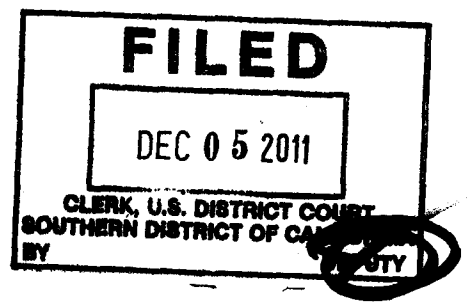


COPY

BLOOD HURST & O'REARDON, LLP

1 BLOOD HURST & O'REARDON, LLP
 2 TIMOTHY G. BLOOD (149343)
 3 THOMAS J. O'REARDON II (247592)
 4 600 B Street, Suite 1550
 5 San Diego, CA 92101
 Telephone: (619) 338-1100
 Facsimile: (619) 338-1101
 tblood@bholaw.com
 toreardon@bholaw.com



6 HOFFMAN & FORDE, ATTORNEYS AT LAW
 7 SCHUYLER V.V. HOFFMAN V (255632)
 8 DANIEL R. FORDE (248461)
 9 3033 Fifth Avenue, Suite 225
 10 San Diego, CA 92103
 Telephone: (619) 546-7880
 Facsimile: (619) 546-7881
 shoffman@hoffmanforde.com
 dforde@hoffmanforde.com

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 RICK DOLFO and SUSAN DOLFO, on
 15 behalf of Themselves, All Others Similarly
 Situated and the General Public,

Case No.: 11CV 2828 DMS BGS

CLASS ACTION

16 Plaintiffs,

CLASS ACTION COMPLAINT

17 v.

18 BANK OF AMERICA, N.A. and BAC
 19 HOME LOANS SERVICING, LP,

DEMAND FOR JURY TRIAL

20 Defendants.

21
 22
 23
 24
 25
 26
 27
 28

0093 21 CA

1 Plaintiffs Rick and Susan Dolfo bring this action on behalf of themselves, all others
2 similarly situated and the general public against defendants Bank of America, N.A. and BAC
3 Home Loans Servicing, LP (referred to jointly as "Bank of America" where not otherwise
4 described in their individual capacities). Plaintiffs allege on information and belief, except for
5 information based on personal knowledge, as follows:

6 NATURE OF THE ACTION

7 1. This is yet another tale of Bank of America cheating its customers. In 2005,
8 plaintiffs obtained a residential mortgage loan. Bank of America subsequently bought the
9 servicing rights to the loan. From the time the loan was issued, plaintiffs complied with their
10 obligations under the loan agreement. They made their monthly payments, maintained the
11 required homeowner's insurance coverage and timely paid their property taxes. Nonetheless,
12 in December 2009, plaintiffs noticed on their monthly mortgage statement that Bank of
13 America paid their property taxes and homeowner's insurance without plaintiffs' knowledge
14 or consent, and even though plaintiffs also paid them. To fund the impound account, and
15 without notifying plaintiffs, Bank of America took money from plaintiffs' monthly mortgage
16 payment, not leaving enough to cover plaintiffs' monthly mortgage payment, throwing
17 plaintiffs into default. Once in default, Bank of America, as the loan servicer, was able to
18 charge additional fees and penalties. Bank of America also falsely reported to credit agencies
19 that plaintiffs were in default on their mortgage.

20 2. Plaintiffs were not notified that Bank of America intended to create an impound
21 account or that it created one. Plaintiffs never agreed to it. Bank of America had no authority,
22 contractual or otherwise, to open or fund the impound account. There also was no need for an
23 impound account as plaintiffs were already paying their insurance and taxes.

24 3. Prior to filing suit, plaintiffs spent months trying to work with Bank of America
25 to solve the problems created by Bank of America: to close the impound account, stop the
26 double payment of homeowner's insurance and property taxes, stop the improper deduction
27 from the monthly mortgage payments, reverse the improper default and have Bank of America
28 correct the improper credit reporting. But, just like millions of other Americans who have

1 tried to work with Bank of America, plaintiffs made no progress, and were constantly put off
2 by Bank of America, mislead and ignored.

3 4. As a result of Bank of America's improper and unauthorized conduct, improper
4 taking of money intended for mortgage payments and the other improper conduct alleged,
5 plaintiffs have suffered damages, including harm to their credit-worthiness, credit history and
6 credit scores. Bank of America refuses to notify the credit reporting agencies of its false
7 reports.

8 5. Plaintiffs are not alone; Bank of America has improperly, unlawfully, and
9 without prior notice established impound accounts on behalf of other members of the Class
10 and taken their money to fund these improper impound accounts. These acts and omissions
11 constitute unlawful, unfair and fraudulent conduct under California's Unfair Competition Law,
12 Business & Professions Code §17200 *et seq.* (the "UCL"), violate the Rosenthal Fair Debt
13 Collection Practices Act, Civil Code §1788 *et seq.*, and violate the Consumer Credit Reporting
14 Agencies Act ("FCRA"), Civil Code §1785.1 *et seq.*, constitute a conversion of money
15 entrusted to Bank of America and breach the mortgage agreements.

16 6. On behalf of themselves and others similarly situated, plaintiffs also seek
17 declaratory relief to define the parties' rights and obligations and injunctive relief to compel
18 compliance with the terms of the mortgage agreement, to require Bank of America to correct
19 and repair Class members' credit ratings, and to otherwise correct and halt Bank of America's
20 ongoing misconduct – including the improper commencement of non-judicial foreclosure on
21 these properties secured by Bank of America loans.

22 7. The Class consists of all those with residential mortgage loans secured by
23 property located in the State of California serviced by Bank of America, where Bank of
24 America created an impound account without the permission of the mortgagor while the
25 mortgagor was in compliance with the terms of his or her mortgage agreement at the time
26 Bank of America created the impound account.

JURISDICTION AND VENUE

1
2 8. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
3 matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000
4 and is a class action in which at least one member of the class of plaintiffs is a citizen of a
5 State different from any defendant.

6 9. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the
7 acts and transactions giving rise to this action occurred in this district and because defendants:

- 8 (a) are authorized to conduct business in this district and have intentionally
9 availed themselves of the laws and markets within this district;
10 (b) do substantial business in this district; and
11 (c) are subject to personal jurisdiction in this district.

PARTIES

12
13 10. At all times relevant, plaintiffs Rick Dolfo and Susan Dolfo resided and
14 continue to reside in San Diego, California. During the class period, plaintiffs complied with
15 all of their obligations under their residential mortgage agreement with Bank of America.
16 They made their monthly payments, maintained the required homeowner's insurance coverage
17 and timely paid their property taxes. Nonetheless, in December 2009, plaintiffs noticed on
18 their monthly mortgage statement that Bank of America paid their property taxes and
19 homeowner's insurance without plaintiffs' knowledge, consent or instruction – and in
20 violation of the terms of the loan agreement and California law. As a result of Bank of
21 America's unlawful and unfair conduct described herein, including its breaches of the
22 mortgage agreement, plaintiffs suffered injury in fact and lost money or property, including
23 incurring the cost of higher interest, greater indebtedness and lower credit worthiness.

24 11. Defendant Bank of America, N.A. is a mortgage lender and servicer with
25 headquarters in Charlotte, North Carolina. Bank of America was founded in San Francisco in
26 1904, is currently registered to do business in the State of California and does business in
27 California. It is the largest bank holding company in the United States by assets and the
28 second largest by market capitalization. Though long involved in the mortgage lending and

1 servicing business, Bank of America's purchase of Countrywide Financial in 2008 turned it
2 into the leading mortgage originator and servicer in the United States, controlling 20% to 25%
3 of the home loan market. Though it is one of the lenders responsible for the collapse of the
4 housing market, Bank of America received federal bailout money, obtaining at least \$45
5 billion through the Troubled Asset Relief Program ("TARP").

6 12. Defendant BAC Home Loans Servicing, LP is a subsidiary of Bank of
7 American, N.A., located in Calabasas, California. It produces mortgage loans on a national
8 scale, most of which are then sold into the secondary market, mainly in the form of mortgage-
9 backed securities. Defendant generally performs the ongoing servicing functions related to the
10 mortgage loans that it produces.

11 13. At all relevant times, defendants both individually and collectively are and were
12 agents and/or joint venturers of each other and acted as a single enterprise, and in doing the
13 acts alleged herein, were acting within the course and scope of such agency.

14 14. Each defendant had actual and/or constructive knowledge of the acts of the
15 other defendant as described herein, and ratified, approved, joined in, acquiesced in, and/or
16 authorized the acts of the other, and/or retained the benefits of said acts.

17 **FACTUAL ALLEGATIONS**

18 15. An impound account (also known as an "escrow account") refers to an account
19 maintained by a lender to collect insurance and tax payments required for the mortgaged
20 property. To fund the impound account, lenders divide the annual aggregate cost of the
21 insurance and tax into a monthly amount and add it to borrower's monthly mortgage payment
22 requirement.

23 16. When applicable, lenders require that borrowers fund impound accounts in
24 order to provide the lender with protection against the state from seizing the mortgaged
25 property for non-payment of property taxes, and to ensure that borrowers will not be without
26 homeowner's insurance in the event that the property is damaged. An impound account helps
27 ensure that the only person who will become owner of the mortgaged property in case of
28 default will be the lender.

1 17. Cal. Civil Code §2954(a)(1) mandates that only under specified conditions can
2 a lender can require impound accounts as a condition of a loan secured by a deed of trust or
3 mortgage on real property containing a single-family, owner-occupied home. Such specific
4 circumstances include "(C) upon a failure of the purchaser or borrower to pay two consecutive
5 tax installments on the property prior to the delinquency date for such payments" or "(G)
6 where a loan is refinanced or modified in connection with a lender's homeownership
7 preservation program or a lender's participation in such a program sponsored by a federal,
8 state, or local government authority or a nonprofit organization." See Civil Code
9 §2954(a)(1)(A)-(G).

10 18. Pursuant to California law, an impound account established in violation of Civil
11 Code §2954(a)(1), "is voidable, at the option of the purchaser or borrower, at any time."

12 19. Further, lenders who receive prepayment of taxes and insurance into an
13 impound account are required to pay borrowers a minimum 2% interest rate on such amounts:

14 Every financial institution that makes loans upon the security of real property
15 containing only a one- to four-family residence and located in this state...and
16 that receives money in advance for the payment of taxes and assessments on the
17 property, for insurance, or for other purposes relating to the property, shall pay
18 interest on the amount so held to the borrower. The interest on such amounts
19 shall be at the rate of at least 2 percent simple interest per annum.

20 Civil Code §2954.8(a); see also Cal. Fin. Code §854.1 ("A borrower shall receive at least 2
21 percent simple interest per annum on impound account payments covered by Section 2954.8 of
22 the Civil Code.").

23 20. The mortgage agreement with plaintiffs and other Class members is a
24 standardized adhesionary contract prepared, approved or purchased by Bank of America.
25 Plaintiffs' Mortgage Agreement, which is an exemplar of those of the Class as is relevant to
26 this action, is attached as Exhibit A. The mortgage agreement does not authorize Bank of
27 America or any other party to unilaterally establish an impound account or pay the taxes or
28 insurance of its borrowers except under specific circumstances that do not apply to plaintiffs or

1 Class members. That is, the mortgage agreements of plaintiffs and Class members all relate to
2 real property in California containing only a single-family, owner-occupied dwelling where:
3 (1) the Class member did not consent in the mortgage agreement, including on the Impound
4 Account Notite (defined below), to voluntarily establish an impound account; (2) the original
5 principal amount of the loan is less than 90 percent of the appraised value of the property
6 securing the loan; (3) the combined principal amount of all loans secured by the real property
7 is less than 80 percent of the appraised value of the property securing the loan; (4) the loan is
8 not made in compliance with the requirements for higher priced mortgage loans established in
9 Regulation Z; and (5) the loan has not been refinanced or modified in connection a lender's
10 homeownership preservation program or a lender's participation in such a program sponsored
11 by a federal, state, or local government authority or a nonprofit organization.

12 21. To accept Bank of America's mortgage agreement, plaintiffs and Class
13 members were required to sign and return the mortgage agreement to Bank of America.

14 22. Plaintiffs and members of the Class fulfilled all of the relevant terms and
15 conditions for which they were responsible under the terms of the mortgage agreements.
16 Further, plaintiffs and members of the Class paid their property taxes and insurance as required
17 under the terms of the mortgage agreements.

18 23. In contrast, Bank of America breached the mortgage agreement by creating
19 impound accounts, taking money intended for principle and interest payments to improperly
20 pay taxes and insurance, and otherwise failing to comply with the terms of the mortgage
21 agreement. Bank of America created impound accounts for the mortgages of plaintiffs and
22 members of the Class in a deceptive manner by *inter alia*, providing them information about
23 mortgage modification options, but never disclosing that as a result of providing such
24 information Bank of America would establish impound accounts and pay taxes and insurance
25 premiums relating to the mortgaged property. In addition, Bank of America also improperly
26 reported to credit rating agencies that plaintiffs and Class members were delinquent or had
27 defaulted on their taxes and insurance premiums and owed money to Bank of America when
28 the money was not owed under the mortgage agreements. Finally, Bank of America has

1 improperly commenced non-judicial foreclosure on these properties secured by Bank of
2 America loans.

3 **PLAINTIFFS MR. AND MRS. DOLFO**

4 24. In or about August 2005, plaintiffs obtained a mortgage loan on their home in
5 San Diego, California from First Magnus Financial Corporation. The loan was a 30 year
6 convertible jumbo PayOption ARM loan – the type of abusive loan that caused the implosion
7 of the housing market and current economic crisis.

8 25. According to the payment schedule in their Mortgage Agreement, plaintiffs
9 were required to make the following monthly payments to Bank of America:

10 Number of Payments	11 Amount of Payments	12 When Payments Are Due (Monthly Beginning)
13 12	\$1,769.02	10/01/2005
14 12	\$1,901.70	10/01/2006
15 12	\$2,044.32	10/01/2007
16 12	\$2,197.65	10/01/2008
17 12	\$2,362.47	10/01/2009
18 300	\$3,772.80	10/01/2010

19 *See Exhibit B (Federal Truth In Lending Disclosure Statement for plaintiffs' loan).*

20 26. According to their Mortgage Agreement, plaintiffs were not required to make
21 any future periodic payments to Bank of America other than the above-listed monthly
22 mortgage payments. *See id.*; *see also* Exhibit C (Payment Letter to Borrower) (listing “-0-” for
23 “Reserve For County Property Taxes,” “Hazard Insurance Reserve,” “Flood Insurance
24 Reserve,” “City Property Taxes,” and “Annual Assessments”).

25 27. In connection with their Mortgage Agreement, plaintiffs were presented with a
26 standardized notice entitled “NOTICE TO BORROWER – IMPOUND / ESCROW
27 ACCOUNT.” *See* Exhibit D (the “Impound Account Notice”). According to the Impound
28 Account Notice, which plaintiffs were required to sign and date, the lender was “prohibit[ed]”

1 from "requiring an impound or escrow account for the payment of taxes, insurance premiums,
2 or other purposes as a condition of the loan except in certain instances." *Id.* Such exceptions
3 included "a failure of the borrower to pay two consecutive tax installments on the property
4 prior to the delinquency date for such payments" or if both parties agreed to the establishment
5 of such an account. However, no exceptions applied to permit the establishment of an
6 impound account and plaintiffs indicated on the Impound Account Notice that: "I/We desire
7 not to establish an impound/escrow account." *Id.*

8 28. In or about October of 2009, plaintiffs contacted Bank of America to discuss
9 modifying their existing home loan. During that conversation, Bank of America informed
10 plaintiffs that they were candidates for a mortgage modification program and that Bank of
11 America would send them a packet to complete within thirty days. However, like tens of
12 thousands of others, plaintiffs never received the modification program packet.

13 29. In or about November 2009, Mr. Dolfo called Bank of America to inquire about
14 the status of the modification program packet. Mr. Dolfo was told that the packet should
15 arrive within another thirty days.

16 30. In or about December 2009, plaintiffs learned that Bank of America made a
17 payment of \$3,393.09 to the San Diego County Tax Collector for property taxes coming due
18 on their home. Plaintiffs were not notified beforehand nor did they authorize Bank of America
19 to pay their property taxes.

20 31. In or about December 2009, and without notice or approval to do so, plaintiffs
21 were notified that Bank of America made a partial homeowner's insurance premium payment
22 of \$862.50. About ten days later, and again with notice or approval, Bank of America paid the
23 balance of plaintiffs' homeowner's insurance premium balance of \$91.50 to Travelers
24 Indemnity Co.

25 32. In or about March 2010, and without notice or approval to do so, plaintiffs
26 learned that Bank of America made another payment to the San Diego County Tax Collector
27 for property taxes coming due on their home.

28

1 33. In or about April 2010, and without notice or approval to do so, plaintiffs
2 learned that Bank of America established an impound account for their mortgage account.

3 34. In or about July 2010, Mr. Dolfo called and spoke with a Bank of America
4 representative ("Amanda" at extension 8095 in the escrow department). During that
5 conversation, and for the first time, Mr. Dolfo was told that Bank of America's policy was to
6 establish an impound account when a borrower is in a home mortgage modification program.
7 Mr. Dolfo told Bank of America's Amanda that his mortgage loan was not in a modification
8 program. Mr. Dolfo then spoke with another Bank of America representative, "Maria" at
9 extension 5553 in the escrow department. Maria admitted that the impound account was
10 improperly established, and told Mr. Dolfo that a request would be sent to the mortgage
11 modification department to remove the impound account from plaintiffs' loan. Despite these
12 assurances, the impound account was not removed.

13 35. On or about August 4, 2010, Mr. Dolfo called and spoke with a Bank of
14 America representative, who identified herself as "Cohar." Cohar told Mr. Dolfo that Bank of
15 America had deleted the insurance payments from plaintiffs' impound account, but not the
16 property tax payments. Cohar then told Mr. Dolfo that "Maria" would get back to him within
17 24 hours regarding the status of the impound account. However, neither Maria nor anyone
18 else from Bank of America got back to Mr. Dolfo.

19 36. In or about December 2010, and without notice or approval to do so, and
20 despite being told by plaintiffs to not do so, plaintiffs were notified that Bank of America
21 made another property tax payment of \$3,395.67 to the San Diego County Tax Collector for
22 their home.

23 37. In or about March 2011, and without notice or approval to do so, and despite
24 being told by plaintiffs to not do so, plaintiffs were notified that Bank of America made
25 another property tax payment of \$3,395.67 to the San Diego County Tax Collector for their
26 home.

27 38. Plaintiffs did nothing to justify the creation of an impound account or otherwise
28 authorize Bank of America to make property tax or homeowner's insurance payments. From

1 the time the loan was issued, plaintiffs complied with their obligations under the loan
2 agreement. Plaintiffs made their monthly payments, maintained the required homeowner's
3 insurance coverage and timely paid their property taxes.

4 39. As a result of the improper establishment of the impound account and improper
5 tax and insurance payments, Bank of America also falsely reported to credit agencies that
6 plaintiffs were deficient on their loan. These false reports have resulted in significant costs to
7 plaintiffs, including a substantial impact on their credit.

8 40. In a letter dated August 25, 2011, and in response to plaintiffs' requests that
9 Bank of America close the improper impound account, Bank of America stated that it now
10 refused to close the impound account for two reasons: 1) because of a negative impound
11 balance and 2) delinquent taxes had been paid from plaintiffs' impound account and therefore,
12 according to Bank of America, they were required to maintain an impound account for the life
13 of the loan. This letter is attached as Exhibit E. That is, Bank of America was now using its
14 breaches of various duties to justify keeping the impound account open.

15 41. The impound account was not created because of a negative impound balance
16 or because any delinquent taxes had been paid from the account. No proper justification for
17 the impound account existed, including late monthly payments or that the loan to value ratio of
18 plaintiffs' principal balance exceeded statutory levels of the sale or appraisal value of their
19 home. *Id.*

20 42. By letter dated September 19, 2011, Bank of America returned plaintiffs'
21 payment of \$2,950.00. Bank of America improperly refused to accept this payment amount –
22 which was the correct amount due under the terms of their Mortgage Agreement – purportedly
23 because the amount “does not represent the total due.”

24 43. After siphoning-off monthly principle and interest payments to fund the
25 improper impound account, on or about September 21, 2011, Bank of America filed a notice
26 of default (“NOD”) to foreclose on plaintiffs' home. As a direct result of the public filing of
27 the NOD, which Bank of America filed based on the false pretense that plaintiffs did not pay
28

1 their property taxes and insurance, third parties such as real estate companies and debt
2 settlement agencies are continuously contacting plaintiffs.

3 44. Bank of America has breached and is continuing to breach the Mortgage
4 Agreement by demanding payments from plaintiffs in excess of the principal and interest
5 charges set forth in the Mortgage Agreement. Bank of America has also falsely informed
6 credit rating agencies that plaintiffs were delinquent on their loan, including their property tax
7 and homeowner's insurance payments, and did not inform these agencies that plaintiffs
8 disputed the debt, resulting in harm to plaintiffs' credit-worthiness, credit history and credit
9 score. Plaintiffs have suffered financial loss as a result of their reduced credit scores.

10 45. Beginning in July 2010, plaintiffs repeatedly contacted Bank of America to
11 question why Bank of America unilaterally created an impound account and paid their
12 property taxes and insurance premiums without their knowledge, consent or instruction. A
13 recent billing statement for plaintiffs is attached as Exhibit F. Plaintiffs were repeatedly
14 informed by Bank of America that the impound account was improperly established, would be
15 removed, and that plaintiffs had always timely paid their property taxes and insurance
16 premiums. Plaintiffs lost financial resources investigating the impound account and related
17 payments, and providing additional requested documents concerning the loan to Bank of
18 America. Bank of America has attempted to collect payments from plaintiffs in a deceptive
19 and unfair manner, including by calling plaintiffs multiple times daily claiming that they owed
20 monies to Bank of America that were not owed. Bank of America has also served plaintiffs
21 the NOD, and a Notice of Intent to Accelerate and initiate foreclosure proceedings if the total
22 due on the Mortgage Agreement, including all impound account fees, plus all fees and costs,
23 are not paid.

24 CLASS ACTION ALLEGATIONS

25 46. Plaintiffs bring this lawsuit on behalf of themselves and the proposed class
26 members under Rule 23(b)(3) of the Federal Rules of Civil Procedure. The proposed Class
27 consists of:
28

1 All persons who entered into a residential mortgage loan with Bank of America
2 secured by property located in the State of California, where Bank of America
3 created an impound account without the permission of the mortgagor while the
4 mortgagor was in compliance with the terms of his or her mortgage agreement
5 at the time Bank of America created the impound account.

6 Excluded from the Class are defendants and any of their officers, directors and employees.

7 47. *Numerosity.* The members of the Class are so numerous that their individual
8 joinder is impracticable. Plaintiffs are informed and believe, and on that basis allege, that the
9 proposed Class contains thousands of members. While the precise number of Class members
10 is unknown to plaintiffs, it is known to defendants.

11 48. *Existence and Predominance of Common Questions of Law and Fact.*
12 Common questions of law and fact exist as to all members of the Class and predominate over
13 any questions affecting only individual Class members. All members of the Class have been
14 subject to the same conduct and their claims are based on standard form contracts. The
15 common legal and factual questions include, but are not limited to, the following:

- 16 (d) whether defendants' alleged conduct breaches the mortgage agreement;
- 17 (e) whether the alleged conduct constitutes violations of the laws asserted
18 herein;
- 19 (f) whether plaintiffs and Class members have sustained monetary or
20 property loss and the proper measure of that loss; and
- 21 (g) whether plaintiffs and Class members are entitled to declaratory and
22 injunctive relief.

23 49. *Typicality.* Plaintiffs' claims are typical of the claims of the members of the
24 Class in that they are members of the Class that they seek to represent.

25 50. *Adequacy of Representation.* Plaintiffs will fairly and adequately protect the
26 interests of the members of the Class. Plaintiffs have retained counsel experienced in the
27 prosecution of this type of class action litigation. Plaintiffs have no adverse or antagonistic
28 interests to those of the Class.

1 62. Business & Professions Code §17200 also prohibits any “unfair ... business act
2 or practice.”

3 63. Bank of America’s acts, omissions, misrepresentations, and practices as alleged
4 herein also constitute “unfair” business acts and practices within the meaning of Business &
5 Professions Code §17200, *et seq.* in that its conduct is substantially injurious to consumers,
6 offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity
7 of the conduct outweighs any alleged benefits attributable to such conduct.

8 64. There were reasonably available alternatives to further Bank of America’s
9 legitimate business interests, other than the conduct described herein.

10 65. Business & Professions Code §17200 also prohibits any “fraudulent business
11 act or practice.”

12 66. Bank of America’s claims, nondisclosures and misleading statements, as more
13 fully set forth above, were false, misleading and/or likely to deceive the consuming public
14 within the meaning of Business & Professions Code §17200.

15 67. Bank of America’s conduct caused and continues to cause substantial injury to
16 plaintiffs and the other Class members. Plaintiffs have suffered injury in fact and have lost
17 money as a result of unfair conduct as they now owe additional interest, late fees and other
18 costs. As a result of defendants’ unfair practices plaintiffs’ credit ratings have declined and
19 they have lost money and property as a result thereof. Plaintiffs also spent money
20 investigating Bank of America’s unilateral decision to create an impound account and pay
21 their property taxes and insurance, and subsequently to remove the impound account as it had
22 promised to do.

23 68. Bank of America has thus engaged in unlawful, unfair and fraudulent business
24 acts and practices and false advertising, entitling plaintiffs to judgment and equitable relief
25 against defendants, as set forth in the Prayer for Relief.

26 69. Additionally, pursuant to Business & Professions Code §17203, plaintiffs
27 seek an order and injunction requiring Bank of America to immediately cease such acts of
28 unlawful, unfair and fraudulent business practices and to take all steps necessary to correct the

1 credit ratings of Class members that have been negatively impacted by Bank of America's
2 unfair practices. Further, pursuant to Business & Professions Code §17203, plaintiffs
3 seek an order and injunction prohibiting Bank of America from continuing with non-
4 judicial foreclosure of properties secured by Bank of America loans where the purported
5 default stems from the false pretense that plaintiffs did not pay their property taxes and
6 insurance and subsequently failed to appropriately fund an improper impound account.

7 **COUNT III**

8 **Violation of the Rosenthal Fair Debt Collection Practices Act**
9 **Cal. Civil Code §1788 et seq.**

10 70. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above,
11 as if fully set forth herein.

12 71. Bank of America is a debt collector within the meaning of California Civil
13 Code §1788.2(c) because it regularly engages in debt collection. In its monthly payment
14 statements sent to plaintiffs and the Class, Bank of America also states that "this
15 communication is from a debt collector." The monies allegedly owed by the plaintiffs and
16 members of the Class are debts within the meaning of California Civil Code §1788.2(d).

17 72. California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act")
18 incorporates by reference and requires compliance with the provisions of the federal Fair Debt
19 Collection Practices Act, 15 U.S.C. §1692 *et seq.* Cal. Civil Code §1788.17.

20 73. By the acts and practices described herein defendants have violated these laws
21 as follows without limitation: (a) making false representations concerning the character,
22 amount or legal status of any debt, 15 U.S.C. §1692e(2); (b) communicating or threatening to
23 communicate to any person credit information which is known or which should be known to
24 be false, including the failure to communicate that a disputed debt is disputed, 15 U.S.C.
25 §1692e(8); (c) making false representations or using deceptive means to collect or attempt to
26 collect on any debt, 15 U.S.C. §1692e(10); and (d) using unfair or unconscionable means to
27 collect or attempt to collect any debt, including collecting amounts which were not expressly
28 authorized by the agreement creating the debt or permitted by law. 15 U.S.C. §1692f.

1 Plaintiffs also seek any injunction directing Bank of America to stop its ongoing violations of
2 Cal. Civil Code §1785.1 *et seq.* and to correct the false reports previously made.

3 **COUNT V**

4 **Conversion**

5 79. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above,
6 as if fully set forth herein.

7 80. Plaintiffs and other Class members paid Bank of America specific and
8 identifiable sums of money, which Bank of America improperly used to pay property taxes
9 and/or insurance premium payments rather than principal and interest on the mortgage loans.
10 Bank of America did not apply such monies to the mortgage loan as it promised.

11 81. At the time of conversion, plaintiffs and Class members had an ownership
12 interest in the monies they paid to Bank of America.

13 82. As a result of Bank of America's collection and conversion of the monies
14 discussed above, Bank of America is indebted to plaintiffs and each other Class member in a
15 sum certain, the amount of which can be proven at trial by reference to Bank of America's
16 own records. Plaintiffs and Class members are entitled to recover said sums as money
17 converted by Bank of America from plaintiffs and Class members, and as damages for it.

18 **COUNT VI**

19 **Declaratory Relief**

20 83. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above,
21 as if fully set forth herein.

22 84. A controversy has arisen and now exists between plaintiffs and Class members
23 on the one hand and Bank of America on the other. The controversy between the parties
24 concerns the existing, standardized mortgage agreements between the parties and the parties'
25 rights and duties under the contract. Plaintiffs and Class members contend that pursuant to the
26 contracts' terms, Bank of America violates the contract by creating impound accounts and
27 subsequently demanding and collecting impound account payment amounts as if such monies
28 were due and owing under the mortgage agreement. Bank of America disputes these

1 contentions and contends that the impound account amounts are due and owing under the
2 mortgage agreement.

3 85. Plaintiffs request a judicial determination of their rights and duties, and the
4 rights and duties of absent Class members and a declaration as to the effectiveness and validity
5 of the impound accounts, and a declaration as to whether Bank of America's demand of
6 impound account payments are authorized pursuant to the terms of the mortgage agreement.

7 86. Plaintiffs and Class members also contend that pursuant to the contract's terms,
8 Bank of America violates the contract by improperly commencing non-judicial foreclosure on
9 properties secured by Bank of America loans under the false pretense that the borrower is in
10 default by not paying amounts necessary to fund the impound account improperly created to
11 pay property taxes and insurance as if such monies were due and owing under the mortgage
12 agreement. Bank of America disputes these contentions and contends that the impound
13 account amounts are due and owing under the mortgage agreement.

14 87. Therefore, plaintiffs also request a judicial determination of their rights and
15 duties, and the rights and duties of absent Class members and a declaration as to define the
16 parties' rights and obligations as to whether Bank of America must correct and repair Class
17 members' credit ratings, and halt the improper commencement of non-judicial foreclosure on
18 properties secured by Bank of America loans.

19 **PRAYER FOR RELIEF**

20 Wherefore, plaintiffs pray for a judgment:

- 21 A. Certifying the Class as requested herein;
- 22 B. Awarding plaintiffs and the proposed Class members actual and punitive
23 damages;
- 24 C. Awarding restitution to plaintiffs and the proposed Class members;
- 25 D. Awarding declaratory and injunctive relief as permitted by law or equity,
26 including a judicial determination of the parties' rights and duties under the contract, enjoining
27 defendants from continuing the unlawful practices as set forth herein (including the improper
28 credit reporting and commencement and continuation of non-judicial foreclosure), ordering

1 specific performance by Bank of America, and directing defendants to identify, with Court
2 supervision, victims of its conduct and pay them restitution and disgorgement of all monies
3 acquired by defendants by means of any act or practice declared by this Court to be wrongful;

4 E. Awarding attorneys' fees and costs; and

5 F. Providing such further relief as may be just and proper.

6 **JURY DEMAND**

7 Plaintiffs demand a trial by jury on all issues so triable.

8 Dated: December 5, 2011

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247592)

11 By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

12 600 B Street, Suite 1550
13 San Diego, CA 92101
14 Telephone: (619) 338-1100
15 Facsimile: (619) 338-1101
tblood@bholaw.com
toreardon@bholaw.com

16 HOFFMAN & FORDE, ATTORNEYS AT LAW
17 SCHUYLER V.V. HOFFMAN V (255632)
DANIEL R. FORDE (248461)
18 3033 Fifth Avenue, Suite 225
San Diego, CA 92103
19 Telephone: (619) 546-7880
Facsimile: (619) 546-7881
shoffman@hoffmanforde.com
20 dforde@hoffmanforde.com

21 Attorneys for Plaintiffs

22
23
24
25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

WICK DOLFO and SUSAN DOLFO

DEFENDANTS

BANK OF AMERICA, N.A. and BAC HOME LOANS

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

SERVICING LP
County of Residence of First Listed Defendant Charlotte, NC
(ON U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Timothy G. Blood, Blood Hurst & O'Reardon LLP
500 B Street, Suite 1550, San Diego CA 92101 619-538-1100

FILED
DEC 05 2011
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

11CV2828 DMS BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | | |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 650 Airline Regs. | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 530 General | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 810 Selective Service |
| <input checked="" type="checkbox"/> 190 Other Contract | | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 196 Franchise | | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 790 Other Labor Litigation | | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | | <input type="checkbox"/> 892 Economic Stabilization Act |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/Accommodations | | | | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | | | | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | | | | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | | | | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| | <input type="checkbox"/> 440 Other Civil Rights | | | | <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Cal. Bus. & Prof. §17200; Cal. Civ. Code §1788, 1785.1

Brief description of cause:
Breach of Contract; Violation of Cal. Consumer Prot. Stat.; Declaratory Relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ \$5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/05/2011 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____