

FILED

2010 JUN - 7 AM 10:23

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

WILLARD K. TOM  
General Counsel  
  
LUCY E. MORRIS  
HEATHER ALLEN  
LYNETTE HOTCHKISS  
lmorris@ftc.gov; hallen@ftc.gov;  
lhotchkiss@ftc.gov  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Tel: (202) 326-3224  
Fax: (202) 326-3768

JOHN D. JACOBS (Local Counsel)  
jjacobs@ftc.gov  
California Bar No. 134154  
Federal Trade Commission  
10877 Wilshire Blvd., Ste. 700  
Los Angeles, CA 90024  
Tel: (310) 824-4343  
Fax: (310) 824-4380

Attorneys for the Plaintiff  
Federal Trade Commission

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
COUNTRYWIDE HOME LOANS, INC.,  
a corporation, and  
  
BAC HOME LOANS SERVICING, LP,  
a limited partnership,  
  
Defendants.

CV10 4193 RSWL SSx

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE  
RELIEF

1 Plaintiff, the Federal Trade Commission ("FTC"), for its  
2 Complaint alleges:

3 1. The FTC brings this action under Section 13(b) of the  
4 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to  
5 obtain permanent injunctive relief, rescission or reformation of  
6 contracts, restitution, the refund of monies paid, disgorgement of  
7 ill-gotten monies, and other equitable relief for Defendants' acts  
8 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
9 § 45(a).

10 **JURISDICTION AND VENUE**

11 2. This Court has subject matter jurisdiction pursuant to 28  
12 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and  
13 53(b).

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

16 **PLAINTIFF**

17 4. The FTC is an independent agency of the United States  
18 Government created by statute. 15 U.S.C. §§ 41-58. The FTC  
19 enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which  
20 prohibits unfair or deceptive acts or practices in or affecting  
21 commerce.

22 5. The FTC is authorized to initiate federal district court  
23 proceedings, by its own attorneys, to enjoin violations of the FTC  
24 Act and to secure such equitable relief as may be appropriate in  
25 each case, including rescission or reformation of contracts,  
26 restitution, the refund of monies paid, and the disgorgement of  
27 ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

1 DEFENDANTS

2 6. Defendant Countrywide Home Loans, Inc. ("CHL") is a New  
3 York corporation with its principal place of business in Calabasas,  
4 CA. CHL transacts or has transacted business in this district.

5 7. Defendant BAC Home Loans Servicing, LP ("BAC Servicing"),  
6 formerly doing business as Countrywide Home Loans Servicing, LP, is  
7 a Texas limited partnership with its principal place of business in  
8 Calabasas, CA. BAC Servicing transacts or has transacted business  
9 in this district.

10 8. Defendants operate a mortgage servicing business that  
11 services millions of home loans annually. Defendants have operated  
12 as a common enterprise while engaging in the unlawful acts and  
13 practices alleged below. Because Defendants have operated as a  
14 common enterprise, each of them is jointly and severally liable for  
15 the acts and practices alleged below.

16 COMMERCE

17 9. At all times material to this Complaint, Defendants have  
18 maintained a substantial course of trade in or affecting commerce,  
19 as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. §  
20 44.

21 NATURE OF ENFORCEMENT ACTION

22 10. This enforcement action is brought to remedy unlawful  
23 acts and practices by Defendants in servicing mortgage loans for a  
24 particularly vulnerable class of consumers: borrowers in financial  
25 distress who are struggling to keep their homes. Many of the loans  
26 serviced by Defendants are risky, high-cost loans that had been  
27 originated or funded by Defendants' parent company, Countrywide  
28

1 Financial Corporation ("CFC"), and its subsidiaries (collectively,  
2 "Countrywide"). When borrowers fall behind on their payments,  
3 Defendants obtain a number of default-related services (such as  
4 property inspections and foreclosure trustee services) by funneling  
5 the work through a panoply of Countrywide subsidiaries. As a  
6 matter of practice, Defendants and the subsidiaries add a  
7 substantial mark-up to their actual costs for the services and then  
8 charge the borrower the marked-up fees. Defendants' marked-up fees  
9 violate the mortgage contract because they exceed the actual cost  
10 of the services and are not reasonable and appropriate to protect  
11 the note holder's interest in the property and rights under the  
12 security instrument. Borrowers do not have any choice in who  
13 performs default-related services or the cost of those services,  
14 and they do not have the option to shop for those services.

15 11. In addition, this action is brought to remedy unlawful  
16 acts and practices by Defendants in servicing loans for borrowers  
17 who are seeking to save their homes through a Chapter 13  
18 bankruptcy. In connection with these bankruptcy cases, Defendants  
19 have made various representations to borrowers about their mortgage  
20 loans that are false or lack a reasonable basis. Defendants also  
21 have failed to disclose to borrowers during their bankruptcy case  
22 when fees and escrow shortages and deficiencies have accrued on  
23 their loan. After the bankruptcy cases have closed and borrowers  
24 no longer have the protection of the bankruptcy court, Defendants  
25 unfairly seek to collect those amounts, including through  
26 foreclosure actions.

1                                    **DEFENDANTS' BUSINESS PRACTICES**

2            12. Prior to July 1, 2008, when Countrywide was acquired by  
3 Bank of America Corporation, Countrywide produced hundreds of  
4 billions of dollars in mortgage loans each year. Defendants, as  
5 Countrywide subsidiaries, have been the mortgage servicer for many  
6 of these loans. In many instances, Countrywide packaged its loans  
7 into mortgage-backed securities and sold them to investors on the  
8 secondary market. Countrywide often retained the right to service  
9 loans it securitized, and Defendants have serviced these loans  
10 pursuant to servicing agreements with the investors. After July 1,  
11 2008, Defendants have continued to service millions of mortgage  
12 loans, including tens of thousands of loans involving borrowers in  
13 bankruptcy and foreclosure. Defendants now do business under the  
14 brand name of "Bank of America Home Loans."

15           13. Many of the loans serviced by Defendants are subprime or  
16 "nontraditional" mortgages such as pay option adjustable rate  
17 mortgages ("ARMs"), interest-only mortgages, and loans made with  
18 little or no income or asset documentation. In recent years,  
19 Countrywide produced an increasing number of such loans, and  
20 Defendants' loan servicing portfolio grew significantly. In March  
21 2008, prior to being acquired by Bank of America Corporation,  
22 Countrywide was ranked as the top mortgage servicer in the United  
23 States and had a servicing portfolio with a balance of over \$1.4  
24 trillion. In September 2009, after its acquisition of Countrywide,  
25 Bank of America was ranked as the nation's top mortgage servicer  
26 with a servicing portfolio of over \$2.1 trillion.

1        14. When a borrower becomes delinquent on a mortgage loan,  
2 mortgage servicers order various default-related services that are  
3 intended to protect the lender's interest in the property. For  
4 example, a mortgage servicer may order a property inspection for  
5 the purpose of verifying the occupancy status of the home. In its  
6 mortgage servicing operation, Countrywide follows a so-called  
7 "vertical integration strategy" to generate default-related fee  
8 income. Rather than obtain default-related services directly from  
9 third-party vendors and charge borrowers for the actual cost of  
10 these services, Countrywide formed subsidiaries to act as middle-  
11 men in the default services process ("default subsidiaries"). The  
12 default subsidiaries exist solely to generate revenues for  
13 Countrywide and do not operate at arms length with Defendants.

14        15. The scheme works as follows. Defendants order default-  
15 related services from the default subsidiaries, which in turn  
16 obtain the services from third-party vendors. The default  
17 subsidiaries then charge Defendants a fee significantly marked up  
18 from the third-party vendors' fee for the service, and the  
19 Defendants, in turn, assess and collect these marked-up fees from  
20 borrowers. As a result, even as the mortgage market collapsed, and  
21 more borrowers fell into delinquency in recent years, Countrywide  
22 earned substantial profits by funneling default-related services  
23 through its default subsidiaries. As stated by Countrywide in an  
24 October 2007 Earnings Call, the company's strategy was to profit  
25 from default-related services in down times such as the current  
26 mortgage crisis:

1 Now, we are frequently asked what the impact of  
2 our servicing costs and earnings will be from  
3 increased delinquencies and [loss] mitigation  
4 efforts, and what happens to costs. And what  
5 we point out is, as I will now, is that  
6 increased operating expenses in times like this  
7 tend to be fully offset by increases in  
8 ancillary income in our servicing operation,  
9 greater fee income from items like late  
10 charges, and importantly from in-sourced vendor  
11 functions that represent part of our  
12 diversification strategy, a counter-cyclical  
13 diversification strategy such as our businesses  
14 involved in foreclosure trustee and default  
15 title services and property inspection  
16 services.

17 (See Statement of David Sambol, President, Chief Operating Officer,  
18 and Director of Countrywide Financial Corporation.)

19 16. The mortgage contract between a lender and borrower  
20 typically consists of two documents: the promissory note ("Note"),  
21 and the mortgage or deed of trust ("Security Instrument"). The  
22 mortgage contracts serviced by Defendants are substantially similar  
23 to the standard Fannie Mae/Freddie Mac form contracts and contain  
24 form language regarding what occurs if a borrower defaults on his  
25 or her loan. The Security Instrument authorizes the servicer, in  
26 cases of default, to:

1 pay for whatever is reasonable or appropriate  
2 to protect the note holder's interest in the  
3 property and rights under the security  
4 instrument, including protecting and/or  
5 assessing the value of the property, and  
6 securing and/or repairing the property.

7 The Security Instrument further provides that any such amounts  
8 "disbursed by" the servicer shall become additional debt of the  
9 borrower secured by the Security Instrument and shall bear interest  
10 at the Note rate "from the date of disbursement." Regarding the  
11 payment of foreclosure fees in the event of default, the Note  
12 provides that the note holder:

13 will have the right to be paid back by me for  
14 all of its costs and expenses in enforcing this  
15 Note to the extent not prohibited by applicable  
16 law. Those expenses include, for example,  
17 reasonable attorneys' fees.

18 Thus, the mortgage contract allows the servicer to pay for default-  
19 related services when necessary or appropriate, and to be  
20 reimbursed by the borrower, but it does not authorize the servicer  
21 to mark up the actual cost of those services to make a profit.

22 17. In charging marked-up fees for default services,  
23 Defendants have violated the mortgage contract by charging  
24 borrowers for default services that exceed the actual cost of the  
25 services and that are not reasonable and appropriate to protect the  
26 note holder's interest in the property and rights under the  
27 security instrument. In addition, Defendants have charged  
28



1 borrowers for the performance of default services, such as property  
2 inspections and title reports, that in some instances were not  
3 reasonable and appropriate to protect the note holder's interest in  
4 the property and rights under the security instrument.

5       18. Countrywide Field Services Corporation ("CFSC"), now  
6 doing business as BAC Field Services Corporation, is one of the  
7 default subsidiaries used by Defendants in servicing borrowers'  
8 mortgage loans. Until at least July 1, 2008, CFSC was a subsidiary  
9 of Defendant CHL. Defendants order property inspections and  
10 property preservation services, such as lawn cuts, from CFSC, which  
11 in turn orders the services from third-party vendors. The vendors  
12 charge CFSC prices for the performance of these services, which  
13 prices CFSC then marks up in numerous instances by 100% or more  
14 before "charging" them to Defendants. Defendants then charge the  
15 marked-up fees to the borrower. Defendants collect these marked-up  
16 fees from borrowers through various means, including in connection  
17 with repayment plans, reinstatements, payoffs, bankruptcy plans,  
18 and foreclosures.

19       19. Defendants obtain services through other default  
20 subsidiaries in similar fashion and then charge borrowers fees for  
21 default services that are substantially marked up from the actual  
22 cost of the services. These other default subsidiaries are  
23 LandSafe Default, Inc., also known as LandSafe National Default,  
24 ("LandSafe") and ReconTrust Company, N.A. ("ReconTrust").  
25 Defendants order pre-foreclosure title reports from LandSafe at the  
26 very beginning of a foreclosure referral. As soon as the report is  
27 completed, the borrower is billed for it, and Defendants send the  
28

1 report with the foreclosure referral to a foreclosure attorney or  
2 trustee. In many instances, Defendants send foreclosure referrals  
3 to ReconTrust. ReconTrust acts as the Defendants' foreclosure  
4 trustee in non-judicial foreclosure states, such as California.  
5 LandSafe hires vendors to perform pre-foreclosure title services  
6 and then "charges" fees to Defendants for those services that are  
7 substantially marked up from the vendors' prices. Likewise,  
8 ReconTrust provides foreclosure trustee services that have been  
9 substantially marked up from the actual cost of the services.  
10 Defendants then pass on these marked-up fees to borrowers.

11       20. Defendants service tens of thousands of mortgage loans  
12 for borrowers who are in Chapter 13 bankruptcy, the purpose of  
13 which is to allow consumers to keep their homes and emerge from  
14 bankruptcy with a "fresh start." In connection with these  
15 bankruptcy cases and in numerous instances, including in bankruptcy  
16 filings such as proofs of claim and motions for relief from stay,  
17 Defendants have made representations to borrowers about their  
18 mortgage loans that are false or lack a reasonable basis.  
19 Defendants failed to adopt adequate policies and procedures to  
20 ensure the accuracy of their representations, and they used  
21 antiquated technology that led to numerous inaccuracies in  
22 servicing loans in bankruptcy, including payment posting errors and  
23 the assessment of unauthorized fees. Defendants also have failed  
24 to disclose to borrowers during their bankruptcy case when fees and  
25 escrow deficiencies and shortages have accrued on their loan.  
26 After the bankruptcy case has closed and borrowers no longer have

1 the protection of the bankruptcy court, Defendants seek to collect  
2 those amounts, including in some cases through foreclosure actions.

3 **VIOLATIONS OF THE FTC ACT**

4 21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits  
5 "unfair or deceptive acts or practices in or affecting commerce."

6 22. Misrepresentations or deceptive omissions of material  
7 fact constitute deceptive acts or practices prohibited by Section  
8 5(a) of the FTC Act. Acts or practices are unfair under Section 5  
9 of the FTC Act if they cause or are likely to cause substantial  
10 injury to consumers that consumers cannot reasonably avoid  
11 themselves and that is not outweighed by countervailing benefits to  
12 consumers or competition. 15 U.S.C. § 45(n).

13 **Count I: Misrepresentation of Amounts Owed**

14 23. In the course and conduct of their loan servicing and  
15 collection, Defendants in numerous instances have represented,  
16 directly or indirectly, expressly or by implication, that consumers  
17 are obligated to pay the amounts specified in Defendants'  
18 communications for default-related services such as property  
19 inspections, title reports, and foreclosure trustee services.

20 24. In truth and in fact, in numerous instances, consumers  
21 are not obligated to pay the amounts that have been specified in  
22 Defendants' communications for default-related services such as  
23 property inspections, title reports, and foreclosure trustee  
24 services. Defendants include in the amounts they represent as owed  
25 fees that have been marked up beyond the actual cost of the  
26 services and/or fees that are for the performance of unnecessary or  
27 unreasonable services, in violation of the mortgage contract.

1        25. Therefore, Defendants' representations as set forth in  
2 Paragraph 23 of this Complaint are false or misleading and  
3 constitute deceptive acts or practices in violation of Section 5(a)  
4 of the FTC Act, 15 U.S.C. § 45(a).

5            **Count II: Unfair Assessment and Collection of Fees**

6        26. In the course and conduct of their loan servicing and  
7 collection, Defendants in numerous instances have assessed and  
8 collected default-related fees that they were not legally  
9 authorized to assess and collect pursuant to the mortgage contract.

10       27. Defendants' actions cause or are likely to cause  
11 substantial injury to consumers that consumers cannot reasonably  
12 avoid themselves and that is not outweighed by countervailing  
13 benefits to consumers or competition.

14       28. Therefore, Defendants' practices as described in  
15 Paragraph 26 above constitute unfair acts or practices in violation  
16 of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and 45(n).

17           **Count III: Deceptive Claims in Bankruptcy Servicing**

18       29. In the course and conduct of servicing loans in  
19 bankruptcy, Defendants in numerous instances have made  
20 representations about different aspects of consumers' loans,  
21 including amounts owed for pre-petition arrearage and the amount  
22 and delinquency status of post-petition payments.

23       30. In truth and in fact, in numerous instances, the  
24 representations set forth in Paragraph 29 are false or misleading  
25 or Defendants did not have a reasonable basis for the  
26 representations at the time the representations were made.

1        31. Therefore, the making of the representations as set forth  
2 in Paragraph 29 of this Complaint constitutes a deceptive act or  
3 practice in or affecting commerce in violation of Section 5(a) of  
4 the FTC Act, 15 U.S.C. § 45(a).

5            **Count IV: Unfair Collection of Hidden Bankruptcy Fees**

6        32. In numerous instances, Defendants have failed to disclose  
7 adequately to borrowers during their bankruptcy case when fees and  
8 escrow deficiencies and shortages have accrued on their loan.  
9 After the bankruptcy case has closed and borrowers no longer have  
10 the protection of the bankruptcy court, Defendants seek to collect  
11 those amounts, including through foreclosure actions.

12        33. Defendants' actions cause or are likely to cause  
13 substantial injury to consumers that consumers cannot reasonably  
14 avoid themselves and that is not outweighed by countervailing  
15 benefits to consumers or competition.

16        34. Therefore, Defendants' practices as described in  
17 Paragraph 32 above constitute unfair acts or practices in violation  
18 of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

19            **CONSUMER INJURY**

20        35. Consumers have suffered and will continue to suffer  
21 substantial injury as a result of Defendants' violations of the FTC  
22 Act. In addition, Defendants have been unjustly enriched as a  
23 result of their unlawful acts or practices. Absent injunctive  
24 relief by this Court, Defendants are likely to continue to injure  
25 consumers, reap unjust enrichment, and harm the public interest.

1                                   **THIS COURT'S POWER TO GRANT RELIEF**

2           36. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers  
3 this Court to grant injunctive and such other relief as the Court  
4 may deem appropriate to halt and redress violations of any  
5 provision of law enforced by the FTC. The Court, in the exercise  
6 of its equitable jurisdiction, may award ancillary relief,  
7 including rescission or reformation of contracts, restitution, the  
8 refund of monies paid, and the disgorgement of ill-gotten monies,  
9 to prevent and remedy any violation of any provision of law  
10 enforced by the FTC.

11                                   **PRAYER FOR RELIEF**

12           Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC  
13 Act, 15 U.S.C. § 53(b), and the Court's own equitable powers,  
14 requests that the Court:

15           A. Enter a permanent injunction to prevent future violations  
16 of the FTC Act;


17           B. Award such relief as the Court finds necessary to redress  
18 injury to consumers resulting from Defendants' violations of the  
19 FTC Act, including but not limited to, rescission or reformation of  
20 contracts, restitution, the refund of monies paid, and the  
21 disgorgement of ill-gotten monies; and

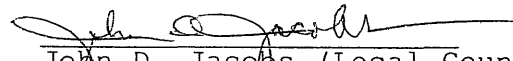
22           C. Award Plaintiff the costs of bringing this action, as  
23 well as such other and additional relief as the Court may determine  
24 to be just and proper.

1 Dated: June 7, 2010

Respectfully submitted,

2 WILLARD K. TOM  
3 General Counsel

4   
5 Lucy E. Morris  
6 Heather Allen  
7 Lynette Hotchkiss  
8 lmorris@ftc.gov; hallen@ftc.gov;  
9 lhotchkiss@ftc.gov  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Tel: (202) 326-3224  
Fax: (202) 326-3768

10  
11   
12 John D. Jacobs (Local Counsel)  
13 jjacobs@ftc.gov  
14 California Bar No. 134154  
15 Federal Trade Commission  
10877 Wilshire Blvd., Ste. 700  
Los Angeles, CA 90024  
Tel: (310) 824-4343  
Fax: (310) 824-4380

16 Attorneys for Plaintiff  
17 Federal Trade Commission  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28