

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION NO. 20-1301H

In re Bayview Loan Servicing, LLC

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2020 JUN 22 PM 1:30  
MICHAEL JOSHI HEARD  
CLERK / MAGISTRATE

ASSURANCE OF DISCONTINUANCE  
PURSUANT TO M.G.L. CHAPTER 93A, § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts ("Commonwealth"), through the Office of Attorney General Maura Healey ("AGO"), and Bayview Loan Servicing, LLC ("BLS") enter into this Assurance of Discontinuance ("Assurance") pursuant to M.G.L. c. 93A, § 5.

2. Pursuant to M.G.L. c. 93A, § 6, the AGO investigated BLS's compliance with M.G.L. c. 93A, § 2 in the conduct of its business of servicing mortgage loans secured by homes in Massachusetts and its debt collection practices related thereto.

3. As a result of its investigation, the AGO alleges that BLS violated M.G.L. c. 93A, § 2 and two Massachusetts debt collection regulations promulgated thereunder, specifically 940 CMR 7.04 and 940 CMR 7.08, by making excessive debt collection calls to debtors as well as by failing to provide to all debtors notice of the right to validation of debt within five (5) days of BLS's first communication with the debtor regarding the debt.

4. In resolution of the allegations described in this Assurance, and in recognition of BLS's cooperation and assistance throughout this investigation, the AGO accepts this Assurance on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A, § 5. BLS voluntarily enters into this Assurance, which is made

without any trial or adjudication, or findings of any issue of fact or law, and is not a final order of any court.

5. BLS enters into this Assurance for settlement purposes only and neither admits nor denies the AGO's allegations.

6. This Assurance is solely for the benefit of the parties to this Assurance and may not be used or relied upon by third parties.

## II. DEFINITIONS

7. "Communication" or "Communicating" means conveying information directly or indirectly to any person through any medium excluding non-identifying Communications. "Communication" shall include speaking with the debtor, leaving a voicemail message for the debtor, or any Communication attempt where a creditor has the opportunity to leave a voicemail message for the debtor.

8. "Covered Conduct" shall mean BLS's alleged violations of the Massachusetts Debt Collection Regulations as codified at 940 CMR 7.00, *et seq.*, including, without limitation, 940 CMR 7.04 and 940 CMR 7.08.

9. "Creditor" has the meaning set forth in 940 CMR 7.03.

10. "Debt" has the meaning set forth in 940 CMR 7.03

11. "Debt Validation Notice" shall mean the written Communication the Creditor is required to provide to Debtors under 940 CMR 7.08.

12. "Debtor" shall have the meaning set forth in 940 CMR 7.03.

## III. STATEMENT OF ALLEGATIONS

13. BLS is a servicer of residential mortgage loans in Massachusetts and throughout the country. BLS is responsible for all aspects of residential mortgage servicing, including

creating and sending monthly statements, collecting and processing payments, processing property tax payments, communicating with Debtors about the status of their accounts and responding to Debtor inquiries, educating customers about, and assisting customers with, loss mitigation and home retention options, and, in some cases, initiating foreclosure proceedings.

14. The AGO alleges that BLS qualifies as a “Creditor,” as that term is defined by 940 CMR 7.03.

**A. Debt Collection Calls**

15. The AGO alleges that BLS violated 940 CMR 7.04(f), which provides that Creditors may not initiate more than two Communications in a seven-day period to either the Debtor’s residence, cellular telephone, or other telephone number provided by the Debtor as his or her personal telephone number.

16. The AGO also alleges that, on additional occasions, BLS violated 940 CMR 7.04(f) by initiating more than two Communications to Debtors at other phone numbers within a 30-day period.

17. BLS employed both customer service personnel and an automated dialer to initiate Communications with Debtors regarding their Debt. The AGO alleges that BLS’s automated dialer failed to properly limit the number of calls placed to Debtors in Massachusetts to two calls in a 7-day period. The automated dialer failed to count as a Communication automated calls BLS initiated after which no one answered the call and BLS did not leave a voice message.

18. The AGO alleges that, on a few thousand occasions, BLS violated 940 CMR 7.04(f) by initiating more than two Communications to Debtors at their residence and/or personal telephone numbers within a seven-day period.

19. In some instances, the AGO alleges that BLS called Debtors multiple times and at multiple phone numbers per day on multiple days in a seven-day period.

20. The AGO alleges that BLS's call frequency harassed Debtors, violated 940 CMR 7.04(f) and constituted unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2.

21. The AGO recognizes that, on or about April 2016, BLS temporarily stopped using its automated dialer to call Massachusetts borrowers until it was able to implement enhanced dialer controls to correct the problem with the automated dialer.

**B. Debt Validation Notice**

22. The AGO also alleges that BLS violated 940 CMR 7.08(1), which requires that Creditors provide to Debtors within five (5) business days after the initial Communication made in connection with the collection of a Debt, notice of:

- a. The amount of the Debt;
- b. The name of the Creditor to whom the Debt is owed;
- c. A statement that unless the Debtor, within 30 days after receipt of the notice, disputes the validity of the Debt, or any portion thereof, the Debt will be assumed to be valid by the Creditor; and
- d. A statement that if the Debtor notifies the Creditor in writing within 30 days after receipt of this notice that the Debt, or any portion thereof is disputed, the Creditor will obtain verification of the Debt and provide the Debtor, or an attorney for the Debtor, additional materials described in 940 CMR 7.08(2).

23. The AGO alleges that BLS failed to provide, to more than 700 Debtors in Massachusetts, notice of the Debtor's right to seek validation of their alleged Debts under 940 CMR 7.08(1) within five (5) days of BLS' initial Communication to the Debtor. More

specifically, while it was BLS's policy to provide all borrowers whose loans boarded 30 or more days past due, and who were not in active bankruptcy at the time of the transfer, with a Debt Validation Notice, BLS failed to send Debt Validation Notices to borrowers that boarded current and then became thirty (30) or more days past due.

24. The AGO recognizes that in or around September 2019, at the AGO's request, BLS implemented changes to their Debt Validation Notice policies and practices to come into compliance with Massachusetts law.

#### **IV. ASSURANCES AND UNDERTAKINGS**

##### **A. Debt Collection Calls**

25. BLS shall continue to take all necessary actions to comply with 940 CMR 7.04(f), including the following:

- a. BLS shall initiate no more than two Communications to a Debtor in a seven-day period for any Debt. Communications for the purposes of this paragraph shall include phone calls or text messages to a Debtor's home telephone number, cellular phone number or any other telephone numbers provided by the Debtor as his or her personal telephone number. Communications shall also include telephone calls, whether initiated by a natural person or an automated system, in which BLS has the option but chooses not to leave a voicemail.
- b. BLS shall initiate no more than two Communications in any 30-day period for any Debt to a telephone number other than a telephone number corresponding to a Debtor's residence, cellular telephone, or other telephone number provided by the Debtor as his or her personal telephone number. Communications, whether initiated by a natural person or an automated system, in which BLS has the option

but chooses not to leave a voicemail shall be considered a Communication for the purposes of this paragraph.

26. Where a Debtor requests that BLS initiate a call to the Debtor or make any other Communication attempt, such a request shall be contemporaneously documented by BLS in its system of record, and nothing in this Assurance shall be interpreted so as to prevent BLS from initiating the requested Communication. For example, this exception includes situations where the Debtor is applying for a loan modification or other loss mitigation assistance and where the Debtor consents to additional phone calls solely to assist in completing an application or for any other loss mitigation purpose (i.e. gathering sufficient documents to complete an application package).

**B. Debt Validation Notices**

27. BLS shall continue to take all actions necessary to comply with 940 CMR 7.08(1).

28. BLS represents that prior to entering into this Assurance, BLS modified its internal policy surrounding Debt Validation Notices to comply with 940 CMR 7.08(1). BLS conducted a review of all mortgage accounts for Massachusetts borrowers it serviced to address those loans that previously boarded current and then subsequently fell delinquent. BLS then issued Debt Validation Notices to any Debtor whose Debt it still serviced (provided they were not then current or otherwise affected by bankruptcy), who had not received a Debt Validation Notice but whose payment was 30 days past due and owing, refrained from making any further attempt to collect from that Debtor until 30 days after it issued a Debt Validation Notice, and for any Debtor who requested validation as provided in 940 CMR 7.08(2), BLS refrained from

making any further attempt to collect from the Debtor until BLS validated the Debt in accordance with 940 CMR 7.08.

29. If the payment owed by any borrower whose mortgage is serviced by BLS becomes 30 days past due after the date of this Assurance, and for any account that BLS acquires after the date of this Assurance where the Debtor's payment is 30 days past due and owing, BLS shall provide a Debt Validation Notice within five (5) business days after BLS's first Communication with the Debtor regarding the Debt. For any account already 30 days past due that BLS later identifies as having not received a Debt Validation Notice from BLS within five (5) business days after BLS's first Communication with the Debtor regarding the Debt, BLS shall refrain from making any further attempt to collect from that Debtor until 30 days after it issues a Debt Validation Notice. For any Debtor who requests validation as provided in 940 CMR 7.08(2), BLS shall refrain from making any further attempt to collect from the Debtor until BLS validates the Debt in accordance with 940 CMR 7.08.

#### V. MONETARY PAYMENT

30. BLS shall, within five (5) business days of execution of this Assurance forward payment of \$565,000 to the Commonwealth of Massachusetts. This payment shall be distributed by the Attorney General in her sole discretion, as long as permitted by law to (a) the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G and/or (b) the General Fund of the Commonwealth of Massachusetts; and/or (c) for programs or initiatives designed to address the negative effects of unfair or deceptive practices related to foreclosure, debt collection or consumer financial products in Massachusetts.

31. Unless otherwise directed by the AGO, this payment shall be made by wire transfer or certified check, made payable to the "Commonwealth of Massachusetts," and shall be

delivered to Kimberly McDonald, Assistant Attorney General, Consumer Protection Division, Office of the MA Attorney General, One Ashburton Place, 18th FL, Boston, MA 02108.

## VI. REPORTING AND COOPERATION

32. BLS shall fully cooperate with the AGO in the implementation of this Assurance and any related AGO monitoring, reviews or compliance undertaken by the AGO.

33. For two years following the date of execution of this Assurance, BLS will provide an annual report (for a total of two such reports under this Assurance), which shall include:

- a. monthly automated quality assurance reports from its Noble internal rules engine (fetch filter) that reviews its Massachusetts loan population and all system call attempts subject to specified reporting criteria, similar in format to those previously provided to the AGO, evidencing whether the frequency of automated calls complies with 940 CMR 7.04(f);
- b. a list of all written notices, written reports, and/or written complaints it receives from Massachusetts consumers or from BLS employees complaining of conduct in violation of the terms of this Assurance, and the Massachusetts Debt collection regulations, 940 CMR 7.00 *et. seq*, which records BLS shall retain for a period of four years from receipt; and
- c. the name, telephone number and address of the Debtors to whom BLS issued Debt Validation Notices, whether the Debtor requested validation of his or her Debt, the date BLS validated the Debt, if applicable, and the status of the account.

34. BLS shall comply with all Massachusetts debt collection regulations and the terms of this Assurance.



## VII. RELEASE

35. The Attorney General fully and finally releases Bayview Loan Servicing, LLC and its parent corporations, affiliates, subsidiaries, successors, and assigns, and their officers, agents, servants, employees, attorneys, and shareholders, from any and all civil liability arising out of the Covered Conduct, as defined in paragraph 8, occurring prior to the execution of this Assurance. BLS acknowledges that this release does not cover criminal conduct.

## VIII. GENERAL PROVISIONS

36. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and the Suffolk Superior Court of the Commonwealth shall retain jurisdiction over this Assurance.

37. This Assurance constitutes the entire agreement between the AGO and BLS and supersedes any prior Communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Assurance.

38. This Assurance can be amended or supplemented only by a written document signed by all parties or by court order, including injunctive relief. Amendments or supplements may be executed in separate counterparts, with signatures conveyed by mail or by facsimile, electronic mail, or other electronic means.

39. This Assurance does not supersede or alter BLS's obligation otherwise to comply with applicable law.

40. This Assurance does not resolve, settle, release or otherwise affect any actual or potential claims against BLS by any parties, other than the Commonwealth and its subdivisions.

41. BLS waives all rights to appeal or otherwise challenge or contest the validity of this Assurance.

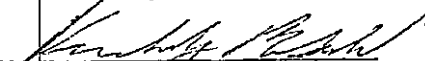
42. This Assurance may be signed in multiple counterparts, each of which shall be considered an original and all of which, when considered together, shall constitute a whole. This Assurance shall be effective upon its execution by all parties hereto and shall thereafter be filed by the AGO in the Superior Court for Suffolk County, Commonwealth of Massachusetts.

43. The signatories for BLS represent and warrant that they have the full legal power, capacity, and authority to bind the parties for which they are executing this Assurance.


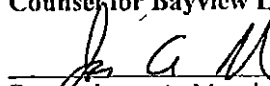
44. BLS acknowledges that it was represented by counsel in this matter and had the opportunity to read and consult with counsel regarding all of the terms of this Assurance.

45. By signing below, BLS agrees to comply with all of the terms of this Assurance.

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DATED: June 16, 2020