

1 contained the information regarding plaintiffs' various disputes which Trans Union, Experian
2 and Equifax conveyed to Defendant BAC Home Loans Servicing LP. These documents, known
3 as Automated Consumer Dispute Verification forms ("ACDVs") were produced by BAC on or
4 about October 11, 2010;

5 WHEREAS, on October 15, 2010, BAC produced a witness pursuant to Federal Rule of
6 Civil Procedure 30(b)(6) to testify concerning the ACDV forms;

7 WHEREAS, the parties conducted an unsuccessful mediation on January 31, 2011;

8 WHEREAS, on February 7, 2011, plaintiffs propounded interrogatories to BAC to
9 inquire as to whether BAC contends that the description of plaintiffs' dispute set forth in the
10 ACDVs affected or impeded the nature of its investigation of the plaintiffs' disputes.

11 WHEREAS, defendant BAC objected to the interrogatories on various grounds;

12 WHEREAS, during the meet and confer process concerning the interrogatories, further
13 communications were had between the parties concerning the adequacy of the ACDVs;

14 WHEREAS, plaintiffs contend that the credit reporting agencies did not provide "all
15 relevant information regarding the dispute that is received by the agency" to BAC concerning
16 plaintiffs' dispute, though BAC takes no position here regarding whether the credit reporting
17 agencies complied with the Fair Credit Reporting Act or other applicable law;

18 WHEREAS, the parties are in agreement that plaintiffs should be allowed to file a First
19 Amended Complaint attached as Exhibit A hereto, which, among other things, will add Trans
20 Union, Equifax, and Experian as defendants and allege violations of 15 U.S.C. §1681i(a)(2)(B);

21 WHEREAS, the following scheduling order was set forth in a March 11, 2011 Order:

22 NON-EXPERT DISCOVERY CUTOFF: May 20, 2011.

23 DESIGNATION OF EXPERTS: 4/6/11; REBUTTAL: 4/19/11.

24 EXPERT DISCOVERY CUTOFF: May 20, 2011.

25 DISPOSITIVE MOTIONS: filed by July 1, 2011; Opp. Due July 15, 2011; Reply Due
26 July 22, 2011; and set for hearing no later than August 5, 2011 at 9:00 AM.

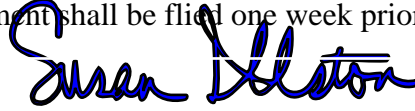
27 PRETRIAL CONFERENCE DATE: September 6, 2011 at 3:30 PM.

28 STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFFS LEAVE TO FILE A FIRST AMENDED
COMPLAINT ADDING NEW PARTIES AND VACATING SCHEDULING ORDER

order. The scheduling order in place in this matter is hereby vacated.

A further CMC is set for 6/24/11 @ 3 p.m. A joint statement shall be filed one week prior to the conference.

Date: 4/8/11



Hon. Susan Illston
United States District Court

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EXHIBIT A

1 LAW OFFICE OF WILLIAM E. KENNEDY
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5 Attorney for Plaintiffs WILLIAM G. STEWART AND NANCY STEWART

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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 WILLIAM G. STEWART AND NANCY)
10 STEWART,)

11 Plaintiffs)

12 vs.)

13 BAC HOME LOANS SERVICING, LP; EQUIFAX)
14 INFORMATION SERVICES, LLC; EXPERIAN)
INFORMATION SOLUTIONS, INC.; and TRANS)
15 UNION LLC)

16 Defendants.)

Case No.: 10-01225SI

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE FAIR
CREDIT REPORTING ACT AND
THE CALIFORNIA CONSUMER
CREDIT REPORTING AGENCIES
ACT**

JURY TRIAL DEMAND

17 **JURISDICTION AND VENUE**

18 1. Jurisdiction is proper in the Federal District Court pursuant to 28 U.S.C. §1331,
19 on the basis that defendants, by an act or omission violated federal law, specifically the federal
20 Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.*

21 2. Venue is proper in the Federal District Court of Northern California pursuant to
22 28 U.S.C. §1391, because this is the judicial district in which a substantial part of the events or
23 omissions giving rise to the claim occurred.

24 **PARTIES**

25 3. At all material times, Plaintiffs WILLIAM G. STEWART AND NANCY
26 STEWART were individuals residing in Marin County, California.

27 4. Plaintiffs are informed and believe that at all material times, defendant BAC
28 HOME LOANS SERVICING, LP (hereinafter "Bank of America") is a Texas Limited

1 Partnership.

2 5. Defendant Equifax Information Services LLC (hereinafter “Equifax”) is a
3 “consumer reporting agency” as defined by 15 U.S.C. §1681a(f).

4 6. Defendant Experian Information Solutions, Inc. (hereinafter “Experian”) is a
5 “consumer reporting agency” as defined by 15 U.S.C. §1681a(f).

6 7. Defendant Trans Union LLC (hereinafter “Trans-Union”) is a “consumer
7 reporting agency” as defined by 15 U.S.C. §1681a(f).

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9
10 **FACTUAL BACKGROUND**

11 8. In early 2007, plaintiffs took out a home equity line of credit from SBMC
12 Mortgage and drew approximately \$84,000 from the credit line.

13 9. The terms of the home equity line of credit allowed plaintiffs to make interest
14 only payments.

15 10. In May 2007, the line of credit was assigned to Countrywide Savings. For
16 unknown reasons Countrywide Savings sent monthly statements to plaintiffs which requested
17 payment of principal and interest, rather than just interest. Although plaintiffs were only
18 obligated to pay interest, they paid principal and interest for several months. However, after
19 discovering this billing error in approximately November 2008, plaintiffs notified Countrywide
20 that they would only make interest payments. Beginning in December 2008, plaintiffs made
21 interest-only payments. Countrywide, which apparently continued to expect to receive principal
22 and interest payments considered plaintiffs’ loan to be delinquent and in subsequent monthly
23 statements, informed plaintiffs that they were past due.

24 11. Mr. Stewart contacted Countrywide and again informed its representatives that
25 the line of credit required only interest payments. Ultimately, an audit was done on plaintiffs’
26 account. Countrywide acknowledged their continuing mistake and apologized to Mr. Stewart.
27 Mr. Stewart was told not to make payments until the audit was completed since the account was
28 overpaid. Throughout this process, Mr. Stewart spent many hours and experienced numerous

transfers from many different departments, supervisors, and divisions.

1
2 12. In approximately May 2009, Bank of America acquired Countrywide and all
3 further actions concerning the account were taken by Bank of America.

4 13. In June 2009, Bank of America issued a notice of intent to accelerate the loan to
5 plaintiffs.

6 14. Mr. Stewart again spent numerous hours on the telephone with Bank of America,
7 explaining the situation to numerous employees who offered different explanations of why the
8 problem was occurring. Mr. Stewart was told not to worry, and was assured that there were notes
9 in the computer that the account was not marked delinquent. Mr. Stewart was also assured that
10 he had not been given any negative blemishes on his credit.

11 15. In July 2009, Mr. Stewart received notification from Wells Fargo that due to
12 derogatory information on his credit reports, it had frozen their equity line with them.

13 16. Bank of America also sent a letter to plaintiffs stating that it was freezing
14 plaintiffs' line of credit due to alleged late payments.

15 17. Mr. Stewart then discovered that Bank of America had, in fact, reported
16 delinquencies on his account. Specifically, Bank of America reported late payments on
17 plaintiffs' line of credit in January, February, and June, 2009. These reports were made with
18 respect to both Mr. and Mrs. Stewart.

19 18. On August 14, 2009, Mr. Stewart submitted a dispute letter to the three major
20 credit reporting agencies – Trans Union, Experian, and Experian. On August 17, 2009, Mr.
21 Stewart submitted the same dispute letter to Bank of America. The letter again explained that
22 plaintiffs were being improperly billed for interest and principal payments, leading to the
23 derogatory credit report.

24 19. Thereafter, pursuant to the requirements of the Fair Credit Reporting Act, 15
25 U.S.C. §1681i(a)(2), each of the three credit reporting agencies conveyed Mr. Stewart's dispute
26 to Bank of America.

27 20. Bank of America verified to each of the three credit reporting agencies that the
28 derogatory information which it was reporting concerning Mr. Stewart was correct.

1 21. Thereafter, each of the three credit reporting agencies reported back to Mr.
2 Stewart that the derogatory credit would not be removed from his credit report.

3 22. On November 12, 2009, plaintiffs again sent a comprehensive dispute letter to the
4 credit reporting agencies.

5 23. The November 12, 2009 letter was also sent to Bank of America.

6 24. The letter explained the history of the dispute, and requested that the derogatory
7 information be removed from plaintiffs' credit reports.

8 25. Thereafter, pursuant to the requirements of the Fair Credit Reporting Act, 15
9 U.S.C. §1681i(a)(2), plaintiffs are informed and believe that each of the three credit reporting
10 agencies conveyed Mr. Stewart's dispute to Bank of America.

11 26. Bank of America verified to each of the three credit reporting agencies that the
12 derogatory information which it was reporting concerning plaintiffs was correct.

13 27. Thereafter, each of the three credit reporting agencies reported back to both
14 plaintiffs that the derogatory credit would not be removed from their respective credit reports.

15 28. On December 14, 2009 Bank of America sent a letter to plaintiffs informing them
16 that "We are in the process of obtaining the documentation and information necessary to address
17 your questions and concerns. We will provide a more complete response within twenty (20)
18 business days."

19 29. On December 21, 2009, plaintiffs again sent a comprehensive dispute letter to the
20 credit reporting agencies and Bank of America. The letter explained the history of the dispute,
21 and again requested that the derogatory information be removed from plaintiffs' credit reports.

22 30. Thereafter, pursuant to the requirements of the Fair Credit Reporting Act, 15
23 U.S.C. §1681i(a)(2), plaintiffs are informed and believe that Trans Union and Equifax conveyed
24 plaintiffs' dispute to Bank of America.

25 31. In response to plaintiffs' December 21, 2009 correspondence, Experian responded
26 to William and Nancy Stewart as follows:

27 We are responding to your request to verify item(s) on your personal credit report. We
28 have already investigated this information and the credit grantor has verified its accuracy.
 Please refer to the personal credit report you received for this name, phone number, and
 address of the credit grantor who verified this information. Pursuant to Section

1 611(a)(3)(A) of the Fair Credit Reporting Act, we will not be investigating your dispute
again at this time.

2 32. Pursuant to 15 U.S.C. §1681i, Experian was required to conduct an investigation
3 by forwarding plaintiffs' dispute to Bank of America. The investigation could be terminated
4 pursuant to section 611(a)(3)(A) of the Fair Credit Reporting Act (15 U.S.C. §1681i(a)(3)(A))
5 only if Experian reasonably determined that the dispute by the consumer was frivolous or
6 irrelevant.

7 33. Bank of America verified to Experian and Trans Union that the derogatory
8 information which it was reporting concerning plaintiffs was correct.

9 34. Thereafter, Experian and Trans Union reported back to both plaintiffs that the
10 incorrect information had been verified, and that the derogatory credit would not be removed
11 from their respective credit reports.

12 35. On January 26, 2010, Bank of America sent a letter to plaintiffs informing them
13 that "We are in the process of obtaining the documentation and information necessary to address
14 your questions and concerns. We will provide a more complete response within twenty (20)
15 business days."

16 36. In late January 2010, plaintiffs sent a certified letter to Bank of America asking
17 them if they had made a decision yet as to how their matter would be resolved, and resubmitting
18 the December 21, 2009 dispute letter. The letter was received by Bank of America on January
19 29, 2010.

20 37. On February 5, 2010, Bank of America sent a letter to plaintiffs which stated:
21 "Our records reflect your payments were delinquent for those months. Consequently, we are
22 unable to grant your request to remove the negative remarks on your credit file." Although the
23 letter was dated in February 2010, the letter stated "Your next payment is due on September 25,
24 2009."

25 38. The February 5, 2010 letter also states that a loan history had been mailed to
26 plaintiffs under separate cover.

27 39. A loan history was mailed to plaintiffs which showed numerous adjustments and
28 reversals to plaintiffs' account.

1 47. Thereafter, plaintiffs are informed and believe that each of the 12+ times it was
2 notified of a dispute by a credit reporting agency, Bank of America failed to review all relevant
3 information provided by the credit reporting agencies and/or conduct a reasonable investigation
4 to ascertain whether the derogatory information it had reported was incomplete or inaccurate, in
5 violation of 15 U.S.C. §1681s-2b.

6 48. In addition, plaintiffs are informed and believe that Bank of America notified the
7 credit reporting agencies that the derogatory credit information reported with respect to the
8 plaintiffs was correct, and failed to notify the credit reporting agencies that the account was
9 disputed.

10 49. Plaintiffs are informed and believe that the violation of 15 U.S.C. §1681s-2b by
11 Bank of America was willful. In the alternative, plaintiffs are informed and believe that the
12 violation of 15 U.S.C. §1681s-2b by Bank of America was negligent.

13 50. Bank of America's violations of 15 U.S.C. §1681s-2b caused damages in an
14 amount to be proven at trial.

15 **SECOND CLAIM FOR RELIEF AGAINST BANK OF AMERICA**
16 **(California Consumer Credit Reporting Agencies Act --Civil Code §1785.25(a))**

17 51. Plaintiffs incorporate all other paragraphs as though fully set forth herein.

18 52. Bank of America violated Civil Code §1785.25(a) by reporting credit information
19 to consumer credit reporting agencies, as that term is defined at Civil Code §1785.3(d). which it
20 knew or should have known was incomplete or inaccurate

21 53. Plaintiffs are informed and believe that the violation of Civil Code §1785.25(a) by
22 defendant was willful and in accordance with defendant's standard business procedures. In the
23 alternative, plaintiffs are informed and believe that the violation of Civil Code §1785.25(a) by
24 defendant was negligent.

25 54. Defendant's violations of the California Consumer Credit Reporting Agencies Act
26 caused damages in an amount to be proven at trial.

27
28 **THIRD CLAIM FOR RELIEF AGAINST EQUIFAX, EXPERIAN, AND TRANS UNION**

(Fair Credit Reporting Act – 15 U.S.C. §1681i(a)(2)(B))

1 55. Plaintiffs incorporate all other paragraphs as though fully set forth herein.

2 56. Pursuant to the Fair Credit Reporting Act, at 15 U.S.C. §1681i(a)(2)(B), upon
3 receiving a dispute from the Stewarts concerning the derogatory credit information the three
4 credit reporting agencies were required to provide “all relevant information regarding the dispute
5 that is received by the agency” to the furnisher of the disputed credit information - in this case
6 Bank of America.

7 57. Neither Equifax, Experian, nor Trans Union complied with 15 U.S.C.
8 §1681i(a)(2)(B). Rather, in response to receipt of a dispute letter from plaintiffs, the credit
9 reporting agencies generated and conveyed an Automated Consumer Dispute Verification form
10 (“ACDV”) to Bank of America. At least twelve ACDV forms were generated and conveyed to
11 Bank of America by the credit reporting agencies. In no case, did the credit reporting agencies
12 convey the dispute letter received from plaintiffs to Bank of America. The ACDV forms
13 generated did not explain the nature of plaintiffs’ dispute. Instead, the forms merely represented
14 the plaintiffs’ disputes as a generic “Dispute Code.” Most of the ACDVs generated by the credit
15 reporting agencies used the “106” Dispute Code, which translates to “disputes present/previous
16 account status.”

17 58. On some of the ACDVs, the ACDVs included a section for text which
18 purportedly explained the nature of the dispute. The text provided, however, was nonsensical, or
19 incomplete. For example, in some ACDVs, the credit reporting agencies appeared to reproduce
20 one out-of-context sentence from the Stewarts’ dispute letters.

21 59. Plaintiffs are informed and believe that each of the credit reporting agencies
22 routinely violate 15 U.S.C. §1681i(a)(2)(B) by failing to provide “all relevant information
23 regarding the dispute that is received by the agency” to the credit reporting agencies. Plaintiffs
24 are informed and believe that credit reporting agencies routinely use ACDVs to convey
25 consumer disputes to furnishers of disputed credit information, when the ACDVs are inadequate
26 to convey the nature and reasons for the consumers’ dispute.

27 60. Plaintiffs are informed and believe that the violations of 15 U.S.C.
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1 §1681i(a)(2)(B) by the credit reporting agencies was willful. In the alternative, plaintiffs are
2 informed and believe that the violations of 15 U.S.C. §1681i(a)(2)(B) by the credit reporting
3 agencies was negligent.

4 61. The credit reporting agencies' violations of 15 U.S.C. §1681i(a)(2)(B) caused
5 damages in an amount to be proven at trial.

6 **FOURTH CLAIM FOR RELIEF AGAINST EXPERIAN**
7 **(Fair Credit Reporting Act – 15 U.S.C. §1681i)**

8 62. Plaintiffs incorporate all other paragraphs as though fully set forth herein.

9 63. Pursuant to 15 U.S.C. §1681i, Experian was required to conduct an investigation
10 in response to plaintiffs' December 14, 2009 dispute letter, and was required to forward
11 plaintiffs' dispute to Bank of America. Experian failed to conduct the required investigation,
12 wrongfully citing section 611(a)(3)(A) of the Fair Credit Reporting Act (15 U.S.C.
13 §1681i(a)(3)(A)) which only allows credit reporting agencies to terminate investigation of a
14 consumer dispute if it reasonably determines that the dispute by the consumer is frivolous or
15 irrelevant. Plaintiffs' dispute was not frivolous or irrelevant, and Plaintiffs are informed and
16 believe that Experian either made no such determination, or unreasonably made such a
17 determination.

18 64. Plaintiffs are informed and believe that the violation of 15 U.S.C. §1681i by
19 Experian was willful. In the alternative, plaintiffs are informed and believe that the violation of
20 15 U.S.C. §1681i by Experian was negligent.

21 65. Experian's violation of 15 U.S.C. §1681i caused damages in an amount to be
22 proven at trial.

23
24 **PRAYER FOR RELIEF**

25 THEREFORE, Plaintiffs pray that the Court grant the following relief:

26 **Against Bank of America:**

27 a) Actual damages, including emotional distress, pursuant to 15 U.S.C. §1681n and 15
28 U.S.C. §1681o, and Civil Code §1685.31(a);

1 b) Punitive damages pursuant to 15 U.S.C. §1681n(a)(2) and Civil Code
2 §1785.31(a)(2)(B);

3 c) Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1681n(c) and Civil Code
4 §1785.31(a)(1) and §1785.31(d).

5 d) For such other and further relief as the Court deems just and proper.

6 **Against Equifax, Experian, and Trans Union:**

7 a) Actual damages, including emotional distress, pursuant to 15 U.S.C. §1681n and 15
8 U.S.C. §1681o.

9 b) Punitive damages pursuant to 15 U.S.C. §1681n(a)(2);

10 c) Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1681n(c) and Civil Code
11 §1785.31(a)(1) and §1785.31(d).

12 e) For such other and further relief as the Court deems just and proper.

13
14 Dated: April 5, 2011

LAW OFFICE OF WILLIAM E. KENNEDY

15
16 /s/
17 William E. Kennedy
18 Attorney for Plaintiffs WILLIAM G. STEWART
19 AND NANCY STEWART

20 **DEMAND FOR JURY TRIAL**

21 Please take notice that Plaintiffs demand a trial by jury in this action.

22 Dated: April 5, 2011

LAW OFFICE OF WILLIAM E. KENNEDY

23 /s/
24 William E. Kennedy
25 Attorney for Plaintiffs WILLIAM G. STEWART
26 AND NANCY STEWART
27
28