

1 1.8 Defendant ReconTrust Company, National Association (“ReconTrust”), a Califor-
2 nia corporation, having been served with the Summons and Complaint; and Washington, appear-
3 ing by and through its attorneys, Robert M. McKenna, Attorney General and James T. Sugarman,
4 Assistant Attorney General; and Defendant, appearing by and through its attorney John S. Devlin,
5 III, Lane, Powell, PC; and

6 1.9 Washington and Defendant having agreed on a basis for the settlement of the mat-
7 ters alleged in the Complaint and to the entry of this Consent Decree against Defendant without
8 the need for trial or adjudication of any issue of law or fact; and

9 1.10 Defendant, by entering into this Consent Decree, does not admit the allegations of
10 the Complaint other than those facts deemed necessary to the jurisdiction of this Court; and

11 1.11 Washington and Defendant agree this Consent Decree does not constitute evi-
12 dence or an admission regarding the existence or non-existence of any issue, fact, or violation of
13 any law alleged by Washington; and

14 1.12 Defendant recognizes and states this Consent Decree is entered into voluntarily
15 and that no promises, representations, or threats have been made by the Attorney General’s Office
16 or any member, officer, agent, or representative thereof to induce it to enter into this Consent De-
17 cree, except for the promises and representations provided herein; and

18 1.13 Defendant waives any right it may have to appeal from this Consent Decree or to
19 otherwise contest the validity of this Consent Decree; and

20 1.14 Defendant further agrees this Court shall retain jurisdiction of this action and ju-
21 risdiction over Defendant for the purpose of implementing and enforcing the terms and conditions
22 of this Consent Decree and for all other purposes related to this matter; and

23 1.15 Defendant further agrees its payments made or due pursuant to this Consent De-
24 cree are not amenable to discharge in bankruptcy and it shall not seek or support its discharge in
25 bankruptcy, nor oppose its being determined not amenable to discharge in bankruptcy; and
26

1 3.3 If at any time in the future Defendant returns to operating as a foreclosure trustee
2 in the state of Washington, it shall not conduct non-judicial foreclosure proceedings involving
3 residential property unless it:

4 a. Maintains a physical presence and street address where personal service
5 of process may be made, with telephone service at that address. For pur-
6 poses of this Consent Decree only, physical presence in this context means
7 maintaining an office that:

- 8 i. is within the geographic boundaries of the state of Washington;
- 9 ii. is open during normal business hours;
- 10 iii. is staffed by a person or persons capable of responding to a borrow-
11 er's or grantor's questions concerning a non-judicial foreclosure
12 and directing the borrower or grantor to another person or persons
13 capable of responding to questions concerning the borrower's de-
14 fault;
- 15 iv. is authorized to accept payments of the amount necessary to reinst-
16 tate the note and deed of trust or to direct the borrower to another
17 person or persons (whether located in the State of Washington or
18 otherwise) capable of reasonably promptly accepting such pay-
19 ments, provided that directing a borrower out-of-state does not pre-
20 judice the borrower's right to reinstate their loan; and
- 21 v. is authorized, where appropriate and where warranted by the facts,
22 to postpone, reschedule or cancel foreclosure sales or to direct the
23 borrower to another person or persons (whether located in the State
24 of Washington or otherwise) capable of reasonably promptly, where
25 appropriate and where warranted by the facts, postponing, resche-
26 duling or canceling foreclosure sales.

- 1 b. Discloses, in notices required by the Deed of Trust Act, including notices
2 of foreclosure and notices of trustee’s sale, but excluding notices of default,
3 the street address and telephone number for the office that constitutes the
4 “physical presence” required by the Deed of Trust Act.
- 5 c. Does not misidentify the owner of the promissory note or other obligation
6 secured by the deed of trust or the entity authorized to exercise the rights of
7 the owner, in any notices required by the Deed of Trust Act.
- 8 d. Identifies in the notice of default the name and actual address of the own-
9 er of any promissory note or other obligation secured by the deed of trust,
10 and the name, address, and telephone number of a party acting as a servicer
11 of the obligations secured by the deed of trust.
- 12 e. Provides, upon the request of the deed of trust grantor or borrower or
13 its representative, (i) copies of documentation sufficient to show the note
14 owner has an enforceable interest in the mortgage or deed of trust and/or
15 (ii) copies of documentation sufficient to show that the entity claiming to
16 be the beneficiary is the owner of the promissory note; provided, however,
17 that for purposes of this Consent Judgment, a copy of the declaration de-
18 scribed in RCW 61.24.030(7)(a), when made in good faith and without no-
19 tice as to its inaccuracy, shall be deemed sufficient proof that the entity
20 claiming to be the beneficiary is the owner of the promissory note. If any
21 such documents are unavailable, Defendant shall provide documents and
22 sworn statements sufficient to establish the note owner’s authority to en-
23 force the security interest.
- 24 f. Ensures that any demand for fees or response to a reinstatement amount re-
25 quest is accurate and contains only actual costs and fees incurred and that
26

1 such demand or amount is authorized by a term of the promissory
2 note and/or deed of trust and is not prohibited by the Deed of Trust Act.

3 g. Acts consistent with its statutory duty of good faith toward the borrower,
4 beneficiary and grantor and its duty to act independently when enforcing
5 the deed of trust provisions. For purposes of this Consent Judgment only,
6 it is a breach of the duty of good faith to enter into an agreement with a
7 note owner, beneficiary or its agent wherein Defendant agrees to stop or
8 postpone a foreclosure only when approved by the noteholder, beneficiary
9 or agent, or to otherwise defer solely to a single party when acting as a
10 trustee.

11 3.4 Defendant may not act as foreclosure trustee where it is also the beneficiary of the
12 deed of trust.

13 3.5 Defendant may not describe in its notice of trustee's sale defaults that may have,
14 but did not actually, occur.

15 3.6 Defendant shall immediately cease operating as a foreclosure trustee with respect
16 to property in the State of Washington until it is in compliance with the requirements of the
17 Washington Deed of Trust Act, RCW 61.24, *et seq.*; provided, however, that Defendant may con-
18 tinue to engage in lawful post-sale activities described in Paragraph 3.2, above, for properties that
19 have been sold at foreclosure prior to the entry of this Order. Defendant shall inform its respec-
20 tive directors, successors, assigns, officers, and management level employees having responsibili-
21 ties with respect to the subject matter of this Consent Decree, by announcing this Consent Decree
22 to them and by making its terms and conditions available to them.

23 IV. MONETARY PAYMENT

24 4.1 Pursuant to RCW 19.86.080, Washington shall recover and Defendant shall pay
25 the Plaintiff the amount of \$1,090,000 for costs and reasonable attorney's fees incurred by Wash-
26 ington in pursuing this matter, for monitoring and potential enforcement of this Consent Decree,
and for future enforcement of RCW 19.86. Upon payment of this amount to Washington, Bank

1 of America Corporation and its affiliated entities shall receive credit in the amount of \$1,090,000
2 against any obligations to make cash payments to the State of Washington pursuant
3 to a consensual settlement of the current multistate loan-servicing related investigation by the Of-
4 fice of the Attorney General.

5 4.2 In any successful action to enforce this Consent Decree against Defendant, Defen-
6 dant shall bear Washington's reasonable costs, including reasonable attorneys' fees.

7 4.3 Defendant's failure to pay attorneys' fees and costs to Washington as required
8 by this Consent Decree shall be a material breach of the Consent Decree.

9 **V. TERMS OF PAYMENT**

10 5.1 Within 30 days of entry of this Consent Decree, or at such other time as agreed to
11 by Washington in writing, Defendant shall pay a total of \$1,090,000 to the State of Washington.
12 Interest shall accrue at the rate of twelve percent (12%) per annum until such payment is made in
13 full.

14 5.2 Defendant shall make all payments owed pursuant to this Consent Decree by
15 bank cashier's check payable to the Attorney General - State of Washington, and shall mail or
16 deliver such payments to the Office of the Attorney General, Consumer Protection Division, 800
17 5th Avenue, Suite 2000, Seattle, Washington 98104-3188, Attention: Cynthia Lockridge, un-
18 less otherwise agreed to in writing by Washington.

19 5.3 Defendant's failure to timely make payments as required by this Consent De-
20 cree, without written agreement by Washington, shall be a material breach of this Consent De-
21 cree.

22 **VI. ENFORCEMENT**

23 6.1 Defendant shall be in full compliance with all requirements and obligations this
24 Consent Decree imposes on Defendant at the time it is entered by the Court, other than the mone-
25 tary payment obligation set forth in Paragraph 4.1, above.
26

1 6.2 If Defendant violates a material condition of this Consent Decree, and if Defendant
2 does not cure the violation after notice by Washington, Washington may seek the imposition of
3 additional conditions, civil penalties, restitution, injunctive relief, attorney's fees, costs and such
4 other remedies as the Court may deem appropriate against Defendant at an evidentiary hearing in
5 which Defendant has an opportunity to be heard, if the Court finds by a preponderance of evi-
6 dence that Defendant has violated a material condition of this Consent Decree.

7 6.3 Jurisdiction is retained by this Court for the purpose of enabling any party to this
8 Consent Decree to apply to the Court, to the extent permitted herein, for enforcement of com-
9 pliance with this Consent Decree, to punish violations thereof, or otherwise address the provisions
10 of this Consent Decree.

11 6.4 Nothing in this Consent Decree shall grant any third-party beneficiary or other
12 rights to any person not a party to this Consent Decree. For the avoidance of doubt, nothing in
13 this Consent Decree confers any right or ability to sue to any trust grantor or borrower, nor does
14 this Consent Decree create any obligation on the part of any party to such trust grantor or borrow-
15 er.

16 6.5 Nothing in this Consent Decree shall be construed to limit or bar any other go-
17 vernmental entity or person from pursuing other available remedies against Defendant or any oth-
18 er person.

19 6.6 Under no circumstances shall this Consent Decree, or the name of the State of
20 Washington, this Court, the Office of the Attorney General, the Consumer Protection Division, or
21 any of their employees or representatives be used by Defendant or any of its respective owners,
22 members, directors, successors, assigns, transferees, officers, agents, servants, employees, repre-
23 sentatives, and all other persons or entities in active concert or participation with Defendant, in
24 connection with any selling, advertising, or promotion of products or services, or as an endorse-
25 ment or approval of Defendant's acts, practices, or conduct of business.

26

1 6.7 Washington shall be permitted, upon advance notice of twenty days to Defendant,
2 to access, inspect and/or copy business records or documents in possession, custody or under con-
3 trol of Defendant to monitor compliance with this Consent Decree, provided that the inspection
4 and copying shall avoid unreasonable disruption of Defendant's business activities. Washington
5 shall not disclose any information described in this Paragraph 6.7 ("Confidential Information")
6 unless such disclosure is required by law. In the event that Washington receives a request under
7 the Public Records Act, subpoena, or other demand for production that seeks the disclosure of
8 Confidential Information, Washington shall notify Defendant as soon as practicable, and in no
9 event more than ten (10) calendar days, after receiving such request and shall allow Defendant a
10 reasonable time, not less than ten (10) calendar days, from the receipt of such notice to seek a
11 protective order relating to the Confidential Information or to otherwise resolve any disputes re-
12 lating to the production of the Confidential Information before Washington discloses any Confi-
13 dential Information. Nothing in this Consent Decree shall affect State of Washington's com-
14 pliance with the Public Records Act, RCW 42.56.

15 6.8 To monitor compliance with this Consent Decree, Washington shall be permitted
16 to serve interrogatories pursuant to the provisions of CR 26 and CR 33 and to question Defendant
17 or any officer, director, agent, or employee of Defendant by deposition pursuant to the provisions
18 of CR 26 and CR 30 provided that Washington attempts in good faith to schedule the deposition
19 at a time convenient for the deponent and his or her legal counsel.

20 6.9 This Consent Decree in no way limits Washington from conducting any lawful
21 non-public investigation to monitor Defendant's compliance with this Consent Decree or to in-
22 vestigate other alleged violations of the CPA, which may include but is not limited to interview-
23 ing customers or former employees of Defendant.

24 6.10 This Consent Decree shall be binding upon and inure to the benefit of Recon-
25 Trust's successors and assigns. ReconTrust, and its successors and assigns, shall notify the At-
26 torney General's Office at least thirty (30) days prior to any change-in-control of ReconTrust that

1 would change the identity of the corporate entity responsible for compliance obligations arising
2 under this Consent Decree, including, but not limited to, dissolution, assignment, sale, merger, or
3 other action that would result in the emergence of a successor corporation; the creation or dissolu-
4 tion of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order;
5 the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Pro-
6 vided, however, that, with respect to any proposed change in the corporation about which Defen-
7 dant, and its successors and assigns, learn less than thirty (30) days prior to the date such action is
8 to take place, Defendant and its successors and assigns, shall notify the AG as soon as is practica-
9 ble after obtaining such knowledge.

10 6.11 The injunctive provisions described in Paragraphs 3.2-3.5, above, shall apply to
11 any bona fide purchaser of the foreclosure trustee business of ReconTrust (the "Purchaser") in the
12 Purchaser's capacity as foreclosure trustee, but only with respect to any foreclosure referrals that
13 the Purchaser receives from Bank of America, N.A. in the State of Washington after the closing
14 of the sale of ReconTrust's foreclosure trustee business to the Purchaser. This Consent Decree
15 shall not otherwise apply to any activities of the Purchaser, including, for the avoidance of doubt,
16 any foreclosure referrals that the Purchaser receives from another person or entity in the State of
17 Washington or any other business conducted by the Purchaser in the State of Washington other
18 than the business referred to in the foregoing sentence. For the avoidance of doubt, nothing in
19 this Consent Decree shall release any claims that the State of Washington has or may have against
20 the Purchaser, except for any claims that the State of Washington may assert against the Purchas-
21 er based on any theory of successor liability, vicarious liability, de facto merger, fraudulent con-
22 veyance, or other similar claim or theory for the obligations, exposures, or liabilities of Recon-
23 Trust with respect to the claims released in this Consent Decree (such claims, "Successor Liabili-
24 ty Claims"). The Purchaser is hereby released and forever discharged from any Successor Lia-
25 bility Claims. The Purchaser shall not be deemed a successor, assign, or transferee for purposes
26 of this Consent Decree.

1 understood that Washington may thereupon assert any claims arising out of or relating to the facts
2 and matters described in the Complaint notwithstanding the release of claims in Paragraph 2.3,
3 above, or any release of claims in the multistate settlement referenced in Paragraph 4.1, above.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DONE IN OPEN COURT this _____ day of _____, 20_____.

JUDGE

Presented By:

ROBERT M. MCKENNA
Attorney General

By: 
JAMES T. SUGARMAN, WSBA #39107
Assistant Attorney General
Attorneys for Plaintiff State of Washington

Notice of Presentment Waived and
Approved as to Form by:

For ReconTrust Company, N.A.

By: 
HAROLD F. R. MILLER
Printed Name