

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
BREVARD COUNTY, FLORIDA  
CIVIL ACTION**

**ABDIEL ECHEVERRIA and  
ISABEL SANTAMARIA**

**Plaintiffs,**

**JURY TRIAL DEMANDED**

**BANK OF AMERICA, N.A., URBAN  
SETTLEMENT SERVICES d/b/a URBAN  
LENDING SOLUTIONS and CARLISLE & GALLAGHER  
CONSULTING GROUP, INC.**

**Defendants,**

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**VERIFIED COMPLAINT**

Plaintiffs, ABDIEL ECHEVERRIA and ISABEL SANTAMARIA, husband and wife, *pro se*,  
sue Defendants BANK OF AMERICA, N.A., URBAN SETTLEMENT SERVICES d/b/a  
URBAN LENDING SOLUTIONS; CARLISLE AND GALLAGHER CONSULTING GROUP,  
INC. and allege as follows:

**I. JURISDICTION AND VENUE**

1. This is an action for damages which exceed the jurisdictional limit of this Court exclusive of interest, attorneys' fees, and costs, which damages are recoverable under the claims set forth herein including the Florida Civil Remedies for Criminal Practices Act ("Florida RICO Act"); Breach of Contract; Fraud In The Inducement; and Fraudulent Concealment; which damages have been suffered by the Plaintiffs due to the actions and conduct of the Defendants as

set forth herein below; for damages and other statutory relief, and for trial by jury of all issues so triable as a matter of right.

2. Jurisdiction of this action is proper in this Court as the Defendant BANK OF AMERICA, N.A. (BANA) maintains numerous offices for the conduct of regular and continuous business within the State of Florida including Brevard County, Florida, and as numerous of the acts set forth herein were committed by BANK OF AMERICA, N.A. during the time that it was registered to do business in Florida. Defendant Bank of America, N.A. may be served with process by serving its registered agent, CT Corporation, 1200 S. Pine Island Rd. Suite 250, Plantation, Florida 33324.

3. URBAN SETTLEMENT SERVICES d/b/a URBAN LENDING SOLUTIONS is a limited liability corporation organized under the laws of Pennsylvania which does business throughout the United States and may be served with process by serving its registered agent: CT Corporation, 1200 S. Pine Island Rd. Suite 250, Plantation, Florida 33324.

4. CARLISLE & GALLAGHER CONSULTING GROUP, INC. is a corporation organized under the laws of North Carolina which conducts business in Florida and throughout the United States and may be served with process by serving its registered agent: Thomas G. Carlisle, 841 Prudential Drive, Jacksonville, FL 32207.

5. This court has jurisdiction over Defendants BANK OF AMERICA, N.A., URBAN SETTLEMENT SERVICES d/b/a URBAN LENDING SOLUTIONS and CARLISLE & GALLAGHER CONSULTING GROUP, INC. engaged to do business in Florida.

6. Venue of this action is proper in this Court as applicable Florida law provides that if venue is proper as to any one Defendant in multi-Defendant litigation, that venue is proper as to all Defendants, and as venue is proper as to Defendants BANK OF AMERICA, N.A. ("BANA"),

venue is proper to URBAN SETTLEMENT SERVICES d/b/a URBAN LENDING SOLUTIONS (URBAN) and CARLISLE & GALLAGHER CONSULTING GROUP, INC. (CARLISLE & GALLAGHER).

## **II. PARTIES**

7. Plaintiff ABDIEL ECHEVERRIA, is a resident of Brevard County, Florida who is over the age of eighteen (18).

8. Plaintiff ISABEL SANTAMARIA, is a resident of Brevard County, Florida who is over the age of eighteen (18).

9. Defendant BANK OF AMERICA, N.A. (BANA), is a mortgage lender with headquarters at 101 Tryon Street, Charlotte, North Carolina 28255. Bank of America, N.A., performs substantial business within the state of Florida. Bank of America N.A. has formerly done business under the name BAC Home Loans Servicing, LP, which was formerly a subsidiary of Bank of America, N.A. and is now a successor by merger.

10. Defendant URBAN SETTLEMENT SERVICES d/b/a URBAN LENDING SOLUTIONS (hereafter URBAN) is a limited liability corporation organized under the laws of Pennsylvania which does business throughout the United States and may be served with process by serving its registered agent, CT Corporation, 1200 S. Pine Island Rd. Suite 250, Plantation, Florida 33324.

11. Defendant CARLISLE & GALLAGHER CONSULTING GROUP, INC. (hereafter CARLISLE & GALLAGHER) is a corporation organized under the laws of North Carolina which does business in Florida and throughout the United States and may be served with process by serving its registered agent: Thomas G. Carlisle, 841 Prudential Drive, Jacksonville, FL 32207.

12. Defendant, BANK OF AMERICA, N.A., a Delaware Corporation, is a financial holding company with its principal office in Charlotte, North Carolina. Defendant BANK OF AMERICA, N.A. (hereafter “BANA”) is and was at all times material hereto a foreign (non-Florida incorporated) corporation which engaged in a regular and systematic course of conduct in Florida including Brevard County and other jurisdictions, which conduct included but was and is not limited to false and fraudulent misrepresentations; and the perpetration of a multitude of frauds upon the Courts of the United States, including this Court, through false and fraudulent misrepresentations in connection with the filing of mortgage foreclosure actions after defrauding homeowners with false hopes of a loan modification and in the manner executed, constituted a pattern of criminal activity.

13. At all times herein mentioned, Defendants BANK OF AMERICA, N.A., and BAC Home Loans Servicing, LP, both individually and collectively, are and were agents and/or joint ventures of each other and, in doing the acts alleged herein, were acting within the course and scope of such agency. Collectively, BANK OF AMERICA, N.A. is referred to in this Complaint as “BANA.”

14. At all relevant times, all the Defendants committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Any allegations about acts of the corporate Defendants means that those acts were committed through their officers, directors, employees, agents, and/or representatives while those individuals were acting within the actual or implied scope of their authority.

### **III. FACTUAL BACKGROUND**

#### **A. The Foreclosure Crisis**

15. In order to explain the full picture of the Plaintiffs' allegations against the Defendants, it is necessary to explain brief explanation of the foreclosure crisis and how it ultimately plays a role in this scam.

16. In the face of the escalating foreclosure crisis in the United States and especially in Florida, Defendants have further victimized and preyed on those struggling to keep their homes by offering and inducing customers into illusory "Workout Agreements," which purport to offer hope of an opportunity to cure loan default, or reduce monthly payments but in truth and fact are merely a ruse through which Defendant BANA dupes homeowners into paying them thousands of dollars immediately before they foreclose as seen in Exhibit H, pg. 3. The loan modification workout agreements signed and offered to Plaintiffs by Bank of America (BANA) were a sham.

17. In spring 2010, news stories begin to emerge detailing erroneous foreclosures and evictions, including banks such as Defendant BANA variously foreclosing on homes which were paid for without a mortgage, accidentally foreclosing on the wrong home, and providing fraudulent documentation in courts. In the fall of 2010, major U.S. lenders such as JP Morgan Chase, Ally Financial (formerly known as GMAC), and Bank of America suspended judicial and non-judicial foreclosures across the United States over the potentially fraudulent practice of robo-signing.

18. As of October 14, 2010, all 50 states have entered a joint investigation into the mortgage industry. The joint investigation aims to determine the veracity of allegations that banks have not reviewed foreclosure documents properly or have falsified documents in order to evict homeowners.

19. Banks concerned about the recovery values of their mortgage portfolios and higher capital requirements, may pull back lending even further than they already have. In short, this fraudulent behavior has greatly affected homeowners who were fraudulently foreclosed and other potential buyers from purchasing a home. These homeowners and future buyers have been greatly affected and thereby forced into a much higher monetary alternative by renting apartments and homes at a much higher monthly payment.

**B. HAMP Was Created To Modify Loans and “Avoid” Foreclosure**

20. In order to explain the full picture of the Plaintiffs’ allegations against the Defendants, it is necessary to explain the overall concept of the HAMP loan modification program and how it was used to create this scam. This in no way means that the Plaintiffs are disgruntled and are bringing these claims because of a “justifiable” failure in acquiring a loan modification. However, an explanation of these issues is necessary in order for the court to understand the commencement of the fraud itself.

21. In an effort to continue to provide meaningful solutions to the housing crisis, the Home Affordable Modification Program (HAMP) was designed to help financially struggling homeowners avoid foreclosure by modifying loans to a level that is affordable for borrowers and sustainable over the long term. The program provides clear and consistent loan modification guidelines that the entire mortgage industry can use. The Home Affordable Modification Program (HAMP) includes incentives for borrowers, servicers and investors.

22. The target of the program is 7 to 8 million struggling homeowners at risk of foreclosure by working with their lenders to lower monthly mortgage payments. The Program is part of the Making Home Affordable Program which was created by the Financial Stability Act of 2009. Under HAMP, mortgage servicers are provided with the opportunity to enter into

contracts with the Federal Government (the U.S. Treasury) to modify homeowners' mortgage loans in a particular and uniform fashion and receive incentive payments in return. Bank of America was and is a participant of the Making Homes Affordable program<sup>1</sup>.

23. The HAMP program is administered by the U.S. Treasury Department (“Treasury”). All banks participating in the Troubled Asset Relief Program (“TARP”) were required to participate in HAMP, while other banks could participate voluntarily. BANA accepted over \$45 billion in tax-payer TARP bailout money. BANA thus signed a “Servicer Participation Agreement” with Treasury to participate in HAMP at its outset in April 2009. As with all participating servicers, BANA was required to solicit certain borrowers to apply for HAMP assistance. In addition, if a borrower contacts a Participating Servicer such as Defendant BANA regarding a HAMP modification, the Participating Servicer must collect income and hardship information to determine if the borrower is eligible for a HAMP modification.

### **C. HAMP Eligibility**

24. The modification process consists of two stages. In the first stage, the servicer collects and evaluates information from the borrower and from its own records. If the borrower meets specific eligibility guidelines for a HAMP modification, the servicer is required to offer the borrower a Trial Period Plan<sup>2</sup>. As described in the Trial Period Plan itself, the servicer then has the three-month trial period to verify that initial information.

25. During this first stage of the HAMP modification, before offering the Trial Period

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<sup>1</sup> <http://www.makinghomeaffordable.gov/get-assistance/contact-mortgage/Pages/default.aspx>.

<sup>2</sup> See U.S. Department of Treasury, *Making Home Affordable, Supplemental Directive 09-01*, Apr. 6, 2009 (“SD 09-01”), at 2. For ease of reference, in this Complaint, “Trial Period Plan” generally refers to all trial-payment agreements or plans issued by BANA and Urban pursuant to HAMP.

Plan, the servicer must evaluate whether the borrower meets specific eligibility guidelines for a HAMP modification<sup>3</sup>:

- The home must be an owner-occupied, single-family 1-to-4 unit property;
- The home must be a primary residence;
- The home must not be vacant or condemned;
- The home's first-lien mortgage must not have an unpaid principal balance exceeding \$729,750 (with higher limits for multiple-unit properties);
- The home mortgage was not previously modified under HAMP;
- The mortgage is currently 60+ days delinquent, default is "reasonably foreseeable," or the mortgage is in foreclosure (default is not a requirement);
- The borrower has submitted a Hardship Affidavit documenting a borrower's financial hardship; and
- The borrower's monthly payment, including principal, interest, taxes, and insurance ("PITI") prior to the modification, is greater than 31 percent of the borrower's monthly income.

26. After using available information provided by the borrower and drawn from its own files, the servicer determined if each of these threshold requirements is met. Further, using that same information, the servicer evaluated borrower's eligibility at this stage via the waterfall and NPV processes (described in more detail below). If, on the basis of that information, the homeowner qualified for a HAMP modification, through these processes, the servicer would then offer the homeowner a Trial Period Plan. As described in the Trial Period Plan itself, the servicer then had the three-month trial period to verify that initial information.

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<sup>3</sup> See U.S. Department of Treasury, *Making Home Affordable, Supplemental Directive 09-01*, Apr. 6, 2009 ("SD 09-01"), at 2.



27. If application of the steps in the Program Documentation yields terms that produce the target 31% monthly mortgage payment, the servicer must offer the borrower a Trial Period Plan Agreement if the modification provides a net present benefit to the mortgage holder. This determination is known as the “Net Present Value” or (“NPV”) test and is to be performed prior to the tender of a Trial Period Plan Agreement.

28. If the homeowner complies with the Trial Period Plan’s written requirements (including making all monthly Trial Period Plan payments), and the servicer’s verification process revealed no variations in the verified information outside of HAMP parameters, then the second stage of the HAMP process is triggered, requiring an offer of a permanent modification.

29. Servicers are restricted from initiating foreclosure or continuing previously initiated foreclosure processes against any properties with loans that are eligible for HAMP but (i) have not been evaluated, (ii) are in the evaluation process, or (iii) are in an active Trial Period Plan<sup>4</sup>. The servicer must also coordinate with the mortgage insurer on the HAMP modification process for loans with mortgage insurance as in the Plaintiffs’ case.

30. At the outset of HAMP in 2009, BANA used a standard form agreement to offer Trial Period Plans to eligible homeowners. This agreement describes the homeowner’s duties and obligations under the plan and promises a permanent HAMP modification for those homeowners that execute the agreement and fulfill the documentation and payment requirements. This Trial Period Plan was intended to, and did, induce homeowners to make trial payments and to expect that they would receive a permanent modification once they made all trial payments on time. However, as described at length below, pursuant to their loan modification scheme and enterprise, BANA and Urban intended to deny modifications to the

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<sup>4</sup> *Id.* at 14; U.S. Department of Treasury, *Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages, Version 4.1* (Dec. 13, 2012), [https://www.hmpadmin.com/portal/programs/docs/hamp\\_servicer/mhahandbook\\_41.pdf](https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_41.pdf) (“HAMP Handbook v4.1”), at 86-88.

vast majority of borrowers even if they complied with all the requirements set forth in the Trial Period Plans and continued making mortgage payments as instructed by BANA.

31. In March 2010, Treasury revised the process by requiring servicers to verify all financial information before issuing a Trial Period Plan to a borrower seeking a HAMP modification. Though BANA had required homeowners to submit financial documents before receiving a trial-payment agreement from the outset, BANA took this opportunity to revise its formal policies and to revise the form Trial Period Plan it used going forward. In response to several court decisions that found the form Trial Period Plan that BANA used constituted a contract, in approximately mid 2010, BANA began using a form Trial Period Plan that included more conditional language. Nevertheless, the form Trial Period Plan used after July 2010 was intended to, and did, induce homeowners to make trial payments and to expect that they would receive a permanent modification once they made all trial payments on time. However, as described at length below, pursuant to their loan-modification scheme and enterprise, BANA and Urban intended to deny modifications to the vast majority of borrowers even if they complied with all the requirements set forth in the loan modification agreement. On information and belief, the Defendants have reaped illicit profits from these actions exceeding \$100 million.

**D. Bank of America, N.A. Used Urban Lending Solutions to Create the Modification Denial Enterprise and a Scheme Designed to Feign Compliance with HAMP while Permanently Modifying as Few Loans as Possible.**

**1. BANA decided it was more profitable to avoid HAMP modifications.**

32. Under HAMP, the government incentivizes participating servicers by paying \$1,000.00 for each HAMP modification. However, this incentive is countered by financial factors that make it more profitable for BANA to avoid modification and to continue to keep a

mortgage in a state of default or distress and to push and churn loans toward foreclosure. This is especially true in cases where the mortgage is owned by a third-party investor and is merely serviced by BANA –as in this case– because BANA does not carry a significant risk of loss in the event of foreclosure.

33. Economic factors that discourage BANA from meeting its obligations under HAMP by facilitating loan modifications include the following:

- BANA may be required to repurchase loans from the investor in order to permanently modify the loan. This presents a substantial cost and loss of revenue that can be avoided by keeping the loan in a state of temporary modification or lingering default.
- The monthly service fee that BANA, as the servicer collects as to each loan it services in a pool of loans, is calculated as a fixed percentage of the unpaid principal balance of the loans in the pool. Consequently, modifying a loan to reduce the principal balance results in a lower monthly fee to the servicer.
- Fees that BANA charges borrowers that are in default constitute a significant source of revenue. Aside from income BANA receives directly, late fees and “process management fees” are often added to the principal loan amount thereby increasing the unpaid balance in a pool of loans and increasing the amount of the servicer’s monthly service fee.
- Entering into a permanent modification will often delay a servicer’s ability to recover advances it is required to make to investors of the unpaid principal and interest payment of a non-performing loan. The servicer’s right to recover expenses from an investor in a loan modification, rather than a foreclosure, is often less clear and less generous.
- Fixed overhead costs involved in successfully performing loan modifications involve up-front costs to the servicer for additional staffing, physical infrastructure, and expenses such as property valuation, credit reports and financing costs.

34. Former BANA employees have confirmed that BANA pressured them as a matter of policy to delay HAMP modifications in order to maximize fees for BANA<sup>5</sup>. According to Simone Gordon<sup>6</sup>, a former BANA Senior Collector of Loss Mitigation, BANA supervisors, known as “site leaders,” regularly told the employees and “team leaders” they supervised that the more they delayed the HAMP modification process, the more fees BANA would collect. Employees were regularly drilled that it was their job to maximize fees for BANA by fostering and extending delay of the HAMP modification process by any means they could – this included by lying to customers.

35. Another former BANA employee, William E. Wilson<sup>7</sup>, who worked as an underwriter and was promoted to supervise a team of Case Relationship Managers (CMR), testified that BANA fostered HAMP delays in order to push homeowners into in-house modifications that were more profitable for BANA and detrimental to homeowners. This former supervisor testified that BANA underwriters, Case Relationship Managers, and other employees were instructed by their respective supervisors to “delay” requests for HAMP modifications and then to push homeowners to accept an internal refinance so that Bank of America would profit. Once an applicant was finally rejected for HAMP after a long delay of months and sometimes years, the bank would offer them an in-house alternative. Bank of America would charge a higher interest rate, ranging up to 5%, as compared to the 2% if the loan had been modified under HAMP.

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<sup>5</sup> Bank of America Employees: “We were told to lie” <http://www.nbcnews.com/business/bank-america-former-employees-we-were-told-lie-6C10351458>.

<sup>6</sup> See Declaration of Simone Gordon, Exhibit K

<sup>7</sup> See Declaration of William E. Wilson Jr., Exhibit J

36. BANA knew that these procedures were contrary to the HAMP requirements to which it promised to adhere as a condition of accepting \$45 billion in taxpayer bailout funds. BANA was also well aware that its procedures were contrary to the representations made to borrowers, including representations in the Trial Period Plans (TPP) sent to borrowers. Nonetheless, they initiated and continued this pattern of practice with most homeowners who indeed qualified for loan modifications.

**2. Bank of America, N.A. (“BANA”), in conjunction with Urban Settlement Services d/b/a Urban Lending Solutions (“Urban”), fraudulently delayed and denied HAMP loan modifications.**

37. Many of the specific facts expressed herein have not been alleged in any prior claim by the Plaintiffs. The Plaintiffs were oblivious to many fraudulent acts and all of those involved.

38. Throughout the course of the exposure of this fraudulent scheme, many former BANA employees have confirmed that BANA is “deliberately” not complying with HAMP guidelines by stringing struggling and desperate homeowners along while in no way intending to modify their loans. Instead, BANA has put a scheme in place that is designed to foster delay, mislead, defraud homeowners and avoid modifying mortgage loans. In reality, Bank of America used it as a tool, say these former employees, to squeeze as much money as possible out of struggling borrowers before eventually foreclosing on them. Anxious homeowners calling in for an update on their application were frequently told that their applications were “under review” when, in fact, nothing had been done in months, or the application had already been denied, four former employees said.

39. Former BANA and Urban employees recount that their supervisors instructed them to outright lie to homeowners and claim that BANA had not received documents it had requested, that documents were incomplete and that it had not received trial payments (when in

fact it had). In some cases, after being informed that they financially qualified for the loan modification and after months of making payments as instructed, some homeowners were then denied a loan modification and given the excuse that they were denied due to their income. Some homeowners were given several different but generic excuses at different times or on the same call of why they were denied a long-awaited loan modification.

40. Former loan-level representative Simone Gordon<sup>8</sup> says flat-out in her affidavit that “we were told to lie to customers” about the receipt of documents and trial payments. She added that the bank would hold financial documents borrowers submitted for review for at least 30 days. “Once thirty days passed, Bank of America would consider many of these documents to be ‘stale’ and the homeowner would have to re-apply for a modification,” Gordon writes. Gordon and her co-workers were repeatedly told by their supervisors that admitting that BANA received documents would “open a can of worms” since BANA was required to underwrite the loan modification within 30 days of receiving those documents, and it did not have sufficient underwriting staff to complete the underwriting in that time. Simone Gordon described meetings where managers created quotas for lower-level employees, and a bonus system for reaching those quotas. Employees “who placed ten or more accounts into foreclosure in a given month received a \$500 bonus,” Gordon wrote. “Bank of America also gave employees gift cards to retail stores like Target or Bed Bath and Beyond as rewards for placing accounts into foreclosure”. Gordon also said that site leaders regularly instructed employees to prolong the loan modification process for customers because the longer proceedings were delayed, “*the more fees Bank of America would collect.*”

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<sup>8</sup> See Simone Gordon’s Declaration to these facts is herein attached to this complaint as Exhibit K.

41. Former BANA underwriter and supervisor William Wilson<sup>9</sup> confirmed that BANA underwriters had a backlog of files so large that they could not possibly complete underwriting within 30 or even 100 days of receiving a package of documents from any given homeowner. A former high-level BANA executive has described BANA's underwriters as being grossly overloaded to the point that they could not have been expected to perform effective or accurate underwriting. Wilson alleged that, during bi-monthly sessions called the "blitz," case managers and underwriters would simply deny any file with financial documents that were more than 60 days old. "During a blitz, a single team would decline between 600 and 1,500 modification files at a time," Wilson wrote. "I personally reviewed hundreds of files in which the computer systems showed that the homeowner had fulfilled a Trial Period Plan and was entitled to a permanent loan modification, but was nevertheless declined for a permanent modification during a blitz." Employees were closely monitored, and those who didn't meet quotas, or who dared to give borrowers accurate information, were fired, as was anyone who "questioned the ethics ... of declining loan modifications for false and fraudulent reasons," according to William Wilson. Employees were then instructed to make up a reason for the denial to submit to the Treasury Department, which monitored the program. Others say that bank employees falsified records in the computer system and removed documents from homeowner files to make it look like the borrower did not qualify for a permanent modification. Wilson, the case management supervisor, alleges in his statement that this "ridiculous and immoral" conduct continued through August of 2012, when he was eventually fired for speaking up. That meant that Bank of America persisted with these activities for at least six months AFTER the main, \$25 billion settlement to which they were a party of. "The delay and rejection programs were methodically carried out under the overall direction of Patrick Kerry, a Vice President who oversaw the entire eastern region's loan

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<sup>9</sup> William E. Wilson's Declaration to these facts is herein attached to this complaint as Exhibit J.

modification process,” wrote William Wilson. Other executives<sup>10</sup> mentioned by name include John Berens, Patricia Felth and Rebecca Mairone. These are senior executives who, if this alleged conduct is true, should face criminal liability.

42. Former BANA underwriter, Steven Cupples<sup>11</sup>, started with Countrywide in 2006 and was retained as a BANA employee when BANA purchased Countrywide. BANA later promoted him to supervise a team of BANA underwriters. Mr. Cupples was among the first BANA employees to work on HAMP-related modifications and worked on the program in several different capacities including underwriting, data analysis, and internal quality assurance. Mr. Cupples has testified that it was clear that BANA had not dedicated even the most basic levels of staff and resources it knew it would need to keep up with the volume of HAMP loan modifications. BANA executives including Rebecca Mairone, John Berens, and Patricia Felth were repeatedly made aware of some of the most obvious shortcomings in BANA’s processes and performance. According to Mr. Cupples, despite BANA’s executives having full knowledge of these problems, BANA made no substantial efforts to fulfill its obligations under HAMP in anything that could be described as a good-faith or honest effort.

43. Erika Brown<sup>12</sup>, one of Defendant BANA’s former employees, said: “Bank of America’s practice is to string homeowners along with no apparent intention of providing the permanent loan modifications it promises.” In reality, Bank of America used it as a tool, say

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<sup>10</sup> An investigation conducted by Bloomberg in late 2013 (*attached as Exhibit A*) revealed the extensive fraud and concealment against homeowners thereby conducted by Bank of America with the assistance of Urban Lending Solutions and other contracted sources such as Carlisle & Gallagher. The investigation and article released on December 16, 2013, featured the plaintiffs in this case, Isabel Santamaria and Abdiel Echeverria. The report confirmed that Brian Moynihan directly called on outside vendors such as Urban to deal with failing loans, the plaintiffs’ included. Urban Lending employees said they were told by their managers that the orders to reduce homeowners’ complaints came directly from Moynihan and Bank of America board members, who checked caseload figures daily. Moynihan declined to comment for this article.

<sup>11</sup> See Steven Cupples Declaration attached herein to this Complaint as Exhibit P.

<sup>12</sup> See Declaration of Erika Brown, Exhibit N.



these former employees, to “squeeze” as much money as possible out of struggling borrowers before eventually foreclosing on them. Borrowers were supposed to make three trial payments before the loan modification became permanent; in actuality, many borrowers would make payments for a year or more, only to find themselves rejected for a permanent modification, and then owing the difference between the trial modification and their original payment<sup>13</sup>. Former Treasury Secretary Timothy Geithner famously described HAMP as a means to “foam the runway” for the banks, spreading out foreclosures so banks could more readily absorb them.

44. These former BANA employees who most had no personal connections, located in customer service centers all over the country including Simone Gordon who worked in New Jersey, William Wilson who worked in North Carolina, Theresa Terrelonge<sup>14</sup> and Erika Brown<sup>15</sup> who worked in Texas, confirmed reports from thousands of homeowners seeking modifications under HAMP: customer service representatives regularly informed homeowners that modification documents were not received on time or not received at all when, in fact, all documents had been received. Similarly, homeowners were regularly told that documents were sent on a particular date when, in fact, BANA had not sent the documents at all. Former Urban employees including Gregory Mackler and Bert Sheeks<sup>16</sup> confirmed that Urban employees disseminated similar misinformation to homeowners who thought they were speaking to BANA’s “Office of the President” when, in fact, they were speaking to Urban employees. The named plaintiffs in this case were subjected to redundant, ambiguous and “threatening” demands

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<sup>13</sup> Christy Romero, the special inspector general of the Troubled Asset Relief Program also known as TARP, told Bloomberg that *“It goes without saying that this is an outright abuse of consumers and government mortgage-assistance programs.”*

<sup>14</sup> See Declaration of Theresa Terrelonge, attached to this Complaint herein as Exhibit L.

<sup>15</sup> See Declaration of Erika Brown, attached to this Complaint herein as Exhibit N.

<sup>16</sup> See Declaration of Bert Sheeks attached to this Complaint herein as Exhibit O.

for documents by BANA and Urban – documents that BANA and Urban knew had already been submitted and just sitting around, that were not required to determine eligibility under HAMP guidelines, or that were unnecessary “updates” of previous documents that were already submitted by the homeowners numerous times.

45. Urban employees including Gregory Mackler<sup>17</sup>, a former Customer Advocate who was promoted to a position of Quality Control, and Bert Sheeks, a former document auditor, similarly described how Urban would let documents from borrowers sit and age without acting on them – all with the full knowledge of the Bank of America executives who were supervising Urban. Once 30 days passed, BANA would consider many of these documents, such as pay stubs or bank statements, to be “stale” and the homeowner would have to re-apply for a modification.

46. Former BANA supervisor and longtime employee Steven Cupples<sup>18</sup> testified to discovering a method Urban employed to allow BANA to prevent modifications that consisted of “scattering” homeowner documents. Among other things, BANA tasked Urban with uploading financial documents it received from homeowners into computer systems that BANA underwriters could then review. Mr. Cupples recognized that Urban regularly scanned portions of document packages it received into *different* links in *various* computer systems such that the documents could not be viewed using a single system. Consequently, it would appear to an inadequately trained underwriter, or to an outside regulator conducting an audit, that the borrower had not sent a complete packet of required documents. BANA used this pretext to consistently decline loan modifications to homeowners who had sent all documents required of

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<sup>17</sup> See *United States of America, ex rel. Gregory Mackler vs. Bank of America, N.A. and BAC Home Loan Servicing, LP*, Case No. 1:11-cv-03270-SLT-RLM.

<sup>18</sup> See Declaration of Steven Cupples attached to this complaint herein as Exhibit P.

them. In addition, this seems to seriously jeopardize a homeowner's personal and financial information which in their minds, should be safely guarded and protected.

47. After BANA and Urban had let homeowners' applications and personal and financial documents sit for a month or more, BANA would order that case managers and underwriters "clean out" the backlog of HAMP applications by denying any file in which the financial documents were more than 60 days old. BANA termed this cleanout a "blitz," and performed it approximately twice a month. According to former BANA supervisor William Wilson, during a blitz, a single "team" of 10-15 Case Relationship Managers would decline between 600 and 1,500 modification files at a time for no reason other than that the borrower documents were more than 60 days old. Generic responses for denials would be given consistently. Troubled homeowners were encountered with a "brick wall" of sorts.

48. Even though homeowners timely and repeatedly submitted documentations required for their loan modification, BANA instructed its managers, underwriters and other employees to enter a reason into its electronic databases that would justify declining the modification it declined during a "blitz" to the Treasury Department. Excuses commonly included claiming that the homeowner had failed to return requested documents; documents were incomplete; income did not qualify after months of pre-qualification; and failed to make payments. In reality, these excuses were untrue and the justifications were entered with BANA's full knowledge that they were indeed false.

49. Former BANA employees including Theresa Terrelonge and Simone Gordon testified to seeing homeowners' financial records "manipulated" in BANA's computer system to the homeowners' detriment.

50. Former Urban employees including Bert Sheeks similarly recount employees manipulating financial records in the computer systems Urban shared with BANA in order to justify ending the modification process and closing files more quickly.

51. Defendant BANA offered production goals to managers and to employees based on how many files they could “close” – meaning how many homeowners seeking loan modifications they could decline. BANA awarded employees incentives such as \$25 in cash or restaurant gift cards based on the number of files they could close in a given week. On the other hand, employees who did not close a sufficient number of files were subject to discipline and possible termination. BANA placed similar production goals and requirements on Urban. Former employees including Gregory Mackler and Bert Sheeks have described the intense pressure BANA placed on Urban and that Urban supervisors also placed on employees to close files as fast as possible to the detriment of the homeowners. Urban recruits were told during six-week introductory sessions that they were being paid \$16 to \$18 an hour to help Americans keep their homes which was not the case. The fact that BANA was awarding monetary incentives and Urban was paying their employees an hourly rate way above an average worker’s hourly wages, just proves how lucrative this scheme was to all the Defendants involved.

52. Defendant Bank of America (“BANA”) methodically carried out delay and rejection programs under the supervision of regional Vice Presidents and other executives including but not limited to Rebecca Mairone, John Berens, Kenneth Scheller<sup>19</sup>, Troy Novotny, Patricia Felch, and Tyrone Wells. The purpose of the mass denials was to reduce the volume of pending modification requests as quickly as possible while extending as few permanent modifications as

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<sup>19</sup> Mr. Ken Sheller signed the letter included with the “loan modification agreement” packet dated January 27, 2010 sent to the Plaintiffs. See Exhibit F, page 1.

possible. Only a few modifications were pushed through in order to give the “appearance” that at least something was being done.

**3. BANA utilized Urban and other third parties in order to carry out their fraudulent HAMP scheme.**

53. In order to appear to be compliant with HAMP, BANA contracted third parties to provide HAMP-related services. BANA controlled and closely supervised these third parties, one of which was Defendant Urban Settlement Services (aka Urban Lending Solutions, hereinafter “Urban”).

54. BANA identified Urban as a participant and member of an enterprise whose purpose was to create a deceptive front whereby BANA would offer borrowers the opportunity to receive a HAMP modification and thereby induce their response and reliance, but then pull the rug from under them by rejecting HAMP modifications based on fraudulent pretenses of a homeowner’s non-compliance.

55. Shortly after an agreement with the Treasury Department by committing to modifying loans under HAMP, BANA then sub-contracts Urban for whom it assigned key functions to modify loans under HAMP.

56. As a fully operational “enterprise”, BANA assigned Urban specific tasks, and structured the arrangement so that BANA received daily, or even hourly, updates on everything Urban was doing with regard to HAMP<sup>20</sup>. Urban and BANA interacted in a close relationship over which BANA maintained strict and meticulous control as the kingpin. BANA created this close contractual relationship in order to ensure that Urban would participate in this loan-

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<sup>20</sup> “Urban Lending employees said they were told by their managers that the orders to reduce homeowners’ complaints came directly from CEO Brian Moynihan and Bank of America board members, who checked caseload figures daily”. See *Bloomberg Article (Exhibit A)*, page 9.

modification scheme and work with BANA in an “enterprise” that has a lucrative common goal of reducing the number of HAMP modifications issued to borrowers.

57. Among some of the many tasks, BANA assigned Urban to analyze the data in a “pool” of loans to determine the preferred modification program based on BANA criteria and perform quality control on the data. Using BANA’s strict criteria, Urban was left to decide which modification program was “appropriate.” Often, this involved shifting a borrower who applied for a HAMP modification into a less advantageous, internal, BANA modification that would be more profitable for BANA and detrimental to the homeowner.

58. Among the other tasks in this scheme, Urban was to receive, track, and perform quality control on financial documents sent by borrowers. It was to upload the documents to a web-based share-point site where it could be viewed by BANA and its employees.

59. This fraudulent scheme was well-planned and synchronized. Urban was to field telephonic inquiries from BANA customers regarding the status of their loan modifications and strive to answer the customers’ questions. BANA also assigned Urban the task of consistently notifying homeowners when required documents were missing. To carry out the goal of the enterprise, mastermind BANA created “scripts” that its partner-in-fraud Urban was to use for the calls it received from homeowners.

60. Former Urban employees and a former BANA executive have confirmed that BANA demanded, and Urban provided, constant updates on virtually all aspects of work Urban performed under this enterprise.

61. Urban’s monetary compensation was determined based on the volume of loan files it processed. Quality customer services provided to Bank of America customers or successful loan modifications (which was not BANA’s objective) was irrelevant to Urban’s compensation.

62. Many times when homeowners were asked to complete loan modification applications, Trial Period Plans (TPP) or submit documentation and hardship affidavits, the homeowners were not aware that they were sending these requests to Urban and not BANA. Many addresses placed on pre-paid FedEx envelopes were indeed the address to Urban's facilities, mainly in Pittsburgh, Pennsylvania. In addition, when distressed homeowners in the loan modification process were asked to fax documentation, they were not aware that at times the fax numbers provided were also Urban fax numbers not BANA's. Borrowers were falsely led to believe they were communicating directly with BANA.

63. Bank of America ("BANA") and Urban Settlement Services d/b/a Urban Lending Solution's relationship was a secret for quite some time. If an Urban employee would answer a call from a BANA customer, they were instructed to identify themselves as BANA and many times as "Bank of America's Office of The President and CEO" even though they were not. Urban & Carlisle & Gallagher employees were given titles and email addresses suggesting that they were employed by Bank of America. To the outside world of homeowners and regulators, Urban and Carlisle & Gallagher's workforce appeared to be employees and executives of Bank of America. BANA homeowners were under the false impression that they were speaking to and corresponding with BANA when, in fact, they were interacting with Urban & Carlisle & Gallagher employees.

64. Urban only entered the documents months after they had been sent, only scanned in partial documents and, in many cases, did not post the documents at all. Urban scanned and entered documents into multiple computer systems and scattered over various links in the systems such that a particular homeowner's application packet would appear "incomplete" to a

regulator such as the OCC (Office of the Comptroller of the Currency) or an auditor reviewing the file.

65. Both BANA and Urban employees reported the problems in the HAMP modification process on multiple occasions to BANA and Urban executives including Tyrone Wells, Troy Novotny, Kenneth Scheller, Robert Nicholson, Rebecca Mairone, David Swain, Patricia Feltch, Jinja Martin, and John Beranich. These were the executives and employees specifically designated by BANA and Urban to oversee BANA and Urban's HAMP loan-modification efforts. Urban's performance did not improve and there were no efforts by BANA to change Urban's conduct or performance. Similarly, there were no substantial efforts by BANA to bring its own performance into compliance with reasonable business practices or to remediate the harm its failings caused hundreds of thousands of deceived homeowners including the Plaintiffs. Both BANA and Urban continued on the same path, despite having full knowledge that it meant borrowers would be wrongfully denied, or delayed in getting, permanent modifications. However, it was never the intention of BANA to improve its performance because it would otherwise dismantle their fraudulent scheme.

**4. Defendant BANA directed, instructed and encouraged Urban to fraudulently and consistently deny loan modifications.**

66. Unbeknownst to borrowers including the Plaintiffs, BANA instructed borrowers to return documents to Urban's locations. BANA used Urban as a "repository" for borrower documents. In actual practice, and according to former Urban employees along with former BANA supervisors Steven Cupples and William Wilson, BANA designed Urban to serve as a "blackhole" for the documents borrowers sent in the course of trying to obtain permanent loan modifications. The manner in which BANA set up and directed Urban's processes guaranteed



that the vast majority of Trial Period Plan Agreements would not be converted to permanent modifications in the time contemplated by the Trial Period Plan Agreements and by HAMP.

67. As part of BANA's systematic plan, loan modification packages were not forwarded to its underwriters until the borrower had submitted all required documents and the modification package was deemed "complete." At times, as expressed by Scott McDaniel's November 24, 2010 bogus answers to the OCC in the Plaintiffs case, they had not even contacted the investor but told the Plaintiffs numerous times over the phone that they were awaiting a response from the investor. However, they actually denied the Plaintiffs' loan modification just two months prior.

68. As per BANA's instructions, Urban delayed forwarding modification packages to underwriting for months and instead noted on the computer system that documents were incomplete despite the fact that borrowers had provided all required documents. Customers regularly heard nothing from BANA for months after sending in their documents and making their required trial payments. When borrowers finally called to inquire as to the status of their modification, they were falsely strung along and told their loan was "under review" or that they were waiting for the investor to make a determination even though the servicer is in control. Eventually most borrowers were falsely told that their loan modification file remained incomplete and that they were required to send in additional documents such as paystubs, utility bills, income tax returns and anything else that would delay or restart the process. Typically communications were over the phone, and were knowingly and intentionally deceptive in light of BANA and Urban's overall loan-modification scheme. On the same phone call which would sometimes last for hours, many homeowners were given several different excuses as to why their loan modification was taking so long or as to why they were ultimately denied.

69. The sensitive documents that were specifically requested, usually several times over were: bank statements, W-2's, paystubs, utility bills, income tax returns (which included social security numbers for all members of the household) and other sensitive personal and financial information that would usually just “sit” there for prolonged periods of time so that the documents would “age” so that they would apparently be too old for a loan modification therefore deeming them “incomplete”. As part of the scheme, Urban customarily and purposely allowed the documents to “age” – meaning that it would not properly upload the documents until after the period by which they could be used for underwriting purposes. BANA consequently deemed the documents to be unacceptable and deemed the file to be incomplete, and refused to provide a permanent modification to the borrower. Again, as part of the scheme, this decision was not announced to the borrower for months – often more than a year after the borrower received their Trial Period Plan.

70. As part of the fraudulent scheme, the delay built into this system additionally allowed BANA and Urban to provide another basis for denial: “excessive forbearance.” Pursuant to TPP's, borrowers were instructed to make “temporary” payments pending a permanent modification. These amounts were by definition lower than the payments due under their unmodified mortgages. However, during these “temporary” periods, and while pursuing its “black hole” delay strategy, BANA continued to consider the full, unmodified loan payments to be due from each borrower. Borrowers who were paying the modified amount stated in their Trial Period Plan agreements for months were being charged the unmodified monthly amounts due. BANA would increase the borrower's indebtedness by the difference each month. Eventually, the homeowner's level of outstanding debt would rise to a point that crossed a threshold and BANA would decline the loan modification due to “excessive forbearance.” Thus, the

overwhelming majority of homeowners who sought permanent modifications from BANA pursuant to HAMP were placed into a delay loop where they were falsely told via the “wire or mail” that their documents had not been received even if they had been and if their documents were actually acknowledged, they were told they were too old and that more current documents had to be resubmitted.

71. This scheme plotted by BANA was lucrative and very successful not to mention, under the radar for quite some time. This scheme lead to tens of thousands of denied loan modifications which should have been approved. Most homeowners met the criteria and fulfilled their part of the agreement however, BANA intentionally breached its agreement with homeowners.

72. Even though homeowners were aggravated by this malicious practice, they were unaware how deep the rabbit hole really goes. Frustrated homeowners’ files were elevated to the “President’s Office” or so they thought. The truth is quite the opposite. Defendant Bank of America’s scheme is beyond comprehension and treacherous. Deceiving homeowners into believing that they are communicating with the “Office of the President and CEO” at Bank of America, when in reality, they are being played like a fiddle by speaking and communicating with Urban, Carlisle & Gallagher or other minions instead, is a new level of fraud for this racketeering enterprise.

73. In approximately August 2010, BANA instituted a program it called the “drive for five.” The purpose of this program was to reduce the number of outstanding service requests to less than five thousand over a period of three months. Pursuant to their scheme and common plan BANA provided Urban with lists of service requests that needed to be closed on a daily basis. Urban Lending employees said they were told by their managers that the orders to reduce

homeowners' complaints came directly from Brian Moynihan (BANA President and CEO) and Bank of America board members, who checked caseload figures daily. These lists consisted of hundreds or thousands of inquiries from homeowners regarding their home mortgages, including inquiries as to why they had not yet received a permanent modification despite complying with the terms of the Trial Period Plan. Urban employees were required, at least in theory, to investigate the inquiry, investigate the underlying mortgage, and provide a recommendation as to the course of action. If follow-up work needed to be done with the homeowner, the service request was still considered to be outstanding. Alternatively, if the borrower could be determined to have failed the modification process, the service request could be deemed closed and the number of outstanding service requests would have been reduced.

74. Employees at Urban were instructed, at BANA's direction and with BANA's full knowledge and support, to close service requests in a manner that would reduce the number of outstanding requests as quickly as possible. Individual Urban employees were expected to close dozens of files per day. Both BANA and Urban knew, and intended, that this would result in the false and deceptive denial of HAMP loan modifications to borrowers who were indeed eligible to receive them.

75. There was no way that BANA could comply with these service requests at the pace they wanted to especially when they were being flooded with loan modification applications at the same time, and therefore Urban was BANA's option in reaching their objective: denying as many loan modifications as possible and rapidly foreclosing on these distressed loans for profit. Urban was able to clear the backlog of homeowner complaints and loan modifications and had sufficient instructions by BANA to deceive homeowners into believing that they were dealing with Bank of America and Bank of America's Office of the President and CEO.

76. Nonetheless, due to the high demand of fraudulent activity being conducted by BANA and Urban, hundreds of new employees – many of which had no qualifications or sufficient training – were hired by Urban in order to meet BANA’s demands, according to Urban employee Gregory Mackler. Urban employees were shown formulaic methods by which to close service requests. These methods included closing a service request (and therefore ending the HAMP process for the homeowner) based on a “Missing Information Letter”, “Incomplete Information Notice” or “Denial Letter” directed to the borrower in the electronic file. Bert Sheeks<sup>21</sup> has testified that Urban employees were “encouraged” to close files simply by seeing such a notice in the system without researching whether the notice was accurate or whether the borrower responded to the notice. Urban employees have confirmed that files were routinely closed on a fraudulent basis when it was apparent from the electronic records that the borrower had provided all required information and documents. The conspirators in this scheme knew or should have known the immediate and proximal impact that the actions would have on the Plaintiffs and other homeowners.

**5. Bank of America and Urban executives knew loan modifications were being fraudulently denied and encouraged the fraud to continue.**

77. Urban and BANA executives were fully aware that thousands of homeowners were being wrongfully denied HAMP modifications pursuant to this loan-modification scheme, yet they allowed, encouraged, and directed that the loan-modification scheme should tenaciously continue.

78. Several former Urban employees including Gregory Mackler, Elizabeth Farmer, Shane Stahl, and Wesley White informed John Beranich, Urban Vice President, that Urban was

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<sup>21</sup> See Declaration of Bert Sheeks, attached to this complaint as Exhibit O.

regularly closing borrower files wrongfully and detailed the ways in which files were being wrongfully closed. Nonetheless, Beranich responded by reminding employees who complained that their job was to reduce the number of service requests and that failure to do so could lead to them losing their jobs. On multiple occasions, employees who raised these types of concerns to Beranich were either terminated or demoted. Urban employees who raised concerns to John Beranich regarding the propriety of the manner in which service requests were closed were subject to discipline that included demotion or even termination.

79. Robert (“Robbie”) Nicholson is a BANA executive who oversaw Urban’s efforts to “reduce” service requests. According to former Urban employee Bert Sheeks, Nicholson was aware of the details of the manner in which Urban improperly closed service requests and that homeowners were being denied modifications and even losing their homes as a result. Nicholson did nothing to remedy these concerns. Instead, Nicholson personally confronted Urban employees who raised concerns and put pressure on the supervisors of those employees to bring them “in line.”

80. David Swain is a BANA Vice President who oversaw BANA’s efforts to reduce its backlog of HAMP applications and outstanding trial plans. Swain instituted high pressure initiatives to reduce backlog by maliciously “declining” HAMP applications and trial plans en masse. According to a former high-level BANA executive, Swain was repeatedly informed from various sources – both verbally and in writing, that reviews and audits showed that BANA’s “blitzes” and other mass declination programs were resulting in thousands of homeowners being wrongfully denied HAMP modifications. BANA Vice President David Swain nevertheless continued with this course of conduct.

81. Rebecca Mairone<sup>22</sup> was a Bank of America Vice President and a former COO of Countrywide's Full Spectrum Lending division. Mairone was instrumental in creating and implementing BANA's policies and procedures to process HAMP applications, including the extent to which BANA used Urban to implement its HAMP scheme. In several instances, BANA employees and other executives directly informed Mairone that processes and training were inadequate, that error rates were unacceptable, and that, as a result, BANA customers who should have received HAMP modifications were being wrongfully declined and were instead losing their homes. Despite repeated reports, Mairone did not implement remedial measures that could reasonably be expected to be effective, thereby allowing the loan-modification scheme to continue unabated.

82. Ken Scheller is a BANA Vice President and former executive of Countrywide and was also instrumental in creating and implementing BANA's policies and procedures to process HAMP applications. On multiple occasions, BANA and Urban employees directly informed Ken Scheller that the processes were being administered in a manner that made it impossible for the vast majority of BANA homeowners to obtain permanent HAMP modifications. Scheller responded by telling at least one Urban employee who was raising concerns that BANA was "not of course interested" in faithfully reviewing modification requests. Scheller directed the employee to "back off" the issue, since raising concerns of this kind was inconsistent with BANA's purpose and therefore Urban's core efforts to *decrease* HAMP participation.

83. Patricia Felch is a BANA Vice President and former Countrywide executive. Felch was instrumental in implementing BANA's policies and procedures to process HAMP applications. On multiple occasions, BANA employees and other executives directly informed

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<sup>22</sup> Rebecca Mairone was found liable by a federal jury in October 2013 for defrauding government-backed housing companies Fannie Mae and Freddie Mac while working at Countrywide.

Feltch that processes and training were inadequate, that error rates were unacceptable, and that, BANA customers were being wrongfully denied the opportunity to modify their mortgage loans and were instead losing their homes to foreclosure. Patricia Feltch was also instrumental in imposing “blitzes” and other mass decline efforts. She continued to impose and implement efforts geared to mass declinations despite being specifically informed that thousands of homeowners were being wrongfully denied HAMP modifications as a result.

84. The above named BANA executives Rebecca Mairone, Ken Scheller, David Swain, Patricia Feltch, and Robbie Nicholson, along with their immediate superiors Tony Meola and John Berens, constituted a control group typical of a criminal enterprise who designed and implemented BANA’s HAMP policies and procedures in a way that deliberately worked to defraud homeowners and to extend as few loan modifications as possible while still giving the appearance that BANA was making efforts to comply with HAMP.

**6. “Notices” provided by Defendants Bank of America and Urban were fraudulent.**

85. Defendants BANA and Urban had explicit knowledge of the foregoing and intended that they had created a “black hole” for homeowners seeking loan modifications, and that the vast majority of applicants would never receive permanent loan modifications including the Plaintiffs.

86. Defendants BANA and Urban had knowledge and intended that, as a result of their scheme to maliciously delay and wrongfully deny modifications, BANA would not provide permanent modifications under the terms of these contracts to all borrowers who satisfied their loan modification requirements and obligations. Defendants also knew and intended that the vast majority of homeowners who sought HAMP modifications, including those who received trial-



payment agreements and were asked to continue making payments and therefore satisfied their obligations, would instead be fraudulently denied a permanent modification on a falsified basis, or offered a permanent modification that did not comply with the terms of the contract. Bank of America told some consumers that it had denied their modifications because it was unable to reach them. However, the borrowers regularly called Bank of America to obtain updates on their status and/or resubmit their documents.

87. BANA and Urban knew and intended that Plaintiffs and other borrowers would rely on BANA's representations that BANA would provide a permanent modification on the terms offered and the Plaintiffs and other borrowers did in fact rely on the fact that BANA had promised them permanent modifications upon fulfillment of payments or after the so-called "investor" reviewed their file which is now proven to be false. The Plaintiffs and other borrowers continued making their monthly payments<sup>23</sup>, as difficult as it was, provided documents on an unnecessary regular basis and incurred the costs of submitting such documents that were being requested over and over again, pawned personal and sentimental mementos and items and borrowed monies from family members, exhausted their 401k savings and paid penalties and taxes for these withdrawals in order to continue making said payments in reliance that these actions would guarantee them a permanent loan modification only for BANA to pull the rug from underneath them.

88. Defendants BANA, Urban and Carlisle & Gallagher sent documents to, and made false statements to, homeowners by means of interstate commerce, including but not limited to the U.S. mails, telephone lines, email, and the internet. Such communications included letters

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<sup>23</sup> Many of the Plaintiffs' monthly payments submitted to BANA during the loan modification process, were fraudulently applied as "foreclosure fees" and were never posted as regular payments. This is why Defendant BANA would assess excessive fees and would falsely advise that the Plaintiffs owed more payments than they actually did. This is a clear indication of Defendant BANA's intentions. *See Exhibit H.*

instructing homeowners as to how to apply for HAMP modification; phone calls in which BANA and Urban employees knowingly misrepresented both the nature of the HAMP modification process and the status of borrowers' loan-modification applications; notices claiming that information or documents were missing; trial-payments; agreements; and notices of denial. Each of these communications and documents were either fraudulent in themselves or sent with an intent to further the enterprise's loan-modification scheme. In the aggregate, Defendants used interstate mail and wire hundreds of thousands (and possibly millions) of times in their loan-modification scheme to make representations that they knew, or would have known but for their recklessness, were deceptive, false, and fraudulent.

89. BANA intentionally lured homeowners into what the homeowners thought was a good faith modification program, encouraged the homeowners to get deeper and deeper into "debt", and then foreclosed when they were sure that the person could not reinstate nor exercise a right of redemption. A key player in this scheme was Urban Lending Solutions. Even though Bank of America's partnership in crime with Urban was the perfect storm, they also contracted other contractors in furtherance of its fraudulent loan modification scheme. These contractors include Sykes Enterprises, Inc. ("Sykes"), who BANA retained to field telephone calls from customers attempting to secure HAMP modifications. The contractors also included Stewart Settlement Services ("Stewart") who BANA retained to mail documents to homeowners seeking HAMP modifications and to receive, compile, and upload documents from homeowners. As with Urban, BANA has closely controlled Sykes' and Stewart's work and performance in furtherance of its scheme.

**E. Defendant Bank of America's Malicious Actions Caused "Injury" to Plaintiffs**

90. In full reliance of the Defendants' misrepresentations, Plaintiffs Abdiel Echeverria and Isabel Santamaria have suffered injury caused by this malicious scheme, including but not limited to longer loan payoff times, accelerated amounts demanded, improper negative reporting to credit bureaus (*see Exhibit G, pg. 3*) resulting in monetary harm due to damaged credit, wrongful payments demanded, withdrawals from Abdiel Echeverria's 401k retirement account including penalties and taxes, the damage caused by the inability to acquire alternate housing due to reliance, monetary damages in reliance of a loan modification that never existed, monetary damages from higher principal balances, inappropriate fees and charges assessed to them, including loan modification payments being assessed as "foreclosure fees"<sup>24</sup>, vacant property fees<sup>25</sup> assessed since January 2010 even though the home has never been vacant, miscellaneous fees which have never been disclosed, inspection fees, attorney's fees, "process management" fees, excessive monthly payments which are not owed, late fees and other charges associated with delinquency and default, increased accrued interest, loss of property value<sup>26</sup>, loss of personal property and mementos, loss of wages, time spent and inconvenience suffered in reliance. The Plaintiffs relied on the Defendants' material representations and acted upon them by consistently spending money on mailings not knowing that these efforts were in vain. To comply with the loan modification requirements, the Plaintiffs sold valuable, personal and memorable items and jewelry for well below their actual value in order to fulfill their loan modification payments which Plaintiffs were instructed by BANA not to miss in order to complete the loan modification process and receive a permanent loan modification.

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<sup>24</sup> See October 2, 2013 letter from BANA to Plaintiffs addressing a QWR labeled as "Exhibit H". On page 3, Bank of America maliciously assessed the Plaintiffs' February 2010 through April 2010 payments, while in the loan modification process, as "foreclosure fees" which Plaintiffs were not aware of.

<sup>25</sup> See October 2, 2013 letter from BANA to Plaintiffs addressing a QWR labeled as "Exhibit H", page 3.

<sup>26</sup> Plaintiffs' home still had some equity when this fraudulent scheme started in 2010. If necessary, the Plaintiffs were able to sell their home at that time and still receive some money in return. However, this scheme avoided any such action by the Plaintiffs thereby depriving them of any monetary return on a home that they had already invested over \$80,000.00.

91. Furthermore, in many instances, BANA actually encouraged or instructed the Plaintiffs and other borrowers to initially default on their loans in order to “qualify” for assistance in order to prove “hardship”, when in fact HAMP required only that an “imminent risk of default” be attested to. By recommending that Plaintiffs fall behind in their payments, Bank of America effectively trapped Plaintiffs into keeping their loan with Defendants, because no other institution would help Plaintiffs after they became delinquent on their mortgage, or after their credit was destroyed. Refinancing was no longer an option for the Plaintiffs. In addition, by complying with the terms of their loan modification agreement with BANA by missing payments, borrowers have placed themselves in default or the risk of default, therefore losing their homes in foreclosure or at risk of such thereby destroying their credit, because they have not made their full mortgage payments even though it was not the intention of the homeowner to do so. In doing so, Plaintiffs’ credit was substantially damaged, they suffered greatly diminished access to credit and financing, and were penalized with fees, penalties and charges in addition to becoming delinquent on their loan as recommended by Defendant Bank of America (BANA). In addition, misrepresenting the delinquency status of consumers’ loans allows Bank of America to impose late fees and other charges to which it is not entitled and which make it even harder for a consumer to remain or become current on their mortgages.

92. The Plaintiffs’ autistic children have also required additional psychological therapy and will continue to do so because of the unnecessary trauma caused upon them due to the consistent threats of foreclosure and the fear of losing their housing structure which threats started in early 2010 while the Plaintiffs were in the process of a loan modification. These therapeutic sessions that have been utilized are with the hopes that it will assist these disabled

children in the transition of moving to another home, if possible, or even becoming homeless. The Plaintiffs have incurred these additional medical expenses.

93. Moreover, if an eligible homeowner has not been tendered a permanent modification, their injury is measured by the difference between their current circumstances and the terms of the modification that they were entitled to – a difference that includes the wrongful loss of a property interest for those who have suffered foreclosure. In addition, whenever BANA delays the tender of a Trial Period Plan or a permanent HAMP modification, the terms of such a modification are less beneficial to the homeowner than they otherwise would be had BANA properly performed as expected. If a homeowner accepted a modification on terms that are less favorable than those of a HAMP-compliant modification offered at the close of their trial period, their injury is measured by the difference between the modification they accepted and the modification they were entitled to.

94. Despite the HAMP directives and guidelines regarding the specific manner in which homeowners in the process of applying for a modification or in a TPP are to be reported to credit reporting agencies, a former employee reports that BANA's practice is to report homeowners to credit reporting agencies as being delinquent without any further explanation thereby further damaging the homeowners' credit beyond repair and therefore making alternative options to housing such as renting or a more modest home purchase impossible. This damage to the Plaintiff's credit makes it virtually impossible to resolve delinquencies, such as refinancing the home or acquiring any other property. Similarly, other forms of credit can and do become more expensive including higher interest rates on current and future purchases therefore making their economic future much more costly and greatly flawed. Many employers are also running credit checks on potential employees and many have opted not to hire those who have endured

damaging foreclosures or other property delinquencies without an explanation. The Echeverrias have recently received several notices from BANA informing them that they are NOW in foreclosure<sup>27</sup>. The notices include inflated amounts due along with unjustifiable fees assessed.

95. Thanks to Bank of America's fraudulent practices, the American dream of home ownership for millions including families with disabilities and the biggest single investment of most Americans, has been destroyed.....even those who were not foreclosed still have seen massive amounts of value and equity wiped out during the last four years by those charged with protecting the mortgage market. Not to mention the lost value of mortgage back securities that make up the bulk of many public and private pension funds.

#### **V. CLAIMS FOR PLAINTIFFS ABDIEL ECHEVERRIA AND ISABEL SANTAMARIA.**

96. After a significant period of time in which the Echeverrias were lead to believe that they were dealing "directly" with Defendant Bank of America and only Bank of America [why would any reasonable homeowner believe otherwise], the Plaintiffs recently became aware that they were victims of a fraudulent scheme perpetrated by the Defendants named herein. The fraud against the Plaintiffs is ongoing.

97. The Echeverrias did everything that was requested from them in order to receive a permanent loan modification but the scheme that ensued during that time was not known to the Plaintiffs until recently. The Plaintiffs paperwork was lost, received and incomplete several times even though at times, they even had an attorney assisting them. The Plaintiffs were consistently threatened by BANA requesting monies that were not owed in order to avoid foreclosure.

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<sup>27</sup> See all foreclosure threats recently mailed by the Defendant Bank of America to the Plaintiffs as "Exhibit I".

98. After several months of submitting documentation for a loan modification and hiring an attorney to assist them, the Echeverrias receive a DENIAL letter from Bank of America on September 27, 2010 via FedEx, mail date September 24, 2010<sup>28</sup>. The letter was dated September 24, 2010. In this denial letter Bank of America advises the plaintiffs that they were being “denied” a loan modification because they did not submit documentation. After months of faxing and mailing documentation over and over again, Defendant BANA denies the Echeverrias a loan modification that they clearly qualified for and complied with all the terms. The Echeverrias felt defeated and helpless. Defendants also knew and intended that pursuant to their loan-modification scheme, the Defendants were actively denying HAMP modifications *en masse* and for false reasons. Thus, these instructions were misleading and deceptive when they were given. The Echeverrias and other homeowners relied on the Defendants’ misrepresentations and acted upon them in reliance.

99. On December 3, 2010, the Echeverrias receive in the mail a letter from Bank of America dated November 24, 2010<sup>29</sup>. The author of this letter was Scott McDaniel from Bank of America’s “Office of the President and CEO”. This letter was addressed to Isabel Santamaria and Abdiel Echeverria (plaintiffs) and forwarded to all those involved in this investigation which included the OCC (“Office of the Comptroller of the Currency”), Attorney General Bill McCollum and Congressman Bill Posey. In this four page letter, Mr. McDaniel provides inaccurate and conflicting information. After the Echeverrias were given the excuse of being

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<sup>28</sup> See copy of FedEx Envelope dated 24SEP10 where loan modification denial letter was mailed. Even though the letter appears to be from BANA, the address on this envelope is Defendant Urban’s address in Pittsburg, Pennsylvania, the same address where the Plaintiffs were instructed to mail documents many times believing that it was BANA. Denial letter and cover sheet also attached to this exhibit collectively as Exhibit D.

<sup>29</sup> See copy of original letter and envelope sent by Carlisle & Gallagher’s Scott McDaniel impersonating a Customer Advocate of Bank of America’s Office of the President and CEO on official BANA stationary labeled as Exhibit B. Plaintiffs have the original letter and envelope mailed to them via U.S. Mail.

denied a loan modification in September 2010 due to not submitting documents, Mr. McDaniel provides an alternate reason in this letter. According to Mr. McDaniel, the Echeverrias documentation was indeed received several times and nothing was ever lost or misplaced. Financial information was provided to BANA in order to pre-qualify and was submitted consistently for many months. Mr. McDaniel states that more documentation was requested on August 13, 2010 and was not received. Mr. McDaniel also provides false information about the Plaintiffs' payments and that Bank of America did not receive an authorization form from the Echeverrias in order to consult with their attorney thereby justifying the constant harassment against the Plaintiffs while they had legal representation. The Echeverrias submitted this authorization form twice since April 2010. Mr. McDaniel also states that the Plaintiffs' credit would be affected during the loan modification process. However, the plaintiffs were unaware of such long-term damage or that it would never be repaired especially since they were instructed to default in order to fully meet the "hardship" criteria. All this time, the Echeverrias actually thought that they were dealing directly with Bank of America and the Office of the President and CEO. Nonetheless, this was all part of the Defendants' scam.

100. Shortly after receiving this deceitful letter from, who the Plaintiffs believed was from Bank of America's "Office of the President", Congressman Posey forwards a letter addressed to him from the OCC to the Plaintiffs<sup>30</sup>. The OCC states that according to the investigation and information provided by Bank of America, they concluded that the Echeverrias did not qualify due to their mortgage expenses being too low. The Plaintiffs were never advised of such a thing after pre-qualifying, not even in the denial letter dated September 24, 2010. The Plaintiffs pre-qualified for the loan modification because they met the criteria financially. So far,

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<sup>30</sup> See Exhibit E, letters from Bill Posey specifically dated December 6, 2010.



three different excuses have been given for not completing a loan modification for the Plaintiffs. These reasons are generic excuses that Bank of America has utilized to unfairly deny loan modifications to homeowners like the Plaintiffs who clearly qualified. Nonetheless, the OCC decided to close the case due to Bank of America's maliciously deceitful responses to the investigation. No one involved actually knew that BANA had instructed third parties to impersonate them during these investigations.

101. Mrs. Santamaria was so disgusted with Bank of America's Office of the President's (still believing that she was actually communicating with the Office of the President) responses that she decided to write a letter back to Scott McDaniel and mailed it certified mail on December 8, 2010 and another letter to both the OCC and Congressman Posey expressing the fraudulent behavior by Bank of America. However, the Echeverrias were unaware that a concealed scheme which involved third parties impersonating Bank of America was also behind this fraudulent behavior. The Echeverrias never received a response back from Mr. McDaniel or the fallacious "Office of the President and CEO".

102. Days after receiving the fraudulent letter from Scott McDaniel and the so-called Office of the President and CEO, Mrs. Santamaria receives a copy of the letter that Scott McDaniel addressed to the Echeverrias from Congressman Posey via U.S. mail. Along with this November 24, 2010 letter which was already received by the Plaintiffs was a copy of a questionnaire-type letter from Bank of America's Scott McDaniel, Office of the President, also dated November 24, 2010 and addressed to the OCC and forwarded to Congressman Posey. The Echeverrias never received a copy of this questionnaire from Bank of America, they only received the four (4) page letter. In this questionnaire there are several malicious

misrepresentations that were clearly not intended for the Echeverrias to see<sup>31</sup>. After formally being denied a loan modification on September 24, 2010, Bank of America now states several times that the plaintiffs are still “under review” for a loan modification and that the investor has not yet been contacted after several months. Mrs. Santamaria was told in early 2010 by Bank of America that they were awaiting for a response from the investor. Nowhere in this questionnaire addressed to the OCC, did any of the named enterprise Defendants disclose that they were in fact a third party and not Bank of America in furtherance of this fraudulent scheme.

103. On December 17, 2010, Mrs. Santamaria submits another complaint against Bank of America via the OCC website and asked for an appeal.

104. On January 25, 2011, the Echeverrias received a call from (877) 498-7226 at 6:59 pm est. This call was from Gloria Perez of Bank of America’s Office of the President. Mrs. Santamaria answered the call but gave the phone to her husband Plaintiff Abdiel Echeverria. Mr. Echeverria was informed by Ms. Perez that she was calling from Bank of America’s “Office of the President and CEO” to offer them a Special Forbearance. However, Bank of America’s so-called “Office of the President and CEO” [which in reality was Carlisle & Gallagher’s Scott McDaniel] had already advised the OCC that the Echeverrias were already in a forbearance plan that the Plaintiffs were not even aware of. The OCC dropped the investigation due to these false allegations made by those impersonating Bank of America. These instructions and information were misleading and deceptive when they were given. Bank of America was not only aware of these claims against the Plaintiffs but in fact instructed them to be carried out. Unbeknownst to the Echeverrias until very recently, Ms. Perez was not calling from BANA’s “Office of the

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<sup>31</sup> Please see December 1, 2010 Letter from the OCC addressed to Congressman Bill Posey attached to Bank of America’s responses to the OCC as questionnaire-type answers labeled as Exhibit C.

President and CEO” and did not even work for Bank of America, she was calling from Urban Lending Solutions.

105. More recently on November 15, 2013, a Bloomberg reporter contacted Plaintiff Isabel Santamaria regarding her experience with Bank of America’s Office of The President and CEO. During the next few weeks, Mrs. Santamaria provided several documents to the reporter further substantiating her claims for the investigation. Mrs. Santamaria initially thought that the reporter was only investigating the Office of the President’s accountability for maliciously neglecting homeowners which in reality is horrid enough. During this investigation, Bloomberg’s Hugh Son spoke to several sources and even spoke to Bank of America’s spokesperson Dan Frahm. However, the Echeverrias were shocked to learn on Friday, December 13, 2013 that their communications with Bank of America’s Office of the President and CEO were bogus and fraudulent to the Plaintiffs’ detriment.

106. According to Bloomberg’s investigation<sup>32</sup>, Bank of America’s Scott McDaniel from the “Office of the President and CEO” was actually employed by Carlisle & Gallagher Consulting Group, Inc., contracted by Bank of America (“BANA”) and authorized to use BANA’s company stationary in furtherance of this fraud. All written communications that the Echeverrias, the OCC, Attorney General Bill McCollum and Congressman Bill Posey received via U.S. mail from Carlisle & Gallagher’s Scott McDaniel were on “official” Bank of America letterhead stationary with BANA’s main head quarter’s address of 100 North Tyron Street, Charlotte, NC 28255-0001 on it. Nowhere in this mailed communication did Mr. McDaniel or Bank of America disclose to the Plaintiffs or those investigating their claims that they were dealing with a third party and not Bank of America. These statements, made over the

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<sup>32</sup> See Bloomberg article “Secret Inside BofA Office of CEO Stymied Needy Homeowners”, Exhibit A.

wires, were knowingly and intentionally misleading and deceptive in light of Defendants' loan-modification scheme enterprise designed to delay or deny HAMP modifications by also misleading homeowners to believe that they were in contact with BANA and not outside vendors. Not only were the Plaintiffs fooled, governmental and regulatory agencies conducting an investigation were also misled and deceived by Bank of America's fraudulent scheme via wire and mail.

107. Dan Frahm, Bank of America spokesperson, issued a defamatory statement to Bloomberg stating that the Echeverrias did not submit paperwork for a loan modification thereby making the Plaintiffs appear responsible for having been denied a loan modification. This false statement was damaging to the Plaintiffs' reputation and may also jeopardize the Plaintiffs. However, Frahm did confirm that Scott McDaniel was not in fact employed by Bank of America but was indeed employed by Carlisle & Gallagher Consulting Group, Inc., one of the companies alongside Bank of America that is carrying out this racketeering scheme. The Plaintiffs were unaware of this scheme against them and other homeowners. This information was misleading and deceptive when they were given. The Echeverrias and other homeowners relied on the Defendants' misrepresentations and acted upon them in reliance.

108. Defendant BANA should have disclosed to all those involved, including governmental officials representing the Plaintiffs and other homeowners, that communications were being handled through their outside vendors and that they were being represented by other companies but instead BANA authorized the use of official Bank of America stationery and the issuing of fake job titles in order to intentionally mislead thousands into believing that they were in contact with BANA or BANA's Office of the President and CEO in furtherance of this racketeering scheme. Nonetheless, BANA instructed the third party vendors on what to do to

violate what they took government money to do. Thus, these instructions were misleading and deceptive when they were given.

109. The Bloomberg investigation released on December 16, 2013, also brought to light many other fraudulent acts that could be considered “criminal” against the Plaintiffs and other homeowners. The Plaintiffs were beyond horrified when they learned of the scheme perpetrated against them by Bank of America and its co-conspirators. For example, Urban Lending’s staff, struggling to meet quotas, resorted to falsifying records and improperly purging complaints, the people said. They sent letters containing inaccurate statements on Office of the CEO and President stationery to lawmakers and U.S. agency officials who sought assistance on behalf of borrowers, the former employees said<sup>33</sup>. The Plaintiffs were victims of this fraudulent scheme. These instructions and information were misleading and deceptive when they were given. U.S. regulatory agencies and agency officials such as Congressman Bill Posey, Attorney General Bill McCollum, the OCC, the Echeverrias and other homeowners relied on the Defendants’ misrepresentations and acted upon them in reliance.

110. Erik Schnackenberg, a customer-service manager who left Urban Lending in 2011 and other employees, contacted Bloomberg because they were distressed with what they saw. “Everyone knew that we weren’t helping people,” said Erik Schnackenberg. He continued by saying “They were giving us all the pressure and none of the power to change anything. It was this absurd, self-contained ecosystem of worthlessness.” Schnackenberg also stated that many of those hired at Urban to assist BANA were at times former assistant managers for fast food restaurants and were now engaging the task of trying to take care of complex, aged files. “It was a recipe for failure for homeowners”, said Schnackenberg. Clearly, by the lack of proper and

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<sup>33</sup> See Bloomberg article “Secret Inside BofA Office of CEO Stymied Needy Homeowners”, Exhibit A, page 2.

qualified staff, Bank of America and Urban were not interested in helping homeowners with loan modifications. The Plaintiffs were unaware of this scheme against them and other homeowners.

111. Quoting Bloomberg's investigation<sup>34</sup>, Moynihan called on outside vendors, who hired an army of employees peaking at almost 17,000 to deal with the failing loans. One was Pittsburgh-based Urban Lending, which had been doing title work for Bank of America since 2007. The vendor also serviced mortgages for MetLife Inc. and SunTrust Banks Inc. Urban Lending expanded in Colorado after winning the Bank of America contract, moving into a five-story brick building in Broomfield with views of the Rocky Mountains. Obviously, this scam has been very lucrative. Urban also had a warehouse in Broomfield, Colorado for processing documents from tens of thousands of HAMP applications. There, unopened mail was stacked to the ceiling, said three people who spent time at the warehouse. Time-sensitive documents such as pay stubs grew stale, and paperwork was scanned into computer systems late or partially, triggering loan-modification rejections, the people said. Obviously, among those disregarded documents were the Echeverrias' personal financial documents.

112. Under pressure from Bank of America managers to close cases, Urban Lending workers resorted to shortcuts, six people said during the investigation. Those "shortcuts" included "forging" power-of-attorney letters or removing notations that a customer hired a lawyer, making it easier to close files. That would explain why Bank of America would completely ignore the fact that the Plaintiffs had legal representation to assist them. Employees also falsified records to show late-night conversations with borrowers that didn't happen, the people said. Bank of America used ex-Countrywide managers to push Urban Lending to meet its goals, according to the former employees. One of them was Rebecca Mairone, the only

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<sup>34</sup> See attached Exhibit A, Bloomberg article featuring Plaintiffs Isabel Santamaria and Abdiel Echeverria: "Secret Inside BofA Office of CEO Stymied Needy Homeowners", page 3.

individual named in the government's first mortgage lawsuit from the financial crisis to reach trial and helped create Bank of America's HAMP policies as the firm's lead default-servicing executive.

113. At the office in Broomfield, Colorado, Urban Lending employees examined every letter from lawmakers to determine which were computer-generated and which were signed by a human, according to four former employees. The handwritten ones got special attention and were called wet signatures, they said. The others were referred to as dry. Letters from federal and regulatory agencies such as the OCC and letters from governmental leaders such as Attorney General Bill McCollum and Congressman Bill Posey<sup>35</sup> were analyzed and responded to with false communications and misrepresentation from Urban and Carlisle & Gallagher at the direction of Defendant Bank of America in furtherance of the fraud by this racketeering enterprise. Furthermore, this would be clearly an indication of "obstruction of justice" committed by the Defendants. The Plaintiffs were unaware of this scheme against them and other homeowners until recently in December 2013.

114. Urban recruits were told during six-week introductory training sessions that they were being paid \$16 to \$18 an hour to help American homeowners keep their homes. This reason was indeed fallacious. It definitely seems that this scheme was very profitable for Bank of America, Urban Lending, Carlisle & Gallagher and all other third party contractors involved since these employees were being paid extremely well. This pay also seemed to motivate workers to keep quiet and content so that they would not lose these higher paid salaries or their jobs. These well paid jobs facilitated the fraud to continue against homeowners such as the Plaintiffs.

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<sup>35</sup> See attached letters from Bill Posey to Plaintiffs as Exhibit E.

115. Another disturbing part of this scheme was the apparent “generosity” given to frustrated Bank of America homeowners. Three former workers voiced that employees had a monthly ration of gift cards they could give to BANA customers valued at \$25 and \$50. These gift cards were given at times to “soothe” customer’s frustrations due to loan modification delays. The employees often joked that the gift cards will be enough to buy “moving boxes”. They were all aware of Bank of America’s scheme to foreclose on homeowners instead of assisting them. However, the Plaintiffs relied on the instructions given and relied upon them not knowing at the time that they were actually another “joke” to all those involved.

116. The Plaintiffs were unaware for almost 2 years that the “uncollected costs” of \$100.00 that were being assessed as fees on all the Notices of Intent to Accelerate dated as far back as January 6, 2010, were indeed “vacant property fees”. Clearly, Bank of America had targeted the Plaintiffs’ mortgage for foreclosure without the Plaintiffs’ knowledge. Oblivious to these facts, the Plaintiffs continued to make their payments and were in the loan modification process when this occurred. In furtherance of the fraud, these instructions by the Defendants were misleading and deceptive when they were given.

117. The Defendants “conducted or participated in the conduct of the ‘enterprise’s affairs”. As a result of the enterprise that the named Defendants orchestrated, the Echeverrias lost valuable time, endured unnecessary stress and economic loss relying on a loan modification that that never existed and if it did, would have taken no more than two months to complete.

118. Defendants repeatedly used mail and wire to issue “knowingly” false communications to the Echeverrias and other homeowners regarding their loan modifications, the status of the loan modification and who was actually responding to the Plaintiffs’ loan modification request, just as Defendants did with thousands of other borrowers pursuant to their



loan modification scheme. Bank of America not only was aware but in fact instructed entities such as Urban and Carlisle & Gallagher to impersonate Bank of America in order to mislead unsuspecting homeowners such as the Plaintiffs. Unaware of all the parties involved and that this was a well-planned scheme, the Plaintiffs relied on these statements and the Defendants knew that they would do so.

119. Forcing a homeowner into default by misrepresenting the HAMP requirements and then dragging them through a fraudulent modification scheme to collect government funds and foreclose instead of modifying (as seen in the BANA and Urban employee affidavits) to profit, is not only evil, it is illegal. With these reckless and malicious acts, the enterprise had a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose. The Defendants functioned as a continuing unit and remained in existence long enough to pursue the course of conduct. The enterprise had a “separate” or “ascertainable” structure distinct from the pattern of racketeering activity. Defendant BANA knowingly and maliciously sent fraudulent responses to Plaintiffs’ legitimate disputes over U.S. Mail and wire with the intent to permanently deprive the Plaintiffs of the right to the property and to appropriate the property to their own use and financial gain.

## **VI. COUNTS**

### **COUNT I**

#### **THE FLORIDA CIVIL REMEDIES FOR CRIMINAL PRACTICES ACT**

#### **(“FLORIDA RICO ACT”)**

120. Plaintiffs re-allege and incorporate paragraphs 1 through 119 above.

121. This is an action for damages pursuant to Florida’s Civil Remedies for Criminal Practices Act, § 772.101, *et seq.*, *Fla. Stat.*

122. At all times material, as set forth above and herein, all named Defendants' acts and practices are and were unlawful under § 772.103(4), because Defendants were and are all "employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity."

123. The allegations contained herein as "Count I" are a separate and distinct legal remedy brought pursuant to Florida Statute § 772.101-§ 772.104, and "Count I" is brought to or in the alternative to other Counts in this Verified Complaint.

124. Since at least the year 2010, to the present, the affiliation between BANA, Urban and Carlisle & Gallagher constituted an enterprise. Defendants conducted and participated in that enterprise's affairs through a pattern of racketeering activity consisting of numerous and repeated uses of the interstate mails and wire communications to execute a scheme to defraud, all in violation of the Florida RICO Act.

125. The federal and Florida RICO statutes, and the accompanying Florida Civil Remedies for Criminal Practices Act, impose civil liability on persons who conduct or participate in an enterprise through a "pattern of racketeering activity." "It shall be unlawful for any person employed by or associated with any *enterprise* engaged in, or the activities of which affect, interstate or foreign commerce, *to conduct or participate*, directly or indirectly, *in the conduct of such enterprise's affairs* through a *pattern of racketeering activity*. Predicate Acts such as wire and mail fraud and obstruction by committing fraud against regulatory and governmental agencies conducting investigations on behalf of homeowners, were committed within a ten year period by the named Defendants in this case. These predicate acts are related because they "have the same or similar purposes, results, participants, victims, or methods of commission, or

otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J. Inc. v. Northwestern Bell Telephone Co.*

126. The RICO enterprise, which engaged in, and whose activities affected interstate and foreign commerce, was comprised of an "association-in-fact" of entities and individuals that included Bank of America, N.A., and its subsidiary BAC Home Loans Servicing, LP, Urban Settlement Services, LLC, Carlisle & Gallagher Consulting Services, Inc. along with several of their respective employees and officers, including Scott McDaniel, Gloria Perez, John Beranich, Robbie Nicholson, Ken Scheller, Patricia Felch, Rebecca Mairone, David Swain, and Jinja Martin.

127. The named Defendants committed a "pattern" of racketeering by committing at least two predicate acts against the Plaintiffs and other homeowners in similar circumstances with a common purpose. Bank of America engaged in a pattern of racketeering activity through an enterprise that includes more than itself or its subparts.

128. The predicate acts alleged are connected to one another and establish a "threat of continued racketeering activity" projecting into the future and has become a regular way that this enterprise conducts its business. The conduct establishes unlawful acts in which the "defendants have treated other individuals or entities in the same *illegal* manner" alleged by the Plaintiffs. Therefore, the open-ended continuity has been established throughout this Complaint.

129. The structure of the enterprise is well-defined; with each enterprise member having an apparent and ostensible legitimate position within an apparent legitimate company structure serving some purpose in the mortgage business, yet each member of the enterprise operates for the fraudulent purpose of the RICO enterprise.

130. Each Defendant played a role in management or operation of the scheme perpetrated through Bank of America and each did so knowingly.

131. The members of the RICO enterprise all had a common purpose and conspired together to violate the Florida RICO Act by using the U.S. Mail, commercial interstate carrier such as FedEx and by wire or other interstate electronic media for the purpose of executing a scheme to defraud by means of false pretenses, representations and promises.. The Defendants collectively agreed upon the same criminal objective, to wit: to extend as few permanent HAMP modifications as possible while providing BANA a justification for foreclosures to claim that borrowers had not fulfilled their trial-payment agreements or were otherwise ineligible for HAMP modifications, all while misleading homeowners into believing that they were in direct contact with Bank of America and Bank of America's Office of the President and CEO. At BANA's direction and with BANA's full knowledge, Urban instructed its employees to close borrowers' claim modification files without an adequate investigation and to mislead said customers into believing that they were in contact with Bank of America and/or Bank of America's Office of the President. Each is responsible for the actions of the others.

132. The enterprise was also forged by the relationships among those associated with it. Through their respective employees, BANA, Urban and Carlisle & Gallagher coordinated their activities to frustrate the HAMP process and customer complaints and limit the number of homeowners who obtained permanent loan modifications, while maintaining the appearance of compliance to regulators and the public. BANA directed that Urban and Carlisle & Gallagher employees identify themselves as being from Bank of America – typically from the “Office of the President.” Urban & Carlisle & Gallagher employees were given titles and email addresses suggesting that they were employed by Bank of America to create the false impression to

borrowers that they were speaking to and corresponding with BANA when, in fact, they were interacting with Urban or Carlisle & Gallagher employees. Unbeknownst to the Plaintiffs and other homeowners, after making homeowners believe that they were receiving special attention from Bank of America's Office of the CEO and President, BANA would deny modifications, claiming that the information (which most was residing with Urban) had not been received.

133. This RICO enterprise has remained in existence for several years, enabling its members to pursue the enterprise's purpose. BANA, Urban and Carlisle & Gallagher conducted and participated in the affairs of this RICO enterprise through a pattern of racketeering activity that began no later than 2010, and possibly even sooner, which continues through the present and has consisted of thousands (or possibly tens of thousands) of acts in the state of Florida of mail fraud and wire fraud under Fla. Stat. §895.03(3) (2001) (Florida's RICO statute).

134. The Defendants were aware of this scheme and actively participated in it by, for example, misrepresenting Urban and Carlisle & Gallagher employees as BANA employees and by establishing delaying tactics that would guarantee that as few borrowers as possible would receive their loan modifications and thereby made the Plaintiffs and other homeowners rely on these misrepresentations.

135. The U.S. mail or wire services, including internet, telephone and email were used in furtherance of the scheme. Use of the mail or wire services were either known to BANA, Urban and Carlisle & Gallagher or it was reasonably foreseeable that they would be used for this purpose.

136. Defendants' repeated violations of the federal and state mail and wire fraud statutes, which have all occurred in the last few years, include:

a). Providing instructions over the internet as to the steps a homeowner would need to take to secure a permanent loan modification under HAMP with the knowledge and intent that it would induce homeowners to act in expectation, even though Defendants did not intend to follow the steps stated on their website that would enable homeowners who fulfilled all requirements to obtain a permanent HAMP loan modification when in fact, without the homeowner's knowledge, they were not actually communicating with BANA most of the time.

b). Sending instructions to Plaintiffs and other homeowners by mail, fax, email or internet directing them to provide documents and other information to be considered for a HAMP loan modification on Bank of America stationary, with the knowledge and intent that it would induce homeowners to act in expectation, even though Defendants did not intend to enable homeowners who fulfilled all requirements to obtain a permanent loan modification and knew that the Plaintiffs and other homeowners would rely on these misrepresentations from Bank of America and Bank of America's "Office of the President and CEO".

c). Informing thousands of homeowners via U.S. mail, facsimile (fax), telephone and/or email that their applications were on hold, being reviewed or that they would not receive a permanent modification, because they had not provided necessary financial documents, when in fact the Defendants knew that the homeowners had provided the documents and that they were being misled into believing that they were submitting such documents to Bank of America when in fact they were in contact with outside vendors such as Urban and Carlisle & Gallagher.

d). Intentionally defrauding homeowners such as the Plaintiffs, into relying that they were in contact with only Bank of America or Bank of America's "Office of the President" when in reality their loan modification applications, sensitive financial documents and other complaints were being handled by Urban, Carlisle & Gallagher and other outside vendors

without their knowledge or consent thereby violating the Plaintiffs' and other homeowners rights to react in an alternate way if they had such knowledge.

e). Intentionally defrauding governmental authorities investigating the Plaintiffs' and other homeowners' complaints by providing responses and information to delay or eliminate such investigations. BANA, Urban and Carlisle & Gallagher intentionally submitted false statements through false means by impersonating Bank of America and Bank of America's Office of the President. The OCC, Attorney Generals, Congressmen and all those implied, were mislead to believe that these communications were from Bank of America and Bank of America's "Office of the CEO and President" when in fact they were not. These communications were false and misleading to all those involved and obstructed legitimate investigations.

f). As part of and in furtherance of the scheme to defraud, Urban, BANA and Carlisle & Gallagher would send borrowers' notices and letters on Bank of America stationary by mail, fax, telephone and/or email that information or documentation was missing from the homeowners' modification files when the Defendants knew that the homeowners had provided the information and that the communications were not being investigated or communicated by BANA employees but instead by Urban and Carlisle & Gallagher employees who were trained to lie to homeowners and impersonate Bank of America employees.

g). As part of and in furtherance of the scheme to defraud, Urban and Carlisle & Gallagher employees falsely held themselves out to BANA customers and to the public by mail, fax, telephone and/or email as being employees and executives of BANA and gave homeowners the false impression that they were speaking to and corresponding with BANA executives from the "Office of the President."

137. These thousands of violations constitute a pattern of racketeering. They are related in that they share the same purpose of defrauding homeowners, involve the same participants, victims and methods of commission. And because of the Defendants' large-scale criminal activities occurred over a period of several years and are continuing unabated, they amount to or pose a threat of continued criminal activity.

138. Each of the Defendants associated with the RICO enterprise knew of the existence of the enterprise and its related activities. BANA, through its designated officers and employees, devised the loan-modification scheme by instructing their co-conspirators such as Urban and Carlisle & Gallagher to impersonate BANA and BANA coordinated with Urban and Carlisle & Gallagher to carry it out. Individual Defendants oversaw, directed, and managed various aspects of the scheme, including authorizing Urban employees to employ unscrupulous methods to reduce the number of borrowers who would be granted loan modifications, falsify documents in the system when federal agencies would investigate, falsify titles that did not exist for the employees who were submitting the communications<sup>36</sup> and reprimanding those employees who objected or those who exposed their true identity.

139. BANA, Urban, Carlisle & Gallagher and their employees conducted and participated in the affairs of the RICO enterprise through a pattern of racketeering activity. Each of the Defendants participated in the enterprise's decision-making or were plainly integral to carrying out the scheme to defraud. Specifically, BANA through its employees, including Scheller, Mairone, Nicholson, Martin, Felch, and Swain, set up the process for approving the loan modifications to ensure that the vast majority of applications would not result in permanent modifications and that these applications and personal information of the homeowners would be

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<sup>36</sup> Such as "Customer Advocate" of Bank of America's Office of the CEO and President when said employee (i.e. Scott McDaniel) held no such title and was not employed by BANA. See Exhibit C and D.



submitted to outside vendors without the homeowner's knowledge or consent. BANA and its officers and employees, including Nicholson and Scheller, supervised Urban and coordinated with Urban and its officers and employees, including Beranich, to ensure that the processes were carried out according to their malicious plan.

140. The Plaintiffs are victims of the Defendants pattern of racketeering activity, overt acts and fraudulent scheme. As a direct and proximate cause of Defendant's scheme and conspiracy, the Plaintiffs have been and continue to be injured in their property. In addition to the other injuries mentioned throughout this complaint, Plaintiffs are injured each time Defendant sends Plaintiffs letters demanding exaggerated payments and notices of foreclosure, which would clearly have been avoided if the Defendants would not have concocted this scheme against the Plaintiffs and other homeowners. The Plaintiffs were also injured every time they submitted payments to Defendant BANA and its co-conspirators when said loan modification payments were never utilized for said purpose and most were not credited as such. Defendants' conduct has directly and proximately caused a loss of property resulting in a legally cognizable injury to the Plaintiffs for which relief is appropriate.

141. As such, the RICO Defendants have violated Fla.Stat. sec. 772.103(1), (2), (3), and (4), with said Defendants' actions:

(a) having the same intent (that being to obtain, through a pattern of fraud, fraudulent activity, and false pretenses, with the intent of depriving said homeowners of monies and real property from innocent and unknowing homeowners and rightfully the property thereof);

(b) ultimately having the same results (that being substantial harm to homeowners' credit; the wrongful foreclosure of homeowners' real property to further the enterprise of the RICO Defendants);

(c) having the same victims (homeowners requesting loan modifications); and

(d) having the same methods of commission (that being fraud, false pretenses, obstruction, wire and mail fraud).

142. The Plaintiffs are entitled to judgment in the amount of three times their actual damages alleged in this complaint herein, plus costs and reasonable attorney fees.

## **COUNT II**

### **BREACH OF CONTRACT**

142. Plaintiffs re-allege and incorporate paragraphs 1 through 119 above.

143. The following breach of contract claim is pertaining to Defendant Bank of America.

144. In January 2010, the Plaintiffs and Defendant Bank of America officially entered into a legally enforceable loan modification contract in which the Plaintiffs submitted and signed all required documents and were received by BANA on February 5, 2010. The Plaintiffs complied with all requirements of said contract. However, Defendant Bank of America had other plans. Bank of America, in violation of the contract, utilized outside sources to fulfill such obligations without the knowledge of the Plaintiffs.

145. It was always the Plaintiffs understanding, until recently, that the contractual obligations would be handled by Bank of America's subsidiary BAC Home Loans Servicing, LP and only Bank of America or their subsidiary BAC as the alleged servicer of the loan<sup>37</sup>. Nowhere in this written loan modification agreement documents or verbally was it ever disclosed to the Plaintiffs that their loan modification or their documents would be handled by any third parties. This agreement clearly states that all documentation is to be returned to BAC Home Loan Servicing, LP ("Bank of America"). Nowhere on any of these documents does it stipulate or

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<sup>37</sup> Please see attached Loan Modification agreement documents from Bank of America to Plaintiffs, "Exhibit F"

advise the Plaintiffs that they would be dealing with any “third parties” in regards to this loan modification or that these third parties would impersonate Defendant BANA. The Plaintiffs herein had no prior knowledge of this breach.

146. In breach of this contract, Defendant Bank of America instructed the Plaintiffs to submit signed applications and their personal and financial documents to Urban Lending Solutions and Carlisle & Gallagher without their knowledge or consent. If Plaintiffs would have been aware of this fraudulent breach of contract and trust, Plaintiffs would have clearly taken an alternate route or demanded that the Defendant Bank of America specifically fulfill their contractual obligations with the Plaintiffs herein.

147. The Plaintiffs’ attorney was never advised that the Plaintiffs were submitting sensitive personal information to third parties who were hired to intentionally lose the Plaintiffs’ valuable documents and deny or destroy all contractual obligations with the Plaintiffs. As far as the Plaintiffs and their counsel were concerned, the Plaintiffs were submitting documentation and communicating only with Defendant Bank of America which was not the case.

148. The Plaintiffs have established the elements for this breach of contract:

- there is a contract;
- a breach of that contract occurred;
- damages resulted from the breach; and
- There are no valid defenses for the breach.

149. Due to Defendant Bank of America’s deliberate breach of its contractual obligation with the Plaintiffs to fulfill their loan modification agreement and by not disclosing any third parties involved, the Plaintiffs have suffered damages which would have not occurred if the Defendant Bank of America would have fulfilled their contractual obligations with the Plaintiffs named herein. Plaintiffs are entitled to obtain back from Defendant Bank of America the

payments that were made to Bank of America by the Plaintiffs in good faith under the workout agreements which were not credited for that purpose. The Plaintiffs lost a considerable amount of money, loss of retirement funds with penalties and taxes from withdrawals, damaged credit<sup>38</sup>, and other foreseeable and unliquidated damages by fulfilling their contractual obligations while the Defendant intentionally breached its contractual obligations with the Plaintiffs.

### COUNT III

#### **FRAUD IN THE INDUCEMENT**

150. Plaintiffs re-allege and incorporate paragraphs 1 through 119 above.

151. The following fraud in the inducement claim is pertaining to Defendant Bank of America (BANA).

152. In November 2009, Plaintiffs missed a payment after being told by Defendant Bank of America that it was “necessary” for them to default in order to prove hardship for a loan modification because now they had already met all other financial requisites for a loan modification. These instructions seemed reasonable to the Plaintiffs at the time. The Plaintiffs consequently missed their November 2009 payment for what they were led to believe would ultimately benefit them in getting approved for a loan modification<sup>39</sup>.

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<sup>38</sup> See Exhibit G, page 3, (BANA letter to Plaintiffs’ attorney) where Defendant BANA clearly states that the loan is currently “delinquent” (even though the Plaintiffs were induced by BANA to miss a payment) and that BAC (Bank of America) will continue to report all delinquencies to the credit reporting agencies thereby causing long-term injury to the Plaintiffs. BANA also states that the Plaintiffs have missed “multiple” payments which is clearly inaccurate. Since the Plaintiffs were fooled and deceived, there was no chance that their credit would ever be spared or repaired after the damage caused.

<sup>39</sup> If a tort claim alleges that the defendant intentionally lied prior to the execution of a contract (i.e. loan modification agreement) in order to induce the plaintiff to enter into the contract, and the plaintiff justifiably relied on the lie, a claim is stated without regard to the contract or its terms. (*See, e.g., Puff 'N Stuff of Winter Park, Inc. v. Bell*, 683 So. 2d 1176, 1180 (Fla. 5th D.C.A. 1996).

153. In January 2010, Plaintiffs were told by BANA that the default was now registered in their system and they now fully met the criteria for a loan modification. The Plaintiffs were pre-approved for a loan modification at that time.

154. In January 2010<sup>40</sup>, Plaintiffs were advised by Defendant Bank of America to continue making their regular payments even though the Plaintiffs were struggling to do so. As difficult as it was, the Plaintiffs continued to make their monthly payments on time. Unbeknownst to the Plaintiffs, many loan modification payments were applied as “foreclosure fees” and recent documentation confirms this<sup>41</sup>.

155. In January 2010, the Plaintiffs officially began submitting personal and financial documentation to Defendant Bank of America (BANA) as instructed.

156. On December 13, 2013, Plaintiffs discovered through an investigation of their case that Bank of America’s loan modification promises were all a farce and were concocted as a scheme against the Plaintiffs and other homeowners with the hopes that the Plaintiffs and others will follow these instructions to their detriment. The investigation and other evidence has shown that the Plaintiffs were fooled into believing that they were communicating with BANA’s “Office of the President and CEO” when in reality, third parties were used in furtherance of the fraud. The Plaintiffs could not have reasonably discovered this evidence in 2010 and only became aware of this fraud recently in 2013 as established in this complaint.

157. Even though Plaintiffs fulfilled their obligations to obtain a loan modification and were told that they would qualify if they did so, Plaintiffs were formally denied a loan modification on September 24, 2010 in furtherance of their injuries.

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<sup>40</sup> A “cause of action accrues when the *last element* constituting the cause of action occurs” when computing whether the statute of limitations has expired or not (Fla. Stat. § 95.031(1)).

<sup>41</sup> See October 2, 2013 letter from BANA, page 3 labeled as Exhibit H.

158. Plaintiffs were not aware that a loan modification never existed and that BANA was utilizing third parties to impersonate them thereby giving the Plaintiffs and all others involved the appearance of legitimacy as alleged in this Complaint. The Plaintiffs were induced to default, to continue making high payments that they could no longer afford and to continue to communication with a “make believe” Bank of America Office of the President. The Plaintiffs were never given a reduced payment amount and were just strung along as much as possible in order for the Defendant to milk as much money from the Plaintiffs as possible and assess as much fees as possible.

159. BANA had an unfair and fraudulent pattern on inducing and directing borrowers to fall behind on their payments with the promise that by doing so, they would become eligible for a loan modification. Relying on these representations, Plaintiffs fell behind on their loan payments, but were ultimately denied a loan modification. The Plaintiffs were induced into a “bogus” contract with the hopes that they would receive a loan modification that never existed in the first place. The Plaintiffs lost valuable time, money and personal possessions in this scam instead of allowing them to pursue different options and watched their equity completely slip away.

160. The Plaintiffs’ credit was seriously destroyed by Defendant Bank of America as a consequence of this fraud.

161. The elements necessary to state a cause of action for fraud in the inducement are 1) a false statement concerning a material fact, 2) knowledge by the person making the statement that the representation is false, 3) intent by the person making the statement that the representation will induce another to act upon it, and 4) reliance on the representation to the injury of the other party. *Mettler, Inc. v. Ellen Tracy, Inc.*, 648 So.2d 253 (Fla. 2d DCA 1994).

162. As previously stated, BANA made a false statement concerning a material fact which was sufficiently important to the Plaintiffs and Defendants that it influenced a decision. The false statement was intentional and part of a deliberate scheme to defraud. The false statements were made recklessly; that is, with complete disregard for truth or falsity. As stated throughout this complaint, there is more than sufficient evidence that the Defendant BANA knew that the Plaintiffs would not get a loan modification and knew that the Plaintiffs would act upon their false instructions. Again, Plaintiffs were not aware of this scam until recently.

163. Bank of America (BANA) clearly instructed their employees and agents to instruct homeowners to miss payments and used other methods of falsity to induce the Plaintiffs and other homeowners to act upon these fallacies knowing that they were indeed false when they were told.

164. The Defendant's actions were deliberate and systemic.

165. The Plaintiffs relied on the Defendant's misleading and false material statements. Plaintiffs could have considered other options if they would have known that these representations were false but instead relied on these statements. The Plaintiffs have suffered numerous damages<sup>42</sup> as alleged throughout this Complaint and will continue to do so due to Defendant BANA's misrepresentations.

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<sup>42</sup> The tort of fraud in the inducement opens up the possibility of punitive damages. "The overwhelming weight of authority in this state makes it clear that proof of fraud sufficient to support compensatory damages necessarily is sufficient to create a jury question regarding punitive damages." See *First Interstate Dev. Corp. v. Ablanado*, 511 So.2d 536 (Fla. 1987).

## **COUNT IV**

### **FRAUDULENT CONCEALMENT**

166. Plaintiffs re-allege and incorporate paragraphs 1-119 above.

167. Urban and Carlisle & Gallagher, at the direction, behest, and on behalf of the Conspiracy of Defendant Bank of America (BANA), intentionally concealed the material facts alleged above in order to induce Plaintiffs reliance into entering into loan modification agreement with BANA.

168. Plaintiffs did in fact rely on the non-existence of the concealed facts in deciding to enter into any contract with Bank of America. Had Plaintiffs known the truth, they would not have entered into the loan modification and would have opted for a different avenue.

169. Defendants had exclusive knowledge of the truth. Their scheme was built on keeping their borrowers (Plaintiffs herein) in the dark.

170. Instead of misleading the Plaintiffs into believing that a loan modification was highly likely when it was all a scam, and that the Plaintiffs were in contact at all times with Defendant Bank of America or its subsidiary BAC Home Loans Servicing, LP, Defendants had a duty to disclose such material information but intentionally failed to do so. As a result of such concealment, Plaintiffs were injured and incurred damages as described in this cause of action as set forth above specifically in Paragraphs 90, 91, 92, 93, 94 and 140.

171. Further, without limiting the damages as described elsewhere in this Complaint, Plaintiffs damages arising from this Cause of Action also include loss of equity in their home, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.



172. These harms were both known and foreseen, if not intended, by the Conspiracy of Defendants.

173. Defendants' intentional, wide-scale, fraudulent conduct also merits the imposition of punitive damages. Plaintiffs respectfully request the award of such punitive damages and any other relief this court shall deem just and proper.

#### **COUNT V**

##### **RESERVATION TO SEEK PUNITIVE DAMAGES**

174. Plaintiffs re-allege and incorporate paragraphs 1-119 above.

175. Plaintiffs reserve the right to seek punitive damages against all named Defendants upon a showing of evidence pursuant to Florida Statute § 786.72.

#### **COUNT VI**

##### **JURY TRIAL DEMANDED**

176. Plaintiffs re-allege and incorporate paragraphs 1-119 above.

177. Plaintiffs demand trial by jury on all issues so triable as per Rule 1.430.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. Enter a judgment declaring the acts and practices of BANA, Urban and Carlisle & Gallagher complained of herein to constitute fraud, together with an award of monetary damages and other available relief on those claims;
- B. Grant a permanent or final injunction enjoining BANA's agents and employees, affiliates and subsidiaries, from continuing to harm the Plaintiffs;

- C. Order BANA to adopt and enforce a policy that requires appropriate training of their employees and agents regarding their duties under HAMP;
- D. Award Plaintiffs the costs of this action, including the fees and costs of experts, along with reasonable attorneys' fees;
- E. Treble damages and the cost of the suit, including attorneys' fees, pursuant to "The Florida RICO Act"; and
- F. Grant Plaintiffs such other and further relief as this Court finds necessary and proper.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated this 18th day of February, 2014.

Respectfully submitted,

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Abdiel Echeverria – Plaintiff (pro se)

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Isabel Santamaria – Plaintiff (pro se)

[REDACTED]  
Palm Bay, Florida [REDACTED]

[REDACTED]  
[REDACTED]  
Email: [REDACTED]

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
BREVARD COUNTY, FLORIDA  
CIVIL ACTION**

**ABDIEL ECHEVERRIA and  
ISABEL SANTAMARIA**

**Plaintiffs,**

**JURY TRIAL DEMANDED**

**BANK OF AMERICA, N.A., URBAN  
SETTLEMENT SERVICES d/b/a URBAN  
LENDING SOLUTIONS and CARLISLE & GALLAGHER  
CONSULTING GROUP, INC.**

**Defendants,**

\_\_\_\_\_ /

**DECLARATION OF ISABEL SANTAMARIA**

I, Isabel Santamaria, declare as follows:

1. I am over the age of 18 and I am otherwise competent to testify to the following based on my own personal knowledge:
2. My allegations in this verified complaint are true and correct to the best of my knowledge.
3. Exhibits labeled B, D, E, H, and I, were mailed via U.S. Mail or FedEx to my address located at: 499 Cellini Avenue NE, Palm Bay, Florida 32907 and were addressed to me and/or to my spouse Abdiel Echeverria. These exhibits are true and correct copies of the originals which I have in my possession.
4. Exhibit F is a true and correct copy of Defendant Bank of America's records and is labeled on the bottom of the page identified in Bank of America's files as BAC-000488 through BAC-000496 (9 pages) and I also possess the envelope where the original loan modification agreement was mailed to me on January 27, 2010. The FedEx envelope copy is also attached to Exhibit F. I also have a true and correct copy of the loan

modification agreement dated January 27, 2010. Even though I had very limited time to complete the forms and gather the requested documents, I mailed this packet along with all requested documents on February 2, 2010 which was received by who I thought was Bank of America but was Urban Lending Solutions on February 5, 2010, the deadline stipulated.

5. Exhibit G is a true and correct copy from Defendant Bank of America's records produced to me and my spouse Abdiel Echeverria in 2012. This is a 3 page copy of BANA's letter to my attorney at the time, Philip Healey, and is labeled on the bottom of the page identified in Bank of America's files as pages BAC-000158, BAC-000159, and BAC-000160.
6. Exhibit C is a true and correct copy of a copy mailed to me by Congressman Bill Posey. Even though I received and still have the original letter mailed by Carlisle & Gallagher's Scott McDaniel (aka Customer Advocate of Bank of America's Office of the President and CEO) addressing my complaints, I never received a copy of the questions answered to the OCC from any named Defendants or the OCC December 1, 2010 letter addressed to Bill Posey regarding the OCC's conclusion of the investigation. These documents were only mailed to me by the Honorable Bill Posey.
7. I was first contacted by Bloomberg's Hugh Son on November 15, 2013 because they were interested in my story which matched their investigative interest regarding Bank of America's mortgage servicing, specifically about people seeking HAMP modifications who were working with the bank's Office of the CEO and President.
8. I was also informed by Bloomberg that they would need several documents including any and all letters from Bank of America's Office of the President and CEO mailed to me, politicians and regulators in which they said blatantly misleading things. I was also asked to provide letters apparently mailed from Bank of America requesting financial documents again, stating that documents were not received or incomplete, that documents were received and any denials for a loan modification. I had such mailings and provided them all to the investigative reporter. I was also in frequent contact with the reporter.
9. I had no prior knowledge until Friday, December 13, 2013 of the results of Bloomberg's investigation which featured my story. At that time, I was advised that I was not in contact with Bank of America's Office of the CEO and President as I believed all along but instead that I was mislead and was actually in contact with Carlisle & Gallagher and Urban Lending Solutions. Also at that time, I became aware that my financial documents were not being handled by Bank of America most of the time and that Gloria Perez was actually employed by Urban Lending Solutions and not Bank of America's Office of the President as she claimed on January 25, 2011. I also became aware that Scott McDaniel

was not employed at all by Bank of America but instead was employed by Carlisle & Gallagher.

10. Bloomberg's report was released on December 16, 2013 and is labeled as Exhibit A to this complaint. I was not aware of the loan modification scam that was committed against me and my spouse, Abdiel Echeverria, before this Bloomberg investigation was initiated and did not know the further details of such until this article was released.
11. I was asked by Defendant Bank of America in November 2009 to default in order to prove hardship which was required for a loan modification as per their instructions. Even though we were having financial difficulties that month, the ultimate decision to miss a payment was to get approved for a loan modification. Due to Bank of America's instructions, I missed one payment in November 2009. I was not in default before these instructions and had a perfect payment record with my previous lender, Taylor, Bean & Whitaker.
12. After we missed our November 2009 payment, we continued to make payments every month. Bank of America states that the last payment credited to our account is for May 2010. We continued to make payments well after that.
13. I was unaware that Bank of America was posting some of my payments in 2010 as "foreclosure fees" until recently in October 2013 as noted in Exhibit H.
14. I have been injured by the Defendants' malicious actions in many ways and continue to suffer damages due to their blatantly malicious actions against me and my family. Other than the exhibits attached showing Bank of America's intentions of destroying our credit and economic future, I also have several documents and reports in my possession that will show the extent of the damages suffered by me and my family due to the Defendants' actions.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE  
AND CORRECT TO THE BEST OF MY KNOWLEDGE.

EXECUTED this 18<sup>th</sup> day of February, 2014 in Palm Bay, Florida.

By: \_\_\_\_\_  
Isabel Santamaria - Plaintiff

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
BREVARD COUNTY, FLORIDA  
CIVIL ACTION**

**ABDIEL ECHEVERRIA and  
ISABEL SANTAMARIA**

**Plaintiffs,**

**JURY TRIAL DEMANDED**

**BANK OF AMERICA, N.A., URBAN  
SETTLEMENT SERVICES d/b/a URBAN  
LENDING SOLUTIONS and CARLISLE & GALLAGHER  
CONSULTING GROUP, INC.**

**Defendants,**

\_\_\_\_\_ /

**DECLARATION OF ABDIEL ECHEVERRIA**

I, Abdiel Echeverria, declare as follows:

1. I am over the age of 18 and I am otherwise competent to testify to the following based on my own personal knowledge:
2. My allegations in this verified complaint are true and correct to the best of my knowledge.
3. I have personal knowledge of all exhibits attached to this verified complaint and have these original exhibits or true and correct copies of such exhibits in my possession.
4. In early November 2009, my wife Isabel Santamaria informed me that she was advised by Bank of America to miss a payment because we were not in default at the time in order to qualify for a loan modification. I agreed and authorized my wife to miss the November 2009 payment so that we could get approved for a loan modification which we desperately needed.

5. We received a loan modification packet in late January 2010 after pre-qualification. I signed all documents requested along with my wife and I witnessed my wife Isabel Santamaria gather all documents requested on the checklist and go to Office Depot on February 2, 2010 to make numerous copies to submit to who we believed was Bank of America. After making said copies, my wife submitted the complete packet along with all documents in the enclosed pre-paid FedEx envelope at Office Depot because they provide that service there. Bank of America requested that these documents be mailed to their location in Pittsburg, Pennsylvania which we now know was Urban Lending Solutions.
6. In order to comply with all payment demands from Bank of America, we sold many of our personal belongings in order to complete payments when we were short. In order to make a payment in the summer of 2010, I also withdrew money from my 401k which caused me to lose thousands of dollars and also pay taxes and penalties on this money. If I would have been aware of any fraudulent behavior, I would not have sold our personal belongings which we were never able to recover again or would not have made a withdrawal from my 401k for which I was penalized and paid taxes for.
7. On January 25, 2011, I personally spoke to Gloria Perez on the telephone and she identified herself as calling from Bank of America's Office of the President and CEO. On this call, Ms. Perez offered me a special forbearance even though Mr. Scott McDaniel had alleged in his letter dated November 24, 2010 that we were "already" in a special forbearance plan. The telephone number listed on the caller id was (877) 498-7226 at 6:59 pm EST.
8. Even though I did not communicate directly with Bloomberg, I did witness telephone and email communications in which my wife provided extensive information and documents.
9. While in a restaurant in Miami on Friday, December 13, 2013, my wife receives a call from the Bloomberg investigative reporter and was told some of the results of the investigation and that the report would be possibly released on Monday, December 16, 2013. My wife was visibly upset and distraught that evening and could not believe the outcome of the investigation. We were totally blind-sided by the scam perpetrated against us.
10. I had no prior knowledge until December 13, 2013 that we were victims of a loan modification scheme perpetrated by Bank of America and third parties Urban Lending Solutions and Carlisle & Gallagher. Prior to this, I had complete faith that all our communications were exclusively with Bank of America and I had no reason to believe otherwise.

11. When the Bloomberg article was released on December 16, 2013, I was able to see with more detail the fraud committed against me and my family. I became aware that Gloria Perez was actually employed by Urban Lending Solutions and that Scott McDaniel was employed by Carlisle & Gallagher. I had no prior knowledge of these impersonations or regarding this scam perpetrated by Bank of America and other third parties in which we were victims of.
12. I was unaware that Bank of America was posting some of our regular payments which were submitted for a loan modification in 2010 as "foreclosure fees" until recently when we received via U.S. Mail a letter from Bank of America dated Oct 2, 2013 (Exhibit H).
13. I have been injured by the Defendants' malicious actions in many ways and continue to suffer damages due to their blatantly malicious actions against me and my family. Other than the exhibits attached showing Bank of America's intentions of destroying our credit and economic future, I also have several documents and reports in my possession that will show the extent of the damages suffered by me and my family due to the Defendants' actions.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE  
AND CORRECT TO THE BEST OF MY KNOWLEDGE.

EXECUTED this 17<sup>th</sup> day of February, 2014 in Palm Bay, Florida.

By: \_\_\_\_\_  
Abdiel Echeverria - Plaintiff