

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

STATE OF VERMONT
SUPERIOR COURT

2015 JUL -7 A 10: 07

WASHINGTON UNIT

FILED

STATE OF VERMONT,
Plaintiff

v.

BANK OF AMERICA, N.A.,
Defendant

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CIVIL DIVISION
Docket No. 639-10-13

SETTLEMENT AGREEMENT AND STIPULATION

As evidenced by their signatures below and pursuant solely to 9 V.S.A. §2458(b) (1)-(3), the State of Vermont (the "State"), through its Attorney General, and Bank of America, N.A. ("Bank of America") (together, the "Parties") hereby enter into this Settlement Agreement and Stipulation ("Stipulation") in order to fully resolve this action.

Background

1. The State filed a consumer protection complaint in this matter setting out certain allegations.
2. Bank of America filed an answer in which it expressly denied the State's allegations.
3. The Parties now wish to resolve this action, and therefore, in lieu of further litigation, the State and Bank of America agree to this Stipulation in resolution of the action.

Definitions

1. For the purpose of this Stipulation, the following terms are defined:
 - a. "Borrower" means the mortgagor of a residential mortgage loan that is or was serviced by Bank of America, which is secured by a dwelling house of four units or fewer, and which house is located within the State of Vermont.

- b. "Foreclosure Action" means a legal action brought by Bank of America in a Vermont court under Vermont state law to foreclose on a residential mortgage loan of a Borrower.
- c. "Foreclosure Settlement" means an offer by Bank of America, agreed to by the Borrower, including but not limited to a loan modification agreement or trial payment plan, that serves as the basis for a settlement of a Foreclosure Action.
- d. "Lawsuit" means this action captioned *State of Vermont v. Bank of America, N.A.*, Docket No. 639-10-13, filed in the Superior Court of Vermont, Washington Unit.
- e. "National Mortgage Settlement" means the consent judgment entered on April 5, 2012, in *United States of America et al. v. Bank of America Corporation et al.*, No. 12-361 (D.D.C.) (docket no. 11).
- f. "Settlement Noncompliance" means Bank of America's alleged failure to timely implement any of the following terms of a Foreclosure Settlement: (i) the interest rate on the loan at issue, (ii) the amount of the monthly payment on the loan, (iii) the term of the loan, or (iv) the existence or absence of a balloon payment. For purposes of this Stipulation and without limitation, sending a bill or a notice of delinquency reflecting a change in an escrow amount due, such as an increase in property taxes or insurance premiums, shall not constitute Settlement Noncompliance. In addition, "Settlement Noncompliance" shall not include changes to payment terms (e.g., changes in variable interest rates) specified in any agreement between Bank of America and the Borrower, nor

shall it include any conduct released as part of the National Mortgage Settlement.

Payment to the State

2. Within ten (10) business days after the court's execution, entry, and filing of this Stipulation, Bank of America shall pay to the State, in care of the Vermont Attorney General's Office, the sum of \$1,250,000.00 (the "Settlement Payment"), which includes the State's fees and costs incurred in investigating and litigating this matter.

Release by the State

3. Effective upon filing of this Stipulation and the Bank's transfer of the Settlement Payment to the State, the State of Vermont hereby releases and discharges Bank of America, or anyone acting on its behalf or under its control, including but not limited to its directors, officers, shareholders, employees, attorneys, agents, successors or assigns, and any corporation, corporation, company, business entity, or other entity through which Bank of America may now engage in activities which are the subject of this Stipulation, including without limitation Bank of America Corporation and all of its subsidiaries, from any and all grievances, suits, causes of action, and any claims of any nature whatsoever relating to or arising out of any Foreclosure Action, any Foreclosure Settlement, any actual or alleged violation of the Vermont Foreclosure Mediation Law, or any conduct alleged by the State in the Lawsuit, arising prior to the date of filing of this Stipulation, known or unknown, accrued or unaccrued, whether arising in law or equity, and whether arising in contract, tort, statute, or any other theory of action.

Other Provisions

4. Bank of America represents that it has in place effective policies and procedures to minimize the risk of future Settlement Noncompliance.
5. The Vermont Attorney General's Office shall use \$250,000 of the Settlement Payment to establish a fund (the "Settlement Noncompliance Fund") for payments to Borrowers who are determined by the Vermont Attorney General's Office to have met the criteria for a valid claim of Settlement Noncompliance.
6. A Borrower who receives funds from the Settlement Noncompliance Fund must execute an appropriate release of liability in the form of Exhibit B attached hereto as a condition of receiving compensation under this Stipulation.
7. Following the execution of this Stipulation, the Vermont Attorney General's Office will notify the public of this Stipulation and the process for submitting a claim of Settlement Noncompliance.
8. Borrowers shall have 60 days from public notice of the Stipulation and the process for submitting a claim of Settlement Noncompliance to submit to the Vermont Attorney General's Office a claim that they have experienced Settlement Noncompliance.
9. The Vermont Attorney General's Office may directly review all Borrowers' claims of Settlement Noncompliance, or may submit some or all claims to a mediator or other claims administrator selected by the Vermont Attorney General's Office.
10. Following the review of all claims, the Vermont Attorney General's Office shall notify all claimants of the determination of their claims.

11. The specific process by which claims will be submitted, evaluated, and paid will be developed by the Vermont Attorney General's Office, and will be administered by the Vermont Attorney General's Office and/or its designees.

12. Any money remaining in the fund after awards are made to claimants shall be divided between Vermont Legal Aid for representation of low income persons in foreclosure or other housing action, and the Vermont Judiciary for costs associated with foreclosure and other housing-related matters.

13. Within 10 days of the Court's execution, entry and filing of this Stipulation, the Parties shall file a stipulation of dismissal with prejudice in the form attached as Exhibit A hereto.

14. The intention of the Parties in entering into this Stipulation is to remediate alleged harms allegedly resulting from alleged unlawful conduct.

15. This Stipulation contains no injunctive measures against Bank of America or any of its affiliates or employees: a) arising out of its business as an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities, as set forth in 17 CFR 230.506(d); or b) from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act; or c) from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, as set forth in 15 U.S.C. 80(a)-9(a)(2). This Stipulation is not intended to indicate that Bank of America, or any of its affiliates or employees, is subject to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of any self-regulatory organizations, or various states' securities laws, including any disqualifications

from relying on registration exemptions or safe harbor provisions. In addition, this Stipulation is not intended to form the basis for any such disqualifications, including but not limited to the disqualification found in 17 CFR 230.506(d). The Court is entering this Stipulation solely to effectuate the Parties' settlement and the Court makes no findings as to the Parties' allegations and defenses.

16. This Stipulation is not a final order of any state securities or banking authority.

17. The Parties agree that no parties other than the State and Bank of America have any contractual rights under this Stipulation and that only the Parties may enforce its terms.

18. The Parties have consented to entry of this Stipulation for settlement only and agree that it does not constitute the admission of a violation of any law. Nothing in this Stipulation shall be construed as an admission by Bank of America of any liability, wrongdoing, misconduct, or legal or factual issue. Neither this Stipulation nor payment from the Settlement Noncompliance Fund may be used as evidence of any liability of Bank of America. Bank of America expressly disputes that "Settlement Noncompliance" as defined herein, and the specific allegations contained in the Complaint in the Lawsuit, are actionable under the Vermont Consumer Protection Act, as these activities relate to litigation and are not "in commerce." Bank of America further expressly incorporates herein its Motion to Dismiss for Failure to State a Claim and incorporated memorandum of law filed in the Lawsuit and, in particular, maintains its position that, to the extent that the State seeks to exercise visitorial powers over Bank of America, the underlying lawsuit is preempted by the National Bank Act.

19. All notices under this Stipulation shall be given via email and either regular mail or overnight courier as indicated below:

Bank of America:

Gregory C. Smallwood
gregory.smallwood@bankofamerica.com
Bank of America, N.A.
7105 Corporate Drive
Plano TX 75024

John D. Adams
jadams@mcguirewoods.com
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030

William C. Mayberry
bmayberry@mcguirewoods.com
McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202-2146

State of Vermont:

Jill S. Abrams
jill.abrams@state.vt.us
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609

Wendy Morgan
wendy.morgan@state.vt.us
Chief, Public Protection Division
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609

20. This Stipulation may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

IT IS SO ORDERED.

Dated this _____ day of June, 2015.

Hon. Mary Miles Teachout
Washington County Superior Court Judge

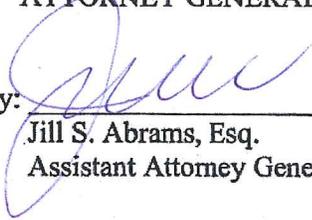
STIPULATION OF SETTLEMENT

The undersigned parties hereby stipulate and agree to the foregoing.

Dated: ~~June~~ ^{JULY} 6, 2015

STATE OF VERMONT

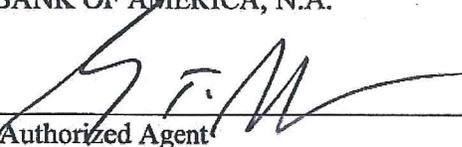
WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 

Jill S. Abrams, Esq.
Assistant Attorney General

Dated: ~~June~~ ^{JULY} 6, 2015

BANK OF AMERICA, N.A.

by: 

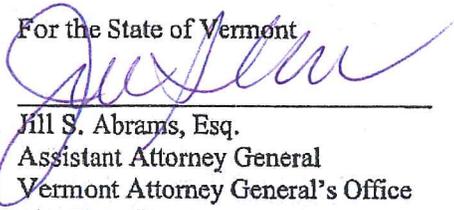
Authorized Agent

Anthony T. Meola
Name of Authorized Agent

Sr. Vice President
Title of Authorized Agent

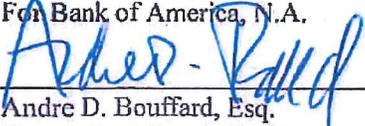
APPROVED AS TO FORM:

For the State of Vermont

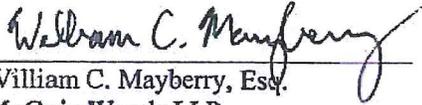


Jill S. Abrams, Esq.
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609

For Bank of America, N.A.



Andre D. Bouffard, Esq.
Downs Rachlin Martin PLLC
199 Main Street
P.O. Box 190
Burlington, VT 05402-0190



William C. Mayberry, Esq.
McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202-2146
For Bank of America, N.A.

Exhibit A

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CIVIL DIVISION
Docket No. 639-10-13Wncv

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Vermont Rules of Civil Procedure, the parties to this action hereby give notice of voluntary dismissal with prejudice of this action and all claims asserted herein.

Burlington, Vermont

June ____, 2015.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Jill S. Abrams
Date: July 6, 2015
Jill S. Abrams
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
(802) 828-1106

BANK OF AMERICA, N.A.

DOWNS RACHLIN & MARTIN PLLC

By: Andre D. Bouffard
Date: 6/25/15
Andre D. Bouffard
John Hollar
199 Main Street
P.O. Box 190
Burlington, VT 05402-0190
(802) 863-2375

MCGUIREWOODS LLP.
William C. Mayberry (Pro Hac #9000773)
Joshua D. Davey (Pro Hac # 9000812)
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
Admitted Pro Hac Vice

SO ORDERED:

Mary Miles Teachout
Superior Court Judge

Exhibit B

RELEASE

This Confidential Release ("Release") is given and agreed as of the date of its execution by Claimant(s)-Borrower(s), _____, ("Claimant") in favor of Bank of America, N.A., its subsidiaries and affiliates ("BANA").

RECITALS

This Release is given and agreed with reference to the following facts and recitals which are true to the best of the Claimant's knowledge and belief, and are made part of this Release:

WHEREAS, Claimant is the mortgagor of a mortgage loan originated and/or serviced by BANA made on or about _____ (the "Loan") and secured by the residential real property located at _____ (the "Collateral Property");

WHEREAS, BANA is or has been the servicer of the Loan;

WHEREAS, Claimant was named as a defendant in a foreclosure action with respect to the Loan (the "Foreclosure Action") filed by or on behalf of BANA in the State of Vermont;

WHEREAS, BANA and the State of Vermont are parties to the Settlement Agreement and Stipulation (the "Stipulation") filed in *State of Vermont v. Bank of America, N.A.*, Docket No. 639-10-13 (Superior Court of Vermont, Washington Unit) (the "Lawsuit") in June 2015;

WHEREAS, Claimant(s) and BANA allegedly entered into a foreclosure settlement by which Claimant(s) and BANA allegedly agreed to a loan modification agreement, trial payment plan or other agreement that served as the basis for a settlement of the Foreclosure Action (the "Foreclosure Settlement").

WHEREAS, Claimant(s) allege that BANA failed to timely implement one or more of the following terms of a Foreclosure Settlement: (i) the interest rate on the loan at issue, (ii) the amount of the monthly payment on the loan, (iii) the term of the loan, or (iv) the existence or absence of a balloon payment (collectively, "Settlement Noncompliance") or otherwise failed to implement the Foreclosure Settlement.

WHEREAS, pursuant to the Stipulation, Claimant(s) has agreed to accept a payment from the Settlement Noncompliance Fund held by the State of Vermont (the "Payment") in consideration for releasing Claimant(s)'s claim for Settlement Noncompliance and any claim related to the Foreclosure Action;

Exhibit B

NOW, THEREFORE, in consideration of the Payment, Claimant(s) agrees as follows:

RELEASE

Release by Claimant(s). For consideration of the Payment, Claimant(s), for his or herself and each of his or her present and former heirs, executors, administrators, partners, co-obligors, co-guarantors, guarantors, sureties, family members, spouses, attorneys, insurers, agents, representatives, predecessors, successors, assigns and all those who claim through them or could claim through them (collectively "Releasers"), releases and discharges BANA or anyone acting on its behalf or under its control, including but not limited to its directors, officers, shareholders, employees, attorneys, agents, successors or assigns, and any corporation, corporation, company, business entity, or other entity through which BANA may now engage in activities which are the subject of the Stipulation, including without limitation Bank of America Corporation and all of its subsidiaries, from any and all grievances, suits, causes of action, and claims arising out of the Foreclosure Action, the Foreclosure Settlement, any actual or alleged violation of the Vermont Foreclosure Mediation Law, any alleged Settlement Noncompliance claim and any other conduct alleged by the State in the Lawsuit, arising prior to the date of this Release, known or unknown, accrued or unaccrued, whether arising in law or equity, and whether arising in contract, tort, statute, or any other theory of action.

[SEE NEXT PAGE FOR SIGNATURES]

Exhibit B

CLAIMANT

Signature: _____

Printed Name: _____

Date: _____

On the ___ day of _____ (year), at _____
_____ (place), Vermont, appeared before me _____
(name), known to me, or satisfactorily proven to be the person who is the signatory to the
foregoing, and made oath that his/her signature is his/her free act and deed.

Notary Public

CLAIMANT

Signature: _____

Printed Name: _____

Date: _____

On the ___ day of _____ (year), at _____
_____ (place), Vermont, appeared before me _____
(name), known to me, or satisfactorily proven to be the person who is the signatory to the
foregoing, and made oath that his/her signature is his/her free act and deed.

Notary Public

VT SUPERIOR COURT
WASHINGTON UNIT

Exhibit A

VT SUPERIOR COURT
WASHINGTON UNIT

DW
2015 JUL -8 A 10:05
ORDER

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

DW-proposed
2015 JUL -7 P 3:14

STATE OF VERMONT,

FILED

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

FILED

CIVIL DIVISION
Docket No. 639-10-13Wncv

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Vermont Rules of Civil Procedure, the parties to this action hereby give notice of voluntary dismissal with prejudice of this action and all claims asserted herein.

Burlington, Vermont

June ____, 2015.

STATE OF VERMONT

BANK OF AMERICA, N.A.

WILLIAM H. SORRELL
ATTORNEY GENERAL

DOWNNS RACHLIN & MARTIN PLLC

By: Jill S. Abrams
Date: July 6, 2015

By: Andre D. Bouffard
Date: 6/25/15

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201 North Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
Admitted Pro Hac Vice

SO ORDERED:

Mary Miles Teachout
Mary Miles Teachout
Superior Court Judge

July 7, 2015