

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

**RICHARD AND LORI BRASKO, ET. AL.**

*Plaintiffs,*

v.

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

3015 Glimcher Blvd.  
Hermitage, PA 16148

*Defendant.*

Civil Action No.: 1:20-cv-03489

---

**SUPPLEMENTAL CLASS ACTION COMPLAINT**

Plaintiffs Richard and Lori Brasko and Eric Rubinstein, on behalf of themselves and the entire class of persons similarly situated, by and through their attorneys, Michael Paul Smith and Melissa L. English of Smith, Gildea & Schmidt, LLC, and Timothy F. Maloney and Veronica B. Nannis of Joseph, Greenwald and Laake, P.A., file this Class Action Complaint, sue the Defendant for cause and claim damages, and state as follows:

**INTRODUCTION**

1. Plaintiffs Richard and Lori Brasko (the “Braskos”) and Eric Rubinstein (“Mr. Rubinstein”), (collectively “Plaintiffs”), and the alleged Class Members are borrowers who currently have or had a residential mortgage loan originated and/or brokered by First Mariner Bank,

a/k/a 1st Mariner Bank, (“First Mariner”), predecessor to Defendant First National Bank of Pennsylvania, which was or is secured by residential real property.

2. Plaintiffs and alleged Class Members are victims of an illegal kickback agreement (“Kickback Agreement”) between First Mariner and All Star Title, Inc. (“All Star”), a Maryland-based title and settlement services company, and a related scheme to defraud (“Scheme to Defraud”) borrowers into paying fraudulent and unnecessarily increased charges for title and settlement services, carried out through the use of the interstate mails and wires.
3. Under the Kickback Agreement, First Mariner, by and through its branch managers, loan officers, agents, and/or other employees received and accepted illegal kickbacks in exchange for the assignment and referral of residential mortgage loans, refinances, and reverse mortgages to All Star for title and settlement services in violation of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2607(a).
4. First Mariner and All Star laundered the kickbacks through third-party marketing companies to conceal the illegal kickbacks and the Kickback Agreement.
5. To pay for the kickbacks, First Mariner and All Star form an association in fact enterprise and implement a Scheme to Defraud borrowers into paying fraudulent and unnecessarily increased charges for title and settlement services, including amounts charged for the sole purpose of funding the illegal kickbacks, thereby defrauding borrowers into bearing the cost of the illegal enterprise.
6. First Mariner chose to reinvest the illegal kickbacks into the Scheme to Defraud, using the illegal kickbacks to produce and send through the U.S. mail tens of thousands of fraudulent

direct mail solicitations to lure borrowers into the Scheme to Defraud, engaging in a continuous pattern of racketeering activity for a period of at least two years, in violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et. seq.*

7. First Mariner benefitted from these fraudulent title and settlement services charges because these charges ensured the continued funding of the illegal kickbacks and were financed into borrowers’ loans from which First Mariner, and, on information and belief, its successor in interest, First National Bank of Pennsylvania , charges and earns interest.
8. First Mariner and All Star fraudulently concealed the kickbacks, Kickback Agreement, and Scheme to Defraud from Plaintiffs and alleged Class Members by: (i) laundering kickbacks through third-party marketing companies, (ii) creating sham invoices and payment records, (iii) making fraudulent representations in marketing materials, (iv) falsely allocating title and settlement fees and manipulating the APR associated with First Mariner loans, and (v) falsely and fraudulently representing and omitting information in and from First Mariner borrowers’ loan documents. These concealments prevented borrowers, regulators, and auditors from discovering the illegal kickbacks, enterprise, and overcharges, as well as injuries to First Mariner borrowers resulting therefrom, thereby allowing the kickbacks and overcharges to continue.

### **PARTIES**

9. Plaintiffs bring this action pursuant to Fed. R. of Civ. P. 23 as a class action on their own behalf and on behalf of the entire class of people similarly situated.
10. The Braskos are residents of St. Mary’s County, Maryland.

11. Mr. Rubinstein is a resident of Carroll County, Maryland.
12. Defendant First National Bank of Pennsylvania is a national banking association with its headquarters and principal office at 166 Main Street, Greenville, Pennsylvania, 16125..
  - a. First National Bank of Pennsylvania is the successor in interest to First Mariner, a Maryland-chartered trust company.
  - b. By and through a merger completed and effective November 8, 2017, First Mariner merged with and into Howard Bank, a Maryland chartered trust company, with Howard Bank surviving as its successor corporation.
  - c. Howard Bank expressly assumed liability for the debts and obligations of First Mariner, which included liabilities from the claims pled herein, pursuant to § 3-713 of the Financial Institutions Article of the Maryland Annotated Code and Art. 1, ¶ 1.1 of the Agreement and Plan of Reorganization by and Between Howard Bancorp, Inc., Howard Bank and First Mariner Bank, dated August 14, 2017 and as amended on November 8, 2017.
  - d. By and through a merger completed and effected January 22, 2022, Howard Bank merged with and into First National Bank of Pennsylvania, with First National Bank of Pennsylvania as the surviving entity.
  - e. First National Bank of Pennsylvania expressly assumed liability for the debts and obligations of Howard Bank, which includes the liabilities from the claims pled herein, pursuant to and ¶ 6 of the Agreement and Plan of Merger between Howard Bank and First National Bank of Pennsylvania dated July 12, 2021.

- f. In addition, the debts and liabilities of Howard Bank, which include the liabilities from the claims pled herein, are imposed on First National Bank of Pennsylvania by operation of law pursuant to § 3-713 of the Financial Institutions Article of the Maryland Annotated Code and 15 Pa.C.S. § 336(a)(4).

**JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c).
14. This court has personal jurisdiction over the parties. Personal jurisdiction over Defendant First National Bank of Pennsylvania is appropriate because it transacts business in this District and Maryland, specifically engaging in residential mortgage lending related to properties located in this District, as well as other banking and lending transactions.
15. Personal jurisdiction over Defendant First National Bank of Pennsylvania is also appropriate because during the time period alleged herein First Mariner continuously transacted business within this District, which caused injury to persons residing in or located in this District. Such jurisdiction extends to Defendant First National Bank of Pennsylvania as First Mariner's successor in interest. *Richmond v. Madison Mgmt. Grp., Inc.*, 918 F.2d 438, 454 (4th Cir. 1990).
16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) and 18 U.S.C. § 1965.

**FACTUAL ALLEGATIONS FOR INDIVIDUAL AND CLASS RELIEF**

17. At all relevant times, All Star is a Maryland corporation and a title and settlement service provider licensed in Maryland and regulated by the Maryland Insurance Administration. All Star is a licensed title and settlement service provider in more than 30 states and

provides title and settlement services on residential mortgage loans, refinances, and reverse mortgages secured by real property in forty-seven states.

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

18. By at least 2012, All Star has entered an agreement with First Mariner to pay First Mariner, and its brokers, loan officer, and/or other employees, kickbacks in exchange for First Mariner's assignment and referral of residential mortgage loans, refinances, and reverse mortgages to All Star for title and settlement services ("Kickback Agreement").
19. At all relevant times, the First Mariner branch managers and loan officers participating in the Kickback Agreement and Scheme to Defraud are licensed mortgage brokers and/or authorized loan officers, and, at all relevant times, are acting within the scope of the business relationship and their employment on behalf of First Mariner. Specifically, these branch managers, loan officers, and employees seek to acquire new business by selling, brokering, originating, and/or securing loans for residential mortgages for new and existing First Mariner loan borrowers. All activities, including any interaction with All Star, were for the benefit of First Mariner.
20. During the relevant time period, Ryan Lowery, Trevor Buck, Tom Bowen, Angela Pobletts, Michael Carter, Michelle Skjoldager a/k/a Michelle Skoldager a/k/a Michelle Downey, Theresa Frederick, Melissa Miller, George Klein, Joy Gillespie, John Karavasilis, Yianni Karavasilis, Laurie Burgess, Ken Miller, Brad Restivo, Robert Hoover, Emma Quinn, Christopher Perrin, Alicia Barford, Merci Fitzgerald, David Horvath, and Mitch Wright, were branch managers and/or loan officers employed by First Mariner.

21. As an integral part of the Kickback Agreement, All Star and First Mariner agree to launder the kickbacks through third-party marketing companies.
22. All Star does not regularly use marketing companies for marketing services, nor does All Star directly solicit borrowers. In contrast, First Mariner and/or its branch managers, mortgage brokers, loan officers, and/or other employees frequently use third-party marketing companies (such as a direct mail, data and/or leads lists, telemarketing, or live transfer leads providers) to provide marketing services aimed at soliciting borrowers to obtain residential mortgage loans, refinances, and reverse mortgages from First Mariner.
23. Under the Kickback Agreement, First Mariner identifies a third-party marketing company that First Mariner uses for its marketing services. All Star then makes the kickback payment to the third-party marketing company, and First Mariner receives and accepts the kickback payment when the third-party marketing company applies All Star's payment for the benefit of First Mariner and for the services that First Mariner is receiving.
24. All Star's payment laundered through the third-party marketing company is an express payment for the benefit of First Mariner for the assignment and referral of First Mariner loans under the Kickback Agreement and not a payment to the third-party marketing company for legitimate marketing services; in fact, All Star receives no marketing services from the third-party marketing company.
25. The kickbacks start with the assignment and referral of loans from the First Mariner branch located at 303 S. Main Street Bel Air, Maryland 21014 and managed by First Mariner branch manager and loan officer Tom Bowen.

26. In 2012, All Star pays, and First Mariner receives and accepts, \$28,597.50 in illegal kickbacks for the assignment and referral of First Mariner loans to All Star for title and settlement services. These kickbacks are laundered by and through various third-party marketing companies, including:
- a. \$187.50 on March 5, 2012, laundered by and through Lendaneer Data & Direct Mail Services (“Lendaneer”);
  - b. \$1,375.00 kickback on March 6, 2012, laundered by and through Influence Direct (“Influence”), a Tennessee-based leads ad marketing company;
  - c. \$962.50 kickback on April 11, 2012, laundered by and through Influence;
  - d. \$525.00 kickback on April 11, 2012, laundered by and through Lendaneer Data & Direct Mail Services (“Lendaneer”), a Tennessee-based marketing company;
  - e. \$687.50 kickback on April 24, 2012, laundered by and through Influence;
  - f. \$375.00 kickback on April 24, 2012, laundered by and through Lendaneer;
  - g. \$262.50 kickback on June 4, 2012, laundered by and through Lendaneer;
  - h. \$962.50 kickback on June 6, 2012, laundered by and through Influence;
  - i. \$187.50 kickback on July 9, 2012, laundered by and through Lendaneer;
  - j. \$687.50 kickback on July 11, 2012, laundered by and through Influence;
  - k. \$1,350.00 kickback on September 12, 2012, laundered by and through Influence;
  - l. \$187.50 kickback on September 12, 2012, laundered by and through Lendaneer;
  - m. \$187.50 kickback on September 21, 2012, laundered by and through Lendaneer;
  - n. \$675.00 kickback on September 26, 2012, laundered by and through Influence;
  - o. \$900.00 kickback on October 3, 2012, laundered by and through Lendaneer;



- p. \$3,180.00 kickback on October 3, 2012, laundered by and through Influence;
  - q. \$4,505.00 kickback on October 29, 2012, laundered by and through Influence;
  - r. \$8,400.00 kickback on December 19, 2012, laundered by and through Influence;  
and
  - s. \$3,000.00 kickback on December 19, 2012, laundered by and through Lendanear.
27. All Star's laundering of payments through Influence and Lendanear are for the sole benefit of First Mariner and are express payments for the referral of First Mariner loans and to conceal the illegal kickbacks, and not for any of these companies actually providing any goods or services to All Star.
28. No good, facilities, and/or services are provided by any First Mariner employees and/or agents, associated with the receipt and acceptance of the kickbacks. The payment of the kickbacks by All Star, and the receipt and acceptance by First Mariner, are made expressly and solely for First Mariner's assignment and referral of First Mariner borrowers' loans to All Star.
29. In 2012, First Mariner in fact assigns and refers 91 First Mariner loans to All Star as quid pro quo for the illegal kickbacks and in performance of the Kickback Agreement.
30. In 2013, All Star pays, and First Mariner receives and accepts, at least \$16,636.58 in illegal kickbacks for the assignment and referral of First Mariner loans to All Star for title and settlement services. These kickbacks are laundered by and through various third-party marketing companies, including:
- a. \$380.00 kickback on January 14, 2013, directly to First Mariner via Tom Bowen;
  - b. \$5,199.99 kickback on February 14, 2013, laundered by and through Influence;

- c. \$873.75 kickback on February 14, 2013, laundered by and through Lendanear;
  - d. \$5,199.99 kickback on March 1, 2013, laundered by and through Influence;
  - e. Unknown kickback amount on March 20, 2013, laundered by and through Lendanear;
  - f. \$3,632.85 kickback on April 23, 2013, laundered by and through Influence; and
  - g. \$1,350.00 kickback on April 23, 2013, laundered by and through Lendanear.
31. All Star's laundering of payments through Influence and Lendanear are for the benefit of First Mariner and are express payments for the referral of First Mariner loans and to conceal the illegal kickbacks, and not for any of these companies actually providing any goods or services to All Star.
32. No good, facilities, and/or services are provided by any of First Mariner employees and/or agents, associated with the receipt and acceptance of the kickbacks. The payment of the kickbacks by All Star, and the receipt and acceptance by First Mariner, are made expressly and solely for First Mariner's assignment and referral of First Mariner borrower's loans to All Star.
33. In 2013, First Mariner in fact assigns and refers 137 First Mariner loans to All Star as quid pro quo for the illegal kickbacks and in performance of the Kickback Agreement.
34. First Mariner continues to assign and refer First Mariner loans to All Star from 2014 to 2016, assigning and referring 30 First Mariner loans to All Star during that time period.
35. Based on First Mariner and All Star's continuing pattern of practice, Plaintiffs believe, and therefore allege, that between 2014 and 2016, All Star continues to pay, and First Mariner

continues to receive and accept, kickbacks for the assignment and referral of First Mariner loans to All Star for title and settlement services.

36. Based on First Mariner's and All Star's continuing pattern of practice, Plaintiffs believe, and therefore allege, that these kickbacks continue to be laundered by and through various third-party marketing companies.

37. Based on the continuing pattern of practice between All Star and First Mariner, Plaintiffs believe and therefore allege, that All Star paid kickbacks to First Mariner by and through other third-party marketing companies in addition to those identified herein.

**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. Concealment from borrowers, regulators, and auditors is essential to the success and continuation of the Kickback Agreement and the illegal kickbacks. All Star and First Mariner use a variety of tactics to conceal the illegal kickbacks, Kickback Agreement, and All Star's and First Mariner's coordinated business relationship under the Kickback Agreement.

39. Laundering the kickbacks through third-party marketing companies is an integral part of the Kickback Agreement and allows All Star and First Mariner to conceal the existence of and amount of the kickbacks from borrowers, regulators, and law enforcement. All Star and the First Mariner launder the kickbacks through third-party marketing companies to also conceal the fact that any thing of value was exchanged between All Star and First Mariner.

40. All Star and First Mariner launder the kickbacks through the third-party marketing companies to conceal that the payments are kickbacks and to create the false impression that All Star is making payments for legitimate marketing services.
41. In fact, All Star does not receive any legitimate marketing services from the third-party marketing companies laundering the kickbacks. To be clear, All Star's payments laundered by the third-party marketing companies are, at all times, solely for the benefit of First Mariner and in exchange for First Mariner's assignment and referral of loans under the Kickback Agreement. These payments are not for the third-party marketing company's provision of any legitimate goods and/or services to All Star.
42. To even further conceal the kickbacks and Kickback Agreement, All Star and First Mariner cause the third-party marketing company to create sham invoices to create the false impression that All Star is paying for, and receiving, legitimate marketing services from the third-party marketing company. Again, in fact, All Star does not receive any legitimate marketing services from the marketing company. All Star's payment is applied solely for the benefit of First Mariner.
43. To add another layer of concealment, All Star and First Mariner construct an elaborate sham to create the false impression that All Star and First Mariner are "co-marketing".
44. The prototype for the "co-marketing" sham was developed by a postcard company contracted by All Star. The postcard company advised:

We played around with the design a bit and what we're running into is that if we use 25-50% of the card with All Star Title's info, it makes it confusing for the person receiving the card as they can't tell who the advertisement is from. We came up with a mockup with a smaller All Star Title logo so that it doesn't totally distract from

the mortgage company's information. We also removed your phone number because we don't want people to call you instead of the mortgage company.

*See Ex. 1*, September 28, 2009 Emails related to design of mailers. In 2010, All Star notified the postcard company, "We actually started a similar program with other direct mail companies and its going really[,] really well." **Ex. 1**.

45. By design, All Star receives no actual marketing benefit from the solicitation; the entire marketing benefit flows to First Mariner. In exchange, under the Kickback Agreement, First Mariner agrees, and is required, to exclusively assign and refer all loans generated by the mailer to All Star for title and settlement services. All Star receives no marketing services but instead, receives the referral from First Mariner.
46. In addition, as advised by All Star's early prototype, All Star and First Mariner agree to limit All Star to a negligible presence on the solicitation, with All Star occupying less than 1/5 of the surface area of a solicitation. The payment made by All Star to First Mariner is far greater, and not reasonably related, to All Star's nominal presence in the solicitations. The inclusion of All Star on any material at all is solely for the purpose of attempting to conceal the kickbacks.
47. The sham solicitations live up to the intended purpose. Despite making thousands in payments to First Mariner, All Star does not receive any marketing benefit from the sham solicitations and not a single, direct call from a borrower. All of All Star's business continues to flow from the assignment and referral of loans by First Mariner. All of All Star's business is subject to the payment of kickbacks.

48. The Consumer Financial Protection Board (CFPB), the federal agency responsible for RESPA enforcement, has identified that during the time period applicable to the Scheme to Defraud, sham “co-marketing” was so prevalent as to cause the Consumer Financial Protection Bureau (“CFPB”) to issue a compliance bulletin concluding that “[b]ased on the Bureau’s investigative efforts, it appears that many [marketing service agreements] are designed to evade RESPA’s prohibition on the payment and acceptance of kickbacks and referral fees.” Consumer Fin. Prot. Bureau Compliance Bulletin 2015-05, [https://files.consumerfinance.gov/f/201510\\_cfpb\\_compliance-bulletin-2015-05-respa-compliance-and-marketing-services-agreements.pdf](https://files.consumerfinance.gov/f/201510_cfpb_compliance-bulletin-2015-05-respa-compliance-and-marketing-services-agreements.pdf).
49. In describing the type of agreements that were used as sham fronts for illegal kickbacks, the CFPB detailed a scheme indistinguishable from the one designed by All Star and the Participating Lenders in the Scheme to Defraud:

[I]n another matter that resulted in an enforcement action, **a title company entered into unwritten agreements with individual loan officers in which it paid for the referrals by defraying the loan officers’ marketing expenses.** The title company supplied loan officers with valuable lead information and marketing materials. In exchange, the loan officers sent referrals to the title company. The lenders did not detect these RESPA violations and/or correct or prevent them, even when they had reason to know that the title company was defraying the marketing expenses of the lenders and their loan officers.

*Id.* (emphasis added).

50. While building the sham of “co-marketing,” All Star makes clear to First Mariner that the payment to First Mariner is solely for the assignment and referral of loans for title and settlement services and attaches a production goal – referred to as a “unit goal” – to each

kickback paid to First Mariner. As Jason Horwitz, the President and owner of All Star and the architect of the Kickback Agreement, described it to one of his marketing representatives:

. . . what we're going to, and this really will apply to all marketing campaigns of any significant size, is basically place a "unit goal" on the mail drop. Essentially, we say... we are setting a reasonable "unit goal: of 25 units... the "unit goal" can be met with closings from the mail, or any other source. It doesn't matter where its from, as long as we hit that unit number. Basically the agreement would be that we do not contribute to another campaign until we hit that unit goal.

*See Ex. 2*, June 22, 2011 Email.

51. From the beginning, All Star's kickback payments to First Mariner are in exchange for the assignment and referral of loans for title and settlement services, and for no other purpose. It is clear that First Mariner must hit certain "unit goals" and All Star will not authorize another kickback until it is demonstrated that First Mariner hit such "unit goal":

---

**From:** Jason Horwitz  
**Sent:** Wednesday, April 11, 2012 11:23 AM EDT  
**To:** First administrative group/cn=Recipients/cn=rob  
**Subject:** Re: New Order FRIDAY/ Invoice for Tom Bowen  
**Attachments:** image001.png

Okedoke

Jason Horwitz  
All Star Title  
1-800-580-0677 office  
443-858-9959 cell  
410-510-1019 direct fax  
[Jason@allstartitle.com](mailto:Jason@allstartitle.com)

Sent from my iPhone

On Apr 11, 2012, at 11:20 AM, "Rob Selznick" <[rob@allstartitle.com](mailto:rob@allstartitle.com)> wrote:

Tom Bowen is dropping another campaign. He got 11 loans off of the first campaign. So far 7 have closed and the other 4 expected to close this month. We are paying 50%, so our cut is \$270.38.

<image001.png>

Best Regards,

**Rob Selznick, Senior Account Manager**  
6225 Smith Ave., Suite 202  
Baltimore, MD 21209

**Ex. 3,** April 11, 2012 Email from J. Horwitz to R. Selznick.

52. First Mariner demonstrates that it understands the kickbacks are for referrals:



**From:** Tom Bowen [<mailto:tbowen@1stmarinerbank.com>]  
**Sent:** Wednesday, August 29, 2012 9:16 PM  
**To:** Rob Selznick  
**Subject:** RE: Chat

Tomorrow is pretty rough I have a meeting at 9am, and closing at 4pm downtown

any time on Friday or early next week, I have 5 people on board so I need to go over the marketing stuff with you. I have all the numbers,

but essentially, you would get a minimum of 35 files, most likely 45-50 in the beginning, and probably up to 60 or so once they are up and running, since I will still be originating.

Also I can start pushing Ryan to get you most of his refs which will be another 5 or so a month.

Looking to start either 3rd week in september or 10/1.

**Ex. 4,** August 31, 2012 Email.

53. All Star regularly monitors the unit goal requirements attached to the kickbacks and reiterates both the kickback agreement and specific unit goals:

On Feb 12, 2013, at 3:27 PM, "Rob Selznick" <[rob@allstartitle.com](mailto:rob@allstartitle.com)> wrote:

Tom,

Here is what I am coming up with numbers wise over the last 90 days as well as mail contribution amounts that we have. Let me know if this jives with what you have...

We have only 4 new orders so far in Feb 2013. I'd say that based off of the numbers below, we are probably around break even over the last 90 days when you factor in the expenses incurred per file (abstracts, commission, closers, etc.). Are you sure everything has been coming our way? I know when we put this together we were expecting to be around 35+ closings per month. How is February shaping up for you?

**Ex. 5,** Feb. 12, 2013 Email from R. Selznick to T. Bowen.

54. All Star regularly requires First Mariner to set out the number of referrals before approving a kickback to be paid:

**From:** Rob Selznick  
**Sent:** Friday, April 19, 2013 4:20 PM  
**To:** 'Tom Bowen'

Ok, so piggy backing off the numbers below, we wound up with 17 closings that I show in the month of March. Here is the breakdown..

Orders

-  
Jan – 11  
Feb – 19  
March – 18  
April – 30 (so far and its only 4/19)

Closings

-  
Jan – 28  
Feb – 12  
March – 17  
April – 5 (so far)

Marketing expenses so far in 2013 are \$7,000. Jason, please advise if we are ok to make contribution and at what level. Thanks!

**Ex. 6**, April 19, 2013 Email from R. Selznick to T. Bowen, copying J. Horwitz.

55. Because no goods or facilities are provided by First Mariner to All Star, no services are actually rendered by First Mariner for All Star, and all of the kickbacks are paid solely in exchange for the assignment and referral of residential mortgage loans by First Mariner, none of the kickback payments are entitled to the protection of 12 U.S.C. § 2607(c)(2).
56. In addition, and in the alternative, any payment from All Star to First Mariner is not reasonably related to the value of any purported good, facility, and/or service that may have been provided by First Mariner to All Star. All Star's presence in any individual First Mariner mailer, or collectively across all of the First Mariner mailers from the relevant

time period, is not reasonably related to the thousands in payments made by All Star to First Mariner under the Kickback Agreement.

57. Because payments by All Star are solely for the assignment and referral of loans by First Mariner, pursuant to the Kickback Agreement, and/or not reasonably related to the value of any purported good, facility, and/or service provided to All Star by First Mariner, the payments are not entitled to the protection of 12 U.S.C. § 2607(c)(2).

**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. Shortly after the first kickback payment is made, to fund the kickbacks, and to ensure the kickbacks will continue, All Star and First Mariner conspire and agree to defraud First Mariner borrowers into paying fraudulent and unnecessarily increased charges for title and settlement services on First Mariner loans assigned and referred to All Star under the Kickback Agreement (“Scheme to Defraud”).

59. Specifically, All Star and First Mariner agree to charge borrowers amounts not associated with any legitimate title or settlement services. First Mariner and All Star include the fraudulent charges in amounts for seemingly legitimate title and settlement services, such as “title exam”, “abstract”, and “document preparation”. These fraudulent charges are charged solely for the purpose of paying for the illegal kickbacks and other aspects of the illegal referring agreement.

60. In 2012, First Mariner and All Star conspire and agree to minimum prices on different loans assigned and referred to All Star for title and settlement services. These minimum

prices, for title and settlement services, ranged from \$750 plus title insurance to \$1,850 including title insurance. *See* **Ex. 7**, Rob Selznick Fee Chart May 2012.

61. These charges are at least \$250 higher than All Star is charging on loans assigned and referred from other lenders for similar services. This is the First Mariner Overcharge and the increased amount that All Star is charging First Mariner borrowers because First Mariner is receiving and accepting kickback from All Star. *See* **Ex. 7**, Rob Selznick Fee Chart May 2012.
62. In addition, these charges include an unidentified amount that is charged for the sole purpose of funding the kickbacks and not associated with any legitimate title or settlement service. This amount constitutes the Kickback Overcharge and, together with the First Mariner Overcharge, constitute the minimum amount of actual damages incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
63. For example, in March 2012, First Mariner and All Star agree to allow All Star to add \$300 to the fixed charges applicable to the First Mariner loans assigned and referred by the First Mariner branch managed by First Mariner loan officer Tom Bowen:

On Feb 21, 2012, at 4:30 PM, "Rob Selznick" <[rob@allstartitle.com](mailto:rob@allstartitle.com)> wrote:

Can you please ok this for me? Tom's structure is 1100 including, but I moved it to 1400 including to compensate for marketing. With this deal there isn't a fee cut, just less for marketing since it is at 1280. Thanks!

**Ex. 8**, February 21, 2012 Email.

64. First Mariner chooses to reinvest and use the illegal kickbacks to produce and mail thousands of borrower solicitations; thereby generating the loans necessary to fulfill its obligations under the Kickback Agreement and the borrowers necessary to charge the fraudulent fees in furtherance of the Scheme to Defraud.
65. After receiving and accepting the kickbacks, First Mariner chooses to reinvest and use the kickbacks to produce and mail more than 70,000 First Mariner solicitations to potential borrowers in virtually every state in the contiguous United States, including:
  - a. 5,000 direct mail solicitations on March 6, 2012, from Influence using at least 2,500 pieces of data obtained on March 5, 2012, from Lendaneer;
  - b. 3,500 direct mail solicitations on April 11, 2012, from Influence using 3,500 pieces of data obtained on April 11, 2012, from Lendaneer;
  - c. 2,500 direct mail solicitations on April 24, 2012, from Influence using 2,500 pieces of data obtained on April 24, 2012, from Lendaneer;
  - d. 1,750 direct mail solicitations on June 6, 2012, from Influence using 3,500 pieces of data obtained on June 4, 2012, from Lendaneer;
  - e. 1,250 direct mail solicitations on July 11, 2012, from Influence using 2,500 pieces of data obtained on July 9, 2012, from Lendaneer;
  - f. 2,500 direct mail solicitations on September 12, 2012, from Influence using 2,500 pieces of data obtained on September 12, 2012, from Lendaneer;
  - g. 1,250 direct mail solicitations on September 26, 2012, from Influence using 2,500 pieces of data obtained on September 21, 2012, from Lendaneer;

- h. 6,000 direct mail solicitations on October 3, 2012, from Influence using 6,000 pieces of data obtained on October 3, 2012, from Lendaneer;
  - i. 8,500 direct mail solicitations on October 29, 2012, from Influence; and
  - j. 40,000 direct mail solicitations on December 19, 2012, from Influence using at least 20,000 pieces of data obtained on December 19, 2012, from Lendaneer.
66. Each of these solicitations is sent through the U.S. mail in furtherance of the Scheme to Defraud and for the purpose of defrauding borrowers into paying fraudulent charges for title and settlement services and thereby depriving them of their money or property. Each solicitation is a predicate act of mail fraud for the purposes of 18 U.S.C. § 1961(5).
67. In 2013, First Mariner and All Star continue to apply the fixed prices and fraudulent charges on First Mariner loans assigned and referred from the First Mariner branch managed by Tom Bowen. **Ex. 9**, March 7, 2013 Email.
68. These charges are at least \$350 higher than All Star is charging on loans assigned and referred from other lenders for similar services and represents the First Mariner Overcharge applicable during this period. *See Ex. 10*, April 2013 Fee Structure.
69. These charges also continue to include all or a portion of the \$300 Kickback Overcharge identified in ¶ 63 above. These First Mariner and Kickback Overcharges are the minimum amount of actual damages incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
70. In May 2013, First Mariner and All Star conspire and agree to minimum prices on different loans assigned and referred to All Star for title and settlement services for each First

Mariner loan assigned and referred to All Star by First Mariner sales manager and loan officer Angela Pobletts and others at her First Mariner branch. These minimum prices, for title and settlement services, ranged from \$1,000 plus title insurance to \$1,800 including title insurance. **Ex. 11**, May 20, 2013 Email.

71. These charges are between \$250 and \$600 higher than All Star is charging on loans assigned and referred from other lenders for similar services during this time and represents the First Mariner Overcharge applicable during this period. *See Ex. 10*, April 2013 Fee Structure.
72. In addition, these charges include an unidentified Kickback Overcharge incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud. These First Mariner and Kickback Overcharges are the minimum amount of actual damages incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
73. First Mariner again chooses to reinvest and use the illegal kickbacks to produce and mail borrower solicitations; thereby generating the loans necessary to fulfill its obligations under the Kickback Agreement and the borrowers necessary to charge the fraudulent fees in furtherance of the Scheme to Defraud.
74. After receiving and accepting the kickbacks, First Mariner chooses to reinvest and use the kickbacks to produce and mail, in 2013, more than 120,000 First Mariner solicitations to potential borrowers, in virtually every state in the contiguous United States, including:

- a. 60,000 direct mail solicitations on February 14, 2013, from Influence using at least 11,650 pieces of data on February 14, 2013, from Lendaneer;
  - b. 60,000 direct mail solicitations on March 1, 2013, from Influence;
  - c. 9,000 direct mail solicitations on April 23, 2013, from Influence using 9,000 pieces of data on April 23, 2013, from Lendaneer.
75. Each of these solicitations is sent through the U.S. mail for the purpose of and in furtherance of the Scheme to Defraud borrowers into paying fraudulent charges for title and settlement services and is a predicate act of mail fraud for the purposes of 18 U.S.C. § 1961(5).
76. In 2014, First Mariner and All Star continue to apply the fixed and fraudulent charges to loans assigned and referred to All Star from the First Mariner branches managed by Tom Bowen and Angela Pobletts.
77. In January of 2014, First Mariner and All Star raise the fixed and fraudulent charges applied to First Mariner loans assigned and referred to All Star by First Mariner loan officer Bob Hoover, raising the fixed charges to \$2,000 for title and settlement services for each loan. **Ex. 12**, Fee Structure January 2014.
78. These charges are at least \$950 higher than All Star is charging on loans assigned and referred from other lenders for similar services during this time and represent the First Mariner Overcharge applicable to these loans. *See Ex. 12*, Fee Structure January 2014.
79. In addition, these charges include an unidentified Kickback Overcharge incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in



- furtherance of the Scheme to Defraud. These First Mariner and Kickback Overcharges are the minimum amount of actual damages incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
80. Through at least September 2014, First Mariner and All Star agree to continue and do so continue the application of the fixed and fraudulent charges applied to loans assigned and referred to All Star by the First Mariner branches managed by Tom Bowen and Angela Pobletts. **Ex. 13**, Fee Structure September 2014.
81. These fixed and fraudulent charges include a First Mariner Overcharge of at least \$750 and a Kickback Overcharge of at least \$200. These First Mariner and Kickback Overcharges are the minimum amount of actual damages incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud. **Ex. 13**, Fee Structure September 2014.
82. Through 2015, and into 2016, First Mariner and All Star continue to apply and charge First Mariner borrowers the fixed and fraudulent charges for title and settlement services, including on those First Mariner loans assigned and referred by First Mariner loan officer Michelle Skjoldager (a/k/a Michelle Downey). **Ex. 14**, Fee Structure November 2015.
83. These fixed and fraudulent charges are at least \$300 higher than All Star is charging on loans assigned and referred from other lenders for similar services during this time and represent the First Mariner Overcharge applicable to these loans. **Ex. 14**, Fee Structure November 2015.

84. In addition, these charges include an unidentified Kickback Overcharge incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud. These Kickback Overcharges are the minimum amount of actual damages incurred by First Mariner borrowers assigned and referred during this period pursuant to the Kickback Agreement, agreement fixing prices, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
85. Based on First Mariner and All Star's continuing pattern of practice, Plaintiffs believe, and therefore allege, that between 2014 and 2016, First Mariner chooses to reinvest and use the illegal kickbacks to produce and mail borrower solicitations; thereby generating the loans necessary to fulfill its obligations under the Kickback Agreement and the borrowers necessary to charge the fraudulent fees in furtherance of the Scheme to Defraud.
86. Based on First Mariner's and All Star's continuing pattern of practice, Plaintiffs believe, and therefore allege, that each of these solicitations is sent through the U.S. mail for the purpose of and in furtherance of the Scheme to Defraud borrowers into paying fraudulent charges for title and settlement services and is a predicate act of mail fraud for the purposes of 18 U.S.C. § 1961(5).
- IV. Through the Kickback Agreement and Scheme to Defraud, First Mariner causes Plaintiffs and the Alleged Class concrete and individualized harm.**
87. As a direct and proximate result of the Kickback Agreement, the Scheme to Defraud, and the pattern of racketeering activity performed by First Mariner and All Star in furtherance of the Scheme to Defraud, First Mariner borrowers, including Plaintiffs and alleged Class

Members, were harmed and suffered concrete injury because they were: (i) defrauded into being charged and paying amounts that are not related to any legitimate title and settlement services and for the purpose of funding illegal kickbacks; (ii) charged and pay higher and unnecessarily increased amounts for title and settlement services than they would have without the Kickback Agreement and/or the Scheme to Defraud; (iii) stripped of their choice of title and settlement service provider and their mortgage broker's impartial evaluation of All Star's service and quality; and (iv) deprived of kickback-free title and settlement services and the consumer benefits of fair competition among independent title and settlement service providers.

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

88. Plaintiffs' transactions, and the course of events thereafter, exemplify the Kickback Agreement, price fixing agreements, and pattern of racketeering activity performed in furtherance of the Scheme to Defraud. These are typical of all alleged Class Members' transactions.

**I. The Braskos' Loan.**

89. In or about January 2013, the Braskos obtained a residential mortgage loan from First Mariner through Robert Hoover, a loan officer employed by First Mariner, in relation to the refinance of their residential real property and principal residence located at 20557 Pershing Drive, Lexington Park, Maryland 20653. The Braskos' First Mariner loan closed on or about January 18, 2013.

90. Hoover assigned and referred the Braskos' First Mariner loan to All Star in performance of the Kickback Agreement and as quid pro quo for the more than \$11,000 in kickbacks All Star paid and First Mariner received and accepted in December 2012, as described in ¶ 26r-s.
91. First Mariner and All Star's performance of the Kickback Agreement deprived the Braskos of their choice of a title and settlement service provider and denied the Braskos kickback-free title and settlement services.
92. In furtherance of the Kickback Agreement and Scheme to Defraud, First Mariner and All Star charged the Braskos \$1,550 in total title and settlement service fees. **Ex. 15**, Braskos HUD-1. These charges include the \$250 First Mariner Overcharge described in ¶ 61 and all or a portion of the \$300 Kickback Overcharge described in ¶ 63, which is the minimum amount of the Braskos' actual damages resulting from the Kickback Agreement and Scheme to Defraud.
93. These charges include amounts unassociated with a title examination, abstract, and/or legitimate title and/or settlement service and are charged for the purpose of funding the illegal kickbacks paid by All Star to First Mariner. These charges are higher than they would be without the Kickback Agreement, Scheme to Defraud, and the pattern of racketeering performed by All Star and First Mariner in furtherance of the Scheme to Defraud. These charges are unnecessarily increased by the illegal kickbacks received and accepted by First Mariner from All Star under the Kickback Agreement.

94. The Braskos pay for these charges when All Star disburses proceeds from the Braskos' First Mariner loan in payment of these title and settlement service charges. *See Ex. 15*, Braskos HUD-1.
95. As a direct and proximate result of the Kickback Agreement, Scheme to Defraud, and the pattern of racketeering activity performed by First Mariner and All Star in furtherance of the Scheme to Defraud, the Braskos were harmed and suffered concrete injury because they were: (i) charged and paid unnecessarily increased and higher fees for title and settlement services than they would have been without the illegal Kickback Agreement, Scheme to Defraud, and pattern of racketeering performed by All Star and First Mariner in furtherance of the Scheme to Defraud; (ii) defrauded into being charged and paying higher prices for title and settlement service fees unnecessarily increased by amounts not associated with any legitimate title and/or settlement services and charged to fund illegal kickbacks; (iii) stripped of their choice of title and settlement service provider and their mortgage broker's impartial evaluation of All Star's service and quality; and (iv) deprived of kickback-free title and settlement services and the consumer benefits of fair competition among independent title and settlement service providers.
96. As a direct and proximate result of the Kickback Agreement and Scheme to Defraud, the Braskos were charged and paid more for title and settlement services than they would have without the Kickback Agreement and Scheme to Defraud. They suffered actual damages in the amount of at least \$250, and on information and belief, additional amounts.

**II. Mr. Rubinstein's Loan.**

97. In or about March 2013, Mr. Rubinstein obtained a residential mortgage loan from First Mariner through Patricia Williams, a loan officer employed by First Mariner, in relation to the refinance of his residential real property and principal residence located at 204 Snowfall Way, Westminster, Maryland 21157. Mr. Rubinstein's First Mariner loan closed on or about March 29, 2013.
98. Patricia Williams assigned and referred Mr. Rubinstein's First Mariner loan to All Star in performance of the Kickback Agreement and as quid pro quo for the more than \$6,000 in kickbacks All Star paid and First Mariner received and accepted in February 2013, as described in ¶ 30b-c.
99. First Mariner and All Star's performance of the Kickback Agreement deprived Mr. Rubinstein of his choice of a title and settlement service provider and denied Mr. Rubinstein kickback-free title and settlement services.
100. In furtherance of the Kickback Agreement and Scheme to Defraud, First Mariner and All Star charged Mr. Rubinstein \$1,147.40 in total title charges. **Ex. 16**, Mr. Rubinstein HUD-1. These charges include the \$350 First Mariner Overcharge described in ¶ 68 and a portion of the \$300 Kickback Overcharge described in ¶ 63, which is the minimum amount of Mr. Rubinstein's actual damages resulting from the Kickback Agreement and Scheme to Defraud.
101. These charges include amounts unassociated with a title examination, abstract, and/or legitimate title and/or settlement service and are charged for the purpose of funding the illegal kickbacks paid by All Star to First Mariner. These charges are higher than they would be without the Kickback Agreement, Scheme to Defraud, and the pattern of

racketeering performed by All Star and First Mariner in furtherance of the Scheme to Defraud. These charges are unnecessarily increased by the illegal kickbacks received and accepted by First Mariner from All Star under the Kickback Agreement.

102. Mr. Rubinstein pays for these charges when All Star disburses proceeds from Mr. Rubinstein's First Mariner loan in payment of these title and settlement service charges. *See Ex. 16*, Mr. Rubinstein's HUD-1.

103. As a direct and proximate result of the Kickback Agreement, Scheme to Defraud, and the pattern of racketeering activity performed by First Mariner and All Star in furtherance of the Scheme to Defraud, Mr. Rubinstein was harmed and suffered concrete injury because he was: (i) charged and paid unnecessarily increased and higher fees for title and settlement services than he would have been without the illegal Kickback Agreement, Scheme to Defraud, and pattern of racketeering performed by All Star and First Mariner in furtherance of the Scheme to Defraud; (ii) defrauded into being charged and paying higher prices for title and settlement service fees unnecessarily increased by amounts not associated with any legitimate title and/or settlement services and charged to fund illegal kickbacks; (iii) stripped of his choice of title and settlement service provider and his mortgage broker's impartial evaluation of All Star's service and quality; and (iv) deprived of kickback-free title and settlement services and the consumer benefits of fair competition among independent title and settlement service providers.

104. As a direct and proximate result of the Kickback Agreement and Scheme to Defraud, Mr. Rubinstein was charged and paid more for title and settlement services than he would have

without the Kickback Agreement and Scheme to Defraud. He suffered actual damages in the amount of at least \$350, and on information and belief, additional amounts.

**FACTUAL ALLEGATIONS RELATED TO LIMITATIONS**

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

105. Essential to the Scheme to Defraud, First Mariner and All Star undertake affirmative acts that fraudulently conceal the Kickback Agreement, the illegal kickbacks, the Scheme to Defraud, the related fixed prices and overcharges, and the actual injury and damages to borrowers, including Plaintiffs and alleged Class Members, resulting therefrom.

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

106. As described above, First Mariner and All Star choose to conceal the existence and payment of kickbacks by All Star to First Mariner by laundering kickbacks through third-party marketing companies, such as Influence and Lendaneer.

107. Laundering the kickbacks through the third-party marketing companies conceals the fact that any thing of value is exchanged between All Star and First Mariner related to the assignment and referral of First Mariner loans, including Plaintiffs' and Class Members' First Mariner loans, the actual payment, receipt, and acceptance of illegal kickbacks, and First Mariner's coordinated business relationship with All Star.

108. First Mariner and All Star further choose to conceal the illegal kickbacks and Kickback Agreement through the creation of sham invoice and payment records.

109. These invoices are a sham, and fraudulent, because they falsely portray that All Star is receiving marketing services from the third-party marketing company in exchange for the



payments. In fact, Jason Horwitz, All Star's owner, designs the sham invoices to conceal that All Star is not receiving any of the marketing services, and All Star's payment is being applied for the sole benefit of First Mariner. **Ex. 17**, Mar. 6, 2012 Email from J. Horwitz to J. Crosslin of Influence Direct.

110. The sham invoices and payment records create an ongoing false record that conceals and prevents discovery of the fact that any thing of value was exchanged between First Mariner and All Star related to the assignment and referral of First Mariner loans, including Plaintiffs' and Class Members' loans, the receipt and acceptance of the illegal kickbacks, and First Mariner's coordinated business relationship with All Star under the Kickback Agreement.
111. The false records conceal the illegal kickbacks, Kickback Agreement, and Scheme to Defraud from any person who may examine All Star's financial records including auditors, regulators, law enforcement, and/or borrowers.

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

112. The Truth in Lending Act ("TILA") mandates that lenders report to borrowers the Annual Percentage Rate, or "APR", associated with a loan, refinance, and/or reverse mortgage. While the interest rate of a loan is the cost to borrow the principal loan amount, the APR includes both the interest rate of the loan plus certain other lender fees, such as origination fees, discount points, and some closing costs, including some title and settlement services fees. The APR is intended as a tool for borrowers to compare, among other things, closing and settlement costs across loans with similar interest rates and to easily identify when one loan has substantially higher fees than another loan at the same interest rate. Lenders are

required to report to borrowers a calculation of the APR on various loan documents, including the TILA disclosure.

113. The title and settlement services fees excluded from the APR calculation are defined by TILA. 12 C.F.R. § 1026.4(c). Because some fees are excluded from the APR (and others are not), title and settlement service companies and lenders can manipulate – and falsely minimize – the APR by falsely allocating amounts charged for title and settlement services to those categories of fees that are excluded from the APR calculation.
114. For example, “fees for title examination, abstract of title, [and] title insurance” are excluded from the APR calculation – *see* 12 C.F.R. § 1026.4(c)(7)(i) – while a settlement or closing fee and an application signing fee are settlement service costs required to be included in the APR calculation. *See* 12 C.F.R. § 1026.4(a)(1)(i). By allocating the charges associated with conducting a settlement or closing with a borrower to the category of “title exam” or “abstract” the result is a fraudulent, and falsely minimized, APR.
115. Upon information and belief, as a regular and continuing business practice, First Mariner and All Star allocate its charges for title and settlement services associated with a borrower’s loan only to those categories of title and settlement services not included in the APR. This falsely minimizes the APR reported on First Mariner borrowers’ loan documents and required federal disclosures.
116. All Star confirms that the false allocation of fees and manipulation of the APR is a regular business practice, as early as 2011 and at least through October 2015, frequently allocating all charges for title and settlement service to “Title Exam” or “Abstract” because those fees

are excluded from, and do not raise, the APR. *See, e.g.*, **Ex. 18**, June 6, 2011 Email; **Ex. 19**, Sept. 24, 2015 Email; **Ex. 20**, October 5, 2015 Email.

117. First Mariner participates in and ratifies this false allocation of fees.
118. For example, despite conducting a settlement or closing with each First Mariner borrower, First Mariner and All Star choose to not allocate any amount of All Star's charges associated with a borrower's loan to "settlement or closing fee" because that charge is included in the APR. Instead, All Star and First Mariner allocate all charges, including portions attributable to conducting a settlement or closing, to "Title Exam" or "Abstract". *See, e.g.*, **Ex. 15**, the Braskos HUD-1; **Ex. 16**, Mr. Rubinstein HUD-1.
119. As a regular business practice, First Mariner requires All Star to provide First Mariner with a borrowers HUD-1 for review and approval by First Mariner before the HUD-1 is presented to the borrower at closing.
120. Because First Mariner and All Star choose to falsely allocate fees, the reported APR is false, thereby falsely minimizing the representation of the cost of the loan to First Mariner borrowers.
121. Based on this continuing pattern of practice, Plaintiffs believe, and therefore allege, that First Mariner and All Star engage in the false allocation and manipulation of the APR throughout the time period First Mariner is participating in the Kickback Agreement and Scheme to Defraud.
122. First Mariner's and All Star's choice to falsely allocate fees and fraudulently report these false allocations in borrowers' loan documents concealed from First Mariner borrowers the fraudulent prices of title and settlement service resulting from the Kickback Agreement

and Scheme to Defraud, and prevented borrowers from discovering the fraudulent nature of the charges through comparison to First Mariner's and All Star's competitors.

123. As a regular business practice, All Star uses various software programs, including "TitleHound", to produce borrower loan documents, including documents reporting the APRs associated with a loan. All Star causes this software, including "TitleHound", to be programmed to produce these false allocations of title and settlement service fees and the resulting false APR calculations. *See Ex. 21*, May 6, 2013 Email from R. Selznick to TitleHound to Add Pobletts First Mariner branch.
124. All Star and First Mariner intend for borrowers to rely on these documents, including the false allocations and calculations included therein, and First Mariner borrowers in fact rely on such documents as they had no reason to suspect First Mariner and All Star's illegal activities.
125. First Mariner's and All Star's choice to falsely allocate fees and manipulate and falsely report APRs fraudulently conceals from First Mariner borrowers the coordinated business relationship between All Star and First Mariner under the Kickback Agreement and Scheme to Defraud, the fraudulent and higher charges for title and settlement services resulting from the Kickback Agreement and Scheme to Defraud, the related agreement fixing prices, and the pattern of racketeering activity First Mariner performs with All Star in furtherance of the Scheme to Defraud. Moreover, this choice affirmatively prevented First Mariner borrowers from discovering their injuries resulting therefrom.

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

126. In addition to the choice to misrepresent the actual APR, by intentionally classifying some of All Star's charges as non-APR related charges, First Mariner and All Star also choose to make false representations on borrowers' loan documents.
127. At all relevant times, federal law required First Mariner, as a lender, to provide a "Good Faith" Estimate to the borrower within three days of taking a loan application. 12 C.F.R. § 1024.7(a)-(b). "The required standardized GFE form must be prepared completely and accurately." 12 C.F.R. App'x C to Part 1024 – Instructions for Completing the Good Faith Estimate (GFE) Form.
128. Block 4 of the "Good Faith" Estimate is to state only the charges for "title services and lender's title insurance."
129. As a regular pattern of practice, First Mariner falsely includes, in Block 4, charges unrelated to title services and/or lender's title insurance, including the illegal kickbacks, Kickback Overcharge, and/or First Mariner Overcharge, all of which are unassociated with any legitimate title or settlement service and are charged for the sole purpose of funding the illegal kickbacks. *See Ex. 15*, the Braskos HUD-1; *Ex. 16*, Mr. Rubinstein HUD-1.
130. First Mariner's choice to falsely include these charges in Block 4 of the "Good Faith" Estimate conceals from borrowers: (i) the charges and amounts associated with the overcharges and fixed fees, (ii) the fraudulent nature of the charges, (iii) the illegal kickbacks, and (iv) the coordinated business relationship between First Mariner and All Star under the Kickback Agreement, the agreement fixing prices, and the pattern of racketeering activity All Star and First Mariner perform in furtherance of the Scheme to Defraud.

131. Additionally, the loan originator must state in Block 1 of the “Good Faith” Estimate:

[A]ll charges that loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, *i.e.*, the amount may not increase at settlement.

12 C.F.R. App’x C to Part 1024 – Instructions for Completing the Good Faith Estimate (GFE) Form.

132. As a regular pattern of practice, First Mariner chooses to falsely omit the illegal kickbacks in Block 1 of the “Good Faith” Estimate notwithstanding that First Mariner would receive the illegal kickbacks in the loan transaction.

133. First Mariner’s choice to falsely omit the illegal kickbacks and/or Kickback Overcharge from Block 1 of the “Good Faith” Estimate conceals from borrowers: (i) the charges and amounts associated with the overcharges and fixed fees, (ii) the fraudulent nature of the charges, (iii) the illegal kickbacks, and (iv) the coordinated business relationship between First Mariner and All Star under the Kickback Agreement, the agreement fixing prices, and the pattern of racketeering activity All Star and First Mariner perform in furtherance of the Scheme to Defraud.

134. In addition to the “Good Faith” Estimate, federal law, at all relevant times, requires each borrower to receive a HUD-1 Settlement Statement at the closing or settlement of a loan. The settlement agent produces the HUD-1, but federal regulations require the loan originator to provide to the settlement agent all information appearing in the HUD-1 statement.

135. Section 1100 of the HUD-1 reports to the borrower the title and settlement services provided on the loan, along with the associated charges to the borrowers for those services.
136. As a continuing pattern and regular business practice, First Mariner and All Star cause the false allocation of fees described in ¶¶ 112-119 to repeat and appear on First Mariner borrowers' HUD-1 statements in Section 1100.
137. As a continuing pattern and regular business practice, First Mariner chooses to omit, and fails to describe, anywhere on a borrower's HUD-1 statement the existence and amount of the illegal kickback received by First Mariner related to the borrower's loan or the fact that All Star has paid a kickback to First Mariner for the assignment and referral of the borrower's loan. First Mariner is required to report the kickback on Line 801 or 808 of the HUD-1.
138. As a continuing pattern and regular business practice, First Mariner chooses to omit, and fails to describe, anywhere on a borrower's HUD-1 statement that the borrower is being charged an illegal kickback and/or a First Mariner and/or Kickback Overcharge, the amount of the illegal kickback and/or First Mariner and/or Kickback Overcharge, or any other flat fee associated with the Kickback Agreement and/or the Scheme to Defraud.
139. First Mariner was required to report these amounts in Section 1100 or Section 1300 of the HUD-1. Instead, First Mariner chooses to fraudulently lump the amount of the illegal kickbacks and/or First Mariner and/or Kickback Overcharges into the amounts associated with legitimate title and settlement services, such as the title examination and/or abstract. Again, this act is fraudulent because the illegal kickbacks and/or First Mariner and/or

Kickback Overcharges are not associated with any legitimate title and/or settlement services and are charged solely for the purpose of paying for illegal kickbacks.

140. These false representations and omissions, presented to First Mariner borrowers, at closing, by All Star as First Mariner's agent, fraudulently concealed: (i) the existence and amounts associated with the First Mariner and Kickback Overcharges, (ii) the fraudulent nature of the reported charges and the fact that portions of the charges reported for legitimate title and settlement service charges were not in fact associated with those services, but charges imposed to pay for illegal kickbacks, (iii) the illegal kickbacks, and (iv) the coordinated business relationship between First Mariner and All Star under the Kickback Agreement, Scheme to Defraud, and pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
141. Lenders authorized to underwrite government insured or guaranteed loans – such as VA or FHA loans – use charts produced by the Department of Housing and Urban Development (“HUD”) listing the Mean, Median, and 80<sup>th</sup> percentile of title and settlement services charges by state to measure a “reasonable and customary” settlement service fee per 24 C.F.R. § 203.27.
142. These authorized lenders require their mortgage broker correspondents and wholesalers, like First Mariner, to follow these charts.
143. At least 199 of the 264 loans assigned and referred by First Mariner to All Star during the time period of the Scheme to Defraud – 75% of the loans – were VA or FHA loans. First Mariner was required to certify that the charges on these specific loans complied with the



aforementioned guidelines per 24 C.F.R. § 203.27 and 24 C.F.R. § 203.255. This certification is presented to borrowers on the “Direct Endorsement” form.

144. As a regular business practice, First Mariner falsely certifies borrowers’ Direct Endorsement forms. *See, e.g.*, **Ex. 22**, Rubinstein Direct Endorsement.
145. These certifications are false because the charges, resulting from the Kickback Agreement, price fixing agreements, and Scheme to Defraud, are unnecessarily increased by the illegal kickbacks and/or First Mariner and/or Kickback Overcharge, not reasonable and customary, and include amounts unassociated with any legitimate title and/or settlement service. As such the fees charged borrowers do not comply with HUD regulations.
146. These false representations and omissions, presented to First Mariner borrowers by All Star – as First Mariner’s agent – at closing, fraudulently conceal: (i) the charges and amounts associated with the overcharges and fixed fees, (ii) the fraudulent nature of the charges, (iii) the illegal kickbacks, and (iv) the coordinated business relationship between First Mariner and All Star under the Kickback Agreement, the agreement fixing prices, and the pattern of racketeering activity All Star and First Mariner perform in furtherance of the Scheme to Defraud.
147. Individually and collectively, First Mariner and All Star’s acts of concealment – the laundering of kickbacks through third-party marketing companies, the related creation of sham invoices and payment records, the false allocation of fees and manipulation of the reported APR, and the misrepresentations and omissions on borrowers’ “Good Faith” Estimates, HUD-1s, and other loan documents – were outside the control of First Mariner

borrowers, including Plaintiffs and Class Members, and were in the sole control of, and the result of choices made by, First Mariner and All Star.

## **II. Plaintiffs' Reasonable Diligence**

148. As a result of the fraudulent concealments by First Mariner and All Star, the Braskos and Mr. Rubinstein and all members of the alleged Class had no actual notice, before, during, or after the closing of their First Mariner loans, of the illegal kickbacks, the exchange of any thing of value between First Mariner and All Star related to their First Mariner loans, the Kickback Agreement and/or Scheme to Defraud, the resulting fraudulent nature of the charges for title and settlement services, and/or the coordinated business relationship between First Mariner and All Star under the Kickback Agreement, the Scheme to Defraud, and the pattern of racketeering activity All Star and First Mariner perform in furtherance of the Scheme to Defraud.

149. Plaintiffs exercised reasonable diligence before, during, and after the closing of their loans.

### **A. The Braskos' Reasonable Diligence.**

150. As a result of the fraudulent concealments made by First Mariner and All Star, the Braskos had no actual notice before, at, or after the closing of their First Mariner loan, of the illegal kickbacks, the exchange of any thing of value between First Mariner and All Star, the Kickback Agreement or Scheme to Defraud, the resulting fraudulent charges for title and settlement services, and/or the coordinated business relationship between First Mariner and All Star under the Kickback Agreement and the Scheme to Defraud.

151. The Braskos exercised reasonable diligence before, during, and after the closing of their loan.

152. The Braskos received the loan documents prepared by First Mariner in advance of their closing and reviewed those loan documents.
153. The Braskos believe, and therefore allege, that their pre-closing loan documents included the required “Good Faith” Estimate prepared by First Mariner.
154. The Braskos believe, and therefore allege, that their “Good Faith” Estimate does not include any description or statement of the coordinated business relationship between First Mariner and All Star, or the fact that All Star paid any thing of value for First Mariner’s assignment and referral of the Braskos’ loan to All Star.
155. The Braskos believe, and therefore allege, that their “Good Faith” Estimate does not include any description or statement of the coordinated business relationship between First Mariner and All Star and contains the fraudulent representations and omission described in ¶¶ 127-133 above. The Braskos believe and therefore allege that their “Good Faith” Estimate does not identify All Star as the provider of any title and/or settlement services related to their refinance.
156. The Braskos believe, and therefore allege, that their pre-closing documents reflect First Mariner and All Star’s false allocation of fees, and, upon information and belief, contain a false APR as described in ¶¶ 112-125.
157. The false statements and omissions made in the Braskos’ pre-closing loan documents were made for the purposes of concealing, and did so conceal from them, the coordinated business relationship between First Mariner and All Star, the Kickback Agreement and the Scheme to Defraud, the fact, nature, and amount of the illegal kickbacks related to the

Braskos' loan, and the fraudulent nature of the charges the Braskos were charged for title and settlement services.

158. As is reasonable under the circumstances, the Braskos believed these pre-closing documents and the representations made therein. A reasonable borrower would have no reason to believe, and the Braskos did not believe at the time of their closing, that: (i) a coordinated business relationship existed between First Mariner and All Star; (ii) there had been any payment or exchange of a thing of value between First Mariner and All Star related to the assignment and referral of their First Mariner loan for title and settlement services; (iii) the charges for their title and settlement services included any amounts unassociated with the title and settlement services and were fraudulent, and the result of Kickback Agreement and the Scheme to Defraud; and/or (iv) the charges for their title and settlement services were therefore unnecessarily increased by the Kickback Agreement between First Mariner and All Star, the Scheme to Defraud, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.
159. The Braskos acted diligently during the closing or settlement of their loan. As a condition of funding their loan, First Mariner required the Braskos to participate in a closing. The Braskos did so attend and fully participated in the required closing.
160. At the closing of their loan, the Braskos received from All Star, and/or its agent, several documents, including a HUD-1 Settlement Statement.
161. First Mariner and All Star chose to omit from documents the Braskos received at their closing, including their HUD-1, any description or statement of the coordinated business

relationship between First Mariner and All Star under the Kickback Agreement and the Scheme to Defraud. *See* **Ex. 15**, the Braskos HUD-1.

162. First Mariner and All Star chose to omit from documents the Braskos received at their closing, including their HUD-1, any description or statement of any payment, amount, or thing of value that All Star paid to First Mariner, or received by First Mariner from All Star, in relation to the Braskos' First Mariner loan. *See* **Ex. 15**, the Braskos HUD-1.
163. First Mariner and All Star chose to include in documents the Braskos received at their closing, including their HUD-1, the falsely allocated fees described in ¶¶ 112-119, which resulted in the fraudulent representations and omissions described in ¶¶ 134-140, 147. *See* **Ex. 15**, the Braskos HUD-1.
164. Plaintiffs believe, and therefore allege, that First Mariner and All Star chose to include in documents the Braskos received at their closing, including their HUD-1, the false certification described in ¶¶ 141-146.
165. First Mariner and All Star made the false representations and omissions in the Braskos' loan closing documents for the purposes of concealing, and did so conceal from them, the coordinated business relationship between First Mariner and All Star, the Kickback Agreement and Scheme to Defraud, the fact, nature, and amount of the illegal kickback related to the Braskos' loan, the fraudulent nature of the charges for title and settlement services, and the Braskos' injuries and actual damages resulting therefrom.
166. As is reasonable under the circumstances, the Braskos believed these closing documents and the representations made therein. A reasonable borrower would have had no reason to believe, and the Braskos did not believe at the time of their closing, that: (i) a coordinated

business relationship existed between First Mariner and All Star; (ii) there had been any payment or exchange of a thing of value between First Mariner and All Star related to the assignment and referral of their First Mariner loan for title and settlement services; (iii) the charges for their title and settlement services included any amounts unassociated with the title and settlement services and were fraudulent, and the result of Kickback Agreement, and the Scheme to Defraud; and/or (iv) the charges for their title and settlement services were therefore unnecessarily increased by the Kickback Agreement between First Mariner and All Star, the Scheme to Defraud, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.

167. The Braskos acted diligently after their closing. On or about October 29, 2020, the Braskos received a letter from undersigned counsel describing an investigation of First Mariner and All Star. This was the Braskos' first indication of any potential wrongful, illegal, harmful, and/or actionable conduct by anyone related to their First Mariner loan.
168. Within days the Braskos contacted and retained counsel. The Braskos filed the Complaint within a year of becoming aware of the facts giving rise to their causes of action, injuries, and actual damages.
169. As a result of First Mariner and All Star's fraudulent concealment, and the Braskos' reasonable diligence before, during, and after the closing of their loan, the statute of limitations on all of their claims were tolled beginning on the date of their loan closing and continuing until the Braskos learned of the facts giving rise to their causes of action, on or about October 29, 2020.

**B. Mr. Rubinstein's Reasonable Diligence.**

170. As a result of the fraudulent concealments made by First Mariner and All Star, Mr. Rubinstein had no actual notice before, at, or after the closing of his First Mariner loan, of the illegal kickbacks, the exchange of any thing of value between First Mariner and All Star, the Kickback Agreement or Scheme to Defraud, the resulting fraudulent charges for title and settlement services, and/or the coordinated business relationship between First Mariner and All Star under the Kickback Agreement and the Scheme to Defraud.
171. Mr. Rubinstein exercised reasonable diligence before, during, and after the closing of his loan.
172. Mr. Rubinstein received the loan documents prepared by First Mariner in advance of his closing and reviewed those loan documents.
173. Mr. Rubinstein believes, and therefore alleges, that his pre-closing loan documents included the required “Good Faith” Estimate prepared by First Mariner.
174. Mr. Rubinstein believes, and therefore alleges, that his “Good Faith” Estimate does not include any description or statement of the coordinated business relationship between First Mariner and All Star, or the fact that All Star paid any thing of value for First Mariner’s assignment and referral of Mr. Rubinstein’s loan to All Star.
175. Mr. Rubinstein believes, and therefore alleges, that his “Good Faith” Estimate does not include any description or statement of the coordinated business relationship between First Mariner and All Star and contains the fraudulent representations and omission described in ¶¶ 127-133 above. Mr. Rubinstein believes and therefore alleges that his “Good Faith” Estimate does not identify All Star as the provider of any title and/or settlement services related to his refinance.

176. Mr. Rubinstein believes, and therefore alleges, that his pre-closing documents reflect First Mariner and All Star's false allocation of fees, and, upon information and belief, contain a false APR as described in ¶¶ 112-125.
177. The false statements and omissions made in Mr. Rubinstein's pre-closing loan documents were made for the purposes of concealing, and did so conceal from him, the coordinated business relationship between First Mariner and All Star, the Kickback Agreement and the Scheme to Defraud, the fact, nature, and amount of the illegal kickbacks related to Mr. Rubinstein's loan, and the fraudulent nature of the charges Mr. Rubinstein was charged for title and settlement services.
178. As is reasonable under the circumstances, Mr. Rubinstein believed these pre-closing documents and the representations made therein. A reasonable borrower would have had no reason to believe, and Mr. Rubinstein did not believe at the time of his closing, that: (i) a coordinated business relationship existed between First Mariner and All Star; (ii) there had been any payment or exchange of a thing of value between First Mariner and All Star related to the assignment and referral of his First Mariner loan for title and settlement services; (iii) the charges for his title and settlement services included any amounts unassociated with the title and settlement services and were fraudulent, and the result of Kickback Agreement and the Scheme to Defraud; and/or (iv) the charges for his title and settlement services were therefore unnecessarily increased by the Kickback Agreement between First Mariner and All Star, the Scheme to Defraud, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.



179. Mr. Rubinstein acted diligently during the closing or settlement of his loan. As a condition of funding his loan, First Mariner required Mr. Rubinstein to participate in a closing. Mr. Rubinstein did so attend and fully participated in the required closing.
180. At the closing of his loan, Mr. Rubinstein received from All Star, and/or its agent, several documents, including a HUD-1 Settlement Statement.
181. First Mariner and All Star chose to omit from documents Mr. Rubinstein received at his closing, including his HUD-1, any description or statement of the coordinated business relationship between First Mariner and All Star under the Kickback Agreement and the Scheme to Defraud. *See Ex. 16*, Mr. Rubinstein HUD-1.
182. First Mariner and All Star chose to omit from documents Mr. Rubinstein received at his closing, including his HUD-1, any description or statement of any payment, amount, or thing of value that All Star paid to First Mariner, or received by First Mariner from All Star, in relation to Mr. Rubinstein's First Mariner loan. *See Ex. 16*, Mr. Rubinstein HUD-1.
183. First Mariner and All Star chose to include in documents Mr. Rubinstein received at his closing, including his HUD-1, the falsely allocated fees described in ¶¶ 112-119, which resulted in the fraudulent representations and omissions described in ¶¶ 134-140, 147. *See Ex. 16*, Mr. Rubinstein HUD-1.
184. First Mariner and All Star chose to include in documents Mr. Rubinstein received at his closing, including his HUD-1, the false certification described in ¶¶ 141-146.
185. First Mariner and All Star made the false representations and omissions in Mr. Rubinstein's loan closing documents for the purposes of concealing, and did so conceal from him, the

coordinated business relationship between First Mariner and All Star, the Kickback Agreement and Scheme to Defraud, the fact, nature, and amount of the illegal kickback related to Mr. Rubinstein's loan, the fraudulent nature of the charges for title and settlement services, and Mr. Rubinstein's injuries and actual damages resulting therefrom.

186. As is reasonable under the circumstances, Mr. Rubinstein believed these closing documents and the representations made therein. A reasonable borrower would have had no reason to believe, and Mr. Rubinstein did not believe at the time of his closing, that: (i) a coordinated business relationship existed between First Mariner and All Star; (ii) there had been any payment or exchange of a thing of value between First Mariner and All Star related to the assignment and referral of his First Mariner loan for title and settlement services; (iii) the charges for his title and settlement services included any amounts unassociated with the title and settlement services and were fraudulent, and the result of Kickback Agreement, and the Scheme to Defraud; and/or (iv) the charges for his title and settlement services were therefore unnecessarily increased by the Kickback Agreement between First Mariner and All Star, the Scheme to Defraud, and the pattern of racketeering activity performed in furtherance of the Scheme to Defraud.

187. Mr. Rubinstein acted diligently after his closing. On or about October 29, 2020, Mr. Rubinstein received a letter from undersigned counsel describing an investigation of First Mariner and All Star. This was Mr. Rubinstein's first indication of any potential wrongful, illegal, harmful, and/or actionable conduct by anyone related to his First Mariner loan.

188. Within days Mr. Rubinstein contacted and retained counsel. Mr. Rubinstein filed the Complaint within a year of becoming aware of the facts giving rise to their causes of action, injuries, and actual damages.

189. As a result of First Mariner and All Star's fraudulent concealment, and Mr. Rubinstein's reasonable diligence before, during, and after the closing of his loan, the statute of limitations on all of his claims were tolled beginning on the date of his loan closing and continuing until Mr. Rubinstein learned of the facts giving rise to his causes of action, on or about October 29, 2020.

### **III. Accrual and Tolling of Limitations**

190. The limitations period provided in 15 U.S.C. § 15(b), applicable to claims brought pursuant to 18 U.S.C. § 1964, is subject to the discovery of injury rule. *Detrick v. Panalpina*, 108 F.3d 529 (4th Cir. 1997) *cert. denied* 1997 U.S. Dist. LEXIS 4626. First Mariner's affirmative concealment acts precluded First Mariner borrowers, including all Plaintiffs and Class Members, from discovering the fraudulent nature of the charges for title and settlement services, and affirmatively prevented First Mariner borrowers, including Plaintiffs and Class Members, from discovering their injuries resulting therefrom.

191. As a result, Plaintiffs' and Class Members' claims, pursuant to 18 U.S.C. § 1964, did not accrue, for the purpose of the limitations period provided in 15 U.S.C. § 15(b), until such time as Plaintiffs and Class Members knew, or should have known, of their injury – for each of the Plaintiffs on or about October 29, 2020.

192. In addition, and in the alternative, as a result of First Mainer and All Star's fraudulent concealments and Plaintiffs' reasonable diligence before, during, and after the closing of

Plaintiffs' loans, the statute of limitations as to all causes of action pled herein are and should be tolled beginning on the date of each Plaintiffs' loan closing and continuing until the Plaintiffs learned of the facts giving rise to the causes of action pled herein – for all of the Plaintiffs on or about October 29, 2020.

193. Plaintiffs believe, and therefore allege, that the fraudulent concealments described herein were an integral component of the Kickback Agreement and Scheme to Defraud and are typical of all alleged Class Members' transactions, such that all Class Members are entitled to fraudulent concealment tolling of applicable limitations period.

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

194. Plaintiffs incorporate the above stated paragraphs as if restated herein.
195. All transactions at issue in the instant complaint are incident to, or part of, real estate settlement services involving federally related mortgage loans secured by first or subordinate liens on residential real property and thereby are subject to the provisions of RESPA, 12 U.S.C. § 2601, *et seq.*
196. At all relevant times, All Star was subject to the provisions of RESPA, 12 U.S.C. § 2601, *et seq.*
197. As a lender, broker, and/or servicer of federally related mortgage loans and loans secured by first or subordinate liens on residential real property, First Mariner is subject to the provisions of RESPA, 12 U.S.C. § 2601, *et seq.*

198. First Mariner, through its mortgage brokers, loan officers, employees, and/or agents, received and accepted things of value paid by All Star in exchange for the assignment and referral of business to All Star in violation of RESPA, 12 U.S.C. § 2607(a).
199. All loans referred to All Star under the Kickback Scheme were secured by first or subordinate liens on residential real property and were made in whole or in part by First Mariner, and/or its affiliates, whose deposits or accounts are insured by the Federal Government and/or who are regulated by an agency of the Federal Government.
200. The payment and/or arranging of payment of kickbacks to First Mariner by All Star, and First Mariner's receipt thereof, constitute a violation of § 8(a) of RESPA, which prohibits the payment of referral fees or kickbacks pursuant to an agreement in connection with the origination or brokering of federally related mortgage loans.
201. The kickbacks from All Star to First Mariner are not associated with any goods, facilities, or services actually provided by First Mariner, or any of its agents and/or employees, to All Star. In addition or in the alternative, the value of any good, facility, and/or service claimed to be provided by First Mariner to All Star is not reasonably related to the kickback from All Star, such that the payment is not "bona fide" or within the protection of 12 U.S.C. § 2607(c)(2).
202. In addition, All Star's laundering of money through the third-party marketing companies was always kickbacks to First Mariner for the assignment and referral of First Mariner loans to All Star, rather than for goods given to, or services performed for, All Star.
203. In the alternative, any payment made by All Star to First Mariner, and/or laundered through any third-party marketing company, is far greater, and not reasonably related, to All Star's

nominal presence in the solicitations and are, in reality, kickbacks designed to look like legitimate payments.

204. As successor in interest to First Mariner by and through merger with Howard Bank, First National Bank of Pennsylvania is liable for First Mariner's RESPA violations pled herein under the law controlling the merger described in ¶ 12, general successor liability principles, and the express terms of the merger agreement.
205. Plaintiffs allege claims for violations of 12 U.S.C. § 2607(a) on their own behalf and pursuant to Fed. R. Civ. P. 23 with the class defined as follows:

All individuals in the United States who were borrowers on a federally related mortgage loan (as defined under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2602) originated or brokered by First Mariner Bank or First Mariner Mortgage, for which All Star Title, Inc., provided a settlement service, as identified in Section 1100 on the borrower's HUD-1, between January 1, 2010, and January 31, 2016. Exempted from this class is any person who, during the period of January 1, 2010 and January 31, 2016, was an employee, officer, member, and/or agent of First Mariner Bank, First Mariner Mortgage, or All Star Title, Inc.

(the "RESPA Class").

206. There are questions of law and fact common to the claims of each and all members of the RESPA Class. These common questions include, but are not limited to:
- a. Whether there existed a referral agreement between First Mariner and All Star whereby First Mariner agreed to assign and refer First Mariner loans, refinances, and reverse mortgages to All Star in exchange for kickbacks;
  - b. Whether First Mariner and its employees and/or agents received illegal kickbacks from All Star for the assignment and referral of business to All Star;

- c. Whether the illegal kickbacks to First Mariner and its employees and/or agents violated RESPA;
- d. Whether First Mariner and All Star used third-party marketing companies to launder kickbacks related to First Mariner loans;
- e. Whether Plaintiffs and RESPA Class Members were forced to pay higher and unnecessarily increased charges for settlement services;
- f. Whether First Mariner used sham invoices and payment records to actively and fraudulently conceal the payment, receipt, and acceptance of illegal kickbacks;
- g. Whether First Mariner disclosed or described to any borrower its coordinated business relationship with All Star or the fact that a thing of value had been exchanged between First Mariner and All Star related to any borrower's loan;
- h. Whether First Mariner disclosed or described on any borrowers' "Good Faith" Estimate, HUD-1, or other loan document that first Mariner had a coordinated business relationship with All Star or the fact that a thing of value had been exchanged between First Mariner and All Star related to any borrower's loan;
- i. Whether, despite exercising reasonable due diligence, Plaintiffs and RESPA Class Members did not and could not have learned of the illegal kickbacks until contacted by counsel;
- j. Whether Plaintiffs and RESPA Class Members are entitled to treble damages under RESPA; and
- k. Whether Plaintiffs and RESPA Class Members are entitled to attorneys' fees and expenses under RESPA.

207. These common issues of law and fact predominate over any question affecting only individual RESPA Class Members.
208. Plaintiffs' transactions and claims are typical of the claims or defenses of the respective RESPA Class Members and are subject to the same statutory measure of damages set forth in 12 U.S.C. § 2607(d)(2).
209. Plaintiffs will fairly and adequately protect the interests of the RESPA Class because the Plaintiffs' interests are identical to the interests of all other members of the RESPA Class.
210. Plaintiffs' counsel have substantial experience in complex litigation and class action proceedings, have been approved as class and settlement class counsel in similar litigation, and will adequately represent the interests of the RESPA Class.
211. The RESPA Class consists of borrowers on more than 250 loans, and thus are so numerous that joinder of all members is impracticable.
212. Separate actions by individual members of the RESPA Class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for First Mariner.
213. This action entails questions of law and fact common to RESPA Class Members that predominate over any questions affecting only individual plaintiffs; therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.
214. Most members of the RESPA Class are unaware of their rights to prosecute a claim against First Mariner and/or its successor in interest, First National Bank of Pennsylvania .



215. No member of the RESPA Class has a substantial interest in individually controlling the prosecution of a separate action, but if he or she does, he or she may exclude himself or herself from the class upon the receipt of notice under Fed. R. Civ. P. 23(c).

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

216. Plaintiffs incorporate the above stated paragraphs as if restated herein.
217. First Mariner is a “person” as defined under 18 U.S.C. § 1961(3) and for the purposes of 18 U.S.C. § 1962(a).
218. First Mariner and All Star associated in fact and formed an enterprise (the “Enterprise”) for the purpose of 18 U.S.C. § 1962(a). For a continuous period of at least two years, First Mariner and All Star associated and committed the predicate acts pled herein, which are separate and in addition to their legitimate mortgage and settlement service operations, for the common purpose of defrauding borrowers into paying higher, fraudulent, and fixed prices for title and settlement services. The activities of the Enterprise affect interstate commerce across more than 36 states and the District of Columbia.
219. First Mariner and All Star associate and perpetrate the Scheme to Defraud for the purpose of defrauding borrowers into paying fixed, fraudulent, and higher prices for title and settlement services related to First Mariner loans, and to pay amounts unassociated with any legitimate title and/or settlement services and to thereby deprive borrowers of their money and/or property.

220. The use of the interstate U.S. Mail and wires by First Mariner and All Star, in furtherance of the Scheme to Defraud, constitute mail and wire fraud as defined under 18 U.S.C. §§ 1341 and 1343, serve as predicate acts, and constitute a pattern of racketeering activity.
221. First Mariner received income derived from this pattern of racketeering activity in the form of kickbacks, paid by All Star to First Mariner, and through the interest, fees, and other income earned on First Mariner residential mortgage loans, refinances, and reverse mortgages resulting from the continuous pattern of racketeering activity.
222. First Mariner improperly used and invested the income it received from the continuous pattern of racketeering activity in furtherance of the activities of the Enterprise and for the purposes of luring borrowers into the Scheme to Defraud and defrauding borrowers in violation of 18 U.S.C. § 1962(a).
223. As a direct and proximate result of First Mariner's continuous pattern of racketeering activity, Plaintiffs and Class Members were injured and suffered actual damages in the amount of at least \$250.
224. As successor in interest to First Mariner by and through merger with Howard Bank, First National Bank of Pennsylvania is liable for First Mariner's RICO violations pled herein under the law controlling the merger identified in ¶ 12, general successor liability principles, and the express terms of the merger agreement.
225. Plaintiffs allege claims pursuant to 18 U.S.C. § 1964(c) on their own behalf and pursuant to Fed. R. Civ. P. 23 with the class defined as follows:

All individuals in the United States who were borrowers on a loan originated or brokered by First Mariner Bank and/or First Mariner Mortgage, for which All Star Title, Inc., provided a settlement

service, as identified in Section 1100 on the borrower's HUD-1, between January 1, 2010, and January 31, 2016. Exempted from this class is any person who, during the period of January 1, 2010 through January 31, 2016, was an employee, officer, member, and/or agent of First Mariner Bank, First Mariner Mortgage, or All Star Title, Inc.

(the "RICO Class").

226. There are questions of law and fact common to the claims of each and all members of the

RICO Class. These common questions include, but are not limited to:

- a. Whether First Mariner and its employees and/or agents violated RICO by defrauding borrowers, including Plaintiffs and RICO Class Members, into paying fraudulent charges for title and settlement services and to fund the kickbacks All Star is paying First Mariner;
- b. Whether First Mariner and All Star formed an enterprise;
- c. Whether the activities of the Enterprise affected interstate commerce;
- d. Whether one purpose of the Scheme to Defraud was to deprive borrowers of money or property;
- e. Whether First Mariner and All Star used the interstate U.S. Mail in furtherance of the activities of the Enterprise including the Scheme to Defraud;
- f. Whether First Mariner and All Star used interstate wires in furtherance of the activities of the Enterprise including the Scheme to Defraud;
- g. Whether First Mariner received income from a pattern of racketeering activity;

- h. Whether First Mariner used income derived from a continuous pattern of racketeering activity in support of, or in furtherance of, the activities of the Enterprise, including the Scheme to Defraud;
  - i. Whether First Mariner actively concealed the Scheme to Defraud and resulting fixed prices and overcharges;
  - j. Whether Plaintiffs and RICO Class Members knew or should have known of their injuries resulting from First Mariner's violation of 18 U.S.C. § 1962(a);
  - k. Whether First Mariner's and All Star's fraudulent concealments prevented Plaintiffs and RICO Class Members from discovering their injuries proximately caused by First Mariner's continuous pattern of racketeering activity;
  - l. Whether Plaintiffs and the RICO Class are entitled to treble damages pursuant to 18 U.S.C. § 1964(c); and
  - m. Whether Plaintiffs and the RICO Class are entitled to attorneys' fees and expenses pursuant to 18 U.S.C. § 1964(c).
227. These common issues of law and fact predominate over any question affecting only individual RICO Class Members.
228. Plaintiffs' transactions and claims are typical of the claims or defenses of the respective RICO Class Members and are entitled to the same statutory measure of damages set forth in 18 U.S.C. § 1964(c).
229. Plaintiffs will fairly and adequately protect the interests of the RICO Class because the Plaintiffs' interests are identical to the interests of all other members of the RICO Class.

230. Plaintiffs' counsel have substantial experience in complex litigation and class action proceedings, have been approved as class and settlement class counsel in similar litigation, and will adequately represent the interests of the RICO Class.
231. The RICO Class consists of borrowers on about 264 loans, and thus are so numerous that joinder of all members is impracticable.
232. Separate actions by individual members of the RICO Class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for First Mariner.
233. This action entails questions of law and fact common to RICO Class Members that predominate over any questions affecting only individual plaintiffs; therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.
234. Most members of the RICO Class are unaware of their rights to prosecute a claim against First Mariner and/or its successor in interest, First National Bank of Pennsylvania .
235. No member of the RICO Class has a substantial interest in individually controlling the prosecution of a separate action, but if he or she does, he or she may exclude himself or herself from the class upon the receipt of notice under Fed. R. Civ. P. 23(c).

**WHEREFORE**, Plaintiffs respectfully demand:

- a. This Court certify the RESPA Class and/or RICO Class pursuant to Federal Rule of Civil Procedure 23 and set this matter for trial;
- b. Judgment for Plaintiffs and RESPA Class Members against First National Bank of Pennsylvania, as successor in interest to First Mariner, and award Plaintiffs and RESPA



