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14 Federal Trade Commission

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
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19 _____)
FEDERAL TRADE COMMISSION,)
20 Plaintiff,)
21 v.)
22 COUNTRYWIDE HOME LOANS, INC.,)
23 a corporation, and)
24 BAC HOME LOANS SERVICING, LP,)
a limited partnership,)
25 Defendants.)
26 _____)

Case No.

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF**

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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
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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.

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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:

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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

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

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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

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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 Dated: June 7, 2010

Respectfully submitted,

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