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19 *and All Others Similarly Situated*

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 TIMOTHY L. STRADER SR., individually  
23 and on behalf of all others similarly situated,

24 Plaintiffs,

25 v.

26 PHH CORPORATION, a Maryland  
27 corporation;

28 REALOGY HOLDINGS CORP., a Delaware

Case No. 8:15-CV-1973

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

corporation;  
 PHH MORTGAGE CORPORATION, a New  
 Jersey corporation;  
 PHH HOME LOANS LLC, a Delaware  
 limited liability company;  
 RMR FINANCIAL, LLC, a California limited  
 liability company;  
 NE MOVES MORTGAGE LLC, a  
 Massachusetts limited liability company;  
 PHH BROKER PARTNER CORPORATION,  
 a Maryland corporation;  
 REALOGY GROUP LLC, a Delaware limited  
 liability company;  
 REALOGY INTERMEDIATE HOLDINGS  
 LLC, a Delaware limited liability company;  
 TITLE RESOURCE GROUP LLC, a  
 Delaware limited liability company;  
 WEST COAST ESCROW COMPANY, a  
 California corporation;  
 TRG SERVICES ESCROW, INC., a  
 Delaware corporation;  
 NRT LLC, a Delaware limited liability  
 company;  
 REALOGY SERVICES GROUP LLC, a  
 Delaware limited liability company;  
 REALOGY SERVICES VENTURE  
 PARTNER LLC, a Delaware limited liability  
 company,

Defendants.

Plaintiff Timothy L. Strader Sr., individually and on behalf of all others  
 similarly situated, alleges as follows:

### **NATURE OF THE ACTION**

1. This is a class action by consumers seeking relief from the deceptive  
 and collusive practices of (a) mortgage lender and servicer PHH Corporation and its  
 subsidiaries and affiliates (collectively, “PHH”); (b) real estate conglomerate  
 Realogy Holdings Corp. and its subsidiaries and affiliates (collectively, “Realogy”);  
 and (c) mortgage lender PHH Home Loans, LLC (“PHH Home Loans”), a joint  
 venture between PHH and Realogy.

1           2.     PHH, Realogy, and PHH Home Loans – and their subsidiaries and  
2 affiliates – have violated the prohibition on referral fees and kickbacks in connection  
3 with residential mortgage loans under the Real Estate Settlement Procedures Act of  
4 1974, as amended, 12 U.S.C. §§ 2601 *et seq.* (“RESPA”), and its implementing  
5 regulations, 12 C.F.R. §§ 1024.1 *et seq.* (“Regulation X”).<sup>1</sup> RESPA – and, in  
6 particular, the prohibition on referral fees and kickbacks in 12 U.S.C. § 2607 – was  
7 explicitly designed to protect consumers “from unnecessarily high settlement  
8 charges caused by certain abusive practices,” such as those described in this  
9 Complaint. 12 U.S.C. § 2601(a). As such, 12 U.S.C. § 2607(a) prohibits the giving  
10 or accepting of any “fee,” “kickback,” or “thing of value” in exchange for business  
11 incident to or part of a “settlement service” (as those terms are defined in RESPA  
12 and Regulation X and explained below) involving a federally related mortgage loan.

13           3.     On January 31, 2005, PHH was spun off from Cendant Corporation  
14 (“Cendant”), the former parent of both PHH and Realogy, and entered into a  
15 Strategic Relationship Agreement (“SRA”) with Cendant. Cendant has since been  
16 replaced in that role by Realogy, its successor company, in conjunction with the  
17 formation of the PHH Home Loans joint venture.

18           4.     Since no later than January 31, 2005, Defendants have violated RESPA  
19 and distorted the market for title insurance and other settlement services in at least  
20 two principal ways.

21           5.     **First**, PHH and Realogy (as successor in interest to Cendant) created  
22 an “Affiliated Business Arrangement” (“ABA”) – as that term is defined in RESPA  
23

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24 <sup>1</sup> Prior to December 30, 2011, Regulation X was located in 24 C.F.R. § 3500.1 *et*  
25 *seq.* The content and structure were kept substantially identical when the regulation  
26 was moved to 12 C.F.R. § 1024.1 *et seq.* in conjunction with the shift of regulatory  
27 authority over RESPA from the United States Department of Housing and Urban  
28 Development to the Consumer Financial Protection Bureau as part of the Dodd-  
Frank Wall Street Reform and Consumer Protection Act. *See Edwards v. First Am.*  
*Corp.*, 798 F.3d 1172, 1179 (9th Cir. 2015).

1 and Regulation X and discussed below – called PHH Home Loans, which was and is  
2 a sham venture carefully engineered by the former affiliates to facilitate and disguise  
3 the payment of unlawful referral fees and kickbacks in exchange for the referral of  
4 title insurance and other settlement services to Realogy’s subsidiary, Title Resource  
5 Group (“TRG”). PHH and Realogy, through their subsidiaries, hold 50.1% and  
6 49.9%, respectively, of the membership interests in PHH Home Loans; and PHH,  
7 through its subsidiary, is the sole Managing Member in control of the venture.

8         6. Prior to October 21, 2015, PHH was bound under the SRA to refer all  
9 title insurance and settlement services to TRG. Each customer of PHH Home Loans  
10 paid approximately \$1,650 to TRG for title insurance and other settlement services.  
11 PHH receives a variety of monetary and nonmonetary referral fees and kickbacks  
12 via its ownership and control of the sham ABA and PHH’s intricate relationship  
13 with Realogy.

14         7. Pursuant to the SRA, PHH Home Loans is the exclusively  
15 recommended mortgage lender for Realogy’s vast real estate brokerage network,  
16 which is operated by Realogy’s subsidiary, NRT LLC (“NRT”), and includes such  
17 recognizable brands as Coldwell Banker, Sotheby’s International Realty, ZipRealty,  
18 The Corcoran Group, and Citi Habitats.

19         8. Moreover, on information and belief, PHH receives a right of first  
20 refusal for the purchase of the mortgage servicing rights for PHH Home Loan  
21 originated mortgages, as evidenced by: (a) the terms of the Limited Liability  
22 Company Operating Agreement for PHH Home Loans (the “Operating  
23 Agreement”), which permit PHH Home Loans to sell the servicing rights to PHH  
24 “on terms no less favorable” than those that could be obtained from an independent  
25 third party; and (b) the fact that PHH owns a disproportionate share of the servicing  
26 rights for those mortgages relative to PHH’s overall market share of residential  
27 mortgage servicing. The details of this arrangement, however, have never been  
28

1 publicly disclosed (and certainly not to the consumers who have paid the fees for the  
2 illegally referred services).

3       9.     **Second**, under the related Private Label Solutions (“PLS”) model – in  
4 which PHH manages all aspects of the mortgage process for various banking  
5 institutions, including, but not limited to, Morgan Stanley, Merrill Lynch, HSBC,  
6 and UBS (collectively, the “PLS Partners”) – PHH directs the PLS Partners to refer  
7 title insurance and other settlement services to TRG without disclosing to consumers  
8 the existence of PHH’s affiliation with TRG, *nor the fact that PHH was required to*  
9 *cause the PLS Partners to refer title insurance and other settlement services to TRG*  
10 *under the terms of the SRA*. Similar to the PHH Home Loans customers, these  
11 consumers were charged approximately \$1,650 each by TRG for the referred  
12 services.

13       10.    On information and belief, PHH also receives disguised kickbacks and  
14 referral fees for the referrals made via the PLS Partners, in the form of, among other  
15 things, the right of first refusal over the purchase of the servicing rights to  
16 mortgages originated by PHH Home Loans.

17       11.    This undisclosed mandatory referral arrangement existed for over 10  
18 years until October 21, 2015, when PHH and Realogy amended the SRA to delete  
19 the mandatory referral provision – as disclosed in a Form 10-Q filed on November  
20 5, 2015 by PHH with the SEC. A copy of PHH’s recent 10-Q – which includes as  
21 exhibits the SRA, the Operating Agreement, and the amendments to each – is  
22 attached as **Exhibit A**.

23       12.    The decision by PHH and Realogy to delete the mandatory referral  
24 provision from the SRA, and particularly the timing of the decision, is telling. Just  
25 months prior to the amendment, PHH was found liable for similar RESPA violations  
26 in connection with PHH’s use of subsidiaries Atrium Insurance Corporation and  
27 Atrium Reinsurance Corporation (collectively, “Atrium”) to extract referral fees and  
28 kickbacks disguised as mortgage reinsurance premiums from home buyers.

1           13. On June 4, 2015, the Consumer Financial Protection Bureau (“CFPB”)  
2 issued a Decision of the Director in the Atrium matter which found PHH liable  
3 under 12 U.S.C. § 2607(a) and ordered PHH to disgorge over *\$109 million* in  
4 illegally charged fees (an amount that would have been far greater were it not for a  
5 three-year limit on the calculation of damages). Also, as part of several injunctive  
6 penalties in the decision, the CFPB enjoined “PHH from referring borrowers to *any*  
7 *provider of a settlement service* if that provider has agreed to purchase a service  
8 from PHH, and if payment for that service is triggered by the referrals. This  
9 provision seeks to prevent PHH from entering into illegal referral agreements with  
10 respect to *any settlement service*, and it also applies for *15 years* from the date the  
11 order becomes effective, as a further means of preventing PHH from committing  
12 similar violations of RESPA.” (Emphasis added). In leveling these and other  
13 penalties, the CFPB noted in its decision that PHH’s violations persisted for over 15  
14 years and that there was no indication that PHH changed its practices due to their  
15 illegality (as opposed to merely having become unprofitable), nor that PHH took  
16 any steps to make future violations less likely. The decision explains the extensive  
17 injunctive penalties by noting “that referral agreements that violate [12 U.S.C. §  
18 2607(a)] can be difficult to detect.” A copy of the decision is attached as **Exhibit B**.

19           14. In addition to the enforcement authority granted to the CFPB, RESPA  
20 provides individual home buyers with a private right of action and imposes joint and  
21 several liability against each person involved in a kickback violation in an amount  
22 equal to three times the amount of any charge paid for the settlement service. 12  
23 U.S.C. § 2607(d)(2). *See also Edwards v. First Am. Corp.*, 610 F.3d 514, 516-17  
24 (9th Cir. 2010) (holding that private plaintiffs alleging kickback violations need not  
25 show that they were overcharged for the settlement service in order to recover treble  
26 damages based on the full amount paid). Moreover, courts have upheld the use of  
27 federal class actions to enforce kickback violations under RESPA. *See, e.g.,*

1 *Edwards v. First Am. Corp.*, 798 F.3d 1172, 1185 (9th Cir. 2015) (reversing denial  
2 of class certification for alleged kickback violations under RESPA).

3 15. This action seeks to redress consumers for Defendants' deceptive and  
4 collusive practices, which have suppressed competition in the market for title  
5 insurance and other settlement services. Plaintiff brings this action on his own  
6 behalf and on behalf of the hundreds of thousands of consumers who have been  
7 victimized by Defendants' illegal conduct.

### 8 **JURISDICTION AND VENUE**

9 16. This Court has jurisdiction over this action pursuant to 28 U.S.C. §  
10 1331 and 12 U.S.C. § 2614. Jurisdiction is also proper in this Court under 28 U.S.C.  
11 § 1332(d) because the matter in controversy, exclusive of interest and costs, exceeds  
12 the sum of \$5,000,000 and is a class action in which members of the class of  
13 plaintiffs are citizens of states different from Defendants.

14 17. Venue is proper in this district under 28 U.S.C. § 1391(b) and 12  
15 U.S.C. § 2614 because the real property involved in Plaintiff's mortgage loan  
16 transactions is located in this district. Further, a substantial part of the events or  
17 omissions giving rise to the claims occurred in this district, and a substantial part of  
18 the property that is the subject of the action is situated in this district.

### 19 **PARTIES**

#### 20 **A. Plaintiff**

21 18. Plaintiff Timothy L. Strader Sr. is an individual and citizen of  
22 California. He resides in Newport Beach, California, in the County of Orange.

#### 23 **B. Defendants**

24 19. Defendant RMR Financial, LLC ("RMR") is a California limited  
25 liability company founded in 2005, with its headquarters in Mount Laurel, New  
26 Jersey. RMR does business under various trade names including Princeton Capital,  
27 Mortgage California, and First Capital.



1           20. Defendant NE Moves Mortgage LLC (“NE Moves”) is a Massachusetts  
2 limited liability company founded in 2005, with its headquarters in Waltham,  
3 Massachusetts.

4           21. Defendant PHH Home Loans LLC (“PHH Home Loans”) is a  
5 Delaware limited liability company founded in 2004, with its headquarters in Mount  
6 Laurel, New Jersey. PHH Home Loans does business under various trade names in  
7 different regions, including Coldwell Banker Home Loans, Cartus Home Loans,  
8 Axiom Financial, and Sunbelt Lending Services. PHH Home Loans holds a 100%  
9 ownership interest in RMR and NE Moves, and any reference to PHH Home Loans  
10 shall include RMR, NE Moves, and any other subsidiaries of PHH Home Loans,  
11 unless the context dictates otherwise.

12           22. Defendant PHH Broker Partner Corporation (“PHH Partner”) is a  
13 Maryland corporation formed in 1990, with its headquarters in Hunt Valley,  
14 Maryland. PHH Partner has a 50.1% membership interest in PHH Home Loans.

15           23. Defendant PHH Mortgage Corporation (“PHH Mortgage”) is a New  
16 Jersey corporation formed in 1977, with its headquarters in Mount Laurel, New  
17 Jersey. PHH Mortgage was formerly known as Cendant Mortgage Corporation. All  
18 references to PHH Mortgage also include Cendant Mortgage Corporation, as its  
19 predecessor, where appropriate.

20           24. Defendant PHH Corporation (“PHH”) is a New Jersey corporation  
21 formed in 2001, with its headquarters in Mount Laurel, New Jersey. PHH Corp. is  
22 the parent corporation and holds a 100% ownership interest in PHH Partner and  
23 PHH Mortgage, and any reference to PHH includes PHH Partner and PHH  
24 Mortgage, unless the context dictates otherwise.

25           25. Defendant Realogy Services Venture Partner LLC (“Realogy Partner”)  
26 is a Delaware limited liability company founded in 2004, with its headquarters in  
27 Parsippany, New Jersey. Realogy Partner has a 49.9% membership interest in PHH  
28 Home Loans. Realogy Partner is the successor in interest of Cendant Real Estate



1 Services Venture Partner, Inc. All references to Realogy Partner also include  
2 Cendant Real Estate Services Venture Partner, Inc., as its predecessor, where  
3 appropriate.

4 26. Defendant Realogy Services Group LLC (“Realogy Services”) is a  
5 Delaware limited liability company founded in 2004, with its headquarters in  
6 Parsippany, New Jersey. Realogy Services was formerly known as Cendant Real  
7 Estate Services Group, LLC. All references to Realogy Services also include  
8 Cendant Real Estate Services, LLC, as its predecessor, where appropriate.

9 27. Defendant Title Resource Group LLC (“TRG”) is a Delaware limited  
10 liability company founded in 1999, with its headquarters in Mount Laurel, New  
11 Jersey. TRG was formerly known as Cendant Settlement Services Group, LLC. All  
12 references to TRG also include Cendant Settlement Services Group, LLC, as its  
13 predecessor, where appropriate. TRG does business under various trade names  
14 including Equity Title, US Title, Sunbelt Title, Texas American Title Company,  
15 Market Street Settlement Group, Mid-Atlantic Settlement, and Burnet Title.

16 28. Defendant West Coast Escrow Company (“West Coast Escrow”) is a  
17 California limited liability company founded in 1984, with its headquarters in  
18 Madison, New Jersey. West Coast Escrow is a wholly owned subsidiary of TRG.

19 29. Defendant TRG Services Escrow, Inc. (“TRG Services”) is a Delaware  
20 corporation founded in 2007, with its headquarters in Madison, New Jersey. TRG  
21 Services is a wholly owned subsidiary of TRG.

22 30. Defendant NRT LLC (“NRT”) is a Delaware limited liability company  
23 founded in 1997, with its headquarters in Madison, New Jersey. NRT does business  
24 under various trade names in different regions, including Coldwell Banker,  
25 Sotheby’s International Realty, Citi Habitats, The Corcoran Group, and ZipRealty.

26 31. Defendant Realogy Group LLC (“Realogy Group”) is a Delaware  
27 limited liability company formed in 2006, with its headquarters in Madison, New  
28

1 Jersey. Realogy Group is the parent corporation and holds a 100% interest in  
2 Realogy Partner, Realogy Services, TRG, and NRT.

3 32. Defendant Realogy Intermediate Holdings LLC (“Realogy  
4 Intermediate”) is a Delaware limited liability company founded in 2006, with its  
5 headquarters in Madison, New Jersey. Realogy Intermediate is the parent  
6 corporation and holds a 100% interest in Realogy Group.

7 33. Defendant Realogy Holdings LLC (“Realogy”) is a Delaware limited  
8 liability company founded in 2006, with its headquarters in Madison, New Jersey.  
9 Realogy Holdings is the parent corporation and holds a 100% interest in Realogy  
10 Intermediate, and any reference to Realogy includes Realogy Intermediate, Realogy  
11 Group, and each of Realogy Group’s subsidiaries, including Realogy Partner,  
12 Realogy Services, TRG, and NRT, unless the context dictates otherwise.

### 13 **REGULATORY FRAMEWORK**

14 34. Congress passed RESPA in 1974 to promote competition within the  
15 real estate settlement industry and protect consumers from “unnecessarily high  
16 settlement charges caused by certain abusive practices.” 12 U.S.C. § 2601(a). One  
17 goal, in particular, was the “elimination of kickbacks or referral fees that tend to  
18 increase unnecessarily the costs of certain settlement services.” 12 U.S.C. §  
19 2601(b).<sup>2</sup> To this end, section 8 of RESPA, 12 U.S.C. § 2607, essentially bans  
20 settlement service providers from collecting unearned fees.

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21  
22 <sup>2</sup> [T]he term “Settlement services” includes any service provided in connection  
23 with a real estate settlement including, but not limited to, the following: title  
24 searches, title examinations, the provision of title certificates, title insurance,  
25 services rendered by an attorney, the preparation of documents, property  
26 surveys, the rendering of credit reports or appraisals, pest and fungus  
27 inspections, services rendered by a real estate agent or broker, the origination of  
a federally related mortgage loan (including, but not limited to, the taking of  
loan applications, loan processing, and the underwriting and funding of loans),  
and the handling of the processing, and closing or settlement . . . .

28 12 U.S.C. § 2602(3).

35. Specifically, the statute proscribes referral fees, kickbacks and certain fee-splitting arrangements, which prior to RESPA's implementation drove up transaction costs charged to real estate purchasers without their knowledge. Thus, section 8(a) prohibits certain business referral fees and provides:

No person shall give and no person shall accept any fee, kickback, or *thing of value*<sup>3</sup> pursuant to any *agreement or understanding*,<sup>4</sup> oral or otherwise, that business incident to or a part of a real estate settlement service involving a *federally related mortgage loan*<sup>5</sup> shall be referred to any person.

12 U.S.C. § 2607(a) (emphasis and footnotes added).<sup>6</sup>

<sup>3</sup> "Thing of value" is broadly defined in RESPA and Regulation X. *See* 12 U.S.C. § 2602(2) ("[T]he term 'thing of value' includes any payment, advance, funds, loan, service, or other consideration . . ."); 12 C.F.R. § 1024.14(d) ("Thing of value . . . includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term 'payment' is used throughout §§ 1024.14 and 1024.15 as synonymous with the giving or receiving of any 'thing of value' and does not require transfer of money.")

<sup>4</sup> An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

12 C.F.R. § 1024.14(e).

<sup>5</sup> "Federally related mortgage loan" is broadly defined in RESPA and Regulation X to include most residential mortgages, including refinancings and second mortgages. *See* 12 U.S.C. § 2602(1); 12 C.F.R. § 1024.2(b).

<sup>6</sup> In addition, section 8(b) makes illegal the splitting of charges such that:

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

1        36. Further, section 8 specifies that “[a]ny referral of a settlement service is  
2 not a compensable service, except as set forth in § 1024.14(g)(1),” which sets forth  
3 all “fees, salaries, compensation, or other payments” permitted under section 8.” 12  
4 C.F.R. §1024.14(g), *codified at* 12 U.S.C. § 2607. These include the payment of  
5 fees and salaries for services actually performed and goods actually furnished, as  
6 well as payments made pursuant to arrangements between real estate agents and  
7 brokers. These limited exemptions remain unchanged. *See* 12 U.S.C. § 2607(c)(1)-  
8 (3).

9        37. In response to RESPA, many settlement service providers abandoned  
10 the classic kickback – where a specific payment was made in return for a specific  
11 referral and there was no other reason for the payment – and instead devised  
12 sophisticated transactions involving a less obvious causal link between the referral  
13 and the payment. These transactions arose most frequently within the context of  
14 business arrangements where one settlement service provider maintained an  
15 enhanced relationship with a second provider of a different settlement service,  
16 through which each service provider captured the clients of the other.

17        38. In turn, Congress enacted two significant amendments to section 8 to  
18 address instances in which no direct kickback or referral fee is paid. First, Congress  
19 changed the calculation of damages from three times the amount of the kickback or  
20 referral fee to three times “any charge paid” for the settlement service. 12 U.S.C. §  
21 2607(d)(2). Thus, upon establishing a violation, a consumer is entitled to recover  
22 treble damages based on the full amount paid for the referred settlement service  
23 without the need to quantify the kickback or demonstrate any overcharge. *See*  
24 *Edwards v. First Am. Corp.*, 610 F.3d 514, 518 (9th Cir. 2010) (finding that class  
25 action plaintiffs have standing to bring RESPA claims even when no overcharge can  
26 be established).

27 \_\_\_\_\_  
28 12 U.S.C. § 2607(b).

1        39. Second, Congress defined and permitted “Controlled Business  
2 Arrangements” – since renamed “Affiliated Business Arrangements” (“ABAs”) –  
3 only under limited circumstances designed to ameliorate their inherently abusive  
4 nature. RESPA defines an ABA as:

5        an arrangement in which (A) a person who is in a position to refer  
6 business incident to or a part of a real estate settlement service involving a  
7 federally related mortgage loan, or an associate of such person, has either  
8 an affiliate relationship with or a direct or beneficial ownership interest of  
9 more than 1 percent in a provider of settlement services; and (B) either of  
such persons directly or indirectly refers such business to that provider or  
affirmatively influences the selection of that provider.

10        12 U.S.C. § 2602(7).<sup>7</sup>

11        40. ABAs are permitted, so long as they abide by *all* requirements  
12 enumerated in section 8(c)(4):

13        Nothing in [Section 8] shall be construed as prohibiting . . . (4) affiliated  
14 business arrangements so long as (A) a *disclosure is made of the existence*  
15 *of such an arrangement* to the person being referred and, in connection  
16 with such referral, such person is provided a written estimate of the charge  
17 or range of charges generally made by the provider to which the person is  
18 referred . . . , (B) such person is not required to use any particular provider  
of settlement services, and (C) *the only thing of value that is received*  
from the arrangement, other than the payments permitted under this  
subsection, *is a return on the ownership interest or franchise relationship.*

19        12 U.S.C. § 2607(c)(4) (emphasis added).

20        41. The regulations and case law interpreting the ABA provisions have  
21 provided important clarifications. Most significantly, courts have held that section  
22 8(c)(4) is not merely an exemption. Rather, all ABAs are *presumed* to be a violation  
23 of section 8 and are permissible *only* if the three conditions in section 8(c)(4) are  
24 satisfied. *See, e.g., Bolinger v. First Multiple Listing Serv., Inc.*, 838 F. Supp. 2d  
25 1340, 1355 (N.D. Ga. 2012) (“Section 8(c)(4) provides a cause of action  
26

27        <sup>7</sup> The terms “associate” and “affiliate relationship” are defined in 12 U.S.C. §  
28 2602(8) and 12 C.F.R. § 1024.15(c), respectively.

1 independent of Sections 8(a) and (b).”); accord *Minter v. Wells Fargo Bank, N.A.*,  
 2 274 F.R.D. 525, 538-39 (D. Md. 2011) (“ABAs not in compliance with the three  
 3 conditions of Section 8(c)(4) are per se violations. . . . By statutory definition . . .  
 4 ABAs involve by virtue of their affiliation the transfer of a ‘thing of value’ in  
 5 exchange, explicitly or not, for referrals and such transfers are prohibited.”).

6 42. Also, regulators and courts have sought to curtail the abusive practice  
 7 of using the façade of a compliant ABA to insulate a business arrangement that has  
 8 as its primary purpose circumventing RESPA’s kickback ban, as is the case with  
 9 PHH Home Loans. In 1996, the United States Department of Housing and Urban  
 10 Development (“HUD”), which was at that time the regulatory body tasked with  
 11 implementing RESPA,<sup>8</sup> issued a Statement of Policy to help identify these sham  
 12 ABAs disguised as joint ventures. See 61 Fed. Reg. 29258, at \*29259 (June 7,  
 13 1996). Courts have looked to the ten-factor test found in HUD’s policy statement to  
 14 determine whether a particular joint venture is a permissible ABA, and have held  
 15 that if a purported ABA “fails the HUD Ten Factor Test, the arrangement to which it  
 16 is a party is a violation of RESPA.”<sup>9</sup> See *Minter*, 274 F.R.D. at 543.

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18 <sup>8</sup> The CFPB assumed this role as part of the Dodd-Frank Wall Street Reform and  
 19 Consumer Protection Act.

20 <sup>9</sup> The ten factors are: (1) Does the new entity have sufficient initial capital and net  
 21 worth, typical in the industry, to conduct the settlement service business for which it  
 22 was created? Or is it undercapitalized to do the work it purports to decide? (2) Is  
 23 the new entity staffed with its own employees to perform the services it provides?  
 24 Or does the new entity have “loaned” employees of one of the parent providers? (3)  
 25 Does the new entity manage its own business affairs? Or is an entity that helped  
 26 create the new entity running the new entity for the parent provider making the  
 27 referrals? (4) Does the new entity have an office for business which is separate  
 28 from one of the parent providers? If the new entity is located at the same business  
 address as one of the parent providers, does the new entity pay a general market  
 value rent for the facilities actually furnished? (5) Is the new entity providing  
 substantial services, i.e., the essential functions of the real estate settlement service,  
 for which the entity receives a fee? Does it incur the risks and receive the rewards  
 of any comparable enterprise operating in the market place? (6) Does the new entity  
 perform all of the substantial services itself? Or does it contract out part of the



43. Thus, any arrangement involving an ABA is a per se violation of section 8 unless it is both a legitimate ABA (utilizing the ten-factor analysis employed by HUD and the courts) *and* meets all three requirements of section 8(c)(4).

### **GENERAL FACTUAL ALLEGATIONS**

#### **A. PHH's Operations**

44. In its SEC filings and elsewhere, PHH touts itself as a leading non-bank mortgage originator and servicer of U.S. residential mortgage loans. Through PHH Mortgage and its subsidiaries, PHH provides outsourced mortgage banking services to a variety of clients, including financial institutions and real estate brokers throughout the U.S. and is focused on originating, selling, and servicing residential mortgage loans. According to *Inside Mortgage Finance*, PHH Mortgage was the fifth largest retail mortgage originator with a 4.7% market share for the nine months ending September 30, 2014. *Inside Mortgage Finance* also reported that PHH

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work? If so, how much of the work is contracted out? (7) If the new entity contracts out some of its essential functions, does it contract services from an independent third party? Or are the services contracted from a parent, affiliated provider or an entity that helped create the controlled entity? If the new entity contracts out work to a parent, affiliated provider or an entity that helped create it, does the new entity provide any functions that are of value to the settlement process? (8) If the new entity contracts out work to another party, is the party performing any contracted services receiving a payment for services or facilities provided that bears a reasonable relationship to the value of the services or goods received? Or is the contractor providing services or goods at a charge such that the new entity is receiving a "thing of value" for referring settlement service business to the party performing the service? (9) Is the new entity actively competing in the market place for business? Does the new entity receive or attempt to obtain business from settlement service providers other than one of the settlement services providers that created the new entity? (10) Is the new entity sending business exclusively to one of the settlement service providers that created it (such as the title application for a title policy to a title insurance underwriter or a loan package to a lender)? Or does the new entity send business to a number of entities, which may include one of the providers that created it? 61 Fed.Reg. 29258, at \*29262. The ten factors are to be considered in their totality and balanced appropriately in light of the specific facts of the business arrangement under review. *Id.*



1 Mortgage was the eighth largest mortgage loan servicer with a 2.3% market share as  
2 of December 31, 2014.

3 45. PHH's business activities are divided into two operating segments:  
4 Mortgage Production (also referred to as mortgage origination) and Mortgage  
5 Servicing.

6 **1. Mortgage Production**

7 46. PHH's Mortgage Production segment, which accounted for  
8 approximately \$231 million in revenue in 2014, provides private-label mortgage  
9 services to financial institutions and real estate brokers. It generates revenue  
10 through fee-based mortgage loan origination services and the origination and sale of  
11 mortgage loans into the secondary market. PHH Mortgage generally sells all  
12 saleable mortgage loans that it originates to secondary market investors, which  
13 include a variety of institutional investors, and initially retains the servicing rights  
14 on mortgage loans sold. The mortgage loans are typically sold within 30 days of  
15 origination and classified as held for sale until sold. During 2014, 69% of PHH's  
16 mortgage loans were sold to, or were sold pursuant to, programs sponsored by  
17 Fannie Mae, Freddie Mac or Ginnie Mae and the remaining 31% were sold to  
18 private investors.

19 47. PHH sources its mortgage loans through its retail and its  
20 wholesale/correspondent platforms. Within the retail platform, it operates through  
21 two principal business channels: PHH Private Label Solutions ("PLS") and a real  
22 estate joint venture with Realogy, PHH Home Loans.

23 48. *Private Label Solutions.* PHH offers complete mortgage outsourcing  
24 solutions to wealth management firms, regional banks, and community banks,  
25 including Merrill Lynch, Morgan Stanley, and HSBC – which represented 24%,  
26 21%, and 10%, respectively, of PHH's total mortgage loan originations in 2014.  
27 The PLS component of PHH's mortgage origination business accounted for 67%  
28 and 72% of its origination volume in 2013 and 2014, respectively.

1        49. *PHH Home Loans.* PHH Home Loans, which is more fully described  
2 below, is supported by PHH's relationship with Realogy, which represented 24% of  
3 PHH's mortgage originations in 2014 and 23% in 2013.

4        50. *Wholesale/Correspondent.* PHH also purchases closed mortgage loans  
5 from community banks, credit unions, mortgage brokers, and mortgage bankers, and  
6 also acquires mortgage loans from mortgage brokers that receive applications from  
7 and qualify the borrowers. This wholesale/correspondent platform accounted for  
8 only 4% of PHH's originations in 2014, down from 10% in 2013.

9        **2. Mortgage Servicing**

10        51. PHH's Mortgage Servicing segment, which accounted for  
11 approximately \$264 million in revenue in 2014, services mortgage loans originated  
12 by PHH Mortgage, purchases mortgage servicing rights from others, and acts as a  
13 subservicer for certain clients that own the underlying servicing rights. PHH  
14 services loans on behalf of the owners of the underlying mortgage, and it has limited  
15 exposure to credit risk because it does not hold loans for investment purposes. PHH  
16 principally generates revenue in its mortgage servicing segment through contractual  
17 fees earned from its servicing rights primarily based on a percentage of the unpaid  
18 principal balance ("UPB"), or from its subservicing agreements, which are typically  
19 a stated amount per loan.

20        52. PHH's stated corporate strategy, as disclosed in SEC filings, has been  
21 to position its mortgage business to be less capital intensive and to have more fee-  
22 based revenue streams. As a result, PHH grew the UPB of its subservicing portfolio  
23 from \$40.8 billion at the end of 2012, to \$96.3 billion at the end of 2013, and \$113.4  
24 billion at the end of 2014.

25        **B. Realogy's Operations**

26        53. Realogy claims in SEC filings and elsewhere to be the preeminent and  
27 most integrated provider of residential real estate services in the U.S. Realogy is the  
28 world's largest franchisor of residential real estate brokerages with some of the most

1 recognized brands in the real estate industry, the largest owner of U.S. residential  
2 real estate brokerage offices, the largest U.S. and a leading global provider of  
3 outsourced employee relocation services, and a significant provider of title and  
4 settlement services.

5       54. Realogy's revenue is derived on a fee-for-service basis, and given its  
6 breadth of complementary service offerings, Realogy is able to generate fees from  
7 multiple aspects of a residential real estate transaction. Realogy's operating  
8 platform is supported by its portfolio of industry leading franchise brokerage brands,  
9 in addition to non-franchise brands owned and operated through NRT. Realogy's  
10 multiple brands and operations allow it to derive revenue from many different  
11 segments of the residential real estate market, in many different geographies, and at  
12 varying price points.

13       55. Realogy divides its operations into four segments, each of which  
14 receives fees based upon services performed for its customers: Real Estate  
15 Franchise Services, Company Owned Real Estate Brokerage Services, Relocation  
16 Services, and Title and Settlement Services.

17       **1. Real Estate Franchise Services**

18       56. Realogy is the largest franchisor of residential real estate brokerages in  
19 the world through its portfolio of well-known brokerage brands, including Century  
20 21, Coldwell Banker, Coldwell Banker Commercial, ERA, Sotheby's International  
21 Realty, and Better Homes and Gardens Real Estate. As of December 31, 2014,  
22 Realogy's real estate franchise systems (inclusive of its company owned brokerage  
23 operations) had approximately 13,500 offices worldwide in 104 countries and  
24 territories. This included approximately 6,000 brokerage offices in the U.S. and  
25 approximately 251,300 independent sales associates worldwide, including  
26 approximately 174,600 independent sales associates operating under its franchise  
27 and proprietary brands in the U.S. Realogy's franchisees pay Realogy fees for the  
28

1 right to operate under one of its trademarks and to enjoy the benefits of the systems  
2 and business enhancing tools provided by its real estate franchise operations.

3       **2. Company Owned Real Estate Brokerage Services**

4       57. Realogy, via subsidiary NRT, owns and operates the largest residential  
5 real estate brokerage business in the U.S. under the Coldwell Banker, Corcoran  
6 Group, Sotheby's International Realty, ZipRealty, and Citi Habitats brand names.  
7 Realogy offers full-service residential brokerage services through more than 725  
8 company owned brokerage offices with approximately 45,000 independent sales  
9 agents in more than 45 of the 100 largest metropolitan areas of the U.S. NRT, as the  
10 broker for a home buyer or seller, derives revenues primarily from gross  
11 commission income received at the closing of real estate transactions. To  
12 complement its residential brokerage services, NRT offers home ownership services  
13 that include comprehensive single-family residential property management in many  
14 of the nation's largest rental markets.

15       **3. Relocation Services**

16       58. Realogy, through subsidiary Cartus Corporation (“Cartus”), claims to  
17 be a leading global provider of outsourced employee relocation services. Cartus is  
18 the largest provider of such services in the U.S. and also operates in several  
19 international relocation destinations. Cartus offers a broad range of employee  
20 relocation services designed to manage all aspects of an employee’s move. The  
21 relocation services business serves corporations, including 56% of the Fortune 50  
22 companies. Cartus also services affinity organizations such as insurance companies  
23 and credit unions that provide Cartus’s services to their members. In 2014, Cartus  
24 assisted in over 171,000 corporate and affinity relocations in nearly 150 countries  
25 for approximately 1,100 active clients.

26       **4. Title and Settlement Services**

27       59. Through subsidiary TRG, Realogy assists with the closing of real estate  
28 transactions by providing full-service title and settlement (i.e., closing and escrow)

1 services to customers, real estate companies – including Realogy’s company owned  
 2 real estate brokerage and relocation services businesses – as well as a targeted  
 3 channel of large financial institution clients, including PHH. In 2014, TRG was  
 4 involved in the closing of approximately 141,000 transactions of which  
 5 approximately 58,000 related to NRT. In addition to its own title and settlement  
 6 services, TRG also coordinates a nationwide network of attorneys, title agents, and  
 7 notaries to service financial institution clients on a national basis. TRG also serves  
 8 as an underwriter of title insurance policies in connection with residential and  
 9 commercial real estate transactions.

10 **C. Between 2005 and 2006, Cendant Spun Off Its Mortgage and Real Estate**  
 11 **Services Divisions Into PHH and Realogy, Respectively, Which Remain**  
 12 **Connected at the Hip**

13 60. To understand how and why PHH and Realogy structured their  
 14 intricately intertwined business dealings, it is important to consider their origins.  
 15 Prior to February 1, 2005, PHH and Realogy were part of a single real estate  
 16 conglomerate known as Cendant.

17 61. When Cendant spun off PHH into its own company, Cendant and PHH  
 18 sought to maintain coordination of their business practices (if not their prior  
 19 corporate form). As PHH explained in a Form 10-K filed with the SEC on March 2  
 20 2009 (emphasis added):

21 For periods between April 30, 1997 and February 1, 2005, we were a  
 22 wholly owned subsidiary of Cendant (renamed Avis Budget Group, Inc.)  
 23 and its predecessors that provided homeowners with mortgages, serviced  
 24 mortgage loans, facilitated employee relocations and provided vehicle  
 25 fleet management and fuel card services to commercial clients. On  
 26 February 1, 2005, we began operating as an independent, publicly traded  
 27 company pursuant to our spin-off from Cendant (the “Spin-Off”). In  
 28 connection with the Spin-Off, we entered into several contracts with  
 Cendant and Cendant’s real estate services division to provide for the  
 separation of our business from Cendant and *the continuation of certain  
 business arrangements with Cendant’s real estate services division,  
 including a separation agreement, a tax sharing agreement, a strategic  
 relationship agreement, a marketing agreement, trademark license  
 agreements and the operating agreement for PHH Home Loans, LLC[.]*

1           62.     Effective July 31, 2006, Cendant spun off its real estate services  
2 division into its own corporation, Realogy, but the ties between the businesses did  
3 not change. Rather, Realogy stepped into the shoes of Cendant for purposes of  
4 Cendant's real estate service arrangements with PHH.

5 **D.     PHH and Cendant (Now Realogy) Executed an SRA and Formed the**  
6 **PHH Home Loans Joint Venture as Part of Their "Separation"**

7           63.     For purposes of this action, the most pertinent business agreements  
8 between PHH and Realogy are the Strategic Relationship Agreement ("SRA") and  
9 Limited Liability Company Operating Agreement of PHH Home Loans (the  
10 "Operating Agreement"). PHH and Cendant, through their subsidiaries, executed  
11 both agreements on January 31, 2005, the same day that PHH was spun off from  
12 Cendant.

13           64.     As detailed below, the SRA describes an exchange of various rights  
14 and other things of value amongst PHH, Cendant (now Realogy), various  
15 subsidiaries and affiliates of both, and PHH Home Loans. The SRA creates a joint  
16 venture between subsidiaries of PHH and Realogy specifically to act as a sham  
17 ABA to give PHH hidden kickbacks and referral fees in exchange for referral of title  
18 insurance and other settlement services to a subsidiary of Realogy, TRG. *See*  
19 **Exhibit A**, Strategic Relationship Agreement.

20           65.     The Operating Agreement supplements the SRA by detailing the  
21 operation of the joint venture and providing additional benefits to PHH. PHH and  
22 Realogy, through their subsidiaries PHH Partner and Realogy Partner, hold 50.1%  
23 and 49.9% of the membership interests in PHH Home Loans; and PHH Partner is  
24 the sole managing member in control of the joint venture. Moreover, on  
25 information and belief and as explained below, the Operating Agreement facilitates  
26 the preferential transfer of lucrative mortgaging servicing rights to PHH Home  
27 Loans. *See* **Exhibit A**, Operating Agreement.

1 **E. PHH Receives Crucial Benefits Under the SRA and Related Agreements**

2 66. Of critical importance to PHH's business, the SRA provides that PHH  
3 Home Loans is the *exclusively* recommended mortgage lender for the vast network  
4 of Realogy-owned brokerages. The SRA also provides PHH Home Loans access to  
5 consumers attending trade shows, conventions, and conferences organized by  
6 Realogy's brokerages.

7 67. Under separate but related agreements, PHH Home Loans has the  
8 exclusive right to use the Century 21, Coldwell Banker, and ERA brand names in  
9 marketing its mortgage loan products; and PHH markets mortgage loan products to  
10 Realogy's brokerage franchises and its Cartus relocation business.

11 68. Moreover, PHH has acknowledged – including in a Form 10-K filed  
12 with the SEC on February 27, 2015 – that its mortgage origination business “is  
13 substantially dependent upon [its] relationship with Realogy.” According to the  
14 filing, 24% of PHH's mortgage loan originations during 2014 were derived from  
15 Realogy.

16 **F. PHH Receives Additional, Undisclosed Benefits from Its Joint Venture**  
17 **with Realogy**

18 69. On information and belief, PHH derives other benefits from its  
19 arrangements with Realogy that are not only hidden from individual consumers but  
20 from the public at large.

21 70. As managing member under the Operating Agreement – via its  
22 subsidiary, PHH Partner – PHH is responsible for selling the mortgage loans  
23 originated by PHH Home Loans, including the lucrative servicing rights to those  
24 loans. Moreover, the Operating Agreement expressly permits PHH to cause PHH  
25 Home Loans to sell the mortgages to PHH, so long as the terms are “no less  
26 favorable” than what an independent third party would pay. In other words, PHH  
27 has the authority to sell servicing rights to itself, so long as PHH matches the price  
28



1 that would be paid by a competitor. Thus, in effect, PHH has a right of first refusal  
2 to acquire lucrative servicing rights.

3 71. PHH purports to sell the servicing rights for PHH Home Loans  
4 originated loans to the highest bidder. Yet, PHH ends up acquiring a  
5 disproportionately large share of those servicing rights versus PHH's overall market  
6 share for mortgage servicing.

7 72. PHH is able to acquire this disproportionate share of servicing rights  
8 through the foregoing right of first refusal, whereby PHH is permitted to purchase  
9 the rights at a price equal to the highest bid. This right to match the highest bid is  
10 both immensely valuable for PHH and also detrimental, both to consumers and the  
11 joint venture, because PHH's right of first refusal discourages other potential buyers  
12 of the servicing rights from bidding.

13 **G. PHH Home Loans and PHH Refer All Title Insurance and Other**  
14 **Settlement Services to TRG**

15 73. Realogy agreed to give PHH special rights with respect to the purchase  
16 of servicing rights from PHH Home Loans, in part because both PHH Home Loans  
17 and PHH (including by way of the PLS Partners) referred all title insurance and  
18 other settlement services business to Realogy's subsidiary, TRG.

19 74. In fact, PHH was bound under the SRA to refer – and cause each PLS  
20 Partner to refer – all title insurance and settlement services to TRG. Section 6.3 of  
21 the SRA provides that “PHH shall, and shall cause its subsidiaries to . . . utilize  
22 [TRG] on an exclusive basis . . . and . . . recommend [TRG] as provider of  
23 Settlement Services to private label solutions (“PLS”) partners . . . .”

24 75. Customers of PHH, PHH Home Loans, and each of the PLS Partners  
25 were referred to TRG for title insurance and other settlement services and charged  
26 approximately \$1,650 by TRG for these services.

1 **H. The PHH Home Loans Originated Mortgage Loans Do Not Qualify for**  
 2 **the ABA Exemption in Section 8(c)(4)**

3 76. PHH and Realogy have sought to disguise the improper kickback of  
 4 benefits to PHH in exchange for referrals of title insurance and other settlement  
 5 services to TRG by forming the PHH Home Loans joint venture.

6 77. Defendants, however, failed to disclose the full nature of the  
 7 relationships and business arrangements amongst PHH, PHH Home Loans, Realogy,  
 8 and TRG, as explained above; thus, PHH Home Loans does not insulate any of the  
 9 improper referrals and associated fees from liability under section 8(c)(4).

10 78. Further, as discussed above, the purported ABA was in fact a sham  
 11 venture designed to facilitate illegal kickbacks and referral fees and thus cannot  
 12 qualify for the exemption under section 8(c)(4).

13 79. In addition, PHH's receipt of additional benefits in exchange for the  
 14 referrals, as described above, violates the requirement in section 8(c)(4)(C) that "the  
 15 only thing of value that is received from the arrangement, other than the payments  
 16 permitted under this subsection, is a return on the ownership interest or franchise  
 17 relationship," and thus prevents the arrangement from qualifying for the ABA  
 18 exemption.

19 **I. The PLS Originated Mortgage Loans Also Violate Section 8**

20 80. On information and belief, PHH caused the PLS Partners – including  
 21 Merrill Lynch, Morgan Stanley, HSBC, and UBS, among others – to refer title  
 22 insurance and other settlement services to TRG in exchange for the benefits flowing  
 23 to PHH described above, including the undisclosed right of first refusal for the  
 24 purchase of the servicing rights for loans originated by PHH Home Loans.

25 81. Neither PHH, the PLS Partners, nor TRG disclosed to consumers that  
 26 the title insurance and other settlement services were referred to TRG based on its  
 27 relationship and arrangements with PHH, *nor did they disclose that PHH was*  
 28

1 *contractually bound to cause each PLS Partner to recommend TRG as the exclusive*  
 2 *provider of title insurance and other settlement services.*

3 82. Rather, on information and belief, PHH and TRG intentionally misled  
 4 consumers into believing that referrals to TRG were made solely at the discretion of  
 5 the respective PLS Partner and based on the PLS Partner's opinion of the quality of  
 6 TRG's services.

7 **J. The Consumer Financial Protection Bureau Found PHH Liable for**  
 8 **Similar Violations of Section 8 and Imposed Extensive Monetary and**  
 9 **Injunctive Penalties**

10 83. On June 4, 2015, the Consumer Financial Protection Bureau ("CFPB")  
 11 issued a Decision of the Director which found PHH liable under section 8 based on  
 12 an additional illegal kickback scheme related to the payment of mortgage  
 13 reinsurance premiums to subsidiaries of PHH – Atrium Insurance Corporation and  
 14 Atrium Reinsurance Corporation (collectively, "Atrium"). *See Exhibit B.*

15 84. Among the penalties imposed on PHH was the disgorgement of over  
 16 \$109 million in illegally charged fees.<sup>10</sup> Also, the CFPB imposed extensive and  
 17 long-lasting injunctive penalties, including enjoining "PHH from referring  
 18 borrowers to *any provider of a settlement service* if that provider has agreed to  
 19 purchase a service from PHH, and if payment for that service is triggered by the  
 20 referrals. This provision seeks to prevent PHH from entering into illegal referral  
 21 agreements with respect to *any settlement service*, and it also applies for 15 years  
 22 from the date the order becomes effective, as a further means of fencing in PHH  
 23 against the commission of similar violations of RESPA." (Emphasis added).  
 24

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25 <sup>10</sup> This figure would actually have been substantially higher were it not for a three-  
 26 year statute of limitations on regulatory actions under section 8 in place prior to the  
 27 transfer of regulatory authority to the CFPB. The decision limits liability to  
 28 payments occurring on or after July 21, 2008, despite noting that PHH's RESPA  
 violations began in 1995 and persisted for nearly two decades.

1        85. The CFPB explained in its decision that PHH's violations spanned  
 2 roughly 18 years; that there was no indication that PHH changed its practices for  
 3 any reason other than that the arrangement had simply ceased to be lucrative; and  
 4 that PHH had not taken any steps to reduce the likelihood of future violations. The  
 5 decision further explains the broad injunctions by commenting "that referral  
 6 agreements that violate section 8(a) can be difficult to detect."

7 **K. PHH and Realogy Amended the SRA to Delete the Mandatory Referral**  
 8 **Provision Shortly After the CFPB Issued Its Decision**

9        86. Shortly after the CFPB issued its decision in the Atrium matter, PHH  
 10 and Realogy suddenly amended the SRA to delete the mandatory, undisclosed  
 11 provision requiring referral of settlement services to TRG described above, which  
 12 had been in place for over 10 years – as disclosed in a Form 10-Q filed on  
 13 November 5, 2015 by PHH with the SEC. A copy of the amendment to the SRA is  
 14 included in the attached **Exhibit A**.

15        87. On information and belief, PHH and Realogy amended the SRA  
 16 because they knew the mandatory referral provision was a violation of section 8 of  
 17 RESPA, 12 U.S.C. § 2607(a), and sought to limit future exposure.

18 **ALLEGATIONS SPECIFIC TO NAMED PLAINTIFF**

19        88. On or about April 22, 2011, Mr. Strader purchased a house located at 4  
 20 Rue Grand Ducal in Newport Beach, California.

21        89. Mr. Strader financed a portion of the purchase price with a loan from  
 22 one of the PLS Partners, Merrill Lynch, and executed a deed of trust securing the  
 23 property for the benefit of Merrill Lynch.

24        90. Mr. Strader was referred to TRG for both title insurance (under the  
 25 trade name Equity Title) and other settlement services (via subsidiary TRG  
 26 Services) in connection with the purchase.

27        91. Mr. Strader paid \$1,000 to Equity Title and \$650 to TRG Services.  
 28

1           92. Mr. Strader was not informed that the referral to Equity Title and TRG  
2 Services was made at the direction of PHH, nor that PHH was required under the  
3 terms of the SRA to refer, and cause Merrill Lynch to refer, all title insurance and  
4 settlement services to TRG.

5           93. Mr. Strader was also not informed of the business arrangements and  
6 affiliations involving PHH, Equity Title, and TRG Services, as explained herein.

### 7                           **CLAIM TOLLING ALLEGATIONS**

8           94. “[A]lthough the limitations period in 12 U.S.C. § 2614 [governing  
9 violations of 12 U.S.C. § 2607] ordinarily runs from the date of the alleged RESPA  
10 violation, ‘the doctrine of equitable tolling may, in the appropriate circumstances,  
11 suspend the limitations period until the borrower discovers or had reasonable  
12 opportunity to discover’ the violation.” *See Merritt v. Countrywide Fin. Corp.*, 759  
13 F.3d 1023, 1040 (9th Cir. 2014). “[D]istrict courts may evaluate RESPA claims  
14 case-by-case ‘to determine if the general rule would be unjust or frustrate the  
15 purpose of the Act and adjust the limitations period accordingly.’”

16           95. The details of the SRA – notably, that PHH Home Loans was the  
17 exclusively recommended mortgage lender for Realogy’s vast real estate brokerage  
18 network; that PHH receives a right of first refusal for the purchase of the mortgage  
19 servicing rights for PHH Home Loan originated mortgages; and that PHH was  
20 required to refer, and cause the PLS Partners to refer, title insurance and other  
21 settlement services to TRG under the terms of the SRA – were never publicly  
22 disclosed (and certainly not to the consumers who have paid the fees for the illegally  
23 referred services).

24           96. Prior to November 5, 2015, when PHH and Realogy filed a Form 10-Q  
25 with the SEC disclosing that they had amended the SRA to delete the mandatory  
26 referral provision, Plaintiff and others similarly situated did not have reasonable  
27 opportunity to discover the violations alleged herein.

28           97. Running the limitations period from the date of the alleged violations

1 would frustrate one of the major purposes the act – the “elimination of kickbacks or  
2 referral fees that tend to increase unnecessarily the costs of certain settlement  
3 services.”

#### 4 **CLASS ACTION ALLEGATIONS**

5 98. Plaintiff brings this action on behalf of himself and the following Class  
6 pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure:

7 *All persons who (1) obtained a federally related mortgage loan (as that*  
8 *term is used in RESPA) from PHH (or one of its subsidiaries), PHH Home*  
9 *Loans (or one of its subsidiaries), or one of the PLS Partners on or after*  
10 *January 31, 2005; and (2) paid a fee for title insurance or other*  
11 *settlement services to TRG (or one of its subsidiaries).*

12 99. Excluded from the Class are Defendants; Defendants’ subsidiaries and  
13 affiliates; any entity in which any Defendant has a controlling interest; any and all  
14 employees of Defendants; any successor or assign of the Defendants; governmental  
15 entities; the judge to whom this case is assigned and his or her immediate family;  
16 and all persons who make a timely election to be excluded from the Class.

17 100. Plaintiff reserves the right to revise the definition of the Class based  
18 upon information learned through discovery.

19 101. *Numerosity.* Pursuant to FRCP 23(a)(1), the members of the Class are  
20 so numerous and geographically dispersed that individual joinder of all Class  
21 members is impracticable. The precise number of Class members is unknown to  
22 Plaintiff, but Plaintiff is informed and believes that there are not less than hundreds  
23 of thousands of members of the Class. The precise number and identity of Class  
24 members is ascertainable from Defendants’ books and records. Class members may  
25 be notified of the pendency of this action by recognized, Court-approved notice  
26 dissemination methods, which may include U.S. mail, electronic mail, Internet  
27 postings, and/or published notice.

28 102. *Commonality and Predominance.* Pursuant to FRCP 23(a)(2) and  
23(b)(3), this action involves common questions of law and fact, which predominate

1 over any individual questions with respect to class members, including, without  
2 limitation:

- 3 a. Whether Defendants engaged in the conduct alleged in this Complaint;
- 4 b. The nature of the relationships of Defendants to one another;
- 5 c. The nature of the benefits exchanged by PHH and Realogy under the  
6 terms of the SRA and otherwise;
- 7 d. Whether Defendants gave and accepted benefits in exchange for the  
8 referral of settlement services, and if so, the nature and extent of such  
9 benefits and services; and
- 10 e. Whether Defendants' relationships with each other, and exchange of  
11 benefits violated section 8 of RESPA

12 103. *Typicality*. Pursuant to FRCP 23(a)(3), the claims of the named  
13 Plaintiff are typical of the claims of the Class because, among other things, all  
14 members of the Class executed mortgage loans and paid similar, if not identical,  
15 amounts for title insurance and other settlement services based on the allegations in  
16 this Complaint.

17 104. *Adequacy*. Pursuant to FRCP 23(a)(4), Plaintiff is an adequate Class  
18 representative because his interests do not conflict with the interests of the other  
19 Class members. Likewise, Plaintiff's counsel is competent and experienced in  
20 prosecuting complex class action cases. The Class's interests will be fairly and  
21 adequately protected by Plaintiff and his counsel.

22 105. *Superiority*. Pursuant to FRCP 23(b)(3), a class action is the best  
23 available method to adjudicate this controversy. This action involves common  
24 questions of fact and law, as described above. Moreover, prosecution of the action  
25 will require targeted discovery on complex issues and could not practically be  
26 pursued by individual litigants. Plaintiff and other Class members' damages are  
27 relatively small compared to the burden and expense that would be required to  
28 individually litigate the claims. In addition, individual litigation of Class members'



1 claims would be impracticable and unduly burdensome to the court system and has  
2 the potential to lead to inconsistent results based on identical conduct. A class  
3 action provides the benefits of a single adjudication, economy of scale, and  
4 comprehensive supervision of a single court.

5 **CAUSE OF ACTION**

6 **Violation of § 8(a) of the Real Estate Settlement Procedures Act,**

7 **12 U.S.C. § 2607(a)**

8 (Against All Defendants)

9 106. Plaintiff realleges and incorporates by reference the allegations in  
10 paragraphs 1 through 105, as though fully incorporated herein.

11 107. 12 U.S.C. § 2607(a) provides that “[n]o person shall give and no person  
12 shall accept any fee, kickback, or thing of value pursuant to any agreement or  
13 understanding, oral or otherwise, that business incident to or a part of a real estate  
14 settlement service involving a federally related mortgage loan shall be referred to  
15 any person.”

16 108. As alleged above, PHH and Realogy created an ABA called PHH  
17 Home Loans, which was and is a sham venture carefully engineered by the former  
18 affiliates to facilitate and disguise the payment of unlawful referral fees and  
19 kickbacks in exchange for the referral of title insurance and other settlement services  
20 to Realogy’s subsidiary, TRG. PHH and Realogy, through their subsidiaries, hold  
21 50.1% and 49.9%, respectively, of the membership interests in PHH Home Loans;  
22 and PHH, through its subsidiary, is the sole Managing Member in control of the  
23 venture.

24 109. PHH was required under the SRA to refer, and to cause its subsidiaries  
25 to refer, all title insurance and settlement services to TRG.

26 110. Similarly, under the PLS model, PHH directed the PLS Partners – for  
27 whom PHH manages all aspects of the mortgage process – to refer title insurance  
28 and other settlement services to TRG without disclosing to consumers the existence

1 of PHH's affiliation with TRG, nor the fact that PHH was required to cause the PLS  
2 Partners to refer title insurance and other settlement services to TRG under the terms  
3 of the SRA.

4 111. Class members who obtained a federally related mortgage loan from  
5 PHH, PHH Home Loans, or a PLS Partner were referred to TRG for title insurance  
6 and other settlement services.

7 112. Based on the foregoing, Realogy, PHH, and PHH Home Loans entered  
8 into "an agreement or understanding, oral or otherwise, that business incident to or a  
9 part of a real estate settlement service involving a federally related mortgage loan"  
10 shall be referred to TRG.

11 113. Plaintiff and each member of the Class paid a fee of approximately  
12 \$1,650 for title insurance and other settlement services to TRG as a customer of  
13 PHH, PHH Home Loans, or any of the PLS Partners, which was "business incident  
14 to or part of" the federally related mortgage loan obtained from PHH, PHH Home  
15 Loans, or a PLS Partner by Plaintiff and the Class.

16 114. Pursuant to the SRA, PHH Home Loans is the *exclusively*  
17 recommended mortgage lender for Realogy's vast real estate brokerage network.  
18 The SRA also provides PHH Home Loans access to consumers attending trade  
19 shows, conventions, and conferences organized by Realogy's brokerages.

20 115. As alleged above, PHH receives what effectively and in practice  
21 amounts to a right of first refusal for the purchase of the mortgage servicing rights  
22 for PHH Home Loan originated mortgages.

23 116. Realogy, PHH, and TRG created and received a "fee, kickback, or  
24 thing of value" by making PHH Home Loans the exclusively recommended  
25 mortgage lender for Realogy's vast real estate brokerage network; granting PHH  
26 Home Loans the exclusive right to use the Century 21, Coldwell Banker, and ERA  
27 trade names to market its mortgage products; providing PHH Home Loans access to  
28 consumers attending trade shows, conventions, and conferences organized by

1 Realogy's brokerages; giving PHH a right of first refusal for the purchase of the  
2 mortgage servicing rights for PHH Home Loan originated mortgages; and providing  
3 the other benefits to PHH alleged herein.

4 117. These fees, kickbacks and things of value were provided and made  
5 pursuant to PHH and Realogy's agreement, under the SRA and otherwise, that title  
6 insurance and other settlement services shall be referred to TRG, and thus violated  
7 12 U.S.C. § 2607(a).

8 118. Moreover, PHH, PHH Home Loans, Realogy, and TRG were part of an  
9 ABA, thus constituting a per se violation of 12 U.S.C. § 2607(a), *unless* Defendants  
10 can establish that the ABA was formed for legitimate purposes *and* complied with  
11 all requirements of 12 U.S.C. § 2607(c)(4).

12 119. Neither PHH Home Loans nor the PLS model qualifies as a permissible  
13 ABA for the following independent reasons: (a) PHH Home Loans and the PLS  
14 model were a sham venture designed to facilitate illegal kickbacks and referral fees;  
15 (b) Defendants failed to disclose the full nature of the relationships and business  
16 arrangements amongst PHH, PHH Home Loans, Realogy, and TRG, as explained  
17 above; and (c) PHH received benefits in excess of the return on its ownership  
18 interest in PHH Home Loans. Thus, the arrangement involving PHH, PHH Home  
19 Loans, Realogy, and TRG constituted a per se violation of 12 U.S.C. § 2607(a).

20 120. 12 U.S.C. § 2607(d) provides that "[a]ny person or persons who violate  
21 the prohibitions or limitations of this section shall be jointly and severally liable to  
22 the person or persons charged for the settlement service involved in the violation in  
23 an amount equal to three times the amount of any charge paid for such settlement  
24 service."

25 121. As alleged herein, Plaintiff and each member of the Class paid  
26 approximately \$1,650 to TRG for title insurance and settlement services as a  
27 customer of PHH, PHH Home Loans, or one of the PLS Partners.

28

1           122. Therefore, Defendants are jointly and severally liable to Plaintiff and  
2 each member of the Class for approximately \$4,950 per Class member, plus three  
3 times the amount of any other fees paid to TRG for settlement services, for each  
4 federally related mortgage loan that Plaintiff and Class members obtained from  
5 PHH, PHH Home Loans, or one of the PLS Partners.

6                                   **PRAYER FOR RELIEF**

7           123. WHEREFORE, Plaintiff, individually and on behalf of members  
8 of the proposed Class, respectfully requests that the Court enter an order and  
9 judgment against Defendants as follows:

- 10           a) An order certifying the proposed Class;
- 11           b) An order appointing Plaintiff's counsel as Class Counsel for the  
12 proposed class;
- 13           c) An order awarding treble damages to Plaintiff and all Class members  
14 pursuant to 12 U.S.C. § 2607(d)(2);
- 15           d) An order awarding costs and attorneys' fees to Plaintiff's Class  
16 Counsel pursuant to 12 U.S.C. § 2607(d)(5);
- 17           e) An order requiring Defendants to pay pre-judgment and post-judgment  
18 interest on any amount awarded; and
- 19           f) Such other relief that the Court deems appropriate.
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1  
2 DATED: November 24, 2015  
3  
4

5 By: /s/ Michael I. Katz

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27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff, individually and on behalf of all members of the proposed class,  
hereby demands a jury trial for all claims so triable.

DATED: November 24, 2015

By: /s/ Michael I. Katz

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