

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

RICHARD AND LORI BRASKO, *et al.*, *
Plaintiffs, *

v. * Case No.: 1:20-cv-03489-SAG

FIRST NATIONAL BANK OF *
PENNSYLVANIA, as successor to FIRST *
MARINER BANK, by and through merger *
with HOWARD BANK, *
Defendant. *

* * * * *

**DEFENDANT FIRST NATIONAL BANK OF PENNSYLVANIA’S ANSWER TO
SUPPLEMENTAL CLASS ACTION COMPLAINT**

Defendant, First National Bank of Pennsylvania, as Successor to First Mariner Bank, by and through Merger with Howard Bank (“FNB”), by its undersigned counsel, hereby submits this Answer and Affirmative Defenses in response to the Supplemental Class Action Complaint filed by Plaintiffs, Richard Brasko, Lori Brasko, and Eric Rubenstein (“Plaintiffs”), and states as follows:

INTRODUCTION

1. FNB admits only that Plaintiffs are borrowers who obtained mortgage loans from First Mariner Bank (“First Mariner”) that were or are secured by residential real property. FNB states that, at this time, there are no “alleged Class Members” and, therefore, lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 1 of the Supplemental Class Action Complaint and, therefore, denies the same. FNB

further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

2. FNB denies the allegations set forth in Paragraph 2. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

3. FNB denies the allegations set forth in Paragraph 3.

4. FNB denies the allegations set forth in Paragraph 4.

5. FNB denies the allegations set forth in Paragraph 5.

6. FNB denies the allegations set forth in Paragraph 6.

7. FNB denies the allegations set forth in Paragraph 7.

8. FNB denies the allegations set forth in Paragraph 8. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

PARTIES

9. The allegations set forth in Paragraph 9 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 9. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

10. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 and, therefore, denies the same.

11. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 and, therefore, denies the same.

12. FNB admits that it is the successor in interest to First Mariner by virtue of its merger with Howard Bank. Except as expressly admitted, the allegations in Paragraph 12, including subparts, constitute conclusions of law to which no response is required. To the extent further response is required, however, FNB denies the allegations set forth in Paragraph 12.

JURISDICTION AND VENUE

13. The allegations in Paragraph 13 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 13.

14. The allegations set forth in Paragraph 14 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 14.

15. The allegations set forth in Paragraph 15 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 15.

16. The allegations set forth in Paragraph 16 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 16.

FACTUAL ALLEGATIONS FOR INDIVIDUAL AND CLASS RELIEF

17. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 and, therefore, denies the same.

I. First Mariner receives and accepts more than \$45,000 in illegal kickbacks from All Star Title.

18. FNB denies the allegations in Paragraph 18, including the allegations in the heading to Section I.

19. FNB denies the allegations in Paragraph 19.

20. FNB admits that certain of the individuals identified in Paragraph 20 of the Complaint—Ryan Lowery; Tom Bowen; Angela Pobletts; Michael Carter; Theresa Frederick; George Klein; Brad Restivo; Yianni Karavasilis; Christopher Perrin; Kenneth Miller; Michelle Skjoldager; Joy Gillespie; Robert Hoover; Merci Fitzgerald; and David Horvath—are, or were, employed by First Mariner. Because the Complaint does not define the term “relevant time period,” however, FNB lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 20 and, therefore, denies the same.

21. FNB denies the allegations in Paragraph 21.

22. FNB denies the allegations set forth in Paragraph 22 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 22 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

23. FNB denies the allegations in Paragraph 23.

24. FNB denies the allegations in Paragraph 24.

25. FNB denies the allegations in Paragraph 25.

26. FNB denies the allegations in Paragraph 26, including all subparts.

27. FNB denies the allegations in Paragraph 27.

28. FNB denies the allegations in Paragraph 28.

29. FNB denies the allegations in Paragraph 29.

30. FNB denies the allegations in Paragraph 30, including all subparts.

31. FNB denies the allegations in Paragraph 31.

32. FNB denies the allegations in Paragraph 32.

33. FNB denies the allegations in Paragraph 33.

34. FNB denies the allegations in Paragraph 34.

35. FNB denies the allegations in Paragraph 35.

36. FNB denies the allegations in Paragraph 36.

37. FNB denies the allegations in Paragraph 37.

II. First Mariner and All Star erect an elaborate sham to conceal the kickbacks and to later try to claim that the kickback payments were “co-marketing” protected by 12 U.S.C. § 2607(c)(2).

38. FNB denies the allegations in Paragraph 38, including the allegations in the heading to Section II.

39. FNB denies the allegations in Paragraph 39.

40. FNB denies the allegations in Paragraph 40.

41. FNB denies the allegations in Paragraph 41.

42. FNB denies the allegations in Paragraph 42.

43. FNB denies the allegations in Paragraph 43.

44. FNB denies the allegations in Paragraph 44 to the extent they relate to First Mariner.

To the extent the allegations in Paragraph 44 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further states that the document attached as Exhibit 1 speaks for itself.

45. FNB denies the allegations in Paragraph 45.

46. FNB denies the allegations in Paragraph 46.

47. FNB denies the allegations in Paragraph 47.

48. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and, therefore, denies the same.

49. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and, therefore, denies the same.

50. FNB denies the allegations in Paragraph 50. FNB further states that the document attached as Exhibit 2 speaks for itself.

51. FNB denies the allegations in Paragraph 51. FNB further states that the document attached as Exhibit 3 speaks for itself.

52. FNB denies the allegations in Paragraph 52. FNB further states that the document attached as Exhibit 4 speaks for itself.

53. FNB denies the allegations in Paragraph 53. FNB further states that the document attached as Exhibit 5 speaks for itself.

54. FNB denies the allegations in Paragraph 54. FNB further states that the document attached as Exhibit 6 speaks for itself.

55. The allegations in Paragraph 55 contain conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 55.

56. FNB denies the allegations in Paragraph 56.

57. The allegations in Paragraph 57 contain conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 57.

III. Early in the performance of the Kickback Agreement, First Mariner and All Star form an association in fact enterprise and execute a Scheme to Defraud borrowers into paying fraudulent title and settlement service charges, using the U.S. mail in furtherance of the Scheme to Defraud, and committing more than 190,000 predicate acts over two years.

58. FNB denies the allegations in Paragraph 58, including the allegations in the heading to Section III.

59. FNB denies the allegations in Paragraph 59.

60. FNB denies the allegations in Paragraph 60. FNB further states that the document attached as Exhibit 7 speaks for itself.

61. FNB denies the allegations in Paragraph 61. FNB further states that the document attached as Exhibit 7 speaks for itself.

62. FNB denies the allegations in Paragraph 62.

63. 1st Mariner denies the allegations in Paragraph 63 of the Complaint and expressly denies that it participated in, or had any involvement with, any kickback schemes alleged in the Complaint. 1st Mariner further states that the document attached as Exhibit 8 speaks for itself.

64. FNB denies the allegations in Paragraph 64.

65. FNB denies the allegations in Paragraph 65, including all subparts.

66. The allegations in Paragraph 66 contain conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 66.

67. FNB denies the allegations in Paragraph 67. FNB further states that the document attached as Exhibit 9 speaks for itself.

68. FNB denies the allegations in Paragraph 68. FNB further states that the document attached as Exhibit 10 speaks for itself.

69. FNB denies the allegations in Paragraph 69.

70. FNB denies the allegations in Paragraph 70. FNB further states that the document attached as Exhibit 11 speaks for itself.

71. FNB denies the allegations in Paragraph 71 of the Complaint. FNB further states that the document attached as Exhibit 10 speaks for itself.

72. FNB denies the allegations in Paragraph 72.

73. FNB denies the allegations in Paragraph 73.

74. FNB denies the allegations in Paragraph 74, including all subparts.

75. The allegations in Paragraph 75 contain conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 75.

76. FNB denies the allegations in Paragraph 76.

77. FNB denies the allegations in Paragraph 77. FNB further states that the document attached as Exhibit 12 speaks for itself.

78. FNB denies the allegations in Paragraph 78. FNB further states that the document attached as Exhibit 12 speaks for itself.

79. FNB denies the allegations in Paragraph 79.

80. FNB denies the allegations in Paragraph 80. FNB further states that the document attached as Exhibit 13 speaks for itself.

81. FNB denies the allegations in Paragraph 81. FNB further states that the document attached as Exhibit 13 speaks for itself.

82. FNB denies the allegations in Paragraph 82. FNB further states that the document attached as Exhibit 14 speaks for itself.

83. FNB denies the allegations in Paragraph 83. FNB further states that the document attached as Exhibit 14 speaks for itself.

84. FNB denies the allegations in Paragraph 84.

85. FNB denies the allegations in Paragraph 85.

86. FNB denies the allegations in Paragraph 86.

IV. Through the Kickback Agreement and Scheme to Defraud, First Mariner causes Plaintiffs and the Alleged Class concrete and individualized harm. than 190,000 predicate acts over two years.

87. FNB denies the allegations in Paragraph 87, including the allegations in the heading to Section IV.

**FACTUAL ALLEGATIONS RELATED TO
THE INDIVIDUAL CLASS REPRESENTATIVES**

88. FNB denies the allegations in Paragraph 88.

I. The Braskos' Loan.

89. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 89 and, therefore, denies the same.

90. FNB denies the allegations in Paragraph 90.

91. FNB denies the allegations in Paragraph 91.

92. FNB denies the allegations in Paragraph 92. FNB further states that the document attached as Exhibit 15 speaks for itself.

93. FNB denies the allegations in Paragraph 93.

94. FNB denies the allegations in Paragraph 94. 1st Mariner further states that the document attached as Exhibit 15 speaks for itself.

95. FNB denies the allegations in Paragraph 95.

96. FNB denies the allegations in Paragraph 96.

II. Mr. Rubenstein's Loan.

97. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 97 and, therefore, denies the same.

98. FNB denies the allegations in Paragraph 98.

99. FNB denies the allegations in Paragraph 99.

100. FNB denies the allegations in Paragraph 100. FNB further states that the document attached as Exhibit 16 speaks for itself.

101. FNB denies the allegations in Paragraph 101.

102. FNB denies the allegations in Paragraph 102. FNB further states that the document attached as Exhibit 16 speaks for itself.

103. FNB denies the allegations in Paragraph 103.

104. FNB denies the allegations in Paragraph 104.

FACTUAL ALLEGATIONS RELATED TO LIMITATIONS

I. First Mariner and All Start fraudulently conceal the kickbacks, Kickback Agreement, and Scheme to Defraud.

105. FNB denies the allegations in Paragraph 105, including the allegations in the heading for Section I.

A. All Star and First Mariner launder kickbacks through third-party marketing companies and create sham invoices and payment records.

106. FNB denies the allegations in Paragraph 106, including the allegations in the subheading for Section I.A.

107. FNB denies the allegations in Paragraph 107. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

108. FNB denies the allegations in Paragraph 108.

109. FNB denies the allegations in Paragraph 109. FNB further states that the document attached as Exhibit 17 speaks for itself.

110. FNB denies the allegations in Paragraph 110.

111. FNB denies the allegations in Paragraph 111.

B. First Mariner and All Star falsely allocate fees and manipulate the APR.

112. The allegations set forth in Paragraph 112 constitute a recitation of law and characterizations of federal statutes to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 112, including the allegations in the subheading for Section I.B.

113. The allegations set forth in Paragraph 113 constitute a recitation of law and characterizations of federal statutes to which no response is required.

114. The allegations set forth in Paragraph 114 constitute a recitation of law and characterizations of federal statutes to which no response is required.

115. FNB denies the allegations in Paragraph 115.

116. FNB denies the allegations in Paragraph 116. FNB further states that the documents attached as Exhibits 18, 19, and 20 speak for themselves.

117. FNB denies the allegations in Paragraph 117.

118. FNB denies the allegations in Paragraph 118. FNB further states that the documents attached as Exhibits 15 and 16 speak for themselves.

119. FNB denies the allegations in Paragraph 119.

120. FNB denies the allegations in Paragraph 120.

121. FNB denies the allegations in Paragraph 121.

122. FNB denies the allegations in Paragraph 122.

123. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 123 and, therefore, denies the same. FNB further states that the document attached as Exhibit 21 speaks for itself.

124. FNB denies the allegations in Paragraph 124.

125. FNB denies the allegations in Paragraph 125.

C. False representations in First Mariner Borrowers' loan documents.

126. FNB denies the allegations in Paragraph 126, including the allegations for the subheading of Section I.C.

127. The allegations set forth in Paragraph 127 constitute a recitation of law and characterizations of federal statutes to which no response is required.

128. The allegations set forth in Paragraph 128 constitute a recitation of law and characterizations of federal statutes to which no response is required.

129. FNB denies the allegations in Paragraph 129. FNB further states that the documents attached as Exhibits 15 and 16 speak for themselves.

130. FNB denies the allegations in Paragraph 130.

131. The allegations set forth in Paragraph 131 constitute a recitation of law and characterizations of federal statutes to which no response is required.

132. FNB denies the allegations in Paragraph 132.

133. FNB denies the allegations in Paragraph 133.

134. The allegations set forth in Paragraph 134 constitute conclusions of law to which no response is required.

135. The allegations set forth in Paragraph 135 constitute conclusions of law to which no response is required.

136. FNB denies the allegations in Paragraph 136.

137. FNB denies the allegations in Paragraph 137.

138. FNB denies the allegations in Paragraph 138.

139. FNB denies the allegations in Paragraph 139.

140. FNB denies the allegations in Paragraph 140.

141. The allegations set forth in Paragraph 141 constitute a recitation of law and characterizations of federal statutes to which no response is required.

142. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 142 and, therefore, denies the same.

143. FNB denies that First Mariner participated in a “Scheme to Defraud” as that term is used in Plaintiffs’ Supplemental Class Action Complaint. With respect to the remaining allegations in the first sentence in Paragraph 143, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein and, therefore, denies the same. With respect to the allegations in the second and third sentences in Paragraph 143, the allegations set forth in Paragraph 143 constitute a recitation of law and characterizations of federal statutes to which no response is required.

144. FNB denies the allegations in Paragraph 144. FNB further states that the document attached as Exhibit 22 speaks for itself.

145. FNB denies the allegations in Paragraph 145.

146. FNB denies the allegations in Paragraph 146.

147. FNB denies the allegations in Paragraph 147. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

II. Plaintiffs’ Reasonable Diligence

148. FNB denies the allegations in Paragraph 148. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

149. FNB denies the allegations in Paragraph 149.

A. The Braskos' Reasonable Diligence.

150. FNB denies the allegations in Paragraph 150.

151. FNB denies the allegations in Paragraph 151.

152. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 152 and, therefore, denies the same.

153. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 153 and, therefore, denies the same.

154. FNB denies the existence of a “coordinated business relationship” between First Mariner and All Star or “that All Star paid anything of value for First Mariner’s assignment and referral of the Braskos’ loan to All Star.”

155. FNB denies the existence of a “coordinated business relationship” between First Mariner and All Star or the Braskos’ Good Faith Estimate contains any fraudulent representations or omissions. FNB denies the remaining allegations in Paragraph 155.

156. FNB denies the allegations in Paragraph 156.

157. FNB denies the allegations in Paragraph 157.

158. FNB denies the allegations in Paragraph 158.

159. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 159 and, therefore, denies the same.

160. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 160 and, therefore, denies the same.

161. FNB denies the allegations in Paragraph 161. FNB further states that the document attached as Exhibit 15 speaks for itself.

162. FNB denies the allegations in Paragraph 162. FNB further states that the document attached as Exhibit 15 speaks for itself.

163. FNB denies the allegations in Paragraph 163. FNB further states that the document attached as Exhibit 15 speaks for itself.

164. FNB denies the allegations in Paragraph 164.

165. FNB denies the allegations in Paragraph 165.

166. FNB denies the allegations in Paragraph 166.

167. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 167 and, therefore, denies the same. FNB, however, denies the existence of “any potential wrongful, illegal, harmful and/or actionable conduct” by or on behalf of First Mariner.

168. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 168 and, therefore, denies the same.

169. The allegations set forth in Paragraph 169 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 169.

B. Mr. Rubenstein’s Reasonable Diligence.

170. FNB denies the allegations in Paragraph 170.

171. FNB denies the allegations in Paragraph 171.

172. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 172 and, therefore, denies the same.

173. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 173 and, therefore, denies the same.

174. FNB denies the existence of a “coordinated business relationship” between First Mariner and All Star or “that All Star paid anything of value for First Mariner’s assignment and referral of Mr. Rubinstein’s loan to All Star.”

175. FNB denies the existence of a “coordinated business relationship” between First Mariner and All Star or Mr. Rubinstein’s Good Faith Estimate contains any fraudulent representations or omissions. FNB denies the remaining allegations in Paragraph 175.

176. FNB denies the allegations in Paragraph 176.

177. FNB denies the allegations in Paragraph 177.

178. FNB denies the allegations in Paragraph 178.

179. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 179 and, therefore, denies the same.

180. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 180 and, therefore, denies the same.

181. FNB denies the allegations in Paragraph 181. FNB further states that the document attached as Exhibit 16 speaks for itself.

182. FNB denies the allegations in Paragraph 182. FNB further states that the document attached as Exhibit 16 speaks for itself.

183. FNB denies the allegations in Paragraph 183. FNB further states that the document attached as Exhibit 16 speaks for itself.

184. FNB denies the allegations in Paragraph 184.

185. FNB denies the allegations in Paragraph 185.

186. FNB denies the allegations in Paragraph 186.

187. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 187 and, therefore, denies the same. FNB, however, denies the existence of “any potential wrongful, illegal, harmful and/or actionable conduct” by or on behalf of First Mariner.

188. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 188 and, therefore, denies the same.

189. The allegations set forth in Paragraph 189 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 169.

III. Accrual and Tolling of Limitations

190. The allegations set forth in the first sentence of Paragraph 190 constitute a recitation of law and characterizations of federal statutes to which no response is required. FNB denies the remaining allegations in Paragraph 190. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

191. The allegations set forth in Paragraph 191 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 191. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

192. FNB denies the allegations in Paragraph 192.

193. FNB denies the allegations in Paragraph 193. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

COUNT I
Violation of the Real Estate Settlement Procedures Act (RESPA),
12 U.S.C. § 2607(a)

194. FNB adopts and incorporates by reference its Answers to Paragraphs 1 through 193.

195. The allegations set forth in Paragraph 195 constitute conclusions of law and characterizations of federal statutes to which no response is required.

196. The allegations set forth in Paragraph 196 constitute conclusions of law and characterizations of federal statutes to which no response is required.

197. The allegations set forth in Paragraph 197 constitute conclusions of law and characterizations of federal statutes to which no response is required.

198. FNB denies the allegations in Paragraph 198.

199. FNB denies the allegations in Paragraph 199.

200. FNB denies the allegations in Paragraph 200.

201. FNB denies the allegations in Paragraph 201.

202. FNB denies the allegations in Paragraph 202.

203. FNB denies the allegations in Paragraph 203.

204. FNB admits that it is the successor in interest to First Mariner by virtue of its merger with Howard Bank. FNB denies the remainder of the allegations in Paragraph 204.

205. The allegations set forth in Paragraph 205 constitute conclusions of law to which no response is required. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

206. FNB denies the allegations in Paragraph 206, including all subparts. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

207. FNB denies the allegations in Paragraph 207.

208. FNB denies the allegations in Paragraph 208. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

209. FNB denies the allegations in Paragraph 209.

210. FNB denies the allegations in Paragraph 210.

211. FNB denies the allegations in Paragraph 211. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

212. FNB denies the allegations in Paragraph 212. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

213. FNB denies the allegations in Paragraph 213. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

214. FNB denies the allegations in Paragraph 214. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

215. FNB denies the allegations in Paragraph 215. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

COUNT II
Violations of Racketeer Influenced & Corrupt Organizations Act (RICO)
18 U.S.C. § 1962

216. FNB adopts and incorporates by reference its Answers to Paragraphs 1 through 215.

217. The allegations set forth in Paragraph 217 constitute conclusions of law and characterizations of federal statutes to which no response is required.

218. FNB denies the allegations in Paragraph 218.

219. FNB denies the allegations in Paragraph 219.

220. FNB denies the allegations in Paragraph 220.

221. FNB denies the allegations in Paragraph 221.

222. FNB denies the allegations in Paragraph 222.

223. FNB denies the allegations in Paragraph 223. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

224. FNB admits that it is the successor in interest to First Mariner by virtue of its merger with Howard Bank. FNB denies the remainder of the allegations in Paragraph 224.

225. The allegations set forth in Paragraph 225 constitute conclusions of law to which no response is required. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

226. FNB denies the allegations in Paragraph 226, including all subparts. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

227. FNB denies the allegations in Paragraph 227.

228. FNB denies the allegations in Paragraph 228.

229. FNB denies the allegations in Paragraph 229.

230. FNB denies the allegations in Paragraph 230.

231. FNB denies the allegations in Paragraph 231. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

232. FNB denies the allegations in Paragraph 232. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

233. FNB denies the allegations in Paragraph 233. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

234. FNB denies the allegations in Paragraph 234. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

235. FNB denies the allegations in Paragraph 235. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations—namely, the one-year statute of limitations set forth in RESPA, 12 U.S.C. § 2607—because their loans closed more than one year before the filing of this action.

3. Plaintiffs are not entitled to relief from the aforementioned statute of limitations under any theory of fraudulent concealment or equitable tolling because, among other reasons, Plaintiffs failed to exercise due diligence to discover the alleged basis for their claims against 1st Mariner.

4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

5. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

6. Plaintiffs' claims are barred, in whole or in part, by the doctrines of settlement, release, and/or payment.

7. Plaintiffs' claims are barred, in whole or in part, by the doctrines of set off and/or off-set.

8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

9. Plaintiffs' claims are barred, in whole or in part, by the actions or inaction of Plaintiffs.

10. Plaintiffs lack standing because they have not suffered a concrete and particularized injury. Plaintiffs paid fair market value for the settlement services at issue in the Complaint and, therefore, have not sustained any cognizable injury-in-fact.

11. Any damages or injuries that Plaintiffs allegedly sustained resulted from circumstances and conditions beyond the control of First Mariner and/or from the actions or inactions of third parties over which First Mariner lacked control.

12. Plaintiffs' claims fail as a matter of law because the individuals alleged to have engaged in the alleged kickback scheme were not working within the scope of their employment with First Mariner.

13. Any damages or injuries that Plaintiffs allegedly sustained are *de minimis*, remote, speculative, and/or transient.

14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate their damages and/or avoid the damages claimed in the Complaint, if any.

15. The acts and statements of First Mariner were, at all relevant times, fair and reasonable and were performed in good faith based on all the relevant facts known to First Mariner. First Mariner did not directly or indirectly perform any acts that would constitute a violation of Plaintiffs' rights or would violate any applicable federal, state, or local law or regulation.

16. At all relevant times, First Mariner complied with all applicable federal, state, and local laws and regulations.

17. Plaintiffs have failed to join one or more indispensable parties.

18. This Court should not certify this matter as a class action because Plaintiffs cannot satisfy the requirements of Federal Rule of Civil Procedure 23.

19. First Mariner reserves the right to amend, correct, update, and/or supplement its Affirmative Defenses, if necessary.

WHEREFORE, Defendant, First National Bank of Pennsylvania, as successor to First Mariner Bank, by and through merger with Howard Bank, respectfully requests that the Court dismiss Plaintiffs' Class Action Complaint with prejudice, issue a determination that this action may not be maintained as a class action, award it reasonable attorneys' fees and costs incurred in

defending this action, and grant any such other and further relief as the Court deems just and appropriate.

Dated: May 12, 2022

Respectfully submitted,

/s/ Michael E. Blumenfeld

Michael E. Blumenfeld (Bar No. 25062)

Peter W. Sheehan, Jr. (Bar No. 29310)

Ashley W. Wetzel (Bar No. 20196)

Nelson Mullins Riley & Scarborough, LLP

100 S. Charles Street | Suite 1600

Baltimore, Maryland 21201

(443) 392-9402 (Telephone)

(443) 392-9499 (Facsimile)

michael.blumenfeld@nelsonmullins.com

peter.sheehan@nelsonmullins.com

Ashley.wetzel@nelsonmullins.com

*First National Bank of Pennsylvania, as
Successor to First Mariner Bank, by and
through Merger with Howard Bank*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2022, a copy of the foregoing was electronically filed via CM/ECF and served on all counsel of record, pursuant to the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Maryland.

/s/ Michael E. Blumenfeld _____
Michael E. Blumenfeld