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16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 CORY ROBINSON, Individually and  
19 On Behalf of All Others Similarly  
20 Situated,

21 Plaintiff,

22 v.

23 BANK OF AMERICA, N.A.

24 Defendant.

Case No.: '21CV110 JM RBB

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF  
REAL ESTATE SETTLEMENT  
PROCEDURES ACT, 12 U.S.C.  
§§ 2601, ET SEQ.**

**JURY TRIAL DEMANDED**



1 Cory Robinson (“Plaintiff” or “Mr. Robinson”) brings this class action  
2 Complaint, by and through his attorneys, against Defendant Bank of America, N.A.  
3 (“Defendant” or “BANA”) and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff makes these allegations on information and belief, with the  
6 exception of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which  
7 Plaintiff alleges on personal knowledge.

8 2. While many violations are described below with specificity, this  
9 Complaint alleges violations of each statute cited in its entirety.

10 3. Unless otherwise indicated, the use of BANA’s name in this Complaint  
11 includes all agents, employees, officers, members, directors, heirs, successors,  
12 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of  
13 BANA.

14 4. Congress found “that significant reforms in the real estate settlement  
15 process are needed to insure that consumers throughout the Nation are provided with  
16 greater and more timely information on the nature and costs of the settlement process  
17 and are protected from unnecessarily high settlement charges caused by certain  
18 abusive practices that have developed in some areas of the country.” 12 U.S.C. §  
19 2601(a). To address this finding, Congress passed the Real Estate Settlement  
20 Procedures Act, 12 U.S.C. §§ 2601, *et seq.*, (“RESPA”) in 1974.

21 5. The Consumer Financial Protection Bureau (“CFPB”) is the primary  
22 regulatory agency authorized by Congress to supervise and enforce compliance  
23 of RESPA. The CFPB periodically issues and amends mortgage servicing rules under  
24 Regulation X, 12 C.F.R. § 1024, RESPA’s implementing regulation. 12 U.S.C. §  
25 2617.

26 6. Under RESPA and Regulation X, loan servicers, including BANA, must  
27 provide borrowers with specific account information available to them in the regular  
28 course of business upon receiving a Qualified Written Request (“QWR”) or a Request



1 for Information (“RFI”) from the borrower. 12 U.S.C. § 2605(e)(1)(A); 12 C.F.R. §  
2 1024.36(a).

3 7. A servicer must respond within 30 days to a QWR for information or an  
4 RFI in one of two ways: (1) provide the requested information, or (2) conduct a  
5 “reasonable search” for the requested information and provide the borrower with a  
6 written notification explaining the basis for the servicer’s determination that the  
7 requested information is “not available.” 12 U.S.C. § 2605(e)(2); 12 C.F.R. §  
8 1024.36(d)(1)(i)–(ii).

9 8. In its official commentary to Regulation X, the CFPB outlines what  
10 constitutes as information that is “not available.” Information is “not available” if:  
11 “[ (1.)] The information is not in the servicer’s control or possession, or [ (2.)] The  
12 information cannot be retrieved in the ordinary course of business through reasonable  
13 efforts.” 12 C.F.R. § 1024, Supp. I, ¶ 36(d)(1)(ii).

14 9. As an example of “available” information, the CFPB provides the  
15 following in its official commentary to Regulation X:

16 A borrower requests a **copy of a telephonic**  
17 **communication with a servicer.** The servicer’s personnel  
18 have access in the ordinary course of business to **audio**  
19 **recording files** with organized recordings or transcripts of  
20 borrower telephone calls and can identify the  
21 communication referred to by the borrower through  
22 reasonable business efforts. **The information requested**  
23 **by the borrower is available to the servicer.**

22 12 C.F.R. § 1024, Supp. I, ¶ 36(d)(1)(ii) (emphasis added).

23 10. A servicer must accept electronic signatures from borrowers under The  
24 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(a)(1),  
25 which states “a signature, contract, or other record relating to such transaction may  
26 not be denied legal effect, validity, or enforceability solely because it is in electronic  
27 form.”

28 11. BANA has refused to accept Plaintiff’s electronic signature.

1 12. BANA has neglected to fulfill its duty to provide information available  
2 to it in the regular course of business to Plaintiff upon receipt of Plaintiff’s QWR and  
3 RFI.

4 13. As alleged in greater detail below, BANA has demonstrated a “pattern  
5 or practice” of failing to adequately respond to borrowers’ requests for account  
6 information, which makes BANA liable for statutory damages in an amount up to  
7 \$2,000 for each failure to adequately respond. 12 U.S.C. § 2605(f).

8 14. Notwithstanding this glaring failure to abide by its statutory duty, and  
9 despite Plaintiff’s informing BANA of its failure, BANA continues to incorrectly  
10 characterize Plaintiff’s and other borrowers’ reasonable requests for account  
11 information as “overbroad and unduly burdensome.”

12 **JURISDICTION AND VENUE**

13 15. This Court has subject matter jurisdiction over this action pursuant to  
14 RESPA, 12 U.S.C. § 2614, and generally pursuant to 28 U.S.C. § 1331 because the  
15 action arises out violations of federal law.

16 16. This Court has personal jurisdiction over BANA because BANA  
17 conducts business in California and maintains sufficient contacts with the state and  
18 this federal district.

19 17. Venue is appropriate in the United States District Court for the Southern  
20 District of California pursuant to 28 U.S.C. § 1391 for the following reasons: Plaintiff  
21 resides in San Diego County, California which is within this judicial district; (ii) the  
22 conduct complained of herein occurred within this judicial district; and (iii) BANA  
23 conducted business within this judicial district at all relevant times.

24 **PARTIES**

25 18. Mr. Robinson is a resident and citizen of San Diego County in the State  
26 of California.

27 19. Upon information and belief, Defendant is a national bank with its  
28 headquarters located in Charlotte, North Carolina.



**FACTUAL ALLEGATIONS**

1  
2       20. Plaintiff incorporates by reference all the above paragraphs of this  
3 complaint as if fully stated herein.

4       21. BANA is the loan servicer for Plaintiff’s mortgage.

5       22. On July 20, 2020, Mr. Robinson, through counsel, sent BANA a Notice  
6 of Error and Request for Information pursuant to the Real Estate Settlement  
7 Procedures Act, 12 U.S.C. § 2605(e), and Regulation X, 12 C.F.R. §§ 1024.35,  
8 1024.36.

9       23. In this letter, Plaintiff disputed the amount of the debt owed, and asked  
10 for several documents associated with his account, including: “A copy of any and all  
11 recordings of [Plaintiff] or any other person concerning [Plaintiff’s] account.”

12       24. On or about August 13, 2020, Plaintiff’s counsel received a response to  
13 the request from BANA dated August 10, 2020.

14       25. In its response, BANA failed to provide any of the requested  
15 information.

16       26. BANA merely delayed its response and created undue burden for  
17 Plaintiff by stating: “[w]e’re committed to protecting the confidentiality of our  
18 customer’s information and we require written authorization from the customer  
19 before we disclose any information . . . . We’re unable to respond to the request and  
20 consider this inquiry closed . . . . The customer’s signature(s) must be a ‘live’  
21 signature, not a digital signature.”

22       27. On October 19, 2020, Plaintiff sent BANA an Authorization to Furnish  
23 & Release Information to Plaintiff’s counsel, as requested by BANA in its response,  
24 and attached a second Notice of Error and Request for Information pursuant to the  
25 Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e), and Regulation X, 12  
26 C.F.R. §§ 1024.35, 1024.36.

27       28. On or about November 9, 2020, Plaintiff’s counsel received a response  
28 to the request from BANA dated November 5, 2020.



1           29. In this response, BANA again failed to provide any of the requested  
2 information.

3           30. BANA improperly failed to provide the information, stating: “[t]he  
4 signature must be a ‘live’ signature, not a digital signature.”

5           31. On November 23, 2020, Plaintiff again sent BANA an Authorization to  
6 Furnish & Release Information to Plaintiff’s counsel, as requested by BANA in its  
7 response, and attached a second Notice of Error and Request for Information pursuant  
8 to the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e), and Regulation  
9 X, 12 C.F.R. §§ 1024.35, 1024.36.

10           32. On or about December 18, 2020, Plaintiff’s counsel received a response  
11 to the request from BANA dated December 17, 2020.

12           33. In this response, BANA failed to provide any of the requested  
13 information.

14           34. BANA used the same boiler plate language to deny the request,  
15 improperly failed to provide the information, and arbitrarily and unreasonably  
16 insisted that “[t]he signature must be a ‘live’ signature, not a digital signature.”

17           35. On January 5, 2021, Plaintiff’s counsel sent a meet and confer letter to  
18 BANA, again requesting the recordings.

19           36. In this letter, Plaintiff’s counsel explained: “we have provided a valid,  
20 signed authorization form on multiple occasions . . . . Please note, my client’s request  
21 specifically asks for all recordings between you and my client. Pursuant to 12 CFR §  
22 1024.36(d)(ii) Bank of America is required to produce all information available  
23 through reasonable business efforts . . . . Therefore, please produce the requested  
24 documentation along with all audio recordings no later than January 15, 2021.”

25           37. On or about January 20, 2021, Plaintiff’s counsel received a response to  
26 the request from BANA dated January 15, 2021.

27           38. In this response, BANA again failed to provide any of the requested  
28 information.



1 39. BANA denied Plaintiff’s request for audio recordings by reiterating,  
2 among other things, that “[t]he signature must be a ‘live’ signature, not a digital  
3 signature.”

4 40. As of the date of the filing of this lawsuit, Plaintiff has not received any  
5 other documents from BANA, and BANA has willfully failed to provide any of the  
6 requested documents to Plaintiff.

7 41. Plaintiff is informed and believes that BANA received similar requests  
8 from other customers within one year prior to the filing of this Complaint.

9 42. After Plaintiff requested documents and recordings, BANA delayed its  
10 response. BANA then eventually provided a response but failed to provide any of the  
11 documents or recordings requested, stating that a Plaintiff must provide a “live”  
12 signature, and then in response to a subsequent request repeated the same boiler plate  
13 language and arbitrarily and unreasonably required a “live” signature from Plaintiff.

14 43. Plaintiff is informed and believes and hereupon alleges that BANA has  
15 refused to produce documents and recordings for possibly hundreds if not thousands  
16 of customers that have requested them.

17 44. Plaintiff is informed and believes and hereupon alleges that BANA can  
18 easily produce the requested recordings through reasonable business efforts.

19 45. Plaintiff is informed and believe and hereupon alleges that BANA  
20 systematically denied each of its customer’s requests.

21 46. BANA’s uniform responses, requiring a “live” signature and failing to  
22 provide any of the requested documents and recordings, shows a pattern and practice  
23 of non-compliance with RESPA.

24 47. Plaintiff requested the recordings at least three times, and BANA failed  
25 to produce the recordings each time, which further illustrates BANA’s pattern and  
26 practice of non-compliance.

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28 ///



**CLASS ACTION ALLEGATIONS**

48. Plaintiff brings this action on behalf of himself individually and on behalf of all others similarly situated, pursuant to Federal Rule Civil Procedure 23(b)(1), (b)(2) and/or (b)(3).

49. The putative class (“the Class”) that Plaintiff seeks to represent is composed of:

All persons within the United States who have or have had a mortgage loan with BANA and who within three years from the filing of this Complaint have requested copies of audio recordings or transcripts of phone calls between themselves and BANA pursuant to 12 U.S.C. § 2605(e)(1)(A) and 12 C.F.R. § 1024.36 and who have subsequently been denied access to those audio recordings by BANA.

50. Excluded from the Class are any of BANA’s officers, directors, employees, affiliates, legal representatives, attorneys, heirs, and assigns, and any entity in which BANA has a controlling interest. Judicial officers presiding over this case, its staff, and immediate family members, are also excluded from the Class.

51. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of the Class members is unknown to Plaintiff at this time, such information can be ascertained through discovery from records maintained by BANA.

52. There is a well-defined community of interest among the members of the Class because common questions of law and fact predominate, Plaintiff’s claims are typical of the members of the Class, and Plaintiff can fairly and adequately represent the interests of the Class.

53. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

///







- 1 a) Whether BANA failed to accept electronic signatures by Class members
- 2 as required under the Electronic Signatures in Global and National
- 3 Commerce Act, 15 U.S.C. § 7001(a);
- 4 b) Whether BANA failed to provide audio recordings of telephone calls
- 5 between BANA and Class members as required under RESPA;
- 6 c) Whether BANA failed to provide documents requested by Class
- 7 members as required under RESPA;
- 8 d) Whether BANA failed to conduct a “reasonable investigation” as
- 9 required pursuant to 12 C.F.R. § 1024.36(d)(1)(i)–(ii);
- 10 e) Whether Plaintiff and the Class are entitled to damages under 12 U.S.C.
- 11 § 2605(f);
- 12 f) Whether BANA demonstrates a “pattern or practice” of failing to
- 13 respond to borrowers’ QWRs and RFIs.
- 14 g) Whether BANA’s conduct violates 12 U.S.C. §§ 2601, *et seq.*; and
- 15 h) Whether Plaintiff and the putative Class members are entitled to
- 16 injunctive relief as sought herein.

17 54. Plaintiff’s claims are typical of those of the other Class members  
18 because Plaintiff, like every other Class member, requested documents and audio  
19 recordings or transcripts of telephone calls between Plaintiff and BANA, and BANA  
20 refused to provide them.

21 55. Plaintiff will fairly and adequately protect the interests of the Class.  
22 Moreover, Plaintiff has no interest that is contrary to or in conflict with those of the  
23 Class he seeks to represent during the Class period.

24 56. In addition, Plaintiff has retained competent counsel experienced in  
25 Class action litigation to protect the interest of the Class and to prosecute this action  
26 vigorously.

27 57. The prosecution of separate actions by individual members of the Class  
28 and would create a risk of inconsistent or varying adjudications with respect to

1 individual members of the Class and lead to repetitious trials of the numerous  
2 common questions of fact and law throughout the United States. Plaintiff knows of  
3 no difficulty that will be encountered in the management of this litigation that would  
4 preclude its maintenance as a Class action. As a result, a Class action is superior to  
5 other available methods for the fair and efficient adjudication of this controversy.

6 58. Proper and sufficient notice of this action may be provided to the Class  
7 members through direct mail and email.

8 59. Moreover, the Class members' individual damages are insufficient to  
9 justify the cost of litigation, so that in the absence of Class treatment, BANA's  
10 violations of law inflicting substantial damages in the aggregate would not be  
11 remedied without certification of the Class.

12 60. Absent certification of this action as a Class action, Plaintiff and the  
13 members of the Class will continue to be harmed by BANA.

14 **CAUSE OF ACTION**

15 **Violations of Real Estate Settlement Procedures Act**

16 **12 U.S.C. §§ 2601, *et seq.***

17 61. Plaintiff re-alleges and incorporates by reference all of the above  
18 paragraphs of this Complaint as though fully stated herein.

19 62. Plaintiff's loans with BANA were at all times relevant a "federally  
20 related mortgage loan" as defined by 12 U.S.C. § 2602(1).

21 63. BANA is, and was at all times relevant, a loan "servicer" as defined by  
22 12 C.F.R. § 1024.3.

23 64. Plaintiff and BANA are "persons" as defined by 12 U.S.C. § 2602(5).

24 65. A failure to follow regulations promulgated by the CFPB in Regulation  
25 X is *per se* a violation of RESPA. 12 U.S.C. § 2605(k).

26 66. Plaintiff's request for audio recordings was both a QWR pursuant to 12  
27 U.S.C. § 2605(e)(1)(A) and an RFI pursuant 12 C.F.R. § 1024.36.

28 ///



1 67. Audio recordings and transcripts of phone calls with borrowers are  
2 information “available in the regular course of business” to BANA. *See* 12 C.F.R. §  
3 1024, Supp. I, ¶ 36(d)(1)(ii).

4 68. BANA failed to provide Plaintiff with requested information available  
5 to BANA in the ordinary course of business. Consequently, BANA violated 12 U.S.C.  
6 § 2605(e), 12 U.S.C. § 2605(k), and 12 C.F.R. § 1024.36.

7 69. BANA further violated 12 U.S.C. § 2605(e), 12 U.S.C. § 2605(k), and  
8 12 C.F.R. § 1024.36 by failing to adequately investigate and respond to Plaintiff’s  
9 requests.

10 70. Plaintiff is informed and believes that other similarly situated borrowers  
11 have requested audio recordings or transcripts of telephone calls between themselves  
12 and BANA only to be likewise denied access to that information by BANA.  
13 Additionally, BANA has refused to provide the requested information to Plaintiff  
14 despite his various requests. This is sufficient to demonstrate a “pattern or practice”  
15 under RESPA. As such, BANA is liable for statutory damages in an amount of up to  
16 \$2,000 per violation pursuant to 12 U.S.C. § 2605(f).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests that the Court grants Plaintiff  
19 the following relief against BANA:

- 20 • That the Court certify this case as a class action;
- 21 • That the Court appoint Plaintiff to serve as the class representative in this
- 22 matter and appoint Plaintiff’s counsel as class counsel;
- 23 • That BANA’s wrongful conduct alleged herein be adjudged and decreed to
- 24 violate the statutes and laws asserted herein; and
- 25 • That Plaintiff and the Class be awarded injunctive relief prohibiting such
- 26 conduct in the future.

27 ///

28 ///



**Violations of Real Estate Settlement Procedures Act**

**12 U.S.C. §§ 2601, et seq.**

- Injunctive relief prohibiting such conduct in the future;
- Injunctive relief ordering BANA to release audio recordings and transcripts of telephone calls to Plaintiff and the Class members;
- Statutory damages in an amount of \$2,000 per violation to Plaintiff and to each member of the Class pursuant to 12 U.S.C. § 2605(f);
- An award of actual damages according to proof per violation to Plaintiff and to each member of the Class pursuant to 12 U.S.C. § 2605(f);
- Attorneys’ fees and costs; and
- Any and all further relief that this Court deems just and proper.

**TRIAL BY JURY**

71. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and hereby demands, a trial by jury on all causes of action and claims with respect to which they have a right to a jury trial.

Date: January 20, 2021

**KAZEROUNI LAW GROUP, APC**

By: s/ Abbas Kazerounian  
Abbas Kazerounian, Esq.  
*Attorneys for Plaintiff*



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