

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

CRISTY PONDER,	:	Civil Action No.
-and-	:	
MARY BOYER,	:	Judge
-and-	:	
BRADLEY CALLANDER,	:	COMPLAINT
-and-	:	
MICHAEL and TOSHA SYLVESTER,	:	Jury Demand
-and-	:	
GARY AND MARY DUGGINS,	:	
-and-	:	
TRACY and JAMES DAVIS,	:	
-and-	:	
DERDRA ROBINSON,	:	
-and-	:	
KATHIE MARIE GIBSON,	:	
-and-	:	
JOSEPH RENNEKAMP,	:	
-and-	:	
BRIAN GARNETT,	:	
Plaintiffs,	:	
-vs-	:	
BANK OF AMERICA, N.A.,	:	
-and-	:	
BAC HOME LOANS SERVICING, LP,	:	
Defendants.	:	

COMPLAINT

COME NOW Plaintiffs Cristy Ponder, Mary Boyer, Bradley Callander, Michael and Tosha Sylvester, Gary and Mary Duggins, Tracy and James Davis, Derdra Robinson, Kathie Marie Gibson, Joseph Rennekamp, and Brian Garnett, (hereafter "Plaintiffs"), by and through counsel, and for their Complaint against Bank of America, N.A. and its subsidiary BAC Home Loans Servicing, LP (hereafter referred to together as "BOA"), allege as follows:

I. PRELIMINARY STATEMENT

1. On October 30 and 31, 2009, the United States Department of Treasury sponsored a "borrower outreach" event in Cincinnati, Ohio. The event was advertised as an opportunity for homeowners struggling with their mortgage payments to get loan modifications and provide the opportunity for distressed borrowers to meet face-to-face and discuss foreclosure prevention options with companies that service their loans. Plaintiffs were relieved and confident that this "help" was legitimate, coming directly from their loan servicers under the sponsorship and endorsement of the United States Department of Treasury. Bank of America and BAC Home Loan Servicing ("BOA") were among the loan servicers present at the event. BOA scheduled appointments with each Plaintiff to attend and meet with representatives of Defendants' mortgage loan servicing operation.

2. At the event, BOA representatives offered each Plaintiff a loan modification and promised that a corresponding written agreement would arrive by mail within weeks. None of the Plaintiffs has received the promised documents.

3. Today, after months of agonizing worry and having experienced every manner of deception, confusion, avoidance, indifference, and incompetence at the hands of BOA, Plaintiffs are no closer to receiving the promised loan modifications. As a result, Plaintiffs are living with

the daily trauma of imminent foreclosure and loss of their homes, significant damaged credit, and other serious and negative financial, physical, and mental consequences.

4. Plaintiffs bring this action for actual, statutory and punitive damages, costs and attorneys' fees, for breach of the common and statutory laws of Ohio for misrepresentation, promissory estoppel, breach of fiduciary duty, breach of covenant of good faith and fair dealing, negligence, defamation, and infliction of emotional distress.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over Defendants because Plaintiffs and Defendants are citizens of different States, and the matter in controversy, without interest and costs, exceeds \$75,000 as specified in 28 U.S.C. § 1332(a).

6. Venue is proper under 28 U.S.C. § 1391(a), because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Ohio, and the properties that are the subject of this action are located in the Southern District of Ohio.

III. PARTIES

7. Plaintiff Cristy Ponder is a resident of the State of Ohio and at all times relevant to this action lived in her home at 250 Williams Avenue, Hamilton, Ohio 45015.

8. Plaintiff Mary Boyer is a resident of the State of Ohio and at all times relevant to this action lived in her home located at 1081 Kensington Lane, Cincinnati, Ohio 45245.

9. Plaintiff Bradley Callander is a resident of the State of Ohio and at all times relevant to this action lived in his home located at 539 River Pebble Drive, Columbus, Ohio 43004.

10. Plaintiffs Michael and Tosha Sylvester are residents of the State of Ohio and at all times relevant to this action lived in their home at 2259 Tucker Road, Blanchester, Ohio 45107.

11. Plaintiffs Gary and Mary Duggins are residents of the State of Ohio and at all times relevant to this action lived in their home at 171 Oak Street, Wilmington, Ohio 45177.

12. Plaintiffs Tracy and James Davis are residents of the State of Ohio and at all times relevant to this action lived in their home located at 8412 Wicklow Avenue, Cincinnati, Ohio 45236.

13. Plaintiff Derdra Robinson is a resident of the State of Ohio and at all times relevant to this action lived in her home at 1023 Anthony Lane, Milford, Ohio 45150.

14. Plaintiff Kathie Marie Gibson is a resident of the State of Ohio and at all times relevant to this action lived in her home at 1329 West North Bend Road, Cincinnati, Ohio 45224.

15. Plaintiff Joseph Rennekamp is a resident of the State of Ohio and at all times relevant to this action lived in his home at 4624 Eddy Drive, Cincinnati, Ohio 45244.

16. Plaintiff Brian Garnett is a resident of the State of Ohio and at all times relevant to this action lived in his home at 2701 McKinley Avenue, Cincinnati, Ohio 45211.

17. Defendant Bank of America, N.A. is an American financial conglomerate incorporated under the laws of the State of Delaware authorized to do business in the State of Ohio. It owns and holds thousands of residential mortgages in Ohio, has filed thousands of foreclosure actions in Ohio, and purchased thousands of homes in Ohio at foreclosure sales.

18. Upon information and belief, Bank of America, N.A. is successor in interest by merger to Countrywide Bank, FSB and Countrywide Home Loans, Inc.

19. Defendant BAC Home Loans Servicing, LP is a wholly-owned subsidiary of Bank of America, N.A. incorporated under the laws of the State of Texas and authorized to do business in the State of Ohio. It is a servicing company that services the daily maintenance of mortgage loans on behalf of Bank of America, N.A.

20. Upon information and belief, Defendant BAC Home Loans Servicing, LP is successor in interest by merger to Countrywide Home Loans Servicing, LP.

IV. FACTS

A. Facts Common to All Plaintiffs

21. In early October 2009, the United States Treasury Department organized a two-day borrower outreach event to occur in Cincinnati, Ohio on October 30 and 31, 2009 at Music Hall.

22. The purpose of the event was to bring together various mortgage lenders and servicers with homeowners who were struggling to make their mortgage payments and needed loan modifications to avoid foreclosure. The event also provided the servicers and lenders an opportunity to make more loan modifications under the federal Home Affordable Modification Program (“HAMP”).

23. HAMP was designed to make “mortgages more affordable and help to prevent the destructive impact of foreclosures on families, communities and the national economy.” HAMP aims to provide modifications to an estimated 3-4 million homeowners at risk of losing their homes to foreclosure within three years. However, by October 2009, seven months into the program, lenders and servicers had completed fewer than 32,000 permanent loan modifications nationwide.

24. BOA has done a particularly poor job of implementing HAMP and by October 2009, had completed fewer than 100 permanent HAMP loan modifications. Facing increasing pressure from the United States Department of Treasury to make more loan modifications, BOA sent a cadre of representatives to the Cincinnati borrower outreach event to meet with homeowners and arrange workouts.

25. In October 2009, each Plaintiff had unaffordable mortgage payments and was seeking a loan modification to avoid foreclosure. Each Plaintiff's mortgage loan was serviced by BOA.

26. Prior to the borrower outreach event, each Plaintiff had made an appointment to meet with a BOA representative at the event and had met with HUD-certified, non-profit housing counselors to gather and organize financial documents, including income verification, to present to BOA.

27. Each Plaintiff met with a BOA representative at the event, explained his or her circumstances, and gave the representative a copy of financial documents.

28. BOA representatives attending the borrower outreach event had the apparent authority to enter into loan workout agreements with borrowers. BOA representatives had laptops and accessed each Plaintiff's loan account on the laptops. BOA representatives entered data into the laptop computers based on the financial documents Plaintiffs provided and made calculations.

29. After reviewing the respective Plaintiff's documents and loan account and discussing each Plaintiff's individual circumstances, BOA representatives told each Plaintiff that he or she qualified for a loan modification and described specific terms of the modification.

30. The BOA representatives promised to send each Plaintiff confirming documents by mail within a few weeks.

31. Each Plaintiff relied on the BOA representations and took no further action to resolve his or her mortgage problems for several weeks following the borrower outreach event.

32. Each Plaintiff would have undertaken to refinance his or her loan or to secure another loan modification if he or she had known that the representations BOA made regarding each Plaintiff's eligibility for a loan modification was false.

33. None of the Plaintiffs has received any of the promised documents verifying the agreements made at the event.

34. Each Plaintiff has been harmed by Defendants' breached agreements, broken promises, and wrongful acts. They have suffered injury which cannot be fully remedied without injunctive relief.

B. Cristy Ponder

35. Plaintiff Cristy Ponder purchased her home in 2003 with an FHA-insured loan from Countrywide Financial Corporation ("Countrywide"). She first fell behind on her loan in early 2007 after helping her boyfriend with significant medical expenses. She avoided foreclosure then only by agreeing to an unreasonable plan that doubled her monthly payment. These unreasonable payments resulted in her falling behind in other bills.

36. The servicing of Ms. Ponder's mortgage loan was transferred from Countrywide to Bank of America sometime in late 2008 or early 2009.

37. Ms. Ponder fell behind on her mortgage payments again in March 2009 as she struggled to keep up with the bills. By October, she was six months behind.

38. The BOA representative with whom Ms. Ponder met at the borrower outreach event told her that she qualified for a modification that would add past due amounts on to the loan and allow her to resume making regular payments immediately.

39. The BOA representative also told her that BOA would put a "hold" on her account and that she would receive confirming documents in the mail in two to three weeks.

40. Ms. Ponder left the borrower outreach event significantly relieved, believing that BOA had resolved her mortgage troubles.

41. Two to three weeks later Ms. Ponder did receive important mail. However, instead of a loan modification, she received a court summons. BOA had sued to foreclose on her home.

C. Mary Boyer

42. Plaintiff Mary Boyer purchased her home in October 2007 with an FHA-insured loan from Huntington Bank. This loan was transferred to Countrywide after one payment; servicing was later transferred to BOA.

43. Ms. Boyer's mortgage difficulties began with expenses related to storm damage in September 2008 and worsened when she was laid off in October 2009.

44. At the outreach event, the BOA representative told Ms. Boyer that she qualified for HAMP and that her new mortgage payment would be \$531, including homeowner association fees, taxes, and home insurance. He told her she would receive the written agreement in the mail within a short period of time.

45. The BOA representative gave Ms. Boyer a card with a phone number to call if she had any questions. In late November, Ms. Boyer called that number to find out what was happening with her loan. After keying in her loan number, she heard a recording telling her that contacting BOA would delay or deny her a modification.

46. A week later, Ms. Boyer logged into her account on BOA's website and read a notice that BOA was processing her loan modification and that she should not contact them until December 26th. On December 26th, she saw the same message with no further update.

47. Ms. Boyer called BOA on December 26th and was told that she did not qualify for HAMP because her loan is FHA-insured. However, she was told that she qualified for a similar program for FHA loans and that she would hear back from BOA on January 6, 2010.

48. After Christmas, Ms. Boyer again checked the BOA website and saw that she had been denied for the FHA modification program. She called BOA and was told that she did not qualify because she was not three months behind. A supervisor confirmed that she did not qualify for any programs because she was not 90 days behind and told her she would have to miss more payments to get assistance.

49. Ms. Boyer has made her November, December, and January payments by depleting savings and borrowing from friends and family. She can no longer afford her mortgage payments but has sufficient income to afford a reasonable mortgage payment under a loan modification.

D. Bradley Callander

50. Plaintiff Bradley Callander lives at 539 River Pebble Drive, Blacklick, Ohio in Franklin County with his minor child. He purchased his home approximately 14 years ago jointly with his father.

51. Seven years ago he refinanced the home through Countrywide to become the sole obligor and owner. The loan was a 30-year fixed rate conventional loan at a 6.25% interest rate. Sometime in 2009, Bank of America assumed servicing responsibilities for Mr. Callander's mortgage.

52. Mr. Callander is a former police officer who is now permanently disabled. His source of income is disability retirement.

53. Although Mr. Callander has never missed a mortgage payment, due to his drastic decrease in income when he became disabled, he has constantly struggled to make his payments, selling personal assets in order to meet his obligations.

54. In danger of default, over the summer of 2009, Mr. Callander, both on his own and with the help of housing counselors, applied to Bank of America multiple times for a loan modification to reduce his payment, and was denied.

55. With the help of Tonya Brunner, a housing counselor and employee of the Ohio Housing Finance Agency, Mr. Callander learned of the borrower outreach event and scheduled an appointment to meet face-to-face with a Bank of America representative on October 31, 2009.

56. Mr. Callander, accompanied by Tonya Brunner, met with two different representatives of Bank of America on October 31, neither of which gave them a business card or other identification, despite their requests. Mr. Callander submitted a complete loss mitigation packet to the representatives.

57. The second BOA representative told Mr. Callander he was eligible for a loan modification, asking: "How does a payment of \$668 sound?" The BOA representative told him his three month trial loan modification period would start December 1st.

58. The BOA representative accepted Mr. Callander's completed financial packet and accompanying documents. When Mr. Callander requested verification of the trial modification, the BOA representative gave him a copy of the budget he submitted.

59. Tonya Brunner and Mr. Callander waited one week to receive confirmation of his loan modification from Bank of America, and then began calling customer service.

60. They were never able to speak to the same customer service representative. In multiple calls over several weeks, they spoke to BOA representatives named Jessica and Cowana, and other unnamed agents in Home Retention and Special Account Advocacy.

61. These BOA agents denied that any representative of Bank of America had met with Mr. Callander on October 31st.

62. Finally, on November 17th they spoke with "Ashley" at BOA, who admitted working on Mr. Callander's file, and told them that Bank of America had 60 to 120 days to make a decision.

63. Mr. Callander has never received the loan modification promised to him on October 31st. In frustration, he and Ms. Brunner submitted another complete loss mitigation packet to Bank of America on December 1st, but has never received any of the promised documents satisfying the agreements made at the event.

E. Tosha Sylvester

64. Plaintiff Tosha Sylvester purchased her home in March 1998 with a loan from Countrywide. She then refinanced in 2004 with a VA-insured loan from Countrywide.

65. In July 2007 Mr. Sylvester became unemployed, and in October 2008, Ms. Sylvester lost her job and income.

66. Shortly after losing her job, Ms. Sylvester contacted Countrywide about the possibility of a loan modification. Countrywide said there was nothing they could do. The servicing of her loan later transferred to BOA. Ms. Sylvester contacted BOA, who also told her that it could not help her with a loan modification.

67. Over the next nine months, Ms. Sylvester depleted her 401(k) and her savings to make her mortgage payments. With no further assets to draw on to make mortgage payments,

she missed her payments in August and September. Mr. Sylvester became re-employed in September 2009 and has made all subsequent payments.

68. Ms. Sylvester met with BOA representative Al Garcia at the borrower outreach event on October 30th.

69. After reviewing her financial information, Mr. Garcia told Ms. Sylvester that she did not qualify for HAMP but that she did qualify for an extension and likely a modification that would lower her interest rate and include a 3 month trial payment plan. He promised she would receive a packet in 2 weeks and that he would call her within the week; he also gave her a postcard with a phone number and his extension.

70. Mr. Garcia did not call. Ms. Sylvester then called the number on his card. The BOA phone answerer was unaware of the outreach event, refused to transfer her to Mr. Garcia's extension and said BOA had none of the financial information that she had given Mr. Garcia. The person asked her to resubmit the information, which she did.

71. After calling BOA, Ms. Sylvester was finally told at the end of November that she qualified for a forbearance plan with no payments for three months followed by a loan modification that would move the missed payments to the end of the loan. She was told that the plan was approved "in the system," but just needed a final signature.

72. In mid-December, having received nothing in the mail, Ms. Sylvester called again. She was told that she needed to start the process all over again because she has a VA loan and that she would hear back by the end of December.

73. On December 28th, Ms. Sylvester called BOA and was told by Mr. Gordon that she had been approved for a modification under the VA program. She was again told that BOA

just needed to get a final signature and to call back in 2 weeks. Mr. Gordon also gave his phone number and extension.

74. On January 18th Ms. Sylvester called back, was told she could not be transferred to Mr. Gordon, and was shocked when she was told that she did not qualify for anything because she did not have enough income. After reviewing all of her financial information while on the phone, the BOA representative told her she still did not qualify because she did not have enough income and that his “best advice” was to sell her home in a short sale.

75. Ms. Sylvester was very upset and asked to be transferred to a supervisor. She then spoke with “Gabriel” and once again went through her entire budget with him. Gabriel told her that her budget was sufficient and that she qualified to go back in review for a forbearance and/or modification. He told Ms. Sylvester that would take another 30 – 45 days and that she should re-submit all of her financial information.

76. Ms. Sylvester has re-submitted all of the requested information. As of February 4th, BOA’s website said that calling before February 22nd would delay the process; nevertheless, BOA mailed Ms. Sylvester a notice of intent to accelerate on January 26, 2010.

77. After repeated promised loan modification agreements and breaches of these agreements, Ms. Sylvester fears that she will be forced to sell her home to avoid foreclosure.

F. Gary and Mary Duggins

78. Gary and Mary Duggins, a married couple, purchased their Wilmington, Ohio home in April 2000. In 2007 they refinanced with Countrywide.

79. Both Mr. and Mrs. Duggins were long-time employees of companies associated with DHL, a large company that closed its Wilmington operation in 2008. They lost their jobs as a result of the DHL closure, and by October 2009, were struggling to make mortgage payments.

80. At the mortgage outreach event they met with a BOA representative named Daniel.

81. Daniel told them that they were eligible for HAMP and a loan modification that would reduce their interest rate to 2%. Daniel promised that he would fax their information to the BOA office that day and that their modification would be in effect by November 21st.

82. Having heard nothing more from BOA, Mrs. Duggins called BOA's customer service on December 3rd to ask about the status of their loan. She was told that the modification had been entered into "the system," was being worked on, that there would be no new information until December 21st, and that calling again could delay the process.

83. On December 21st, she called BOA and was told that the modification was still being worked on and that the process might take up to 120 days.

84. At all times relevant, Mr. and Mrs. Duggins have continued to make their regular loan payments by depleting their retirement savings and running up significant credit card debt so as not to lose their home.

G. Tracy and James Davis

85. Tracy and James Davis purchased their home in 1993. In 2004 the Davises refinanced their loan with Mercantile Savings Bank. As result of a merger between Mercantile Savings Bank and People's Community Bank, and then a subsequent merger with First Financial Bank, Bank of America began servicing the Davis' loan in June 2009.

86. In September 2006, Ms. Davis lost her longtime job and was forced to accept lower paying employment. Mr. Davis lost his job in January 2008 and has been unable to find employment.

87. In September 2009, the Davises began falling behind on their mortgage payments. The Davises attended the borrower outreach event. On October 30, 2009 the Davises met with BOA representative Brittney Metzker. After reviewing the Davis' loan account and financial documents, Ms. Metzker told the Davises that they qualified for a loan modification that would reduce their monthly mortgage payments to no more than \$800.

88. Ms. Metzker told the Davises they would receive their loan modification in the mail within 5-7 days and provided them with her telephone number and extension to call if there were any problems.

89. The Davises left the borrower outreach event believing that their family's home and been saved. Therefore, they did not pursue any other options to save their home from foreclosure.

90. The Davises waited 10 days but received no communication from BOA. The Davises then began their attempts to contact BOA about the promised loan modification. The Davises attempted to reach Ms. Metzker at the extension number she provided, but they were unable to enter an extension number when they called the main number. The Davises were put on hold for lengthy periods of time and were eventually sent to an overflow call center in India. The operator for Bank of America told the Davises that all of the operators at the overflow center were unable to access anyone's account. The operator, however, agreed to send an email to Ms. Metzker on the Davis' behalf.

91. Desperate, the Davises began calling BOA on a daily basis. No one at BOA would tell them anything about their promised loan modification other than a few operators stating it was under review. Eventually, a representative from BOA gave the Davises Ms. Metzker's email address. The Davises have sent numerous emails to Ms. Metzker about their

promised loan modification but there has been no response from either Ms. Metzker or anyone else at Bank of America.

92. Instead, BOA sent the Davises a letter on November 18, 2009 stating that their home was in foreclosure. The Davises immediately called BOA who stated that their home was in foreclosure and provided the name of a law firm representing BOA.

93. No foreclosure has ever been filed against the Davises.

H. Derdra Robinson

94. Derdra Robinson purchased her Milford, Ohio home in 1996. She lives there with her son.

95. In 2005 Ms. Robinson refinanced with Encore Credit Corporation. Servicing of the adjustable rate note was transferred to Countrywide, and later to Bank of America.

96. By January 2008, Ms. Robinson was struggling to make payments because the interest rate kept increasing. She contacted Countrywide and applied for a loan modification. By mid-2008, the loan rate exceeded 11.5%, and she was unable to continue making payments.

97. In December 2008 Countrywide offered a loan modification that would fix her rate at 6.25% for five years. The new payment amount was \$863.11. She made that payment for six months and then received a letter from BOA that increased the payment to \$1096.92 without explanation.

98. When Ms. Robinson met with a BOA representative at the outreach event, she was accompanied by a Legal Aid attorney. After reviewing her information and account, the representative said "This is what I've worked out for you: \$867.79, principal, interest, taxes and insurance. Can you do this?"

99. Ms. Robinson agreed to the amount and to make the first payment within a week. He scheduled due dates for three trial payments starting November 15th and wrote out the payment schedule on a sheet of note paper, which he gave to Ms. Robinson.

100. Ms. Robinson made her first three payments before each due date.

101. In mid-December she received a letter from BOA asking for more financial documentation to determine whether she qualified for a loan modification. She subsequently called and spoke with three different BOA representatives, who asked for payments in three different amounts.

102. On December 31st, Jason at BOA told her that she would receive paperwork for a final modification in 90 days. She has had no instructions as to payments beyond the trial period, but has continued to make monthly payments with no assurance that the modification she was promised at the outreach event will materialize.

I. Kathie Marie Gibson

103. Ms. Gibson purchased her Cincinnati home in the spring of 2007 and lives there with her mother and her son.

104. In the fall of 2008, Ms. Gibson began experiencing a financial hardship related to the cost of her medical care. In early 2009, Ms. Gibson asked her servicer, Countrywide, for temporary assistance with her mortgage payments. She was offered what she understood to be a three month deferment, and was told that after the deferment, her loan would be modified.

105. Throughout the next several months, continuing through April 2009, Ms. Gibson repeatedly called Countrywide and faxed updated income information. Countrywide responded by telling her via phone recordings that her account was “under review.” She never received a

loan modification from Countrywide and continued making payments. Sometime in early 2009, the servicing of her loan transferred from Countrywide to Bank of America.

106. In September 2009, Ms. Gibson was laid off when her employer downsized because of economic conditions. She attended the outreach event in hopes of getting the mortgage relief she had been seeking for months.

107. Ms. Gibson met with a representative of BOA, who assured her that receiving Unemployment Compensation would not prevent her from qualifying for a loan modification. The representative then promised her that loan would be modified to provide her with a reduced payment within 45 to 60 days. Ms. Gibson repeatedly asked the representative if she should be worried about losing her home. The representative told her that she had nothing to worry about.

108. Between Christmas and the first week of January, Ms. Gibson received three separate calls from BOA, each asking for the same income verification documents that she had previously provided at the borrower outreach event. Ms. Gibson repeatedly faxed this information to BOA.

109. In early January, Ms. Gibson sent in a payment to BOA, although she has not yet received her loan modification documents, because she is fearful of losing her home. Without the loan modification documents, Ms. Gibson is unsure if the amount she has sent will be properly credited to her account.

J. Joseph Rennekamp

110. Joseph Rennekamp refinanced his Cincinnati home in 2006 with America's Wholesale Lenders. The servicing of the loan was subsequently transferred to Countrywide Home Loans, and then to Bank of America.

111. Mr. Rennekamp has been unable to secure permanent employment since February 2002, when he lost his job of 26 years as a machinist due to his employer's insolvency. Mr. Rennekamp has had to divert retirement savings to pay his mortgage loan.

112. At the outreach event, Mr. Rennekamp met with a BOA representative and they talked about his unemployment income. The representative told him that he qualified for a modification and that his new payment "will be in the range of \$450 PITI." She also told him the loan modification agreement would follow in the mail within two weeks. She gave Mr. Rennekamp specific instructions for signing the documents and having them notarized.

113. By mid-November, Mr. Rennekamp was concerned that he had not received the modification paperwork. He started calling BOA. He only got through to a representative once and received no meaningful response. The other times he called, he gave up after 40-45 minutes on hold.

114. Mr. Rennekamp has received no phone calls or correspondence about the loan modification, and he has continued to make his mortgage payments.

K. Brian Garnett

115. Brian Garnett purchased his Cincinnati home in October 2007 with an FHA-insured loan from Taylor, Bean, & Whitaker. He lives in the home with his mother.

116. Mr. Garnett lost his job in December 2008 but continued to make payments by cutting expenses and using savings.

117. By May 2009, Mr. Garnett had run out of money and called Taylor, Bean, & Whitaker to request a loan modification. He received a forbearance plan and was told he did not need to make payments for June, July, and August.

118. In August Mr. Garnett called Taylor, Bean, & Whitaker to ask the amount of his September payment. He learned that the loan servicing had been transferred to BOA but BOA had not yet received his loan information. He resumed making regular monthly payments in the original amount.

119. In September, Mr. Garnett received a letter from BOA claiming that he was four months behind. He immediately called BOA and was told to attend the outreach event, where he met with a BOA representative.

120. Mr. Garnett told the representative that he could possibly afford an \$800 payment. However, she told him that \$500 looked more affordable with his budget, and that he qualified for a modification to this payment amount. She told him to expect loan modification documents in the mail in two to three weeks.

121. Either Mr. Garnett or his mother has called BOA weekly since the event. Each time, they were told that the loan modification was still "under review." BOA has also asked Mr. Garnett to resubmit much of his financial information. At the same time, Mr. Garnett has been told that he is falling farther behind, despite having continued to make his regular monthly payment.

122. In January 2010, Mr. Garnett's mother called and spoke with a supervisor, who asked for the same financial information that had already been re-submitted. The supervisor then said that Mr. Garnett did not qualify for a modification and would need to resubmit financial documents and start the process all over again.

123. Also in January, Mr. Garnett received an acceleration notice threatening foreclosure.

FIRST CLAIM FOR RELIEF: MISREPRESENTATION

124. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as thought fully rewritten herein.

125. Defendants represented to each Plaintiff that they had authority to enter into loan modifications at the borrower outreach event.

126. Defendants represented to Plaintiffs that each Plaintiff qualified for a loan modification at the borrower outreach event.

127. Defendants represented to Plaintiffs that that they would mail each Plaintiff confirming modification documents within several weeks of the borrower outreach event.

128. Defendants represented to Plaintiff Ponder that they would put her account on hold.

129. Defendants' representations were false as Defendants knew or should have known that they did not have the authority to enter loan modification agreements at the event, that loan modification agreements would not be sent out with a few weeks of the event, and that in the case of Plaintiff Ponder that the account had not been put on hold from a foreclosure filing.

130. Defendants' misrepresentations to Plaintiffs were intentional, reckless, or negligent.

131. Defendants' misrepresentations to Plaintiffs were material.

132. Defendants' knew or should have known that Plaintiffs would rely on those misrepresentations.

133. Plaintiffs relied on Defendants' misrepresentations in foregoing refinance opportunities and foregoing other loan modification options that were available to them subsequent to the borrower outreach event.

134. Plaintiffs' reliance on Defendants' misrepresentations were thus to their detriment and they suffered monetary and other damages as a result.

SECOND CLAIM FOR RELIEF: PROMISSORY ESTOPPEL

135. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as though fully rewritten herein.

136. At the time Plaintiffs consented to the loan modification agreements, Defendants represented to Plaintiffs that the terms of their home loans were governed by the new contractual terms set forth to each Plaintiff at the Borrower Outreach Event.

137. Plaintiffs reasonably relied upon the foregoing promises and representations.

138. Plaintiffs' reliance was to their detriment.

139. Plaintiffs tendered payments and performed their duties under the understanding that their loan payments would be based on the new contractual terms, and forwent other opportunities to resolve any delinquency, including, but not limited to, working with free HUD-certified housing counselors, filing bankruptcy, or obtaining a loan refinance.

140. Under the facts and circumstances of this case, justice requires the enforcement of Defendants' promises and representations.

141. Plaintiffs are entitled to enforcement of Defendants' promises and representations, and Defendants are liable to Plaintiffs for actual damages.

THIRD CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY

142. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as though fully written herein.

143. Defendants participated in the October 30 and 31, 2009 borrower outreach event advertised to provide assistance to homeowners struggling to get loan modifications with their lenders and servicers.

144. Plaintiffs attended the event in search of assistance.

145. Defendants knew, or should have known, that they had special expertise and a more sophisticated understanding of loan servicing and loss mitigation options than Plaintiffs, especially in regards to understanding and administering the United States Department of the Treasury's HAMP, the Federal Housing Administration's ("FHA's") loan modification programs, and the Veterans Administration's ("VA") loan modification programs.

146. The United States Treasury hosted the borrower outreach event and presented BOA representatives as individuals who could assist the Plaintiffs in securing loan modifications.

147. Defendants knew, or should have known, that Plaintiffs would rely upon Defendants' to protect their interests in securing loan modifications to save their homes under the federal loan modification programs.

148. Plaintiffs relied on Defendants' representations that they qualified for various loan modification programs and that Defendants would provide the memorialized agreements for which Plaintiff qualified.

149. Defendants' actions constitute a breach of fiduciary duty owed to Plaintiffs.

150. As a direct and proximate result of Defendants' breach of fiduciary duty, Plaintiffs have been damaged and are entitled to recover damages.

FOURTH CLAIM FOR RELIEF:
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

151. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as though fully written herein.

152. Defendants have a duty of good faith and fair dealing implied in every contract that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the benefit of their contract.

153. At the outreach event, Defendants misled Plaintiffs into believing they would receive a loan modification. Plaintiffs forewent other loss modification and workout options due to these misrepresentations. Defendants' misrepresentations at the outreach event constitute a breach of this duty.

154. Defendants are required by various contracts with the United States Government, the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Company ("Freddie Mac") or by Federal Housing Administration and Veterans Administration regulations to offer loan modifications or workouts to Plaintiffs. The Defendants breached their duty by failing to do so.

155. Defendants further breached this duty by making misrepresentations before and after the outreach event that Plaintiffs did not qualify for loan modification or workout options for which Plaintiffs did qualify.

156. Defendants disconnected telephone calls, repeatedly transferred calls, refused to transfer borrowers to the extensions given to them by representatives at the outreach event, threatened to deny or delay modification if Plaintiffs called, and mishandled phone calls such that Plaintiffs were unable to receive loan modifications and workouts that Defendants were required to offer. This conduct by Defendants breached this duty.

157. Defendants' breach of their duty of good faith and fair dealing was intentional, wanton, reckless, and/or negligent.

158. Plaintiffs were damaged as a proximate result of Defendants' breach of their duty of good faith and fair dealing.

FIFTH CLAIM FOR RELIEF: NEGLIGENCE

159. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as though fully rewritten herein.

160. Defendants have a duty to evaluate borrowers whose loans they service with a reasonable level of care for federal loan modification programs and to qualify borrowers for appropriate loan modification programs in a timely fashion.

161. Defendants breached this duty to Plaintiffs by telling Plaintiffs that they qualified for loan modifications when they did not.

162. Defendants further breached this duty to Plaintiffs by failing to provide loan modifications for which Plaintiffs qualified within reasonable time frames.

163. Defendants' breaches of duty caused Plaintiffs to suffer serious and ongoing damages, including financial harm to credit and extensive anxiety and emotional distress.

SIXTH CLAIM FOR RELIEF: DEFAMATION

164. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as though fully rewritten herein.

165. Defendants made and continue to make false and defamatory statements about Plaintiffs regarding their account. The false statements claimed that Plaintiffs owed financial charges on their mortgage loans accounts that they did not owe, and that Plaintiffs' accounts were delinquent.

166. Defendants published and continue to publish these false statements to various debt collectors, Credit Reporting Agencies, and by publicly filing foreclosure.

167. Plaintiffs were injured and suffer ongoing injury as a direct and proximate result of Defendants' actions. This injury to Plaintiffs was foreseeable.

168. Defendants acted with actual malice in their continued attempts to collect amounts that are not due and owing by Plaintiffs; by misapplying or failing to apply Plaintiffs' payments correctly to their accounts; by reporting their accounts in default and/or serious delinquency to the Credit Reporting Agencies; by threatening Plaintiffs with foreclosure; and by actually filing foreclosure.

169. Defendants' actions were in reckless disregard for the truth or falsity of the publication.

170. As a result, Defendants are liable to Plaintiffs for actual and punitive damages.

SEVENTH CLAIM FOR RELIEF: INFLICTION OF EMOTIONAL DISTRESS

171. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as though fully rewritten herein.

172. Defendants improperly serviced Plaintiffs' loans in a manner that caused emotionally distress by, inter alia and as more fully set out above: disconnecting, repeatedly transferring, refusing to transfer, or otherwise mishandling phone calls from Plaintiffs; threatening to deny or delay loan modifications if Plaintiffs called Defendants; filing foreclosure, threatening foreclosure, telling callers to sell their home, or telling callers there was nothing Defendants could do when Defendants were in fact legally obligated to make loan modifications; requiring borrowers to repeatedly correct their budget information and resubmit paperwork and

financial information; and telling borrowers they were denied for a loan modification after previously telling them they qualified or when they did in fact qualify.

173. Defendants acted intentionally, recklessly, knowingly, and/or negligently in causing Plaintiffs' emotional distress, or Defendants knew or should have known that their actions would result in Plaintiffs suffering serious emotional distress.

174. Defendants' conduct was extreme and outrageous.

175. As a direct and proximate result of Defendants' intentional, reckless and/or negligent infliction of emotional distress Plaintiffs have suffered severe humiliation, distress, depression and anxiety. The loss of their financial well-being, further harm to their credit, and the threatened loss of their homes are the sources of serious emotional distress.

176. As a result, Defendants are liable to Plaintiffs for actual and punitive damages.


PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court render judgment on Plaintiffs' behalf as follows:

- A. Award actual and punitive damages in an amount exceeding \$75,000.00 and to be determined at trial on each of Plaintiffs' claims for misrepresentation, promissory estoppel, breach of fiduciary duty, breach of covenant of good faith and fair dealing, negligence, defamation, and infliction of emotional distress;
- B. Enter an injunction ordering Defendants to modify Plaintiffs' loans consistent with their representations and as required by contracts and regulations;
- C. Direct Defendants Bank of America, N.A. and BAC Home Loans Servicing, LP to pay the cost of this proceeding, including Plaintiffs' attorneys' fees as appropriate;

D. Award Plaintiffs such other relief as the Court deems just and equitable.

Respectfully submitted,

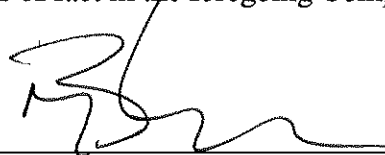


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JURY DEMAND

Plaintiffs hereby demand that all issues of fact in the foregoing Complaint be tried to a jury.



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