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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

LAURA J. SANDOVAL, on behalf of)	
herself and all others similarly situated,)	
)	
Plaintiff,)	No. 01-2-06488-1
)	
vs.)	FIRST AMENDED CLASS ACTION
)	COMPLAINT
WASHINGTON MUTUAL, INC.; WASHINGTON)	
MUTUAL BANK, FA; BANK UNITED)	
CORPORATION; BANK UNITED OF TEXAS,)	
FSB, and)	
DOES 1 - 100,)	
)	
Defendants.)	
_____)	

Individual and representative Plaintiff Laura Sandoval, by and through her attorneys, on behalf of herself and all others similarly situated, complains against Defendants Washington Mutual,

1 Inc., Washington Mutual Bank, FA, Bank United Corporation, and Bank United of Texas, FSB
2 ("Defendants"), and alleges as follows:

3 Plaintiff brings this case on behalf of herself and a class of borrowers whose mortgage loans
4 were or are serviced by Defendants. Plaintiff alleges that Defendants improperly assessed property
5 inspection fees and late fees in violation of contract and state and federal law.

6 **PARTIES**

7 1. Laura Sandoval is a resident of Tacoma, Washington.

8 2. Washington Mutual Bank, FA ("WMB") is incorporated in the State of
9 Washington and maintains its principal place of business in Seattle, Washington.

10 3. Washington Mutual, Inc. is also incorporated in the State of Washington and
11 maintains its principal place of business in Seattle, Washington. Washington Mutual, Inc., the
12 parent company of WMB, acquired Bank United Corporation on February 8, 2001, including its
13 assets and liabilities. Bank United Corporation conducted business through its wholly-owned
14 subsidiary, Bank United of Texas, FSB. Pursuant to the merger, Bank United Corporation has
15 ceased to exist as an independent company, and Washington Mutual, Inc. is thus the successor
16 entity to both Bank United Corporation and Bank United of Texas, FSB (collectively, "Bank
17 United").

18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over the breach of contract and unjust enrichment
20 claims pled herein because they arise under the common law.

21 5. This Court has jurisdiction over the alleged violations of the Unfair and Deceptive
22 Trade Practices Act pursuant to Section 19.86.090 of the Revised Code of Washington.

23 6. Venue is proper in Pierce County under the Washington Code of Civil Procedure
24 Section 4.12.010 because the subject property is located in this jurisdiction.

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1 **FACTUAL ALLEGATIONS**

2 7. Washington Mutual operates one of the largest residential mortgage loan
3 servicing businesses in the United States. It collects and applies loan payments from borrowers,
4 collects funds for, and pays mortgage-related expenses, and forecloses on borrowers it deems to
5 be in default.

6 8. Washington Mutual assigned Washington Mutual loan numbers to mortgage
7 loans formerly serviced by Bank United, and now services those loans. It notified the obligees
8 under such loans that, effective June 4, 2001, their loans have been converted to the Washington
9 Mutual servicing system; that communications regarding their loans should be directed to
10 Washington Mutual's customer service department; and that payments on the loans should be
11 made to Washington Mutual.

12 9. Bank United originated some of the loans Washington Mutual now services but,
13 primarily, acquired the servicing rights for such loans from other lenders. Washington Mutual
14 services both conventional loans and loans guaranteed by the federal government. As of
15 September 30, 1999, Bank United's single family mortgage servicing portfolio, now part of the
16 Washington Mutual portfolio, totaled approximately \$30.9 billion.

17 **Defendants Assess Property Inspection Fees
18 in Breach of Borrowers' Uniform Contracts
and In Violation of Federal Regulations**

19 10. Defendants subjected Plaintiff and Class members, whose mortgage loans they
20 service or serviced, to unlawful property inspection fees, in violation of federal regulations and
21 the uniform terms of Plaintiff's and Class members' mortgage contracts.

22 11. Plaintiff, like other and Class members, purchased a single-family home using a
23 mortgage insured through the Federal Housing Administration ("FHA") of the Department of
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1 Housing and Urban Development ("HUD"). (The acronyms HUD and FHA are used
2 interchangeably herein.)

3 12. FHA mortgage insurance programs help low and moderate income families
4 become homeowners by lowering some of the costs of their mortgage loans. FHA mortgage
5 insurance also encourages lenders to make loans to otherwise creditworthy borrowers who might
6 not be able to meet conventional underwriting requirements, by protecting the lender against
7 defaults on mortgages for properties that meet certain minimum requirements.

8 13. All of HUD's single family home loan programs are authorized by the enabling
9 legislation of the National Housing Act, 12 U.S.C. § 1709 *et seq.* The regulations implementing
10 the individual programs are contained in the Code of Federal Regulations (C.F.R.), Title 24.

11 14. The standardized loan contracts between Defendants on the one hand and Plaintiff
12 and Class members on the other are adhesion contracts drafted by the lender. Pursuant to such
13 contracts, the lender or servicer may collect only those fees and charges which are lawful,
14 authorized by the contract, and, for loans guaranteed by HUD, those which are authorized by
15 HUD. While the contracts allow the lender or servicer to inspect a property, the contracts do not
16 permit the lender or servicer to charge a borrower for the inspection.

17 15. Under HUD regulations, mortgage loan servicers may assess borrowers a property
18 inspection fee only when, (A) each of the following are satisfied: (1) the mortgage is in default;
19 (2) payment is not received within 45 days of the due date; and (3) efforts to reach the borrower
20 by telephone during that 45-day period have been unsuccessful; or, (B) the property is vacant or
21 abandoned. *See* 24 C.F.R. 203.377. Also, according to HUD regulations, the fees and charges
22 collected by loan servicers from borrowers must be reasonable and customary. *See* 24 C.F.R. §
23 203.552.

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1 payment." Since the payments are "due" on the 1st, the end of "fifteen calendar days" expires at
2 the end of the 16th day and the 17th day of each month is the earliest date that a late charge may
3 be assessed. This language is the same or substantially similar for all Class members' mortgage
4 loan contracts.

5 22. In addition, Plaintiff's mortgage loan statements state that a payment will be
6 considered late "if received after" the 16th day of the month. This language is the same or
7 substantially similar for all Class members' mortgage loan statements.

8 23. Bank United's policy allows for (and in fact anticipates) the assessment of late
9 fees when its own payment processing problems are the cause of the delay in posting of timely-
10 received payments. For example, as of at least October 1999, Bank United's late charge policy
11 provided that in the event of "system problems" on the day late charges are to be assessed,
12 "Management [would] determine whether or not late charges should be assessed based on the
13 volume of unprocessed payments."

14 24. Even though the payments of Plaintiff and Class members were timely received,
15 Defendants failed to post such payments in a timely manner, and improperly assessed late
16 charges against Plaintiff and Class members. Thus, Defendants benefit from a default they
17 create.

18 25. In this manner, Defendants caused damages and injury to Plaintiff and members
19 of the Class.

20 **Defendants' Policies Unduly Pressure**
21 **Borrowers To Pay Improper Charges**

22 26. In November 2000, after confirming with a Bank United employee the amount
23 required to bring her mortgage account current, Plaintiff sent Bank United a payment totaling
24 \$1,887.06, using the services of Western Union Money Transfer. Western Union Money

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1 Transfer confirmed the funds were transferred to Bank United on November 30, 2000. However,
2 Bank United did not credit Plaintiff's mortgage account until December 8, 2000.

3 27. When Bank United did finally credit Plaintiff's November \$1,887.06 payment, it
4 did not apply the payment according to the priorities set forth in the mortgage loan contract.
5 Instead, Bank United paid itself \$45.21 and \$80.00 in miscellaneous fees from that payment
6 without first applying the payment to mortgage insurance premiums, principal, interest, or taxes,
7 as required by the mortgage loan contract. It then informed Plaintiff that her payment was 59
8 cents short and had thus not been credited. Bank United then improperly characterized Plaintiff's
9 subsequent payments as "partial" payments that it was entitled to reject. Defendants' lack of
10 customer service made it virtually impossible for Plaintiff to obtain proper credit in her account
11 other than by paying all improper charges or filing suit.

12 28. As with Plaintiff, when Defendants' unlawful assessment of fees and improper
13 application of payments reduces the balance of the payment tendered by Class members below
14 that which Defendants deem to be "due," Defendants' uniform practice is to either reject the
15 payment or to place the balance in a "suspense account" and not apply the payment. Defendants
16 then refuse to accept further payments unless all the amounts it claims as due, including its
17 illegal assessment of fees, are paid in one lump sum.

18 29. Defendants' improper assessment of fees and their misapplication of the payments
19 of Plaintiff and Class members endanger the property interests of Plaintiff and Class members.
20 The threat of foreclosure by Defendants unduly pressures borrowers to pay improper charges.

21 **CLASS ACTION ALLEGATIONS**

22 30. Plaintiff brings this action on behalf of herself and all others similarly situated, as
23 a member of the proposed class (herein "Class"). The Class which Plaintiff seeks to represent is
24 defined as follows:

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1 **All persons who have or had residential mortgage loans which were serviced**
2 **by Bank United at any time from four years preceding the date the first**
3 **complaint was filed in this action to the present.**

4 31. The Class excludes Defendants and any entity in which Defendants have a
5 controlling interest, and their legal representatives, officers, directors, assigns and successors.

6 32. This action has been brought and may properly be maintained as a class action
7 pursuant to CR 23.

8 33. **Numerosity of the Class:** The Class is so numerous that joinder of all such
9 persons is impracticable and the disposition of their claims in a Class Action rather than in
10 individual actions will benefit the parties and the Court. The precise number of Class members
11 and their addresses are unknown to Plaintiff, although it is believed that the Class numbers in the
12 thousands. Members of the Class may identified from Defendants' records, and may be notified
13 of the pendency of this action by mail, supplemented, if deemed necessary, by published notice.

14 34. **Existence and Predominance of Common Questions of Law and Fact:** There
15 is a well-defined community of interest in the questions of law and fact involved in this case
16 which affect all members of the Class and which predominate over any individual issues.
17 Questions of law and fact common to the Class members include, but are not limited to, the
18 following:

19 a. Whether Defendants are unjustly enriched by extracting improper late fees and
20 improper property inspection fees from payments made by or on behalf of
21 Plaintiff and Class members;

22 b. Whether Defendants' conduct breached Class members' standardized loan
23 contracts;

24 c. Whether Defendants' conduct breached implied terms in Class members'
25 standardized loan contracts;

- 1 d. Whether Plaintiff and Class members are entitled to the declaratory relief
2 prayed for below;
- 3 e. Whether Defendants' conduct violates the Unfair and Deceptive Trade
4 Practices Act, Rev. Code Wash. section 19.86.010 et seq. or the applicable
5 consumer protection statutes of other states;
- 6 f. The proper measure of Class members' damages; and
- 7 g. Whether Plaintiff and the Class are entitled to injunctive relief and the nature
8 of such relief.

9 35. **Typicality:** Plaintiff's claims are typical of those of the Class because the
10 material terms of Plaintiff's mortgage loan contract are the same as Class members' mortgage
11 loan contracts, Plaintiff's mortgage was serviced by Bank United, Plaintiff's payments were
12 improperly posted or credited, and Plaintiff was wrongfully assessed property inspection and late
13 fees by Bank United and/or its successors in interest.

14 36. **Adequacy:** Plaintiff adequately represents the Class because she will fairly and
15 adequately protect the interests of the Class. Plaintiff's interests do not conflict with the interests
16 of the other members of the Class which she seeks to represent. Plaintiff is committed to the
17 vigorous prosecution of this action and has retained competent counsel experienced in complex
18 class action litigation and consumer litigation. The interests of the Class will be fairly and
19 adequately protected by Plaintiff and her counsel.

20 37. A Class Action is the superior method for fair and efficient adjudication of this
21 controversy. Since the damages suffered by individual members of the Class, while not
22 inconsequential, may be relatively small, the expense and burden of individual litigation make it
23 impractical for members of the Class to seek redress individually for the wrongful conduct
24 alleged herein. Further, it would be virtually impossible for the members of the Class

1 E. An award of compensatory damages, treble damages and any additional,
2 consequential and incidental damages and costs suffered by Plaintiff and members of the Class
3 due to of Defendants' wrongful conduct;

4 F. Prejudgment interest, attorney's fees, costs of suit, including expert witness fees;
5 and

6 G. Such other and further legal and equitable relief, including exemplary relief, as
7 this Court may deem proper.

8 DATED: November __, 2001 **COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.**

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