their homes would not be  
13 foreclosed while their requests for modifications were pending, but sending foreclosure notices, scheduling  
14 auction dates, and even selling consumers' homes while they waited for decisions; (d) falsely notifying  
15 consumers or credit reporting agencies that consumers are in default when they are not; (e)  
16 misrepresenting the eligibility criteria for modifications and providing consumers with inaccurate and  
17 deceptive reasons for denying their requests for modifications; and (f) offering modifications on one set of  
18 terms, but then providing consumers with agreements on different terms, misrepresenting that consumers  
19 have been approved for modifications, or revoking or failing to honor modifications.

20 159. Bank of America engaged in deceptive acts or practices in servicing of residential mortgage  
21 loans by representing that it had authority for enforce mortgage Notes and foreclose on behalf of certain  
22 Trusts, when it had knowingly failed to properly transfer the interest in the relevant Notes to those Trusts.

23 160. Bank of America engaged in deceptive practices by engaging in collection and foreclosure  
24 practices in violation of the FDCPA and SCRA.

25 161. Defendants' deceptive conduct breached their obligations under Nev. Rev. Stat. §§ 598, *et*  
26 *seq.*, including, but not limited to:

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1 Nev. Rev. Stat. § 598.0915(5), which provides that it is a deceptive practice for a person to  
2 “[k]nowingly make[] a false representation as to the characteristics, ingredients, uses,  
3 benefits, alterations or quantities of goods or services for sale or lease...”

4 Nev. Rev. Stat. § 598.0915(9), which provides that it is a deceptive practice for a person to  
5 “[a]dvertise[] goods or services with the intent not to sell or lease them as advertised;”

6 Nev. Rev. Stat. § 598.0915(15), making it a deceptive trade practice for a person to  
7 “[k]nowingly make[] any other false representation in a transaction;”

8 Nev. Rev. Stat. § 598.092(5)(a), making it a deceptive trade practice for a person to advertise or  
9 offer an opportunity for investment and represent “that the investment is guaranteed,  
10 secured or protected in a manner which he or she knows or has reason to know is false or  
11 misleading;”

12 Nev. Rev. Stat. § 598.092(5)(c), making it a deceptive trade practice for a person to advertise or  
13 offer an opportunity for investment and make “any untrue statement of a material fact or  
14 omits to state a material fact which is necessary to make another statement, considering the  
15 circumstances under which it is made, not misleading;”

16 Nev. Rev. Stat. § 598.092(8), which declares that it is a deceptive trade practice for a person to  
17 “[k]nowingly misrepresent[] the legal rights, obligations or remedies of a party to a  
18 transaction;”

19 Nev. Rev. Stat. § 598.0923(3), which makes knowing violations of “a state or federal statute or  
20 regulation relating to the sale or lease of goods or services” a violation of the Deceptive  
21 Trade Practices Act; and

22 Nev. Rev. Stat. § 598.0973, allowing a court to impose heightened penalties for “engaging in a  
23 deceptive trade practice directed toward [an] elderly person or person with disability.”

24 Nev. Rev. Stat. § 598.0953, making evidence that someone has engaged in a deceptive practice  
25 “prima facie evidence of intent to injure competitors and to destroy or substantially lessen  
26  
27  
28

1 competition.”

2 162. On information and belief, affected consumers included consumers over the age of 60.

3 163. In all matters alleged herein, the Defendants acted in the course of their business or  
4 occupation within the meaning of Nev. Rev. Stat. §§ 598.0903 to 598.0999.

5 164. In all requisite matters alleged herein, the Defendants acted knowingly within the meaning  
6 of Nev. Rev. Stat. §§ 598.0903 to 598.0999.

7 165. In all matters alleged herein, the Defendants acted willfully in violation of Nev. Rev. Stat.  
8 §§ 598, *et seq.* as required by Nev. Rev. Stat. § 598.0999(2).

9 **COUNT II – VIOLATIONS OF THE CONSENT JUDGMENT**

10 166. In the event that the Court does not find that Defendants materially breached the Consent  
11 Judgment allowing the State to terminate the Consent Judgment, the State pleads as follows in lieu of  
12 Paragraphs 153-157.

13 167. The State re-alleges all preceding paragraphs in their entirety.

14 168. Section 4 of the Consent Judgment requires Defendants to provide modifications to Eligible  
15 Borrowers.

16 169. Section 4.6(a) of the Consent Judgment provides that the foreclosure process “will not be  
17 initiated or advanced for the period necessary to determine such Eligible Borrower’s interest in retaining  
18 ownership and ability to afford the revised mortgage terms, as well as the investor’s willingness to accept a  
19 loan modification.”

20 170. Section 4.9 of the Consent Judgment requires Defendants to “ensure that offers of loan  
21 modifications under this Judgment...are made to Eligible Borrowers, on average, no more than 60 days  
22 after such Eligible Borrowers make contact with the applicable CFC Servicer and provide any required  
23 information concerning a possible modification.”

24 171. Section 4.3 of the Consent Judgment prohibits Defendants from increasing Eligible  
25 Borrowers’ interest rates as a part of a modification under NHRP.

26 172. Section 4.3 of the Consent Judgment requires Defendants to provide Eligible Borrowers  
27 with “streamlined modifications.”

28 173. Defendants have breached the terms of the Consent Judgment by:

- a. failing to provide modifications to Eligible Borrowers;
- b. proceeding with foreclosures while Eligible Borrowers were awaiting decisions on their modification requests;
- c. failing to make decisions on modification requests from Eligible Borrowers within 60 days, on average;
- d. raising Eligible Borrowers' interest rates despite their commitment to lowering them; and
- e. failing to provide Eligible Borrowers with streamlined modifications by requiring them to submit extensive documentation.

174. The Consent Judgment constitutes “a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999” for purposes of Nev. Rev. Stat. § 598.0999(1). Therefore, violations of the Consent Judgment also constitute violations of these provisions of the DTPA.

175. On information and belief, affected consumers include consumers over the age of 60.

#### **PRAYER FOR RELIEF**

WHEREFORE, the State respectfully requests that the Court:

1. Enter a declaratory judgment that the Defendants' operation of their loan modification, loss mitigation, and foreclosure programs has violated, and continues to violate, the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598, et seq.;

2. Prohibit Defendants from continuing the course of conduct alleged herein as violating the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598, et seq. as written now or amended in the future.

3. Order Defendants to pay a civil penalty in a sum not to exceed \$5,000 per violation against any Defendant found by the Court to have engaged in any method, act or practice declared unlawful under the above-cited statutes;

4. Order Defendants to pay a civil penalty in a sum not to exceed \$12,000 per violation against any Defendant found by the Court to have engaged in any method, act or practice declared unlawful under the above-cited statutes, that is directed towards an elderly or disabled person;

///

1           5.     Order Defendants to pay restitution pursuant to Nev. Rev. Stat. § 598.0993;

2           6.     Issue an order allowing the State to terminate its Consent Judgment with Defendants on the  
3 grounds that Defendants have materially breached the terms of the Judgment;

4           7.     Enter a declaratory judgment that the Countrywide’s loan origination practices alleged  
5 herein violated the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598, *et seq.*

6           8.     Order Defendants to cover the costs incurred by municipalities and other homeowners due  
7 to vacant foreclosed properties that secured residential mortgage loans originated or serviced by  
8 Countrywide;

9           9.     Order Defendants to pay restitution pursuant to Section 10.4 of the Consent Judgment;

10          10.    Order Defendants to pay the costs of this action; including costs of investigation, pursuant  
11 to Nev. Rev. Stat. § 598.0999(2); and

12          11.    Order such other and further relief as the Court may deem just and proper.

13           OR IN THE ALTERNATIVE to Paragraphs 6 through 9 above, in the event the Court does not  
14 find a material breach allowing the State to terminate the Consent Judgment, the State respectfully requests  
15 that the Court:

16          12.    Enter a declaratory judgment that the Defendant’s operation of its loan modification  
17 program has violated the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598, *et seq.* and the  
18 Consent Judgment in the *State of Nevada v. Countrywide Financial Corporation, et al.*

19          13.    Prohibit the Defendant from continuing the course of conduct alleged herein as violating  
20 the Consent Judgment and the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598, *et seq.* as  
21 written now or amended in the future.

22          14.    Hold Defendants in contempt and order them to comply immediately with all provisions of  
23 the Consent Judgment pursuant to Section 10.4 of the Consent Judgment.

24          15.    Extend the Termination Date established in the Consent Judgment and impose additional  
25 reporting requirements to allow the State to evaluate Defendants’ compliance.

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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 3rd day of November, 2011 a true and correct copy of the STATE OF NEVADA'S SECOND AMENDED COMPLAINT, was transmitted electronically to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing was sent to the following CM/ECF registrants, additionally, it was served by hand on the parties as indicated below:

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