

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

ARTHUR CHASSEN; DEBORAH MEREDITH; JOEL OSTER; )  
DENNIS SCRIMER; GLEN J. DALAKIAN; )  
JACK HOFFMAN and DEBORAH HOFFMAN; )  
KATHLEEN COOPER; and RICHARD MURPHY )  
individually and on behalf of others similarly situated, )

Plaintiffs, )

vs. )

FIDELITY NATIONAL FINANCIAL, INC. )  
a Delaware corporation; )  
FIDELITY NATIONAL TITLE INSURANCE COMPANY, )  
a California corporation; )  
CHICAGO TITLE INSURANCE COMPANY, )  
a Missouri corporation )  
THE FIRST AMERICAN CORPORATION, )  
a California corporation; )  
FIRST AMERICAN TITLE INSURANCE COMPANY, )  
a California corporation; )  
LANDAMERICA FINANCIAL GROUP, INC., )  
a Virginia corporation; )  
TRANSNATION TITLE INSURANCE COMPANY, )  
a Nebraska corporation; )  
LAWYERS TITLE INSURANCE CORPORATION, )  
a Nebraska corporation; )  
STEWART INFORMATION SERVICES CORPORATION, )  
a Delaware corporation; )  
STEWART TITLE GUARANTY COMPANY, )  
a Texas corporation; )  
OLD REPUBLIC INTERNATIONAL CORPORATION, )  
a Delaware corporation; )  
OLD REPUBLIC TITLE INSURANCE GROUP, INC., )  
a Delaware corporation; )  
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, )  
a Minnesota corporation; )

Defendants )

Case No.

**CLASS ACTION COMPLAINT - JURY TRIAL DEMANDED**

Plaintiffs, Arthur Chassen ("Chassen") residing at 2363 Phillip Court, Mahwah, NJ 07430,  
Deborah Meredith, f/k/a/ Bonanni ("Meredith), residing at 68 Truman Avenue, Princeton, NJ 08540;  
Glen J. Dalakian ("Dalakian") residing at 21 Maplecrest Lane, Colts Neck, NJ 07722; Joel Oster

("Oster") residing at 14 Spruce Lane, North Haledon, NJ 07508; Dennis Scrimmer ("Scrimmer") residing at 44 East End Avenue, Avon By The Sea, NJ 07717; Jack Hoffman and Deborah Hoffman (jointly "Hoffman") residing at 29 Jacqueline Court, Lanoka Harbor 08734; Kathleen Cooper ("Cooper") residing at 519D Laurelbrook Drive, Brick, NJ 08724; and Richard Murphy ("Murphy") residing at 14 Evelyn Court, Brick, NJ 08723 by and through their attorneys, individually and on behalf of all others similarly situated, allege as follows upon personal knowledge as to themselves, and as to all other matters upon information and belief.

### **NATURE OF THE CASE**

1. This is a class action lawsuit brought by Meredith, Dalakian, Oster, Scrimmer, Chassen, Hoffman, Cooper and Murphy (collectively "Plaintiffs") on behalf of themselves and all others similarly situated who:

- a) purchased and/or financed and/or refinanced residential real property located within the State of New Jersey ("Property") at any time within 6 years next preceding the date of filing of this Complaint,
- b) tendered funds to a "Settlement Agent" to facilitate the purchase and/or finance of such Property in accordance with the Real Estate Settlement Procedures Act, 12 U.S.C § 2601 et seq. ("RESPA"),
- c) were charged fees for:
  - i. the recording of Deeds, Mortgages and other instruments in excess of those fees actually paid by the Settlement Agent for the recording of such Deeds, Mortgages and other instruments in accordance with N.J.S.A. 22A:4-4.1, and/or
  - ii. the discharge of Mortgages in excess of those fees actually paid by the Settlement Agent for the discharge of such Mortgages in accordance with N.J.S.A. 22A:4-4.1, and

## THE PARTIES

### The Plaintiffs

2. Each of the Plaintiffs
  - a) is a resident of the State of New Jersey,
  - b) purchased and/or financed residential real estate located within the State of New Jersey ("Property") within a period of six (6) years next preceding the date of filing of this Complaint,
  - c) tendered funds to a "Settlement Agent" to facilitate the purchase and/or finance of said Property in accordance with RESPA,
  - d) was charged fees for the recording of Deeds and Mortgages in excess of those fees actually paid by the Settlement Agent for the recording of such Deeds and Mortgages in accordance with N.J.S.A. 22A:4-4.1,
  - e) was issued a Closing Protection Letter ("CPL") or a Closing Service Letter ("CSL") by the Defendants relating to the purchase and financing of said residential real estate.

### The Defendants

3. **Fidelity National Financial, Inc.** ("Fidelity Financial")
  - a) is a Delaware corporation that maintains its headquarters at 601 Riverside Avenue, Jacksonville, FL 32204,
  - b) has done business in the State of New Jersey at all times relevant to this lawsuit,
  - c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
  - d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

4. **Fidelity National Title Insurance Company** ("Fidelity Title"):

a) is a California corporation that maintains its headquarters at 601 Riverside Avenue, Jacksonville, FL 32204,

b) has done business in the State of New Jersey at all times relevant to this lawsuit,

c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,

d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

5. **Chicago Title Insurance Company** ("Chicago Title"):

a) is a Missouri corporation that maintains its headquarters at 601 Riverside Avenue, Jacksonville, FL 32204,

b) has done business in the State of New Jersey at all times relevant to this lawsuit,

c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,

- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

6. **The First American Corporation** ("First Am Corp"):

- a) is a California corporation that maintains its headquarters at 1 First American Way, Santa Ana, CA 92707,
- b) has done business in the State of New Jersey at all times relevant to this lawsuit,
- c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

7. **First American Title Insurance Company** ("First Am Title"):

- a) is a California corporation that maintains its headquarters at 1 First American Way, Santa Ana, CA 92707,
- b) has done business in the State of New Jersey at all times relevant to this lawsuit,

- c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

8. **LandAmerica Financial Group, Inc** ("LandAmerica"):

- a) is a Virginia corporation that maintains its headquarters at 5600 Cox Road, Glen Allen, VA 23060,
- b) has done business in the State of New Jersey at all times relevant to this lawsuit,
- c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

9. **Transnation Title Insurance Company** ("Transnation"):

- a) is a Nebraska corporation that maintains its headquarters at 101 Gateway Centre Pkwy., Gateway I, Richmond, VA 23235.
- b) has done business in the State of New Jersey at all times relevant to this lawsuit,
- c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

10. **Lawyers Title Insurance Corporation** ("Lawyers Title"):

- a) is a Nebraska corporation that maintains its headquarters at 5600 Cox Road, Glen Allen, VA 23060,
- b) has done business in the State of New Jersey at all times relevant to this lawsuit,
- c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

11. **Stewart Information Services Corporation** ("Stewart Corp"):

a) is a Delaware corporation that maintains its headquarters at 1980 Post Oak Boulevard, Houston, TX 77056,

b) has done business in the State of New Jersey at all times relevant to this lawsuit,

c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,

d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

12. **Stewart Title Guaranty Company** ("Stewart Guaranty"):

a) is a Texas corporation that maintains its headquarters at 1980 Post Oak Boulevard, Houston, TX 77056,

b) has done business in the State of New Jersey at all times relevant to this lawsuit,

c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,

d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

13. **Old Republic International Corporation** ("Old Republic Corp"):

a) is a Delaware corporation that maintains its headquarters at 307 N. Michigan Avenue, Chicago, IL 60601,

b) has done business in the State of New Jersey at all times relevant to this lawsuit,

c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,

d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,

f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

14. **Old Republic Title Insurance Group, Inc.** ("Old Republic Group"):

a) is a Delaware corporation that maintains its headquarters at 400 Second Avenue South, Minneapolis, MN 55401,

b) has done business in the State of New Jersey at all times relevant to this lawsuit,

c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,

- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

15. **Old Republic National Title Insurance Company** ("Old Republic Title"):

- a) is a Minnesota corporation that maintains its headquarters at 400 Second Avenue South, Minneapolis, MN 55401,
- b) has done business in the State of New Jersey at all times relevant to this lawsuit,
- c) is engaged directly and/or through its wholly-owned subsidiaries in the issuance of title insurance policies to consumers and residents of the State of New Jersey insuring title to Property,
- d) has accepted funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- e) has designated and authorized various persons and/or companies as the Defendants' agents to accept funds from consumers to facilitate the purchase and/or finance Property in accordance with the RESPA,
- f) has issued CPLs or CSLs to consumers relating to the purchase and financing of said Property

## FACTUAL ALLEGATIONS

### The Meredith Closings

#### Meredith Closing 1

16. On September 8, 2006 Meredith purchased the premises located at and commonly known as 68 Truman Avenue, Princeton, NJ 08054 ("Premises 1").

17. The transfer of title to Premises 1 and Meredith's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

18. Meredith's payment of the purchase price for Premises 1 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

19. The HUD-1 Uniform Settlement Statement executed by Meredith and the Settlement Agent at the time of the closing for Premises 1 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 1**.

20. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Meredith and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, Fidelity Financial, and/or Fidelity Financial's wholly-owned subsidiaries including, but not limited to Defendant, Fidelity Title.

21. The HUD-1 Uniform Settlement Statement executed by Meredith and the Settlement Agent at the time of the closing for Premises 1 set forth recording fees to be paid by Meredith as follows:

- a) Deed                      \$120.00
- b) Mortgage                \$300.00

22. At the time of the closing of Premises 1, Meredith tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Meredith's grantors in the amount of \$120.00, and
- b) the recording of the Mortgage given by Meredith in the amount of \$300.00

23. The amount actually paid by the Settlement Agent for the recording of the Deed given by Meredith's grantors and the Mortgage given by Meredith was as follows:

- a) Deed \$80.00
- b) Mortgage \$210.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 1**.

24. The difference between:

- a) the amount paid by Meredith for the recording of the Deed given by Meredith's grantors and the Mortgage given by Meredith, and
- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Meredith's grantors and the Mortgage given by Meredith

totaling \$130.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, Fidelity Title and Fidelity Financial.

25. The HUD-1 Uniform Settlement Statement executed by Meredith and the Settlement Agent at the time of the closing for Premises 1 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

26. Meredith's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates her reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

27. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made.

28. Prior to the aforesaid closing Defendant, Fidelity Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, issued a CPL or CSL to and for the benefit of Meredith for which Meredith paid to Defendant, Fidelity Title, individually and on behalf of and for the benefit of

Defendant, Fidelity Financial, a fee distinct and separately-itemized from the fee paid by Meredith for title insurance.

29. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Meredith,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

30. The misappropriation of the aforesaid excess recording fees tendered by Meredith to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Meredith,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

31. The acquiescence of the Defendants, Fidelity Title and Fidelity Financial, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

32. Meredith seeks to represent a Subclass of purchasers of title insurance from Defendants Fidelity Title and Fidelity Financial.

### **Meredith Closing 2**

32. On September 30, 2004 Meredith purchased the premises located at and commonly known as 31 Main Street, Lebanon, NJ 08833 ("Premises 2").

33. The transfer of title to Premises 2 and Meredith's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

34. Meredith's payment of the purchase price for Premises 2 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

35. The HUD-1 Uniform Settlement Statement executed by Meredith and the Settlement Agent at the time of the closing for Premises 2 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 2**.

36. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Meredith and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, Fidelity National and/or Fidelity Financial 's wholly-owned subsidiaries including, but not limited to Defendant, Fidelity Title.

37. The HUD-1 Uniform Settlement Statement executed by Meredith and the Settlement Agent at the time of the closing for Premises 2 set forth recording fees to be paid by Meredith as follows:

- a) Deed \$135.00
- b) Mortgage \$250.00

38. At the time of the closing of Premises 2, Meredith tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Meredith's grantors in the amount of \$135.00, and
- b) the recording of the Mortgage given by Meredith in the amount of \$250.00

39. The amount actually paid by the Settlement Agent for the recording of the Deed given by Meredith's grantors and the Mortgage given by Meredith was as follows:

- a) Deed \$70.00
- b) Mortgage \$220.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 2**.

40. The difference between:

- a) the amount paid by Meredith for the recording of the Deed given by Meredith's grantors and the Mortgage given by Meredith, and
- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Meredith's grantors and the Mortgage given by Meredith

totaling \$95.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, Fidelity Title and Fidelity Financial.

41. The HUD-1 Uniform Settlement Statement executed by Meredith and the Settlement Agent at the time of the closing for Premises 2 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

42. Meredith's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates her reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

43. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

44. Prior to the aforesaid closing Defendant, Fidelity Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, issued a CPL and/or CSL to and for the benefit of Meredith for which Meredith paid to Defendant, Fidelity Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, a fee distinct and separately-itemized from the fee paid by Meredith for title insurance.

45. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Meredith,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

46. The misappropriation of the aforesaid excess recording fees tendered by Meredith to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Meredith,

b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

47. The acquiescence of the Defendants, Fidelity Title and Fidelity Financial, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

### **The Dalakian Closing**

48. On July 15, 2005 Dalakian refinanced the premises located at and commonly known as 21 Maplecrest Lane, Colts Neck, NJ 07722 ("Premises 3").

49. The refinance of Premises 3 and Dalakian's payment of the fees and charges related thereto similarly took place in a title settlement or "closing".

50. Dalakian's payment of the fees and charges related to the refinance of Premises 3 were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

51. The HUD-1 Uniform Settlement Statement executed by Dalakian and the Settlement Agent at the time of the closing for Premises 3 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 3**.

52. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Dalakian and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, Fidelity Financial and/or Fidelity Financial's wholly-owned subsidiaries including, but not limited to Defendant, ChicagoTitle.

53. The HUD-1 Uniform Settlement Statement executed by Dalakian and the Settlement Agent at the time of the closing for Premises 3 set forth recording fees to be paid by Dalakian as follows:

- a) Mortgage               \$300.00
- b) Release                \$150.00

54. At the time of the closing of Premises 3, Dalakian tendered to the Settlement Agent funds for:

- a) the recording of the Mortgage given by Dalakian in the amount of \$300.00

b) the discharge or release of Dalakian's prior mortgage in the amount of \$150.00.

55. The amount actually paid by the Settlement Agent for the recording of the Mortgage given by Dalakian was \$240.00. Upon information and belief, the Settlement Agent paid nothing for the discharge of Dalakian's prior mortgage such discharge having been attended to by Dalakian's prior mortgagee. A true copy of the page of said Mortgage bearing the amounts paid for recording said document affixed by the County Clerk is annexed hereto as part of **Exhibit 3**.

56. The difference between:

- a) the amount paid by Dalakian for recording of the Mortgage given by Dalakian, and
- b) the amount actually paid by the Settlement Agent for the recording of the Mortgage given by Dalakian

together with the amount charged for the discharge of Dalakian's prior mortgage totaling \$210.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, Chicago Title and Fidelity Financial.

57. The HUD-1 Uniform Settlement Statement executed by Dalakian and the Settlement Agent at the time of the closing for Premises 3 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

58. Dalakian's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates his reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

59. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

60. Prior to the aforesaid closing Defendant, Chicago Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, issued a CPL or CSL to and for the benefit of Dalakian for

which Dalakian paid to Defendant, Chicago Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, a fee distinct and separately-itemized from the fee paid by Dalakian for title insurance.

61. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Dalakian,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

62. The misappropriation of the aforesaid excess recording fees tendered by Dalakian to the Settlement Agent constitutes fraud and a misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Dalakian,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

63. The acquiescence of the Defendants, Chicago Title and Fidelity Financial, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

64. Dalakian seeks to represent a Subclass of purchasers of title insurance from Defendants Fidelity Financial and/or Fidelity Financial's wholly-owned subsidiaries including, but not limited to Defendant, Chicago Title.

### **The Oster Closing**

64. On January 26, 2005 Oster purchased the premises located at and commonly known as 14 Spruce Lane, North Haledon, NJ 07508 ("Premises 4").

65. The transfer of title to Premises 4 and Oster's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

66. Oster's payment of the purchase price for Premises 4 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

67. The HUD-1 Uniform Settlement Statement executed by Oster and the Settlement Agent at the time of the closing for Premises 4 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 4**.

68. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Oster and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, Fidelity Financial and/or Fidelity Financial's wholly-owned subsidiaries including, but not limited to Defendant, Chicago Title.

69. The HUD-1 Uniform Settlement Statement executed by Oster and the Settlement Agent at the time of the closing for Premises 4 set forth recording fees to be paid by Oster as follows:

- a) Deed \$110.00
- b) Mortgage \$240.00

70. At the time of the closing of Premises 4, Oster tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Oster's grantors in the amount of \$110.00, and
- b) the recording of the Mortgage given by Oster in the amount of \$240.00

71. The amount actually paid by the Settlement Agent for the recording of the Deed given by Oster's grantors and the Mortgage given by Oster was as follows:

- a) Deed \$70.00
- b) Mortgage \$170.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 4**.

72. The difference between:

- a) the amount paid by Oster for the recording of the Deed given by Oster's grantors and the Mortgage given by Oster, and

- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Oster's grantors and the Mortgage given by Oster

totaling \$110.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the knowledge and acquiescence of Defendants, Chicago Title and Fidelity Financial.

73. The HUD-1 Uniform Settlement Statement executed by Oster and the Settlement Agent at the time of the closing for Premises 4 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

74. Oster's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates his reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

75. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

76. Prior to the aforesaid closing Defendant, Chicago Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, issued a CPL or CSL to and for the benefit of Oster for which Oster paid to Defendant, Chicago Title, individually and on behalf of and for the benefit of Defendant, Fidelity Financial, a fee distinct and separately-itemized from the fee paid by Oster for title insurance.

77. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Oster,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

78. The misappropriation of the aforesaid excess recording fees tendered by Oster to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Oster,
- b) the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

79. The acquiescence of the Defendants, Chicago Title and Fidelity Financial, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

80. Oster seeks to represent a Subclass of purchasers of title insurance from Fidelity Financial and/or Fidelity Financial's wholly-owned subsidiaries including, but not limited to Defendant, Chicago Title

## **The Scrimmer Closings**

### **Scrimmer Closing 1**

80. On April 14, 2006 Scrimmer refinanced the premises located at and commonly known as 175 W. Sylvania Avenue, Neptune City, NJ 07753 ("Premises 5").

81. The refinance of Premises 5 and Scrimmer's payment of the fees and charges related thereto took place in a title settlement or "closing".

82. Scrimmer's payment of fees and charges related to the refinance of Premises 5 were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

83. The HUD-1 Uniform Settlement Statement executed by Scrimmer and the Settlement Agent at the time of the closing for Premises 5 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 5**.

84. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Scrimmer and was responsible to attend to and assure the proper disbursement of all funds

so tendered was, as a matter of law, the agent of the Defendant, Stewart Corp and/or Stewart Corp's wholly-owned subsidiaries including, but not limited to Defendant, Stewart Guaranty.

85. The HUD-1 Uniform Settlement Statement executed by Scrimer and the Settlement Agent at the time of the closing for Premises 5 set forth recording fees to be paid by Scrimer as follows:

- a) Mortgage               \$300.00
- b) Release                 \$75.00

86. At the time of the closing of Premises 5, Scrimer tendered to the Settlement Agent funds for:

- a) the recording of the Mortgage given by Scrimer in the amount of \$300.00, and
- b) the discharge or release of Scrimer's prior mortgage in the amount of \$75.00.

87. The amount actually paid by the Settlement Agent for the recording of the Mortgage given by Scrimer was \$220.00. A true copy of the page of said Mortgage bearing the amounts paid for recording said document affixed by the County Clerk is annexed hereto as part of **Exhibit 5**. Upon information and belief, the Settlement Agent paid nothing for the discharge of Scrimer's prior mortgage such discharge having been attended to by Scrimer's prior mortgagee.

88. The difference between:

- a) the amount paid by Scrimer for recording of the Mortgage given by Scrimer, and
- b) the amount actually paid by the Settlement Agent for the recording of the Mortgage given by Scrimer

together with the amount charged for the discharge of Scrimer's prior mortgage totaling \$155.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the knowledge and acquiescence of Defendants, Stewart Corp and Stewart Guaranty.

89. The HUD-1 Uniform Settlement Statement executed by Scrimer and the Settlement Agent at the time of the closing for Premises 5 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

90. Scrimmer's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates his reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

91. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

92. Prior to the aforesaid closing Defendant, Stewart Guaranty, individually and on behalf of and for the benefit of Defendant, Stewart Corp, issued a CPL or CSL to and for the benefit of Scrimmer for which Scrimmer paid to Defendant, Stewart Guaranty, individually and on behalf of and for the benefit of Defendant, Stewart Corp., a fee distinct and separately-itemized from the fee paid by Scrimmer for title insurance.

93. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Scrimmer,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

94. The misappropriation of the aforesaid excess recording fees tendered by Scrimmer to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Scrimmer,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

95. The acquiescence of the Defendants, Stewart Corp and Stewart Guaranty, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

96. Scrimmer seeks to represent a Subclass of purchasers of title insurance from the Defendants, Stewart Corp and Stewart Guaranty.

### **Scrimmer Closing 2**

96. On May 5, 2006 Scrimmer purchased the premises located at and commonly known as 1428 6<sup>th</sup> Avenue, Neptune, NJ 07754 ("Premises 6").

97. The purchase of Premises 6 and Scrimmer's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

98. Scrimmer's purchase of Premises 6 and payment of fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

99. The HUD-1 Uniform Settlement Statement executed by Scrimmer and the Settlement Agent at the time of the closing for Premises 6 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 6**.

100. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Scrimmer and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendant, LandAmerica and/or LandAmerica's wholly-owned subsidiaries including, but not limited to Defendant, Transnation.

101. The HUD-1 Uniform Settlement Statement executed by Scrimmer and the Settlement Agent at the time of the closing for Premises 6 set forth recording fees to be paid by Scrimmer as follows:

- a) Deed \$100.00
- b) Mortgage \$250.00

102. At the time of the closing of Premises 6, Scrimmer tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Scrimmer's grantors in the amount of \$100.00, and
- b) the recording of the Mortgage given by Scrimmer in the amount of \$250.00

103. The amount actually paid by the Settlement Agent for the recording of the Deed given by Scrimmer's grantors and the Mortgage given by Scrimmer was as follows:

- a) Deed \$70.00
- b) Mortgage \$210.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 6**.

104. The difference between:

- a) the amount paid by Scrimmer for the recording of the Deed given by Scrimmer's grantors and the Mortgage given by Scrimmer, and
- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Scrimmer's grantors and the Mortgage given by Scrimmer

totaling \$70.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, LandAmerica and Transnation.

105. The HUD-1 Uniform Settlement Statement executed by Scrimmer and the Settlement Agent at the time of the closing for Premises 6 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

106. Scrimmer's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates his reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

107. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

108. Prior to the aforesaid closing Defendant, Transnation, individually and on behalf of and for the benefit of Defendant, LandAmerica, issued a CPL or CSL to and for the benefit of Scrimmer for which Scrimmer paid to Defendant, Transnation, individually and on behalf of and for the benefit of Defendant, LandAmerica, a fee distinct and separately-itemized from the fee paid by Scrimmer for title insurance.

109. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Scrimmer,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

110. The misappropriation of the aforesaid excess recording fees tendered by Scrimmer to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Scrimmer,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

111. The acquiescence of the Defendants, LandAmerica and Transnation, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

112. Scrimmer seeks to represent a Subclass of purchasers of title insurance from the Defendants, LandAmerica and Transnation,

### **The Chassen Closing**

112. On November 30, 2004 Chassen purchased the premises located at and commonly known as 2363 Phillip Court, Mahwah, NJ 07430 ("Premises 7").

113. The transfer of title to Premises 7 and Chassen's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

114. Chassen's payment of the purchase price for Premises 7 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

115. The HUD-1 Uniform Settlement Statement executed by Chassen and the Settlement Agent at the time of the closing for Premises 7 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 7**.

116. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Chassen and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of Defendant, First Am Corp, and/or its wholly-owned subsidiaries including but not limited to Defendant, First Am Title.

117. The HUD-1 Uniform Settlement Statement executed by Chassen and the Settlement Agent at the time of the closing for Premises 7 set forth recording fees to be paid by Chassen as follows:

- a) Deed \$200.00
- b) Mortgage \$300.00

118. At the time of the closing of Premises 7, Chassen tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Chassen's grantors in the amount of \$200.00, and
- b) the recording of the Mortgage given by Chassen in the amount of \$300.00

119. The amount actually paid by the Settlement Agent for the recording of the Deed given by Chassen's grantors and the Mortgage given by Chassen was as follows:

- a) Deed \$70.00
- b) Mortgage \$80.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 7**.

120. The difference between:

- a) the amount paid by Chassen for the recording of the Deed given by Chassen's grantors and the Mortgage given by Chassen, and
- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Chassen's grantors and the Mortgage given by Chassen

totaling \$350.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the knowledge and acquiescence of Defendants, First Am Title and First Am Corp.

121. The HUD-1 Uniform Settlement Statement executed by Chassen and the Settlement Agent at the time of the closing for Premises 7 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

122. Chassen's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates his reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

123. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

124. Prior to the aforesaid closing Defendant, First Am Title, individually and on behalf of and for the benefit of Defendant, First Am Corp, issued a CPL or CSL to and for the benefit of Chassen for which Chassen paid to Defendant, First Am Title, individually and on behalf of and for the benefit of Defendant, First Am Corp., a fee distinct and separately-itemized from the fee paid by Chassen for title insurance.

125. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Chassen,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

126. The misappropriation of the aforesaid excess recording fees tendered by Chassen to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Chassen,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

127. The acquiescence of the Defendants, First Am Title and First Am Corp., in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

128 Chassen seeks to represent a Subclass of purchasers of title insurance from the Defendants. First Am Title and First Am Corp.

### **The Hoffman Closing**

128. On June 28, 2004 Hoffman purchased premises commonly known as 29 Jacqueline Court, Lanoka Harbor 08734 (Premises 8").

129. The transfer of title to Premises 8 and Hoffman's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

130. Hoffman's payment of the purchase price for Premises 8 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

131. The HUD-1 Uniform Settlement Statement executed by Hoffman and the Settlement Agent at the time of the closing for Premises 8 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 8**.

132. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Hoffman and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, LandAmerica and/or LandAmerica's wholly-owned subsidiaries including, but not limited to Defendant, Lawyers Title.

133. The HUD-1 Uniform Settlement Statement executed by Hoffman and the Settlement Agent at the time of the closing for Premises 8 set forth recording fees to be paid by Hoffman as follows:

- a) Deed \$100.00
- b) Mortgage \$250.00

134. At the time of the closing of Premises 8, Hoffman tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Hoffman's grantors in the amount of \$100.00, and
- b) the recording of the Mortgage given by Hoffman in the amount of \$250.00

135. The amount actually paid by the Settlement Agent for the recording of the Deed given by Hoffman's grantors and the Mortgage given by Hoffman was as follows:

- a) Deed \$60.00
- b) Mortgage \$180.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 8**.

136. The difference between:

- a) the amount paid by Hoffman for the recording of the Deed given by Hoffman's grantors and the Mortgage given by Hoffman, and
- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Hoffman's grantors and the Mortgage given by Hoffman

totaling \$110.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, LandAmerica and Lawyers Title.

137. The HUD-1 Uniform Settlement Statement executed by Hoffman and the Settlement Agent at the time of the closing for Premises 9 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

138. Hoffman's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates their reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

139. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made

140. Prior to the aforesaid closing Defendant, Lawyers Title, individually and on behalf of and for the benefit of Defendant, LandAmerica, issued a CPL or CSL to and for the benefit of Hoffman for which Hoffman paid to Defendant, Lawyers Title, individually and on behalf of and for the benefit of Defendant, LandAmerica, a fee distinct and separately-itemized from the fee paid by Hoffman for title insurance.

141. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Hoffman,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

142. The misappropriation of the aforesaid excess recording fees tendered by Hoffman to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Hoffman,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

143. The acquiescence of the Defendants, LandAmerica and Lawyers Title, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

144. Hoffman seeks to represent a Subclass of purchasers of title insurance from the Defendants. LandAmerica and Lawyers Title .

### **The Cooper Closing**

144. On March 16, 2004 Cooper purchased the premises located at and commonly known as 646 Deer Head Lake Drive, Forked River, NJ 08731 ("Premises 9").

145. The transfer of title to Premises 9 and Cooper's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

146. Cooper's payment of the purchase price for Premises 9 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

147. The HUD-1 Uniform Settlement Statement executed by Cooper and the Settlement Agent at the time of the closing for Premises 9 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 9**.

148. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Cooper and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, Stewart Corp and/or Stewart Corp's wholly-owned subsidiaries including, but not limited to Defendant, Stewart Guaranty.

149. The HUD-1 Uniform Settlement Statement executed by Cooper and the Settlement Agent at the time of the closing for Premises 9 set forth recording fees to be paid by Cooper as follows:

- a) Deed \$150.00
- b) Mortgage \$325.00

150. At the time of the closing of Premises 9, Cooper tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Cooper's grantors in the amount of \$150.00, and
- b) the recording of the Mortgage given by Cooper in the amount of \$325.00

151. The amount actually paid by the Settlement Agent for the recording of the Deed given by Cooper's grantors and the Mortgage given by Cooper was as follows:

- a) Deed \$60.00
- b) Mortgage \$230.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 9**.

152. The difference between:

- a) the amount paid by Cooper for the recording of the Deed given by Cooper's grantors and the Mortgage given by Cooper, and

- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Cooper's grantors and the Mortgage given by Cooper,

totaling \$185.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, Stewart Guaranty and Stewart Corp.

153. The HUD-1 Uniform Settlement Statement executed by Cooper and the Settlement Agent at the time of the closing for Premises 9 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

154. Cooper's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates her reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

155. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made.

156. Prior to the aforesaid closing Defendant, Stewart Guaranty, individually and on behalf of and for the benefit of Defendant, Stewart Corp, issued a CPL or CSL to and for the benefit of Cooper for which Cooper paid to Defendant, Stewart Guaranty, individually and on behalf of and for the benefit of Defendant, Stewart Corp., a fee distinct and separately-itemized from the fee paid by Cooper for title insurance.

157. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Cooper,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

158. The misappropriation of the aforesaid excess recording fees tendered by Cooper to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Cooper,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

159. The acquiescence of the Defendants, Stewart Corp and Stewart Guaranty, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

160. Cooper seeks to represent a Subclass of purchasers of title insurance from the Defendants Stewart Corp and Stewart Guaranty.

### **The Murphy Closing**

160. On May 27, 2004 Murphy purchased the premises located at and commonly known as 14 Evelyn Court, Brick, NJ 08723 ("Premises 10").

161. The transfer of title to Premises 10 and Murphy's payment of the purchase price together with fees and charges related thereto took place in a title settlement or "closing".

162. Murphy's payment of the purchase price for Premises 10 together with fees and charges related thereto were in accordance with a "HUD-1 Uniform Settlement Statement" mandated pursuant to RESPA and regulations promulgated pursuant thereto.

163. The HUD-1 Uniform Settlement Statement executed by Murphy and the Settlement Agent at the time of the closing for Premises 10 was prepared by the Settlement Agent identified therein. A true copy of said HUD-1 Uniform Settlement Statement is annexed hereto as part of **Exhibit 10**.

164. The Settlement Agent who prepared the HUD-1 Uniform Settlement Statement, accepted funds from Murphy and was responsible to attend to and assure the proper disbursement of all funds so tendered was, as a matter of law, the agent of the Defendants, Old Republic Corp and/or Old Republic Corp's wholly-owned subsidiaries including, but not limited to Defendants, Old Republic Group and Old Republic Title.

165. The HUD-1 Uniform Settlement Statement executed by Murphy and the Settlement Agent at the time of the closing for Premises 10 set forth recording fees to be paid by Murphy as follows:

- a) Deed \$150.00
- b) Mortgage \$350.00

166. At the time of the closing of Premises 10, Murphy tendered to the Settlement Agent funds for:

- a) the recording of the Deed given by Murphy's grantors in the amount of \$150.00, and
- b) the recording of the Mortgage given by Murphy in the amount of \$350.00

167. The amount actually paid by the Settlement Agent for the recording of the Deed given by Murphy's grantors and the Mortgage given by Murphy was as follows:

- a) Deed \$60.00
- b) Mortgage \$90.00

True copies of the pages of said Deed and Mortgage bearing the amounts paid for recording said documents affixed by the County Clerk are annexed hereto as part of **Exhibit 10**.

168. The difference between:

- a) the amount paid by Murphy for the recording of the Deed given by Murphy's grantors and the Mortgage given by Murphy, and
- b) the amount actually paid by the Settlement Agent for the recording of the Deed given by Murphy's grantors and the Mortgage given by Murphy

totaling \$350.00 was retained and misappropriated by the Settlement Agent for the benefit of the Settlement Agent with the acquiescence of Defendants, Old Republic Corp, Old Republic Group and Old Republic Title.

169. The HUD-1 Uniform Settlement Statement executed by Murphy and the Settlement Agent at the time of the closing for Premises 10 included, inter alia, the following Certification directly preceding the signature of the Settlement Agent:

"The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction."

170. Murphy's signature on the HUD-1 Uniform Settlement Statement and tendering funds to the Settlement Agent as set forth therein, demonstrates his reliance upon the truth and accuracy of the aforesaid Certification by the Settlement Agent.

171. The aforesaid Certification made by the Settlement Agent by execution of the HUD-1 Uniform Settlement Statement was false when made and was, as a matter of law, made with the intention that Murphy would rely upon such Certification.

172. Prior to the aforesaid closing Old Republic Title individually and on behalf of and for the benefit of Defendants, Old Republic Corp and Old Republic Group, issued a CPL or CSL to and for the benefit of Murphy for which Murphy paid to Defendant, Old Republic Title, individually and on behalf of and for the benefit of Defendants, Old Republic Corp and Old Republic Group, a fee distinct and separately-itemized from the fee paid by Murphy for title insurance.

173. The misrepresentation made by the Settlement Agent in falsely certifying the truth and accuracy of the account of funds disbursed or to be disbursed by the Settlement Agent constitutes fraud within the meaning and intent of:

- a) the CPL or CSL issued to Murphy,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

174. The misappropriation of the aforesaid excess recording fees tendered by Murphy to the Settlement Agent constitutes fraud and misappropriation within the meaning and intent of:

- a) the CPL or CSL issued to Murphy,
- b) The Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

175. The acquiescence of the Defendants, Defendants, Old Republic Corp, Old Republic Group and Old Republic Title, in the fraud and misappropriation of Settlement Agents as heretofore described, inured to the benefit of the Defendants and constitutes an unconscionable commercial practice within

the meaning and intent of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.

176. Murphy seeks to represent a Subclass of purchasers of title insurance from the Defendants , Old Republic Corp, Old Republic Group and Old Republic Title,

### **All Class closings**

176. At each closing, the original deed and/or mortgage which is to be recorded is within the actual possession of the Settlement Agent. It is within the ability and responsibility of the Settlement Agent to count the exact number of pages in the deed and/or mortgage and determine the precise amount of recording fees to be charged in accordance with N.J.S.A. 22A:4-4.1. There is no reasonable or legally-viable explanation for the persistent overcharging of recording fees other than fraud.

177. The recording fees for each closing are disclosed on line 1201 of each HUD-1 Uniform Settlement Statement, under the heading "Government Recording and Transfer Charges". The amounts disclosed on line 1201 of each HUD-1 annexed hereto are not true and accurate, because the amounts charged are far in excess of the actual "Government recording charges" paid by the Settlement Agents in accordance with N.J.S.A. 22A:4-4.1 for the recording of the deeds and/or mortgages and include additional amounts which have, in fact, been misappropriated by the settlement agents.

177. After each closing, the Defendants, directly or through their agents, receives a copy of the deed and or mortgage endorsed by the county clerk with a stamp stating the exact amount of recording fees actually paid. Each Defendant retains the right to review the HUD-1, which shows the amount charged the consumer for these recording fees. Any comparison of HUD-1 forms to the recorded deeds and mortgages would readily reveal the overcharging of recording fees by Settlement Agents.

178. The Defendants, throughout the times stated herein:

- a) have retained agents to serve as Settlement Agents with respect to the residential real estate closings in the State of New Jersey as described herein, who have charged Plaintiffs and/or similarly-placed consumers recording fees grossly in excess of those permitted by and actually paid in accordance with N.J.S.A. 22A:4-4.1, during the six years prior to the filing of this lawsuit
- b) knew that Defendants' agents who have served as Settlement Agents with respect to the residential real estate closings in the State of New Jersey as described herein have charged Plaintiffs and/or similarly-placed consumers recording fees grossly in excess of those permitted by and actually paid in accordance with N.J.S.A. 22A:4-4.1,
- c) failed to refund the overcharges to Plaintiffs and/or similarly-placed consumers
- d) failed to advise Plaintiffs and/or similarly-placed consumers that they were being so overcharged,
- e) failed to advise Plaintiffs and/or similarly-placed consumers that such overcharging constituted fraud and misappropriation within the meaning and intent of the CPLs and/or CSLs issued to and for the benefit of Plaintiffs and similarly-placed consumers
- f) failed to halt such unlawful overcharging and/or prevent such overcharging although the Defendants were in a position and were legally obligated to do so.

### **JURISDICTION AND VENUE**

179. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1332(d)(2) because:

- a) there are several hundred thousand class members,
- b) there is an aggregate amount in controversy exceeding \$50 million, exclusive of interest and costs, and

- c) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states.

This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

180. Venue is proper in District of New Jersey pursuant to 28 U.S.C. § 1391(a)(2) because each Defendant does substantial business in the State of New Jersey and all of the events or omissions giving rise to the claims asserted herein occurred in the State of New Jersey.

### **CLASS ACTION ALLEGATIONS**

181. Plaintiffs bring this suit as a class action on behalf of themselves and on behalf of all others similarly situated (the "Class") pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Plaintiffs seek to represent the following Class:

All those persons:

- a) who purchased and/or financed residential real property located within the State of New Jersey ("Property") at any time within a period of six (6) years next preceding the date of filing of this Complaint,
- b) who tendered funds to the Defendants or to a "Settlement Agent" retained by one of the Defendants to facilitate the purchase and/or finance of such Property in accordance with RESPA,
- c) who were charged fees for:
  - i. the recording of Deeds, Mortgages and other instruments in excess of those fees actually paid by the Settlement Agent for the recording of such Deeds, Mortgages and other instruments in accordance with N.J.S.A. 22A:4-4.1, and/or

- ii. the discharge of Mortgages in excess of those fees actually paid by the Settlement Agent for the discharge of such Mortgages in accordance with N.J.S.A. 22A:4-4.1

182. The Class includes the following Subclasses:

- a) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Fidelity Financial directly and/or through its wholly-owned subsidiaries, Fidelity Title and Chicago,
- b) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Fidelity Title.
- c) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Chicago Title.
- d) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, First Am Corp directly and/or through its wholly-owned subsidiary, First Am Title,
- e) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Transnation,
- f) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, LandAmerica directly and/or through its wholly-owned subsidiaries, Transnation and Lawyers Title,
- g) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Transnation,
- h) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant Lawyers Title,
- i) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Stewart Corp directly and/or through its wholly-owned subsidiary, Stewart Title,

- j) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Stewart Title
- k) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant, Old Republic Corp directly and/or through its wholly-owned subsidiaries, Old Republic Group and Old Republic Title,
- l) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant Old Republic Group,
- m) all persons meeting the criteria of paragraph 181 (a) through (c) above who purchased title insurance at a real estate closing from Defendant Old Republic Title,

183. This action has been brought and may be properly maintained as a class action for the following reasons:

a) Numerosity: Members of the Class and Subclasses are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe, and on that basis allege, that each proposed Subclass contains hundreds of thousands of members having total claims exceeding \$50 million exclusive of interest and treble damages. The Class and Subclasses are therefore sufficiently numerous to make joinder impracticable, if not impossible. The precise number of Class members is unknown to Plaintiffs.

b) Existence and Predominance of Commons Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class and Subclasses. These questions predominate over the questions affecting individual Class and Subclass members.

These common legal and factual questions include, but are not limited to, the following:

- i. whether the retention by Settlement Agents of excess recording fees paid by the Class and Subclass members constitutes fraud and misappropriation within the meaning and intent of CPLs and/or CSLs issued to the Class and Subclasses by the Defendants;

- ii. whether the Defendants through their agents who acted as Settlement Agents for residential real estate closings violated the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq. by misrepresenting the true and actual fees paid by said Settlement Agents for the recording of Deeds and Mortgages and the discharge or release of prior mortgages;
- iii. whether the Defendants' acquiescence in the retention by Settlement Agents of excess recording fees paid by the Class and Subclass members constitutes an unconscionable commercial practice in violation of the Consumer Fraud Act of the State of New Jersey, N.J.S.A. 56:8-1 et seq.
- iv. the appropriate nature of class-wide equitable relief;
- v. the appropriate measurement of restitution and/or measure of damages to award to Plaintiffs and members of the Class and Subclasses.

These and other questions of law or fact which are common to the members of the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses.

c) Typicality: Each Plaintiff's claims are typical of the claims of the Class and Subclass which that Plaintiff represents since:

- i. Plaintiffs purchased or financed residential real estate in the State of New Jersey as did each member of the Class and Subclass;
- ii. Plaintiffs were charged and paid fees for the recording of a Deed and/or Mortgage in excess of those fees actually paid by the Settlement Agent in accordance with N.J.S.A. 22A:4-4.1;
- iii. Plaintiffs were issued a CPL or CSL by the Defendants to protect them against the fraud or misappropriation of funds by the Settlement Agent; and
- iv. Plaintiffs and all members of the Class sustained monetary and economic injuries arising out of the wrongful conduct of Settlement Agents and the Defendants. Plaintiffs

are advancing the same claims and legal theories on behalf of themselves and all absent class and Subclass members.

d) Adequacy: Plaintiffs are adequate representatives of the Class and Subclasses because their interests do not conflict with the interests of the Class and Subclasses that they seek to represent; they have retained counsel competent and highly experienced in complex class action litigation; and they intend to prosecute this action vigorously. The interests of the Class and Subclasses will be fairly and adequately protected by Plaintiffs and their counsel.

e) Superiority: A class action is superior to other available means of fair and efficient adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

f) By knowingly allowing their Settlement Agents to charge and retain recording fees in excess of those permitted to be charged by law, Defendants have acted, and refused to act, on grounds generally applicable to the Class and Subclasses, thereby making appropriate final injunctive relief with respect to the Class and Subclasses as a whole; and

g) In the absence of a class action, the Defendants' Settlement Agents would be unjustly enriched because they would be able to retain the benefits and fruits of their wrongful conduct.

**VIOLATIONS ALLEGED**

**COUNT I  
BREACH OF CONTRACT**

184. Plaintiffs and the Class and Subclasses incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

185. In consideration for the fees paid by Plaintiffs and the Class and the Subclasses, the Defendants expressly agreed by the terms of the CPLs and/or CSLs issued to Plaintiffs and the Class and Subclasses to reimburse or otherwise pay to Plaintiffs and the Class and Subclasses any sums misappropriated by the Settlement Agents with respect to the residential real estate closings for which the CPLs and/or CSLs were issued.

186. Despite knowing that Settlement Agents had misappropriated sums paid by Plaintiffs and the Class and Subclasses, and that Plaintiffs and the Class and Subclasses were entitled to be reimbursed for all sums so misappropriated, the Defendants have failed and refused to meet their contractual obligations to Plaintiffs and to the Class and Subclasses.

187. As a result of the failure and refusal of the Defendants to meet their contractual obligations, Plaintiffs and the Class and Subclasses were injured and financially damaged.

**COUNT II  
CONSUMER FRAUD**

188. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

189. New Jersey has enacted the Consumer Fraud Act, N.J.S.A.A. §§56.8-1, et seq. to protect consumers against unfair, deceptive or fraudulent business practices and unconscionable commercial practices. The Consumer Fraud Act provides consumers with a private right of action for violations thereof.

190. The Consumer Fraud Act specifically applies to sales of residential real estate.

191. In violation of the Consumer Fraud Act, Defendants' agents acting as "Settlement Agent" with respect to residential real estate closings affirmatively misrepresented and knowingly concealed, suppressed and failed to disclose material facts about the recording fees actually charged by the government in accordance with N.J.S.A. 22A:4-4.1.as compared to the additional amounts charged and collected by the settlement agents at the consumer's expense.

192. The conduct of Defendants, as set forth above, constitutes, unfair, fraudulent and/or deceptive business practices prohibited under the Consumer Fraud Act.

193. The failure and refusal of the Defendants to prevent the systemic fraud and misappropriations of the Defendants' agents as heretofore described, while Defendants knew of such fraud and were in a legal position to prevent the same, constitutes an unconscionable commercial practice in violation of the Consumer Fraud Act.

194. As a result of Defendants' unfair, fraudulent, deceptive and/or unconscionable business practices, Plaintiffs and members of the Class have suffered ascertainable losses of monies and/or property and/or value.

### **COUNT III RACKETEERING**

195. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

196. Defendants and their settlement agents were involved in an enterprise or enterprises to conduct real estate closings, sell title insurance, and collect associated fees.

197. In affirmatively misrepresenting the recording fees actually paid by the Defendants and/or their approved Settlement Agents in accordance with N.J.S.A. 22A:4-4.1, and in knowingly concealing the true and actual recording fees so paid, the Defendants, by and through their Settlement Agents, committed a theft of Plaintiffs' and the Class' funds by creating and/or or reinforcing a false impression as to law, value, intention or other state of mind in violation of N.J.S.A. 2C:20-4.

198. In soliciting and accepting settlement funds from Plaintiffs and the Class and Subclasses the Defendants became legally obligated to make specific payments and disposition of such settlement funds as set forth in the HUD-1 settlement statements prepared by the Defendants and/or their approved Settlement Agents.

199. The Defendants directly as well as by and through their Settlement Agents committed a theft of Plaintiffs' and the Class' funds by failing to make the required payment or disposition such settlement funds as set forth in the HUD-1 settlement statements prepared by the Defendants and/or their approved Settlement Agents in violation of N.J.S.A. 2C:20-9.

200. The Defendants' violations of N.J.S.A. 2C:20-4. and N.J.S.A. 2C:20-9 constitutes "racketeering activity" within the purpose and meaning of N.J.S.A. 2C:41-1 through N.J.S.A.2C:41-6.

201. The Defendants engaged in more than two (2) incidents of racketeering activity within a period of six (6) years next preceding the filing of this Complaint.

202. The incidents of racketeering activity engaged in by the Defendants embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

203. The multiple incidents of racketeering activity engaged in by the Defendants constitutes a "pattern of racketeering activity" within the purpose and meaning of N.J.S.A. 2C:41-1 through N.J.S.A.2C:41-6.

204. The real estate settlements conducted by the Defendants by and through their Settlement Agents involved economic activity relating to a service and affected "trade or commerce" within the purpose and meaning of N.J.S.A. 2C:41-1 through N.J.S.A.2C:41-6.

205. By charging consumers amounts for "government recording fees" greatly in excess of what the government actually charges, and pocketing the difference, the defendants and their agents violated N.J.S.A. 2C:41-2.

206. Defendants and their approved Settlement Agents participated in the conduct of their enterprise's affairs through a pattern of racketeering activity.

207. The funds unlawfully acquired and/or retained by the Defendants through the pattern of racketeering perpetrated by them was used in the operation of an enterprise engaged in and/or affecting trade or commerce in violation of N.J.S.A.2C:41-2 ("RICO" violations),

208. As a result of the aforesaid racketeering conduct, including but not limited to the collection of, amounts for "government recording fees" which are greatly in excess of what the government actually charges, and the misappropriation of the difference, Plaintiff and the Class and Subclasses have suffered damages to their income and property.

#### **COUNT IV**

#### **CONSPIRACY, RICO CONSPIRACY AND AIDING AND ABETTING**

209. Plaintiffs hereby incorporate by reference paragraphs 1- as if fully set forth herein.

210. Pursuant to N.J.S.A.A. 2C:5:2, it is unlawful to aid and abet a person or entity to engage in conduct which provides or assists the opportunity to violate the law and which in fact assists such person or entity to violate the law.

211. Pursuant to New Jersey RICO law it is specifically unlawful for any person to conspire as defined in N.J.S.A. 2C:5-2 to violate any of the provisions of N.J.S.A. 2C:41-2.

212. As set out hereinbefore and incorporated by reference herein, Defendants rendered material aid and assistance to their Settlement Agents who charged excessive amounts for government recording fees and misappropriated the difference, and engaged in conduct which provides said Settlement Agents with the means an opportunity to violate N.J.S.A. 2C:20-4. and which in fact enabled said Settlement Agents to violate N.J.S.A. 2C:20-4. and N.J.S.A. 2C:20-9.

213. The aid and assistance of the Defendants in their Settlement Agents' violation of RICO is manifested by the overt acts of Defendants including:

- a) their designation of Settlement Agents as "approved" for purposes of conducting residential real estate closings,
- b) their issuance of CPLs and/or CSLs which acknowledge the possibility that the Defendants' "approved" Settlement Agents will misappropriate funds tendered to them by consumers
- c) their failure, despite being in a position to do so, to take any action (including specifically to terminate such violations) upon the information available to them on the plain face of the HUD-1s, deeds and mortgages in their possession which clearly and obviously document the illegal charges imposed and misrepresented by approved Settlement Agents at consumers' expense.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray, on behalf of themselves and members of the Class, that this Court:

A. determine that the claims alleged herein may be maintained as a class action under Rule 23(a), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, and issue order certifying the Class as defined above;

B. award all actual, general, special, incidental, statutory, and consequential damages and specific performance to which Plaintiffs and Class members are entitled including treble damages pursuant to N.J.S.A. 56:8-19 and N.J.S.A. 2C:41-4(c) ;

C. award pre-judgment on such monetary relief;

D. grant appropriate injunctive and/or declaratory relief, including, without limitation, an Order that:

- 1) enjoins and restrains the Defendants, their respective officers, employees, agents, successors, subsidiaries and affiliates from providing residential title search services, residential title closing services and issuing residential title insurance policies throughout the

State of New Jersey unless the Defendants have confirmed as to each separate residential real estate closing that the Settlement Agent has:

a. strictly and accurately disclosed the true and actual recording fees payable by such Settlement Agents in accordance with N.J.S.A. 22A:4-4.1 for the recording of Deeds, Mortgages and other instruments to be recorded with respect to each residential real estate closing, and

b. strictly and accurately charged the true and actual recording fees paid by such Settlement Agents in accordance with N.J.S.A. 22A:4-4.1 for the recording of Deeds, Mortgages and other instruments recorded with respect to each residential real estate closing.

2) grants such further and other relief as this Court deems appropriate.

E. award reasonable attorney's fees, investigation costs and litigation costs in accordance with N.J.S.A. 56:8-19 and N.J.S.A. 2C:41-4(c); and

F. grant such further and other relief as this Court deems appropriate.

### **JURY DEMAND**

Plaintiffs on behalf of themselves and the Class hereby demand trial by jury as to all Counts

Respectfully submitted,

O'Connor, Parsons & Lane, LLC

DATED: December 15, 2008

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