[ORAL ARGUMENT NOT YET SCHEDULED]
No. 17-7003

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA, EX REL. LAURENCE SCHNEIDER, ET AL.,

Plaintiffs,

LAURENCE SCHNEIDER,

Plaintiff-Appellant,

v.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION; JPMORGAN CHASE & CO.; CHASE HOME FINANCE, LLC,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING NEITHER PARTY

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

The named plaintiffs are United States of America, ex rel. Laurence Schneider; State of California, ex rel. Laurence Schneider; State of Delaware, ex rel. Laurence Schneider; State of Florida, ex rel. Laurence Schneider; State of Georgia, ex rel. Laurence Schneider; State of Hawaii, ex rel. Laurence Schneider; State of Illinois, ex rel. Laurence Schneider; State of Indiana, ex rel. Laurence Schneider; State of Iowa, ex rel. Laurence Schneider; Commonwealth of Massachusetts, ex rel. Laurence Schneider; State of Minnesota, ex rel. Laurence Schneider; State of Montana, ex rel. Laurence Schneider; State of Nevada, ex rel. Laurence Schneider; State of New Jersey, ex rel. Laurence Schneider; State of New Mexico, ex rel. Laurence Schneider; State of New York, ex rel. Laurence Schneider; State of North Carolina, ex rel. Laurence Schneider; State of Rhode Island, ex rel. Laurence Schneider; State of Tennessee, ex rel. Laurence Schneider; Commonwealth of Virginia, ex rel. Laurence Schneider; District of Columbia, ex rel. Laurence Schneider. The plaintiff-appellant is Laurence Schneider. The defendants-appellees are JPMorgan Chase Bank, National Association; JPMorgan Chase & Co.; and Chase Home Finance, LLC. The United States is participating as amicus curiae.

B. Rulings Under Review

The plaintiff-appellant is appealing from the December 22, 2016 judgment and decision issued by the Honorable Rosemary M. Collyer, United States District Court

for the District of Columbia, in Case No. 14-cv-1047, ECF Nos. 118 and 119. The district court's opinion and order are reproduced in the Joint Appendix at JA1 and JA23, respectively. No citation is yet available in the Federal Supplement. The district court's opinion can be found at 2016 WL 7408826.

C. Related Cases

This case has not previously been before this or any other court. The plaintiff-appellant's complaint alleges fraud related to the National Mortgage Settlement consent judgment, which was entered in *United States* v. *Bank of America Corp.*, No. 12-cv-361 (D.D.C.). This Court heard an appeal arising from that case, *United States* v. *Bank of America Corp.*, 753 F.3d 1335 (D.C. Cir. 2014).

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GLOSSARY

Chase	JPMorgan Chase
Consent J.	Consent judgment
FCA	False Claims Act
JA	Joint Appendix

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INTRODUCTION AND INTERESTS OF THE UNITED STATES

This is a *qui tam* suit brought under the False Claims Act, 31 U.S.C. § 3729 *et seq.* (FCA), alleging misconduct by JPMorgan Chase Bank. Among other things, the relator alleges that Chase falsely claimed to have complied with several requirements under the National Mortgage Settlement consent judgment to avoid making additional payments to the United States. The district court dismissed the case, holding, *inter alia*, that the FCA claims relating to that settlement could not proceed because the

relator failed to "exhaust" procedures in the consent judgment that govern an "enforcement action under th[e] Consent Judgment."

We take no position here on the merits of the relator's underlying claims. We declined to intervene in the case. And although we are a party to the National Mortgage Settlement, we have not asked the district court that issued the consent judgment to enforce the judgment's terms against Chase. But the United States, in whose name and whose behalf this False Claims Act suit was brought, has an interest in the resolution of the "exhaustion" issue before this Court. The United States is a party to the National Mortgage Settlement, which involves not just Chase but several other banks. And the United States is a party to other settlements and contracts that can give rise to suits under the False Claims Act and to other actions (civil or criminal) alleging fraud. We are therefore participating on the narrow "exhaustion" question addressed by the district court.

STATEMENT OF THE ISSUE

Whether a False Claims Act suit may allege fraud arising from the National Mortgage Settlement consent judgment, without first following procedures that govern "[a]n enforcement action under th[e] Consent Judgment."

PERTINENT STATUTES AND REGULATIONS

The issue on which we are participating does not directly concern the text of any statutes or regulations. The addendum to appellant's brief reproduces certain

provisions of the National Mortgage Settlement consent judgment. For the Court's convenience, we have reproduced additional provisions in an addendum to this brief.

STATEMENT OF THE CASE

I. False Claims Act

The False Claims Act, 31 U.S.C. § 3729 *et seq.,* is used broadly "in defending the Federal treasury," and it is a "powerful tool in deterring fraud." S. Rep. No. 345, 99th Cong., 2d Sess. 4 (1986). Congress enacted the FCA in 1863 "with the principal goal of stopping the massive frauds perpetrated by large private contractors during the Civil War." *Vermont Agency of Nat. Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 781 (2000) (brackets and internal quotation marks omitted). But the Act was intended to "reach all types of fraud, without qualification, that might result in financial loss to the Government." *United States* v. *Neifert-White Co.*, 390 U.S. 228, 232 (1968).

Many of the Act's "prohibitions can be enforced through both criminal and civil actions by the federal government." *United States ex rel. Heath* v. *AT&T, Inc.*, 791 F.3d 112, 116 (D.C. Cir. 2015).[1] "In addition, the Act authorizes private individuals—known as relators—to bring a *qui tam* civil action 'in the name of the Government,' and to share in any damages recovered." *Ibid.* (citation omitted); 31 U.S.C. § 3730(b)(1), (d); see generally *Vermont Agency*, 529 U.S. at 781. A civil suit may be

[1] The original Act "provided both criminal and civil sanctions." *Rainwater* v. *United States*, 356 U.S. 590, 592 n.8 (1958). "The criminal provision remains on the books and is currently codified separately, as amended, at 18 U.S.C. § 287." *Vermont Agency*, 529 U.S. at 782 n.11.

brought either by the Attorney General or a relator seeking civil penalties plus three times the amount of the government's damages. 31 U.S.C. § 3729(a), (b)(1).

The FCA imposes civil liability for a variety of deceptive practices involving government funds and property. Among other things, the Act renders liable any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," 31 U.S.C. § 3729(a)(1)(A); any person who "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," *id.* § 3729(a)(1)(B); any person who "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government," *id.* § 3729(a)(1)(G); and any person who "conspires" to engage in such acts, *id.* § 3729(a)(1)(C); see *id.* § 3729(b)(1) (defining "knowingly").

II. Factual Background and Prior Proceedings

A. National Mortgage Settlement

In March 2012, the United States, forty-nine states, and the District of Columbia filed a complaint and proposed consent judgment in the United States District Court for the District of Columbia against several mortgage servicers, including JPMorgan Chase. JA2; *United States* v. *Bank of Am. Corp.*, 753 F.3d 1335,

1336 (D.C. Cir. 2014) (per curiam).[2] The complaint alleged a variety of misconduct in the servicers' home mortgage practices, and the proposed consent judgment implemented a negotiated settlement. *Ibid.*; see Dkt. Nos. 10-14, *United States* v. *Bank of Am.*, No. 12-cv-361 (D.D.C.).

Under that consent judgment, Chase agreed to pay a penalty; to provide approximately $3.675 billion in various forms of consumer relief, such as loan forgiveness; and to comply with certain business practice requirements called "Servicing Standards." Consent Judgment, No. 12-cv-361 ¶¶ 3, 5 (D.D.C. Apr. 4, 2012) (Consent J.); Consent J. Ex. D. The United States released a number of claims but did not release "[a]ny liability based upon obligations created by th[e] Consent Judgment." Consent J. Ex. F, § (11)(n).

The consent judgment also contains provisions for monitoring the banks' compliance. The agreement established a Monitoring Committee, Consent J. Ex. E, § B; an Independent Monitor to assess compliance, Consent J. ¶ 7; Consent J. Ex. E §§ C(1), (5), D; creation of metrics for evaluating compliance with certain servicing standards, Consent J. Ex. E § C(12), (23) & Sch. E-1; and rules governing enforcement actions by the parties or Monitoring Committee, *id.* § J.

[2] The other defendant banks were Ally, Bank of America, Citibank, and Wells Fargo. See *United States.* v. *Bank of Am.*, No. 12-cv-361 (D.D.C.).

The parties agreed that if Chase fails to meet its consumer relief obligations, Chase would "pay an amount equal to 125% of the unmet commitment," or 140% in specific circumstances. Consent J. Ex. D(10)(d).[3] With respect to servicing standards for which there are established metrics, if the Monitor concludes that Chase is exceeding the allowable error rate, the Monitor notifies Chase of a "Potential Violation," and Chase has a right to cure within a set time frame. Consent J. Ex. E, §§ D(3), (5), E(1)-(6). If Chase cures, there is no other "remedy under th[e] Consent Judgment . . . with respect to such Potential Violation." *Id.* § E(6). If Chase does not timely cure such a "Potential Violation," "[i]n the event of an action to enforce [Chase's] obligations," the court can order "non-monetary equitable relief, including injunctive relief, directing specific performance under the terms of th[e] Consent Judgment, or other non-monetary corrective action," and the court "may award" agreed-to "civil penalties."[4] *Id.* § J(3)(a), (b). With respect to other alleged noncompliance—such as violation of servicing standards not subject to a metric or other obligations—the court may order only non-monetary injunctive relief. *Id.* § J(3), (a); see *United States* v. *Bank of Am.*, 78 F. Supp. 3d 520, 530 (D.D.C. 2015).

[3] If there is a "payment due" under the provision governing unmet consumer relief obligations, one half "shall be allocated to the United States" and the other half divided among the state parties. Consent J. Ex. E, § J(3)(c)(3).

[4] Penalties based on servicing standards are generally paid to the states, unless the standard relates to conduct in bankruptcy, in which case it is paid to the United States or as otherwise directed by the Director of the United States Trustee Program. Consent J. Ex. E, § J(3)(c)(1)-(2).

The "Enforcement Terms" also state that Chase's "obligations under this Consent Judgment shall be enforceable solely in the U.S. District Court for the District of Columbia" and that "[a]n enforcement action under th[e] Consent Judgment may be brought by any Party to this Consent Judgment or the Monitoring Committee." Consent J. Ex. E, § J(2). Ordinarily "prior to commencing any enforcement action, a Party must provide notice to the Monitoring Committee of its intent to bring an action to enforce th[e] Consent Judgment." *Ibid.* The committee then has "21 days to determine whether to bring an enforcement action." *Ibid.* If the committee declines to do so, "the Party must wait 21 additional days . . . before commencing an enforcement action." *Ibid.*

The United States has not invoked the consent judgment's procedures or otherwise asked the district court to enforce the terms of the judgment against Chase. Based on the information currently available to it, including the reports filed by the Monitor, the United States is unaware of any violation of the agreed-to terms.

B. Factual Background and Procedural History

1. The plaintiff in this case is a relator who filed a *qui tam* suit against JPMorgan Chase under the False Claims Act and similar state laws. JA27, JA39, JA94-JA116 (Second Am. Compl.). As relevant here, relator alleges that Chase violated the so-called "reverse" provision of the False Claims Act when Chase claimed to have complied with various aspects of the National Mortgage Settlement, thereby avoiding additional payments and penalties required under the consent judgment.

JA27, JA35, JA70-JA75, JA80-JA95. That FCA provision imposes liability on any person who, among other things, "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government" or who "knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." 31 U.S.C. § 3729(a)(l)(G).[5]

2. The district court granted Chase's motion to dismiss. JA1-JA22 (opinion); JA23 (order). As relevant here, the court held that relator could not sue because he "failed to exhaust the dispute resolution procedures required by the National Mortgage Settlement before filing suit." JA12-JA14. The court reasoned that in a False Claims Act suit, "Relator stands in the position of the Federal Government," and the federal government could not sue Chase before following the consent judgment's "mandatory pre-litigation steps." JA13. In the court's view, these included "notice to the allegedly noncompliant bank, the Monitor, and the Monitoring Committee," "good faith efforts to reach agreement," notification of the Monitoring Committee of intent to file an enforcement action, waiting twenty-one days for the Monitoring Committee to consider whether it would sue, and then waiting an additional twenty-one days. *Ibid.*

[5] The United States declined to intervene in the suit, Dkt. Nos. 24, 96, as did other states, under whose state False Claims Acts the relator had also brought suit, see, *e.g.,* Dkt. Nos. 25-37, 41, 43, 70-72, 75-76, 83, 95, 97, 104.

SUMMARY OF ARGUMENT

The agreement to undertake procedures before bringing an "enforcement action under th[e] Consent Judgment" governs a specific type of action—one asking the district court to enforce that judgment, *i.e.*, to compel compliance with the terms of the judgment. This term does not govern the broader set of actions—civil or criminal—where the agreement, embodied in the consent judgment, is a backdrop for an alleged fraud and one allegation would also establish noncompliance.

An "enforcement action under" a consent judgment is an action asking a court to use its inherent authority to compel compliance with that judgment. The term "enforcement action under" commonly refers to the cause of action and/or governing source of law. And the "enforcement of a judgment" is "[a] court's action to compel a person to comply with the terms of a judgment." *Black's Law Dictionary* 645 (10th ed. 2014). This is ordinarily an invocation of a court's inherent power to enforce its judgments, see *Peacock* v. *Thomas*, 516 U.S. 349, 356-357 (1996), and is equally true for consent judgments, where a "breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist." *Kokkonen* v. *Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1994). In other words, an action to compel compliance is an "enforcement action under" the relevant judgment.

Conversely, in common legal usage, a suit filed under the False Claims Act is not described a suit under the contract or program that gave rise to the alleged

fraudulent conduct. Instead, it is commonly described as an "action under the False Claims Act." Many garden-variety FCA suits allege that the defendant engaged in fraudulent conduct in the course of performing (or purporting to perform) its obligations under a contract. It does not follow that compliance with contractual dispute-resolution mechanisms is necessary before the United States (or a relator) can bring such FCA suits. Nor does it follow that such mechanisms govern other civil or criminal actions for fraud.

If Chase failed to satisfy the requirements of the consent judgment, the United States could avail itself of the judgment's remedies and ask the district court to enforce that judgment. But even if Chase's alleged misconduct also constituted a violation of the consent judgment, the FCA suit here is an effort to enforce the distinct (though overlapping) obligations imposed by the FCA. Indeed, a suit under the False Claims Act does not merely allege that Chase breached an agreed-to obligation. The False Claims Act is not a vehicle for punishing garden-variety breaches of contract, and it contains distinct elements, including a scienter requirement. Whatever expectation Chase may have had about the procedures outlined in the agreement, Chase could have had no reasonable expectation that claims of knowingly false statements or concealment to avoid monetary obligations would have to be routed through the procedures described in the consent judgment.

If there were any doubts, several other provisions and applicable interpretive guides further demonstrate that the pre-enforcement procedures do not apply to an

FCA action. These include unitary references to the court where the consent judgment is filed and enforced; textual clues suggesting that there is only a single type of "enforcement action"; substantial limits on the remedies available in an enforcement action; and a presumption that contracts would not constrain the ability of the United States and state governments, established by statute, to pursue actions for fraud against the sovereign.

STANDARD OF REVIEW

This Court reviews the interpretation of a consent judgment de novo. *United States* v. *Bank of Am. Corp.*, 753 F.3d 1335, 1337 (D.C. Cir. 2014) (per curiam).

ARGUMENT

The relator in this case filed suit under the False Claims Act, 31 U.S.C. § 3729 *et seq.* (FCA), alleging, among other things, that JPMorgan Chase knowingly engaged in fraudulent conduct to conceal and to avoid a financial obligation to the United States. The United States declined to intervene in this suit and does not take the position that Chase failed to comply with the terms agreed to in the National Mortgage Settlement. But the United States has a significant interest in the legal theory underlying the district court's decision to dismiss these claims.

The district court held that before the United States or a relator could bring a False Claims Act suit premised on fraud in the execution of the settlement agreement, they first had to undertake agreed-to procedures governing "enforcement actions

under th[e] Consent Judgment."[6] That holding appears to rest on the mistaken premise that the United States (and the forty-nine state parties) agreed to undertake the pre-enforcement procedures before bringing any action where the factual allegations include failure to comply with the agreed-to terms of the consent judgment.

That premise is mistaken. Properly understood, the agreement to undertake certain procedures before bringing an "enforcement action under th[e] Consent Judgment" governs a specific type of action—one asking the district court to compel compliance with the terms of the judgment. It does not govern the broader set of actions—civil or criminal—where the agreed-to terms are the backdrop for an alleged fraud and one allegation would also establish noncompliance with the judgment.

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[6] The district court appears to have made one error in describing those procedures. In addition to describing the procedure of notifying and waiting for the Monitoring Committee, the district court stated that "a party wishing to dispute compliance by a signatory bank" would first have to "give notice to the allegedly noncompliant bank, the Monitor, and the Monitoring Committee" and "engage in good faith efforts to reach agreement." JA13. We do not understand that provision to apply here or to be a condition precedent to an enforcement action. In a section titled "Dispute Resolution Procedures," the consent judgment provides that Chase, "the Monitor, and the Monitoring Committee will engage in good faith efforts to reach agreement on the proper resolution of any dispute concerning any issue arising under th[e] Consent Judgment," and that "[s]ubject to" the enforcement section described below, "in the event that a dispute cannot be resolved," they "may petition the Court for resolution of the dispute." Consent J. Ex. E, § G. Those "Dispute Resolution Procedures" do not refer to the government parties (the United States and the various states), but just to the "Servicer [(banks)], the Monitor, and the Monitoring Committee." *Ibid.* Moreover, those procedures are not described as a prerequisite to an enforcement action. *Ibid.*

Here, as in many other contexts, multiple sorts of actions may be brought under multiple sources of law for the same conduct. And like other actions for fraud, FCA suits must allege more than a failure to comply with agreed-to terms, including scienter. In particular, whatever expectation Chase may have had about remedies, Chase could not have reasonably expected that *knowingly* making false statements, using false records, or concealing or improperly avoiding monetary obligation to the United States would be remedied only within the limited procedures set out for enforcement actions and not under other sources of law, such as the False Claims Act. The agreement is the backdrop for the alleged misconduct. But the charge of fraud is not merely an attempt to enforce the terms of the agreement.

A. An Enforcement Action Under the Consent Judgment Is an Action Seeking to Compel Compliance with the Terms of the Judgment.

1. "A consent judgment or consent decree is a settlement that includes an injunction, or some other form of specific relief, and that is formally entered by the court and enforceable by contempt." 20 Charles Alan Wright & Mary Kay Kane, *Federal Practice and Procedure* § 104, at 879 n.2 (2d ed. 2017 Supp.). It "embodies an agreement of the parties and thus in some respects is contractual in nature." *Rufo* v. *Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 378 (1992). "But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Ibid.*; see *Frew* v. *Hawkins*, 540 U.S. 431, 437 (2004). A consent judgment is interpreted

pursuant to "standard principles of contract law." *United States* v. *Bank of Am. Corp.*, 753 F.3d 1335, 1337 (D.C. Cir. 2014) (per curiam) (interpreting same judgment).

In a provision governing "Enforcement Terms," Consent J. ¶ 6; Consent J. Ex. E, the judgment provides that it "shall be filed in the U.S. District Court for the District of Columbia" and "shall be enforceable therein." Consent J. Ex. E, § J(1). It further explains that "obligations under th[e] Consent Judgment shall be enforceable solely in the U.S. District Court for the District of Columbia" and that "[a]n enforcement action under th[e] Consent Judgment may be brought by any Party to th[e] Consent Judgment or the Monitoring Committee." *Id.* § J(2). Ordinarily, "prior to commencing any enforcement action, a Party must provide notice to the Monitoring Committee of its intent to bring an action to enforce th[e] Consent Judgment." *Ibid.* The committee then has "21 days to determine whether to bring an enforcement action." *Ibid.* If the committee declines to do so, "the Party must wait 21 additional days . . . before commencing an enforcement action." *Ibid.*

2. These pre-enforcement procedures govern an action invoking the district court's inherent authority to compel compliance with its judgment. The procedures must occur before "commencing any enforcement action," which is most naturally read as shorthand for the previously-described "enforcement action under th[e] Consent Judgment," Consent J. Ex. E, § J(2), rather than governing any enforcement action of any kind (such as an action concerning unrelated subject matter). Although the word "under" does not have a "uniform, consistent meaning," *Kirtsaeng* v. *John*

Wiley & Sons, Inc., 133 S. Ct. 1351, 1359 (2013), the term "enforcement action under" ordinarily refers to the cause of action and/or the governing source of law. See, *e.g.*, *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 86 (1998) ("enforcement action under the citizen-suit provision of the Emergency Planning and Community Right-To-Know Act of 1986"); *General Motors Corp.* v. *United States*, 496 U.S. 530, 535 (1990) ("enforcement action under § 113(b) of the [Clean Air] Act"); *Cumberland Coal Res., LP* v. *Federal Mine Safety & Health Review Comm'n*, 717 F.3d 1020, 1022 (D.C. Cir. 2013) ("enforcement actions under the Mine Safety Act").

The "enforcement of [a] judgment" is "[a] court's action to compel a person to comply with the terms of a judgment." *Black's Law Dictionary* 645 (10th ed. 2014); see, *e.g.*, *Salazar* v. *Buono*, 559 U.S. 700, 712 (2010). This is ordinarily not an action brought under any distinct authority but rather is an invocation of a court's "ancillary jurisdiction" to use its "inherent power to enforce its judgments." See *Peacock* v. *Thomas*, 516 U.S. 349, 356-357 (1996); see also *Riggs* v. *Johnson Cty.*, 73 U.S. (6 Wall.) 166, 187 (1868) ("if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree"). In other words, it is an "enforcement action under" the relevant judgment.

This is equally true with respect to consent judgments. A key reason to submit a settlement for entry by the court as a consent judgment is to render the agreement "enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Frew*, 540 U.S. at 437; see *Kokkonen* v. *Guardian Life*

Ins. Co., 511 U.S. 375, 380-381 (1994). A "breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist." *Id.* at 381; see *Rufo*, 502 U.S. at 378 (consent decree "is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees"); *Spallone* v. *United States*, 493 U.S. 265, 276 (1990) (describing "inherent power" to "enforce the consent judgment"); *Beckett* v. *Air Line Pilots Ass'n*, 995 F.2d 280, 286 (D.C. Cir. 1993) (similar); see also *Frew*, 540 U.S. at 439 ("enforcing the decree vindicates an agreement"); *Gunter* v. *Atlantic Coast Line R.R.*, 200 U.S. 273, 292 (1906) (similar).

Therefore, in common legal usage, when people refer to actions to enforce consent judgments, they are generally referring to requests that courts use their inherent authority to compel compliance with the judgment. *E.g., Thatcher* v. *Kohl's Dep't Stores, Inc.*, 397 F.3d 1370, 1373 (Fed. Cir. 2005) (only a party to the consent decree may "proceed with a contempt action to enforce the judgment under the terms of the consent judgment"); *Tourangeau* v. *Uniroyal, Inc.*, 101 F.3d 300, 305, 308, 309 (2d Cir. 1996) (describing such an action as an "action to enforce the Consent Judgment"); *Travelers Indem. Co.* v. *Dingwell*, 884 F.2d 629, 639-640 (1st Cir. 1989) (describing possible "action to enforce the consent judgment"); see also, *e.g., Beckett*, 995 F.2d at 286 (court had authority in "action to enforce th[e] Consent Decree" because "a trial court retains jurisdiction to enforce consent decrees"); *Sault Ste. Marie*

Tribe of Chippewa Indians v. *Engler*, 271 F.3d 235, 238 (6th Cir. 2001) ("the continuing enforcement of a consent judgment is rightfully considered an extension of the original lawsuit"); *Solis* v. *Current Dev. Corp.*, 557 F.3d 772, 775 (7th Cir. 2009) ("enforcement orders" with respect to consent decrees "are postjudgment orders").

B. This Case Is Not an Enforcement Action Under the Consent Judgment.

This case is not an enforcement action under the consent judgment. Instead, it is a suit under the False Claims Act alleging fraud against the United States. As noted, the term "enforcement action under" ordinarily refers to the cause of action and/or the governing source of law. Thus, in common legal usage, a suit filed under the False Claims Act is not a suit under the contract or program that gave rise to the alleged fraudulent conduct. Instead, it is an "action under the False Claims Act." See, *e.g.*, *United States ex rel. Eisenstein* v. *City of New York*, 556 U.S. 928, 929 (2009) ("when the United States declines to formally intervene in a *qui tam* action brought under the False Claims Act"); *id.* at 932 ("A private enforcement action under the FCA is called a *qui tam* action"); *United States* v. *McNinch*, 356 U.S. 595, 595-596 (1958) ("This case . . . involves three separate actions by the Government to recover damages and forfeitures under the False Claims Act."); *United States ex rel. Burke* v. *Record Press, Inc.*, 816 F.3d 878, 881 (D.C. Cir. 2016) ("when resolving an action under the False Claims Act, including one implicating a contract"); *United States ex rel. Davis* v. *District of Columbia*, 793 F.3d 120, 125 (D.C. Cir. 2015) (describing what can "serve as the basis

for a *qui tam* action under the [False Claims Act]") (court's alteration); *United States* v. *Van Oosterhout*, 96 F.3d 1491, 1492 (D.C. Cir. 1996) ("The government filed this action under the False Claims Act to recover monies paid out under Small Business Administration (SBA) loan guaranties").[7]

If Chase failed to satisfy the requirements of the consent judgment, the United States could avail itself of the consent judgment's remedies and ask the district court to enforce the judgment. But even if Chase's alleged misconduct also constituted a violation of the consent judgment, the FCA suit here is not an effort to enforce the consent judgment or obligations arising under that judgment. Rather, it is an effort to enforce the distinct (though overlapping) obligations imposed by the FCA. Indeed, many garden-variety FCA suits allege that the defendant engaged in fraudulent conduct in the course of performing (or purporting to perform) its obligations under a contract. It does not follow that compliance with contractual dispute-resolution mechanisms is necessary before the United States (or a relator) can bring such FCA

[7] See also, *e.g., Universal Health Servs., Inc.* v. *United States ex rel. Escobar*, 136 S. Ct. 1989, 1996, 2002 (2016) (describing misconduct "actionable under the False Claims Act"); *Allison Engine Co.* v. *United States ex rel. Sanders*, 553 U.S. 662, 672 (2008) ("Recognizing a cause of action under the FCA for fraud directed at private entities"); *United States* v. *Bornstein*, 423 U.S. 303, 308 (1976) ("the Government brought this civil action in a Federal District Court under the False Claims Act"); cf., *e.g., United States ex rel. Eisenstein,* 556 U.S. at 930 ("the United States is a 'real party in interest' in a case brought under the FCA"); *United States ex rel. McBride* v. *Halliburton Co.*, 848 F.3d 1027, 1030 (D.C. Cir. 2017) ("McBride brings two claims under the FCA"); Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 4(f)(1), 123 Stat. 1617, 1625 (applying amendments "to all claims under the False Claims Act . . . pending on or after that date.").

suits. Nor does it follow that such mechanisms govern other civil or criminal actions for fraud.

Even if the alleged conduct would, by itself, violate both the consent judgment and the False Claims Act, it does not follow that any legal proceeding under the FCA is also an enforcement action under the consent judgment. Here, as in other contexts, multiple sorts of actions may be brought under multiple sources of law for the same conduct. See, *e.g., United States* v. *Batchelder*, 442 U.S. 114, 125 (1979) (prosecutors have discretion to "proceed under" or "charge under" various statutes based on the same conduct); *Seaboard Air Line Ry.* v. *Koennecke*, 239 U.S. 352, 354 (1915) (cause of death action could have been brought "under" either of two statutes).

Moreover, a suit under the False Claims Act does not merely allege that Chase breached an agreed-to obligation. The False Claims Act is not "a vehicle for punishing garden-variety breaches of contract." *Universal Health Servs.* v. *United States ex rel. Escobar*, 136 S. Ct. 1989, 2003 (2016). It is the "primary litigative tool for the recovery of losses sustained as the result of *fraud* against the government," *Avco Corp.* v. *U.S. Dept. of Justice*, 884 F.2d 621, 622 (D.C. Cir. 1989) (emphasis added), and contains distinct elements. Most significantly, the FCA contains a scienter requirement, 31 U.S.C. § 3729(a)(1), (b)(1), that "help[s] to ensure that ordinary breaches of contract are not converted into FCA liability." *United States* v. *Science Applications Int'l Corp.*, 626 F.3d 1257, 1271 (D.C. Cir. 2010); see, *e.g.*, *United States ex rel. Harper* v. *Muskingum Watershed Conservancy Dist.*, 842 F.3d 430, 436-437 (6th Cir.

2016) (applying mens rea requirement for "reverse" FCA claim), *petition for cert. filed* (U.S. Apr. 25, 2017) (No. 16-1278).

The scienter requirement is a distinct prerequisite to FCA liability that a party to the consent judgment would not need to establish in order to seek relief under the judgment itself. Whatever expectation Chase (or any other party to an agreement with the United States) may have that procedures outlined in the agreement would be the exclusive means of alleging innocent or merely negligent violations, Chase could have had no reasonable expectation that the sorts of claims brought under the False Claims Act would have to be routed through those procedures. Thus, Chase could not have reasonably expected that knowingly making false statements, knowingly using false records, or knowingly concealing or improperly avoiding monetary obligation to the United States, see 31 U.S.C. § 3729(a)(1)(G) ("reverse" FCA provision), would be remedied only within the limited procedures set out in the consent judgment and not under other sources of law, such as the False Claims Act.

C. Additional Provisions of the Consent Judgment Confirm This Conclusion.

Even if there were serious ambiguity about what constitutes an enforcement action under the consent judgment, the consent judgment must be read as a "whole," and "'reliance upon certain aids to construction is proper, as with any other contract.'" *Segar* v. *Mukasey*, 508 F.3d 16, 22-23 (D.C. Cir. 2007) (quoting *United States* v. *ITT Cont'l Baking Co.*, 420 U.S. 223, 238 (1975)). Several other provisions and

applicable interpretive guides further demonstrate that the pre-enforcement procedures do not apply to an FCA action.

First, the consent judgment provides that it "shall be filed in the U.S. District Court for the District of Columbia (the 'Court') and shall be enforceable therein" (Ex. E, § J(1)); and that Chase's "obligations under this Consent Judgment shall be enforceable solely in the U.S. District Court for the District of Columbia" (*id.* § J(2)). The unitary reference to the court where the consent judgment is filed and enforced is consistent with the commonplace understanding, discussed above, that an enforcement action under a consent judgment is a request that a court enforce its own judgment. The terms governing where enforcement of the judgment may occur are an awkward fit for the broader proposition that any action, including an action for fraud arising from the judgment, is the type of enforcement action to which the judgment's procedural terms apply.[8]

Second, the consent judgment provides that "[a]n enforcement action under this Consent Judgment may be brought by any Party to this Consent Judgment or the

[8] In a civil suit or criminal prosecution based on that fraud, venue is not necessarily proper in the district that approved the consent judgment. See, *e.g.,* 31 U.S.C. § 3732(a) (FCA venue provision); Fed. R. Crim. P. 18 (criminal venue rules); U.S. Const. amend. VI (same); U.S. Const. art. III, § 2, cl. 3 (same). Under Chase's and the district court's apparent premise, after the government followed the pre-enforcement procedures, it would appear that the government could bring such a civil or criminal action only if the applicable venue provisions happened to place the matter in the U.S. District Court for the District of Columbia or if the parties would waive any venue rights.

Monitoring Committee." Ex. E, § J(2). That appears to contemplate a single type of enforcement action, rather than a range of all litigation predicated in part on violations of the judgment. The fact that such an action can be brought by any party or by the Monitoring Committee fits comfortably with the understanding that the referenced enforcement action is an action asking the district court to compel compliance. But it fits awkwardly with the broader reading that undergirds the district court's holding. Neither every party nor the Monitoring Committee can necessarily bring every kind of fraud action arising from the agreement. Moreover, the district court's premise seems entirely to exclude a *qui tam* suit, which would be brought by a relator.

Third, ordinarily "prior to commencing any enforcement action, a Party must provide notice to the Monitoring Committee of its intent to bring an action to enforce this Consent Judgment." Consent J. Ex. E, § J(2). The committee then has "21 days to determine whether to bring an enforcement action." *Ibid.* If the committee declines to do so, "the Party must wait 21 additional days . . . before commencing an enforcement action." *Ibid.* Like the provision describing who may bring an enforcement action, this appears to contemplate only a single type of enforcement action. Thus, the judgment does not expressly say whether, if the Monitoring Committee brings an enforcement action, the United States may not. That would not raise concerns if the contemplated action were a traditional action to compel compliance; once one entity initiated the action, no one else would need to. Similarly, the judgment does not say what would occur if the Monitoring Committee and parties

brought different kinds of actions—if the government provided notice and the committee asked the district court to compel compliance, could the United States bring a criminal prosecution for fraud? If an "enforcement action under th[e] Consent Judgment" swept so broadly, the pre-enforcement procedures would presumably address some of these issues.

In addition, these procedures are a poor fit for *qui tam* suits. Contrary to the district court's suggestion (JA14), in our view a relator is not a party to the judgment and therefore cannot use these procedures. But apart from any uncertainty whether a stranger to the judgment could invoke its procedures, the district court's premise would subvert other provisions of the False Claims Act. The FCA requires relators to file *qui tam* complaints under seal to avoid alerting defendants to the possibility of a government investigation. 31 U.S.C. § 3730(b)(2); see *State Farm Fire & Cas. Co.* v. *United States ex rel. Rigsby*, 137 S. Ct. 436, 443 (2016). Relators' invoking the consent judgment's procedures before filing suit would undermine that important function. And if a relator had to ask the United States to invoke the consent judgment's procedures before the relator could file suit, that would undermine the role that the FCA assigns to relators and could perhaps deter relators who fear that the United States might then bring the FCA suit instead. It seems particularly anomalous to construe the consent judgment to make a relator's right to file a *qui tam* suit contingent on steps that the FCA itself discountenances.

Fourth, the pre-enforcement procedures delay and appear to confer a veto over the United States' and state parties' ability to bring an "enforcement action." Under the district court's premise, the United States could not file an FCA suit, or perhaps a criminal case, until first notifying the Monitoring Committee and giving the committee an opportunity to act. And if the committee did "commenc[e] an enforcement action," it appears that the United States may not be able to do so. The ability of a government to pursue actions for fraud against the sovereign is an important power. And the False Claims Act specifically establishes the power to bring such suits and the procedures governing such suits. Agreements with the United States must be construed narrowly to avoid foreclosing the later exercise of sovereign authority. See *United States* v. *Cherokee Nation of Okla.*, 480 U.S. 700, 707 (1987); *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982). At the very least, it would be surprising if the United States and state parties agreed to vastly limit their own legal authority to proceed against a bank for outright fraud. See *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561, 574-575 (1984) ("it seems highly unlikely" that a city would "bargain away" important programs and "[h]ad there been any intention" to make a significant policy change, "it is much more reasonable to believe that there would have been an express provision to that effect"); cf. *United States ex rel. Onnen* v. *Sioux Falls Indep. Sch. Dist. No. 49-5*, 688 F.3d 410, 414-415 (8th Cir. 2012).

Fifth, in a section titled "Enforcement Action"—the same term that triggers the pre-enforcement procedures—the consent judgment establishes available

remedies. "In the event of an action to enforce [Chase's] obligations . . . and to seek remedies for an uncured Potential Violation for which [Chase's] time to cure has expired, the sole relief available" is ordinarily "Equitable Relief," constituting "[a]n order directing non-monetary equitable relief, including injunctive relief, directing specific performance under the terms of this Consent Judgment, or other non-monetary corrective action." Consent J. Ex. E, § J(3)(a). The court "may award" defined "civil penalties" for uncured "Potential Violation[s]," *id.* § J(3)(b). It would be passing strange to so severely limit the remedies available in any action arising, even in part, from the failure to comply with the consent judgment's terms—including actions for fraud.

CONCLUSION

The judgment of the district court should be vacated and remanded for further proceedings.[9]

[9] Chase raised many other arguments below and may repeat those arguments as alternative grounds for affirmance. We do not address those issues at this time, as they have not yet been (and may not be) briefed to this Court.

Respectfully submitted,

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JUNE 2017

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,468 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

/s/ Adam Jed

Adam C. Jed

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2017, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

/s/ Adam Jed
Adam C. Jed

ADDENDUM

ADDENDUM TABLE OF CONTENTS

Consent Judgment, No. 1:12-cv-00361 (D.D.C. Apr. 4, 2012): **Page**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA CORP. *et al.*,

Defendants.

12 0361

Civil Action No. _____

CONSENT JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on March 12, 2012, alleging that J.P. Morgan Chase & Company and J.P. Morgan Chase Bank, N.A. (collectively, "Defendant") violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States, the False Claims Act, the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Servicemembers Civil Relief Act, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;

WHEREAS, Defendant, by its attorneys, has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of this Court;

WHEREAS, the intention of the United States and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant;

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issue of fact or law, without this Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), and 1367, and under 31 U.S.C. § 3732(a) and (b), and over Defendant. The Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 31 U.S.C. § 3732(a).

II. SERVICING STANDARDS

2. Defendant shall comply with the Servicing Standards, attached hereto as Exhibit A, in accordance with their terms and Section A of Exhibit E, attached hereto.

III. FINANCIAL TERMS

3. *Payment Settlement Amounts.* Defendant shall pay into an interest bearing escrow account to be established for this purpose the sum of $1,121,188,661, which sum shall be added to funds being paid by other institutions resolving claims in this litigation (which sum shall be known as the "Direct Payment Settlement Amount") and which sum shall be distributed in the manner and for the purposes specified in Exhibit B. Defendant's payment shall be made by electronic funds transfer no later than seven days after the Effective Date of this Consent Judgment, pursuant to written instructions to be provided by the United States Department of Justice. After Defendant has made the required payment, Defendant shall no longer have any property right, title, interest or other legal claim in any funds held in escrow. The interest bearing escrow account established by this Paragraph 3 is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended. The Monitoring Committee established in Paragraph 8 shall, in its sole discretion, appoint an escrow agent ("Escrow Agent") who shall hold and distribute funds as provided herein. All costs and expenses of the Escrow Agent, including taxes, if any, shall be paid from the funds under its control, including any interest earned on the funds.

4. *Payments to Foreclosed Borrowers.* In accordance with written instructions from the State members of the Monitoring Committee, for the purposes set forth in Exhibit C, the Escrow Agent shall transfer from the escrow account to the Administrator appointed under

Exhibit C $1,489,813,925.00 (the "Borrower Payment Amount") to enable the Administrator to provide cash payments to borrowers whose homes were finally sold or taken in foreclosure between and including January 1, 2008 and December 31, 2011; who submit claims for harm allegedly arising from the Covered Conduct (as that term is defined in Exhibit G hereto); and who otherwise meet criteria set forth by the State members of the Monitoring Committee. The Borrower Payment Amount and any other funds provided to the Administrator for these purposes shall be administered in accordance with the terms set forth in Exhibit C.

5. *Consumer Relief.* Defendant shall provide $3,675,400,000 of relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraphs 1-8 of Exhibit D, and $537,000,000 of refinancing relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraph 9 of Exhibit D, to remediate harms allegedly caused by the alleged unlawful conduct of Defendant. Defendant shall receive credit towards such obligation as described in Exhibit D.

IV. ENFORCEMENT

6. The Servicing Standards and Consumer Relief Requirements, attached as Exhibits A and D, are incorporated herein as the judgment of this Court and shall be enforced in accordance with the authorities provided in the Enforcement Terms, attached hereto as Exhibit E.

7. The Parties agree that Joseph A. Smith, Jr. shall be the Monitor and shall have the authorities and perform the duties described in the Enforcement Terms, attached hereto as Exhibit E.

8. Within fifteen (15) days of the Effective Date of this Consent Judgment, the participating state and federal agencies shall designate an Administration and Monitoring Committee (the "Monitoring Committee") as described in the Enforcement Terms. The

Monitoring Committee shall serve as the representative of the participating state and federal agencies in the administration of all aspects of this and all similar Consent Judgments and the monitoring of compliance with it by the Defendant.

V. RELEASES

9. The United States and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the Federal Release, attached hereto as Exhibit F. The United States and Defendant have also agreed that certain claims, and remedies are not released, as provided in Paragraph 11 of Exhibit F. The releases contained in Exhibit F shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

10. The State Parties and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the State Release, attached hereto as Exhibit G. The State Parties and Defendant have also agreed that certain claims, and remedies are not released, as provided in Part IV of Exhibit G. The releases contained in Exhibit G shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

VI. SERVICEMEMBERS CIVIL RELIEF ACT

11. The United States and Defendant have agreed to resolve certain claims arising under the Servicemembers Civil Relief Act ("SCRA") in accordance with the terms provided in Exhibit H. Any obligations undertaken pursuant to the terms provided in Exhibit H, including any obligation to provide monetary compensation to servicemembers, are in addition to the obligations undertaken pursuant to the other terms of this Consent Judgment. Only a payment to

an individual for a wrongful foreclosure pursuant to the terms of Exhibit H shall be reduced by the amount of any payment from the Borrower Payment Amount.

VII. OTHER TERMS

12. The United States and any State Party may withdraw from the Consent Judgment and declare it null and void with respect to that party if the Defendant does not make the Consumer Relief Payments (as that term is defined in Exhibit F (Federal Release)) required under this Consent Judgment and fails to cure such non-payment within thirty days of written notice by the party.

13. This Court retains jurisdiction for the duration of this Consent Judgment to enforce its terms. The parties may jointly seek to modify the terms of this Consent Judgment, subject to the approval of this Court. This Consent Judgment may be modified only by order of this Court.

14. The Effective Date of this Consent Judgment shall be the date on which the Consent Judgment has been entered by the Court and has become final and non-appealable. An order entering the Consent Judgment shall be deemed final and non-appealable for this purpose if there is no party with a right to appeal the order on the day it is entered.

15. This Consent Judgment shall remain in full force and effect for three and one-half years from the date it is entered ("the Term"), at which time the Defendants' obligations under the Consent Judgment shall expire, except that, pursuant to Exhibit E, Defendants shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term and cooperate with the Monitor's review of said report, which shall be concluded no later than six months after the end of the Term. Defendant shall have no further obligations under this Consent Judgment six months after the expiration of the Term, but the Court shall retain

jurisdiction for purposes of enforcing or remedying any outstanding violations that are identified in the final Monitor Report and that have occurred but not been cured during the Term.

16. Except as otherwise agreed in Exhibit B, each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

17. Nothing in this Consent Judgment shall relieve Defendant of its obligation to comply with applicable state and federal law.

18. The sum and substance of the parties' agreement and of this Consent Judgment are reflected herein and in the Exhibits attached hereto. In the event of a conflict between the terms of the Exhibits and paragraphs 1-18 of this summary document, the terms of the Exhibits shall govern.

SO ORDERED this 4 day of April, 2012

Rosemary M Collyer

UNITED STATES DISTRICT JUDGE

EXHIBIT D

Consumer Relief Requirements

Any Servicer as defined in the Servicing Standards set forth in Exhibit A to this Consent Judgment (hereinafter "Servicer" or "Participating Servicer") agrees that it will not implement any of the Consumer Relief Requirements described herein through policies that are intended to (i) disfavor a specific geography within or among states that are a party to the Consent Judgment or (ii) discriminate against any protected class of borrowers. This provision shall not preclude the implementation of pilot programs in particular geographic areas.

Any discussion of property in these Consumer Relief Requirements, including any discussion in Table 1 or other documents attached hereto, refers to a 1-4 unit single-family property (hereinafter, "Property" or collectively, "Properties").

Any consumer relief guidelines or requirements that are found in Table 1 or other documents attached hereto, are hereby incorporated into these Consumer Relief Requirements and shall be afforded the same deference as if they were written in the text below.

For the avoidance of doubt, subject to the Consumer Relief Requirements described below, Servicer shall receive credit for consumer relief activities with respect to loans insured or guaranteed by the U.S. Department of Housing and Urban Development, U.S. Department of Veterans Affairs, or the U.S. Department of Agriculture in accordance with the terms and conditions herein, provided that nothing herein shall be deemed to in any way relieve Servicer of the obligation to comply with the requirements of the U.S. Department of Housing and Urban Development, U.S. Department of Veterans Affairs, and the U.S. Department of Agriculture with respect to the servicing of such loans.

Servicer shall not, in the ordinary course, require a borrower to waive or release legal claims and defenses as a condition of approval for loss mitigation activities under these Consumer Relief Requirements. However, nothing herein shall preclude Servicer from requiring a waiver or release of legal claims and defenses with respect to a Consumer Relief activity offered in connection with the resolution of a contested claim, when the borrower would not otherwise have received as favorable terms or when the borrower receives additional consideration.

Programmatic exceptions to the crediting available for the Consumer Relief Requirements listed below may be granted by the Monitoring Committee on a case-by-case basis.

To the extent a Servicer is responsible for the servicing of a mortgage loan to which these Consumer Relief Requirements may apply, the Servicer shall receive credit for all consumer relief and refinancing activities undertaken in connection with such

i. Credit will be calculated as the difference between the preexisting interest rate and the offered interest rate times UPB times a multiplier.

ii. The multiplier shall be as follows:

1. If the new rate applies for the life of the loan, the multiplier shall be 8 for loans with a remaining term greater than 15 years, 6 for loans with a remaining term between 10 and 15 years and 5 for loans with a remaining term less than 10 years.

2. If the new rate applies for 5 years, the multiplier shall be 5.

f. Additional dollars spent by each Servicer on the refinancing program beyond that Servicer's required commitment shall be credited 25% against that Servicer's first lien principal reduction obligation and 75% against that Servicer's second lien principal reduction obligation, up to the limits set forth in Table 1.

10. Timing, Incentives, and Payments

a. For the consumer relief and refinancing activities imposed by this Agreement, Servicer shall be entitled to receive credit against Servicer's outstanding settlement commitments for activities taken on or after Servicer's start date, March 1, 2012 (such date, the "Start Date").

b. Servicer shall receive an additional 25% credit against Servicer's outstanding settlement commitments for any first or second lien principal reduction and any amounts credited pursuant to the refinancing program within 12 months of Servicer's Start Date (e.g., a $1.00 credit for Servicer activity would count as $1.25).

c. Servicer shall complete 75% of its Consumer Relief Requirement credits within two years of the Servicer's Start Date.

d. If Servicer fails to meet the commitment set forth in these Consumer Relief Requirements within three years of Servicer's Start Date, Servicer shall pay an amount equal to 125% of the unmet commitment amount; except that if Servicer fails to meet the two year commitment noted above, and then fails to meet the three year commitment, the Servicer shall pay an amount equal to 140% of the unmet three-year commitment amount; provided, however, that if Servicer must pay any Participating State for failure to meet the obligations of a state-specific commitment to provide Consumer Relief pursuant to the terms of that commitment, then Servicer's obligation to pay under this provision shall be reduced by the amount that such a Participating State would have received under this provision and the Federal portion of the payment attributable to that

EXHIBIT E

Enforcement Terms

A. **Implementation Timeline.** Servicer anticipates that it will phase in the implementation of the Servicing Standards and Mandatory Relief Requirements (i) through (iv), as described in Section C.12, using a grid approach that prioritizes implementation based upon: (i) the importance of the Servicing Standard to the borrower; and (ii) the difficulty of implementing the Servicing Standard. In addition to the Servicing Standards and any Mandatory Relief Requirements that have been implemented upon entry of this Consent Judgment, the periods for implementation will be: (a) within 60 days of entry of this Consent Judgment; (b) within 90 days of entry of this Consent Judgment; and (c) within 180 days of entry of this Consent Judgment. Servicer will agree with the Monitor chosen pursuant to Section C, below, on the timetable in which the Servicing Standards and Mandatory Relief Requirements (i) through (iv) will be implemented. In the event that Servicer, using reasonable efforts, is unable to implement certain of the standards on the specified timetable, Servicer may apply to the Monitor for a reasonable extension of time to implement those standards or requirements.

B. **Monitoring Committee.** A committee comprising representatives of the state Attorneys General, State Financial Regulators, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development shall monitor Servicer's compliance with this Consent Judgment (the "Monitoring Committee"). The Monitoring Committee may substitute representation, as necessary. Subject to Section F, the Monitoring Committee may share all Monitor Reports, as that term is defined in Section D.2 below, with any releasing party.

C. **Monitor**

Retention and Qualifications and Standard of Conduct

1. Pursuant to an agreement of the parties, Joseph A. Smith Jr. is appointed to the position of Monitor under this Consent Judgment. If the Monitor is at any time unable to complete his or her duties under this Consent Judgment, Servicer and the Monitoring Committee shall mutually agree upon a replacement in accordance with the process and standards set forth in Section C of this Consent Judgment.

2. Such Monitor shall be highly competent and highly respected, with a reputation that will garner public confidence in his or her ability to perform the tasks required under this Consent Judgment. The Monitor shall have the right to employ an accounting firm or firms or other firm(s) with similar capabilities to support the Monitor in carrying out his or her duties under this Consent Judgment. Monitor and Servicer shall agree on the selection of a "Primary Professional Firm," which must have adequate capacity and resources to perform the work required under this agreement.

The Monitor shall also have the right to engage one or more attorneys or other professional persons to represent or assist the Monitor in carrying out the Monitor's duties under this Consent Judgment (each such individual, along with each individual deployed to the engagement by the Primary Professional Firm, shall be defined as a "Professional"). The Monitor and Professionals will collectively possess expertise in the areas of mortgage servicing, loss mitigation, business operations, compliance, internal controls, accounting, and foreclosure and bankruptcy law and practice. The Monitor and Professionals shall at all times act in good faith and with integrity and fairness towards all the Parties.

3. The Monitor and Professionals shall not have any prior relationships with the Parties that would undermine public confidence in the objectivity of their work and, subject to Section C.3(e), below, shall not have any conflicts of interest with any Party.

(a) The Monitor and Professionals will disclose, and will make a reasonable inquiry to discover, any known current or prior relationships to, or conflicts with, any Party, any Party's holding company, any subsidiaries of the Party or its holding company, directors, officers, and law firms.

(b) The Monitor and Professionals shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a conflict of interest for the Monitor or Professionals. The Monitor and Professionals shall disclose any conflict of interest with respect to any Party.

(c) The duty to disclose a conflict of interest or relationship pursuant to this Section C.3 shall remain ongoing throughout the course of the Monitor's and Professionals' work in connection with this Consent Judgment.

(d) All Professionals shall comply with all applicable standards of professional conduct, including ethics rules and rules pertaining to conflicts of interest.

(e) To the extent permitted under prevailing professional standards, a Professional's conflict of interest may be waived by written agreement of the Monitor and Servicer.

(f) Servicer or the Monitoring Committee may move the Court for an order disqualifying any Professionals on the grounds that such Professional has a conflict of interest that has inhibited or could inhibit the Professional's ability to act in good faith and with integrity and fairness towards all Parties.

4. The Monitor must agree not to be retained by any Party, or its successors or assigns, for a period of 2 years after the conclusion of the terms of the engagement. Any Professionals who work on the engagement must agree not to work on behalf of Servicer, or its successor or assigns, for a period of 1 year after the conclusion of the term of the engagement (the "Professional Exclusion Period"). Any Firm that performs work with respect to Servicer on the engagement must agree not to perform work on behalf of Servicer, or its successor or assigns, that consists of advising Servicer on a response to the Monitor's review during the engagement and for a period of six months after the conclusion of the term of the engagement (the "Firm Exclusion Period"). The Professional Exclusion Period and Firm Exclusion Period, and terms of exclusion may be altered on a case-by-case basis upon written agreement of Servicer and the Monitor. The Monitor shall organize the work of any Firms so as to minimize the potential for any appearance of, or actual, conflicts.

Monitor's Responsibilities

5. It shall be the responsibility of the Monitor to determine whether Servicer is in compliance with the Servicing Standards and the Mandatory Relief Requirements (as defined in Section C.12) and whether Servicer has satisfied the Consumer Relief Requirements, in accordance with the authorities provided herein and to report his or her findings as provided in Section D.3, below.

6. The manner in which the Monitor will carry out his or her compliance responsibilities under this Consent Judgment and, where applicable, the methodologies to be utilized shall be set forth in a work plan agreed upon by Servicer and the Monitor, and not objected to by the Monitoring Committee (the "Work Plan").

Internal Review Group

7. Servicer will designate an internal quality control group that is independent from the line of business whose performance is being measured (the "Internal Review Group") to perform compliance reviews each calendar quarter ("Quarter") in accordance with the terms and conditions of the Work Plan (the "Compliance Reviews") and satisfaction of the Consumer Relief Requirements after the (A) end of each calendar year (and, in the discretion of the Servicer, any Quarter) and (B) earlier of the Servicer assertion that it has satisfied its obligations thereunder and the third anniversary of the Start Date (the "Satisfaction Review"). For the purposes of this provision, a group that is independent from the line of business shall be one that does not perform operational work on mortgage servicing, and ultimately reports to a Chief Risk Officer, Chief Audit

Executive, Chief Compliance Officer, or another employee or manager who has no direct operational responsibility for mortgage servicing.

8. The Internal Review Group shall have the appropriate authority, privileges, and knowledge to effectively implement and conduct the reviews and metric assessments contemplated herein and under the terms and conditions of the Work Plan.

9. The Internal Review Group shall have personnel skilled at evaluating and validating processes, decisions, and documentation utilized through the implementation of the Servicing Standards. The Internal Review Group may include non-employee consultants or contractors working at Servicer's direction.

10. The qualifications and performance of the Internal Review Group will be subject to ongoing review by the Monitor. Servicer will appropriately remediate the reasonable concerns of the Monitor as to the qualifications or performance of the Internal Review Group.

Work Plan

11. Servicer's compliance with the Servicing Standards shall be assessed via metrics identified and defined in Schedule E-1 hereto (as supplemented from time to time in accordance with Sections C.12 and C.23, below, the "Metrics"). The threshold error rates for the Metrics are set forth in Schedule E-1 (as supplemented from time to time in accordance with Sections C.12 and C.23, below, the "Threshold Error Rates"). The Internal Review Group shall perform test work to compute the Metrics each Quarter, and report the results of that analysis via the Compliance Reviews. The Internal Review Group shall perform test work to assess the satisfaction of the Consumer Relief Requirements within 45 days after the (A) end of each calendar year (and, in the discretion of the Servicer, any Quarter) and (B) earlier of (i) the end of the Quarter in which Servicer asserts that it has satisfied its obligations under the Consumer Relief Provisions and (ii) the Quarter during which the third anniversary of the Start Date occurs, and report that analysis via the Satisfaction Review.

12. In addition to the process provided under Sections C.23 and 24, at any time after the Monitor is selected, the Monitor may add up to three additional Metrics and associated Threshold Error Rates, all of which (a) must be similar to the Metrics and associated Threshold Error Rates contained in Schedule E-1, (b) must relate to material terms of the Servicing Standards, or the following obligations of Servicer: (i) after the Servicer asserts that it has satisfied its obligation to provide a refinancing program under the framework of the Consumer Relief Requirements ("Framework"), to provide notification to eligible borrowers indicating

that such borrowers may refinance under the refinancing program described in the Framework, (ii) to make the Refinancing Program available to all borrowers fitting the minimum eligibility criteria described in 9.a of the Framework, (iii) when the Servicer owns the second lien mortgage, to modify the second lien mortgage when a Participating Servicer (as defined in the Framework) reduces principal on the related first lien mortgage, as described in the Framework, (iv) with regard to servicer-owned first liens, to waive the deficiency amounts less than $250,000 if an Eligible Servicemember qualifies for a short sale under the Framework and sells his or her principal residence in a short sale conducted in accordance with Servicer's then customary short sale process, or (v) without prejudice to the implementation of pilot programs in particular geographic areas, to implement the Framework requirements through policies that are not intended to disfavor a specific geography within or among states that are a party to the Consent Judgment or discriminate against any protected class of borrowers (collectively, the obligations described in (i) through (v) are hereinafter referred to as the "Mandatory Relief Requirements"), (c) must either (i) be outcomes-based (but no outcome-based Metric shall be added with respect to any Mandatory Relief Requirement) or (ii) require the existence of policies and procedures implementing any of the Mandatory Relief Requirements or any material term of the Servicing Standards, in a manner similar to Metrics 5.B-E, and (d) must be distinct from, and not overlap with, any other Metric or Metrics. In consultation with Servicer and the Monitoring Committee, Schedule E-1 shall be amended by the Monitor to include the additional Metrics and Threshold Error Rates as provided for herein, and an appropriate timeline for implementation of the Metric shall be determined.

13. Servicer and the Monitor shall reach agreement on the terms of the Work Plan within 90 days of the Monitor's appointment, which time can be extended for good cause by agreement of Servicer and the Monitor. If such Work Plan is not objected to by the Monitoring Committee within 20 days, the Monitor shall proceed to implement the Work Plan. In the event that Servicer and the Monitor cannot agree on the terms of the Work Plan within 90 days or the agreed upon terms are not acceptable to the Monitoring Committee, Servicer and Monitoring Committee or the Monitor shall jointly petition the Court to resolve any disputes. If the Court does not resolve such disputes, then the Parties shall submit all remaining disputes to binding arbitration before a panel of three arbitrators. Each of Servicer and the Monitoring Committee shall appoint one arbitrator, and those two arbitrators shall appoint a third.

14. The Work Plan may be modified from time to time by agreement of the Monitor and Servicer. If such amendment to the Work Plan is not objected to by the Monitoring Committee within 20 days, the Monitor shall proceed to implement the amendment to the Work Plan. To the extent possible, the Monitor shall endeavor to apply the Servicing Standards uniformly across all Servicers.

15. The following general principles shall provide a framework for the formulation of the Work Plan:

(a) The Work Plan will set forth the testing methods and agreed procedures that will be used by the Internal Review Group to perform the test work and compute the Metrics for each Quarter.

(b) The Work Plan will set forth the testing methods and agreed procedures that will be used by Servicer to report on its compliance with the Consumer Relief Requirements of this Consent Judgment, including, incidental to any other testing, confirmation of state-identifying information used by Servicer to compile state-level Consumer Relief information as required by Section D.2.

(c) The Work Plan will set forth the testing methods and procedures that the Monitor will use to assess Servicer's reporting on its compliance with the Consumer Relief Requirements of this Consent Judgment.

(d) The Work Plan will set forth the methodology and procedures the Monitor will utilize to review the testing work performed by the Internal Review Group.

(e) The Compliance Reviews and the Satisfaction Review may include a variety of audit techniques that are based on an appropriate sampling process and random and risk-based selection criteria, as appropriate and as set forth in the Work Plan.

(f) In formulating, implementing, and amending the Work Plan, Servicer and the Monitor may consider any relevant information relating to patterns in complaints by borrowers, issues or deficiencies reported to the Monitor with respect to the Servicing Standards, and the results of prior Compliance Reviews.

(g) The Work Plan should ensure that Compliance Reviews are commensurate with the size, complexity, and risk associated with the Servicing Standard being evaluated by the Metric.

(h) Following implementation of the Work Plan, Servicer shall be required to compile each Metric beginning in the first full Quarter after the period for implementing the Servicing Standards associated with the Metric, or any extension approved by the Monitor in accordance with Section A, has run.

Monitor's Access to Information

16. So that the Monitor may determine whether Servicer is in compliance with the Servicing Standards and Mandatory Relief Requirements, Servicer shall provide the Monitor with its regularly prepared business reports analyzing Executive Office servicing complaints (or the equivalent); access to all Executive Office servicing complaints (or the equivalent) (with appropriate redactions of borrower information other than borrower name and contact information to comply with privacy requirements); and, if Servicer tracks additional servicing complaints, quarterly information identifying the three most common servicing complaints received outside of the Executive Office complaint process (or the equivalent). In the event that Servicer substantially changes its escalation standards or process for receiving Executive Office servicing complaints (or the equivalent), Servicer shall ensure that the Monitor has access to comparable information.

17. So that the Monitor may determine whether Servicer is in compliance with the Servicing Standards and Mandatory Relief Requirements, Servicer shall notify the Monitor promptly if Servicer becomes aware of reliable information indicating Servicer is engaged in a significant pattern or practice of noncompliance with a material aspect of the Servicing Standards or Mandatory Relief Requirements.

18. Servicer shall provide the Monitor with access to all work papers prepared by the Internal Review Group in connection with determining compliance with the Metrics or satisfaction of the Consumer Relief Requirements in accordance with the Work Plan.

19. If the Monitor becomes aware of facts or information that lead the Monitor to reasonably conclude that Servicer may be engaged in a pattern of noncompliance with a material term of the Servicing Standards that is reasonably likely to cause harm to borrowers or with any of the Mandatory Relief Requirements, the Monitor shall engage Servicer in a review to determine if the facts are accurate or the information is correct.

20. Where reasonably necessary in fulfilling the Monitor's responsibilities under the Work Plan to assess compliance with the Metrics or the satisfaction of the Consumer Relief Requirements, the Monitor may request information from Servicer in addition to that provided under

Sections C.16-19. Servicer shall provide the requested information in a format agreed upon between Servicer and the Monitor.

21. Where reasonably necessary in fulfilling the Monitor's responsibilities under the Work Plan to assess compliance with the Metrics or the satisfaction of the Consumer Relief Requirements, the Monitor may interview Servicer's employees and agents, provided that the interviews shall be limited to matters related to Servicer's compliance with the Metrics or the Consumer Relief Requirements, and that Servicer shall be given reasonable notice of such interviews.

Monitor's Powers

22. Where the Monitor reasonably determines that the Internal Review Group's work cannot be relied upon or that the Internal Review Group did not correctly implement the Work Plan in some material respect, the Monitor may direct that the work on the Metrics (or parts thereof) be reviewed by Professionals or a third party other than the Internal Review Group, and that supplemental work be performed as necessary.

23. If the Monitor becomes aware of facts or information that lead the Monitor to reasonably conclude that Servicer may be engaged in a pattern of noncompliance with a material term of the Servicing Standards that is reasonably likely to cause harm to borrowers or tenants residing in foreclosed properties or with any of the Mandatory Relief Requirements, the Monitor shall engage Servicer in a review to determine if the facts are accurate or the information is correct. If after that review, the Monitor reasonably concludes that such a pattern exists and is reasonably likely to cause material harm to borrowers or tenants residing in foreclosed properties, the Monitor may propose an additional Metric and associated Threshold Error Rate relating to Servicer's compliance with the associated term or requirement. Any additional Metrics and associated Threshold Error Rates (a) must be similar to the Metrics and associated Threshold Error Rates contained in Schedule E-1, (b) must relate to material terms of the Servicing Standards or one of the Mandatory Relief Requirements, (c) must either (i) be outcomes-based (but no outcome-based Metric shall be added with respect to any Mandatory Relief Requirement) or (ii) require the existence of policies and procedures required by the Servicing Standards or the Mandatory Relief Requirements, in a manner similar to Metrics 5.B-E, and (d) must be distinct from, and not overlap with, any other Metric or Metrics. Notwithstanding the foregoing, the Monitor may add a Metric that satisfies (a)-(c) but does not satisfy (d) of the preceding sentence if the Monitor first asks the Servicer to propose, and then implement, a Corrective Action Plan, as defined below, for the material

term of the Servicing Standards with which there is a pattern of noncompliance and that is reasonably likely to cause material harm to borrowers or tenants residing in foreclosed properties, and the Servicer fails to implement the Corrective Action Plan according to the timeline agreed to with the Monitor.

24. If Monitor proposes an additional Metric and associated Threshold Error Rate pursuant to Section C.23, above, Monitor, the Monitoring Committee, and Servicer shall agree on amendments to Schedule E-1 to include the additional Metrics and Threshold Error Rates provided for in Section C.23, above, and an appropriate timeline for implementation of the Metric. If Servicer does not timely agree to such additions, any associated amendments to the Work Plan, or the implementation schedule, the Monitor may petition the court for such additions.

25. Any additional Metric proposed by the Monitor pursuant to the processes in Sections C.12, C.23, or C.24 and relating to provision VIII.B.1 of the Servicing Standards shall be limited to Servicer's performance of its obligations to comply with (1) the federal Protecting Tenants at Foreclosure Act and state laws that provide comparable protections to tenants of foreclosed properties; (2) state laws that govern relocation assistance payments to tenants ("cash for keys"); and (3) state laws that govern the return of security deposits to tenants.

D. Reporting

Quarterly Reports

1. Following the end of each Quarter, Servicer will report the results of its Compliance Reviews for that Quarter (the "Quarterly Report"). The Quarterly Report shall include: (i) the Metrics for that Quarter; (ii) Servicer's progress toward meeting its payment obligations under this Consent Judgment; (iii) general statistical data on Servicer's overall servicing performance described in Schedule Y. Except where an extension is granted by the Monitor, Quarterly Reports shall be due no later than 45 days following the end of the Quarter and shall be provided to: (1) the Monitor, and (2) the Board of Servicer or a committee of the Board designated by Servicer. The first Quarterly Report shall cover the first full Quarter after this Consent Judgment is entered.

2. Following the end of each Quarter, Servicer will transmit to each state a report (the "State Report") including general statistical data on Servicer's servicing performance, such as aggregate and state-specific information regarding the number of borrowers assisted and credited activities conducted pursuant to the Consumer Relief Requirements, as described in Schedule Y. The State Report will be delivered simultaneous with the

submission of the Quarterly Report to the Monitor. Servicer shall provide copies of such State Reports to the Monitor and Monitoring Committee.

Monitor Reports

3. The Monitor shall report on Servicer's compliance with this Consent Judgment in periodic reports setting forth his or her findings (the "Monitor Reports"). The first three Monitor Reports will each cover two Quarterly Reports. If the first three Monitor Reports do not find Potential Violations (as defined in Section E.1, below), each successive Monitor Report will cover four Quarterly Reports, unless and until a Quarterly Report reveals a Potential Violation (as defined in Section E.1, below). In the case of a Potential Violation, the Monitor may (but retains the discretion not to) submit a Monitor Report after the filing of each of the next two Quarterly Reports, provided, however, that such additional Monitor Report(s) shall be limited in scope to the Metric or Metrics as to which a Potential Violation has occurred.

4. Prior to issuing any Monitor Report, the Monitor shall confer with Servicer and the Monitoring Committee regarding its preliminary findings and the reasons for those findings. Servicer shall have the right to submit written comments to the Monitor, which shall be appended to the final version of the Monitor Report. Final versions of each Monitor Report shall be provided simultaneously to the Monitoring Committee and Servicers within a reasonable time after conferring regarding the Monitor's findings. The Monitor Reports shall be filed with the Court overseeing this Consent Judgment and shall also be provided to the Board of Servicer or a committee of the Board designated by Servicer.

5. The Monitor Report shall: (i) describe the work performed by the Monitor and any findings made by the Monitor's during the relevant period, (ii) list the Metrics and Threshold Error Rates, (iii) list the Metrics, if any, where the Threshold Error Rates have been exceeded, (iv) state whether a Potential Violation has occurred and explain the nature of the Potential Violation, and (v) state whether any Potential Violation has been cured. In addition, following each Satisfaction Review, the Monitor Report shall report on the Servicer's satisfaction of the Consumer Relief Requirements, including regarding the number of borrowers assisted and credited activities conducted pursuant to the Consumer Relief Requirements, and identify any material inaccuracies identified in prior State Reports. Except as otherwise provided herein, the Monitor Report may be used in any court hearing, trial, or other proceeding brought pursuant to this Consent Judgment pursuant to Section J, below, and shall be admissible in evidence in a proceeding brought under this Consent Judgment pursuant to Section J, below. Such admissibility shall not prejudice Servicer's right

and ability to challenge the findings and/or the statements in the Monitor Report as flawed, lacking in probative value or otherwise. The Monitor Report with respect to a particular Potential Violation shall not be admissible or used for any purpose if Servicer cures the Potential Violation pursuant to Section E, below.

Satisfaction of Payment Obligations

6. Upon the satisfaction of any category of payment obligation under this Consent Judgment, Servicer, at its discretion, may request that the Monitor certify that Servicer has discharged such obligation. Provided that the Monitor is satisfied that Servicer has met the obligation, the Monitor may not withhold and must provide the requested certification. Any subsequent Monitor Report shall not include a review of Servicer's compliance with that category of payment obligation.

Compensation

7. Within 120 days of entry of this Consent Judgment, the Monitor shall, in consultation with the Monitoring Committee and Servicer, prepare and present to Monitoring Committee and Servicer an annual budget providing its reasonable best estimate of all fees and expenses of the Monitor to be incurred during the first year of the term of this Consent Judgment, including the fees and expenses of Professionals and support staff (the "Monitoring Budget"). On a yearly basis thereafter, the Monitor shall prepare an updated Monitoring Budget providing its reasonable best estimate of all fees and expenses to be incurred during that year. Absent an objection within 20 days, a Monitoring Budget or updated Monitoring Budget shall be implemented. Consistent with the Monitoring Budget, Servicer shall pay all fees and expenses of the Monitor, including the fees and expenses of Professionals and support staff. The fees, expenses, and costs of the Monitor, Professionals, and support staff shall be reasonable. Servicer may apply to the Court to reduce or disallow fees, expenses, or costs that are unreasonable.

E. Potential Violations and Right to Cure

1. A "Potential Violation" of this Consent Judgment occurs if the Servicer has exceeded the Threshold Error Rate set for a Metric in a given Quarter. In the event of a Potential Violation, Servicer shall meet and confer with the Monitoring Committee within 15 days of the Quarterly Report or Monitor Report indicating such Potential Violation.

2. Servicer shall have a right to cure any Potential Violation.

3. Subject to Section E.4, a Potential Violation is cured if (a) a corrective action plan approved by the Monitor (the "Corrective Action Plan") is determined by the Monitor to have been satisfactorily completed in

accordance with the terms thereof; and (b) a Quarterly Report covering the Cure Period reflects that the Threshold Error Rate has not been exceeded with respect to the same Metric and the Monitor confirms the accuracy of said report using his or her ordinary testing procedures. The Cure Period shall be the first full quarter after completion of the Corrective Action Plan or, if the completion of the Corrective Action Plan occurs within the first month of a Quarter and if the Monitor determines that there is sufficient time remaining, the period between completion of the Corrective Action Plan and the end of that Quarter.

4. If after Servicer cures a Potential Violation pursuant to the previous section, another violation occurs with respect to the same Metric, then the second Potential Violation shall immediately constitute an uncured violation for purposes of Section J.3, provided, however, that such second Potential Violation occurs in either the Cure Period or the quarter immediately following the Cure Period.

5. In addition to the Servicer's obligation to cure a Potential Violation through the Corrective Action Plan, Servicer must remediate any material harm to particular borrowers identified through work conducted under the Work Plan. In the event that a Servicer has a Potential Violation that so far exceeds the Threshold Error Rate for a metric that the Monitor concludes that the error is widespread, Servicer shall, under the supervision of the Monitor, identify other borrowers who may have been harmed by such noncompliance and remediate all such harms to the extent that the harm has not been otherwise remediated.

6. In the event a Potential Violation is cured as provided in Sections E.3, above, then no Party shall have any remedy under this Consent Judgment (other than the remedies in Section E.5) with respect to such Potential Violation.

F. Confidentiality

1. These provisions shall govern the use and disclosure of any and all information designated as "CONFIDENTIAL," as set forth below, in documents (including email), magnetic media, or other tangible things provided by the Servicer to the Monitor in this case, including the subsequent disclosure by the Monitor to the Monitoring Committee of such information. In addition, it shall also govern the use and disclosure of such information when and if provided to the participating state parties or the participating agency or department of the United States whose claims are released through this settlement ("participating state or federal agency whose claims are released through this settlement").

2. The Monitor may, at his discretion, provide to the Monitoring Committee or to a participating state or federal agency whose claims are released through this settlement any documents or information received from the Servicer related to a Potential Violation or related to the review described in Section C.19; provided, however, that any such documents or information so provided shall be subject to the terms and conditions of these provisions. Nothing herein shall be construed to prevent the Monitor from providing documents received from the Servicer and not designated as "CONFIDENTIAL" to a participating state or federal agency whose claims are released through this settlement.

3. The Servicer shall designate as "CONFIDENTIAL" that information, document or portion of a document or other tangible thing provided by the Servicer to the Monitor, the Monitoring Committee or to any other participating state or federal agency whose claims are released through this settlement that Servicer believes contains a trade secret or confidential research, development, or commercial information subject to protection under applicable state or federal laws (collectively, "Confidential Information"). These provisions shall apply to the treatment of Confidential Information so designated.

4. Except as provided by these provisions, all information designated as "CONFIDENTIAL" shall not be shown, disclosed or distributed to any person or entity other than those authorized by these provisions. Participating states and federal agencies whose claims are released through this settlement agree to protect Confidential Information to the extent permitted by law.

5. This agreement shall not prevent or in any way limit the ability of a participating state or federal agency whose claims are released through this settlement to comply with any subpoena, Congressional demand for documents or information, court order, request under the Right of Financial Privacy Act, or a state or federal public records or state or federal freedom of information act request; provided, however, that in the event that a participating state or federal agency whose claims are released through this settlement receives such a subpoena, Congressional demand, court order or other request for the production of any Confidential Information covered by this Order, the state or federal agency shall, unless prohibited under applicable law or the unless the state or federal agency would violate or be in contempt of the subpoena, Congressional demand, or court order, (1) notify the Servicer of such request as soon as practicable and in no event more than ten (10) calendar days of its receipt or three calendar days before the return date of the request, whichever is sooner, and (2) allow the Servicer ten (10) calendar days from the receipt of the notice to obtain a protective order or stay of production for the

documents or information sought, or to otherwise resolve the issue, before the state or federal agency discloses such documents or information. In all cases covered by this Section, the state or federal agency shall inform the requesting party that the documents or information sought were produced subject to the terms of these provisions.

G. Dispute Resolution Procedures. Servicer, the Monitor, and the Monitoring Committee will engage in good faith efforts to reach agreement on the proper resolution of any dispute concerning any issue arising under this Consent Judgment, including any dispute or disagreement related to the withholding of consent, the exercise of discretion, or the denial of any application. Subject to Section J, below, in the event that a dispute cannot be resolved, Servicer, the Monitor, or the Monitoring Committee may petition the Court for resolution of the dispute. Where a provision of this agreement requires agreement, consent of, or approval of any application or action by a Party or the Monitor, such agreement, consent or approval shall not be unreasonably withheld.

H. Consumer Complaints. Nothing in this Consent Judgment shall be deemed to interfere with existing consumer complaint resolution processes, and the Parties are free to bring consumer complaints to the attention of Servicer for resolution outside the monitoring process. In addition, Servicer will continue to respond in good faith to individual consumer complaints provided to it by State Attorneys General or State Financial Regulators in accordance with the routine and practice existing prior to the entry of this Consent Judgment, whether or not such complaints relate to Covered Conduct released herein.

I. Relationship to Other Enforcement Actions. Nothing in this Consent Judgment shall affect requirements imposed on the Servicer pursuant to Consent Orders issued by the appropriate Federal Banking Agency (FBA), as defined in 12 U.S.C. § 1813(q), against the Servicer. In conducting their activities under this Consent Judgment, the Monitor and Monitoring Committee shall not impede or otherwise interfere with the Servicer's compliance with the requirements imposed pursuant to such Orders or with oversight and enforcement of such compliance by the FBA.

J. Enforcement

1. **Consent Judgment.** This Consent Judgment shall be filed in the U.S. District Court for the District of Columbia (the "Court") and shall be enforceable therein. Servicer and the Releasing Parties shall waive their rights to seek judicial review or otherwise challenge or contest in any court the validity or effectiveness of this Consent Judgment. Servicer and the Releasing Parties agree not to contest any jurisdictional facts, including the Court's authority to enter this Consent Judgment.

2. **Enforcing Authorities.** Servicer's obligations under this Consent Judgment shall be enforceable solely in the U.S. District Court for the

District of Columbia. An enforcement action under this Consent Judgment may be brought by any Party to this Consent Judgment or the Monitoring Committee. Monitor Report(s) and Quarterly Report(s) shall not be admissible into evidence by a Party to this Consent Judgment except in an action in the Court to enforce this Consent Judgment. In addition, unless immediate action is necessary in order to prevent irreparable and immediate harm, prior to commencing any enforcement action, a Party must provide notice to the Monitoring Committee of its intent to bring an action to enforce this Consent Judgment. The members of the Monitoring Committee shall have no more than 21 days to determine whether to bring an enforcement action. If the members of the Monitoring Committee decline to bring an enforcement action, the Party must wait 21 additional days after such a determination by the members of the Monitoring Committee before commencing an enforcement action.

3. **Enforcement Action.** In the event of an action to enforce the obligations of Servicer and to seek remedies for an uncured Potential Violation for which Servicer's time to cure has expired, the sole relief available in such an action will be:

(a) Equitable Relief. An order directing non-monetary equitable relief, including injunctive relief, directing specific performance under the terms of this Consent Judgment, or other non-monetary corrective action.

(b) Civil Penalties. The Court may award as civil penalties an amount not more than $1 million per uncured Potential Violation; or, in the event of a second uncured Potential Violation of Metrics 1.a, 1.b, or 2.a (*i.e.*, a Servicer fails the specific Metric in a Quarter, then fails to cure that Potential Violation, and then in subsequent Quarters, fails the same Metric again in a Quarter and fails to cure that Potential Violation again in a subsequent Quarter), where the final uncured Potential Violation involves widespread noncompliance with that Metric, the Court may award as civil penalties an amount not more than $5 million for the second uncured Potential Violation.

Nothing in this Section shall limit the availability of remedial compensation to harmed borrowers as provided in Section E.5.

(c) Any penalty or payment owed by Servicer pursuant to the Consent Judgment shall be paid to the clerk of the Court or as otherwise agreed by the Monitor and the Servicer and distributed by the Monitor as follows:

1. In the event of a penalty based on a violation of a term of the Servicing Standards that is not specifically related to conduct in bankruptcy, the penalty shall be allocated, first, to cover the costs incurred by any state or states in prosecuting the violation, and second, among the participating states according to the same allocation as the State Payment Settlement Amount.

2. In the event of a penalty based on a violation of a term of the Servicing Standards that is specifically related to conduct in bankruptcy, the penalty shall be allocated to the United States or as otherwise directed by the Director of the United States Trustee Program.

3. In the event of a payment due under Paragraph 10.d of the Consumer Relief requirements, 50% of the payment shall be allocated to the United States, and 50% shall be allocated to the State Parties to the Consent Judgment, divided among them in a manner consistent with the allocation in Exhibit B of the Consent Judgment.

K. **Sunset.** This Consent Judgment and all Exhibits shall retain full force and effect for three and one-half years from the date it is entered (the "Term"), unless otherwise specified in the Exhibit. Servicer shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term, and shall cooperate with the Monitor's review of said report, which shall be concluded no later than six months following the end of the Term, after which time Servicer shall have no further obligations under this Consent Judgment.

EXHIBIT F

any pending adversary proceedings, contested matters, appeals, and other actions filed by the United States Trustee against any other party wherein the COMPANY, its affiliates, or employees and officers of the COMPANY or its affiliates, is a party or otherwise involved; or (3) a waiver of, or restriction or prohibition on, the United States Trustees' ability, to the extent permitted by law, informally or formally, in individual bankruptcy cases, to seek a cure of material inaccuracies in the COMPANY's or its affiliates' mortgage-related claims filed in a bankruptcy case and based on the Covered Bankruptcy Conduct, but not to impose monetary sanctions or other punitive relief against the COMPANY or its affiliates in addition to such cure; provided, however, that this provision shall not constitute a waiver of, or restriction or prohibition on, the COMPANY's or its affiliates' ability to dispute whether the United States Trustees have authority or ability to seek such a cure.

(10) For the purposes of this Release, the term "affiliated entity" shall mean entities that are directly or indirectly controlled by, or control, or are under common control with, the COMPANY as of or prior to 11:59 p.m., Eastern Standard Time, on February 8, 2012. The term "control" with respect to an entity means the beneficial ownership (as defined in Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended) of 50 percent or more of the voting interest in such entity.

(11) Notwithstanding any other term of this Release, the following claims of the United States are specifically reserved and are not released:

(a) Any liability arising under Title 26, United States Code (Internal Revenue Code);

(b) Any liability of individuals (including current or former directors, officers, and employees of the COMPANY or any affiliated entity) who have received or receive in the future notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual); have been or are indicted or charged; or have entered or in the future enter into a plea agreement, based on the Covered Servicing Conduct, the Covered Origination Conduct, and the Covered Bankruptcy Conduct (collectively, the "Covered Conduct");

(c) Any criminal liability;

(d) Any liability to the United States for any conduct other than the Covered Conduct, or any liability for any Covered Conduct that is not expressly released herein;

(e) Any and all claims whether legal or equitable, in connection with investors or purchasers in or of securities or based on the sale, transfer or assignment of any interest in a loan, mortgage, or security to, into, or for the benefit of a mortgage-backed security, trust, special purpose entity, financial institution, investor, or other entity, including but not limited to in the context of a mortgage securitization or whole loan sale to such entities ("Securitization/Investment Claims"). Securitization/Investment Claims include, but are not limited to, claims based on the following, all in connection with investors or purchasers in or of securities or in connection with a sale, transfer, or assignment of any interest in loan, mortgage or security to, into, or for the benefit of a mortgage-backed security, trust, special purpose entity, financial institution, investor, or other entity:

(i) The United States' capacity as an owner, purchaser, or holder of whole loans, securities, derivatives, or other similar investments, including without limitation, mortgage backed securities, collateralized debt obligations, or structured investment vehicles.

(ii) The creation, formation, solicitation, marketing, assignment, transfer, valuation, appraisal, underwriting, offer, sale, substitution, of or issuance of any interest in such whole loans, mortgages, securities, derivatives, or other similar investments.

(iii) Claims that the COMPANY or an affiliated entity made false or misleading statements or omissions, or engaged in other misconduct in connection with the sale, transfer or assignment of any interest in a loan, mortgage, or security or in connection with investors or purchasers in or of such loans, mortgages, or securities, including but not limited to conduct that affected a federally insured financial institution or violated a legal duty to a mortgage-backed security, trust, special purpose entity, financial institution, or investor (including the United States), or governmental agency and/or that subjects the COMPANY or an affiliated entity to a civil penalty or other remedy under 12 U.S.C. § 1833a.

(iv) Representations, warranties, certifications, statements, or claims made regarding such whole loans, securities, derivatives or other similar

investments, including representations, warranties, certifications or claims regarding the eligibility, characteristics, or quality of mortgages or mortgagors;

(v) Activities related to the executing, notarizing, transferring or recording of mortgages; the endorsement or transfer of a loan; and the obtaining, executing, notarizing, transferring or recording of assignments;

(vi) Obtaining, securing, updating, transferring, or providing promissory notes or endorsements of promissory notes through allonges or otherwise;

(vii) Custodial and trustee functions;

(viii) Intentional or fraudulent failure to pay investors sums owed with respect to any security, derivatives, or similar investment;

(ix) Contractual covenants, agreements, obligations and legal duties to a mortgage-backed security, trust, special purpose entity, financial institution, investor, or other entity (including the United States);

(x) Covered Origination Conduct (except to the extent such conduct is released in Paragraphs 3.b, 4 or 5); and

(xi) Covered Servicing Conduct to the extent the COMPANY or any affiliated entity engaged in the Covered Servicing Conduct in question not in its capacity as servicer, subservicer or master servicer, but in its capacity as the

originator of a mortgage loan or as seller, depositor, guarantor, sponsor, securitization trustee, securities underwriter, document custodian or any other capacity.

The exclusion set forth above in this Paragraph shall not apply to Securitization/Investment Claims based on the following conduct, and such claims are included in what is being released:

Securitization/Investment Claims based on Covered Servicing Conduct by the COMPANY or any current or former affiliated entity where: (1) such conduct was performed by the COMPANY or any affiliated entity in its capacity as the loan servicer, master servicer or subservicer, whether conducted for its own account or pursuant to a third party servicing agreement or similar agreement, and not in its capacity as loan originator, seller, depositor, guarantor, sponsor, securitization trustee, securities underwriter, or any other capacity; and (2) such conduct was not in connection with (x) the creation, formation, solicitation, marketing, sale, assignment, transfer, offer, sale, substitution, underwriting, or issuance of any interest in securities, derivatives or other similar investments or (y) the sale or transfer of mortgage loans. The claims addressed in this sub-paragraph include, without limitation, Securitization and Investment Claims that the party seeking to enforce a mortgage loan against a borrower and homeowner in respect of that borrower's default did not have a documented enforceable interest in the promissory note and mortgage or deed of trust under applicable state law or is otherwise not a proper party to the foreclosure or bankruptcy action or claims

based on such party's attempts to obtain such a documented enforceable interest or become such a proper party.

(f) Any liability arising under Section 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, relating to private mortgage insurance, with respect to claims brought by the CFPB;

(g) Except with respect to claims related to the delivery of initial or annual privacy notices, requirements with respect to the communication of non-public personal information to non-affiliated third parties, or other conduct required by Sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6802-6809), any claims or conduct involving the obligation of a financial institution under Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. s. 6801(b)) and its implementing regulations to maintain administrative, technical, and physical information security safeguards;

(h) Any liability arising under the Fair Housing Act; any provision of the Equal Credit Opportunity Act that is not expressly released in Paragraph 2 of this Release, including any provision prohibiting discriminatory conduct; the Home Mortgage Disclosure Act; or any other statute or law that prohibits discrimination of persons based on race, color, national origin, gender, disability, or any other protected status;

(i) Administrative claims, proceedings, or actions brought by HUD against any current or former director, officer, or employee for suspension, debarment or exclusion from any HUD program;

(j) Any liability arising under the federal environmental laws;

(k) Any liability to or claims brought by (i) the Federal Housing Finance Agency; (ii) any Government Sponsored Enterprise, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (except where the Government Sponsored Enterprise seeks to impose such liability or pursue such claims in its capacity as an administrator of the Making Home Affordable Program of Treasury); (iii) the Federal Deposit Insurance Corporation (whether in its capacity as a Corporation, Receiver, or Conservator); (iv) the Government National Mortgage Association ("Ginnie Mae") arising out of COMPANY's contractual obligations related to serving as Master Subservicer on defaulted Ginnie Mae portfolios, including claims for breach of such obligations; (v) the CFPB with respect to claims within its authority as of the designated transfer date of July 21, 2011 that are not expressly released in Paragraph 7; (vi) the National Credit Union Administration, whether in its capacity as a Federal agency, Liquidating Agent, or Conservator; (vii) the Securities and Exchange Commission; (viii) the Federal Reserve Board and its member institutions; (ix) Maiden Lane LLC, Maiden Lane II LLC, Maiden Lane III LLC, entities that are consolidated for accounting purposes on the financial statements of the Federal Reserve Bank of New York, and the Federal Reserve Bank of New York; (x) the Office of the Comptroller of the Currency; (xi) the USDA (except to the extent claims are released in Paragraph 5); (xii) the VA (except to the extent claims are released in Paragraph 4); (xiii) the Commodity Futures Trading Commission; and (xvi) the Inspectors General of such entities;

(l) Any liability to the United States for the following claims alleged against J.P. Morgan Chase & Company or any of its current or former subsidiaries, affiliates, officers, directors, employees or agents, including but not limited to Chase Home Finance, LLC, EMC Mortgage, and JPMorgan Chase Bank, National Association, or any other entity or person:

(i) All claims or allegations based on any conduct alleged in United States ex rel. [Under Seal] v. [Under Seal], 2:11-cv-00535-RLH-RJJ (D. Nev.); and

(ii) All claims or allegations based on any conduct alleged in United States ex rel. Szymoniak v. [Under Seal], Civ. No. 0:10-cv-01465 (D.S.C.) or in United States ex rel. Szymoniak v. [Under Seal], Civ. No. 3:10-cv-575 (W.D.N.C.), except any such claims that are encompassed by the releases described in paragraphs 2 to 9, above, and not otherwise reserved from these releases in this agreement.

(m) Any action that may be taken by the appropriate Federal Banking Agency (FBA), as defined in 12 U.S.C. § 1813(q), against COMPANY, any of its affiliated entities, and/or any institution-affiliated party of COMPANY, as defined in 12 U.S.C. § 1813(u), pursuant to 12 U.S.C. § 1818, and any action by the FBA to enforce the Consent Order issued against the COMPANY by the FBA on April 13, 2011;

(n) Any liability based upon obligations created by this Consent Judgment;