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Susan M. Strader, as trustees of the T/S Strader
Family Trust, Lester L. Hall, Jr., and All Others
18 *Similarly Situated*

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

21 TIMOTHY L. STRADER, SR. and SUSAN
22 M. STRADER, as trustees of the T/S
STRADER FAMILY TRUST, and LESTER
23 L. HALL, JR., individually and on behalf of
all others similarly situated,

24 Plaintiffs,

25 v.

26
27 PHH CORPORATION, a Maryland
corporation;
28 REALOGY HOLDINGS CORP., a Delaware

Case No. 8:15-CV-01973

**THIRD 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 EQUITY TITLE COMPANY, a California
23 corporation;
24 NRT LLC, a Delaware limited liability
25 company;
26 REALOGY SERVICES GROUP LLC, a
27 Delaware limited liability company;
28 REALOGY SERVICES VENTURE
PARTNER LLC, a Delaware limited liability
company,

Defendants.

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1 Plaintiffs Timothy L. Strader, Sr. and Susan M. Strader, as trustees of the T/S
2 Strader Family Trust, and Lester L. Hall, Jr., individually and on behalf of all others
3 similarly situated, allege as follows:

4 **NATURE OF THE ACTION**

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

11 2. Beginning no later than January 31, 2005, PHH, PHH Home Loans,
12 and Realogy entered into a disguised and illegal scheme of providing cross-referrals,
13 preferences, exclusivities, and other things of value to and among themselves, often
14 through their many affiliates and subsidiaries, for settlement services related to
15 federally related mortgage loans. The purpose and effect of the scheme was to
16 permit Defendants (defined below) to rig the market and obtain anticompetitive
17 prices for their services. In order for their scheme to succeed, Defendants
18 purposefully hid the interconnected nature of their activities to ensure the scheme
19 was unknown to Plaintiffs and other consumers who paid for the services. From the
20 consumer’s standpoint, the real estate broker, mortgage broker, lender, escrow
21 officer, title insurer, and settlement service providers to which they were referred by
22 Defendants were standalone, independent companies, with diverse brand logos and
23 recognizable names like Coldwell Banker, West Coast Escrow, and First Capital,
24 which in no way suggested any affiliation.

25 3. Through this scheme, PHH, PHH Home Loans, and Realogy – and
26 certain of their subsidiaries and affiliates – have violated the prohibition on referral
27 fees and kickbacks in connection with residential mortgage loans under the Real
28 Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. §§ 2601 *et seq.*

1 (“RESPA”), and its implementing regulations, 12 C.F.R. §§ 1024.1 *et seq.*
 2 (“Regulation X”).¹ RESPA – and, in particular, the prohibition on referral fees and
 3 kickbacks in 12 U.S.C. § 2607 – was explicitly designed to protect consumers “from
 4 unnecessarily high settlement charges caused by certain abusive practices,” such as
 5 those described in this Complaint. 12 U.S.C. § 2601(a). As such, 12 U.S.C. §
 6 2607(a) prohibits the giving or accepting of any “fee,” “kickback,” or “thing of
 7 value” in exchange for business incident to or part of a “settlement service” (as
 8 those terms are defined in RESPA and Regulation X and explained below) involving
 9 a federally related mortgage loan.

10 4. Defendants’ scheme had its genesis in the 2005 restructuring of
 11 Cendant Corporation (“Cendant”), which was the ultimate parent of all of the PHH
 12 and Realogy businesses. As part of the restructuring, PHH was ostensibly “spun
 13 off” from Cendant. However, while this created two corporate entities, PHH and
 14 Cendant entered into a series of contractual arrangements that reconstituted and
 15 maintained the close affiliations that existed prior to the spin-off.

16 5. The framework of the particular scheme at issue relating to settlement
 17 services was obscured in various provisions of these agreements. When thoroughly
 18 analyzed and stitched together, this seemingly disparate set of corporate-level
 19 commitments, preferences, exclusivities, and referrals – as implemented at the
 20 consumer level – had the design and effect of guiding and pushing unwitting
 21 consumers through the home-buying process in a manner that caused the consumers
 22 not to use competing settlement service providers.

24 ¹ 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).

6. Defendants executed the illegal scheme in two main ways:

7. **First**, PHH and Realogy (as successor-in-interest to Cendant) created an “Affiliated Business Arrangement” (“ABA”) – as that term is defined in RESPA and Regulation X and discussed below – called PHH Home Loans, which was and is a sham venture carefully engineered to facilitate and disguise the payment of unlawful referral fees and other kickbacks and things of value in exchange for referrals of settlement services to and among the Defendants, including referrals of title insurance and other settlement services to Realogy’s subsidiary, Title Resource Group (“TRG”). PHH and Realogy, through their subsidiaries, hold 50.1% and 49.9%, respectively, of the membership interests in PHH Home Loans; and PHH, through its subsidiary, is the sole Managing Member in control of the venture.

8. At the time it was spun off from Cendant, PHH also entered into a Strategic Relationship Agreement (“SRA”) with Cendant. (Cendant has since been replaced in that role by Realogy, its successor company.) Prior to an amendment that occurred on October 21, 2015, PHH was bound under the SRA to refer all title insurance and settlement services to Realogy’s subsidiary, TRG (referenced in the SRA as its predecessor entity, Cendant Settlement Services Group, LLC or “CSSG”). Each customer of PHH Home Loans was referred to TRG for title insurance and other settlement services. In return, PHH received a variety of monetary and nonmonetary referral fees and kickbacks via its ownership and control of the sham ABA and PHH’s intricate relationship with Realogy.

9. Pursuant to the SRA, PHH Home Loans is the exclusively recommended mortgage lender for Realogy’s vast real estate brokerage network, which is operated by Realogy’s subsidiary, NRT LLC (“NRT”), and includes such recognizable brands as Coldwell Banker, Sotheby’s International Realty, ZipRealty, The Corcoran Group, and Citi Habitats. This exclusive status results in referrals either directly to PHH Home Loans (or an affiliate) to serve either as the mortgage lender or mortgage broker for clients of these real estate brokerages. When PHH

1 Home Loans or its affiliate acts as the mortgage broker, it places the loans with PHH
2 Mortgage or other PHH affiliates and siphons off substantial broker fees and charges
3 for itself.

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

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

26 12. PHH also receives disguised kickbacks and fees for the referrals made
27 via the PLS Partners, in the form of, among other things, the right of first refusal
28

1 over the purchase of the servicing rights to mortgages originated by PHH Home
2 Loans, along with the economic benefits resulting from these servicing rights.

3 13. Defendants' mandatory referral arrangement existed for over 10 years
4 until October 21, 2015, when PHH and Realogy amended the SRA to delete the
5 mandatory referral provision – as reflected in an exhibit to a Form 10-Q that PHH
6 submitted to the SEC on November 5, 2015. A copy of that Form 10-Q – which
7 includes as exhibits the SRA, the Operating Agreement, and the amendments to
8 each – is attached hereto as **Exhibit A**.

9 14. The decision by PHH and Realogy to delete the mandatory referral
10 provision from the SRA, and particularly the timing of the decision, is telling. Just a
11 few months prior to the amendment, PHH was found liable for similar RESPA
12 violations in connection with PHH's use of subsidiaries Atrium Insurance
13 Corporation and Atrium Reinsurance Corporation (collectively, "Atrium") to extract
14 referral fees and kickbacks disguised as mortgage reinsurance premiums from home
15 buyers.

16 15. On June 4, 2015, the Consumer Financial Protection Bureau ("CFPB")
17 issued a Decision of the Director in the Atrium matter which found PHH liable
18 under 12 U.S.C. § 2607(a) and ordered PHH to disgorge over *\$109 million* in
19 illegally charged fees (an amount that would have been far greater were it not for a
20 three-year limit on the calculation of damages). Also, as part of several injunctive
21 penalties in the decision, the CFPB enjoined "PHH from referring borrowers to *any*
22 *provider of a settlement service* if that provider has agreed to purchase a service
23 from PHH, and if payment for that service is triggered by the referrals. This
24 provision seeks to prevent PHH from entering into illegal referral agreements with
25 respect to *any settlement service*, and it also applies for *15 years* from the date the
26 order becomes effective, as a further means of preventing PHH from committing
27 similar violations of RESPA." (Emphasis added).

28

1 16. In leveling these and other penalties, the CFPB noted in its decision
2 that PHH's violations persisted for over 15 years and that there was no indication
3 that PHH changed its practices due to their illegality (as opposed to merely having
4 become unprofitable), or that PHH took any steps to make future violations less
5 likely. The decision explains the extensive injunctive penalties by noting that
6 "referral agreements that violate [12 U.S.C. § 2607(a)] can be difficult to detect." A
7 copy of the decision is attached as **Exhibit B**.

8 17. In addition to the enforcement authority granted to the CFPB, RESPA
9 provides individual home buyers with a private right of action and imposes joint and
10 several liability against each person involved in a kickback violation in an amount
11 equal to three times the amount of any charge paid for the settlement service. 12
12 U.S.C. § 2607(d)(2). The statute specifically entitles plaintiffs to three times *the*
13 *actual amount paid for the settlement service*, not just the amount of any overcharge
14 resulting from the illegal kickbacks or referral fees. *See Edwards v. First Am.*
15 *Corp.*, 610 F.3d 514, 516-17 (9th Cir. 2010) (private plaintiffs alleging kickback
16 violations need not show that they were overcharged for the settlement service in
17 order to recover treble damages based on the full amount paid). Moreover, courts
18 have upheld the use of federal class actions to enforce kickback violations under
19 RESPA. *See, e.g., Edwards v. First Am. Corp.*, 798 F.3d 1172, 1185 (9th Cir. 2015)
20 (reversing denial of class certification for alleged kickback violations under
21 RESPA).

22 18. By this action, Plaintiffs seek redress for all consumers who were
23 victimized by Defendants' deceptive and collusive practices, which have suppressed
24 competition in the market for settlement services. Plaintiffs are entitled to damages
25 encompassing all amounts paid to Defendants as fees and other charges for title
26 insurance, escrow services, loan brokerage services, and other settlement services.
27 Pursuant to RESPA, Plaintiffs are entitled to recover treble the amount of such
28 damages. Plaintiffs bring this action on their own behalf and on behalf of the

1 hundreds of thousands of consumers who have been similarly victimized by
2 Defendants' illegal scheme.

3 **JURISDICTION AND VENUE**

4 19. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
5 1331 and 12 U.S.C. § 2614. Jurisdiction is also proper in this Court under 28 U.S.C.
6 § 1332(d) because the matter in controversy, exclusive of interest and costs, exceeds
7 the sum of \$5,000,000 and is a class action in which members of the class of
8 plaintiffs are citizens of states different from Defendants.

9 20. Venue is proper in this district under 28 U.S.C. § 1391(b) and 12
10 U.S.C. § 2614 because the real property involved in Plaintiffs' mortgage loan
11 transactions is located in this district. Further, a substantial part of the events or
12 omissions giving rise to the claims occurred in this district, and a substantial part of
13 the property that is the subject of the action is situated in this district.

14 **PARTIES**

15 **A. Plaintiffs**

16 21. Plaintiffs Timothy L. Strader, Sr. and Susan M. Strader, as trustees of
17 the T/S Strader Family Trust (collectively, the "Straders") are individuals and
18 citizens of California. They reside in Newport Beach, California, in the County of
19 Orange.

20 22. Plaintiff Lester L. Hall, Jr. ("Mr. Hall") is an individual and citizen of
21 California. He resides in Santa Ana, California, in the County of Orange.

22 **B. Defendants**

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

1 24. 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 25. 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 26. 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 27. 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 28. 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. The precise roles and relationships
25 of each of these affiliated entities in the allegations described herein are known only
26 to Defendants and will be the subject of discovery.

27 29. Defendant Realogy Services Venture Partner LLC (“Realogy Partner”)
28 is a Delaware limited liability company founded in 2004, with its headquarters in

1 Parsippany, New Jersey. Realogy Partner has a 49.9% membership interest in PHH
2 Home Loans. Realogy Partner is the successor in interest of Cendant Real Estate
3 Services Venture Partner, Inc. All references to Realogy Partner also include
4 Cendant Real Estate Services Venture Partner, Inc., as its predecessor, where
5 appropriate.

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

11 31. Defendant West Coast Escrow Company (“West Coast Escrow”) is a
12 California limited liability company founded in 1984, with its headquarters in
13 Madison, New Jersey.

14 32. Defendant TRG Services Escrow, Inc. (“TRG Services”) is a Delaware
15 corporation founded in 2007, with its headquarters in Madison, New Jersey.

16 33. Defendant Equity Title Company (“Equity Title”) is a California
17 corporation founded in 1979, with its headquarters in Madison, New Jersey.

18 34. Defendant Title Resource Group LLC (“TRG”) is a Delaware limited
19 liability company founded in 1999, with its headquarters in Mount Laurel, New
20 Jersey. TRG was formerly known as Cendant Settlement Services Group, LLC
21 (“CSSG”). TRG does business under various trade names including Equity Title,
22 US Title, Sunbelt Title, Texas American Title Company, Market Street Settlement
23 Group, Mid-Atlantic Settlement, and Burnet Title. TRG is the parent corporation
24 and holds a 100% interest in West Coast Escrow, TRG Services, and Equity Title.
25 All references to TRG also include West Coast Escrow, TRG Services, and Equity
26 Title, unless the context dictates otherwise, and Cendant Settlement Services Group,
27 LLC, as its predecessor, where appropriate.

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

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

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

38. Defendant Realogy Holdings Corp. (“Realogy”) is a Delaware corporation founded in 2006, with its headquarters in Madison, New Jersey. Realogy Holdings is the parent corporation and holds a 100% interest in Realogy Intermediate, and any reference to Realogy includes Realogy Intermediate, Realogy Group, and each of Realogy Group’s subsidiaries, including Realogy Partner, Realogy Services, TRG, and NRT, unless the context dictates otherwise. The precise roles and relationships of each of these affiliated entities in the allegations described herein are known only to Defendants and will be the subject of discovery.

REGULATORY FRAMEWORK

A. RESPA Prohibits “Kickbacks” and “Things of Value” in Exchange for Referral of Settlement Services

39. Congress passed RESPA in 1974 to promote competition within the real estate settlement industry and protect consumers from “unnecessarily high settlement charges caused by certain abusive practices.” 12 U.S.C. § 2601(a). One goal, in particular, was the “elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services.” 12 U.S.C. §

1 2601(b).² To this end, section 8 of RESPA, 12 U.S.C. § 2607, essentially bans
 2 settlement service providers from collecting unearned fees.

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

7 No person shall give and no person shall accept any fee, kickback, or
 8 *thing of value*³ pursuant to any *agreement or understanding*,⁴ oral or

9 ² The statute establishes that:

10 [T]he term "Settlement services" includes any service provided in connection
 11 with a real estate settlement including, but not limited to, the following: title
 12 searches, title examinations, the provision of title certificates, title insurance,
 13 services rendered by an attorney, the preparation of documents, property
 14 surveys, the rendering of credit reports or appraisals, pest and fungus
 15 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

16 12 U.S.C. § 2602(3).

17 ³ "Thing of value" is broadly defined in RESPA and Regulation X. *See* 12 U.S.C. §
 18 2602(2) ("[T]he term "thing of value" includes any payment, advance, funds, loan,
 19 service, or other consideration . . ."); 12 C.F.R. § 1024.14(d) ("Thing of value . . .
 20 includes, without limitation, monies, things, discounts, salaries, commissions, fees,
 21 duplicate payments of a charge, stock, dividends, distributions of partnership profits,
 22 franchise royalties, credits representing monies that may be paid at a future date, the
 23 opportunity to participate in a money-making program, retained or increased
 24 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.")

25 ⁴ The statute establishes that:

26 An agreement or understanding for the referral of business incident to or part of a
 27 settlement service need not be written or verbalized but may be established by a
 28 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

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

12 U.S.C. § 2607(a) (emphasis and footnotes added).⁶

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

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

42. In response to RESPA, many settlement service providers abandoned the classic kickback – where a specific payment was made in return for a specific referral and there was no other reason for the payment – and instead devised sophisticated transactions involving a less obvious causal link between the referral

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).

⁵ “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).

⁶ 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.

12 U.S.C. § 2607(b).

1 and the payment. These transactions arose most frequently within the context of
 2 business arrangements where one settlement service provider maintained an
 3 enhanced relationship with a second provider of a different settlement service,
 4 through which each service provider captured the clients of the other.

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

14 44. Second, Congress defined and permitted “Controlled Business
 15 Arrangements” – since renamed “Affiliated Business Arrangements” (“ABAs”) –
 16 only under limited circumstances designed to ameliorate their inherently abusive
 17 nature. RESPA defines an ABA as:

18 an arrangement in which (A) a person who is in a position to refer
 19 business incident to or a part of a real estate settlement service involving a
 20 federally related mortgage loan, or an associate of such person, has either
 21 an affiliate relationship with or a direct or beneficial ownership interest of
 22 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.

23 12 U.S.C. § 2602(7).⁷

24 45. ABAs are permitted, so long as they abide by *all* of the requirements
 25 enumerated in section 8(c)(4):

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

7 12 U.S.C. § 2607(c)(4) (emphasis added).

8 46. The regulations and case law interpreting the ABA provisions have
 9 provided important clarifications. Most significantly, courts have held that section
 10 8(c)(4) is not merely an exemption. Rather, all ABAs are *presumed* to violate
 11 section 8 and are permissible *only* if the three conditions in section 8(c)(4) are
 12 satisfied. *See, e.g., Bolinger v. First Multiple Listing Serv., Inc.*, 838 F. Supp. 2d
 13 1340, 1355 (N.D. Ga. 2012) (“Section 8(c)(4) provides a cause of action
 14 independent of Sections 8(a) and (b).”); *accord Minter v. Wells Fargo Bank, N.A.*,
 15 274 F.R.D. 525, 538-39 (D. Md. 2011) (“ABAs not in compliance with the three
 16 conditions of Section 8(c)(4) are per se violations. . . . By statutory definition . . .
 17 ABAs involve by virtue of their affiliation the transfer of a ‘thing of value’ in
 18 exchange, explicitly or not, for referrals and such transfers are prohibited.”).

19 47. Also, regulators and courts have sought to curtail the abusive practice
 20 of using the façade of a compliant ABA to insulate a business arrangement that has
 21 as its primary purpose circumventing RESPA’s kickback ban, as is the case with
 22 PHH Home Loans. In 1996, the United States Department of Housing and Urban
 23 Development (“HUD”), which was at that time the regulatory body tasked with
 24 implementing RESPA,⁸ issued a Statement of Policy to help identify these sham
 25 ABAs disguised as joint ventures. *See* 61 Fed. Reg. 29258, at *29259 (June 7,

27 ⁸ Effective July 21, 2011, the CFPB assumed this role as part of the Dodd-Frank
 28 Wall Street Reform and Consumer Protection Act.

1 1996). Courts have looked to the ten-factor test found in HUD's policy statement to
 2 determine whether a particular joint venture is a permissible ABA, and have held
 3 that if a purported ABA "fails the HUD Ten Factor Test, the arrangement to which it
 4 is a party is a violation of RESPA."⁹ *See Minter*, 274 F.R.D. at 543.

5 48. Thus, any arrangement involving an ABA is a per se violation of
 6 section 8 unless it is both a legitimate ABA (utilizing the ten-factor analysis

7 ⁹ The ten factors are: (1) Does the new entity have sufficient initial capital and net
 8 worth, typical in the industry, to conduct the settlement service business for which it
 9 was created? Or is it undercapitalized to do the work it purports to decide? (2) Is
 10 the new entity staffed with its own employees to perform the services it provides?
 11 Or does the new entity have "loaned" employees of one of the parent providers? (3)
 12 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
 14 referrals? (4) Does the new entity have an office for business which is separate
 15 from one of the parent providers? If the new entity is located at the same business
 16 address as one of the parent providers, does the new entity pay a general market
 17 value rent for the facilities actually furnished? (5) Is the new entity providing
 18 substantial services, i.e., the essential functions of the real estate settlement service,
 19 for which the entity receives a fee? Does it incur the risks and receive the rewards
 20 of any comparable enterprise operating in the market place? (6) Does the new entity
 21 perform all of the substantial services itself? Or does it contract out part of the
 22 work? If so, how much of the work is contracted out? (7) If the new entity
 23 contracts out some of its essential functions, does it contract services from an
 24 independent third party? Or are the services contracted from a parent, affiliated
 25 provider or an entity that helped create the controlled entity? If the new entity
 26 contracts out work to a parent, affiliated provider or an entity that helped create it,
 27 does the new entity provide any functions that are of value to the settlement
 28 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 employed by HUD and the courts) *and* meets all three requirements of section
2 8(c)(4).

3 **GENERAL FACTUAL ALLEGATIONS**

4 **A. PHH's Operations**

5 49. PHH touts itself as a leading non-bank mortgage originator and servicer
6 of U.S. residential mortgage loans. Through PHH Mortgage and its subsidiaries,
7 PHH provides outsourced mortgage banking services to a variety of clients,
8 including financial institutions and real estate brokers throughout the U.S., and is
9 focused on originating, selling, and servicing residential mortgage loans.

10 According to *Inside Mortgage Finance*, PHH Mortgage was the fifth largest retail
11 mortgage originator with a 4.7% market share for the nine months ending
12 September 30, 2014. *Inside Mortgage Finance* also reported that PHH Mortgage
13 was the eighth largest mortgage loan servicer with a 2.3% market share as of
14 December 31, 2014.

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

18 **1. Mortgage Production**

19 51. PHH's Mortgage Production segment, which accounted for
20 approximately \$231 million in revenue in 2014, provides private-label mortgage
21 services to financial institutions and real estate brokers. It generates revenue
22 through fee-based mortgage loan origination services and the origination and sale of
23 mortgage loans into the secondary market. PHH Mortgage generally sells all
24 saleable mortgage loans that it originates to secondary market investors, which
25 include a variety of institutional investors, and initially retains the servicing rights
26 on mortgage loans sold. The mortgage loans are typically sold within 30 days of
27 origination and classified as held for sale until sold. During 2014, 69% of PHH's
28 mortgage loans were sold to, or were sold pursuant to, programs sponsored by

1 Fannie Mae, Freddie Mac or Ginnie Mae and the remaining 31% were sold to
2 private investors.

3 52. PHH sources its mortgage loans through its retail and its
4 wholesale/correspondent platforms. Within the retail platform, it operates through
5 two principal business channels: PHH Private Label Solutions (“PLS”) and a real
6 estate joint venture with Realogy, PHH Home Loans.

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

13 54. *PHH Home Loans.* PHH Home Loans, which is more fully described
14 below, is supported by PHH’s relationship with Realogy, which represented 24% of
15 PHH’s mortgage originations in 2014 and 23% in 2013.

16 55. *Wholesale/Correspondent.* PHH also purchases closed mortgage loans
17 from community banks, credit unions, mortgage brokers, and mortgage bankers, and
18 also acquires mortgage loans from mortgage brokers that receive applications from
19 and qualify the borrowers. This wholesale/correspondent platform accounted for
20 only 4% of PHH’s originations in 2014, down from 10% in 2013.

21 **2. Mortgage Servicing**

22 56. PHH’s Mortgage Servicing segment, which accounted for
23 approximately \$264 million in revenue in 2014, services mortgage loans originated
24 by PHH Mortgage, purchases mortgage servicing rights from others, and acts as a
25 subservicer for certain clients that own the underlying servicing rights. PHH
26 services loans on behalf of the owners of the underlying mortgage, and it has limited
27 exposure to credit risk because it does not hold loans for investment purposes. PHH
28 principally generates revenue in its mortgage servicing segment through contractual

1 fees earned from its servicing rights primarily based on a percentage of the unpaid
2 principal balance (“UPB”), or from its subservicing agreements, which are typically
3 a stated amount per loan.

4 57. PHH’s stated corporate strategy has been to position its mortgage
5 business to be less capital intensive and to have more fee-based revenue streams.
6 As a result, PHH grew the UPB of its subservicing portfolio from \$40.8 billion at
7 the end of 2012, to \$96.3 billion at the end of 2013, and \$113.4 billion at the end of
8 2014.

9 **B. Realogy’s Operations**

10 58. Realogy claims to be the preeminent and most integrated provider of
11 residential real estate services in the U.S. Realogy describes itself as: the world’s
12 largest franchisor of residential real estate brokerages with some of the most
13 recognized brands in the real estate industry; the largest owner of U.S. residential
14 real estate brokerage offices; the largest U.S. and a leading global provider of
15 outsourced employee relocation services; and a significant provider of title and
16 settlement services.

17 59. Realogy’s revenue is derived on a fee-for-service basis. Realogy
18 claims that, due to its breadth of “complementary” service offerings, it is able to
19 generate fees from multiple aspects of a residential real estate transaction.
20 Realogy’s operating platform is supported by its portfolio of industry leading
21 franchise brokerage brands, in addition to non-franchise brands owned and operated
22 through NRT. Realogy’s multiple brands and operations allow it to derive revenue
23 from many different segments of the residential real estate market, in many different
24 geographies, and at varying price points.

25 60. Realogy divides its operations into four segments, each of which
26 receives fees based upon services performed for its customers: Real Estate
27 Franchise Services, Company Owned Real Estate Brokerage Services, Relocation
28 Services, and Title and Settlement Services.

1 **1. Real Estate Franchise Services**

2 61. Realogy is the largest franchisor of residential real estate brokerages in
3 the world through its portfolio of well-known brokerage brands, including Century
4 21, Coldwell Banker, Coldwell Banker Commercial, ERA, Sotheby's International
5 Realty, and Better Homes and Gardens Real Estate. As of December 31, 2014,
6 Realogy's real estate franchise systems (inclusive of its company owned brokerage
7 operations) had approximately 13,500 offices worldwide in 104 countries and
8 territories. This included approximately 6,000 brokerage offices in the U.S. and
9 approximately 251,300 independent sales associates worldwide, including
10 approximately 174,600 independent sales associates operating under its franchise
11 and proprietary brands in the U.S. Realogy's franchisees pay Realogy fees for the
12 right to operate under one of its trademarks and to enjoy the benefits of the systems
13 and "business enhancing tools" provided by its real estate franchise operations.

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

15 62. Realogy, via subsidiary NRT, owns and operates the largest residential
16 real estate brokerage business in the U.S. under the Coldwell Banker, Corcoran
17 Group, Sotheby's International Realty, ZipRealty, and Citi Habitats brand names.
18 Realogy offers full-service residential brokerage services through more than 725
19 company owned brokerage offices with approximately 45,000 independent sales
20 agents in more than 45 of the 100 largest metropolitan areas of the U.S. NRT, as the
21 broker for a home buyer or seller, derives revenues primarily from commission
22 income received at the closing of real estate transactions. To complement its
23 residential brokerage services, NRT offers home ownership services that include
24 comprehensive single-family residential property management in many of the
25 nation's largest rental markets.

26 **3. Relocation Services**

27 63. Realogy, through subsidiary Cartus Corporation ("Cartus"), claims to
28 be a leading global provider of outsourced employee relocation services. Cartus is

1 the largest provider of such services in the U.S. and operates in several international
 2 relocation destinations. Cartus offers a broad range of employee relocation services
 3 designed to manage all aspects of an employee's move. The relocation business
 4 serves corporations, including 56% of the Fortune 50 companies. Cartus also
 5 services affinity organizations such as insurance companies and credit unions that
 6 provide Cartus's services to their members. In 2014, Cartus assisted in over
 7 171,000 corporate and affinity relocations in nearly 150 countries for approximately
 8 1,100 active clients.

9 **4. Title and Settlement Services**

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

21 **C. Between 2005 and 2006, Cendant Spun Off Its Mortgage and Real Estate** 22 **Services Divisions Into PHH and Realogy, Respectively, Which Remain** 23 **Affiliated Through Their Contractual Interconnections**

24 65. Prior to February 1, 2005, PHH and Realogy were part of a single real
 25 estate conglomerate known as Cendant.

26 66. When Cendant spun off PHH into its own company, Cendant and PHH
 27 sought to maintain coordination of their business practices (if not their prior
 28

1 corporate form). As PHH explained in a Form 10-K filed with the SEC on March 2
2 2009 (emphasis added):

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

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

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

23 68. PHH and Cendant, through their subsidiaries, executed the Strategic
24 Relationship Agreement (“SRA”) and Limited Liability Company Operating
25 Agreement of PHH Home Loans (the “Operating Agreement”) on January 31, 2005,
26 the same day PHH was spun off from Cendant.

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

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

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

71. Of critical importance to PHH's business, the SRA provides that PHH Home Loans is the *exclusively* recommended mortgage lender for the vast network of Realogy-owned brokerages. The SRA also provides PHH Home Loans access to consumers attending trade shows, conventions, and conferences organized by Realogy's brokerages, held by subsidiary NRT. NRT further agreed as part of the SRA to allow PHH Home Loans to use NRT's office space.

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

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

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

74. PHH derived other benefits from its arrangements with Realogy that were not only hidden from Plaintiffs and consumers, but from the public at large.

1 75. As managing member under the Operating Agreement – via its
 2 subsidiary, PHH Partner – PHH is responsible for selling the mortgage loans
 3 originated by PHH Home Loans, including the lucrative servicing rights to those
 4 loans. The Operating Agreement expressly permits PHH to cause PHH Home
 5 Loans to sell the mortgages to PHH, so long as the terms are “no less favorable”
 6 than what an independent third party would pay. In other words, PHH has the
 7 authority to sell servicing rights to itself, so long as PHH matches the price that
 8 would be paid by a competitor. Thus, in effect, PHH has a right of first refusal to
 9 acquire lucrative servicing rights.

10 76. PHH purports to sell the servicing rights for PHH Home Loans
 11 originated loans to the highest bidder. Yet, PHH ends up acquiring a
 12 disproportionately large share of those servicing rights versus PHH’s overall market
 13 share for mortgage servicing.

14 77. PHH is able to acquire this disproportionate share of servicing rights
 15 through the foregoing right of first refusal, whereby PHH is permitted to purchase
 16 the rights at a price equal to the highest bid. This right to match the highest bid is
 17 immensely valuable for PHH because it discourages other potential buyers of the
 18 servicing rights from bidding.

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

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

26 79. In fact, PHH was bound under the SRA to refer – and cause each PLS
 27 Partner to refer – all title insurance and settlement services to TRG. Section 6.3 of
 28 the SRA provides that “PHH shall, and shall cause its subsidiaries to (i) recommend

CSSG [now TRG] as provider of Settlement Services,” “(ii) utilize [TRG] on an exclusive basis,” and “(iii) recommend [TRG] as provider of Settlement Services to private label solutions (“PLS”) partners and the Small Corps”¹⁰

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, Cendant 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.

80. Plaintiffs and other customers of PHH, PHH Home Loans, and each of the PLS Partners were referred to TRG for title insurance and other settlement services and charged fees by TRG for these services. Plaintiffs and other customers trusted and relied that these referrals were lawful and not part of an anticompetitive kickback scheme.

81. PHH, PHH Home Loans, and each of the PLS Partners (at the direction of PHH) made these referrals in exchange for the unlawful kickbacks described above, causing the precise marketplace distortions and increased settlement costs that RESPA seeks to remedy.

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

¹⁰ The Small Corps – which include, among others, defendants RMR and NE Moves – are subsidiary entities utilized to make mortgage loans for the joint venture, including the loans to Mr. Hall the PHH Home Loans Subclass.

1 83. Indeed, as examples of further RESPA violations stemming from the
 2 mandatory referral provisions of the SRA, Realogy (through its brokerage
 3 subsidiaries), on information and belief, has implemented unlawful bonus structures
 4 and entered into other anticompetitive marketing agreements with its real estate
 5 managers and agents. Among other things, bonus compensation paid to real estate
 6 managers is tied to the capture rate for settlement services and other referrals to
 7 affiliates. In addition, the allocation of marketing funds to agents increases based on
 8 referrals to affiliates, all in connection with PHH Home Loans mortgages.

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

11 84. PHH and Realogy have sought to disguise the improper kickback of
 12 benefits to PHH in exchange for referrals of title insurance and other settlement
 13 services to TRG by forming the PHH Home Loans joint venture.

14 85. Under the SRA, PHH and Realogy caused PHH Home Loans to refer
 15 title insurance and other settlement services to TRG in exchange for the benefits
 16 flowing to PHH described above, including the undisclosed right of first refusal for
 17 the purchase of the servicing rights for loans originated by PHH Home Loans.

18 86. Defendants, however, failed to notify Plaintiffs and other members of
 19 the Class of the full nature of the relationships and business arrangements amongst
 20 PHH, PHH Home Loans, Realogy, and TRG, as explained above.

21 87. Further, as discussed above, the purported ABA was in fact a sham
 22 venture designed to facilitate illegal kickbacks and referral fees.

23 88. In addition, PHH's receipt of additional benefits in exchange for the
 24 referrals, as described above, was a "thing of value . . . received from the
 25 arrangement, other than . . . a return on the ownership interest or franchise
 26 relationship."

I. The PLS Partner-Originated Mortgage Loans Also Violate Section 8

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

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

91. Rather, PHH and TRG intentionally misled Plaintiffs and consumers into believing that referrals to TRG were made solely at the discretion of the respective PLS Partner and based on the PLS Partner’s opinion of the quality of TRG’s services.

J. Defendants’ Illegal Scheme Comes to Light When the CFPB Takes Action and PHH and Realogy Amend the SRA in Late 2015

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

93. Among the penalties imposed on PHH was the disgorgement of over \$109 million in illegally charged fees.¹¹ Also, the CFPB imposed extensive and

¹¹ This figure would have been substantially higher were it not for a three-year statute of limitations on regulatory actions under section 8 in place prior to the 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

1 long-lasting injunctive penalties, including enjoining “PHH from referring
2 borrowers to *any provider of a settlement service* if that provider has agreed to
3 purchase a service from PHH, and if payment for that service is triggered by the
4 referrals. This provision seeks to prevent PHH from entering into illegal referral
5 agreements with respect to *any settlement service*, and it also applies for *15 years*
6 from the date the order becomes effective, as a further means of fencing in PHH
7 against the commission of similar violations of RESPA.” (Emphasis added).

8 94. The CFPB’s decision explained that PHH’s violations spanned roughly
9 18 years; that there was no indication that PHH changed its practices for any reason
10 other than that the arrangement had ceased to be lucrative; and that PHH had not
11 taken any steps to reduce the likelihood of future violations. The decision further
12 explains the broad injunctions by commenting that “referral agreements that violate
13 section 8(a) can be difficult to detect.”

14 95. The CFPB’s decision against PHH in the Atrium matter drew media
15 attention and caused industry analysts to scrutinize PHH and question if it might
16 have additional exposure for similar violations. For example, on August 6, 2015,
17 PHH held a conference call for investors and securities analysts to discuss its
18 financial results for the second quarter of 2015. During that call, an analyst asked
19 PHH’s President and CEO to clarify whether PHH’s relationship with Realogy is
20 similar to the relationships it had with the companies named in the CFPB action, and
21 he responded simply by asserting that the PHH Home Loans joint venture is not a
22 marketing services agreement. (Moreover, as described below, in response to a
23 follow-up question, the President and CEO of PHH provided a misleading
24 description of PHH’s obligations to refer title and other settlement services to TRG.)
25
26
27

28 violations began in 1995 and persisted for nearly two decades.

1 96. Nevertheless, on September 9, 2015, PHH and Realogy suddenly
2 amended the SRA. However, that version of the SRA has never been made public,
3 so the nature of the changes made by that amendment are presently unknown.

4 97. On October 8, 2015, the CFPB issued its Compliance Bulletin 2015-05,
5 a copy of which is attached as **Exhibit C**. The stated purpose of that Bulletin was to
6 “remind participants in the mortgage industry of the prohibition on kickbacks and
7 referral fees” under RESPA, and to “describe the substantial risks posed by entering
8 into marketing services agreements (MSAs).” The CFPB explained that, based on
9 its investigative efforts, “it appears that many MSAs are designed to evade
10 RESPA’s prohibition on the payment and acceptance of kickbacks and referral
11 fees.” Accordingly, the CFPB expressed its “grave concerns” about the use of
12 MSAs, and forcefully recommended that “a more careful consideration of legal and
13 compliance risks arising from MSAs would be in order for mortgage industry
14 participants generally.”

15 98. Less than two weeks after the CFPB issued its Compliance Bulletin, on
16 October 21, 2015, PHH and Realogy *amended and restated the September 9, 2015*
17 *amendment* to the SRA. This October 21, 2015 “Amended and Restated
18 Amendment No. 2” to the SRA was provided as an exhibit to PHH’s Form 10-Q for
19 the third quarter of 2015, which was filed with the SEC on November 5, 2015. As
20 reflected therein, the end result of this series of amendments to the SRA was the
21 **deletion of the provision requiring the mandatory referral of settlement**
22 **services to TRG** described above, which had been in place for over 10 years (yet
23 never disclosed to Plaintiffs or other consumers in their home mortgage
24 transactions).

25 99. The amendment of the SRA did not escape the attention of industry
26 analysts, and was the subject of media reports in November 2015 questioning the
27 purpose and effect of the changes. For example, according to a November 13, 2015
28 media report discussing the SRA amendment and the possible reasons for it, a

1 statement was attributed to Realogy's vice president for corporate communications
 2 in which he defended Realogy's joint ventures but acknowledged that, apart from
 3 the joint ventures themselves, Realogy had recently "reviewed all of our practices to
 4 assure that they comply with the law and regulations."

5 100. On information and belief, PHH and Realogy amended the SRA
 6 because they knew the mandatory referral provision of the SRA violated section 8 of
 7 RESPA, 12 U.S.C. § 2607(a), and sought to limit future exposure.

8 **ALLEGATIONS SPECIFIC TO NAMED PLAINTIFFS**

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

10 101. On or about April 5, 2007, Mr. Hall purchased a home located at 1211
 11 West River Lane in Santa Ana, California.

12 102. Mr. Hall's real estate agent for the transaction was associated with
 13 Coldwell Banker at its office in Corona del Mar, California.

14 103. Mr. Hall's real estate agent at Coldwell Banker provided him a referral
 15 to a mortgage lender. However, Mr. Hall was not notified that Coldwell Banker's
 16 corporate parent, Cendant/Realogy, had a contractual obligation to refer clients to
 17 PHH Home Loans for mortgage loans; and Mr. Hall was not aware of that
 18 arrangement.

19 104. Mr. Hall's real estate agent at Coldwell Banker referred Mr. Hall to a
 20 mortgage broker affiliated with First Capital Mortgage,¹² also located in Corona del
 21 Mar, California. Mr. Hall was **not** notified that First Capital is a subsidiary of PHH
 22 Home Loans; and Mr. Hall was not aware of that relationship.

23 105. Mr. Hall financed a portion of the purchase price of his home through
 24 First Capital, which placed the loan with PHH Mortgage, with a deed of trust

25
 26 ¹² At the time of Mr. Hall's transaction, First Capital was a trade name of Hamera
 27 Corp., one of the Small Corps referenced in the SRA. Hamera Corp. has since been
 28 merged into and succeeded by defendant RMR, which now owns and uses the First
 Capital trade name.

1 securing the property for the benefit of PHH Mortgage. Upon the closing of the
 2 transaction, PHH Mortgage paid a "Third Party Mortgage Fee" of \$3,800.00 to First
 3 Capital, and Mr. Hall was required to pay additional settlement fees to First Capital
 4 totaling \$1,012.16. After closing, Mr. Hall's loan was serviced by PHH.

5 106. Mr. Hall was referred to and used TRG for both title insurance (via
 6 TRG subsidiary Equity Title) and other settlement services (via TRG subsidiary
 7 West Coast Escrow) in connection with the purchase of his home. Mr. Hall was **not**
 8 notified that PHH had a contractual obligation to refer clients to TRG for title and
 9 other settlement services; and Mr. Hall was not aware of the arrangement. Mr. Hall
 10 ended up paying title fees and charges totaling \$1,219.50, and escrow fees and other
 11 charges totaling \$2,078.75 in conjunction with the settlement of his mortgage loan.

12 107. Mr. Hall was **not** notified and was not aware of the true nature of the
 13 business arrangements and affiliations involving PHH, PHH Home Loans, First
 14 Capital, Coldwell Banker, Equity Title, and West Coast Escrow, as explained
 15 herein. As a simple illustration, below is a snapshot of the file folder Mr. Hall
 16 maintained for his loan, where he attached the business cards of the Coldwell
 17 Banker, First Capital, and West Coast Escrow agents with whom he worked in
 18 closing his transaction:



1 108. Mr. Hall was given no reason to suspect that these agents were not
2 acting independently from one another, and were not acting in his best interests,
3 when they referred him to each other for settlement services. Instead, Mr. Hall
4 trusted that each of these referrals was lawful and had no idea that he was being
5 victimized by Defendants' anti-competitive kickback scheme.

6 109. Mr. Hall exercised reasonable diligence in reviewing the notices and
7 other documentation provided to him by his agents and service providers during the
8 process of buying his home. As set forth above, he was not notified of any of the
9 contractual obligations between and among Defendants by which they had agreed to
10 exchange referrals, preferences, exclusivities, and other things of value in relation to
11 the settlement services for his federally related mortgage loan.

12 110. Following the closing of his loan, Mr. Hall continued to exercise
13 reasonable diligence in reviewing the notices and other documentation provided to
14 him by his agents and service providers, and in keeping abreast of media references
15 concerning his agents and service providers. At no time was he notified or otherwise
16 made aware of the interrelationships between the Defendants, or of any of the
17 contractual obligations between and among Defendants by which they had agreed to
18 exchange referrals, preferences, exclusivities, and other things of value in relation to
19 the settlement services for his federally related loan.

20 111. Thus, despite his diligence, Mr. Hall had no reason to suspect that he
21 was a victim of the illegal scheme that is the subject of his claims in this action, and
22 had no reason to investigate the possibility of such claims until the subsequent
23 events and disclosures described herein that occurred in November 2015.

24 112. As a result of the referrals described above, which were made in
25 conformity with the illegal scheme described herein between PHH, PHH Home
26 Loans, and Realogy, Mr. Hall paid more for settlement services than he would have
27 paid in the absence of the anticompetitive referrals and kickbacks.
28

1 **B. Class Representatives Timothy L. Strader, Sr. and Susan M. Strader, as**
2 **trustees of the T/S Strader Family Trust (PLS Subclass)**

3 113. On or about April 22, 2011, the Straders purchased a home located at 4
4 Rue Grand Ducal in Newport Beach, California.

5 114. The Straders financed a portion of the purchase price with a loan from
6 one of the PLS Partners, Bank of America – doing business as Merrill Lynch – and
7 executed a deed of trust securing the property for the benefit of Bank of America.
8 PHH acted as Bank of America’s agent and provided services for Bank of America
9 in processing and underwriting the loan.

10 115. The Straders were referred to TRG for both title insurance (via TRG
11 subsidiary Equity Title) and other settlement services (via TRG subsidiary West
12 Coast Escrow) in connection with the purchase. The Straders trusted and relied that
13 the referrals were lawful and not part of an anticompetitive kickback scheme.

14 116. The Straders paid fees and other charges totaling approximately \$6,793
15 to Equity Title and West Coast Escrow for title insurance and other settlement
16 services, respectively, in conjunction with the settlement of the mortgage loan.

17 117. As a result of the referral to TRG in exchange for the unlawful
18 kickbacks to PHH described above, the Straders paid more for these services than
19 they would have paid in the absence of the referrals and kickbacks.

20 118. After closing, the Straders’ loan was serviced by PHH.

21 119. On or about July 19, 2012, the Straders refinanced their mortgage loan
22 with Merrill Lynch and executed a new deed of trust and note in favor of Bank of
23 America. PHH acted as Bank of America’s agent and provided services for Bank of
24 America in processing and underwriting the loan.

25 120. The Straders were again referred to TRG for both title insurance (via
26 TRG subsidiary Equity Title) and other settlement services (via TRG subsidiary
27 TRG Services) in connection with the refinance. The Straders again trusted and
28

1 relied that the referrals were lawful and not part of an anticompetitive kickback
2 scheme.

3 121. The Straders paid fees and other charges totaling approximately \$1,650
4 to Equity Title and TRG Services for title insurance and other settlement services,
5 respectively, in conjunction with the settlement of the mortgage loan.

6 122. After closing, the Straders' new loan was serviced by PHH.

7 123. The Straders were not notified in connection with either transaction
8 that PHH was contractually obligated to refer clients to Equity Title and TRG
9 Services for title and other settlement services, and to cause Merrill Lynch to refer
10 all title insurance and settlement services to TRG; and the Straders were not aware
11 of these arrangements.

12 124. The Straders were also not notified and not aware of the true nature of
13 the business arrangements and affiliations involving PHH, Equity Title, and TRG
14 Services, as explained herein.

15 125. The Straders were given no reason to suspect that these entities were
16 not acting independently from one another, and were not acting in the Straders' best
17 interests, when Defendants referred the Straders to other Defendants for settlement
18 services. Instead, the Straders trusted that each of these referrals was lawful and had
19 no idea that they were being victimized by Defendants' anti-competitive kickback
20 scheme.

21 126. The Straders exercised reasonable diligence in reviewing the notices
22 and other documentation provided to them by their agents and service providers
23 during the process of buying and refinancing their home. As set forth above, the
24 Straders were not notified of any of the contractual obligations between and among
25 Defendants by which they had agreed to exchange referrals, preferences,
26 exclusivities, and other things of value in relation to the settlement services for their
27 federally related mortgage loans.

28 127. Following the closings of their loans, the Straders continued to exercise

1 reasonable diligence in reviewing the notices and other documentation provided to
2 them by their agents and service providers, and in keeping abreast of media
3 references concerning their agents and service providers. At no time were they
4 notified or otherwise made aware of the interrelationships between the Defendants,
5 or of any of the contractual obligations between and among Defendants by which
6 they had agreed to exchange referrals, preferences, exclusivities, and other things of
7 value in relation to the settlement services for the Straders' federally related loans.

8 128. Thus, despite their diligence, the Straders had no reason to suspect that
9 they were victims of the illegal scheme that is the subject of their claims in this
10 action, and had no reason to investigate the possibility of such claims until the
11 subsequent events and disclosures described herein that occurred in November
12 2015.

13 129. As a result of the referrals described above, which were made in
14 conformity with the illegal scheme described herein between PHH and Realogy, the
15 Straders paid more for settlement services than they would have paid in the absence
16 of the anticompetitive referrals and kickbacks.

17 **CLAIM TOLLING ALLEGATIONS**

18 130. RESPA is a remedial consumer-protection statute. As a result, the
19 Ninth Circuit has held that tolling of the statute of limitations is often appropriate
20 and necessary to effectuate the congressional purpose of protecting consumers.
21 "[A]lthough the limitations period in 12 U.S.C. § 2614 [governing violations of 12
22 U.S.C. § 2607] ordinarily runs from the date of the alleged RESPA violation, the
23 doctrine of equitable tolling may, in the appropriate circumstances, suspend the
24 limitations period until the borrower discovers or had reasonable opportunity to
25 discover' the violation." *Merritt v. Countrywide Fin. Corp.*, 759 F.3d 1023, 1040
26 (9th Cir. 2014) (internal quotation omitted). "[D]istrict courts may evaluate RESPA
27 claims case-by-case 'to determine if the general rule would be unjust or frustrate the
28 purpose of the Act and adjust the limitations period accordingly.'" *Id.* In particular,

1 “[t]here may be situations in which a consumer is unable to file suit within the
2 statutory limitations period precisely because of a real estate service provider’s
3 obfuscation or failure to disclose.” *Id.* Thus, the Ninth Circuit concluded that the
4 district court should “consider such evidence as it deems appropriate to determine
5 on what date the [plaintiffs] discovered or had reasonable opportunity to discover
6 the alleged Section 8 violations and whether they filed their complaint within a year
7 of that date.” *Id.*

8 131. As in *Merritt*, the instant case presents circumstances where equity
9 demands an adjustment of the limitations period in order to serve the remedial
10 purposes of RESPA. As a threshold matter, even with its broad investigatory power
11 and resources, the CFPB recognizes that illicit referral arrangements like the one in
12 this case “can be difficult to detect.” Exhibit B at 16.

13 132. In the present case, Defendants’ obfuscation denied Plaintiffs and the
14 members of the Class a reasonable opportunity to discover the true nature of
15 Defendants’ wrongdoing until the series of events described above in paragraphs 92-
16 100, beginning with the CFPB’s decision in *Atrium* in June 2015 and culminating
17 with the November 2015 publicity surrounding the amendment of the SRA. Indeed,
18 without further discovery and investigation – which Defendants have been
19 stonewalling here – the full extent of Defendants’ scheme will likely remain hidden
20 from scrutiny and Defendants will have succeeded in violating the law without any
21 accountability to or recourse for their victims.

22 133. As set forth above, when making referrals to one another for the
23 purpose of securing Plaintiffs’ settlement service business, Defendants did not give
24 notice to Plaintiffs of the nature of the relationships between them and, in particular,
25 the contractual arrangements between PHH, PHH Home Loans, and Realogy
26 underlying Plaintiffs’ claims in this case. Among the facts not made known to
27 Plaintiffs were the details of the SRA – notably, that PHH Home Loans was the
28 exclusively recommended mortgage lender for Realogy’s real estate brokerage

1 network; that PHH receives a right of first refusal for the purchase of the mortgage
2 servicing rights for PHH Home Loan originated mortgages; and that PHH was
3 required to refer, and cause the PLS Partners to refer, title insurance and other
4 settlement services to TRG.

5 134. Defendants' failure to give notice of their cross-referral relationships to
6 Plaintiffs was consistent with Defendants' general practices, policies, and
7 procedures in making referrals to their customers throughout the Class period. By
8 its very nature, Defendants' anticompetitive scheme required keeping consumers in
9 the dark as to the relationships and arrangements between Defendants in order to lull
10 Plaintiffs and consumers into following the advice of their agents to use the PHH,
11 PHH Homes Loans, and Realogy services rather than looking for alternate
12 providers. Indeed, the complicated corporate structures of PHH, PHH Home Loans
13 and Realogy, with numerous differently-named affiliates and subsidiaries, were
14 designed and maintained in part to make it difficult for Plaintiffs and consumers to
15 learn that the various service providers were actually interrelated – let alone
16 discover the full nature of those interrelationships and cross-referral obligations.

17 135. As publicly-traded companies, PHH and Cendant/Realogy were
18 required under SEC regulations to provide copies of material agreements as exhibits
19 to certain SEC submissions. Redacted versions of the SRA and Operating
20 Agreement were included as exhibits when Cendant/Realogy submitted a Form 8-K
21 to the SEC in February 2005 and when PHH submitted a Form 10-K to the SEC in
22 March 2005. But neither PHH nor Realogy provided any meaningful discussion of
23 their referral arrangements in their SEC filings, and certainly did not explain the
24 interconnected nature of the referrals, preferences, exclusivities, and other things of
25 value being swapped between them as part of the scheme alleged in this action.
26 More importantly, although these redacted versions of the SRA and Operating
27 Agreement were submitted to the SEC, copies were not provided to Plaintiffs or to
28 the other Class members. Like Plaintiffs, the members of the Class were not

1 informed of the agreements' existence and were given no reason (and were under no
2 obligation) to research PHH's and Realogy's submissions to the SEC in order to try
3 to ferret out whether they were being victimized by an illegal referral/kickback
4 scheme with respect to the purchases of their homes.

5 136. Even if Plaintiffs or any other Class members had an urge to conduct
6 research into PHH's and Realogy's submissions to the SEC, the byzantine corporate
7 structures used by Defendants stood (and still remain) in the way. For example, if
8 Class members desired to find the PHH submission that attached the SRA and
9 Operating Agreement, they would have to know how to search the SEC's database
10 and know the specific entity that submitted the document in question. As of the date
11 of this Third Amended Complaint, a search for "PHH" in the SEC's database returns
12 34 different entities using some variation of that name. Even if the correct entity
13 were found, Class members would have to sift through that entity's hundreds of
14 submissions to find the one among them that actually attached the exhibits in
15 question.

16 137. But even finding that needle in the haystack would be of no use unless
17 the Class members also knew how to translate the cryptic provisions of the SRA and
18 Operating Agreement. To illustrate, the provision of the SRA requiring PHH to
19 refer settlement services to TRG states that "PHH shall, and shall cause its
20 Subsidiaries to . . . recommend CSSG as provider of Settlement Services." That
21 provision would have no obvious meaning for a consumer like Mr. Hall, for
22 example, who obtained his loan through First Capital Mortgage and paid Equity
23 Title and West Coast Escrow (among others) for settlement services. Moreover,
24 because the return value for PHH is encompassed by separate provisions of the
25 SRA, the Operating Agreement and other associated agreements, even cracking the
26 code of that referral provision would not reveal the nature of the kickback scheme at
27 issue here.

1 138. The purpose of RESPA is “to insure that consumers throughout the
2 Nation are provided with greater and more timely information on the nature and
3 costs of the settlement process and are protected from unnecessarily high settlement
4 charges caused by certain abusive practices.” 12 U.S.C. § 2601(a). In amending
5 RESPA in 1982, Congress expressly recognized that the settlement industry “almost
6 exclusively rel[ies] on referrals.” *See Edwards v. First Am. Corp.*, 610 F.3d 514,
7 517-18 (9th Cir. 2010) (quoting H.R. Rep. No. 97-532, at 52 (1982)). This is
8 because most consumers have little, if any, knowledge or experience in relation to
9 these matters and therefore rely on the impartial advice of the persons making
10 referrals, assuming that they are based on their “professional evaluation of the
11 quality of the services provided.” *Id.*

12 139. In the present case, Defendants’ referral “recommendations” to
13 Plaintiffs and the other members of the Class were not impartial and not based on an
14 evaluation of the quality of the services. Plaintiffs and the other Class members
15 were not informed that the referrals at issue were provided pursuant to the
16 contractual and other kickback arrangements established between PHH, PHH Home
17 Loans, and Realogy. Without notice of these arrangements, Plaintiffs and the other
18 Class members had no reason to question the legitimacy of the referrals, let alone
19 make inquiries to uncover Defendants’ illegal scheme.

20 140. Indeed, prior to November 5, 2015, Defendants publicly maintained
21 that there was nothing to be concerned about regarding the contractual relationships
22 between PHH, PHH Home Loans, and Realogy. Even after the CFPB’s action in
23 the Atrium matter, Defendants misleadingly deflected inquiries from sophisticated
24 analysts whose job it is to research and evaluate all available information concerning
25 businesses in the real estate industry. On August 6, 2015, PHH held its quarterly
26 conference call for investors and analysts to discuss the company’s business and
27 financial performance during the prior quarter. During that call, an analyst asked
28 Glen Messina, PHH’s President and Chief Executive Officer, to explain how PHH’s

1 relationship with Realogy differed from the arrangements the CFPB had just found
 2 to be unlawful in the Atrium matter. In their back-and-forth, the analyst asked the
 3 following question: “[I]n regards to your agreement with Realogy, do you currently
 4 send all your title fees or your title work to Realogy's title business right now?” Mr.
 5 Messina responded as follows:

6 [TRG], which is the subsidiary in Realogy that does title, is one of our
 7 approved title and settlement providers. Here we have a good relationship
 8 with TRG. They do a great job for us and they continue to process well.
 9 So but ultimately the consumer has the option to select whatever title and
 10 or settlement services provider. So it's not really our call, it's the
 consumer's call. But Realogy is one of the approved providers that our
 customers can pick from.¹³

11 Mr. Messina's response – provided to a sophisticated industry analyst – is
 12 disingenuous, as it did not accurately depict either PHH's contractual obligation to
 13 refer settlement services to TRG, or the reality of how such referrals were made
 14 under the SRA. Yet, the response illustrates Defendants' continuing obfuscation of
 15 their illegal scheme as late as August 2015.

16 141. Next, as alleged above, in September and October 2015, PHH and
 17 Realogy suddenly changed their tune, amending the SRA to remove the requirement
 18 that PHH refer title and other settlement services to Realogy/TRG, and publicly
 19 explaining that they did so after reviewing their practices to assure that they
 20 complied with the law. The October 2015 amendment (but not the September
 21 version) was filed with the SEC on November 5, 2015. It was also referenced
 22 briefly during PHH's quarterly conference call on that same day (in the context of
 23 an update on PHH's disputes with the CFPB and other regulators). The changes to
 24 the SRA and their potential import were publicized by stock analysts and the media,
 25 and that publicity for the first time allowed Plaintiffs, other Class members, and the

26 ¹³ Transcript of Second Quarter 2015 Earnings Conference Call, August 6, 2015,
 27 10:00 a.m., <http://seekingalpha.com/article/3412566-phhs-phh-ceo-glen-messina-on-q2-2015-results-earnings-call-transcript?part=single>.
 28

1 general public to be clued into the nature of the anticompetitive scheme that had
2 been perpetrated on Plaintiffs and the Class over the preceding years.

3 142. Prior to this publicity, Plaintiffs and the other Class members had no
4 reason even to consider retaining counsel or searching SEC filings to uncover
5 potential RESPA violations. Rather, Plaintiffs and the other Class members
6 reasonably relied on the notices they were provided, which were required by law to
7 be complete, accurate and consistent with the obligations of their brokers and agents
8 to look after their best interests and avoid or disclose any potential conflicts of
9 interest. No further affirmative investigation was required under these
10 circumstances. *See Conmar Corp. v. Mitsui & Co. (U.S.A.)*, 858 F.2d 499, 504 (9th
11 Cir. 1988) (“The requirement of diligence is only meaningful . . . when facts exist
12 that would excite the inquiry of a reasonable person.”); *In re Coordinated Pretrial*
13 *Proceedings in Petroleum Products Antitrust Litig.*, 782 F. Supp. 487, 497-98 (C.D.
14 Cal. 1991) (“Due diligence is not required in the abstract. Plaintiffs are not under a
15 duty continually to scout around to uncover claims which they have no reason to
16 suspect they might have.”); *Minter v. Wells Fargo Bank, N.A.*, 279 F.R.D. 320, 324
17 (D. Md. 2012) (“To satisfy the due diligence requirement [for tolling RESPA’s
18 statute of limitations], a plaintiff need not undertake any specific inquiry into that
19 which was concealed but must establish that it was not aware of, and should not
20 have been aware of, any facts that should have provoked such inquiry.”).

21 143. In light of the initial publicity about the PHH-Realogy relationship on
22 November 5, 2015, and with the assistance of counsel’s extensive investigation,
23 Plaintiffs were able to discover the nature and extent of Defendants’ illegal scheme
24 as alleged herein. Plaintiffs promptly filed this action on November 25, 2015, which
25 was less than six months after the CFPB’s decision in the Atrium matter, less than
26 two months after the CFPB’s Compliance Bulletin concerning MSAs, and a mere
27 twenty days after PHH submitted the amended and restated SRA to the SEC.
28

144. In summary, Defendants intentionally obfuscated and concealed the nature of their illegal scheme throughout the Class period by: (1) establishing and maintaining complex corporate structures with numerous differently-named affiliates and subsidiaries; (2) maintaining a policy and practice of not notifying Plaintiffs and the other Class members during their home mortgage transactions of the relevant interrelationships between Defendants and, in particular, of the contractual referral and kickback arrangements between PHH, PHH Home Loans, and Realogy in the SRA and related agreements; (3) burying references to those arrangements within complicated and multi-faceted agreements and, without any explanation of their import or meaning, submitting them to the SEC in heavily redacted form as exhibits to voluminous reports; and (4) publicly maintaining the propriety of the interrelationships between PHH, PHH Home Loans and Realogy, even going so far as to deflect post-Atrium inquiries of stock analysts by misrepresenting Defendants' obligations and performance under the SRA. As a result, even with all due diligence, Plaintiffs and the other Class members did not have a reasonable opportunity to discover, and did not discover, Defendants' wrongdoing until after the publicity surrounding the amendment of the SRA in November 2015.

CLASS ACTION ALLEGATIONS

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

The PHH Home Loans Subclass

All persons who (1) obtained a federally related mortgage loan (as that term is used in RESPA) from or through PHH Home Loans (or one of its 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).

The PLS Subclass

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

5 146. Excluded from the Class are Defendants; Defendants' subsidiaries and
6 affiliates; any entity in which any Defendant has a controlling interest; any and all
7 employees of Defendants; any successor or assign of the Defendants; governmental
8 entities; the judge to whom this case is assigned and his or her immediate family;
9 and all persons who make a timely election to be excluded from the Class.

10 147. Plaintiffs reserve the right to revise the definition of the Class based
11 upon information learned through discovery.

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

21 149. *Commonality and Predominance.* Pursuant to FRCP 23(a)(2) and
22 23(b)(3), this action involves common questions of law and fact, which predominate
23 over any individual questions with respect to Class members, including, without
24 limitation:

- 25 a. Whether Defendants engaged in the conduct alleged in this Complaint;
- 26 b. The nature of the relationships of Defendants to one another;
- 27 c. The nature of the benefits exchanged by PHH and Realogy under the
28 terms of the SRA and otherwise;

1 d. Whether Defendants gave and accepted benefits in exchange for the
2 referral of settlement services, and if so, the nature and extent of such
3 benefits and services; and

4 e. Whether Defendants' relationships with each other and exchange of
5 benefits violated section 8 of RESPA

6 150. *Typicality.* Pursuant to FRCP 23(a)(3), the claims of the named
7 Plaintiffs are typical of the claims of the Class because, among other things, all
8 members of the Class executed mortgage loans and paid similar, if not identical,
9 amounts for title insurance and other settlement services based on the allegations in
10 this Complaint. Furthermore, Mr. Hall's claims are typical of the claims of the PHH
11 Home Loans Subclass because, among other things, all members of the PHH Home
12 Loans Subclass obtained mortgage loans from or through PHH Home Loans and
13 received similar, if not identical, notices that failed to adequately state the full nature
14 of the relationships between the lender and the provider of title insurance and other
15 settlement services. The Straders' claims are typical of the claims of the PLS
16 Subclass because, among other things, all members of the PLS Subclass obtained
17 mortgage loans from one of the PLS Partners and did not receive notice regarding
18 the relationship of PHH and the provider of title insurance and other settlement
19 services.

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

25 152. *Superiority.* Pursuant to FRCP 23(b)(3), a class action is the best
26 available method to adjudicate this controversy. This action involves common
27 questions of fact and law, as described above. Moreover, prosecution of the action
28 will require targeted discovery on complex issues and could not practically be

1 pursued by individual litigants. Plaintiffs and the other Class members' damages
 2 are relatively small compared to the burden and expense that would be required to
 3 individually litigate the claims. In addition, individual litigation of Class members'
 4 claims would be impracticable and unduly burdensome to the court system and has
 5 the potential to lead to inconsistent results based on identical conduct. A class
 6 action provides the benefits of a single adjudication, economy of scale, and
 7 comprehensive supervision of a single court.

8 CAUSES OF ACTION

9 FIRST 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. Hall and the PHH Home Loans Subclass Against PHH, PHH
 13 Mortgage, PHH Home Loans, RMR Financial, NE Moves Mortgage, PHH Partner,
 14 Realogy Holdings, Realogy Intermediate, Realogy Group, Realogy Partner, Realogy
 Services, TRG, TRG Services, West Coast Escrow, and NRT)

15 153. Plaintiffs reallege and incorporate by reference the allegations in
 16 paragraphs 1 through 152, as though fully incorporated herein.

17 154. 12 U.S.C. § 2607(a) provides that "[n]o person shall give and no person
 18 shall accept any fee, kickback, or thing of value pursuant to any agreement or
 19 understanding, oral or otherwise, that business incident to or a part of a real estate
 20 settlement service involving a federally related mortgage loan shall be referred to
 21 any person."

22 155. As alleged above, PHH and Realogy created a joint venture called PHH
 23 Home Loans, which was and is a sham venture carefully engineered by the former
 24 affiliates to facilitate and disguise the payment of unlawful referral fees and
 25 kickbacks in exchange for the referral of title insurance and other settlement services
 26 to Realogy's subsidiary, TRG. PHH and Realogy, through their subsidiaries, hold
 27 50.1% and 49.9%, respectively, of the membership interests in PHH Home Loans;
 28

1 and PHH, through its subsidiary, is the sole Managing Member in control of the
2 venture.

3 156. PHH was required under the SRA to refer, and to cause its subsidiaries
4 to refer, all title insurance and settlement services to TRG.

5 157. Class members who obtained a federally related mortgage loan from
6 PHH Home Loans were referred to TRG for title insurance and other settlement
7 services.

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

12 159. As a result of PHH Home Loans’ referral of TRG, Mr. Hall and each
13 member of the PHH Home Loans Subclass paid fees and other charges for title
14 insurance and other settlement services to TRG as customers of PHH Home Loans,
15 which was “business incident to or part of” a federally related mortgage loan
16 obtained from PHH Home Loans.

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

21 161. As alleged above, PHH receives what effectively and in practice
22 amounts to a right of first refusal for the purchase of the mortgage servicing rights
23 for PHH Home Loan originated mortgages, along with the economic benefits
24 resulting from obtaining these servicing rights.

25 162. Realogy, PHH, and TRG created and received a “fee, kickback, or
26 thing of value” by making PHH Home Loans the exclusively recommended
27 mortgage lender for Realogy’s vast real estate brokerage network; granting PHH
28 Home Loans the exclusive right to use the Century 21, Coldwell Banker, and ERA

1 trade names to market its mortgage products; providing PHH Home Loans access to
2 consumers attending trade shows, conventions, and conferences organized by
3 Realogy's brokerages; giving PHH a right of first refusal for the purchase of the
4 mortgage servicing rights for PHH Home Loan originated mortgages; and providing
5 the other benefits to PHH alleged herein.

6 163. These fees, kickbacks and things of value were provided and made
7 pursuant to PHH and Realogy's agreement, under the SRA and otherwise, that title
8 insurance and other settlement services shall be referred to TRG, and thus violated
9 12 U.S.C. § 2607(a).

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

12 165. PHH and Realogy entered into an arrangement in which PHH Home
13 Loans would refer title insurance and settlement services involving federally related
14 mortgage loans to TRG. Realogy, the parent corporation of TRG, has a 100%
15 ownership interest (*i.e.*, more than 1 percent) in TRG. Likewise, because Realogy
16 has a 49.9% membership interest in PHH Home Loans, PHH Home Loans has an
17 affiliate relationship with TRG.

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

22 167. The ABA alleged herein involving PHH, Realogy, PHH Home Loans,
23 and TRG does not qualify as a permissible ABA for the following independent
24 reasons: (a) PHH Home Loans was a sham venture designed to facilitate illegal
25 kickbacks and referral fees; (b) Defendants failed to notify Plaintiffs and other
26 members of the Class of the full nature of the relationships and business
27 arrangements amongst PHH, PHH Home Loans, Realogy, and TRG, as explained
28 above; and (c) PHH received benefits in excess of the return on its ownership

1 interest in PHH Home Loans. Thus, the arrangement involving PHH, PHH Home
2 Loans, Realogy, and TRG constituted a per se violation of 12 U.S.C. § 2607(a).

3 168. 12 U.S.C. § 2607(d) provides that “[a]ny person or persons who violate
4 the prohibitions or limitations of this section shall be jointly and severally liable to
5 the person or persons charged for the settlement service involved in the violation in
6 an amount equal to three times the amount of any charge paid for such settlement
7 service.”

8 169. As alleged herein, Mr. Hall and each member of the PHH Home Loans
9 Subclass paid fees and other charges to TRG for title insurance and settlement
10 services as a customer of PHH Home Loans.

11 170. Therefore, Defendants are jointly and severally liable to Mr. Hall and
12 each member of the PHH Home Loans Subclass for three times the amount of all
13 fees and other charges paid to TRG for title insurance and other settlement services,
14 for each federally related mortgage loan that Mr. Hall and the PHH Home Loans
15 Subclass members obtained from PHH Home Loans.

16 **SECOND CAUSE OF ACTION**

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

18 **12 U.S.C. § 2607(a)**

19 (On Behalf of the Straders and the PLS Subclass Against PHH, PHH Mortgage,
20 Realogy Holdings, Realogy Intermediate, Realogy Group, Realogy Services, TRG,
TRG Services, and West Coast Escrow)

21 171. Plaintiffs reallege and incorporate by reference the allegations in
22 paragraphs 1 through 170, as though fully incorporated herein.

23 172. 12 U.S.C. § 2607(a) provides that “[n]o person shall give and no person
24 shall accept any fee, kickback, or thing of value pursuant to any agreement or
25 understanding, oral or otherwise, that business incident to or a part of a real estate
26 settlement service involving a federally related mortgage loan shall be referred to
27 any person.”
28

1 173. As alleged herein, under the PLS model, PHH directed the PLS
2 Partners – for whom PHH manages all aspects of the mortgage process – to refer
3 title insurance and other settlement services to TRG without notifying consumers of
4 the existence of PHH’s affiliation with TRG, nor the fact that PHH was required to
5 cause the PLS Partners to refer title insurance and other settlement services to TRG
6 under the terms of the SRA. Every person who obtained a federally related
7 mortgage loan from a PLS Partner was referred to TRG for title insurance and other
8 settlement services.

9 174. Therefore, Realogy and PHH entered into “an agreement or
10 understanding, oral or otherwise, that business incident to or a part of a real estate
11 settlement service involving a federally related mortgage loan” shall be referred to
12 TRG.

13 175. Similar to the PHH Home Loans customers, as a result of the PLS
14 Partners’ referral of TRG, the Straders and each member of the PLS Subclass paid
15 fees and other charges for title insurance and other settlement services to TRG.

16 176. Realogy, PHH, and TRG created and received a disguised “fee,
17 kickback, or thing of value” for the referrals made via the PLS Partners, in the form
18 of, among other things, the right of first refusal over the purchase of the servicing
19 rights to mortgages originated by PHH Home Loans, along with the economic
20 benefits resulting from obtaining these servicing rights.

21 177. As alleged herein, these fees, kickbacks and things of value were made
22 pursuant to PHH and Realogy’s agreement, under the SRA and otherwise, that title
23 insurance and other settlement services shall be referred to TRG, and that PHH shall
24 cause each PLS Partner to refer title insurance and other settlement services to TRG.

25 178. 12 U.S.C. § 2607(d) provides that “[a]ny person or persons who violate
26 the prohibitions or limitations of this section shall be jointly and severally liable to
27 the person or persons charged for the settlement service involved in the violation in
28

1 an amount equal to three times the amount of any charge paid for such settlement
2 service.”

3 179. As alleged herein, the Straders and each member of the PLS Subclass
4 paid fees and other charges to TRG for title insurance and other settlement services
5 as a customer of a PLS Partner.

6 180. Therefore, Defendants are jointly and severally liable to the Straders
7 and the PLS Subclass for three times the amount of all fees and other charges paid to
8 TRG for title insurance and other settlement services, for each federally related
9 mortgage loan that the Straders and the PLS Subclass obtained from a PLS Partner.

10 **PRAYER FOR RELIEF**

11 181. WHEREFORE, Plaintiffs, individually and on behalf of members of
12 the proposed Class, respectfully request that the Court enter an order and judgment
13 against Defendants as follows:

- 14 a) An order certifying the proposed Class and the PHH Home Loans
15 Subclass and PLS Subclass;
- 16 b) An order appointing Plaintiffs’ counsel as Class Counsel for the
17 proposed Class and Subclasses;
- 18 c) An order awarding treble damages to Plaintiffs and all Class members
19 pursuant to 12 U.S.C. § 2607(d)(2);
- 20 d) An order awarding costs and attorneys’ fees to Plaintiffs’ Class
21 Counsel pursuant to 12 U.S.C. § 2607(d)(5);
- 22 e) An order requiring Defendants to pay pre-judgment and post-judgment
23 interest on any amount awarded; and
- 24 f) Such other relief that the Court deems appropriate.
- 25
26
27
28

1 DATED: May 12, 2016

2 By: /s/ Michael I. Katz

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DEMAND FOR JURY TRIAL

Plaintiffs, individually and on behalf of all members of the proposed Class,
hereby demand a jury trial for all claims so triable.

DATED: May 12, 2016

By: /s/ Michael I. Katz

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Sr. and Susan M. Strader, as trustees of the
T/S Strader Family Trust, Lester L. Hall,
Jr., and All Others Similarly Situated*

CERTIFICATE OF SERVICE

I hereby certify that on this on May 12, 2016, I caused to be filed the foregoing **THIRD AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF § 8(a) OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT, 12 U.S.C. § 2607(a)**. This document is being filed electronically using the court's electronic case filing (ECF) system, which will automatically send a notice of electronic filing to the email addresses of all counsel of record.

Dated: May 12, 2016

/s/Michael I. Katz

Michael I. Katz