

LAW OFFICES OF  
GARY Y. SHIGEMURA  
A Law Corporation

GARY Y. SHIGEMURA, #1007-0  
RANDALL N. HARAKAL, #2844-0  
JOYCE M. BROWN, #5530-0  
700 Fort Street Tower  
745 Fort Street  
Honolulu, Hawaii 96813  
Telephone: 531-9711  
Fax: 537-9430

Attorneys for Plaintiff  
DEBORAH JOAN CRABTREE,  
aka DEBORAH J. CRABTREE

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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S. TAMANAHA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DEBORAH JOAN CRABTREE,  
aka DEBORAH J. CRABTREE,

Plaintiff,

vs.

BANK OF AMERICA HOME LOANS  
SERVICING, L.P.; BANK OF AMERICA,  
N. A.; COUNTRYWIDE HOME LOANS,  
INC.; and JOHN DOES 1-50, JANE DOES 1-  
50, DOE PARTNERSHIPS 1-50, DOE  
CORPORATIONS 1-50, DOE TRUSTS 1-50,  
DOE ENTITIES 1-50 and DOE  
GOVERNMENTAL UNITS 1-50,

Defendants.

) CIVIL NO. 11-1-1613-07 K K S  
) (OTHER CIVIL ACTION)  
)  
) COMPLAINT; DEMAND FOR JURY  
) TRIAL; SUMMONS

\_\_\_\_\_  
JMB/EAC

SUMMONS  
DENIED

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## COMPLAINT

COMES NOW PLAINTIFF JOAN CRABTREE, aka DEBRA J. CRABTREE, by and through her attorneys at The Law Offices of Gary Y. Shigemura, a Law Corporation, for a Complaint against BANK OF AMERICA HOME LOANS SERVICING, L.P.; BANK OF AMERICA, N. A.; COUNTRYWIDE HOME LOANS, INC.; and JOHN DOES 1-50, JANE DOES 1-50, DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50, DOE TRUSTS 1-50, DOE ENTITIES 1-50 and DOE GOVERNMENTAL UNITS 1-50, alleges and avers as follows:

### JURISDICTION AND VENUE

1. The Court has personal jurisdiction over the above-named defendants pursuant to Haw. Rev. Stat. § 634-35, as the subject tortuous acts and injuries occurred in this Circuit, and the defendants either reside in or have conducted business in this Circuit so as to subject themselves to the jurisdiction of the Court.

2. The Court has subject matter jurisdiction over the present action pursuant to Haw. Rev. Stat. § 603-21.5.

3. Venue is proper pursuant to Haw. Rev. Stat. § 603-36.

### PARTIES

4. PLAINTIFF DEBORAH JOAN CRABTREE, aka DEBORAH J. CRABTREE (hereinafter "PLAINTIFF") is and was at all times relevant and material to the facts herein, a resident of the City and County of Honolulu, State of Hawaii. PLAINTIFF'S date of birth is July 26, 1948.

5. At all times relevant and material to the facts herein, PLAINTIFF is the owner of the property designated as Tax Map Key (1) 9-4-085-074 located at 94-328 Leleaka Street, in Mililani in the State of Hawaii (hereinafter "property" and/or "home" and/or "house")

which is used as her and her family's primary residence. As of July 16, 2010, PLAINTIFF was Trustee of the ROBERT L. CRABTREE, JR. TRUST, dated July 16, 2010.

6. Upon information and belief, at all times relevant and material to the facts herein, Defendant BANK OF AMERICA HOME LOANS SERVICING, L. P. (hereinafter "Defendant BAC's Servicer"), which operates and does business in the State of Hawaii, received mortgage payments from PLAINTIFF from August 2010 to June 30, 2011 as the alleged servicing agent of the lender on the Subject Property as well as receiving mortgage payments from PLAINTIFF and her former husband, ROBERT LEE CRABTREE, JR. (hereinafter "ROBERT") from November 2005 through August 2010.

7. Upon information and belief, at all times relevant and material to the facts herein, Defendant BAC's Servicer is a subsidiary of BANK OF AMERICA, N. A. (hereinafter "Defendant BAC"), who operates and does business in the State of Hawaii.

8. Upon information and belief, at all times relevant and material to the facts herein, Defendant BAC's Servicer and/or Defendant BAC by and through its officers, agents, representatives and/or employees were acting within the course and scope of their employment as a servicer of mortgages and a collector of debts allegedly owed to Defendant BAC which operates and does business in the State of Hawaii.

9. Upon information and belief, at all times relevant and material to the facts herein, Defendant COUNTRYWIDE HOME LOANS, INC., (hereinafter "Defendant COUNTRYWIDE"), which operates and does business in the State of Hawaii, by and through its officers, agents, representatives and/or employees consulted, created loan documents, offered and approved two loans to PLAINTIFF and ROBERT and secured loans by a first and second mortgage on their property.

10. Upon information and belief, at all times relevant and material to the facts herein, Defendant COUNTRYWIDE by and through its officers, agents, representatives and/or employees were acting within the course and scope of their employment as the home loan division and a servicer of debts allegedly owed to Defendant COUNTRYWIDE which operates and does business in the State of Hawaii.

11. Defendants JOHN DOES 1-50, JANE DOES 1-50, DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50, DOE TRUSTS 1-50, DOE ENTITIES 1-50 and DOE GOVERNMENTAL UNITS 1-50 (hereinafter referred to collectively as "DOE DEFENDANTS") are sued herein under fictitious names for the reason that their true names, capacities and responsibilities are presently unknown to PLAINTIFF after diligent search, but they are persons or entities who are in some manner presently unknown to PLAINTIFF and who engaged in the activities alleged herein; and/or are in some manner responsible for the injuries and damages to PLAINTIFF; and/or are persons who conducted some activity in a negligent and/or willful manner or who failed to fulfill a duty or obligation, which conduct or omission to act was the proximate cause of injuries or damages to PLAINTIFF; and/or were in some manner related to the previously named Defendants engaged in the activities alleged herein; and (1) PLAINTIFF asks to insert their true names and capacities, activities, and/or responsibilities, whether individual or corporate or other, when the same are ascertained; and, (2) PLAINTIFF asks this Honorable Court, pursuant to the allegations made in this Complaint, may cause other parties to be summoned and brought before this Court whether or not they reside, engage in business or have an agent for service of process in the State of Hawaii.

12. All of the above-named Defendants and the presently unidentified DOE DEFENDANTS' are sometimes collectively referred to as the "DEFENDANTS".

## STATEMENT OF FACTS

13. On or about October 26, 2005, PLAINTIFF and her husband, ROBERT, consulted with the officers, agents, representatives and/or employees of Defendant COUNTRYWIDE in Hawaii taking out a first mortgage (hereinafter "1<sup>st</sup> Mortgage") for \$467,400.00 (USD), Account No. 120758920, to refinance their two existing EMC Mortgage loans.

14. On or about October 26, 2005, Defendant COUNTRYWIDE provided a Truth In Lending Disclosure Statement for the 1<sup>st</sup> Mortgage loan to PLAINTIFF and ROBERT, which stated the total amount of the mortgage to be financed was \$452,723.67.

15. On or about October 26, 2005, Defendant COUNTRYWIDE attached an Amortization Schedule for the 1<sup>st</sup> Mortgage to the Truth In Lending Disclosure Statement and stated that the beginning balance of the mortgage was \$467,400.00.

16. On or about October 26, 2005, PLAINTIFF and ROBERT were required to sign and date a Notice of Right to Cancel the 1<sup>st</sup> Mortgage and PLAINTIFF was a named Borrower on the 1<sup>st</sup> Mortgage.

17. On or about October 26, 2005, Defendant COUNTRYWIDE was the named servicer for the 1<sup>st</sup> Mortgage and PLAINTIFF and ROBERT's telephone number listed on all known loan documentation was (808) 625-7454 or their house phone.

18. On or about November 1, 2005, DEFENDANTS, including BAC Servicer, started servicing PLAINTIFF and ROBERTS' 1<sup>st</sup> Mortgage.

19. On or about November 1, 2005, Defendant COUNTRYWIDE billed PLAINTIFF and ROBERT who made monthly payments of \$2,802.30 toward the 1<sup>st</sup> Mortgage.

20. On or about October 12, 2006, PLAINTIFF and ROBERT, consulted with

officers, agents, representatives and/or employees of Defendant COUNTRYWIDE in Hawaii for a second mortgage (hereinafter "2<sup>nd</sup> Mortgage") for \$93,000.00 (USD), Account No. 150552796, executing the final documents in California.

21. On or about October 12, 2006, a Truth In Lending Disclosure Statement for the 2<sup>nd</sup> Mortgage loan was provided to PLAINTIFF and ROBERT, which stated the total amount of the mortgage to be financed was \$89,985.95.

22. On or about October 12, 2006, Defendant COUNTRYWIDE attached a Mortgage's Amortization Schedule to the Truth In Lending Disclosure Statement for the 2<sup>nd</sup> Mortgage and stated that the beginning balance of the mortgage was \$93,000.00.

23. On or about October 12, 2006, DEFENDANTS, including BAC Servicer, started servicing PLAINTIFF and ROBERTS' 2<sup>nd</sup> Mortgage.

24. On or about October 12, 2006, PLAINTIFF was a named Borrower on the 1<sup>st</sup> Mortgage and PLAINTIFF and ROBERT's telephone number listed on all known loan documentation was (808) 625-7454 or their house phone.

25. On or about November 1, 2006, officers, agents, representatives and/or employees of Defendant COUNTRYWIDE billed PLAINTIFF and ROBERT who made monthly payments of \$1,067.86 toward the 2<sup>nd</sup> Mortgage.

26. No notice or documents were provided notifying PLAINTIFF and/or ROBERT that the 1<sup>st</sup> or 2<sup>nd</sup> Mortgage, and/or the Notes associated with these mortgages, were sold, purchased, acquired, transferred and/or assigned to Defendant BAC.

27. On or about August 2, 2010, PLAINTIFF's husband, ROBERT, died of cancer on August 2, 2010. Subsequently PLAINTIFF's mother died unexpectedly of cancer three months later in November 2010 and her brother died unexpectedly of cancer eight months

later in April 2011.

28. On August 3, 2010, the day after ROBERT died, DEFENDANTS, including BAC Servicer, by their officers, agents, representatives or employees telephoned PLAINTIFF asking that she make the 1<sup>st</sup> Mortgage loan payment. DEFENDANTS had *never* called PLAINTIFF and/or ROBERT in the past for either their 1<sup>st</sup> or 2<sup>nd</sup> Mortgage payment.

29. PLAINTIFF and ROBERTS' loan documents with DEFENDANTS required loan payment on the first of last month but each included a grace period up to and including the 16<sup>th</sup> day of each month when if payment was made within the grace period no late charges would be assessed.

30. PLAINTIFF and ROBERT's ordinary course of business for over five (5) years with DEFENDANTS, including BAC Servicer, was to make their 1<sup>st</sup> or 2<sup>nd</sup> mortgage payments to DEFENDANTS before they were deemed late on the 15<sup>th</sup> of the month, but not necessarily before or on the due date on the first of the month. DEFENDANTS received the payments anywhere from the 1<sup>st</sup> of the month to the 13<sup>th</sup> of the month, depending on when ROBERT received his paycheck, with only two known exceptions when late payments were made in 2009.

31. On or about August 3, 2010, during this telephone conversation with its officers, agents, representatives and/or employees of DEFENDANTS, including BAC Servicer, PLAINTIFF was crying as it was the day after ROBERT died. She tried to explain to DEFENDANTS that her husband, ROBERT, had died the day before and that she needed at least thirty days get her husband's business affairs in order and that she would pay them and get her accounts up-to-date as soon as she received his life insurance. She needed time to sort out his funeral plans and she told DEFENDANTS that she only had \$5,000 on hand for food for the family,

to bury her husband and to prepare for his wake.

32. DEFENDANTS' officers, agents, representatives and/or employees, including BAC Servicer, told her that if she had \$5,000 that would be enough to make the 1<sup>st</sup> Mortgage payment.

33. On or about August 4, 2010 through August 12, 2010, DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees continued to call PLAINTIFF incessantly every day even though PLAINTIFF asked DEFENDANTS many times to give her 30 days to get her husband's business affairs in order.

34. PLAINTIFF told DEFENDANTS that calling her 50 times a day would not help her pay them faster. Officers, agents, representatives and/or employees of DEFENDANTS would tell her to the effect, "I can't stop the calls, they are computer generated and they won't stop until they are paid."

35. PLAINTIFF asked the officers, agents, representatives and/or employees of DEFENDANTS if they could make a notation in the computer regarding the death of her husband in order to stop the calling for just a couple of weeks. DEFENDANTS told her "No".

36. PLAINTIFF spoke to all her other bill collectors and they were willing to wait 30 days until she received her life insurance money to pay their back.

37. On or about August 13, 2010, the morning of the wake when PLAINTIFF, family members and grieving friends were at her house, her multi-speaker answering phone clicked on such that a computer generated voice was broadcast throughout the house stating, "This is Bank of America and we are calling to collect with regards to a debt."

38. PLAINTIFF quickly hung up the phone, but was unsuccessful in trying to stop the message from broadcasting to her friends and family. For the rest of the wake



DEFENDANTS, including BAC Servicer, repeatedly called every 15 minutes forcing PLAINTIFF, her son, Daniel, or her daughter, Tracy, to rush to the phone to hang it up before the message was broadcast through the house again.

39. PLAINTIFF was receiving phone calls from ROBERT's relatives on the mainland as well as from well wishers all over the world who wanted to share their condolences with her and her family so she could not silence or disconnect the phone. PLAINTIFF could not believe that any company or business would be so callous as to intrude on her husband's wake by calling incessantly when they had been told repeatedly that her husband had just died.

40. By the terms and the conditions of DEFENDANT's 1<sup>st</sup> Mortgage and the Note, PLAINTIFF's mortgage payment was not deemed late unless it was received after the fifteenth of the month or August 15, 2010.

41. On or about August 18, 2010, PLAINTIFF was able to secure her financial bank accounts and mailed both her 1<sup>st</sup> and 2<sup>nd</sup> Mortgage payments together with the late fees to DEFENDANTS, including BAC Servicer.

42. On or about August 18, 2010, after DEFENDANTS, including BAC Servicer, requested official documents proving ROBERT had died and that PLAINTIFF had authority to speak on his behalf. PLAINTIFF mailed ROBERT'S Certificate of Death and a copy of ROBERT's General, Individual and Trustee Power of Attorney (hereinafter "Trustee POA"), granting PLAINTIFF authority to deal with ROBERT's financial affairs and his Trust.

43. On or about August 22, 2010, DEFENDANTS, including BAC Servicer, denied ever receiving the package and insisted that PLAINTIFF send the documents again.

44. On or about August 23, 2010, PLAINTIFF mailed a second package to DEFENDANTS, including BAC Servicer, this time through registered certified mail, containing

a second set of ROBERT's official Certificate of Death and her Trustee POA.

45. On or about August 24, 2010, DEFENDANTS, including BAC Servicer, by way of a different department, sent her a letter stating they had received her package with ROBERT's Certificate of Death and that they had changed the name on the 1<sup>st</sup> Mortgage account to that of ROBERT's estate.

46. On or about August 14, 2010 through August 24, 2010, DEFENDANTS, including BAC Servicer, continued to call PLAINTIFF incessantly every day of the week, approximately every 15 minutes, from 7:00 a.m. to 7:00 p.m.

47. DEFENDANTS, including BAC Servicer, by their officers, agents, representatives and/or employees called PLAINTIFF's home telephone number asking repeatedly to speak to ROBERT. PLAINTIFF repeatedly told DEFENDANTS that her husband ROBERT was dead and he could not speak to the DEFENDANTS, therefore, they must speak to her because she was his Successor Trustee.

48. Further, PLAINTIFF was a named Borrower on the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage and was a named party on title to the house.

49. DEFENDANTS, by their officers, agents, representatives and/or employees repeatedly told PLAINTIFF that they could not speak to her, they could only speak to ROBERT stating, "We cannot talk to you because you are not on the Note"; notwithstanding the mortgage documents which stated she was a Borrower.

50. DEFENDANTS, including BAC Servicer, by and through their officers, agents, representatives and/or employees told PLAINTIFF they would send her papers about Defendant BAC's and/or DEFENDANTS' Note on the house which she had to sign and return or they could not talk to her and she would lose the house.

51. DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees told PLAINTIFF that she had no right to be in her home, it was ROBERTS.

52. PLAINTIFF asked DEFENDANTS, including BAC Servicer, to help her determine if there was any mortgage insurance on her mortgages as when PLAINTIFF and ROBERT originally took out the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage they had asked for mortgage insurance to be included in their loan.

53. DEFENDANTS, including BAC Servicer, refused to help PLAINTIFF investigate whether there was mortgage insurance on either her 1<sup>st</sup> or 2<sup>nd</sup> mortgage, nor would they answer any of her questions.

54. DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees repeatedly told PLAINTIFF that since ROBERT died that she had to sign the Note for the 1<sup>st</sup> Mortgage or they could not speak to her otherwise.

55. PLAINTIFF had no obligation to sign the Note as instructed by DEFENDANTS, including BAC Servicer, as it would unfairly prejudice her into acquiring debt that under federal law she was not obligated to assume and she was already a named Borrower on the mortgage.

56. DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees told PLAINTIFF repeatedly, “We need those papers or we can take your house. You have no right.”

57. PLAINTIFF repeatedly told DEFENDANTS that she was current on making her mortgage payments and she has paid both the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage on or about the due date every month only falling behind briefly on or about the time her husband died.

58. PLAINTIFF repeatedly told DEFENDANTS she had the cancelled checks, telephone payment confirmation numbers and/or a record of bank withdrawals to prove her payments.

59. DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees told her that they could legally call her up every 15 minutes, every hour from 7:00 a.m. until 7:00 p.m. at night, seven (7) days a week and they would continue to make such calls.

60. DEFENDANTS, including BAC Servicer, always called from a "1-800" service number, which could be a different number each time, preventing her from screening her calls and forcing her to listen to almost every call from DEFENDANTS. PLAINTIFF did not want to risk missing another creditor calling whom she had not spoken to yet as she might need to make arrangements to pay a bill. PLAINTIFF and ROBERT were proud of his good name and their standing in the community. ROBERT was always careful with their credit rating as they had struggled financially when they were first married and had worked hard to get the high credit scores.

61. On or about October 28, 2010, DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees mailed a notice for the first time to PLAINTIFF's home stating that it had come to their attention that the hurricane/windstorm/hail insurance was inadequate on the 1<sup>st</sup> Mortgage and such a policy would be placed on the 1<sup>st</sup> Mortgage if she did not acquire a policy.

62. On or about October 28, 2010, PLAINTIFF called DEFENDANTS, including BAC Servicer, to ask about the Notice and she told the representative that she had homeowner's hurricane coverage already in place which provided adequate coverage for the

hurricane/windstorm/hail insurance.

63. PLAINTIFF was told that she had to pay the \$5,401.11 even though she had a policy in place which provided more than adequate coverage.

64. On or about October 28, 2010, PLAINTIFF called her insurance carriers, Liberty Mutual and Zephyr, to ask each company to fax a copy of her home owner's policy to DEFENDANTS, including BAC Servicer, to prove she had the hurricane insurance in place as they required.

65. On or about October 28, 2010, Liberty Mutual and Zephyr faxed the certificate of insurance to DEFENDANTS, including BAC Servicer, as PLAINTIFF requested.

66. On or about November 11, 2010, DEFENDANTS, including BAC Servicer, mailed a second notice to PLAINTIFF's home regarding the hurricane/windstorm/hail insurance claiming she did not have coverage.

67. Notwithstanding proof of adequate insurance in place, on or about December 21, 2010, DEFENDANTS, including BAC Servicer, by and through its officers, agents, representatives and/or employees assessed \$5,401.11 against PLAINTIFF's 1<sup>st</sup> Mortgage for the alleged inadequate home owner insurance and demanded payment.

68. On or about December 30, 2010, DEFENDANTS, including BAC Servicer, finally cancelled the improperly assessed hurricane/wind/hail insurance policy and reversed the charges.

69. From August 25, 2010 through December 31, 2010, DEFENDANTS, including BAC Servicer, continued to incessantly make oppressive, harassing and threatening calls to PLAINTIFF.

70. In or about August 3, 2010 through December 31, 2010, according to the

caller identification of “1-800” on PLAINTIFF’s telephone, DEFENDANTS, including BAC Servicer, continued its pattern of incessantly calling PLAINTIFF and hanging up the phone when she answered. This could happen about forty-eight (48) times a day.

71. On or about January 8, 2011, PLAINTIFF did not receive her 2<sup>nd</sup> Mortgage coupon in the mail. She telephoned the customer service center and spoke with DEFENDANTS, including BAC Servicer, to make both of her monthly mortgage payments over the phone. She had successfully made telephone payments to DEFENDANTS in the past.

72. On or about January 8, 2011, DEFENDANTS, including BAC Servicer, agreed to take PLAINTIFF’s telephone payments.

73. On or about January 11, 2011, DEFENDANTS, including BAC Servicer, sent PLAINTIFF an email alert from Bank of America stating her payment for her mortgage loan account ending #8920, or 1<sup>st</sup> Mortgage, had posted.

74. On or about January 18, 2011, DEFENDANTS, including BAC Servicer, sent PLAINTIFF two letters stating that the telephone payments had not gone through for her 1<sup>st</sup> and 2<sup>nd</sup> Mortgage and to make the payments again.

75. PLAINTIFF called on the same day she received the letters and spoke with a Representative of DEFENDANTS, including BAC Servicer, and asked to speak with a Supervisor to ensure that her 1<sup>st</sup> and 2<sup>nd</sup> Mortgage payments were taken properly over the telephone this time and prevent any further error on the part of DEFENDANTS.

76. After DEFENDANTS’ Supervisor looked at PLAINTIFF’s computer record she said, “Oh my God, what are they doing to you.”

77. After double checking all the bank account routing numbers and PLAINTIFF’s confirmation number, both the Representative and Supervisor agreed to take

PLAINTIFF's telephone payments.

78. PLAINTIFF was told to call DEFENDANTS, including BAC Servicer, at a toll-free number to speak to a specific representative to confirm that no errors had been made with her telephone withdrawals this time. PLAINTIFF was told to call the number the next day to make sure the payments had been properly withdrawn from her bank account.

79. On or about January 19, 2011, PLAINTIFF called the toll-free telephone number as instructed and was told by DEFENDANT's Representative that her withdrawals had been made and her "account was good to go."

80. On or about February 8, 2011, in contrast to the assurances of DEFENDANTS' Supervisor and Representatives, PLAINTIFF received her first written Notice of Intent to Accelerate from DEFENDANTS, including BAC Servicer, for nonpayment of her 2<sup>nd</sup> Mortgage monthly payment.

81. PLAINTIFF did not receive a similar notice for her 1<sup>st</sup> Mortgage as it had been successfully withdrawn from her checking account by DEFENDANTS, including BAC Servicer, even though it was made during the same telephone conference, using the same checking account number, with the same routing numbers as the 2<sup>nd</sup> Mortgage.

82. DEFENDANTS, including BAC Servicer, failed to make the withdrawal for the 2<sup>nd</sup> Mortgage even though there were adequate funds in PLAINTIFF's account to pay both the 1<sup>st</sup> and the 2<sup>nd</sup> Mortgage and any other outstanding checks she had written.

83. On or about March 4, 2011, DEFENDANTS, including BAC Servicer, began to accelerate the multiple harassing phone calls they made to PLAINTIFF telling her she was NOW delinquent on her monthly payments for her 2<sup>nd</sup> Mortgage, when, in fact, she was not.

84. On or about March 15, 2011, PLAINTIFF mailed a Qualified Written

Request (hereinafter “QWR”) to DEFENDANTS, including BAC Servicer, for her 1<sup>st</sup> Mortgage pursuant to the rules found under the Real Estate Settlement Procedure Act.

85. On or about March 23, 2011, DEFENDANTS, including BAC Servicer, replied in a form letter acknowledging receipt of PLAINTIFF’s “QWR” letter for her 1<sup>st</sup> Mortgage.

86. On or about March 28, 2011, PLAINTIFF received a letter from DEFENDANTS, including BAC Servicer, Qualified Written Request Group. The letter attached copies of documents relating to her 1<sup>st</sup> Mortgage and noted that the remainder of her requests will be addressed under a separate cover, pursuant to Real Estate Settlement and Procedures Act guidelines.

87. On or about March 29, 2011, PLAINTIFF mailed a Qualified Written Request (hereinafter “QWR”) to DEFENDANTS, including BAC Servicer, for her 2<sup>nd</sup> Mortgage pursuant to the rules found under the Real Estate Settlement Procedure Act.

88. On or about April 8, 2011, PLAINTIFF received three (3) forms from DEFENDANTS, including BAC Servicer, for her 2<sup>nd</sup> Mortgage, in which none of the clauses applied to her facts and had she filled them out would have resulted in nonsensical or legal assertions by which she would have been bound. These form letters did not have a cover letter or a contact person whom she could call; nor did she have any indication that they were in response to PLAINTIFF’s QWR letter for her 2<sup>nd</sup> Mortgage dated March 29, 2011.

89. On or about May 6, 2011, a letter was sent informing DEFENDANTS, including BAC Servicer, that PLAINTIFF was in receipt of the three form letters and all future correspondence regarding the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage should be directed to PLAINTIFF’s legal counsel.



90. On or about May 11, 2011, DEFENDANTS, including BAC Servicer, again replied in a form letter acknowledging receipt of PLAINTIFF's "QWR" letter for her 1<sup>st</sup> Mortgage and stating there would be a complete response in 20 days.

91. On or about May 17, 2011, DEFENDANTS, including BAC Servicer, again replied in a form letter acknowledging receipt of PLAINTIFF's "QWR" letter for her 1<sup>st</sup> Mortgage and stating there would be a complete response in 20 days.

92. DEFENDANTS, including BAC Servicer, did not respond again to PLAINTIFF's QWR letter about her 1<sup>st</sup> Mortgage

93. On or about May 23, 2011, PLAINTIFF received the same three (3) form letters from DEFENDANTS, including BAC Servicer, for her 2<sup>nd</sup> Mortgage, in which none of the clauses applied to her facts and would have resulted in nonsensical or legal assertions which she would have been bound by. These form letters did not have a cover letter or a contact person whom she could call; nor did she have any indication that they were in response to PLAINTIFF's QWR letter for her 2<sup>nd</sup> Mortgage dated March 29, 2011.

94. On or about June 2, 2011, PLAINTIFF received Notice of Intent to Accelerate for her 2<sup>nd</sup> Mortgage.

95. On or about June 8, 2011 PLAINTIFF received a letter from DEFENDANTS, including BAC Servicer, stating that the servicing of her 1<sup>st</sup> and 2<sup>nd</sup> Mortgage would be transferred to Defendant BAC effective July 1, 2011.

96. On or about June 21, 2011, PLAINTIFF wrote a detailed letter to DEFENDANTS, including BAC Service, refuting the allegations that she had failed to pay her 2<sup>nd</sup> Mortgage as stated in the June 2, 2011, Notice of Intent to Accelerate.

97. PLAINTIFF often cried on the telephone begging the DEFENDANTS,

including BAC Servicer, to stop the telephone calls and the inaccurate mailings as she was afraid that somehow DEFENDANTS would take the house from her.

98. Instead, DEFENDANTS, including BAC Servicer, harassment accelerated so severely it caused PLAINTIFF, but not limited to, anxiety mental and emotional distress resulting in physical illness resulting in weight loss, nervous shaking, high blood pressure, insomnia, which has required medical care.

99. In spite of receiving regular payments from PLAINTIFF and depositing those checks, DEFENDANTS, including BAC Servicer, threatened her repeatedly with foreclosure over the telephone and by written notice sent by the U. S. Postal Service that if she did not pay the sums and late fees they alleged she owed for the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage.

100. PLAINTIFF tried multiple times to correct DEFENDANTS, including BAC Servicer, repeated mistakes and accounting errors with regards to her 1<sup>st</sup> and 2<sup>nd</sup> Mortgages.

101. DEFENDANTS, including BAC Servicer, were informed of the distress and grief that PLAINTIFF was experiencing as she was a recent widow who was elderly and in an emotionally and physiologically fragile state and continued the incessant telephone calls and campaign, knowingly accelerating a hostile and vicious campaign against PLAINTIFF by both telephone and mail.

102. PLAINTIFF was not late in making her loan payments to DEFENDANTS, including BAC Servicer, for either the 1<sup>st</sup> or 2<sup>nd</sup> Mortgage from October 2010 through the present as she has carefully mailed in her coupons with payments on a regular basis and has cancelled checks and/or telephone payment confirmation numbers and/or bank withdrawal records to confirm the payments.

103. PLAINTIFF has affirmed to DEFENDANTS, including BAC Servicer, and her actions prove that that she has always made her monthly loan payments on both the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage.

104. DEFENDANTS, including BAC Servicer, incessantly called PLAINTIFF approximately every 15 minutes, from 7:00 a.m. until 7:00 p.m. at night, seven (7) days a week, often asking for ROBERT and often refusing to talk to her when she picked up the phone which rang as often as 48 times a day, even though they had proof that ROBERT was deceased.

105. DEFENDANTS, including BAC Servicer, had been repeatedly told that ROBERT was deceased and PLAINTIFF sent them documentation of his death twice and her Trustee POA.

### COUNT I

#### **(State Collection Practices, Haw. Rev. Stat. § 480 et seq. (“SCP”))**

106. PLAINTIFF incorporates by reference paragraphs 1 through 105, as if fully set forth herein.

107. Pursuant to Haw. Rev. Stat. § 480 et seq. DEFENDANTS, including BAC Servicer, are debt collectors.

108. By the above and other acts, on or about August 3, 2010 through June 30, 2011, DEFENDANTS, including BAC Servicer, imputed to persons present, including to PLAINTIFF herself, that she was dishonest and guilty of obtaining property by false pretenses, a crime of moral turpitude.

109. In or about August 3, 2010 through June 30, 2011, DEFENDANTS, including BAC Servicer, have made false accusations to PLAINTIFF herself and threatened to

make false accusations to other persons, including credit reporting agencies, that a debt has not been paid.

110. In or about August 3, 2010 through June 30, 2011, DEFENDANTS, including BAC Servicer, have accused PLAINTIFF of trespassing on the Subject Property as she had no right to be there.

111. By the above and other acts, DEFENDANTS, including BAC Servicer, conduct to collect or attempt to collect for itself and/or on behalf of a third party a consumer debt from PLAINTIFF constitute a violation of Haw. Rev. Stat. § 480 et seq.

112. DEFENDANTS, including BAC Servicer, actions and conduct would be offensive to persons of ordinary sensibilities.

113. On or about, at different times from August 3, 2010 through June 30, 2011, DEFENDANTS, including BAC Servicer, threatened to foreclose the Subject Property thereby selling or assigning the debt causing PLAINTIFF to lose her defense or legal right to her home as a result of the sale/assignment of the property.

114. DEFENDANTS, including BAC Servicer, actions and conduct were not privileged, were untrue and unfair, wanton, reckless, oppressive and unjustified, threatening and calculated to coerce and embarrass PLAINTIFF regarding the debt and to cause her emotional distress and anxiety.

115. DEFENDANTS, including BAC Servicer, actions and statements as set forth above were in violation of the SCP, Hawaii Revised Statute § 480D, for which they are liable to PLAINTIFF for damages, attorney fees and costs.

## COUNT II

### **(Unfair and Deceptive Trade Business Practices (“UDTBP”))**

116. PLAINTIFF incorporates by reference paragraphs 1 through 115, as if fully set forth herein.

117. PLAINTIFF is a consumer as that term is defined in Hawaii Revised Statutes §480-1.

118. The described acts and practices involved “trade and commerce” as that term is used in Hawaii Revised Statutes, §480-2(a).

119. An unfair or deceptive practice in the conduct of any trade or commerce is unlawful pursuant to Hawaii Revised Statutes, §480-2(a).

120. Certain trade practices are also unlawful pursuant to Hawaii Revised Statutes, §481A-3.

121. DEFENDANTS, including BAC Servicer, alleging their status as assignee of the Countrywide 1<sup>st</sup> and 2<sup>nd</sup> Mortgage, including but not limited to their agents, representatives, employees and facilitators, made false representations as to the terms of the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage.

122. The misleading information given by DEFENDANTS, including BAC Servicer, by their failure to provide documents, the charges, the false and misleading communications in connection with the above-described actions were vexatious, wanton, unethical, oppressive, unscrupulous, and substantially injurious to PLAINTIFF as a consumer and amounts to unfair and deceptive trade practices in violation of Hawaii Revised Statutes, §§ 480-2, 480-13, 480-13.5 and 481A-3.

123. Each attempt by DEFENDANTS, including BAC Servicer, to manufacture late payment notices to PLAINTIFF stating she was late on her monthly payment when, in fact, she was not late on her payment and her payment had been made as required, is an unfair, deceptive and a separate violation of Hawaii Revised Statutes, §§ 480-2, 480-13, 480-13.5 and 481A-3.

124. Each attempt by DEFENDANTS, including BAC Servicer, to say a payment had not been made when, in fact, DEFENDANTS, including BAC Servicer, had deposited and cashed PLAINTIFF's check was a separate violation of Hawaii Revised Statutes, §§ 480-2, 480-13, 480-13.5 and 481A-3.

125. Each attempt by DEFENDANTS, including BAC Servicer, to say PLAINTIFF did not have a right to make payments or have a right to be on the Subject Property was a separate violation of Hawaii Revised Statutes, §§ 480-2, 480-13, 480-13.5 and 481A-3.

126. PLAINTIFF qualifies as an elder pursuant to Hawaii Revised Statutes, § 480-13.5.

127. DEFENDANTS, including BAC Servicer, acted with malice and relentlessly harassed PLAINTIFF with full knowledge of her age, the fact her husband, her mother and her brother died within three months of each other, her declining physical and emotional condition and how desperately ill and emotionally distraught she was becoming as a result of their actions.

128. DEFENDANTS, including BAC Servicer, violations of RESPA in connection with the described loan(s) constitute unfair and deceptive trade business practices in violation of Hawaii Revised Statutes, §§ 480-2(a), 480-13, 480-13.5 and 481A-3.

129. As a direct and proximate result of DEFENDANTS, including BAC Servicer, unfair and deceptive trade practices, PLAINTIFF has suffered damages, including but not limited to the loss of reputation, changes to her credit rating affecting her ability to secure refinancing for her home and/or financing for her personal and/or business interests in the amount to be determined at trial.

130. DEFENDANTS, including BAC Servicer, described acts and practices offend established public policy and/or were unethical, oppressive, unscrupulous, and/or substantially injurious to consumers and were therefore unfair in violation of Hawaii Revised Statutes, §§ 480-2(a), 480-13, 480-13.5 and 481A-3.

131. DEFENDANTS, including BAC Servicer, described acts and practices involved material representations, omissions or practices that were likely to mislead PLAINTIFF and other consumers acting reasonably under the circumstances and were therefore deceptive in violation of Hawaii Revised Statutes, §§ 480-2(a), 480-13, 480-13.5 and 481A-3.

132. Pursuant to Hawaii Revised Statutes, § 480-13(b)(1), PLAINTIFF as a consumer, who is injured by unfair and deceptive trade business practices, is entitled, for each unfair and deceptive trade business practice, to be awarded a sum not less than \$1,000.00 or threefold any damages he or she sustained, whichever sum is the greater, and reasonable attorneys' fees together with costs of suit.

133. Pursuant to Hawaii Revised Statutes, §§ 480-13(b)(2), PLAINTIFF as a consumer was injured by unfair and deceptive trade business practices by DEFENDANTS, including BAC Servicer, may bring proceedings to enjoin the unlawful practices and be awarded reasonable attorneys' fees together with costs of suit.

134. Pursuant to Hawaii Revised Statutes, § 480-13.5 (a), PLAINTIFF as an elderly consumer was injured by unfair and deceptive trade business practices is entitled, for each unfair and deceptive trade business practice, in addition to any other civil penalty, to be awarded a sum not to exceed \$10,000.00 for each violation.

135. As a direct and proximate result of DEFENDANTS, including BAC Servicer, unfair and deceptive trade practices, PLAINTIFF, an elder, has been injured and is entitled to various remedies including, but not limited to, a declaration that the note and mortgage is void, reimbursement, equitable recoupment, indemnification, damages (statutory, actual and treble damages), additional civil penalties for consumer frauds committed against elders, interest, attorney fees and costs and injunctive relief.

### **COUNT III**

#### **(Truth In Lending Act (“TILA”) and/or Real Estate Settlement Procedure Act (“RESPA”))**

136. PLAINTIFF incorporates by reference paragraphs 1 through 135, as if fully set forth herein.

137. DEFENDANTS, including BAC Servicer, cannot assert holder in due course by limitations pursuant to federal statutes, regulations and/or administrative rules.

138. DEFENDANTS, including BAC Servicer, above and other acts violated TILA, 15 U.S.C.A. §§ 1601 et seq. and/or RESPA, 12 U.S.C.A. §§ 2601 et seq.

139. PLAINTIFF has been injured and is entitled to damages to be determined at trial.

140. As a direct and proximate result of said violations of TILA and/or RESPA, DEFENDANTS, including BAC Servicer, are liable to PLAINTIFF for damages and reasonable attorneys’ fees and costs.



## COUNT V

### **(Violations of Hawaii Bureau of Conveyance Regulations)**

141. PLAINTIFF incorporates by reference paragraphs 1 through 140, as if fully set forth herein.

142. DEFENDANTS, including BAC Servicer, published intent to accelerate the home loan for the Subject Property without possessing legally enforceable, recorded assignment of mortgages from the actual mortgagees. Under Hawaii law, before an entity would be entitled to receive a distribution from the sale of real property, their interest therein must have been recorded.

143. DEFENDANTS, including BAC Servicer, act of accelerating the note without the requisite legal title, while falsely stating that it had such title, and while lacking the right to engage in trust business in Hawaii, constitutes a false, deceptive or misleading representation or means in connection with the collection of a debt, in violation of the Federal FDCP, 15 U.S.C. § 1692e.

144. DEFENDANTS, including BAC Servicer, are “debt collectors” as defined in 15 U.S.C. § 1692e, because they regularly use instrumentalities of interstate commerce, and the mails, in attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another, namely the actual lenders, mortgagors, and certificate holders under the above-referenced pooling and/or servicing agreements.

145. Upon information and belief, DEFENDANTS, including BAC Servicer, failed to establish a complete chain of assignment from the originator to the person assigning the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage to DEFENDANTS, including BAC Servicer,.

146. Failure to file these assignments in the State of Hawaii Bureau of Conveyances and/or with the Assistant Registrar of the Land Court clearly prohibits DEFENDANTS, including BAC Servicer, from exercising any attempts to accelerate the Subject Property's 1<sup>st</sup> an/or 2<sup>nd</sup> Mortgage.

147. As a direct and proximate result of the actions of DEFENDANTS, including BAC Servicer, PLAINTIFF is entitled to damages in such amounts as shall be proven at the time of trial.

## **COUNT VI**

### **(Bad Faith)**

148. PLAINTIFF incorporates by reference paragraphs 1 through 147, as if fully set forth herein.

149. DEFENDANTS, including BAC Servicer, owed PLAINTIFF a fiduciary duty to deal with her in good faith and in a fair manner.

150. DEFENDANTS, including BAC Servicer, failed to deal with PLAINTIFF in good faith and in a fair manner by making various misrepresentations of material fact and/or omissions of material fact, not making the mandatory federal law disclosures and deliberately misleading PLAINTIFF that she was in default of her loan and she would lose her home to foreclosure when, in fact, DEFENDANTS, including BAC Servicer, had received her payments and withdrawn the funds.

151. As a result of DEFENDANTS, including BAC Servicer, actions and conduct, PLAINTIFF has suffered various injuries and damages in such amounts as shall be proven at the time of trial.

152. As a result of the wrongful acts and/or omissions of DEFENDANTS, including BAC Servicer, PLAINTIFF is entitled to various remedies including, but not limited to, a declaration that the note and mortgage is void, reimbursement, equitable recoupment, indemnification, damages, attorneys' fees and costs, and injunctive relief.

## **COUNT VII**

### **(Unjust Enrichment)**

153. PLAINTIFF incorporates by reference paragraphs 1 through 152, as if fully set forth herein.

154. DEFENDANTS, including BAC Servicer, have an actual an implied contract and warranty with PLAINTIFF to ensure that PLAINTIFF understood all fees, rates, payments and charges which would be paid to said DEFENDANTS, including BAC Servicer,, to obtain credit on Plaintiff's behalf, to not charge any fees which are not related to the settlement of the loan and without full disclosure to PLAINTIFF.

155. DEFENDANTS, including BAC Servicer, cannot, in good conscience and equity, retain the benefits from their actions of breach of contract, fees, rebates, kickbacks, profits and gains from any resale of mortgages and notes using Plaintiff's identity, credit score, appraisal and reputation without consent, right, justification or excuse as part of an illegal enterprise scheme.

156. DEFENDANTS, including BAC Servicer, have been unjustly enriched at the expense of PLAINTIFF, and maintenance of the enrichment would be contrary to the rules and principles of equity.

157. PLAINTIFF thus demands restitution from DEFENDANTS, including BAC Servicer, in the form of actual damages, exemplary damages and attorneys' fees.

## **COUNT VIII**

### **(Breach of Fiduciary Duty)**

158. PLAINTIFF incorporates by reference paragraphs 1 through 157, as if fully set forth herein.

159. At all times relevant herein, DEFENDANTS, including BAC Servicer, owed PLAINTIFF a fiduciary duty with regard to the above loan.

160. Each DEFENDANTS, including BAC Servicer, breached its fiduciary duty owed to PLAINTIFF as described above.

161. PLAINTIFF has been damaged thereby in an amount to be proved at trial.

## **COUNT IX**

### **(Misrepresentation)**

162. PLAINTIFF incorporates by reference paragraphs 1 through 161, as if fully set forth herein.

163. DEFENDANTS, including BAC Servicer, have continuously and intentionally misrepresented the full nature of their agency and/or collection efforts omitting material facts and making numerous false representations to PLAINTIFF for the obvious purpose of coercing an unfair and improper settlement advantage and/or force the sale of her property as described in the facts above.

164. DEFENDANTS, including BAC Servicer, knew or should have known that their misrepresentations were false, misleading, vexatious, willful, wanton and with malice and PLAINTIFF would rely on these representations to her detriment.

165. PLAINTIFF did rely on these representations to her detriment, and was justified in her reliance, and as a result suffered damages.

166. As a direct and proximate cause of DEFENDANTS, including BAC Servicer, material omissions and material misrepresentations, the note and mortgage is void and PLAINTIFF is entitled to damages in such amounts as shall be proven at the time of trial.

167. PLAINTIFF also asserts her claim for punitive damages for the willful, wanton, vexatious and malicious misrepresentations in such amounts as will be proven at trial.

### **COUNT X**

#### **(Defamation)**

168. PLAINTIFF incorporates by reference paragraphs 1 through 167, as if fully set forth herein.

169. DEFENDANTS, including BAC Servicer, negligently and/or recklessly and/or intentionally published or caused to be published slanted and defamatory statements about PLAINTIFF to third-parties and/or others, thereby damaging her ability to seek and find suitable alternative credit and financing for her personal and business needs.

170. The actions by DEFENDANTS, including BAC Servicer, lacked any justification or privilege and it was an abuse of legitimate legal means to improperly threaten to litigate a wrongful foreclosure and deprive PLAINTIFF of her property.

171. As a direct and proximate result of the defamation by DEFENDANTS, including BAC Servicer, PLAINTIFF has suffered consequential, special and general damages in such amounts as will be proven at trial and further claims punitive damages for the wrongful acts.

## COUNT XI

### **(Negligent Infliction of Emotional Distress)**

172. PLAINTIFF incorporates by reference paragraphs 1 through 171, as if fully set forth herein.

173. DEFENDANTS, including BAC Servicer, owed PLAINTIFF a duty to avoid negligently inflicting severe mental and emotional distress upon PLAINTIFF.

174. DEFENDANTS, including BAC Servicer, breached their duties by causing PLAINTIFF to suffer severe mental and emotional distress, by threatening her with foreclosure and misleading her regarding her rights to keep her home among other wrongful and misleading acts.

175. As a direct and proximate result of the wrongful actions and/or omissions of DEFENDANTS, including BAC Servicer, as alleged above, PLAINTIFF's reputation was severely damaged and PLAINTIFF suffered humiliation, embarrassment and public ridicule causing PLAINTIFF severe pain and mental anguish, all to her damage. Further, PLAINTIFF has suffered medical emergencies, requiring care and attention, all of which will be proven at trial.

176. As a direct and proximate result of the intentional and/or negligent and/or reckless infliction of emotional distress, PLAINTIFF demands consequential, special and general damages in such amounts as will be proven at trial.

## COUNT XII

### **(Intentional Infliction of Emotional Distress)**

177. PLAINTIFF incorporates by reference paragraphs 1 through 176, as if fully set forth herein.

178. DEFENDANTS, including BAC Servicer, owed PLAINTIFF a duty to avoid intentionally inflicting severe mental and emotional distress upon PLAINTIFF.

179. DEFENDANTS, including BAC Servicer, breached their duties by causing PLAINTIFF to suffer extreme and outrageous mental and emotional distress, by intentionally and/or recklessly, willfully, vexatiously and maliciously misleading her regarding her rights to keep her home among other wrongful and misleading acts with full knowledge of the extreme and severe illness it was causing her and trying to collect on a debt that was not delinquent.

180. As a direct and proximate result of the intentional wrongful actions and conduct and/or omissions of DEFENDANTS, including BAC Servicer, as alleged above, PLAINTIFF's reputation was harmed causing PLAINTIFF severe pain and mental anguish, all to her damage. Further, because of the above stated acts and conduct, PLAINTIFF has suffered medical emergencies, requiring care and attention, all of which will be proven at trial.

181. As a direct and proximate result of the intentional, willful, wanton, vexatious and malicious acts and conduct to and against PLAINTIFF it caused PLAINTIFF harm, including the infliction of emotional distress and pain, mental anguish and anxiety, PLAINTIFF demands consequential, special, general and punitive damages in such amounts as will be proven at trial.

### **COUNT XIII**

#### **(Tort of Outrage)**

182. PLAINTIFF incorporates by reference paragraphs 1 through 181, as if fully set forth herein.

183. Being that PLAINTIFF is a person and a consumer who is entitled to good faith and fair dealing, who due to the malicious, willful, wanton and vexatious acts and conduct

of DEFENDANTS, including BAC Servicer, individually and jointly, which are extreme and outrageous so as to cause PLAINTIFF severe emotional distress, mental anguish and anxiety by wrongfully threatening to foreclose on her property, manufacturing late notices when she was not late in making her payments and wrongfully destroying her credit rating in her personal capacity.

184. As a direct and proximate result of the intentional and/or negligent and/or reckless infliction of emotional distress, PLAINTIFF demands special, general and punitive damages, in such amounts as will be proven at trial.

#### **COUNT XIV**

#### **(Unconscionability)**

185. PLAINTIFF incorporates by reference paragraphs 1 through 184, as if fully set forth herein.

186. DEFENDANTS, including BAC Servicer, have engaged in unconscionable behavior and acts to the detriment of PLAINTIFF, including but not limited to charging PLAINTIFF inflated and unnecessary charges, by failing to give PLAINTIFF required documents in a timely manner, by failing to take action to modify and/or rescind the loan and mortgage, by making false and misleading representations regarding PLAINTIFF's efforts to make payments on the existing loans and by pursuing foreclosure of PLAINTIFF's home.

187. As a direct and proximate result of the intentional and/or negligent and/or reckless infliction of emotional distress, PLAINTIFF demands special, general and punitive damages, in such amounts as will be proven at trial.



## **COUNT XV**

### **(Breach of Contract)**

188. PLAINTIFF incorporates by reference paragraphs 1 through 187, as if fully set forth herein.

189. PLAINTIFF and DEFENDANTS, including BAC Servicer, entered into contracts for the 1<sup>st</sup> and 2<sup>nd</sup> Mortgage and the companion collateral documents.

190. Pursuant to these contracts, PLAINTIFF has faithfully paid her monthly mortgages and attempted to repeatedly correct the errors of DEFENDANTS, including BAC Servicer.

191. DEFENDANTS, including BAC Servicer, did not fulfill its obligations under these contracts and, in fact, repeatedly violated federal law in its administration of these contracts and wrongfully threatened PLAINTIFF with the foreclosure of her home.

192. The failure of DEFENDANTS' to uphold these provisions is a breach of contract.

193. PLAINTIFF suffered substantial pecuniary damages as set forth herein and in an amount to be proven at trial.

194. Further, a breach of contract grants PLAINTIFF a statutory right to all reasonable attorney fees and costs incurred pursuant to Haw. Rev. Stat., Section 607-14.

## **COUNT XVI**

### **(The Fair Credit Reporting Act ("FCRA"))**

195. PLAINTIFF incorporates by reference paragraphs 1 through 194, as if fully set forth herein.

196. DEFENDANTS, including BAC Servicer, had a duty and responsibility under the FCRA, 15 U.S.C. §§ 1681 et seq., to furnish correct information to any consumer reporting agency.

197. The failure of DEFENDANTS, including BAC Servicer, to uphold these provisions is a breach of their duties under the FCRA to PLAINTIFF.

198. PLAINTIFF's credit report has been severely damaged by DEFENDANTS' false and incorrect information supplied to various consumer reporting agencies.

199. Further, a breach of the FCRA grants PLAINTIFF a statutory right to all reasonable attorney fees and costs incurred for negligent and/or willful noncompliance with the FCRA, 15 U.S.C. §§ 1681 et seq.

## **COUNT XVII**

### **(Punitive Damages)**

200. PLAINTIFF incorporates by reference paragraphs 1 through 199, as if fully set forth herein.

201. The above described actual conduct of DEFENDANTS, including BAC Servicer, was jointly and severally willful, wanton, vexatious, malicious reckless and oppressive and was done with actual malice constituting willful misconduct and/or want of care which raises the presumption of conscious indifference to the consequences of their actions.

By virtue of the foregoing, PLAINTIFF is entitled to an award of punitive damages against DEFENDANTS, including BAC Servicer.

## PRAYER

WHEREFORE, PLAINTIFF prays that the Court:

A. AS TO COUNT I (State Collection Practices)

1. Correct the errors in her credit report and any tangibly related documents.
2. Award PLAINTIFF her attorneys fees and costs.

B. AS TO COUNT II (HRS 480 UDAP)

3. Award PLAINTIFF statutory damages of not less than \$10,000.00 or three times the damages PLAINTIFF sustained whichever is greater;

4. Declare the above transaction null and void and unenforceable at law or in equity pursuant to Hawaii Revised Statutes, § 480-12;

5. Award rescission of the transaction, rescission of all security interests relating to PLAINTIFF's property, and direct that PLAINTIFF have no further obligation of payment to DEFENDANTS, including BAC Servicer.

6. Order DEFENDANTS, including BAC Servicer, to cause a Satisfaction of Mortgage to be filed with the Bureau of Conveyances, State of Hawaii, regarding their mortgage as described above; and

7. Order DEFENDANTS, including BAC Servicer, to delete any adverse information regarding PLAINTIFF that they have reported to any consumer (credit) reporting agency; and enjoin DEFENDANTS, including BAC Servicer, from making, in the future, any adverse consumer report regarding PLAINTIFF to anyone.

C. AS TO COUNT IV (TILA & RESPA)

8. Award PLAINTIFF damages for any TILA and/or RESPA violations pursuant to applicable law; and

9. Award Plaintiff her actual damages as a result of these violations.

D. AS TO COUNT V (Hawaii Bureau of Conveyance Regulations)

10. Grant injunctive relief to PLAINTIFF by enjoining from DEFENDANTS, including BAC Servicer, herein from accelerating the home loan, selling or foreclosing on the Subject Property;

11. Bar any attempt by from DEFENDANTS, including BAC Servicer, to bring a foreclosure action against PLAINTIFF for lack of standing; and

12. Award damages in such amounts as shall be proven at the time of trial for DEFENDANTS, including BAC Servicer,' Violations of Hawaii Bureau of Conveyance Regulations.

E. AS TO COUNT VI (Bad Faith)

13. Award PLAINTIFF various remedies including, but not limited to, a declaration that the note and mortgage is void, reimbursement, equitable recoupment, indemnification, damages (statutory, actual, punitive and treble damages), and injunctive relief as a result of DEFENDANTS, including BAC Servicer,' failure to act in good faith.

F. AS TO COUNT VII (Unjust Enrichment)

14. PLAINTIFF restitution in the form of actual damages and/or exemplary damages from DEFENDANTS, including BAC Servicer, for unjust enrichment.

G. AS TO COUNT VIII (Breach of Fiduciary Duty)

15. Award PLAINTIFF damages as will be proved at trial; and

16. Award PLAINTIFF her exemplary damages.

H. AS TO COUNT IX (Misrepresentation)

17. Award PLAINTIFF damages in the amount of the injury to her property;

18. Award PLAINTIFF damages in the amount of the injury to her person, both physical and emotional;

19. That the Court order DEFENDANTS, including BAC Servicer, to take all action necessary to terminate any security interest which any Defendant may claim on PLAINTIFF's home and that the Court declare all such security interest of DEFENDANTS void, including but not limited to, any notes, mortgages and/or deeds and/or foreclosure conveyance documents;

20. That DEFENDANTS, including BAC Servicer, be enjoined during the pendency of this action, and permanently thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on PLAINTIFF's home, from recording any deeds or mortgages regarding that property or from otherwise taking any steps to deprive PLAINTIFF of ownership of that property;

21. Award PLAINTIFF exemplary damages.

I. AS TO COUNT XIV (Unconscionability)

22. Award PLAINTIFF damages for property injury;

23. Award PLAINTIFF damages in the amount of the injury to her person, both physical and emotional; and

24. Award PLAINTIFF her exemplary damages.

J. AS TO COUNT XV (Breach of Contract)

25. Award PLAINTIFF damages as will be proved at trial;

26. Award PLAINTIFF her reasonable attorneys' fees and costs; and

27. Award PLAINTIFF her exemplary damages.

K. AS TO COUNT XVI (Breach of the FCRA)

28. Award PLAINTIFF damages as will be proved at trial;

29. Order DEFENDANTS, including BAC Servicer, to delete any adverse

information regarding PLAINTIFF that they have reported to any consumer (credit) reporting agency; and enjoin DEFENDANTS, including BAC Servicer, from making, in the future, any adverse consumer report regarding PLAINTIFF to anyone;

30. Award PLAINTIFF her reasonable attorneys' fees and costs; and

31. Award PLAINTIFF her exemplary damages.

L. AS TO ALL COUNTS

32. Declare DEFENDANTS' security interest in the subject property void, and enjoin DEFENDANTS from taking any action towards collection of the home loan and/or foreclosure of their security interest in the subject property;

33. Award PLAINTIFF her reasonable attorneys fees and costs; and

34. Award PLAINTIFF such other and further relief as the Court deems appropriate and necessary in the premises.

DATED: Honolulu, Hawaii, JUL 29 2011

LAW OFFICES OF GARY Y. SHIGEMURA

By 

GARY Y. SHIGEMURA  
RANDALL N. HARAKAL  
JOYCE M. BROWN  
Attorneys for Plaintiff  
DEBORAH JOAN CRABTREE,  
aka Debra J. Crabtree