

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD M. WULF, JR., as an individual and as a representative of the classes,

Plaintiff,

v.

BANK OF AMERICA, N.A., and BAC HOME LOANS SERVICING, L.P.,

Defendants.

Case No.: _____

**COMPLAINT – CLASS ACTION
(JURY TRIAL DEMANDED)**

Plaintiff Richard M. Wulf, Jr. (“Plaintiff”), by and through his attorneys, and on behalf of himself, the Putative Classes set forth below, and in the public interest, brings the following Complaint against Defendants Bank of America, N.A. (“BOA”) and BAC Home Loans Servicing, L.P. (“BAC Servicing”) (collectively, “Defendants”).

PRELIMINARY STATEMENT

1. Plaintiff and the Putative Class members currently have or formerly had loans or lines of credit with Defendants, secured by their residential property. During the applicable statutory period, Defendants fraudulently, deceptively, unfairly, and illegally forced Plaintiff and other members of the Putative Classes to purchase and maintain flood insurance in amounts greater than required by law, greater than Defendants’ financial interest in their property, and contrary to the amounts agreed upon in the relevant loan and mortgage documents, without complying with disclosure requirements under federal law, and without any reasonable basis or justification.

2. Defendants fraudulently, deceptively, unfairly, and illegally required this excessive insurance coverage, in bad faith, in order to steer business to BOA's captive insurance company, and to otherwise generate interest, fees, commissions, and other compensation for BOA and its affiliates.

3. Based on Defendants' conduct as described herein, Plaintiff asserts a federal Truth in Lending Act ("TILA") claim on behalf of a Putative Nationwide Class consisting of all persons who have or had a loan or line of credit with BOA secured by their property and were required by BOA (or its agents or affiliates) to purchase or maintain flood insurance on their property in the United States within one year prior to this action's filing date through the date of final disposition of this action.

4. In addition, Plaintiff asserts state law claims for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("PAUTP-CPL), fraud, breach of contract, and breach of the implied covenant of good faith and fair dealing. Plaintiff asserts these state law claims on behalf of a Putative Pennsylvania Class consisting of all persons who have or had loans or lines of credit with Defendants secured by their property and were required by Defendants to purchase or maintain flood insurance on their property in the State of Pennsylvania within six (6) years prior to this action's filing date through the date of final disposition of this action.

5. Plaintiff and the Putative Classes seek monetary relief, injunctive relief, declaratory relief, penalties, and attorneys' fees and costs pursuant to the TILA, PAUTP-CPL, and other authority for Defendants' unlawful conduct, as described herein.

THE PARTIES

6. Individual and representative Plaintiff Richard M. Wulf, Jr., resides in the County of Schuylkill, State of Pennsylvania. Plaintiff is a member of the Putative Classes defined below.

7. Defendant Bank of America, N.A. (“BOA”) is a national banking association headquartered in Charlotte, North Carolina. BOA does business in the State of Pennsylvania and several other states throughout the country.

8. Defendant BAC Home Loans Servicing, L.P. (“BAC Servicing”) is a wholly owned subsidiary of BOA that services loans originated and purchased by BOA, including mortgage loans and lines of credit to Pennsylvania homeowners. BAC Servicing is headquartered in Calabasas, California.

JURISDICTION AND VENUE

9. This Court has federal question jurisdiction over Plaintiff’s TILA claim pursuant to 28 U.S.C. § 1331, and has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367. In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) and under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the State of Pennsylvania, and Defendants are citizens of different states. The amount in controversy in this action exceeds \$5,000,000.00, and there are more than 100 members of each of the Putative Classes.

10. Venue is proper in the United States District Court, Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391 because Plaintiff resides in Pennsylvania, and Defendants regularly conduct business in the Eastern District of Pennsylvania.

FACTUAL ALLEGATIONS

11. On or about July 28, 2009, Plaintiff obtained a mortgage loan from Fulton Bank in the amount of \$108,007.00, secured by a mortgage on his homestead. The Mortgage Agreement stated that its terms and conditions “bind and benefit the successors and assigns of Lender and Borrower.”

12. As a condition precedent to obtaining this mortgage loan from Fulton Bank, Plaintiff was required to (and did) sign a “Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance Participating Communities” (“Flood Hazard Notice”). This Flood Hazard Notice stated that Plaintiff’s property was located in a “Special Hazard Flood Area” and that flood insurance was “mandatory” under federal law. The Flood Hazard Notice further stated that the Fulton Bank would not make the loan unless Plaintiff purchased flood insurance in the amount described in the Flood Hazard Notice.

13. Consistent with the National Flood Insurance Act (“NFIA”) (42 U.S.C. 4001 et. seq), the Flood Hazard Notice stated that the “flood insurance purchased must cover the *lowest of*: (1) the outstanding principal balance of the loan(s); or (2) the maximum amount of coverage allowed for the type of building under the NFIP [\$250,000.00]; or (3) the full replacement cost value (RCV) of the building and/or contents securing the loan.” (emphasis added)

14. Plaintiff’s Mortgage Agreement incorporated the Flood Hazard Notice, and provided that Plaintiff was required to insure the property “against loss by floods to the extent required by the Secretary” of Housing and Urban Development (“HUD”). HUD’s website, in turn, provides as follows:

Dollar Amount of Flood Insurance Coverage. For loans, loan insurance or guarantees, the amount of flood insurance coverage need not exceed the outstanding principal balance of the loan.

<http://www.hud.gov/offices/cpd/environment/review/floodinsurance.cfm>.

15. As agreed by Plaintiff in the Flood Hazard Notice and Mortgage Agreement, Plaintiff obtained flood insurance coverage in the amount of \$110,000.00 at the time the loan was originated. The cost of this insurance to Plaintiff was an annual premium payment of \$1,016.00, which was made part of his escrow on the loan. Fulton Bank never indicated that this amount was in any way inadequate under federal law or the Mortgage Agreement.

16. In or around September of 2009, Defendant BOA purchased Plaintiff's mortgage, succeeding Fulton Bank as the lender. Consistent with the provision in the Mortgage Agreement that its terms "bind and benefit the successors and assigns of Lender and Borrower," Plaintiff continued to make payments to Defendants under the terms and conditions originally agreed upon with Fulton Bank, including escrow payments.

17. On July 29, 2010, Defendants sent Plaintiff a form letter ("Demand for Increased Flood Coverage"), stating that his flood insurance coverage was "not adequate" under federal law and/or his Mortgage Agreement, and further stating that he was required to increase his flood insurance coverage by \$103,703.00 (from \$110,000 to more than \$213,000). This Demand for Increased Flood Coverage also stated:

To maintain acceptable insurance, we require that you maintain flood insurance coverage in an amount at least equal to the lesser of: (1) the maximum insurance available under the NFIP for participating communities, which is currently \$250,000; or (2) the replacement value of the improvements to your property (typically based on the amount of hazard insurance we understand you have purchased for the property).

This language was inconsistent with Plaintiff's Flood Hazard Notice and Mortgage Agreement (as well as the NFIA), and conspicuously omitted to provide Plaintiff with a third option (as previously agreed) to insure the property to the outstanding principal balance of the loan. Moreover, Defendants did not explain why the amount of flood insurance Plaintiff had carried for the previous year was no longer adequate under federal law and/or the Mortgage Agreement.

18. Defendants' representations in the Demand for Increased Flood Coverage were false. Neither federal law nor Plaintiff's Mortgage Agreement require him to maintain flood insurance in an amount greater than the principal balance of his mortgage loan, and his coverage was not inadequate under federal law or his Mortgage Agreement.

19. Defendants knew or should have known that their representations were false, as evidenced by, *inter alia*, the following facts:

- a) the plain language of the relevant loan and mortgage documents did not require flood insurance in excess of Plaintiff's principal balance;
- b) the National Flood Insurance Act and its accompanying regulations do not require flood insurance in excess of a borrower's principal balance;
- c) HUD does not require flood insurance in excess of a borrower's principal balance;
- d) Fulton Bank did not require coverage in excess of Plaintiff's principal balance during the time that it held and serviced the mortgage;
- e) Defendants held and serviced Plaintiff's mortgage for ten months, without claiming that Plaintiff's existing flood insurance was inadequate;
- f) Defendants did not and cannot identify any changes in federal law, the mortgage documents, or the circumstances surrounding the loan that justified Defendants' representation that Plaintiff's coverage was suddenly not "adequate;"
- g) Defendants' Demand for Increased Flood Coverage clearly deviated from the language of the Flood Hazard Notice, and fraudulently omitted to provide

Plaintiff the option to maintain flood insurance in the amount of “the outstanding principal balance of the loan(s);” and

- h) Defendants’ Demand for Increased Flood Coverage used intentionally deceptive and confusing language that obscured and otherwise misrepresented federal legal requirements and the terms of Plaintiff’s loan and mortgage documents.

20. In the Demand for Increased Flood Coverage, Defendants further informed Plaintiff that if he did not obtain the additional coverage demanded by Defendants by September 16, 2010, (1) BAC Servicing would purchase such additional coverage for him “through agencies that are affiliates of Bank of America, N.A.”, (2) “Bank of America, N.A. and its affiliates may receive a commission or other compensation in connection with obtaining this coverage”, and (3) the “premium may be more expensive and will likely provide less coverage” than insurance he could obtain by himself. Defendants also suggested that Plaintiff contact BOA’s affiliate, Banc of America Insurance Services, Inc., to purchase the additional insurance and avoid having the insurance force placed upon him.

21. Relying on Defendants’ fraudulent representations (including Defendants’ representation that his flood insurance was not “adequate”), and having no choice other than to risk Defendants purchasing even more expensive insurance for him, Plaintiff obtained additional flood insurance to match his hazard insurance, at an additional cost of \$332 per year. Plaintiff obtained this additional flood insurance on or about August 27, 2010. But for Defendants’ Demand for Increased Flood Coverage, Plaintiff never would have purchased such additional flood insurance coverage and never would have incurred such expense.

22. On September 21, 2010, *after* Plaintiff already had obtained this increased flood insurance coverage, Defendants send him a notice (“Notice of Force Placement”) indicating that (1) BAC Servicing had purchased an additional \$103,703 in flood insurance coverage for him anyway, and (2) “the cost of that policy will be charged to you and may become an additional debt secured by your mortgage or deed of trust and/or escrowed.” This Notice of Force Placement acknowledged that “[w]e understand that you do have some flood insurance on the Property,” but claimed that “based on our records, it is not adequate.” Defendants claimed in the Notice of Force-Placement that “The Lender-Placed additional insurance will protect our interest in the Property.” However, Defendants’ interest in the property already was fully protected by Plaintiff’s initial flood insurance policy and was more than protected by the additional coverage that Plaintiff purchased. Defendants have never explained why it is necessary to require Plaintiff or other borrowers to obtain flood insurance coverage in amounts beyond Defendants’ financial risk.

CLASS ACTION ALLEGATIONS

23. Plaintiff asserts his TILA claim in Count 1 on behalf of a Putative Nationwide Class defined as follows:

Proposed Nationwide Class: All persons who have or had a loan or line of credit with BOA secured by their residential property, and were required by BOA (or its agents or affiliates) to purchase or maintain flood insurance on their property in the United States within one year prior to this action’s filing date through the date of final disposition of this action.

24. Plaintiff asserts his remaining claims in Counts 2-5 (violation of PAUTP-CPL, Fraud, Breach of Covenant of Good Faith and Fair Dealing, and Breach of Contract) on behalf of a Putative Pennsylvania Class defined as follows:

Proposed Pennsylvania Class: All persons who have or had a loan or line of credit with Defendants that was secured by their residential property and were required by Defendants to purchase or maintain flood insurance on their property in the State of Pennsylvania within six (6) years prior to this action's filing date through the date of final disposition of this action.

25. Numerosity: The Putative Classes are so numerous that joinder of all Class members is impracticable. Plaintiff is informed and believes that during the relevant time period, thousands of Defendants' customers satisfy the definition of the Putative Classes.

26. Typicality: Plaintiff's claims are typical of the members of the Putative Classes. Plaintiff is informed and believes that his loan and mortgage documents were typical of those of other Putative Class members, that the flood insurance notice he received was typical of those received by other Putative Class members, that Defendants treated him consistent with other Putative Class members in accordance with Defendants' policies and practices, and that it was typical for Defendants to require their customers to purchase and maintain flood insurance in an amount greater than that required by law and/or than required to insure the amount of funds extended, under fraudulent pretenses, without any reasonable basis or justification and without proper notice of such requirements in the relevant loan and mortgage documents .

27. Adequacy: Plaintiff will fairly and adequately protect the interests of the Putative Classes, and has retained counsel experienced in complex class action litigation.

28. Commonality: Common questions of law and fact exist as to all members of the Putative Classes and predominate over any questions solely affecting individual members of the Putative Classes, including but not limited to:

- a. Whether federal law requires Defendants' customers to purchase and/or maintain flood insurance in amounts greater than necessary to secure the amount of funds extended under a home loan or line of credit;
- b. Whether Defendants have a pervasive policy and practice of misrepresenting to their customers that federal law requires flood insurance or additional flood insurance on loans or lines of credit for which flood insurance or additional flood insurance is not required by law;
- c. Whether Defendants' pervasive policy and practice is to demand flood insurance in amounts greater than necessary to secure the amount of funds extended;
- d. Whether the loan and mortgage documents relied upon by Defendants clearly, conspicuously, adequately, and meaningfully disclose the amount of flood insurance that Defendants require of customers, and authorize Defendants to demand and/or force-place flood insurance in amounts greater than necessary to secure the amount of funds extended;
- e. Whether Defendants' standard flood insurance notice letters are false, deceptive, misleading and/or fraudulent;
- f. Whether Defendants' conduct described in this Complaint was fraudulent, deceptive, misleading, and/or unconscionable or unfair;
- g. Whether BOA violated the TILA by failing to timely, accurately, meaningfully, and/or clearly and conspicuously disclose customers' flood insurance requirements, or by changing its flood insurance requirements without proper notice and consent;
- h. Whether Defendants' conduct described in this Complaint constitutes one or more violations of the PAUTP-CPL and/or was fraudulent;
- i. Whether Defendants owe their customers a duty of good faith and fair dealing and/or have an obligation to avoid creating situations where properties are over-insured, and if so, whether Defendants breached this duty and/or obligation by, *inter alia*, demanding flood insurance in

amounts greater than necessary to secure the amount of funds extended;

- j. Whether Defendants breached their contracts with customers by demanding unauthorized amounts of flood insurance or amounts that were not properly and adequately disclosed in such contracts;
- k. The appropriateness and form of any equitable relief reversing charges for excessive flood insurance coverage, allowing customers to close loans or credit lines without first paying premiums for flood insurance that were not necessary or required by law, ordering Defendants to cease and desist from such conduct in the future, or any other declaratory or injunctive relief;
- l. The appropriateness and proper measure of monetary and other damages sustained by the Putative Classes; and
- m. The appropriateness and proper measure of any penalties, fines, or other remedies.

29. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the Putative Classes would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of each individual Class member's claim as separate action would potentially be dispositive of the interest of other individuals not a party to such action, impeding their ability to protect their interests.

30. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the Putative Classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Classes as a whole.

31. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Putative Classes predominate over any questions affecting only individual members of the Putative Classes, and because a class

action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' conduct described in this Complaint stems from common and uniform policies and practices, resulting in unnecessary flood insurance premiums and related charges that are readily calculable from Defendants' records and other class-wide evidence. Members of the Putative Classes do not have an interest in pursuing separate actions against Defendants, as the amount of each Class member's individual claims is small compared to the expense and burden of individual prosecution, and Plaintiff is unaware of any similar claims brought against Defendants by any members of the Putative Classes on an individual basis. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single forum in Pennsylvania, where all of the Putative Pennsylvania Class members reside and many of the Putative Nationwide Class members reside.

32. Plaintiff intends to send notice to all members of the Putative Classes to the extent required by Rule 23. The names and addresses of the Putative Class members are available from Defendants' records.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE TRUTH IN LENDING ACT

33. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs.

34. Residential mortgage loan agreements and line of credit agreements between Defendant BOA and its customers are subject to the disclosure requirements of

the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and all related regulations, commentary, and interpretive guidance promulgated by the Federal Reserve Board.

35. BOA is a “creditor” as defined by the TILA.

36. BOA is required to timely disclose all finance charges, other charges, and third-party charges that may be imposed in connection with a mortgage loan or line of credit.

37. BOA is required to make these disclosures clearly and conspicuously.

38. BOA is further required to accurately and fully disclose the terms of the legal obligation between the parties.

39. BOA violated these and other requirements under the TILA by (i) failing to timely, clearly, conspicuously, accurately, fully, and meaningfully disclose its flood insurance requirements; and (ii) misrepresenting to Plaintiff and other Class members that they were obligated by federal law and/or their mortgage agreements to purchase flood insurance in amounts greater than necessary to secure the amount of funds extended.

40. In addition, BOA violated the TILA by, *inter alia*, (i) adversely changing the terms of mortgage loans or credit lines after origination without consent and demanding more insurance than previously required in amounts greater than necessary to protect its interest in the property; and (ii) failing to provide proper notice, after origination, that BOA was amending the terms of loans or credit lines as described in the relevant mortgage documents.

41. The TILA violations set forth above occurred within one year of the commencement of this action. To the extent that the violations described above occurred earlier, Plaintiff did not discover and did not have a reasonable opportunity to discover BOA’s fraud and nondisclosures until Defendants notified him on July 29, 2010 that it was necessary for him to increase his flood insurance coverage to an amount greater than his principal balance, in order to have “adequate” coverage under federal law and/or his

Mortgage Agreement. Prior to this time, Plaintiff had no reason or opportunity to complain about BOA's TILA violations because it was not yet apparent that BOA's disclosures were incomplete, inaccurate, and misleading.

42. Plaintiff's TILA claim is timely. The statute of limitations on Plaintiff's TILA claim did not begin to run and/or was equitably tolled until such time that he had a reasonable opportunity to discover BOA's TILA violations and complain about such violations. It would be manifestly unjust and inconsistent with the purposes of the TILA to apply and enforce an earlier accrual date for Plaintiff's TILA claim.

43. BOA systematically and pervasively engaged in similar violations of the TILA to the detriment of other members of the Putative Nationwide Class.

44. Plaintiff and the Putative Nationwide Class have been injured and have suffered a monetary loss as a result of BOA's violations of the TILA.

45. As a result of BOA's violations, Plaintiff and the Putative Nationwide Class are entitled to recover actual damages and a penalty of \$500,000.00 or 1% of Defendants' net worth, whichever is greater, as provided by 15 U.S.C. § 1640(a)(1)-(2).

46. Plaintiff and the Putative Nationwide Class also are entitled to recovery of attorneys' fees and costs to be paid by BOA, as provided by 15 U.S.C. § 1640(a)(3).

SECOND CLAIM FOR RELIEF

VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

47. Defendants' transactions and business interactions with Plaintiff and other Pennsylvania customers are subject to the requirements of Pennsylvania law, including the PAUTP-CPL, 73 Pa. Cons. St. § 201-1 *et seq.*

48. The PAUTP-CPL prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." 73 Pa. Cons. St. § 201-2(4). The PAUTP-CPL also prohibits "fraudulent or deceptive conduct which

creates a likelihood of confusion or of misunderstanding.” 73 Pa. Cons. St. § 201-2(4)(xxi).

49. Defendants pervasively violated the PAUTP-CPL during the Class Period, and continue to violate this statute, by virtue of their unfair, deceptive, and fraudulent practice of demanding and/or force-placing flood insurance on property owned Plaintiff and other Putative Pennsylvania Class members in amounts greater than required by law, greater than Defendants’ financial interest in their property, and contrary to the amounts agreed upon in the relevant loan and mortgage documents, without any reasonable basis or justification, and by intentionally misleading Plaintiff and other Class members to believe that such amounts of insurance coverage are required by contract and/or federal law.

50. Defendants knowingly and willfully engaged in such violations in bad faith and with fraudulent intent, for the purpose of (i) unfairly and unconscionably maximizing revenue from Plaintiff and other Putative Pennsylvania Class members; (ii) generating interest, fees, commissions, and “other compensation” for BOA and its affiliates; (iii) providing a ready-made customer base for BOA’s captive insurance company; (iv) gaining unwarranted contractual and legal advantages; and (v) depriving Plaintiff and other Putative Pennsylvania Class members of their contractual and legal rights to obtain a loan, extension of credit, or credit renewal (or maintain the same) without having to purchase flood insurance coverage in excess of the funds extended to them.

51. Plaintiff and the Putative Pennsylvania Class reasonably and justifiably relied on Defendants to (among other things) fully, honestly, and fairly disclose the

amount of flood insurance that was required for their property under their mortgage agreements and federal law, and to interpret and/or apply such requirements reasonably and fairly in good faith.

52. As a result of Defendant's violations of the PAUTP-CPL, Plaintiff and the Putative Pennsylvania Class have suffered ascertainable losses and damages in the form of increased insurance premiums, escrow charges, interest payments, and/or other charges, and unnecessary burdens on their property rights.

53. Plaintiff and the Putative Pennsylvania Class are entitled to relief for Defendants' violations of the PAUTP-CPL, including but not limited to actual damages, statutory damages of \$100 per violation, treble damages, costs, attorneys' fees, injunctive relief, declaratory relief, and additional legal or equitable relief as necessary or proper. *See* Pa. Cons. St. § 201-9.2.

THIRD CLAIM FOR RELIEF
COMMON LAW FRAUD

54. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs.

55. Defendants falsely represented to Plaintiff and other Putative Pennsylvania Class members that their flood insurance coverage was not "adequate", when in fact, their level of coverage (1) met or exceeded federal requirements, (2) met or exceeded the requirements of their mortgage agreements, (3) met or exceeded the amount of funds extended to them, and (4) was more than adequate to protect Defendants' financial interest in their property.

56. These representations were material.

57. Defendants knew that they had no reasonable basis for making these representations, and knew that such representations were not supported by federal law, their mortgage agreements, or business necessity.

58. Defendants willfully made these representations in bad faith and with fraudulent intent, for the purpose of (i) unfairly and unconscionably maximizing revenue from such customers; (ii) generating interest, fees, commissions, and “other compensation” for BOA and its affiliates; (iii) providing a ready-made customer base for BOA’s captive insurance company; (iv) gaining unwarranted contractual and legal advantages; and (v) depriving Plaintiff and other Putative Pennsylvania Class members of their contractual and legal rights to obtain a loan, extension of credit, or credit renewal (or maintain the same) without having to purchase flood insurance coverage in excess of the funds obtained extended to them.

59. Plaintiff and other members of the Putative Pennsylvania Class reasonably and justifiably relied on Defendants’ intentional misrepresentations, and based on those misrepresentations, paid for insurance coverage or additional insurance coverage that was not required (or more than the amount required) under federal law and/or their mortgage agreements, and was not necessary (or more than the amount necessary) to secure the funds extended to them and protect Defendants’ financial interest in their property.

60. As a direct result of Defendants’ intentional misrepresentations, Plaintiff and the Pennsylvania Class have suffered damages in the form of increased insurance premiums, escrow charges, interest payments, and/or other charges, and unnecessary burdens on their property rights. Plaintiff and the Putative Class are entitled to recover these damages and other appropriate relief from Defendants.

FOURTH CLAIM FOR RELIEF

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

61. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs.

62. Defendants owed Plaintiff and the Putative Pennsylvania Class members a duty of good faith and fair dealing under Pennsylvania law, by virtue of Defendants' contractual relationship with Plaintiff and the Putative Pennsylvania Class members.

63. Defendants breached this duty by, among other things: (1) misrepresenting both federal requirements and contractual requirements regarding flood insurance, (2) demanding and/or force-placing flood insurance coverage in excess of that required by federal law or the relevant loan and mortgage documents, (3) unreasonably exercising in bad faith any purported discretionary authority Defendants claim they were afforded under the loan and mortgage documents, and (4) imposing contractual requirements that did not exist or exceeded the requirements disclosed in the relevant contracts.

64. Defendants willfully engaged in the foregoing conduct in bad faith and with fraudulent intent, for the purpose of (i) unfairly and unconscionably maximizing revenue from such customers; (ii) generating interest, fees, commissions, and "other compensation" for BOA and its affiliates; (iii) providing a ready-made customer base for BOA's captive insurance company; (iv) gaining unwarranted contractual and legal advantages; and (v) depriving Plaintiff and other Putative Pennsylvania Class members of their contractual and legal rights to obtain a loan, extension of credit, or credit renewal (or maintain the same) without having to purchase flood insurance coverage in excess of the funds obtained extended to them.

65. As a result of Defendants' breaches of the covenant of good faith and fair dealing, Plaintiff and the Putative Pennsylvania Class have been injured, and have suffered actual damages and monetary losses, in the form of increased insurance premiums, escrow charges, interest payments, and/or other charges, and unnecessary burdens on their property rights.

66. Plaintiff and the Putative Pennsylvania Class are entitled to recover these damages and other appropriate relief from Defendants.

FIFTH CLAIM FOR RELIEF
BREACH OF CONTRACT

67. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs.

68. BOA is an assignee of Plaintiff's Mortgage Agreement and is bound by the terms of that Mortgage Agreement.

69. Plaintiff's Mortgage Agreement does not require flood insurance in an amount greater than the unpaid principal balance on the loan.

70. Defendants breached the Mortgage Agreement by requiring Plaintiff to obtain flood insurance in excess of his principal balance and by force-placing flood insurance in excess of his principal balance.

71. Defendants' breach was willful and not the result of mistake or inadvertence. On information and belief, Defendants systematically and pervasively required other members of the Putative Pennsylvania Class to obtain flood insurance in excess of the amount required under their mortgage agreements.

72. As a direct result of Defendants' unlawful conduct, Plaintiff and the Putative Pennsylvania Class have suffered damages in the form of increased insurance

premiums, escrow charges, interest payments, and/or other charges, and unnecessary burdens on their property rights.

73. Plaintiff and the Putative Pennsylvania Class are entitled to recover their damages and other appropriate relief for the foregoing contractual breaches.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Putative Classes, prays for relief as follows:

- A. Determining that this action may proceed as a class action under Rule 23(b)(1), (2) and (3) of the Federal Rules of Civil Procedure;
- B. Designating Plaintiff's counsel as counsel for the Putative Classes;
- C. Issuing proper notice to the Putative Classes at Defendants' expense;
- D. Declaring that Defendants committed multiple, separate violations of the TILA and PAUTP-CPL;
- E. Declaring that Defendants' conduct was fraudulent, violated the terms of its contracts, and breached the covenant of good faith and fair dealing;
- F. Declaring that Defendants acted willfully in deliberate or reckless disregard of applicable law and the rights of Plaintiff and the Putative Classes;
- G. Awarding appropriate equitable relief, including but not limited to restitution and an injunction requiring Defendants to reverse all unlawful, unfair, or otherwise improper charges for insurance coverage, allowing customers to close loans or credit lines without first paying premiums for flood insurance that were not necessary or required by law, and cease and desist from engaging in further unlawful conduct in the future;
- H. Awarding actual damages, statutory damages, treble damages, punitive damages, penalties, and interest;

- I. Awarding reasonable attorneys' fees and costs as provided by the TILA, PAUTP-CPL, and other authority; and
- J. Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

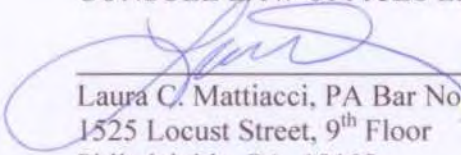
DEMAND FOR JURY TRIAL

74. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and the Putative Class demand a trial by jury.

Respectfully submitted,

Dated: 10/1/10

CONSOLE LAW OFFICES LLC



Laura C. Mattiacci, PA Bar No. 89643
1525 Locust Street, 9th Floor
Philadelphia, PA 19102
Telephone: (215) 545-7676
Fax (215) 545-8211

NICHOLS KASTER, PLLP
Paul J. Lukas, MN Bar No. 22084X*
Kai Richter, MN Bar No. 0296545*
Rebekah L. Bailey, MN Bar No. 0389599*
*(*pro hac vice* applications forthcoming)
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Fax: (612) 215-6870

ATTORNEYS FOR PLAINTIFF AND
THE PUTATIVE CLASSES