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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NAVEEN PALAVALLI, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

No. **C09 0663**
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT
Case No.



1 Plaintiff, Naveen Palavalli, by his attorneys, on behalf of himself and similarly situated
2 individuals, alleges as follows:

3 I. INTRODUCTION

4 1. In order to compete in what was then a then very competitive home loan market,
5 Bank of America offered a special "no fee rate modification plan" on some loans. This plan
6 offered first mortgage borrowers that met certain conditions the opportunity to renegotiate a
7 lower interest rate once per year over the life of the loan if market rates dropped.

8 2. In 2007, with the financial and housing markets declining, interest rates also
9 dropped. Rates have continued to fall since then. When Plaintiff and members of the proposed
10 Class sought a loan modification pursuant to the no fee rate modification plan, Bank of America
11 stonewalled, gave various excuses as to why Plaintiff and others did not qualify, and refused to
12 live up to its promise to lower the interest rate.

13 3. In this action, Plaintiff seeks damages on behalf of a class of borrowers who were
14 offered and accepted the rate modification plan and who qualified for, but were denied rate
15 modifications pursuant to the plan.

16 II. JURISDICTION AND VENUE

17 4. This Court has subject-matter jurisdiction over this class action pursuant to the
18 Class Action Fairness Act of 2005, which confers federal jurisdiction over class actions where,
19 as here, "any member of a class of plaintiffs is a citizen of a State different from any
20 Defendants" and the aggregated amount in controversy exceeds five million dollars
21 (\$5,000,000). See 28 U.S.C. §§ 1332(d)(2) and (6). This Court has personal jurisdiction over
22 the parties because Plaintiff submits to the jurisdiction of the Court and Defendant systematically
23 and continually conducts business throughout the State of Washington.

24 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c). Many of
25 the acts and transactions giving rise to the violations of law complained of herein occurred in this
26 District.

CLASS ACTION COMPLAINT - 1
Case No.



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1 and take advantage of current lending rates based on your current
2 financial needs.

3 Subject to the following criteria and restrictions, by just contacting
4 the Customer Service Call Center to request a loan modification at
5 1.800.285.6000, you may request to modify

- 6 • Rate only, OR
- 7 • Rate and monthly payment.

8 The following criteria will apply:

- 9 • Your loan must be closed under the criteria of this special
10 program to be eligible for this no-fee rate modification
11 option.
- 12 • There is a 3 month waiting period after the closing date of
13 the original loan before you exercise the rate modification.
- 14 • The option is available for the life of the loan.*
- 15 • You can exercise the option 1 time every 12 months (you
16 must wait 12 months between each exercise of the option).
- 17 • There are no fees charged to you to exercise this option.
- 18 • Options will be evaluated based on the current market rate
19 and standard risk adjustments will apply.
- 20 • The loan can be approved for modification if you are and
21 have been current for the past 90 days.
- 22 • This option is available in selected states, unless state
23 regulatory requirements prohibit or restrict the transaction.
24 Please consult your Account Representative for availability
25 in your state.
- 26 • The option is available only on owner-occupied primary
residence and second homes. (Investment properties are
not allowed.)
- There is no maximum or minimum principal balance
required (not allowed if loan has been paid in full).
- No minimum change in rate is required.



- 1
- All first mortgage products currently available under this special program will be eligible for a "No-Fee" rate modification.
- 2

3 **Please note: Loans with an adjustable rate (ARM) (fully*
4 *amortized and initial interest-only) are only eligible for rate*
5 *modification during the fixed or interest-only period of the loan. If*
6 *you modify an ARM loan, the modification will only be for the*
7 *remaining months of the fixed or interest only period. The*
8 *eventual ARM adjustment will be based on the scheduled ARM*
9 *information and not on the modification information.*

10 Note:

- At time of rate modification, an amortization schedule is run to ensure that the loan amortizes out correctly. If you request to modify the rate down to a lower rate only and do not adjust the payment, the term will change, it will decrease.
- You will always be able to pay additional amounts towards your loan at any time without modification of the rate.

11 Restrictions:

- No title changes are allowed: No addition or removal of borrower(s) to the loan/Note or the deed (title) are allowed.
- No investment properties.
- No additional funds can be made available as a result of the rate modification.
- No term extensions.
- No changes that would require the payment to increase.
- This option is only applicable to first mortgage loans only, and is not applicable for home equity loan products (HELOANs and HELOCs).

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23 13. Plaintiff completed a first mortgage loan transaction on or about December 5,

24 2006, for a property located at 24028 40th Ave. SE, Bothell, Washington 98021. He was told he

25 qualified for the loan modification program outlined above.

26



1 14. Plaintiff has requested a modification to the prevailing lower interest rate and has
2 been declined. On one occasion he was told there was a "bug in the system" that prevented his
3 request from being honored. The following is Plaintiff's email exchange with Defendant:

4 Hi Todd,

5 Last time we spoke, you mentioned that there was a bug in your
6 system and that is why my no fee interest rate reduction mortgage
7 was never getting qualified for a rate reduction anytime I called.
8 You mentioned that somebody in bofa is investigating into why my
9 loan was not getting qualified and yesterday was the deadline for
10 it. Could you please provide me an update on this? Thanks.

11 [Todd] I'm researching this right now.

12 15. Plaintiff is not the only customer who has been refused a modification as
13 evidenced by this internal communication among Defendant's employees that was provided to
14 Plaintiff by Defendant's employee:

15 From: Donnelly, Susan
16 Sent: Thursday, April 30, 2009 1:16 PM
17 To: Barnica, Jeanette
18 cc: Patterson, Todd
19 Subject: Escalated No Fee Mortgage issue/Petrov crest XXXXXX

20 Jeanette

21 I was hoping you would be able to point me in the right direction
22 for this issue. We have a Washington State customer who has a no
23 fee mortgage. The bank started a pilot in WA form 9-2006 to 2-
24 2007 to see how the No Fee Mortgage would do. One of the terms
25 for this product was a one time no fee rate modification. They
26 were also able to do a rate modification once every 12 months.
When the fee No Fee Mortgage went bank wide they dropped the
no fee rate modification feature.

We now have Washington Customers trying to use the one time no
fee rate modification they are told by the Loan Servicing Centers
telling these Customers that they do not qualify for the rate
modification and are not honoring the no fee option.

This issue was surfaced to me by Todd Patterson a Washington
Assoc who has six customers with this issue. The customer that he
gave me as an example is Alexander Petrov loan #
XXXXXXXXXXXX.



1 Susan Donnelly
2 Assistant Vice President
3 Customer Solutions

4 **V. CLASS ACTION ALLEGATIONS**

5 16. Plaintiff brings this action on behalf of himself and on behalf of the following
6 proposed Class:

7 All persons who were eligible for the no rate fee modification plan
8 but who did not receive a lower interest rate even though they
9 qualified for such a loan and the prevailing rate was lower than
10 when their loan was originated.

11 **A. Numerosity**

12 17. The Class is so numerous that joinder of all members is impracticable. Class
13 members number in the hundreds if not thousands. The precise number of Class members and
14 their addresses are unknown to the Plaintiff, but can be obtained from Defendant's records.

15 **B. Commonality**

16 18. There are questions of law or fact common to the Class, including at least the
17 following:

- 18 (a) Whether Defendant offered the No Fee Rate Reduction Option;
- 19 (b) Whether Defendant refused to perform as promised;
- 20 (c) Whether Defendant violated state law in refusing to perform;
- 21 (d) Whether Defendant's wrongful conduct resulted in economic damage to

22 Plaintiff and members of the Class, and the amount of said damages; and

- 23 (g) What relief should be imposed in favor of the Plaintiff and the Class.

24 **C. Typicality**

25 19. Plaintiff's claim is typical of the claims of the other members of the Class.
26 Plaintiff has the same interests in this matter as all other members of the Class, and his claims are
substantially identical to and typical of the claims of all members of the Class. Plaintiff does not
have interests antagonistic to or in conflict with those of the other members of the Class.



1 **D. Adequacy**

2 20. Plaintiff is committed to pursuing this action and has retained competent counsel
3 experienced in class actions. Plaintiff will fairly and adequately represent the interests of the
4 Class members.

5 **E. Common Questions Predominate, and the Class Action Device is Superior**

6 21. The common questions of law and fact enumerated above predominate over
7 questions affecting only individual members of the Class, and a class action is the superior
8 method for fair and efficient adjudication of the controversy. The likelihood that individual
9 members of the Class will prosecute separate actions is remote due to the time and expense
10 necessary to conduct such litigation. To Plaintiff's knowledge, no similar litigation is currently
11 pending by other members of the Class. Plaintiff's counsel, highly experienced in class actions,
12 foresee little difficulty in the management of this case as a class action.

13 **VI. CLAIM FOR RELIEF**

14 **COUNT I**

15 **BREACH OF CONTRACT**

16 22. Plaintiff, on behalf of himself and all others similarly situated, realleges and
17 incorporates herein by reference each of the allegations contained in the preceding paragraphs of
18 this Complaint.

19 23. Defendant formed agreements and entered into contracts with Plaintiff and the
20 members of the Class including offer, acceptance and consideration ("Loan Contracts"). The
21 terms of the Loan Contracts are memorialized in the loan documents and disclosures provided to
22 Plaintiffs and the members of the Class.

23 24. Plaintiff and members of the Class performed their obligations under the Loan
24 Contracts and are entitled to loan modifications reducing their interest rates and/or payment
25 amounts. Defendant has failed to perform and Plaintiff and members of the Class have been
26 damaged.

CLASS ACTION COMPLAINT - 7
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment as follows:

3 A. For an order declaring that this action may be maintained as a class action
4 pursuant to Federal Rule of Civil Procedure 23, and for an order certifying this case as a class
5 action and appointing Plaintiff as representative of the Class;

6 B. For an order awarding compensatory damages on behalf of Plaintiff and the Class
7 in an amount to be proven at trial;

8 C. For pre-judgment and post-judgment interest as provided for by law or allowed in
9 equity;

10 D. For an order awarding Plaintiff and the Class their attorneys' fees and costs; and

11 E. Such other and further relief as may appear necessary and appropriate.

12 **JURY TRIAL DEMANDED**

13 Pursuant to Fed. R. Civ. P. 38, Plaintiff demands a trial by jury of the claims alleged
14 herein.

15 DATED: May 13, 2009.

16 HAGENS BERMAN SOBOL SHAPIRO LLP

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