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 19 *Lester L. Hall, Jr. and All Others Similarly*  
 20 *Situated*

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

23 TIMOTHY L. STRADER, SR. and LESTER  
 24 L. HALL, JR., individually and on behalf of  
 all others similarly situated,  
 25  
 Plaintiffs,  
 26  
 v.  
 27 PHH CORPORATION, a Maryland  
 corporation;  
 28 REALOGY HOLDINGS CORP., a Delaware

Case No. 8:15-CV-01973  
**AMENDED CLASS ACTION  
 COMPLAINT FOR  
 VIOLATIONS OF § 8(a) OF  
 THE REAL ESTATE  
 SETTLEMENT PROCEDURES  
 ACT, 12 U.S.C. § 2607(a)**  
**JURY TRIAL DEMANDED**

1 corporation;  
2 PHH MORTGAGE CORPORATION, a New  
3 Jersey corporation;  
4 PHH HOME LOANS LLC, a Delaware  
5 limited liability company;  
6 RMR FINANCIAL, LLC, a California limited  
7 liability company;  
8 NE MOVES MORTGAGE LLC, a  
9 Massachusetts limited liability company;  
10 PHH BROKER PARTNER CORPORATION,  
11 a Maryland corporation;  
12 REALOGY GROUP LLC, a Delaware limited  
13 liability company;  
14 REALOGY INTERMEDIATE HOLDINGS  
15 LLC, a Delaware limited liability company;  
16 TITLE RESOURCE GROUP LLC, a  
17 Delaware limited liability company;  
18 WEST COAST ESCROW COMPANY, a  
19 California corporation;  
20 TRG SERVICES ESCROW, INC., a  
21 Delaware corporation;  
22 NRT LLC, a Delaware limited liability  
23 company;  
24 REALOGY SERVICES GROUP LLC, a  
25 Delaware limited liability company;  
26 REALOGY SERVICES VENTURE  
27 PARTNER LLC, a Delaware limited liability  
28 company,

Defendants.

Plaintiffs Timothy L. Strader, Sr. and Lester L. Hall, Jr., individually and on behalf of all others similarly situated, allege 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 entered into an illegal  
2 arrangement whereby PHH Home Loans would refer title insurance and other  
3 settlement services to Realogy’s subsidiary, TRG, in exchange for illegal kickbacks  
4 to PHH. Under RESPA, consumers who paid fees and other charges for these  
5 settlement services from TRG are entitled to an award of treble damages based on  
6 the *full amount* paid for such settlement services pursuant to 12 U.S.C. § 2607(d)(2).  
7 As fully alleged herein, Plaintiffs seek recovery of treble damages for all consumers  
8 who paid fees and other charges for title insurance and other settlement services  
9 from TRG as a result of this illegal kickback scheme.

10           3.       PHH, Realogy, and PHH Home Loans – and their subsidiaries and  
11 affiliates – have violated the prohibition on referral fees and kickbacks in connection  
12 with residential mortgage loans under the Real Estate Settlement Procedures Act of  
13 1974, as amended, 12 U.S.C. §§ 2601 *et seq.* (“RESPA”), and its implementing  
14 regulations, 12 C.F.R. §§ 1024.1 *et seq.* (“Regulation X”).<sup>1</sup> RESPA – and, in  
15 particular, the prohibition on referral fees and kickbacks in 12 U.S.C. § 2607 – was  
16 explicitly designed to protect consumers “from unnecessarily high settlement  
17 charges caused by certain abusive practices,” such as those described in this  
18 Complaint. 12 U.S.C. § 2601(a). As such, 12 U.S.C. § 2607(a) prohibits the giving  
19 or accepting of any “fee,” “kickback,” or “thing of value” in exchange for business  
20 incident to or part of a “settlement service” (as those terms are defined in RESPA  
21 and Regulation X and explained below) involving a federally related mortgage loan.

22  
23  
24 \_\_\_\_\_  
25 <sup>1</sup> Prior to December 30, 2011, Regulation X was located in 24 C.F.R. § 3500.1 *et*  
26 *seq.* The content and structure were kept substantially identical when the regulation  
27 was moved to 12 C.F.R. § 1024.1 *et seq.* in conjunction with the shift of regulatory  
28 authority over RESPA from the United States Department of Housing and Urban  
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           4.       On January 31, 2005, PHH was spun off from Cendant Corporation  
2 (“Cendant”), the former parent of both PHH and Realogy, and entered into a  
3 Strategic Relationship Agreement (“SRA”) with Cendant. Cendant has since been  
4 replaced in that role by Realogy, its successor company, in conjunction with the  
5 formation of the PHH Home Loans joint venture.

6           5.       Since no later than January 31, 2005, Defendants have violated RESPA  
7 and distorted the market for title insurance and other settlement services in at least  
8 two principal ways.

9           6.       First, PHH and Realogy (as successor in interest to Cendant) created an  
10 “Affiliated Business Arrangement” (“ABA”) – as that term is defined in RESPA and  
11 Regulation X and discussed below – called PHH Home Loans, which was and is a  
12 sham venture carefully engineered by the former affiliates to facilitate and disguise  
13 the payment of unlawful referral fees and kickbacks in exchange for the referral of  
14 title insurance and other settlement services to Realogy’s subsidiary, Title Resource  
15 Group (“TRG”). PHH and Realogy, through their subsidiaries, hold 50.1% and  
16 49.9%, respectively, of the membership interests in PHH Home Loans; and PHH,  
17 through its subsidiary, is the sole Managing Member in control of the venture.

18           7.       Prior to October 21, 2015, PHH was bound under the SRA to refer all  
19 title insurance and settlement services to TRG. Each customer of PHH Home Loans  
20 paid TRG for title insurance and other settlement services. PHH receives a variety  
21 of monetary and nonmonetary referral fees and kickbacks via its ownership and  
22 control of the sham ABA and PHH’s intricate relationship with Realogy.

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

28

1           9.       Moreover, on information and belief, PHH receives a right of first  
2 refusal for the purchase of the mortgage servicing rights for PHH Home Loan  
3 originated mortgages, as evidenced by: (a) the terms of the Limited Liability  
4 Company Operating Agreement for PHH Home Loans (the “Operating  
5 Agreement”), which permit PHH Home Loans to sell the servicing rights to PHH  
6 “on terms no less favorable” than those that could be obtained from an independent  
7 third party; and (b) the fact that PHH owns a disproportionate share of the servicing  
8 rights for those mortgages relative to PHH’s overall market share of residential  
9 mortgage servicing. The details of this arrangement, however, have never been  
10 publicly disclosed (and certainly not to the consumers who have paid the fees for the  
11 illegally referred services).

12           10.       Second, under the related Private Label Solutions (“PLS”) model – in  
13 which PHH manages all aspects of the mortgage process for various banking  
14 institutions, including, but not limited to, Morgan Stanley, Merrill Lynch (a  
15 subsidiary of – and trade name for – Bank of America, N.A.), HSBC, and UBS  
16 (collectively, the “PLS Partners”) – PHH directs the PLS Partners to refer title  
17 insurance and other settlement services to TRG without disclosing to consumers the  
18 existence of PHH’s affiliation with TRG, *nor the fact that PHH was required to*  
19 *cause the PLS Partners to refer title insurance and other settlement services to TRG*  
20 *under the terms of the SRA*. Similar to the PHH Home Loans customers, these  
21 consumers were charged by TRG for the referred services.

22           11.       On information and belief, PHH also receives disguised kickbacks and  
23 referral fees for the referrals made via the PLS Partners, in the form of, among other  
24 things, the right of first refusal over the purchase of the servicing rights to  
25 mortgages originated by PHH Home Loans, along with the economic benefits  
26 resulting from obtaining these servicing rights.

27           12.       This undisclosed mandatory referral arrangement existed for over 10  
28 years until October 21, 2015, when PHH and Realty amended the SRA to delete

1 the mandatory referral provision – as disclosed in a Form 10-Q filed on November  
2 5, 2015 by PHH with the SEC. A copy of PHH’s recent 10-Q – which includes as  
3 exhibits the SRA, the Operating Agreement, and the amendments to each – is  
4 attached as **Exhibit A**.

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

11 14. On June 4, 2015, the Consumer Financial Protection Bureau (“CFPB”)  
12 issued a Decision of the Director in the Atrium matter which found PHH liable  
13 under 12 U.S.C. § 2607(a) and ordered PHH to disgorge over *\$109 million* in  
14 illegally charged fees (an amount that would have been far greater were it not for a  
15 three-year limit on the calculation of damages). Also, as part of several injunctive  
16 penalties in the decision, the CFPB enjoined “PHH from referring borrowers to *any*  
17 *provider of a settlement service* if that provider has agreed to purchase a service  
18 from PHH, and if payment for that service is triggered by the referrals. This  
19 provision seeks to prevent PHH from entering into illegal referral agreements with  
20 respect to *any settlement service*, and it also applies for *15 years* from the date the  
21 order becomes effective, as a further means of preventing PHH from committing  
22 similar violations of RESPA.” (Emphasis added). In leveling these and other  
23 penalties, the CFPB noted in its decision that PHH’s violations persisted for over 15  
24 years and that there was no indication that PHH changed its practices due to their  
25 illegality (as opposed to merely having become unprofitable), nor that PHH took  
26 any steps to make future violations less likely. The decision explains the extensive  
27 injunctive penalties by noting “that referral agreements that violate [12 U.S.C. §  
28 2607(a)] can be difficult to detect.” A copy of the decision is attached as **Exhibit B**.



1 omissions giving rise to the claims occurred in this district, and a substantial part of  
2 the property that is the subject of the action is situated in this district.

3 **PARTIES**

4 **A. Plaintiffs**

5 19. Plaintiff Timothy L. Strader, Sr. (“Mr. Strader”) is an individual and  
6 citizen of California. He resides in Newport Beach, California, in the County of  
7 Orange.

8 20. Plaintiff Lester L. Hall, Jr. (“Mr. Hall”) is an individual and citizen of  
9 California. He resides in Santa Ana, California, in the County of Orange.

10 **B. Defendants**

11 21. Defendant RMR Financial, LLC (“RMR”) is a California limited  
12 liability company founded in 2005, with its headquarters in Mount Laurel, New  
13 Jersey. RMR does business under various trade names including Princeton Capital,  
14 Mortgage California, and First Capital.

15 22. Defendant NE Moves Mortgage LLC (“NE Moves”) is a Massachusetts  
16 limited liability company founded in 2005, with its headquarters in Waltham,  
17 Massachusetts.

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

26 24. Defendant PHH Broker Partner Corporation (“PHH Partner”) is a  
27 Maryland corporation formed in 1990, with its headquarters in Hunt Valley,  
28 Maryland. PHH Partner has a 50.1% membership interest in PHH Home Loans.

1           25. Defendant PHH Mortgage Corporation (“PHH Mortgage”) is a New  
2 Jersey corporation formed in 1977, with its headquarters in Mount Laurel, New  
3 Jersey. PHH Mortgage was formerly known as Cendant Mortgage Corporation. All  
4 references to PHH Mortgage also include Cendant Mortgage Corporation, as its  
5 predecessor, where appropriate.

6           26. Defendant PHH Corporation (“PHH”) is a New Jersey corporation  
7 formed in 2001, with its headquarters in Mount Laurel, New Jersey. PHH Corp. is  
8 the parent corporation and holds a 100% ownership interest in PHH Partner and  
9 PHH Mortgage, and any reference to PHH includes PHH Partner and PHH  
10 Mortgage, unless the context dictates otherwise.

11           27. Defendant Realogy Services Venture Partner LLC (“Realogy Partner”)  
12 is a Delaware limited liability company founded in 2004, with its headquarters in  
13 Parsippany, New Jersey. Realogy Partner has a 49.9% membership interest in PHH  
14 Home Loans. Realogy Partner is the successor in interest of Cendant Real Estate  
15 Services Venture Partner, Inc. All references to Realogy Partner also include  
16 Cendant Real Estate Services Venture Partner, Inc., as its predecessor, where  
17 appropriate.

18           28. Defendant Realogy Services Group LLC (“Realogy Services”) is a  
19 Delaware limited liability company founded in 2004, with its headquarters in  
20 Parsippany, New Jersey. Realogy Services was formerly known as Cendant Real  
21 Estate Services Group, LLC. All references to Realogy Services also include  
22 Cendant Real Estate Services, LLC, as its predecessor, where appropriate.

23           29. Defendant Title Resource Group LLC (“TRG”) is a Delaware limited  
24 liability company founded in 1999, with its headquarters in Mount Laurel, New  
25 Jersey. TRG was formerly known as Cendant Settlement Services Group, LLC  
26 (“CSSG”). All references to TRG also include Cendant Settlement Services Group,  
27 LLC, as its predecessor, where appropriate. TRG does business under various trade  
28 names including Equity Title, US Title, Sunbelt Title, Texas American Title

1 Company, Market Street Settlement Group, Mid-Atlantic Settlement, and Burnet  
2 Title.

3 30. Defendant West Coast Escrow Company (“West Coast Escrow”) is a  
4 California limited liability company founded in 1984, with its headquarters in  
5 Madison, New Jersey. On information and belief, West Coast Escrow is a wholly  
6 owned subsidiary of TRG.

7 31. Defendant TRG Services Escrow, Inc. (“TRG Services”) is a Delaware  
8 corporation founded in 2007, with its headquarters in Madison, New Jersey. On  
9 information and belief, TRG Services is a wholly owned subsidiary of TRG.

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

14 33. Defendant Realogy Group LLC (“Realogy Group”) is a Delaware  
15 limited liability company formed in 2006, with its headquarters in Madison, New  
16 Jersey. Realogy Group is the parent corporation and holds a 100% interest in  
17 Realogy Partner, Realogy Services, TRG, and NRT.

18 34. Defendant Realogy Intermediate Holdings LLC (“Realogy  
19 Intermediate”) is a Delaware limited liability company founded in 2006, with its  
20 headquarters in Madison, New Jersey. Realogy Intermediate is the parent  
21 corporation and holds a 100% interest in Realogy Group.

22 35. Defendant Realogy Holdings Corp. (“Realogy”) is a Delaware  
23 corporation founded in 2006, with its headquarters in Madison, New Jersey.  
24 Realogy Holdings is the parent corporation and holds a 100% interest in Realogy  
25 Intermediate, and any reference to Realogy includes Realogy Intermediate, Realogy  
26 Group, and each of Realogy Group’s subsidiaries, including Realogy Partner,  
27 Realogy Services, TRG, and NRT, unless the context dictates otherwise.

28

1 **REGULATORY FRAMEWORK**

2 **A. RESPA Prohibits “Kickbacks” and “Things of value” in Exchange for**  
3 **Referral of Settlement Services**

4 36. Congress passed RESPA in 1974 to promote competition within the  
5 real estate settlement industry and protect consumers from “unnecessarily high  
6 settlement charges caused by certain abusive practices.” 12 U.S.C. § 2601(a). One  
7 goal, in particular, was the “elimination of kickbacks or referral fees that tend to  
8 increase unnecessarily the costs of certain settlement services.” 12 U.S.C. §  
9 2601(b).<sup>2</sup> To this end, section 8 of RESPA, 12 U.S.C. § 2607, essentially bans  
10 settlement service providers from collecting unearned fees.

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

15 No person shall give and no person shall accept any fee, kickback, or  
16 *thing of value*<sup>3</sup> pursuant to any agreement or understanding,<sup>4</sup> oral or

17 <sup>2</sup> [T]he term “Settlement services” includes any service provided in connection  
18 with a real estate settlement including, but not limited to, the following: title  
19 searches, title examinations, the provision of title certificates, title insurance,  
20 services rendered by an attorney, the preparation of documents, property  
21 surveys, the rendering of credit reports or appraisals, pest and fungus  
22 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 . . . .

12 U.S.C. § 2602(3).

23 <sup>3</sup> “Thing of value” is broadly defined in RESPA and Regulation X. *See* 12 U.S.C. §  
24 2602(2) (“[T]he term “thing of value” includes any payment, advance, funds, loan,  
25 service, or other consideration . . . .”); 12 C.F.R. § 1024.14(d) (“Thing of value . . .  
26 includes, without limitation, monies, things, discounts, salaries, commissions, fees,  
27 duplicate payments of a charge, stock, dividends, distributions of partnership profits,  
28 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

1 otherwise, that business incident to or a part of a real estate settlement  
2 service involving a *federally related mortgage loan*<sup>5</sup> shall be referred to  
any person.

3 12 U.S.C. § 2607(a) (emphasis and footnotes added).<sup>6</sup>

4 38. Further, section 8 specifies that “[a]ny referral of a settlement service is  
5 not a compensable service, except as set forth in § 1024.14(g)(1),” which sets forth  
6 all “fees, salaries, compensation, or other payments” permitted under section 8.” 12  
7 C.F.R. §1024.14(g), *codified at* 12 U.S.C. § 2607. These include the payment of  
8 fees and salaries for services actually performed and goods actually furnished, as  
9 well as payments made pursuant to arrangements between real estate agents and  
10 brokers. These limited exemptions remain unchanged. *See* 12 U.S.C. § 2607(c)(1)-  
11 (3).

12  
13  
14  
15 rates, sales or rentals at special prices or rates, lease or rental payments based in  
16 whole or in part on the amount of business referred, trips and payment of another  
17 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.”)

18 <sup>4</sup> An agreement or understanding for the referral of business incident to or part of a  
19 settlement service need not be written or verbalized but may be established by a  
20 practice, pattern or course of conduct. When a thing of value is received  
21 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.

22 12 C.F.R. § 1024.14(e).

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

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

26 No person shall give and no person shall accept any portion, split, or percentage  
27 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.

28 12 U.S.C. § 2607(b).

1 **B. “Affiliated Business Arrangements” Are Per Se Violations of Section 8 of**  
2 **RESPA Unless They Satisfy All Requirements of Section 8(c)(4)**

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

11 40. In turn, Congress enacted two significant amendments to section 8 to  
12 address instances in which no direct kickback or referral fee is paid. First, Congress  
13 changed the calculation of damages from three times the amount of the kickback or  
14 referral fee to three times “any charge paid” for the settlement service. 12 U.S.C. §  
15 2607(d)(2). Thus, upon establishing a violation, a consumer is entitled to recover  
16 treble damages based on the full amount paid for the referred settlement service  
17 without the need to quantify the kickback or demonstrate any overcharge. *See*  
18 *Edwards v. First Am. Corp.*, 610 F.3d 514, 518 (9th Cir. 2010) (finding that class  
19 action plaintiffs have standing to bring RESPA claims even when no overcharge can  
20 be established).

21 41. Second, Congress defined and permitted “Controlled Business  
22 Arrangements” – since renamed “Affiliated Business Arrangements” (“ABAs”) –  
23 only under limited circumstances designed to ameliorate their inherently abusive  
24 nature. RESPA defines an ABA as:

25 an arrangement in which (A) a person who is in a position to refer  
26 business incident to or a part of a real estate settlement service involving a  
27 federally related mortgage loan, or an associate of such person, has either  
28 an affiliate relationship with or a direct or beneficial ownership interest of  
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.

1 12 U.S.C. § 2602(7).<sup>7</sup>

2 42. ABAs are permitted, so long as they abide by *all* requirements  
3 enumerated in section 8(c)(4):

4 Nothing in [Section 8] shall be construed as prohibiting . . . (4) affiliated  
5 business arrangements so long as (A) a *disclosure is made of the existence*  
6 *of such an arrangement* to the person being referred and, in connection  
7 with such referral, such person is provided a written estimate of the charge  
8 or range of charges generally made by the provider to which the person is  
9 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.*

10 12 U.S.C. § 2607(c)(4) (emphasis added).

11 43. The regulations and case law interpreting the ABA provisions have  
12 provided important clarifications. Most significantly, courts have held that section  
13 8(c)(4) is not merely an exemption. Rather, all ABAs are *presumed* to be a violation  
14 of section 8 and are permissible *only* if the three conditions in section 8(c)(4) are  
15 satisfied. *See, e.g., Bolinger v. First Multiple Listing Serv., Inc.*, 838 F. Supp. 2d  
16 1340, 1355 (N.D. Ga. 2012) (“Section 8(c)(4) provides a cause of action  
17 independent of Sections 8(a) and (b).”); *accord Minter v. Wells Fargo Bank, N.A.*,  
18 274 F.R.D. 525, 538-39 (D. Md. 2011) (“ABAs not in compliance with the three  
19 conditions of Section 8(c)(4) are per se violations. . . . By statutory definition . . .  
20 ABAs involve by virtue of their affiliation the transfer of a ‘thing of value’ in  
21 exchange, explicitly or not, for referrals and such transfers are prohibited.”).

22 44. Also, regulators and courts have sought to curtail the abusive practice  
23 of using the façade of a compliant ABA to insulate a business arrangement that has  
24 as its primary purpose circumventing RESPA’s kickback ban, as is the case with  
25 PHH Home Loans. In 1996, the United States Department of Housing and Urban  
26 Development (“HUD”), which was at that time the regulatory body tasked with

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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 implementing RESPA,<sup>8</sup> issued a Statement of Policy to help identify these sham  
2 ABAs disguised as joint ventures. *See* 61 Fed. Reg. 29258, at \*29259 (June 7,  
3 1996). Courts have looked to the ten-factor test found in HUD’s policy statement to  
4 determine whether a particular joint venture is a permissible ABA, and have held  
5 that if a purported ABA “fails the HUD Ten Factor Test, the arrangement to which it  
6 is a party is a violation of RESPA.”<sup>9</sup> *See Minter*, 274 F.R.D. at 543.

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

9 <sup>9</sup> The ten factors are: (1) Does the new entity have sufficient initial capital and net  
10 worth, typical in the industry, to conduct the settlement service business for which it  
11 was created? Or is it undercapitalized to do the work it purports to decide? (2) Is  
the new entity staffed with its own employees to perform the services it provides?  
12 Or does the new entity have “loaned” employees of one of the parent providers? (3)  
Does the new entity manage its own business affairs? Or is an entity that helped  
13 create the new entity running the new entity for the parent provider making the  
referrals? (4) Does the new entity have an office for business which is separate  
14 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  
15 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,  
16 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  
17 perform all of the substantial services itself? Or does it contract out part of the  
work? If so, how much of the work is contracted out? (7) If the new entity  
18 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  
19 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,  
20 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  
21 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  
22 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  
23 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  
24 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  
25 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  
26 lender)? Or does the new entity send business to a number of entities, which may  
27  
28

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

5 **GENERAL FACTUAL ALLEGATIONS**

6 **A. PHH's Operations**

7 46. In its SEC filings and elsewhere, PHH touts itself as a leading non-  
8 bank mortgage originator and servicer of U.S. residential mortgage loans. Through  
9 PHH Mortgage and its subsidiaries, PHH provides outsourced mortgage banking  
10 services to a variety of clients, including financial institutions and real estate brokers  
11 throughout the U.S. and is focused on originating, selling, and servicing residential  
12 mortgage loans. According to *Inside Mortgage Finance*, PHH Mortgage was the  
13 fifth largest retail mortgage originator with a 4.7% market share for the nine months  
14 ending September 30, 2014. *Inside Mortgage Finance* also reported that PHH  
15 Mortgage was the eighth largest mortgage loan servicer with a 2.3% market share as  
16 of December 31, 2014.

17 47. PHH's business activities are divided into two operating segments:  
18 Mortgage Production (also referred to as mortgage origination) and Mortgage  
19 Servicing.

20 **1. Mortgage Production**

21 48. PHH's Mortgage Production segment, which accounted for  
22 approximately \$231 million in revenue in 2014, provides private-label mortgage  
23 services to financial institutions and real estate brokers. It generates revenue  
24 through fee-based mortgage loan origination services and the origination and sale of  
25 mortgage loans into the secondary market. PHH Mortgage generally sells all

26 \_\_\_\_\_  
27 include one of the providers that created it? 61 Fed. Reg. 29258, at \*29262. The  
28 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 saleable mortgage loans that it originates to secondary market investors, which  
2 include a variety of institutional investors, and initially retains the servicing rights  
3 on mortgage loans sold. The mortgage loans are typically sold within 30 days of  
4 origination and classified as held for sale until sold. During 2014, 69% of PHH's  
5 mortgage loans were sold to, or were sold pursuant to, programs sponsored by  
6 Fannie Mae, Freddie Mac or Ginnie Mae and the remaining 31% were sold to  
7 private investors.

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

12 50. *Private Label Solutions.* PHH offers complete mortgage outsourcing  
13 solutions to wealth management firms, regional banks, and community banks,  
14 including Merrill Lynch, Morgan Stanley, and HSBC – which represented 24%,  
15 21%, and 10%, respectively, of PHH's total mortgage loan originations in 2014.  
16 The PLS component of PHH's mortgage origination business accounted for 67%  
17 and 72% of its origination volume in 2013 and 2014, respectively.

18 51. *PHH Home Loans.* PHH Home Loans, which is more fully described  
19 below, is supported by PHH's relationship with Realogy, which represented 24% of  
20 PHH's mortgage originations in 2014 and 23% in 2013.

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

26 **2. Mortgage Servicing**

27 53. PHH's Mortgage Servicing segment, which accounted for  
28 approximately \$264 million in revenue in 2014, services mortgage loans originated

1 by PHH Mortgage, purchases mortgage servicing rights from others, and acts as a  
2 subservicer for certain clients that own the underlying servicing rights. PHH  
3 services loans on behalf of the owners of the underlying mortgage, and it has limited  
4 exposure to credit risk because it does not hold loans for investment purposes. PHH  
5 principally generates revenue in its mortgage servicing segment through contractual  
6 fees earned from its servicing rights primarily based on a percentage of the unpaid  
7 principal balance (“UPB”), or from its subservicing agreements, which are typically  
8 a stated amount per loan.

9 54. PHH’s stated corporate strategy, as disclosed in SEC filings, has been  
10 to position its mortgage business to be less capital intensive and to have more fee-  
11 based revenue streams. As a result, PHH grew the UPB of its subservicing portfolio  
12 from \$40.8 billion at the end of 2012, to \$96.3 billion at the end of 2013, and \$113.4  
13 billion at the end of 2014.

14 **B. Realogy’s Operations**

15 55. Realogy claims in SEC filings and elsewhere to be the preeminent and  
16 most integrated provider of residential real estate services in the U.S. Realogy is the  
17 world’s largest franchisor of residential real estate brokerages with some of the most  
18 recognized brands in the real estate industry, the largest owner of U.S. residential  
19 real estate brokerage offices, the largest U.S. and a leading global provider of  
20 outsourced employee relocation services, and a significant provider of title and  
21 settlement services.

22 56. Realogy’s revenue is derived on a fee-for-service basis, and given its  
23 breadth of complementary service offerings, Realogy is able to generate fees from  
24 multiple aspects of a residential real estate transaction. Realogy’s operating  
25 platform is supported by its portfolio of industry leading franchise brokerage brands,  
26 in addition to non-franchise brands owned and operated through NRT. Realogy’s  
27 multiple brands and operations allow it to derive revenue from many different  
28

1 segments of the residential real estate market, in many different geographies, and at  
2 varying price points.

3 57. Realogy divides its operations into four segments, each of which  
4 receives fees based upon services performed for its customers: Real Estate  
5 Franchise Services, Company Owned Real Estate Brokerage Services, Relocation  
6 Services, and Title and Settlement Services.

7 **1. Real Estate Franchise Services**

8 58. Realogy is the largest franchisor of residential real estate brokerages in  
9 the world through its portfolio of well-known brokerage brands, including Century  
10 21, Coldwell Banker, Coldwell Banker Commercial, ERA, Sotheby's International  
11 Realty, and Better Homes and Gardens Real Estate. As of December 31, 2014,  
12 Realogy's real estate franchise systems (inclusive of its company owned brokerage  
13 operations) had approximately 13,500 offices worldwide in 104 countries and  
14 territories. This included approximately 6,000 brokerage offices in the U.S. and  
15 approximately 251,300 independent sales associates worldwide, including  
16 approximately 174,600 independent sales associates operating under its franchise  
17 and proprietary brands in the U.S. Realogy's franchisees pay Realogy fees for the  
18 right to operate under one of its trademarks and to enjoy the benefits of the systems  
19 and business enhancing tools provided by its real estate franchise operations.

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

21 59. Realogy, via subsidiary NRT, owns and operates the largest residential  
22 real estate brokerage business in the U.S. under the Coldwell Banker, Corcoran  
23 Group, Sotheby's International Realty, ZipRealty, and Citi Habitats brand names.  
24 Realogy offers full-service residential brokerage services through more than 725  
25 company owned brokerage offices with approximately 45,000 independent sales  
26 agents in more than 45 of the 100 largest metropolitan areas of the U.S. NRT, as the  
27 broker for a home buyer or seller, derives revenues primarily from gross  
28 commission income received at the closing of real estate transactions. To

1 complement its residential brokerage services, NRT offers home ownership services  
2 that include comprehensive single-family residential property management in many  
3 of the nation's largest rental markets.

4 **3. Relocation Services**

5 60. Realogy, through subsidiary Cartus Corporation (“Cartus”), claims to  
6 be a leading global provider of outsourced employee relocation services. Cartus is  
7 the largest provider of such services in the U.S. and also operates in several  
8 international relocation destinations. Cartus offers a broad range of employee  
9 relocation services designed to manage all aspects of an employee’s move. The  
10 relocation services business serves corporations, including 56% of the Fortune 50  
11 companies. Cartus also services affinity organizations such as insurance companies  
12 and credit unions that provide Cartus’s services to their members. In 2014, Cartus  
13 assisted in over 171,000 corporate and affinity relocations in nearly 150 countries  
14 for approximately 1,100 active clients.

15 **4. Title and Settlement Services**

16 61. Through subsidiary TRG, Realogy assists with the closing of real estate  
17 transactions by providing full-service title and settlement (i.e., closing and escrow)  
18 services to customers, real estate companies – including Realogy’s company owned  
19 real estate brokerage and relocation services businesses – as well as a targeted  
20 channel of large financial institution clients, including PHH. In 2014, TRG was  
21 involved in the closing of approximately 141,000 transactions of which  
22 approximately 58,000 related to NRT. In addition to its own title and settlement  
23 services, TRG also coordinates a nationwide network of attorneys, title agents, and  
24 notaries to service financial institution clients on a national basis. TRG also serves  
25 as an underwriter of title insurance policies in connection with residential and  
26 commercial real estate transactions.

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

4 62. To understand how and why PHH and Realogy structured their  
5 intricately intertwined business dealings, it is important to consider their origins.  
6 Prior to February 1, 2005, PHH and Realogy were part of a single real estate  
7 conglomerate known as Cendant.

8 63. When Cendant spun off PHH into its own company, Cendant and PHH  
9 sought to maintain coordination of their business practices (if not their prior  
10 corporate form). As PHH explained in a Form 10-K filed with the SEC on March 2  
11 2009 (emphasis added):

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

26 64. Effective July 31, 2006, Cendant spun off its real estate services  
27 division into its own corporation, Realogy, but the ties between the businesses did  
28 not change. Rather, Realogy stepped into the shoes of Cendant for purposes of  
Cendant’s real estate service arrangements with PHH.

24 **D. PHH and Cendant (Now Realogy) Executed an SRA and Formed the**  
25 **PHH Home Loans Joint Venture as Part of Their “Separation”**

26 65. For purposes of this action, the most pertinent business agreements  
27 between PHH and Realogy are the Strategic Relationship Agreement (“SRA”) and  
28 Limited Liability Company Operating Agreement of PHH Home Loans (the

1 “Operating Agreement”). PHH and Cendant, through their subsidiaries, executed  
2 both agreements on January 31, 2005, the same day that PHH was spun off from  
3 Cendant.

4 66. As detailed below, the SRA describes an exchange of various rights  
5 and other things of value amongst PHH, Cendant (now Realogy), various  
6 subsidiaries and affiliates of both, and PHH Home Loans. The SRA creates a joint  
7 venture between subsidiaries of PHH and Realogy specifically to act as a sham  
8 ABA to give PHH hidden kickbacks and referral fees in exchange for referral of title  
9 insurance and other settlement services to a subsidiary of Realogy, TRG. *See*  
10 **Exhibit A**, Strategic Relationship Agreement.

11 67. The Operating Agreement supplements the SRA by detailing the  
12 operation of the joint venture and providing additional benefits to PHH. PHH and  
13 Realogy, through their subsidiaries PHH Partner and Realogy Partner, hold 50.1%  
14 and 49.9% of the membership interests in PHH Home Loans; and PHH Partner is  
15 the sole managing member in control of the joint venture. Moreover, on  
16 information and belief and as explained below, the Operating Agreement facilitates  
17 the preferential transfer of lucrative mortgaging servicing rights to PHH Home  
18 Loans. *See Exhibit A*, Operating Agreement.

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

20 68. Of critical importance to PHH’s business, the SRA provides that PHH  
21 Home Loans is the *exclusively* recommended mortgage lender for the vast network  
22 of Realogy-owned brokerages. The SRA also provides PHH Home Loans access to  
23 consumers attending trade shows, conventions, and conferences organized by  
24 Realogy’s brokerages.

25 69. Under separate but related agreements, PHH Home Loans has the  
26 exclusive right to use the Century 21, Coldwell Banker, and ERA brand names in  
27 marketing its mortgage loan products; and PHH markets mortgage loan products to  
28 Realogy’s brokerage franchises and its Cartus relocation business.

1           70. Moreover, PHH has acknowledged – including in a Form 10-K filed  
2 with the SEC on February 27, 2015 – that its mortgage origination business “is  
3 substantially dependent upon [its] relationship with Realogy.” According to the  
4 filing, 24% of PHH’s mortgage loan originations during 2014 were derived from  
5 Realogy.

6 **F. PHH Receives Additional, Undisclosed Benefits from Its Joint Venture**  
7 **with Realogy**

8           71. On information and belief, PHH derives other benefits from its  
9 arrangements with Realogy that are not only hidden from individual consumers but  
10 from the public at large.

11           72. As managing member under the Operating Agreement – via its  
12 subsidiary, PHH Partner – PHH is responsible for selling the mortgage loans  
13 originated by PHH Home Loans, including the lucrative servicing rights to those  
14 loans. Moreover, the Operating Agreement expressly permits PHH to cause PHH  
15 Home Loans to sell the mortgages to PHH, so long as the terms are “no less  
16 favorable” than what an independent third party would pay. In other words, PHH  
17 has the authority to sell servicing rights to itself, so long as PHH matches the price  
18 that would be paid by a competitor. Thus, in effect, PHH has a right of first refusal  
19 to acquire lucrative servicing rights.

20           73. PHH purports to sell the servicing rights for PHH Home Loans  
21 originated loans to the highest bidder. Yet, PHH ends up acquiring a  
22 disproportionately large share of those servicing rights versus PHH’s overall market  
23 share for mortgage servicing.

24           74. PHH is able to acquire this disproportionate share of servicing rights  
25 through the foregoing right of first refusal, whereby PHH is permitted to purchase  
26 the rights at a price equal to the highest bid. This right to match the highest bid is  
27 both immensely valuable for PHH and also detrimental, both to consumers and the  
28

1 joint venture, because PHH’s right of first refusal discourages other potential buyers  
2 of the servicing rights from bidding.

3 **G. PHH Home Loans and PHH Refer All Title Insurance and Other**  
4 **Settlement Services to TRG, Resulting in Marketplace Distortions and**  
5 **Increased Settlement Costs to Consumers**

6 75. Realogy agreed to give PHH special rights with respect to the purchase  
7 of servicing rights from PHH Home Loans, in part because both PHH Home Loans  
8 and PHH (including by way of the PLS Partners) referred all title insurance and  
9 other settlement services business to Realogy’s subsidiary, TRG.

10 76. In fact, PHH was bound under the SRA to refer – and cause each PLS  
11 Partner to refer – all title insurance and settlement services to TRG. Section 6.3 of  
12 the SRA provides that “PHH shall, and shall cause its subsidiaries to (i) recommend  
13 CSSG [now TRG] as provider of Settlement Services,” “(ii) utilize [TRG] on an  
14 exclusive basis,” and “(iii) recommend [TRG] as provider of Settlement Services to  
15 private label solutions (“PLS”) partners . . . .”

Section 6.3 Settlement Services.  
PHH shall, and shall cause its Subsidiaries to (i) recommend CSSG as provider of Settlement Services (including, without limitation, on all transactions where PHH or one of its Subsidiaries has the option to choose the provider of such services, all closings by mail, all \*CONFIDENTIAL and all search products such as Property and Judgment Reports), (ii) utilize CSSG on an exclusive basis  
  
\* The term “Confidential” indicates material that has been omitted and for which confidential treatment has been requested. All such omitted material has been filed with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.  
  
whenever PHH or one of its Subsidiaries has the option to choose the title or escrow agent and, in the applicable jurisdiction, CSSG either provides such services or receives compensation in connection with such services or both, and (iii) recommend CSSG as provider of Settlement Services to private label solutions (“PLS”) partners and the Small Corps; provided, however, that: (a) during the first eighteen (18) months after the date of this Agreement, CSSG shall provide all such services at the pricing levels which existed immediately prior to execution of this Agreement (and, thereafter, agree to most favored nation status for such pricing); and (b) within one hundred eighty (180) days from the date of this Agreement, Centant Real Estate shall cause CSSG to provide most favored nation status on service level agreements and processes that are consistent with existing CSSG service levels. PHH shall not, and shall cause its Subsidiaries not to, enter into any arrangement that provides for a party other than CSSG to provide the products and services set forth in (i) above to PHH’s customers or its PLS partners’ customers, unless such PLS partner requires an alternative provider as a condition to entering into or renewing such arrangement with PHH or such Subsidiary and then only after CSSG has been afforded the opportunity to present its service offerings to such PLS partner.

22 77. Customers of PHH, PHH Home Loans, and each of the PLS Partners  
23 were referred to TRG for title insurance and other settlement services and charged  
24 fees by TRG for these services. Customers trusted and relied that these referrals  
25 were lawful and not part of an anti-competitive kickback scheme.

26 78. PHH, PHH Home Loans, and each of the PLS Partners (at the direction  
27 of PHH) made these referrals in exchange for the unlawful kickbacks described  
28

1 above, causing the precise marketplace distortions and increased settlement costs  
2 that RESPA seeks to remedy.

3 79. Thus, while not a required element of a section 8 claim under  
4 controlling law, all customers who were referred to TRG for title insurance and  
5 settlement services by PHH, PHH Home Loans, and each of the PLS Partners paid  
6 more for these services than they would have paid in the absence of the referrals and  
7 kickbacks.

8 80. Indeed, as examples of further RESPA violations stemming from the  
9 mandatory referral provisions of the SRA, Realogy (through its brokerage  
10 subsidiaries), on information and belief, has implemented unlawful bonus structures  
11 and entered into other anti-competitive marketing agreements with its real estate  
12 managers and agents. Among other things, bonus compensation paid to real estate  
13 managers is tied to the capture rate for settlement services and other referrals to  
14 affiliates. In addition, the allocation of marketing funds to agents increases based  
15 on referrals to affiliates, all in connection with PHH Home Loans mortgages.

16 **H. The PHH Home Loans Originated Mortgage Loans Violate Section 8 and**  
17 **Do Not Satisfy the ABA Exemption Requirements in Section 8(c)(4)**

18 81. PHH and Realogy have sought to disguise the improper kickback of  
19 benefits to PHH in exchange for referrals of title insurance and other settlement  
20 services to TRG by forming the PHH Home Loans joint venture.

21 82. Under the SRA, PHH and Realogy caused PHH Home Loans to refer  
22 title insurance and other settlement services to TRG in exchange for the benefits  
23 flowing to PHH described above, including the undisclosed right of first refusal for  
24 the purchase of the servicing rights for loans originated by PHH Home Loans.

25 83. Defendants, however, failed to disclose the full nature of the  
26 relationships and business arrangements amongst PHH, PHH Home Loans, Realogy,  
27 and TRG to the customers who were referred to TRG, as explained above.  
28

1 84. Further, as discussed above, the purported ABA was in fact a sham  
2 venture designed to facilitate illegal kickbacks and referral fees.

3 85. In addition, PHH’s receipt of additional benefits in exchange for the  
4 referrals, as described above, was a “thing of value . . . received from the  
5 arrangement, other than . . . a return on the ownership interest or franchise  
6 relationship.”

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

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

13 87. Neither PHH, the PLS Partners, nor TRG disclosed to consumers that  
14 the title insurance and other settlement services were referred to TRG based on its  
15 relationship and arrangements with PHH, *nor did they disclose that PHH was*  
16 *contractually bound to cause each PLS Partner to recommend TRG as the exclusive*  
17 *provider of title insurance and other settlement services.*

18 88. Rather, on information and belief, PHH and TRG intentionally misled  
19 consumers into believing that referrals to TRG were made solely at the discretion of  
20 the respective PLS Partner and based on the PLS Partner’s opinion of the quality of  
21 TRG’s services.

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

25 89. On June 4, 2015, the Consumer Financial Protection Bureau (“CFPB”)  
26 issued a Decision of the Director which found PHH liable under section 8 based on  
27 an additional illegal kickback scheme related to the payment of mortgage  
28 reinsurance premiums to subsidiaries of PHH – Atrium Insurance Corporation and  
Atrium Reinsurance Corporation (collectively, “Atrium”). *See Exhibit B.*

1           90. Among the penalties imposed on PHH was the disgorgement of over  
2 *\$109 million* in illegally charged fees.<sup>10</sup> Also, the CFPB imposed extensive and  
3 long-lasting injunctive penalties, including enjoining “PHH from referring  
4 borrowers to *any provider of a settlement service* if that provider has agreed to  
5 purchase a service from PHH, and if payment for that service is triggered by the  
6 referrals. This provision seeks to prevent PHH from entering into illegal referral  
7 agreements with respect to *any settlement service*, and it also applies for *15 years*  
8 from the date the order becomes effective, as a further means of fencing in PHH  
9 against the commission of similar violations of RESPA.” (Emphasis added).

10           91. The CFPB explained in its decision that PHH’s violations spanned  
11 roughly 18 years; that there was no indication that PHH changed its practices for  
12 any reason other than that the arrangement had simply ceased to be lucrative; and  
13 that PHH had not taken any steps to reduce the likelihood of future violations. The  
14 decision further explains the broad injunctions by commenting “that referral  
15 agreements that violate section 8(a) can be difficult to detect.”

16 **K. PHH and Realty Amended the SRA to Delete the Mandatory Referral**  
17 **Provision Shortly After the CFPB Issued Its Decision**

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

24  
25 \_\_\_\_\_  
26 <sup>10</sup> This figure would actually have been substantially higher were it not for a three-  
27 year statute of limitations on regulatory actions under section 8 in place prior to the  
28 transfer of regulatory authority to the CFPB. The decision limits liability to  
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           93. On information and belief, PHH and Realogy amended the SRA  
2 because they knew the mandatory referral provision was a violation of section 8 of  
3 RESPA, 12 U.S.C. § 2607(a), and sought to limit future exposure.

4                           **ALLEGATIONS SPECIFIC TO NAMED PLAINTIFFS**

5       **A. Class Representative Lester L. Hall, Jr. (PHH Home Loans Subclass)**

6           94. On or about April 5, 2007, Mr. Hall purchased a house located at 1211  
7 West River Lane in Santa Ana, California.

8           95. Mr. Hall financed a portion of the purchase price with a loan from PHH  
9 Home Loans and executed a deed of trust securing the property for the benefit of  
10 PHH Home Loans.

11           96. Mr. Hall was referred to TRG for both title insurance (under the trade  
12 name Equity Title) and other settlement services (via TRG subsidiary West Coast  
13 Escrow) in connection with the purchase. Mr. Hall trusted and relied that the  
14 referrals were lawful and not part of an anti-competitive kickback scheme.

15           97. Mr. Hall paid fees and other charges to Equity Title and West Coast  
16 Escrow for title insurance and other settlement services, respectively, in conjunction  
17 with the settlement of the mortgage loan.

18           98. As a result of PHH's and PHH Home Loans' referral of TRG in  
19 exchange for the unlawful kickbacks described above, Mr. Hall paid more for these  
20 services than he would have paid in the absence of the referrals and kickbacks.

21           99. Mr. Hall was not informed of the full nature of the business  
22 arrangements and affiliations involving PHH, PHH Home Loans, Equity Title, and  
23 West Coast Escrow, as explained herein.

24       **B. Class Representative Timothy L. Strader. (PLS Subclass)**

25           100. On or about April 22, 2011, Mr. Strader purchased a house located at 4  
26 Rue Grand Ducal in Newport Beach, California.

27  
28

1           101. Mr. Strader financed a portion of the purchase price with a loan from  
2 one of the PLS Partners, Bank of America – doing business as Merrill Lynch – and  
3 executed a deed of trust securing the property for the benefit of Bank of America.

4           102. Mr. Strader was referred to TRG for both title insurance (under the  
5 trade name Equity Title) and other settlement services (via TRG subsidiary TRG  
6 Services) in connection with the purchase. Mr. Strader trusted and relied that the  
7 referrals were lawful and not part of an anti-competitive kickback scheme.

8           103. Mr. Strader paid fees and other charges to Equity Title and TRG  
9 Services for title insurance and other settlement services, respectively, in  
10 conjunction with the settlement of the mortgage loan.

11           104. As a result of the referral to TRG in exchange for the unlawful  
12 kickbacks to PHH described above, Mr. Strader paid more for these services than he  
13 would have paid in the absence of the referrals and kickbacks.

14           105. On or about July 19, 2012, Mr. Strader refinanced his mortgage loan  
15 with Merrill Lynch and executed a new deed of trust and note in favor of Bank of  
16 America.

17           106. Mr. Strader was again referred to TRG for both title insurance (under  
18 the trade name Equity Title) and other settlement services (via TRG subsidiary TRG  
19 Services) in connection with the purchase. Mr. Strader again trusted and relied that  
20 the referrals were lawful and not part of an anti-competitive kickback scheme.

21           107. Mr. Strader again paid fees and other charges to Equity Title and TRG  
22 Services for title insurance and other settlement services, respectively, in  
23 conjunction with the settlement of the mortgage loan.

24           108. Mr. Strader was not informed in connection with either transaction that  
25 the referrals to Equity Title and TRG Services were made at the direction of PHH,  
26 nor that PHH was required under the terms of the SRA to refer, and cause Merrill  
27 Lynch to refer, all title insurance and settlement services to TRG.

28

1 109. Mr. Strader was also not informed of the business arrangements and  
2 affiliations involving PHH, Equity Title, and TRG Services, as explained herein.

3 **CLAIM TOLLING ALLEGATIONS**

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

12 111. Defendants concealed the nature of the relationships between PHH,  
13 Realogy, PHH Home Loans, and TRG underlying Plaintiffs claims in this case. The  
14 details of the SRA – notably, that PHH Home Loans was the exclusively  
15 recommended mortgage lender for Realogy’s vast real estate brokerage network;  
16 that PHH receives a right of first refusal for the purchase of the mortgage servicing  
17 rights for PHH Home Loan originated mortgages; and that PHH was required to  
18 refer, and cause the PLS Partners to refer, title insurance and other settlement  
19 services to TRG under the terms of the SRA – were never publicly disclosed (and  
20 certainly not to the consumers who have paid the fees for the illegally referred  
21 services).

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

26 113. Likewise, even through the exercise of due diligence, which Plaintiffs  
27 and class members in fact exercised, Plaintiffs and class members could not have  
28 discovered Defendants’ violations of Section 8(a) of RESPA prior to November 5,

1 2015, because Defendants did not disclose the nature of the relationships between  
2 PHH, Realogy, PHH Home Loans, and TRG in mortgage related disclosures to  
3 consumers, nor in their SEC filings.

4 114. Although not required under controlling law for equitable tolling of the  
5 RESPA violations alleged herein, Defendants intentionally concealed the nature of  
6 their kickback scheme through, at best, incomplete and misleading disclosures that  
7 prevented customers, in the exercise of reasonable diligence, from discovering the  
8 existence of Defendants' section 8 violations.

9 115. Running the limitations period from the date of the alleged violations  
10 would frustrate one of the major purposes the act – the “elimination of kickbacks or  
11 referral fees that tend to increase unnecessarily the costs of certain settlement  
12 services.”

### 13 **CLASS ACTION ALLEGATIONS**

14 116. Plaintiffs bring this action on behalf of themselves and the following  
15 subclasses (collectively, the “Class”) pursuant to Rules 23(a), (b)(2), (b)(3), and  
16 (c)(5) of the Federal Rules of Civil Procedure:

#### 17 ***The PHH Home Loans Subclass***

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

#### 21 ***The PLS Subclass***

22 *All persons who (1) obtained a federally related mortgage loan (as that*  
23 *term is used in RESPA) from one of the PLS Partners on or after January*  
24 *31, 2005; and (2) paid a fee for title insurance or other settlement services*  
*to TRG (or one of its subsidiaries).*

25 117. Excluded from the Class are Defendants; Defendants' subsidiaries and  
26 affiliates; any entity in which any Defendant has a controlling interest; any and all  
27 employees of Defendants; any successor or assign of the Defendants; governmental  
28

1 entities; the judge to whom this case is assigned and his or her immediate family;  
2 and all persons who make a timely election to be excluded from the Class.

3 118. Plaintiffs reserve the right to revise the definition of the Class based  
4 upon information learned through discovery.

5 119. *Numerosity*. Pursuant to FRCP 23(a)(1), the members of the Class are  
6 so numerous and geographically dispersed that individual joinder of all Class  
7 members is impracticable. The precise number of Class members is unknown to  
8 Plaintiffs, but Plaintiffs are informed and believe that there are not less than  
9 hundreds of thousands of members of the Class. The precise number and identity of  
10 Class members is ascertainable from Defendants' books and records. Class  
11 members may be notified of the pendency of this action by recognized, Court-  
12 approved notice dissemination methods, which may include U.S. mail, electronic  
13 mail, Internet postings, and/or published notice.

14 120. *Commonality and Predominance*. Pursuant to FRCP 23(a)(2) and  
15 23(b)(3), this action involves common questions of law and fact, which predominate  
16 over any individual questions with respect to Class members, including, without  
17 limitation:

- 18 a. Whether Defendants engaged in the conduct alleged in this Complaint;
- 19 b. The nature of the relationships of Defendants to one another;
- 20 c. The nature of the benefits exchanged by PHH and Realogy under the
- 21 terms of the SRA and otherwise;
- 22 d. Whether Defendants gave and accepted benefits in exchange for the
- 23 referral of settlement services, and if so, the nature and extent of such
- 24 benefits and services; and
- 25 e. Whether Defendants' relationships with each other, and exchange of
- 26 benefits violated section 8 of RESPA

27 121. *Typicality*. Pursuant to FRCP 23(a)(3), the claims of the named  
28 Plaintiffs are typical of the claims of the Class because, among other things, all

1 members of the Class executed mortgage loans and paid similar, if not identical,  
2 amounts for title insurance and other settlement services based on the allegations in  
3 this Complaint. Furthermore, Mr. Hall's claims are typical of the claims of the PHH  
4 Home Loans Subclass because, among other things, all members of the PHH Home  
5 Loans Subclass executed mortgage loans from PHH Home Loans and received  
6 similar, if not identical, disclosures that failed to adequately state the full nature of  
7 the relationship between the lender and the provider of title insurance and other  
8 settlement services. Mr. Strader's claims are typical of the claims of the PLS  
9 Subclass because, among other things, all members of the PLS Subclass executed  
10 mortgage loans from one of the PLS Partners and did not receive any disclosure  
11 regarding the relationship of PHH and the provider of title insurance and other  
12 settlement services.

13       122. *Adequacy.* Pursuant to FRCP 23(a)(4), Plaintiffs are adequate Class  
14 representatives because their interests do not conflict with the interests of the other  
15 Class members. Likewise, Plaintiffs' counsel is competent and experienced in  
16 prosecuting complex class action cases. The Class's interests will be fairly and  
17 adequately protected by Plaintiffs and their counsel.

18       123. *Superiority.* Pursuant to FRCP 23(b)(3), a class action is the best  
19 available method to adjudicate this controversy. This action involves common  
20 questions of fact and law, as described above. Moreover, prosecution of the action  
21 will require targeted discovery on complex issues and could not practically be  
22 pursued by individual litigants. Plaintiffs and other Class members' damages are  
23 relatively small compared to the burden and expense that would be required to  
24 individually litigate the claims. In addition, individual litigation of Class members'  
25 claims would be impracticable and unduly burdensome to the court system and has  
26 the potential to lead to inconsistent results based on identical conduct. A class  
27 action provides the benefits of a single adjudication, economy of scale, and  
28 comprehensive supervision of a single court.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

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

4 **12 U.S.C. § 2607(a)**

5 (On Behalf of Mr. Hall and the PHH Home Loans Subclass Against PHH, PHH  
6 Mortgage, PHH Home Loans, RMR Financial, NE Moves Mortgage, PHH Partner,  
7 Realogy Holdings, Realogy Intermediate, Realogy Group, Realogy Partner, Realogy  
8 Services, TRG, TRG Services, West Coast Escrow, and NRT)

9 124. Plaintiffs reallege and incorporate by reference the allegations in  
10 paragraphs 1 through 123, as though fully incorporated herein.

11 125. 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.”

16 126. As alleged above, PHH and Realogy created a joint venture 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.

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

26 128. Class members who obtained a federally related mortgage loan from  
27 PHH Home Loans were referred to TRG for title insurance and other settlement  
28 services.

1           129. Based on the foregoing, Realogy, PHH, and PHH Home Loans entered  
2 into “an agreement or understanding, oral or otherwise, that business incident to or a  
3 part of a real estate settlement service involving a federally related mortgage loan”  
4 shall be referred to TRG.

5           130. As a result of PHH Home Loans’ referral of TRG, Mr. Hall and each  
6 member of the PHH Home Loans Subclass paid fees and other charges for title  
7 insurance and other settlement services to TRG as a customer of PHH Home Loans,  
8 which was “business incident to or part of” the federally related mortgage loan  
9 obtained from PHH Home Loans by Mr. Hall and the PHH Home Loans Subclass.

10           131. Pursuant to the SRA, PHH Home Loans is the *exclusively*  
11 recommended mortgage lender for Realogy’s vast real estate brokerage network.  
12 The SRA also provides PHH Home Loans access to consumers attending trade  
13 shows, conventions, and conferences organized by Realogy’s brokerages.

14           132. As alleged above, PHH receives what effectively and in practice  
15 amounts to a right of first refusal for the purchase of the mortgage servicing rights  
16 for PHH Home Loan originated mortgages, along with the economic benefits  
17 resulting from obtaining these servicing rights.

18           133. Realogy, PHH, and TRG created and received a “fee, kickback, or  
19 thing of value” by making PHH Home Loans the exclusively recommended  
20 mortgage lender for Realogy’s vast real estate brokerage network; granting PHH  
21 Home Loans the exclusive right to use the Century 21, Coldwell Banker, and ERA  
22 trade names to market its mortgage products; providing PHH Home Loans access to  
23 consumers attending trade shows, conventions, and conferences organized by  
24 Realogy’s brokerages; giving PHH a right of first refusal for the purchase of the  
25 mortgage servicing rights for PHH Home Loan originated mortgages; and providing  
26 the other benefits to PHH alleged herein.

27           134. These fees, kickbacks and things of value were provided and made  
28 pursuant to PHH and Realogy’s agreement, under the SRA and otherwise, that title

1 insurance and other settlement services shall be referred to TRG, and thus violated  
2 12 U.S.C. § 2607(a).

3 135. In addition, PHH, Realogy, PHH Home Loans, and TRG entered into  
4 an ABA that constitutes a per se violation of 12 U.S.C. § 2607(a).

5 136. PHH and Realogy entered into an arrangement in which PHH Home  
6 Loans would refer title insurance and settlement services involving federally related  
7 mortgage loans to TRG. Realogy, the parent corporation of TRG, has a 100%  
8 ownership interest (*i.e.*, more than 1 percent) in TRG. Likewise, because Realogy  
9 has a 49.9% membership interest in PHH Home Loans, PHH Home Loans has an  
10 affiliate relationship with TRG.

11 137. Therefore, PHH, PHH Home Loans, Realogy, and TRG were part of an  
12 ABA that constitutes a per se violation of 12 U.S.C. § 2607(a), *unless* Defendants  
13 can establish that the ABA was formed for legitimate purposes *and* complied with  
14 all requirements of 12 U.S.C. § 2607(c)(4).

15 138. The ABA alleged herein involving PHH, Realogy, PHH Home Loans,  
16 and TRG does not qualify as a permissible ABA for the following independent  
17 reasons: (a) PHH Home Loans was a sham venture designed to facilitate illegal  
18 kickbacks and referral fees; (b) Defendants failed to disclose the full nature of the  
19 relationships and business arrangements amongst PHH, PHH Home Loans, Realogy,  
20 and TRG, as explained above; and (c) PHH received benefits in excess of the return  
21 on its ownership interest in PHH Home Loans. Thus, the arrangement involving  
22 PHH, PHH Home Loans, Realogy, and TRG constituted a per se violation of 12  
23 U.S.C. § 2607(a).

24 139. 12 U.S.C. § 2607(d) provides that “[a]ny person or persons who violate  
25 the prohibitions or limitations of this section shall be jointly and severally liable to  
26 the person or persons charged for the settlement service involved in the violation in  
27 an amount equal to three times the amount of any charge paid for such settlement  
28 service.”

1 140. As alleged herein, Mr. Hall and each member of the PHH Home Loans  
2 Subclass paid fees and other charges to TRG for title insurance and settlement  
3 services as a customer of PHH Home Loans.

4 141. Therefore, Defendants are jointly and severally liable to Mr. Hall and  
5 each member of the PHH Home Loans Subclass for three times the amount of all  
6 fees and other charges paid to TRG for title insurance and other settlement services,  
7 for each federally related mortgage loan that Mr. Hall and the PHH Home Loans  
8 Subclass members obtained from PHH Home Loans.

9 **SECOND CAUSE OF ACTION**

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

11 **12 U.S.C. § 2607(a)**

12 (On Behalf of Mr. Strader and the PLS Subclass Against PHH, PHH Mortgage,  
13 Realogy Holdings, Realogy Intermediate, Realogy Group, Realogy Services, TRG,  
TRG Services, and West Coast Escrow)

14 142. Plaintiffs reallege and incorporate by reference the allegations in  
15 paragraphs 1 through 141, as though fully incorporated herein.

16 143. 12 U.S.C. § 2607(a) provides that “[n]o person shall give and no person  
17 shall accept any fee, kickback, or thing of value pursuant to any agreement or  
18 understanding, oral or otherwise, that business incident to or a part of a real estate  
19 settlement service involving a federally related mortgage loan shall be referred to  
20 any person.”

21 144. As previously alleged herein, under the PLS model, PHH directed the  
22 PLS Partners – for whom PHH manages all aspects of the mortgage process – to  
23 refer title insurance and other settlement services to TRG without disclosing to  
24 consumers the existence of PHH’s affiliation with TRG, nor the fact that PHH was  
25 required to cause the PLS Partners to refer title insurance and other settlement  
26 services to TRG under the terms of the SRA. Every person who obtained a federally  
27 related mortgage loan from a PLS Partner was referred to TRG for title insurance  
28 and other settlement services.

1           145. Therefore, Realogy and PHH entered into “an agreement or  
2 understanding, oral or otherwise, that business incident to or a part of a real estate  
3 settlement service involving a federally related mortgage loan” shall be referred to  
4 TRG.

5           146. Similar to the PHH Home Loans customers, as a result of the PLS  
6 Partners’ referral of TRG, Mr. Strader and each member of the PLS Subclass paid  
7 fees and other charges for title insurance and other settlement services to TRG.

8           147. On information and belief, Realogy, PHH, and TRG created and  
9 received a disguised “fee, kickback, or thing of value” for the referrals made via the  
10 PLS Partners, in the form of, among other things, the right of first refusal over the  
11 purchase of the servicing rights to mortgages originated by PHH Home Loans, along  
12 with the economic benefits resulting from obtaining these servicing rights.

13           148. As previously alleged herein, these fees, kickbacks and things of value  
14 were made pursuant to PHH and Realogy’s agreement, under the SRA and  
15 otherwise, that title insurance and other settlement services shall be referred to TRG,  
16 and that PHH shall cause each PLS Partner to refer title insurance and other  
17 settlement services to TRG.

18           149. 12 U.S.C. § 2607(d) provides that “[a]ny person or persons who violate  
19 the prohibitions or limitations of this section shall be jointly and severally liable to  
20 the person or persons charged for the settlement service involved in the violation in  
21 an amount equal to three times the amount of any charge paid for such settlement  
22 service.”

23           150. As alleged herein, Mr. Strader and each member of the PLS Subclass  
24 paid fees and other charges to TRG for title insurance and other settlement services  
25 as a customer of a PLS Partner.

26           151. Therefore, Defendants are jointly and severally liable to Mr. Strader  
27 and the PLS Subclass for three times the amount of all fees and other charges paid to  
28

1 TRG for title insurance and other settlement services, for each federally related  
2 mortgage loan that Mr. Strader and the PLS Subclass obtained from a PLS Partner.

3 **PRAYER FOR RELIEF**

4 152. WHEREFORE, Plaintiffs, individually and on behalf of  
5 members of the proposed Class, respectfully request that the Court enter an order  
6 and judgment against Defendants as follows:

- 7 a) An order certifying the proposed PHH Home Loans Subclass and PLS  
8 Subclass;
- 9 b) An order appointing Plaintiffs' counsel as Class Counsel for the  
10 proposed Class and Subclasses;
- 11 c) An order awarding treble damages to Plaintiffs and all Class members  
12 pursuant to 12 U.S.C. § 2607(d)(2);
- 13 d) An order awarding costs and attorneys' fees to Plaintiffs' Class  
14 Counsel pursuant to 12 U.S.C. § 2607(d)(5);
- 15 e) An order requiring Defendants to pay pre-judgment and post-judgment  
16 interest on any amount awarded; and
- 17 f) Such other relief that the Court deems appropriate.
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