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JIMMIE HODGE and GLORIA HODGE

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA
17 FRESNO DIVISION

18 JIMMIE HODGE and GLORIA HODGE,) No.
individually and on behalf of a class of)
19 similarly situated individuals,)
20 Plaintiffs,) **COMPLAINT**
21 v.) **JURY TRIAL DEMANDED**
22 NATIONSTAR MORTGAGE HOLDINGS,)
INC. and BANK OF AMERICA, N.A.,)
23 Defendants.)
24)
25)
26)
27)
28)

1 Plaintiffs Jimmie Hodge and Gloria Hodge (“Plaintiffs”) bring this action individually
2 and on behalf of all similarly situated persons (“Class Members”), and allege as follows:

3 INTRODUCTION

4 1. This action arises from the systemic and improper collusion between Nationstar
5 Mortgage Holdings, Inc. (“Nationstar”) and Bank of America, N.A. (“Bank of America”) to
6 charge homeowners inflated amounts of principal on their mortgages. This practice results in
7 homeowners being presented with unexpected “balloon payments” at the end of the life of their
8 mortgage. This figure can be astronomic — in Plaintiffs’ case, the amount Defendants claimed
9 due was 20% of the underlying loan.

10 2. When asked for a full accounting, Defendants are either incapable or unwilling to
11 verify the legitimacy of this purported amount due. Specifically, Defendants refuse to provide a
12 complete servicing and payment history for the entirety of the loan’s life. However, as detailed
13 more fully below, Defendants purport to calculate this “balloon payment” based upon the
14 specific date of each payment made over the course of the loan’s life. Because Defendants do
15 not provide this information to Plaintiffs or Class members, the “balloon payment” cannot be
16 independently verified. However, as described herein, the remaining principal balance reported
17 by Defendants is a mathematical impossibility.

18 3. Specifically, Defendant Nationstar acquired servicing rights for mortgages that
19 were originated with and previously serviced by Defendant Bank of America. Without
20 substantiating its claims through Bank of America’s prior servicing records, Nationstar claims
21 that due to purported late payments in its mortgagees’ payment histories, additional interest
22 should be charged on the loan, which in turn caused the loan’s principal to be amortized at a
23 drastically reduced rate from that articulated in the loan’s note. However, when pressed,
24 Nationstar has failed to provide records of these purported late payments (specifically, the
25 servicing history from Bank of America’s records). Thus Nationstar, acting on behalf of Bank of
26 America, either cannot or will not provide a complete schedule detailing the accrual of increased
27 principal over the entire life of the loan.

1 is a citizen of Delaware and Texas, and Defendant Bank of America is a citizen of Delaware and
2 North Carolina.

3 9. Additionally, this Court has original subject matter jurisdiction over Counts I and
4 II of this Complaint pursuant to 28 U.S.C. § 1331 because those claims arise under the laws of
5 the United States, namely, the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601, *et seq.*
6 (“RESPA”), and the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* (“FDCPA”).

7 10. This Court has supplemental subject-matter jurisdiction over the remaining claims
8 of this Complaint pursuant to 28 U.S.C. § 1367(a), because those claims are so related to Counts I
9 and II that they form part of the same case or controversy under Article III of the United States
10 Constitution.

11 **VENUE**

12 11. Venue lies in this Court pursuant to 28 U.S.C. § 1391(a)(2), because a substantial
13 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this judicial district.

14 12. For purposes of Local Rule 120(d), this action arises in Stanislaus County and is
15 therefore properly commenced in Fresno.

16 **PARTIES**

17 13. Plaintiff Jimmie Hodge is a resident of Franklin County, Arkansas, and has at all
18 relevant times been a mortgagor of the real property located at 1100 Parnell Avenue, Turlock,
19 California 95380.

20 14. Plaintiff Gloria Hodge is a resident of Franklin County, Arkansas, and has at all
21 relevant times been a mortgagor of the real property located at 1100 Parnell Avenue, Turlock,
22 California 95380.

23 15. Defendant Nationstar Mortgage Holdings, Inc. (“Nationstar”), a Delaware
24 corporation, is a residential mortgage loan servicing company, with its principal place of
25 business in Coppell, Texas. Pursuant to 28 U.S.C. § 1391(c), Nationstar resides in this judicial
26 district because it is subject to personal jurisdiction here.

27 16. Defendant Bank of America, N.A. (“Bank of America”), a Delaware corporation,
28 is a banking and financial services company that provides, *inter alia*, commercial, consumer, and

1 mortgage banking services to its customers. Bank of America has its principal place of business
2 in Charlotte, North Carolina. Pursuant to 28 U.S.C. § 1391(c), Bank of America resides in this
3 judicial district because it is subject to personal jurisdiction here.

4 **GENERAL ALLEGATIONS**

5 **A. Plaintiffs' Mortgage with Bank of America and Nationstar's**
6 **Assumption of Servicing Rights.**

7 17. On or about January 5, 2001, Plaintiffs incurred a mortgage obligation to Bank of
8 America for real property located at 1100 Parnell Avenue, Turlock, California 95380 (the
9 "Property" or "1100 Parnell Ave."). The Property was the residence of Plaintiff Gloria Hodge's
10 mother.

11 18. The promissory note securing the mortgage loan (the "Note") stated that the
12 annual percentage rate of the loan was 7.862%, the principal amount of the loan was \$50,479.00,
13 the finance charge was \$35,892.74, and the total amount of all scheduled payments was
14 \$86,371.74. The terms of the Note further stated that repayment would begin on February 19,
15 2001, and would be spread out across 180 monthly payments, with the monthly amount due on
16 the first 179 payments of \$479.84, and the final payment due in an amount of \$480.84. A true
17 and correct copy of the Note is attached hereto as Exhibit A.

18 19. The Note further states that late fees will not be assessed unless Plaintiffs are "15
19 days or more late in paying all or part of a payment."

20 20. From February 2001 through June 2013, Plaintiffs made their full monthly
21 payments on the Note within the 15-day grace period, with the exception of a five-month period
22 in 2005. During this period, Plaintiffs asked for (and Bank of America granted) a change in the
23 repayment schedule. Under the terms of this agreement, beginning on November 19, 2005, and
24 continuing through March 19, 2006, Plaintiffs paid \$240 per month (the monthly interest on the
25 Note). A true and correct copy of this agreement is attached hereto as Exhibit B.

26 21. On April 19, 2006, Plaintiffs resumed their original monthly payments of
27 \$479.64.
28

1 22. Pursuant to this modification in Plaintiffs' payment schedule, the final payment
2 on the Note was now extended to July 19, 2016. Per the agreement, Plaintiffs would have to
3 "continue to make payments through 07/19/2016 in order to reinstate [their] account." Exhibit B.

4 23. On or about June 25, 2013, Plaintiffs received a letter from Nationstar ("June 25,
5 2013 Letter"), informing them that Nationstar had acquired and would service the mortgage of
6 the Property, as of July 1, 2013. The June 25, 2013 Letter further stated that Plaintiffs' "original
7 loan terms will not change as a result of this transfer." A true and correct copy of the June 25,
8 2013 Letter is attached hereto as Exhibit C.

9 **B. Defendants Unlawfully Increase the Amount Purportedly Owed**
10 **on Plaintiffs' Mortgage and Repeatedly Refuse to Substantiate the**
11 **Amount Owed.**

12 24. Following the receipt of the June 25, 2013 Letter from Nationstar, Plaintiffs
13 continued to dutifully make their payments on the Note, never paying later than 15 days past the
14 scheduled monthly payment date.

15 25. On March 2, 2016, Nationstar sent Plaintiffs a letter (the "March 2, 2016 Letter")
16 advising them that the Note would "expire or mature on 8/19/2016," and that a payoff statement
17 detailing the final balance would be mailed under separate cover. A true and correct copy of the
18 March 2, 2016 Letter is attached hereto as Exhibit D.

19 26. On March 2, 2016, Nationstar also sent Plaintiffs a statement indicating a payoff
20 balance of \$11,469.00 ("March 2, 2016 Statement"). A true and correct copy of the March 2,
21 2016 Statement is attached hereto as Exhibit E. If Plaintiffs continued to make their scheduled
22 payments in accordance with the terms of their loan, this would result in a final payment of
23 approximately \$9,234.14 in unpaid principal, as opposed to the final payment of \$480.84
24 detailed in the Note. *Compare* Exhibit A, *with* Exhibit E.

25 27. Concerned by this drastic discrepancy, Plaintiff Gloria Hodge called Nationstar to
26 inquire about the purported increase in the loan. The Nationstar employee with whom she spoke
27 informed Ms. Hodge that this number was reflective of the \$50,000 borrowed from the Note.
28 When Ms. Hodge referred to the final payment of \$480.84 detailed in the Note, she was told that
Plaintiffs nonetheless owed a final payment of approximately \$9,234.14, as detailed in Exhibit E.

1 28. Plaintiffs then filed a complaint with the Arkansas Attorney General’s Office on
2 March 9, 2016, seeking verification from Nationstar as to the validity of this purported debt
3 (“Attorney General Complaint”). A true and correct copy of that complaint is attached hereto as
4 Exhibit F. Subsequently, on March 10, 2016, the Arkansas Attorney General’s Office sent an
5 email informing Nationstar of the Attorney General Complaint and seeking to resolve the matter
6 (“AG Email to Nationstar”). The AG Email to Nationstar contained, *inter alia*, Plaintiffs’
7 names, information sufficient to identify the account number of their loan, and a request for an
8 explanation of the “balloon payment” Nationstar claims was due, in light of Plaintiffs’ diligent
9 payment history of 15 years and Plaintiffs’ insistence that the “balloon payment” was in error.

10 29. Nationstar responded on March 23, 2016 (the “March 23, 2016 Letter”), stating
11 that Plaintiffs

12 have a Daily Simple Interest (DSI) loan with the first payment due on February
13 19, 2001. The [underlying] Note states “Since interest will accrue daily on the
14 principal amount outstanding, the actual finance charge, total of payments, and
15 final payment may vary, depending upon the date(s) payments are actually made
16 by me.” The Note further states the finance charge on the outstanding balance is
determined on a simple interest basis. If the customer makes payments before or
after any due date, the amount of the final payment may be higher or lower than
the amount originally scheduled. . . .

17 . . . A review of the payment history reflects the customers remitted payments on
18 different dates monthly, thus causing more funds to be applied to interest and
19 resulting in the remaining unpaid principal balance (UPB).

20

21 Overall, no errors were identified during the course of our investigation. Mr. and
22 Mrs. Hodge have the right to access the documents relied upon in this
23 investigation. We have enclosed these documents for their records.

24 A true and correct copy of the March 23, 2016 Letter is attached hereto as Exhibit G.

25 30. However, the document appended to the March 23, 2016 Letter only contained
26 Plaintiffs’ payment history from July 2013, forward (*i.e.*, the date upon which Nationstar began
27 servicing the Note). A true and correct copy of that document is attached hereto as Exhibit H.
28 This payment history does not provide the payment history (and thus the actual amortization) of
the Note from the beginning of the loan (February 2001) through the present, nor does it detail
any purported overages that may have accrued from February 2001 through July 2013. Instead,

1 the schedule picks up almost twelve-and-a-half years into the mortgage and begins with a
2 principal balance that is patently unverifiable. Thus, nothing in the March 23, 2016 Letter
3 explains how Plaintiffs purportedly fell almost \$10,000 in arrears on the Note since February
4 2001.

5 31. On or about June 6, 2016, Plaintiffs again contacted Nationstar and asked for a
6 more thorough audit substantiating the purported amount owed. Nationstar sent Plaintiffs an
7 updated version of the payment history that had been appended to its March 23, 2016 Letter. A
8 true and correct copy of this updated payment history (“June 6, 2016 Payment History”) is
9 attached hereto as Exhibit I. Like the previous payment history, the June 6, 2016 Payment
10 History fails to show the actual amortization of the Note from the beginning of the loan through
11 the present, and instead begins on July 5, 2013, articulating a principal balance that is unverified
12 and, upon information and belief, unverifiable.

13 32. Indeed, even if Plaintiffs had made *all 180 of their mortgage payments* on the
14 latest possible day of the grace period each month (*i.e.*, fifteen days after the due date articulated
15 in the Note), and even taking into account the five-month interest-only payments in 2005,
16 Plaintiffs’ principal arrearages would have been less than \$2,000 by the date of their 180th
17 payment.

18 33. On July 8, 2016, Plaintiffs sent their 180th payment of \$480.84, as required by the
19 Note (“July 8, 2016 Letter”). A true and correct copy of that letter is attached hereto as Exhibit J.
20 The July 8, 2016 Letter identified Plaintiffs, as well as Plaintiffs’ account numbers with both
21 Nationstar and Bank of America. The July 8, 2016 Letter challenged Nationstar’s accounting of
22 Plaintiffs’ payment history, as well as the amount of the additional principal purportedly owed,
23 and sought any and all documentation from Nationstar verifying the amount of the debt owed,
24 including but not limited to Plaintiffs’ payment history from 2001 to 2013.

25 34. Subsequently, on July 20, 2016, Nationstar sent Plaintiffs a statement (“July 20,
26 2016 Statement”) showing a principal balance of \$9,234.14 and demanding a monthly payment
27 of \$479.84 by August 19, 2016. A true and correct copy of the July 20, 2016 Statement is
28 attached hereto as Exhibit K.

1 41. Numerosity: The Class is so numerous that joinder of all members is
2 impracticable. Upon information and belief, members of the Class number as many as two
3 million.¹

4 42. Commonality: There are questions of law or fact common to the Class. These
5 questions include, but are not limited to:

6 (a) whether Nationstar possesses records sufficient to verify the balloon payments it
7 purports Class members owe;

8 (b) whether Bank of America possess records sufficient to verify the balloon
9 payments it purports Class members owe;

10 (c) whether Nationstar’s failure to timely or sufficiently respond to the written
11 requests of Class members violates the requirements of 12 U.S.C. § 2605(e);

12 (d) whether Nationstar’s refusal to provide a complete servicing and payment
13 schedule to Class members seeking to verify the purported “balloon payment” owed violates the
14 requirements of 12 U.S.C. § 2605(e);

15 (e) whether Nationstar’s attempts to collect balloon payments, premised on late
16 payments on daily simple interest loans, amount to attempts to collect a debt, pursuant to 15
17 U.S.C. §§ 1692, *et seq.*;

18 (f) whether Nationstar’s unsubstantiated assertions of amounts owed in balloon
19 payments by Class members amount to unfair debt collection practices pursuant to 15 U.S.C.
20 §§ 1692, *et seq.*;

21 (g) whether Nationstar’s attempts to collect unsubstantiated balloon payments,
22 premised on late payments on daily simple interest loans, are unlawful;

23 (h) whether Nationstar has been enriched unjustly;

24 (i) whether Bank of America has valid contracts with Class members;

25 (j) whether Bank of America breached the terms of its contracts with Class members;

26 _____
27 ¹ David Lazarus, “BofA Cuts 2 Million Customers Loose.” *Los Angeles Times* (May 14, 2013)
28 (detailing Bank of America’s sale of servicing rights for two million mortgages to Nationstar),
available at <http://articles.latimes.com/2013/may/14/business/la-fi-lazarus-20130514>).

1 (k) whether Class members were injured as a result of Bank of America’s breach;

2 (l) whether an injunction should issue; and

3 (m) whether declaratory relief should be granted.

4 43. Typicality: Plaintiffs’ claims are typical of the claims of the Class, in that
5 Plaintiffs and the Class are mortgagors with daily simple interest loans that were originated or
6 serviced by Bank of America, and whose loans subsequently became serviced by Nationstar.
7 Nationstar purports that Plaintiffs — like all other Class members — owe additional principal on
8 their mortgage, but Nationstar makes this assertion without suitable records to verify such a
9 claim, and has not provided sufficient verification of the purported debt owed. Plaintiffs, like all
10 other Class members, have been injured by Nationstar’s practices in that Plaintiff’s, like all other
11 Class members, are required to pay an unsubstantiated and unconscionable debt to Nationstar or
12 else risk foreclosure on their real property.²

13 44. Similarly, Plaintiffs, like all other Class members, have a valid contract with Bank
14 of America, articulating the terms of the mortgage loans, which include a payment schedule
15 detailing the number of payments owed and the amount of each payment. Bank of America has
16 breached its contract with Plaintiffs and Class members by attempting to extract an amount
17 greater than the amount detailed in the payment schedules in the underlying mortgage notes,
18 without providing proof of its right to do so under the contract. Such action on the part of Bank
19 of America also violates the covenant of the duty of good faith and fair dealing, owed to
20 Plaintiffs and Class members, as it injures the rights of Plaintiffs and Class members to receive
21 the benefits owed to them under the contracts at issue.

22 45. Adequate Representation: Plaintiffs will fairly and adequately protect the
23 interests of the Class. Plaintiffs’ interests do not conflict with the interests of the Class members.

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25 ² See, e.g., *Renfro v. Nationstar Mortgage LLC*, No. 1:14-cv-00314-CG-M, Amended
26 Complaint (Dkt. No. 24), ¶ 16 (S.D. Ala. Oct. 10, 2014) (alleging multiple instances in which
27 “Nationstar has used the same generic form letters to respond to qualified written requests and
28 notices of servicing errors [which] failed to address the specific issues addressed in the
borrower’s letter and violated RESPA Section 2605(e)”; *id.* at ¶ 17 (“Upon information and
belief, Nationstar as a matter of course only provides payment history in response to the such
[sic] request covering the period of time in which it serviced the loan.”)).

1 Furthermore, Plaintiffs have retained competent counsel experienced in class action litigation
2 and consumer protection litigation. Plaintiffs' counsel will fairly and adequately protect and
3 represent the interests of the Classes. Rule 23(a)(4) and 23(g) are satisfied.

4 46. Predominance and Superiority: Plaintiffs and Class members have all suffered
5 and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful
6 conduct. A class action is superior to other available methods for the fair and efficient
7 adjudication of the controversy. Absent a class action, most Class members would likely find
8 the cost of litigating their claims prohibitively high and would therefore have no effective
9 remedy at law (and would therefore risk, *inter alia*, foreclosure of their real property based upon
10 unsubstantiated and unconscionable balloon payments). Because of the relatively small size of
11 each Class member's individual claim, it is likely that only a small percentage of Class members
12 could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class
13 members will continue to incur damages (including the risk of foreclosure due to unsubstantiated
14 and unconscionable balloon payments), and Defendants' misconduct will continue without
15 remedy. Class treatment of common questions of law and fact would also be a superior method
16 to multiple individual actions or piecemeal litigation in that class treatment will conserve the
17 resources of the courts and the litigants and will promote consistency and efficiency of
18 adjudication.

19 47. Suitability of Injunctive Relief: In acting as above-alleged, and in failing and
20 refusing to cease and desist (or to provide sufficient evidence to substantiate their claims) despite
21 public complaints filed with a State's Attorney General, Defendants have acted on grounds
22 generally applicable to the entire Class, thereby making final injunctive relief and corresponding
23 declaratory relief each appropriate with respect to the Class as a whole. The prosecution of
24 separate actions by individual Class members would create the risk of inconsistent or varying
25 adjudications with respect to individual Class members that would establish incompatible
26 standards of conduct for Defendants and other mortgage servicers and lenders.

27 48. Injunctive relief is necessary to prevent further unlawful and unfair conduct by
28 Defendants. Money damages, alone, could not afford adequate and complete relief, and

1 injunctive relief is necessary to restrain Defendants from continuing to commit their illegal and
2 unfair practices.

3 **COUNT I**

4 **Violation of Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601, et seq.**
5 **(As to Defendant Nationstar)**

6 49. Plaintiffs hereby incorporate by reference the allegations contained in the
7 paragraphs preceding Count I.

8 50. Defendant Nationstar is a “servicer” of the mortgages of Plaintiffs and Class
9 members, within the meaning of 12 U.S.C. § 2605(i)(2).

10 51. Defendant Nationstar engages in “servicing,” within the meaning of 12 U.S.C.
11 § 2605(i)(3).

12 52. Plaintiffs’ and Class members’ mortgages as “federally related mortgages”
13 pursuant to 12 U.S.C. § 2602(1).

14 53. Plaintiffs’ written communications to Nationstar contesting the validity and
15 accounting of servicing and amortization of the purported, surplus principal on their mortgage —
16 the March 10, 2016 AG Email to Nationstar and Exhibit J — were each a “qualified written
17 request” (“QWR”) and “notice of error” (“NOE”) within the meaning of 12 U.S.C. § 2605(e) and
18 its accompanying regulation, 12 C.F.R. § 1024.35.

19 54. The AG Email to Nationstar and Exhibit J satisfied RESPA’s requirement that a
20 QWR and NOE sufficiently identify or enable the servicer to identify (1) the borrower, (2) the
21 loan account at issue, and (3) “a statement of the reasons for the belief of the borrower, to the
22 extent applicable, that the account is in error or provides sufficient detail to the servicer
23 regarding other information sought by the borrower.” 12 U.S.C. § 2605(e); *see also* 12 C.F.R.
24 § 1024.35.

25 55. Nationstar failed to sufficiently respond to Plaintiffs’ QWR and NOE
26 correspondences, in violation of 12 U.S.C. § 2605(e). Specifically, Nationstar failed to conduct a
27 reasonable investigation into the errors described in Plaintiffs’ two letters by refusing to provide
28 an entire servicing history for 1100 Parnell Ave. At minimum, Nationstar did not — and upon

1 information and belief, *cannot* — explain any increases to the principal on Plaintiffs’ mortgage
2 that occurred prior to July 2013.

3 56. Additionally, Nationstar failed to provide a timely response to Plaintiffs’ QWR
4 and NOE correspondences. Pursuant to 12 U.S.C. § 2605(e), upon receipt of a QWR, a servicer
5 must acknowledge receipt of the correspondence within five days, excluding legal public
6 holidays, Saturdays, and Sundays. Nationstar received Plaintiffs’ first QWR (the AG Email to
7 Nationstar) on March 10, 2016, but did not respond until March 23, 2016. *See* Exhibit G
8 (Nationstar’s March 23, 2016 Letter, acknowledging receipt of Plaintiffs’ QWR on March 10,
9 2016).

10 57. With regard to Plaintiffs’ second QWR, sent by Plaintiffs’ attorney on July 8,
11 2016, Nationstar *never* sent an acknowledgement of receipt, thereby engaging in a separate
12 violation of 12 U.S.C. § 2605(e)’s requirement of acknowledgement of receipt.

13 58. Additionally, Defendant Nationstar committed separate violations of RESPA by
14 failing to take timely action to respond to Plaintiffs’ “requests to correct errors relating to
15 allocation of payments, final balances for purposes of paying off the loan, or avoiding
16 foreclosure, or other standard servicer’s duties,” as required by 12 U.S.C.S. § 2605(k)(1)(C).

17 59. Upon information and belief, Nationstar’s violations of RESPA with regard to
18 Plaintiffs’ QWR and NOE correspondences, as detailed herein, are part of a systemic pattern and
19 practice of failing to timely respond to QWRs and NOEs, failing to conduct a meaningful
20 investigation in response to QWRs and NOEs, failing to provide sufficient (or event relevant)
21 documentation to support its contentions as to balances owed on the mortgages it services, and
22 failing to obtain (much less *retain*) complete payment histories for the mortgages it services. *See*
23 *supra* note 2.

24 60. Plaintiffs and Class members have suffered actual damages as a result of
25 Nationstar’s myriad failures to comply with RESPA.

26 61. Plaintiffs, on behalf of themselves and the Class, seek actual damages, statutory
27 damages, costs, and attorney’s fees pursuant to 12 U.S.C. § 2605(f).

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COUNT II

**Violation of Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, et seq.
(As to Defendant Nationstar)**

62. Plaintiffs hereby incorporate by reference the allegations contained in the paragraphs preceding Count I.

63. Plaintiffs and Class members are “consumers” pursuant to 15 U.S.C. § 1692a(3).

64. Any additional, unsubstantiated mortgage principal sought by Nationstar — above and beyond the amount expressly articulated in the underlying notes of Plaintiffs and Class members, respectively — is a “debt” pursuant to 15 U.S.C. § 1692a(5).

65. Nationstar is a “debt collector” pursuant to 15 U.S.C. § 1692a(6).

66. All communications from Nationstar to Plaintiffs and Class members—including but not limited to all letters exemplified by Exhibits D, E, K, and L are “communications” pursuant to 15 U.S.C. § 1692a(2).

67. Nationstar’s acts and practices, as detailed herein, violate the prohibitions set forth in 15 U.S.C. § 1692d regarding false or misleading representations made in connection with the collection of a debt. Specifically — in violation of 15 U.S.C. §§ 1692d(2) and 1692d(10), and all other applicable portions of this subsection — Defendant has falsely represented the character, amount, or legal status of the inflated principal purportedly owed from all simple interest loans for which it acquired servicing rights from Bank of America, and falsely and deceptively attempts to collect sums purportedly owed, which Nationstar refused and refuses to verify when put to its proof by Plaintiffs and Class members. This is evidenced, *inter alia*, by Defendant’s inability to substantiate the nearly \$10,000 in arrearages it claims that Plaintiffs owe, despite being asked, repeatedly, by both Plaintiffs and the Arkansas Attorney General to do so.

68. The conduct described in the immediately preceding paragraph (and alleged more fully in the entirety of this Complaint) similarly violates

(a) the prohibitions articulated in 15 U.S.C. § 1692f, which guards against unfair and unconscionable acts and practices utilized in connection with the collection of a debt; and

1 (b) the requirements set forth in 15 U.S.C. § 1692g regarding, *inter alia*, (1) the
2 validation of a debt, by a debt collector, upon notice from a consumer seeking validation of a
3 debt, and/or (2) the requisite procedures following a consumer’s disputing the debt at issue.

4 69. As a result of Defendant’s violations of 15 U.S.C. §§ 1692, *et seq.* detailed herein,
5 and pursuant to 15 U.S.C. § 1692k, Plaintiffs seek on behalf of themselves and Class members
6 the following: actual and statutory damages, attorney’s fees, and costs.

7 **COUNT III**

8 **Unjust Enrichment**
9 **(As to Defendant Nationstar)**

10 70. Plaintiffs hereby incorporate by reference the allegations contained in the
11 paragraphs preceding Count I.

12 71. Plaintiffs and Class members conferred non-gratuitous benefits upon Defendant in
13 the form of payments on their respective mortgages. Mortgage servicers such as Nationstar
14 collect monthly fees in return for the services provided. This fee is typically based, *inter alia*, on
15 the outstanding principal loan balance.

16 72. Defendant accepted or retained such non-gratuitous benefits with full knowledge
17 that Plaintiffs and Class members did not consent to Defendant’s practice of adding
18 unsubstantiated principal amounts to the mortgages of Plaintiffs and Class members, resulting in
19 astronomical and arbitrary “balloon payments” at the conclusion of the term of the mortgage.
20 Defendants have been unjustly enriched in receiving any and all revenues (including but not
21 limited to excess interest and principal payments) resulting from the acts and practices
22 complained of herein.

23 73. Defendant’s retention of such ill-gotten gains offend principles of equity, and
24 accordingly Plaintiffs and Class members seek the disgorgement and restitution of the amounts
25 by which Defendant was unjustly enriched.
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COUNT IV
Breach of Contract

(As to Defendant Bank of America)

74. Plaintiffs hereby incorporate by reference the allegations contained in the paragraphs preceding Count I.

75. A valid contract exists between Bank of America and Plaintiffs, and a valid contract exists between Bank of America and Class members.

76. Those contracts are governed by North Carolina law. *See* Exhibit A at 3 (“This Promissory Note is made in North Carolina and shall be governed by federal law and by the laws of the State of North Carolina.”).

77. Among the terms of each contract Bank of America entered into with Plaintiffs and Class members is a “Federal Truth In Lending Disclosure” which details, *inter alia*, the principal of the loan and the loan’s payoff schedule—detailing the number of payments over the entire life of the loan, as well as the amount of each payment. *See, e.g.*, Exhibit A.

78. Bank of America has systematically breached the terms of its contracts with Plaintiffs and Class members by refusing to abide by the terms of the respective payoff schedules.

79. Plaintiffs and Class members have been injured as a result of Bank of America’s breach, and accordingly seek their actual damages.

COUNT V

Breach of the Duty of Good Faith and Fair Dealing
(As to Defendant Bank of America)

80. Plaintiffs hereby incorporate by reference the allegations contained in the paragraphs preceding Count I.

81. “In every contract there is an implied covenant of good faith and fair dealing that neither party will do anything which injures the right of the other to receive the benefits of the agreement.” *Bicycle Transit Auth., Inc. v. Bell*, 314 N.C. 219, 228, 333 S.E.2d 299, 305 (1985).

1 **PRAYER FOR RELIEF**

2 93. Plaintiffs, on behalf of themselves and all others similarly situated, pray for
3 judgment against Defendants as follows:

4 (c) for an order certifying the proposed Plaintiff Class, designating Plaintiffs as
5 named representatives of the Class, and designating the undersigned as Class Counsel;

6 (d) for declaration that Defendants may not assert a breach of the underlying
7 mortgage contracts concerning the real property of Plaintiffs and Class members, unless they
8 concurrently provide complete and accurate payment histories (or commensurate proof) fully
9 corroborating their allegations of breach;

10 (e) for an order enjoining Defendants from attempting to collect any payments from
11 Plaintiffs or Class members, under the terms of the underlying mortgage contracts with Plaintiffs
12 and Class members, without providing evidence sufficiently corroborating the legitimacy and
13 amount of said payments;

14 (f) for an award to Plaintiffs and to the Class of compensatory, exemplary, and
15 statutory damages, including interest, in an amount to be proven at trial;

16 (g) for a declaration that Nationstar must disgorge, for the benefit of the Class, all or
17 part of the ill-gotten profits they received from the acts and practices complained of herein,
18 and/or make full restitution to Plaintiffs and Class Members;

19 (h) for pre-judgment and post-judgment interest as provided by law;

20 (i) for attorneys' fees and costs; and

21 (j) for such other and further relief as the Court may deem proper.

22 **DEMAND FOR JURY TRIAL**

23 94. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by
24 jury of all issues so triable.

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1 Dated: October 7, 2016

2 Respectfully submitted,

3 /s/ Hank Bates

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