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Attorneys for Respondents  
COUNTRYWIDE FINANCIAL CORPORATION,  
COUNTRYWIDE HOME LOANS, INC., and  
BANK OF AMERICA CORPORATION

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

COUNTRYWIDE FINANCIAL CORPORATION;	)	Consolidated Case Nos.
COUNTRYWIDE HOME LOANS, INC.; AND	)	31-CA-072916 and 31-CA-072918
BANK OF AMERICA CORPORATION	)	
	)	
and	)	<b>RESPONDENTS' MOTION FOR</b>
	)	<b>MODIFICATIONS TO THE</b>
JOSHUA D. BUCK and MARK THIERMAN,	)	<b>BOARD-PROPOSED NOTICES TO</b>
THIERMAN LAW FIRM	)	<b>EMPLOYEES AND CERTIFICATE</b>
	)	<b>OF COMPLIANCE</b>
and	)	
	)	
PAUL CULLEN, THE CULLEN LAW FIRM	)	
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Pursuant to Section 10518.1 of the Compliance Casehandling Manual, Part 3, Respondents Countrywide Financial Corporation (“CFC”), Countrywide Home Loans, Inc. (“CHL”), and Bank of America Corporation (“BAC”) (collectively, “Respondents”) hereby submit this Motion For Modifications To The Board-Proposed Notices To Employees And Certificate Of Compliance in connection with the Board’s January 24, 2020 Order (the “Order”).

Respondents’ Motion should be granted and the language in the Notices to Employees attached as Appendix A, B, and C, respectively, to the Order (each, a “Notice” and, collectively, the “Notices”), as well as the associated Certification of Compliance forms enclosed with the Region’s February 14, 2020 letter (the “Certifications”), should be modified. This matter was initiated in January 2012, and arises from an underlying lawsuit that was first filed on June 16, 2009, all of which relates to an arbitration agreement formerly used by CHL during the period of 2007 through 2009. In its Order, the Board found that this arbitration agreement unlawfully restricted access to the Board in violation of Section 8(a)(1) of the National Labor Relations Act (“NRLA”). Pursuant to its Order, the Board seeks to have Respondents post a notice at the Lancaster, California facility that contains language that has nothing to do with the matter at issue and have it sent to employees who never were affected by the arbitration agreement. A lot has changed in the intervening ten-plus years since CHL last used the arbitration agreement and the changed circumstances properly justify the proposed revisions to the documents related to compliance with the Board’s Order.

First, CFC and CHL should have no obligation or need to physically post, mail, or electronically send a notice to employees or rescind the arbitration agreement. Indeed, CFC and CHL have merged out of existence, following a complex and involved transaction, through which BAC became the ultimate parent company of those entities, effective July 1, 2008. When

it was still operating, CHL typically presented applicants for employment there with an arbitration agreement.<sup>1</sup> However, since 2009, the arbitration agreement has not been issued or entered into at all. Moreover, since filing a motion to compel arbitration in the lawsuit underlying this matter, on August 22, 2011, Respondents have not attempted to enforce the arbitration agreement against any individual. Thus, there is nothing further needed to be done to rescind any arbitration agreement and, in any event, CFC and CHL cannot send any notice to employees since these entities no longer exist.

Second, BAC should be required to take action that is consistent with the changed circumstances and current situation. In that regard, BAC should have to only post a Notice, via electronic mailing, and send an email to the individuals currently employed by it who were hired by CHL at any time during the period of 2007 through 2009, and then submit to the Board (and/or Region, as appropriate) a list containing the names and addresses of those individuals to whom the Notice was emailed. Unlike what CHL formerly did with many of its employees, BAC does not, and did not, enter into arbitration agreements with any employees. And, as above, BAC has not attempted to enforce an arbitration agreement against any individual since August 22, 2011, when it was party to the filing of a motion to compel arbitration in the lawsuit underlying this matter. Accordingly, BAC should have to send the notice only to the affected individuals, as referenced above. It would serve no purpose, for example, to send the notice to a BAC employee hired last year who never has even seen the arbitration agreement.

Lastly, the proposed language in the Notices and Certifications needs to be modified, including to clarify the facts with respect to which entity implemented the arbitration agreement

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<sup>1</sup> CFC was a holding company and did not employ any non-exempt employees in California, including either of the Claimants, and did not enter into any arbitration agreements like those at issue here.

and to remove language that does not belong or relate to the instant matter. Specifically, the Board-Proposed Notices contain language about forming unions and other similar language not at issue here. This matter involves only whether the arbitration agreement unlawfully restricted a limited number of employees from accessing the Board. Accordingly, Respondents propose that the wording on the Notice to be used by BAC – the only Notice that actually needs to be prepared or used – be modified, as contained on Exhibit A attached hereto, to reflect the changed circumstances as currently situated. Similarly, Respondents propose that the Certifications also be modified to reflect the changed circumstances as currently situated, as set forth on Exhibit B (each Countrywide entity, CFC and CHL) and Exhibit C (BAC) attached hereto.

For all of these reasons, Respondents propose that, in light of the changed circumstances, the Notices and the associated Certifications should be modified to account for the current situation as it relates to the three Respondents. Even with such modifications, Respondents will be subject to appropriate consequences, on both a backward and forward-looking basis.

Dated: May 4, 2020

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By



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Gregg A. Fisch  
Attorneys for Respondents  
COUNTRYWIDE FINANCIAL CORPORATION,  
COUNTRYWIDE HOME LOANS, INC., and  
BANK OF AMERICA CORPORATION

EXHIBIT A



# NOTICE TO EMPLOYEES



## POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**WE WILL NOT** maintain or otherwise seek to use or enforce the mandatory arbitration agreement formerly used by Countrywide that the National Labor Relations Board has found employees could reasonably believe bars or restricts their right to file charges with the National Labor Relations Board.

**WE WILL** rescind the mandatory arbitration agreement formerly used by Countrywide to make clear that it does not restrict any employees' right to file charges with the National Labor Relations Board.

**WE WILL** notify all current Bank of America employees who were hired by Countrywide at any time during the period of 2007 through 2009 that the mandatory arbitration agreement formerly used by Countrywide has been rescinded.

**BANK OF AMERICA, N.A.**

(Employer)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Representative) {Title

**EXHIBIT B**

**CERTIFICATION OF COMPLIANCE**  
**(PART ONE)**

**RE: Countrywide Financial Corporation, Countrywide Home Loans, Inc.,  
and Bank of America Corporation  
Cases 31-CA-072916, 31-CA-072918**

**As required by the Board's order in this matter, this document is a sworn certification of the steps that Respondent has taken to comply with the Board's order.**

**Physical Posting - Notice to Employees**

Because Respondent has gone out of business and/or closed the facility involved in these proceedings, and has not employed any employees since July 19, 2011, and has not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, Respondent does not need to physically post any Notice to Employees in the above matter.

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**Intranet Posting - Notice to Employees**

Because Respondent has gone out of business and/or closed the facility involved in these proceedings, and has not employed any employees since July 19, 2011, and has not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, Respondent does not need to post any Notice to Employees in the above matter on Respondent's intranet/website.

**Electronic Mailing - Notice to Employees**

The signed and dated Notice in the above captioned matter was e-mailed on (date) \_\_\_\_\_ to the individuals currently employed by Bank of America, N.A., who were hired by Countrywide at any time during the period of 2007 through 2009. A list containing the names and addresses of those individuals to whom the Notice was e-mailed is attached. The electronic mailing transmitting the Notice to Employees was sent to the Compliance Officer on (date) \_\_\_\_\_.

**I have completed this Certification of Compliance (Part One) and state under penalty of perjury that it is true and correct.**

**RESPONDENT COUNTRYWIDE FINANCIAL CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form should be returned to the Compliance Officer, together with **ONE** Notice, dated and signed in the same manner as those posted. It is required that the Certification of Compliance and signed Notice be returned via e-filing on the NLRB's website.

**CERTIFICATION OF COMPLIANCE**  
**(PART TWO)**

**RE: Countrywide Financial Corporation, Countrywide Home Loans, Inc.,  
and Bank of America Corporation  
Cases 31-CA-072916, 31-CA-072918**

**As required by the Board's order in this matter, this document is a sworn certification of the steps that Respondent has taken to comply with the Board's order.**

**Mailing - Notice to Employees**

Because Respondent has gone out of business and/or closed the facility involved in these proceedings, and has not employed any employees since July 19, 2011, and has not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, Respondent does not need to mail the Notice in the above captioned matter

**Rescind the mandatory arbitration provision**

Because Respondent has gone out of business and/or closed the facility involved in these proceedings, and has not employed any employees since July 19, 2011, and neither Respondent nor Bank of America has sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, any mandatory and binding arbitration agreement formerly used by Countrywide already has been rescinded, and there is nothing further needed to be done to rescind any such agreement or to otherwise make clear to employees that such an agreement does not bar or restrict employees' right to file charges with the National Labor Relations Board.

**Notify all applicants and current and former employees**

On (date) \_\_\_\_\_, **Respondent** notified by email the individuals currently employed by Bank of America, N.A., who were hired by Countrywide at any time during the period of 2007 through 2009, that the mandatory arbitration agreement formerly used by Countrywide has been rescinded.

\_\_\_\_\_  
**I have completed this Certification of Compliance (Part Two) and state under penalty of perjury that it is true and correct.**

**RESPONDENT COUNTRYWIDE FINANCIAL CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form should be returned to the Regional Office. It is required that the Certification of Compliance and signed Notice be returned via e-filing on the NLRB's website.

**EXHIBIT C**

**CERTIFICATION OF COMPLIANCE**  
**(PART ONE)**

**RE: Countrywide Financial Corporation, Countrywide Home Loans, Inc.,  
and Bank of America Corporation  
Cases 31-CA-072916, 31-CA-072918**

**As required by the Board's order in this matter, this document is a sworn certification of the steps that Respondent has taken to comply with the Board's order.**

**Physical Posting - Notice to Employees**

Because CFC and CHL have gone out of business and/or closed the facility involved in these proceedings, and have not employed any employees since July 19, 2011, and Respondents have not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, Respondent does not need to physically post any Notice to Employees in the above matter.

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**Intranet Posting - Notice to Employees**

Because CFC and CHL have gone out of business and/or closed the facility involved in these proceedings, and have not employed any employees since July 19, 2011, and Respondents have not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, Respondent does not need to post any Notice to Employees in the above matter on Respondent's intranet/website.

**Electronic Mailing - Notice to Employees**

The signed and dated Notice in the above captioned matter was e-mailed on (date) \_\_\_\_\_ to the individuals currently employed by Bank of America, N.A., who were hired by Countrywide at any time during the period of 2007 through 2009. A list containing the names and addresses of those individuals to whom the Notice was e-mailed is attached. The electronic mailing transmitting the Notice to Employees was sent to the Compliance Officer on (date) \_\_\_\_\_.

**I have completed this Certification of Compliance (Part One) and state under penalty of perjury that it is true and correct.**

**RESPONDENT BANK OF AMERICA, N.A.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form should be returned to the Compliance Officer, together with **ONE** Notice, dated and signed in the same manner as those posted. It is required that the Certification of Compliance and signed Notice be returned via e-filing on the NLRB's website.

**CERTIFICATION OF COMPLIANCE**  
**(PART TWO)**

**RE: Countrywide Financial Corporation, Countrywide Home Loans, Inc.,  
and Bank of America Corporation  
Cases 31-CA-072916, 31-CA-072918**

**As required by the Board's order in this matter, this document is a sworn certification of the steps that Respondent has taken to comply with the Board's order.**

**Mailing - Notice to Employees**

Because CFC and CHL have gone out of business and/or closed the facility involved in these proceedings, and have not employed any employees since July 19, 2011, and Respondents have not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, Respondent does not need to mail the Notice in the above captioned matter

**Rescind the mandatory arbitration provision**

Because CFC and CHL have gone out of business and/or closed the facility involved in these proceedings, and have not employed any employees since July 19, 2011, and Respondents have not sought to enforce a mandatory arbitration agreement against any employee since August 22, 2011, any mandatory and binding arbitration agreement formerly used by Countrywide already has been rescinded, and there is nothing further needed to be done to rescind any such agreement or to otherwise make clear to employees that such an agreement does not bar or restrict employees' right to file charges with the National Labor Relations Board.

**Notify all applicants and current and former employees**

On (date) \_\_\_\_\_, **Respondent** notified by email the individuals currently employed by Bank of America, N.A., who were hired by Countrywide at any time during the period of 2007 through 2009, that the mandatory arbitration agreement formerly used by Countrywide has been rescinded.

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**I have completed this Certification of Compliance (Part Two) and state under penalty of perjury that it is true and correct.**

**RESPONDENT BANK OF AMERICA, N.A.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form should be returned to the Regional Office. It is required that the Certification of Compliance and signed Notice be returned via e-filing on the NLRB's website.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067-6055.

On May 4, 2020, I served true copies of the following document(s) described as **RESPONDENTS' MOTION FOR MODIFICATIONS TO THE BOARD-PROPOSED NOTICES TO EMPLOYEES AND CERTIFICATE OF COMPLIANCE** on the interested parties in this action as follows:

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Thierman Buck Law Firm P.C.  
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**Via Email**

Linda Dreeben  
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1015 Half Street SE  
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Email: [appellatecourt@nlrb.gov](mailto:appellatecourt@nlrb.gov)

**Via Email**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address mbaello@shepparmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 4, 2020, at Los Angeles, California.

/s/ Gina E. Schemerhorn  
Gina E. Schemerhorn