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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID MCFERRIN and KATHERINE  
MCFERRIN, husband and wife, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

OLD REPUBLIC TITLE, LTD., and OLD  
REPUBLIC NATIONAL TITLE INSURANCE  
COMPANY,

Defendants.

CV8 5309 FDB

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED



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1 Plaintiffs, David and Katherine McFerrin, by their attorneys, on behalf of themselves and  
2 all others similarly situated, bring this action for treble damages and injunctive relief under the  
3 Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601 *et seq.*, and the statutes of  
4 35 states and the District of Columbia against the above-named Defendants, demand a trial by  
5 jury, and complain as follows:

## 6 I. INTRODUCTION

7 1. Millions of real estate transactions in the United States utilize the services of a  
8 third-party escrow company to settle purchase and sale transactions of real property and  
9 refinancing transactions. As a third-party facilitator of the transaction, the escrow company is  
10 effectively relied upon by all parties to the transaction to act as a disinterested and unbiased  
11 neutral facilitator and fiduciary and agent of the principals, acting pursuant to its escrow  
12 instructions in exchange for an agreed escrow fee.

13 2. An escrow company performing a real estate settlement in a purchase/sale  
14 transaction is responsible principally for: (1) taking delivery of the agreed payment from the  
15 buyer and/or his/her mortgagor, and delivering in return to the buyer good title to the purchased  
16 property; and (2) taking title to the property from the seller, paying off existing mortgage loans  
17 and delivering the net proceeds of the sale. In a refinance transaction, the escrow company is  
18 responsible for ensuring that prior loans are paid off with the proceeds of the new loan(s) and  
19 new loans properly recorded. As part of this process, whether it is a purchase transaction or a  
20 refinance transaction, when prior mortgages or loans that were secured by the real property are  
21 paid off, deeds of trust or liens associated with such prior loans must be extinguished and new  
22 deeds of trusts or liens associated with the new mortgages or loans must be recorded. ***The***  
23 ***process of extinguishing the deeds of trust and liens associated with real property loans that***  
24 ***are being paid off in the settlement transaction is known as reconveyance.***

25 3. Major lenders have handled their own reconveyance either at no charge to the  
26 borrower or with a charge that is included in the payoff amount due from the borrower to close



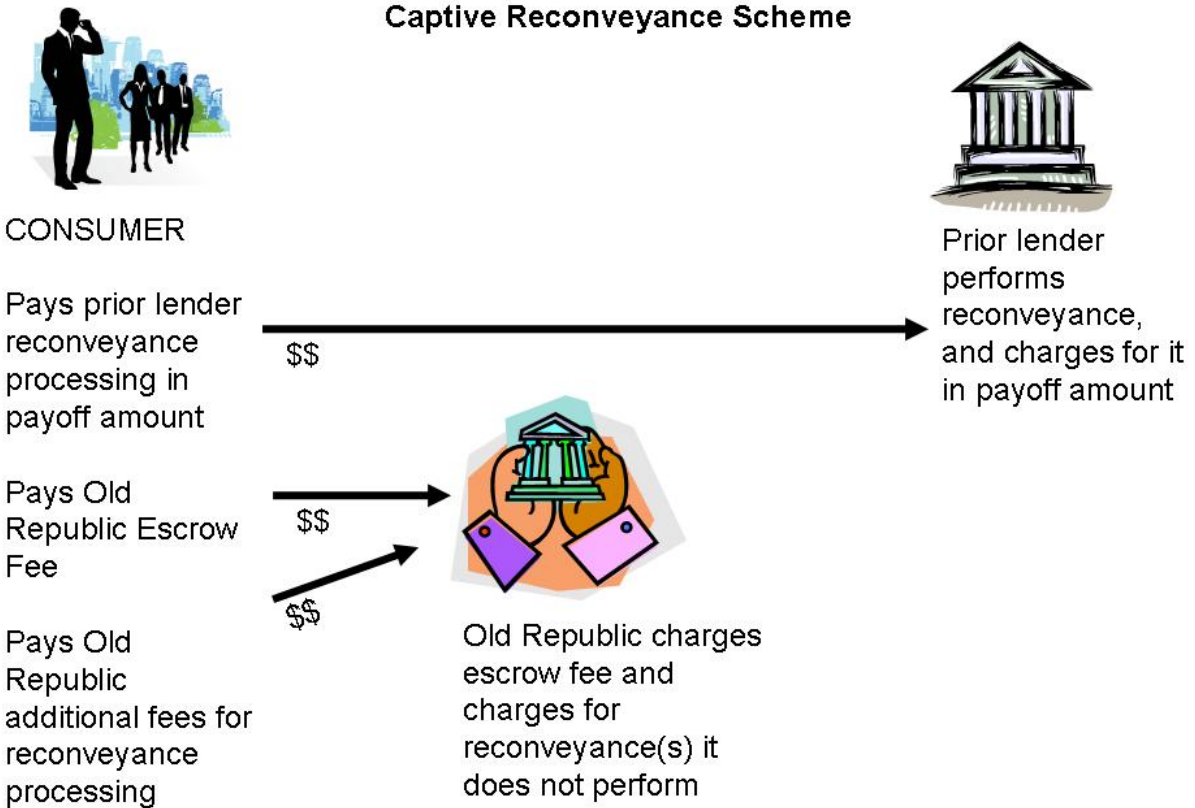
1 the loan account. As a result, in virtually all transactions involving major lenders the escrow  
2 company does not, in fact, process, prepare or record the reconveyance of the prior loan deed(s).  
3 At most, it may merely track the transaction to ensure that reconveyance has occurred.

4 4. As set forth more fully below, Defendants have cast aside the presumed and  
5 claimed neutrality of an escrow provider in favor of their own pecuniary interests by unfairly,  
6 deceptively and illegally charging fees for reconveyance processing when in truth and fact,  
7 Defendants do not process the reconveyance. As a result, Defendants violate federal and state  
8 law by collecting a fee that is: (1) deceptively and inadequately described on the settlement  
9 statement; (2) illegally split with a settlement services provider; (3) duplicative of the  
10 reconveyance processing fee charged by the prior lender; and (4) a charge for which no or  
11 nominal services are performed, and is therefore unearned and unreasonable. In addition,  
12 Defendants illegally require the use of their own additional and duplicate reconveyance services,  
13 dupe and deceive consumers and breach their contracts with consumers and fiduciary and agency  
14 duties by collecting unearned and deceptively labeled reconveyance processing fees for  
15 providing services that they are already obligated to provide under the closing instructions in  
16 exchange for the agreed escrow fee. This “Reconveyance Scheme” works as follows:



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### Captive Reconveyance Scheme



5. Plaintiffs were charged a \$100 reconveyance processing fee by Defendant Old Republic Title, Ltd., for their prior first mortgage, yet the lender on this loan processed the reconveyance and charged Plaintiff \$19 to record the reconveyance. As a result, Plaintiffs paid at least \$100 in illegal, unearned and deceptively described and charged settlement service fees. On information and belief, Defendants engage in the practice of collecting illegal, unearned and deceptively disclosed fees across hundreds of thousands of transactions and have reaped ill-gotten gains in excess of tens of millions of dollars.

6. In this action, Plaintiffs, on behalf of a Class of those who paid Defendants reconveyance processing fees where Defendants did not perform reconveyance processing services, seek damages arising from Defendants' violations of Federal and state law.

1 **II. JURISDICTION AND VENUE**

2 7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.  
3 § 1331, in that it is a civil action arising under the laws of the United States. The Court  
4 additionally has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), in that this is a  
5 “civil action in which the matter in controversy exceeds the sum or value of \$5,000,000,  
6 exclusive of interest and costs, and is a class action in which – (A) any member of a class of  
7 plaintiffs is a citizen of a State different from any defendant.” The named Plaintiffs are citizens  
8 of Washington and Defendant Old Republic National Title Company is a citizen of the State of  
9 Minnesota.

10 8. Defendant transacts business, maintains offices or is found within the Western  
11 District of Washington. The interstate commerce described herein is carried on, in part, within  
12 the Western District of Washington and the illegal charges and deceptive acts herein alleged  
13 were carried on, in part, in the Western District of Washington.

14 **III. PARTIES**

15 **A. Plaintiffs**

16 9. Plaintiffs, Rev. David McFerrin and Katherine McFerrin, are a married couple  
17 residing in the State of Washington. During the Class Period, Plaintiffs refinanced a home in  
18 Tacoma, Washington, and Defendant Old Republic Title, Ltd. was the escrow settlement service  
19 provider in that transaction. Plaintiffs have been injured by reason of the illegal, unfair and  
20 deceptive acts alleged.

21 **B. Defendants**

22 10. Defendant Old Republic National Title Insurance Company (“ORNTIC”) is a  
23 Minnesota Corporation with its principal place of business at 400 Second Avenue South,  
24 Minneapolis, Minnesota. ORNTIC does business in the State of Washington directly and  
25 through its subsidiary, Defendant Old Republic Title, Ltd., and throughout the United States  
26 directly and through other affiliates and subsidiaries.



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1 payment from the buyer and/or his/her mortgagor, and delivering in return to the buyer good title  
2 to the purchased property; and (2) taking title to the property from the seller and delivering in  
3 return the net proceeds of the sale. In a refinance transaction, the escrow company is responsible  
4 for ensuring that prior loans are paid off and new loans properly recorded. As part of this  
5 process, whether it is a purchase transaction or a refinance transaction, when prior mortgages or  
6 loans that were secured by the real property are paid off, deeds of trust or liens associated with  
7 such prior loans must be extinguished and new deeds of trusts or liens associated with the new  
8 mortgages or loans must be recorded. The process of extinguishing the deeds of trust and liens  
9 associated with real property loans that are being paid off in the settlement transaction is known  
10 as reconveyance. Defendants provide real estate settlement services, including escrow services  
11 as described above.

12 16. Historically, escrow providers would include with payoff funds to a prior lender  
13 in a transaction a form evidencing payment in full of the prior note. The lender would complete  
14 the form and return it to the escrow provider, and the escrow provider would then complete the  
15 necessary reconveyance process and have the reconveyance recorded. In this context, escrow  
16 providers charged a reconveyance processing fee to consumers to cover their costs of actually  
17 providing the service of processing the reconveyance. Some states legislatively set a  
18 presumptively reasonable reconveyance processing fee.<sup>4</sup>

19 17. However now, and for at least the time period relevant to this complaint, most, if  
20 not all, major lenders handle their own reconveyance processing either at no charge to the  
21 borrower or with a charge that is included in the payoff amount due from the borrower to close  
22 the loan account. As a result, in virtually all transactions involving major lenders – and in the  
23 transactions of Plaintiffs and the Class – the escrow company does not, in fact, prepare, process  
24 or record the reconveyance of the prior loan deed(s), it merely ensures that it has occurred.  
25 There are national and local companies that offer reconveyance tracking services to escrow

26 <sup>4</sup> See Cal. Civ. Code § 2941, subd. (e)(2), setting fee of \$45.00 per loan.



1 providers. For example, SMS Settlement Services, a wholly owned subsidiary of title insurer  
2 First American Corporation, advertises reconveyance tracking services on its website for \$35 per  
3 loan.<sup>5</sup>

4 18. It is not unusual, nor is it illegal or unfair for escrow companies to charge an  
5 estimated fee or allowance for a third-party charge that will not be determined until a short time  
6 after the signing of the transaction documents or the closing of the transaction. For example, in a  
7 purchase/sale transaction, an escrow company may hold back \$100-\$300 of the seller's proceeds  
8 to cover and pay the final utility bill for charges incurred between the prior bill and the date of  
9 sale. After the final bill is delivered to escrow and paid, any remainder from the hold back is  
10 then returned to the seller. However the reconveyance processing fees charged by Defendant  
11 ORT in this case are not estimates or hold backs. No portion of the reconveyance processing  
12 fees are credited or returned with the final settlement statement.

13 19. The American Escrow Association is the industry trade group for the escrow  
14 industry. On its website, <http://www.a-e-a.org>, it sets forth the creed of its members as follows:

15 **Our Creed**

16 Members of the American Escrow Association pledge to abide by  
17 the following Creed:

18 **TO** abide by all laws and regulations governing the processing of,  
19 handling and general operation of all real estate and loan closing  
20 transactions.

21 **TO** recognize the principles of the professional trust and  
22 confidence placed on those in our profession and maintain the  
23 confidential nature of all settlement transactions.

24 **TO** sustain our fiduciary responsibility to the principals in each  
25 transaction by remaining an unbiased and neutral third party.

26 **TO** continuously acquire and maintain a sufficient professional  
knowledge of the Escrow/Settlement industry so that our  
responsibilities are completed with integrity and bring honor to our  
chosen profession.

---

<sup>5</sup> See <http://www.smsfastrack.com/HowItWorks.asp>, (last viewed on April 23, 2008).



1 **TO** avoid, at all times, giving legal advice in any matter or manner  
2 and/or engaging in the unauthorized practice of law.

3 **TO** uphold the integrity, dignity and worthiness of our vocation by  
4 industrious application to the end that we may merit a reputation  
5 for a high quality of service to our employer, customer, and fellow  
6 Escrow/Settlement agent.

7 **TO** be loyal to our Association and its ideals.

8 20. As a lucrative adjunct to their title insurance offerings, the nation's leading title  
9 insurance companies, such as Defendants, have dramatically increased their presence and power  
10 in the national escrow market. In 2006, title insurers provided \$621 million of escrow services,  
11 up approximately 50% from \$423 million in 2002.<sup>6</sup>

12 **B. Federal Regulation Under RESPA**

13 21. The Real Estate Settlement Service Protection Act of 1974 ("RESPA") was  
14 enacted to protect consumers from "unnecessarily high settlement charges caused by certain  
15 abusive practices" in mortgage lending. *See* 12 U.S.C. § 2601(a).

16 22. Section eight of RESPA prohibits kickbacks and unearned fees. It provides in  
17 relevant part to this complaint as follows:

18 (a) Business Referrals. No person shall give and no person shall  
19 accept any fee, kickback, or thing of value pursuant to any  
20 agreement or understanding, oral or otherwise, that business  
21 incident to or part of a real estate settlement service involving a  
22 federally related mortgage loan shall be referred to any person.

23 (b) Splitting charges. No person shall give and no person shall  
24 accept any portion, split, or percentage of any charge made or  
25 received for the rendering of a real estate settlement service in  
26 connection with a transaction involving a federally related  
mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments. Nothing in  
this section shall be construed as prohibiting ..., (2) the payment to  
any person of a bona fide salary or compensation or other payment  
for goods or facilities actually furnished or for services actually  
performed....

---

<sup>6</sup> *See* American Land Title Association Industry Annual Statements, available on the World-  
Wide-Web at <http://www.alta.org/industry/financial.cfm>.



1 (d) Penalties for violations;...

2 ....

3 (2) Any person or persons who violate the prohibitions or  
4 limitations of this section shall be jointly and severally liable to the  
5 person or persons charged for the settlement service involved in  
6 the violation in an amount equal to three times the amount of any  
7 charge paid for such settlement service.

8 ....

9 (5) In any private action brought pursuant to this subsection, the  
10 court may award to the prevailing party the court costs of the  
11 action together with reasonable attorneys fees.

12 12 U.S.C. § 2607.

13 23. RESPA confers on the Secretary of the Department of Housing and Urban  
14 Development (“HUD”) the authority to prescribe rules and regulations to achieve the statute’s  
15 purposes. *See* 12 U.S.C. § 2617(a). The relevant regulation adopted by HUD is known as  
16 Regulation X and sets forth in relevant part:

17 § 3500.14 Prohibition against kickbacks and unearned fees.

18 (a) Section 8 violation. Any violation of this section is a violation  
19 of section 8 of RESPA (12 U.S.C. 2607) and is subject to  
20 enforcement as such under § 3500.19.

21 (b) No referral fees. No person shall give and no person shall  
22 accept any fee, kickback or other thing of value pursuant to any  
23 agreement or understanding, oral or otherwise that business  
24 incident to or part of a settlement service involving a federally  
25 related mortgage loan shall be referred to any person. Any referral  
26 of a settlement service is not a compensable service, except as set  
forth in § 3500.15(g)(1). A business entity (whether or not in an  
affiliate relationship) may not pay any other business entity or the  
employees of any other business entity for the referral of  
settlement service business.

(c) No split of charges except for actual services performed. No  
person shall give and no person shall accept any portion, split, or  
percentage of any charge made or received for the rendering of a  
settlement service in connection with a transaction involving a  
federally related mortgage loan other than for services actually  
performed. ***A charge by a person for which no or nominal  
services are performed or for which duplicative fees are charged  
is an unearned fee and violates this section.*** The source of the



1 payment does not determine whether or not a service is  
2 compensable. Nor may the prohibitions of this Part be avoided by  
3 creating an arrangement wherein the purchaser of services splits  
4 the fee.

5 ....

6 (e) Agreement or understanding. An agreement or understanding for the  
7 referral of business incident to or part of a settlement service need not be  
8 written or verbalized, but may be established by a practice, pattern or  
9 course of conduct. When a thing of value is received repeatedly and is  
10 connected in any way with the volume or value of the business referred,  
11 the receipt of the thing of value is evidence that it is made pursuant to an  
12 agreement or understanding for the referral of business.

13 (f) Referral – (1) A referral includes any oral or written action directed to a  
14 person which has the effect of affirmatively influencing the selection by  
15 any person of a provider of a settlement service or business incident to or  
16 part of a settlement service when such person will pay for such settlement  
17 service or business incident thereto or pay a charge attributable in whole  
18 or in part to such settlement service or business.

19 (2) A referral also occurs whenever a person paying for a settlement  
20 service or a business incident thereto is required to use (see § 3500.2,  
21 “required use”) a particular provider of settlement service or a business  
22 incident thereto.

23 ....

24 (g) Fees salaries, compensation and other payments.

25 ....

26 (3) Multiple services. When a person in a position to refer settlement  
service business ... receives a payment for providing additional settlement  
services as part of a real estate transaction, such payment must be for  
services that are actual, necessary and distinct from the primary services  
provided by such person.

24 C.F.R. § 3500.14.

24. “Required use” is defined as follows:

Required use means a situation in which a person must use a particular  
provider of settlement service in order to have access to some distinct  
service or property, and the person will pay for the settlement service or  
the particular provider or will pay a charge attributable, in whole or in  
part, to the settlement service.

24 C.F.R. § 3500.2



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1           25.     The escrow services provided by Defendants and the reconveyance fees charged  
2 to Plaintiffs and the Class are settlement services subject to RESPA Regulation.

3 **C.     Plaintiffs David and Katherine McFerrin’s Transaction**

4           26.     On or about August 3, 2004, Plaintiffs David and Katherine McFerrin signed  
5 closing documents for a refinance of a home located at 5905 27th Street NW, Tacoma,  
6 Washington. The “settlement agent” was Defendant Old Republic Title, Ltd. and the place of  
7 settlement was 2111 North Northgate Way, Suite 105, Seattle, Washington. ORT’s “File  
8 Number” was 5218001344-KCB.

9           27.     Plaintiffs’ refinancing transaction involved a new loan in the amount of \$207,000  
10 from Finance America, LLC and the repayment of a prior mortgage loan from Wells Fargo Bank  
11 (“Wells Fargo”).

12           28.     At the time of signing their refinancing documents, Defendants provided  
13 Plaintiffs with an unsigned copy of the documents presented to them (the “Closing Packet”).

14           29.     The Closing Packet contained an “Estimated Settlement Statement” for Plaintiffs’  
15 transaction (“Estimated HUD-1”) that contained four pages, was completed by Defendants and is  
16 attached hereto as Exhibit A.

17           30.     The Estimated HUD-1 indicated a settlement date of August 9, 2004.

18           31.     The Estimated HUD-1 sets forth in detail a litany of fees paid by Plaintiffs in  
19 connection with the refinancing and, according to the applicable regulations, should identify the  
20 person or company receiving each settlement fee and a description of the fee.<sup>7</sup>

21  
22  
23 <sup>7</sup> Appendix A specifically requires the following:

24           Blank lines are provided in Section L for any additional settlement  
25 charges. Blank lines are also provided for additional insertions in Sections  
26 J and K. The names of the recipients of the settlement charges in Section  
L and the names of the recipients of adjustments described in Section J or  
K should be included on the blank lines.

24 C.F.R. § 3500 Appendix A; *See also* 24 C.F.R. § 3500.8.



1           32.     As set forth in the Estimated HUD-1, Plaintiffs paid a “Settlement or Closing  
2 Fee” to Defendant ORT in the amount of \$489.60, which was a \$450 fee plus \$39.60 in  
3 applicable sales tax. Plaintiffs also paid ORT an \$11 “Express Fee – Payoff,” a \$20 “Wire Fee,”  
4 a \$36 “Courier/Email Fee—Documents,” and a \$50 “Credit Card Payoff Fees.”<sup>8</sup> There are no  
5 other fees set forth on the Estimated HUD-1 that designate the recipient as “Old Republic Title,  
6 Ltd.” or any other member of the Old Republic family.

7           33.     Under the section labeled “100 Gross Amount Due From Borrower,” Section J,  
8 line 105 of the HUD-1 states “Reconveyance Processing.” It indicates a settlement charge of  
9 \$100, but does not identify the recipient of this fee.<sup>9</sup>

10          34.     The Estimated HUD-1 thus indicates that Plaintiffs paid a settlement charge of  
11 \$100.00 for “Reconveyance Processing” to an unidentified recipient. On information and belief,  
12 ORT charged, collected and retained this \$100 settlement services fee.

13          35.     The Closing Packet also contained a four-page loan payoff statement from Wells  
14 Fargo, dated August 2, 2004, and attached hereto as Exhibit B (“Wells Fargo Payoff Statement”).  
15 The Wells Fargo Payoff Statement indicates Plaintiffs’ names and property address.

16          36.     The Wells Fargo Payoff Statement indicates the principle, interest and pro-rata  
17 interest that will accrue through August 10, 2004. There is an additional \$239.34 charge for  
18

---

19           <sup>8</sup> These additional fees, totaling \$117, are listed on the Estimated HUD-1 at line 1303 as:  
“Additional Charges to Old Republic Title, Ltd.”

20           <sup>9</sup> Line 105 is within Section J of the HUD-1 and thus “...the names of the recipients of  
21 adjustments described in Section J ... should be included on the blank lines.” *See, supra*,  
footnote 7. With respect to line 105 in particular, the HUD-1 instructions at 24 C.F.R. § 3500  
Appendix A state the following:

22           Lines 104 and 105 are for additional amounts owed by the borrower or  
23 items paid by the seller prior to settlement by reimbursed by the Borrower  
24 at settlement. For example, the balance in the Seller’s reserve account  
25 held in connection with an existing loan, if assigned to Borrower in a loan  
26 assumption case, will be entered here. These lines will also be used when  
a tenant in property being sold has not yet paid the rent, which the  
Borrower will collect, for a period of time prior to the settlement. The  
lines will also be used to indicate the treatment for any tenant security  
deposit. The Seller will be credited on Lines 404-405.



1 “Prorated Mortgage Insurance” and “Unpaid Late Charges” of \$57.59. A “Fax Fee” of \$10 is  
2 also included.

3 37. The Wells Fargo Payoff Statement also includes \$19.00 for “Recording Fees,” on  
4 information and belief, a charge to record the reconveyance of the mortgage note. The total  
5 amount to pay the loan in full is set forth as \$167,372.03.

6 38. The Estimated HUD-1 indicates that Plaintiffs were charged \$167,532.53 for  
7 “PAYOFF EXISTING LOAN.” The Closing Packet contains no information as to why the  
8 HUD-1 indicates a loan payoff amount \$160.50 more than the amount set forth in the Wells  
9 Fargo Payoff Statement.<sup>10</sup>

10 39. The third page of the Wells Fargo Payoff Statement plainly states: “In order to  
11 record the payoff of this loan with your county, any funds previously received may not be  
12 rejected by the institution upon which they are drawn.” Thus, the Wells Fargo Payoff Statement  
13 indicates Wells Fargo’s intention to perform the reconveyance processing and actual  
14 reconveyance of its loan, which on information and belief, it did perform.

15 40. The Closing Packet also contained a four-page document and a two-page  
16 document, each on Old Republic Title, Ltd. letterhead dated August 3, 2004, indicating  
17 Plaintiffs’ names and titled “CLOSING AGREEMENT AND ESCROW INSTRUCTIONS For  
18 Financing and Refinancing Transaction,” and “Supplement to CLOSING AGREEMENT AND  
19 ESCROW INSTRUCTIONS For Financing and Refinancing Transaction Including Instructions  
20 to Record Documents and Disburse Funds,” respectively, attached as Exhibit C (“Closing  
21 Instructions”).

22  
23  
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25  
26 <sup>10</sup> Presumably, the actual disbursements occurred on or about August 15, 2004, and thus five  
additional days of interest at \$32.10, totaling \$160.50, were added to the payoff amount.



1 41. The Closing Instructions state on the first page:

2 **Documents.** The closing agent is instructed to select, prepare,  
3 correct, receive, hold, record, and deliver documents as necessary  
4 to close the transaction. The closing agent may request that certain  
5 documents be prepared or obtained by the parties or their  
6 attorneys, in which case the parties shall deliver the requested  
7 documents to the closing agent before the closing date...

8 42. The Closing Instructions also state on the first page:

9 **Verification of Existing Encumbrances.** The closing agent is  
10 instructed to request a written statement from the holder of each  
11 existing encumbrance on the property, verifying its status, terms,  
12 balance owing and, if it will not be removed at closing, the  
13 requirements that must be met to obtain a waiver of any due on  
14 sale provision. The closing agent may rely upon such written  
15 statements in the performance of its duties, without liability or  
16 responsibility for their accuracy or completeness.

17 43. The Closing Instructions provide on the second page:

18 **Closing Agent's Fees and Expenses.** The closing agent's fee is  
19 intended as compensation for the services set forth in these  
20 instructions. If additional services are required to comply with any  
21 change or addition to the parties' agreement or these instructions,  
22 or as a result of any party's assignment of interest or delay in  
23 performance, the parties agree to pay a reasonable additional fee  
24 for such services. The parties shall also reimburse the closing  
25 agent for any out-of-pocket costs and expenses incurred by it under  
26 these instructions. The closing agent's fees costs and expenses  
shall be due and payable on the closing date or other termination of  
the closing agent's duties and responsibilities under these  
instructions, and shall be paid by either or both of the parties as  
provided in the parties' agreement.

44. On the first page of the Supplement, the Closing Instructions provide:

**Instruction to Close.** The closing agent is instructed to perform  
its customary closing duties under these instructions, to deliver and  
record documents according to these instructions, and to disburse  
the funds according to the settlement statement, adjusting  
estimated amounts, when the closing agent has the documents  
required to close the transaction in its possession and has, or will  
obtain when the documents have been delivered and recorded.

45. Notwithstanding the Estimated HUD-1 provided to Plaintiffs, on information and  
belief, Defendants did not perform "Reconveyance Processing." Instead, Defendants kept these  
duplicative and unearned sums for no settlement services rendered, effectively increasing their



1 escrow fee from \$450 to \$550, without providing any services beyond which they were already  
2 contractually obligated to provide for the agreed \$450 escrow fee.

3 46. As a result of Defendants' illegal, unfair and deceptive collection of split,  
4 unearned, duplicative and unreasonable reconveyance processing fees, Plaintiffs and the Class  
5 have been monetarily and financially harmed in an amount equal to the reconveyance processing  
6 fees illegally, unfairly and deceptively collected by Defendants and unknowingly tendered by  
7 Plaintiffs.

8 **D. The Reconveyance Scheme**

9 47. As set forth herein and described in detail above, Defendants employed a  
10 fraudulent and corrupt scheme to reap duplicate, unearned, and unreasonable reconveyance fees  
11 from consumers (the "Reconveyance Scheme").

12 48. The Reconveyance Scheme operated, generally, in the following manner:

- 13 i. Defendants would agree to act as the settlement agent in a Class member's  
14 real estate transaction involving a federally related mortgage loan, agreeing to  
15 a set escrow fee in exchange for performing its duties under the escrow  
16 instructions or agreement;
- 17 ii. Defendants would request a loan payoff statement from the Class member's  
18 prior lender(s);
- 19 iii. The loan payoff statement would include fees for reconveyance processing  
20 and recording which Defendants would include in the amounts required to be  
21 paid to the prior lender from the escrow proceeds or would indicate the  
22 reconveyance processing and recording will be done at no cost to the Class  
23 member;
- 24 iv. Defendants would not disclose to the Class member that the prior lender(s)  
25 were processing and recording the reconveyance(s);
- 26



1 v. Defendants would require Class members to use Defendant for additional  
2 reconveyance settlement services and would charge and collect additional  
3 reconveyance fees from the Class member, above and beyond the agreed  
4 escrow fee, to be paid from the escrow proceeds.

5 49. As a direct result of the Reconveyance Scheme, Defendants systematically and  
6 repeatedly caused Class members to pay to Defendants fees far above the agreed escrow fees in  
7 exchange for no additional settlement services rendered beyond which Defendants had already  
8 agreed to perform pursuant to the Escrow Agreements and Escrow Instructions. Defendants  
9 failed to disclose their self dealing and omitted material facts pertaining to the escrow in  
10 violation of its common law duty as a fiduciary and agent to its customers.

11 50. The following diagram depicts the operation of the Reconveyance Scheme  
12 specifically with respect to Plaintiffs' transaction:  
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PLAINTIFF

Pays Wells Fargo  
to record  
reconveyance  
in payoff

\$19

Pays ORT Escrow  
Fee

\$450

Pays ORT for  
WELLS FARGO  
reconveyance  
processing

\$100



ORT  
Discloses **\$450**  
Escrow Fee but  
Collects **\$550**

### McFerrin Transaction with ORT Captive Reconveyance Scheme



Wells Fargo  
Performs  
reconveyance,  
and charges \$19  
to record it

### V. EQUITABLE TOLLING, DISCOVERY RULE RE: STATUTES OF LIMITATIONS

51. Any applicable statutes of limitations have been tolled by Defendants' illegal, unfair and deceptive practices. Defendants have concealed from Plaintiffs and the Class the truth about their illegal, unfair and deceptive practices described herein, thereby tolling the running of the applicable statutes of limitations.

52. Plaintiffs and the Class could not have reasonably discovered Defendants' illegal, unfair and deceptive practices as alleged herein until recently.

53. Defendants are estopped from relying on any statute of limitations defense because of their illegal unfair and deceptive pricing practices as alleged herein.





1 the interests of the Class. Counsel is competent and experienced in state and federal class action  
2 litigation has been retained to represent the Class.

3 61. Plaintiffs also bring this action as a class action under Rule 23(b)(2) of the Federal  
4 Rules of Civil Procedure, for the illegal, unfair and deceptive acts of Defendants.

5 62. Defendants have acted, continued to act, refused to act and continued to refuse to  
6 act on grounds generally applicable to the Class, thereby making appropriate final injunctive  
7 relief with respect to the Class as a whole.

8 63. Common questions of law and fact exist with respect to all Class members and  
9 predominate over any questions solely affecting individual Class members. Among the  
10 questions of law or fact common to the Class are the following:

- 11 • Whether Defendants have engaged in the alleged illegal, unfair and  
12 deceptive acts of charging duplicative, split, unearned and unreasonable  
reconveyance processing fees, as set forth herein.
- 13 • The duration and scope of Defendants' alleged illegal, unfair and deceptive  
14 acts.
- 15 • Whether Defendants' acts were in violation of RESPA.
- 16 • Whether Defendants' acts have caused damages to Plaintiffs and other  
purchasers of escrow services from Defendant.
- 17 • Whether Defendants owed fiduciary and agency duties to their customers.
- 18 • Whether Defendants breached their fiduciary and agency duties to the  
19 Plaintiffs and the members of the Class.
- 20 • Whether Defendants have been unjustly enriched.
- 21 • Whether Defendants misrepresented or concealed from Plaintiffs any of  
22 their violations as an agent or fiduciary, thereby delaying the accrual of any  
cause of action and tolling any otherwise applicable statutes of limitations.

23 64. This action is superior to any other method for the fair and efficient adjudication  
24 of this legal dispute since joinder of all members is not only impracticable, but impossible. The  
25 damages suffered by certain members of the Class are small in relation to the expense and  
26



1 burden of individual litigation and therefore it is highly impractical for such Class members to  
2 seek redress for damages resulting from Defendants’ illegal, unfair and deceptive conduct.

3 65. There will be no extraordinary difficulty in the management of the class action.

4 **VII. CLAIMS FOR RELIEF**

5 **COUNT I**

6 **BREACH OF CONTRACT**

7 66. Plaintiffs reallege and incorporate by reference the preceding allegations as if  
8 fully set forth above.

9 67. Defendants formed agreements and entered into contracts with Plaintiffs and the  
10 Class including offer, acceptance and consideration (“Escrow Contracts”). The terms of the  
11 Escrow Contracts are memorialized in the Escrow Instructions provided to Plaintiffs and the  
12 Class.

13 68. Plaintiffs and the Class paid an agreed escrow fee as “compensation for the  
14 services set forth in these instructions.”

15 69. The services set forth in the Escrow Instructions included: (1) “request a written  
16 statement from the holder of each existing encumbrance on the property, verifying its status,  
17 terms, balance owing and, if it will not be removed at closing, the requirements that must be met  
18 to obtain a waiver of any due on sale provision;” (2) “select, prepare, correct, receive, hold,  
19 record, and deliver documents as necessary to close the transaction;” and (3) “to deliver and  
20 record documents according to these instructions, and to disburse the funds according to the  
21 settlement statement....”

22 70. Defendants were also obligated under the Escrow Contracts to disclose to  
23 Plaintiffs and the Class the actual fees that Defendants were charging for the settlement services  
24 that Defendants were providing.

25 71. Plaintiffs and the Class fulfilled their contractual obligations to Defendants by  
26 paying the escrow fees stated and charged by Defendant.







1 and defraud any person; (2) directly and indirectly engaged in an unfair and deceptive act toward  
2 a person; (3) directly and indirectly obtained property by fraud and misrepresentation; and  
3 (4) knowingly made published and disseminated false, deceptive and misleading information.

4 86. Defendants have engaged and continue to engage in a practice of illegally and  
5 unfairly requiring the use of a settlement services provider and deceptively collecting a fee that  
6 is: (1) deceptively and inadequately described on the HUD-1; (2) duplicative of the  
7 reconveyance processing fees charged by the prior lender; and (3) a charge for which no or  
8 nominal services are performed, and is therefore unearned and unreasonable, in violation of state  
9 laws as identified below.

10 87. Defendants' conduct described herein constitutes prohibited practices, unfair,  
11 deceptive and unconscionable conduct under the unfair and deceptive trade practices acts of 35  
12 states and the District of Columbia, as follows:

13 a. Alaska: The aforementioned practices by Defendants were and are in  
14 violation of the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471,  
15 *et seq.*;

16 b. Arkansas: The aforementioned practices by Defendants were and are in  
17 violation of the Arkansas Deceptive Trade Practices Act, Ark. Code §§ 4-88-101, *et seq.*;

18 c. California: The aforementioned practices by Defendants were and are in  
19 violation of the California Unfair and Deceptive Practices Act, Cal. Civil Code § 1750, *et seq.*  
20 and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*;

21 d. Colorado: The aforementioned practices by Defendants were and are in  
22 violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;

23 e. Connecticut: The aforementioned practices by Defendants were and are in  
24 violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;

25 f. Delaware: The aforementioned practices by Defendants were and are in  
26 violation of the Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511., *et seq.*;



1 g. District of Columbia: The aforementioned practices by Defendants were  
2 and are in violation of the District of Columbia Consumer Protection Procedures Act, D.C. Code  
3 § 28-3901, *et seq.*;

4 h. Florida: The aforementioned practices by Defendants were and are in  
5 violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201,  
6 *et seq.*;

7 i. Georgia: The aforementioned practices by Defendants were and are in  
8 violation of the Georgia Fair Business Practices Act, § 10-1-390, *et seq.*;

9 j. Hawaii: The aforementioned practices by Defendants were and are in  
10 violation of the Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480-1,  
11 *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1,  
12 *et seq.*;

13 k. Idaho: The aforementioned practices by Defendants were and are in  
14 violation of the Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;

15 l. Illinois: The aforementioned practices by Defendants were and are in  
16 violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1,  
17 *et seq.*;

18 m. Kansas: The aforementioned practices by Defendants were and are in  
19 violation of the Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50-626, *et seq.*;

20 n. Kentucky: The aforementioned practices by Defendants were and are in  
21 violation of the Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and  
22 the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;

23 o. Louisiana: The aforementioned practices by Defendants were and are in  
24 violation of the Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat.  
25 Ann. §§ 51:1401, *et seq.*;

26



1 p. Maryland: The aforementioned practices by Defendants were and are in  
2 violation of the Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;

3 q. Michigan: The aforementioned practices by Defendants were and are in  
4 violation of the Michigan Consumer Protection Act, §§ 445.901, *et seq.*;

5 r. Minnesota: The aforementioned practices by Defendants were and are in  
6 violation of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*;  
7 and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;

8 s. Mississippi: The aforementioned practices by Defendants were and are in  
9 violation of the Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;

10 t. Missouri: The aforementioned practices by Defendants were and are in  
11 violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;

12 u. Montana: The aforementioned practices by Defendants were and are in  
13 violation of the Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code  
14 § 30-14-101, *et seq.*;

15 v. Nebraska: The aforementioned practices by Defendants were and are in  
16 violation of the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.*, and the  
17 Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;

18 w. Nevada: The aforementioned practices by Defendants were and are in  
19 violation of the Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903,  
20 *et seq.*;

21 x. New Jersey: The aforementioned practices by Defendants were and are in  
22 violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*;

23 y. New Mexico: The aforementioned practices by Defendants were and are  
24 in violation of the New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1, *et seq.*;

25  
26



1 z. New York: The aforementioned practices by Defendants were and are in  
2 violation of the New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349,  
3 *et seq.*;

4 aa. North Dakota: The aforementioned practices by Defendants were and are  
5 in violation of the North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51-15-01, *et seq.*;

6 bb. Oklahoma: The aforementioned practices by Defendants were and are in  
7 violation of the Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;

8 cc. Oregon: The aforementioned practices by Defendants were and are in  
9 violation of the Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;

10 dd. Rhode Island: The aforementioned practices by Defendants were and are  
11 in violation of the Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen.  
12 Laws § 6-13.1-1, *et seq.*;

13 ee. South Carolina: The aforementioned practices by Defendants were and  
14 are in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10,  
15 *et seq.*;

16 ff. South Dakota: The aforementioned practices by Defendants were and are  
17 in violation of South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D.  
18 Codified Laws §§ 37-24-1, *et seq.*;

19 gg. Tennessee: The aforementioned practices by Defendants were and are in  
20 violation the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.*;

21 hh. Vermont: The aforementioned practices by Defendants were and are in  
22 violation of the Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;

23 ii. Washington: The aforementioned practices by Defendants were and are in  
24 violation of the Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;

25 jj. Wisconsin: The aforementioned practices by Defendants were and are in  
26 violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et seq.*



1           88.     Under statutes enacted in these 35 states, and the District of Columbia, to protect  
2 consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices  
3 and false advertising, Plaintiffs and the Class are consumers who purchased Defendants' service  
4 pursuant to a consumer transaction for personal use and are therefore subject to protection under  
5 such legislation.

6           89.     Under statutes enacted in these 35 states, and the District of Columbia, to protect  
7 consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices  
8 and false advertising, Defendants are sellers who are subject to liability under such legislation for  
9 unfair, deceptive, fraudulent and unconscionable consumer sales practices.

10          90.     Defendants violated the statutes enacted in these 35 states, and the District of  
11 Columbia, to protect consumers against unfair, deceptive, fraudulent and unconscionable trade  
12 and business practices and false advertising, by omitting material information concerning the  
13 nature of the escrow and settlement services fees.

14          91.     The actions of Defendants alleged herein are uncured or incurable deceptive acts  
15 under the statutes enacted in these 35 states, and the District of Columbia, to protect consumers  
16 against unfair, deceptive, fraudulent and unconscionable trade and business practices and false  
17 advertising.

18          92.     As a direct result of Defendants' violations of the statutes enacted in these 35  
19 states, and the District of Columbia, to protect consumers against unfair, deceptive, fraudulent  
20 and unconscionable trade and business practices and false advertising, Plaintiffs and the Class  
21 have been damaged.

22          93.     Plaintiffs and the Class are therefore entitled to and hereby seek compensatory  
23 damages, multiple damages, and equitable and declaratory relief and any and all other available  
24 remedies according to proof.



1 **COUNT IV**

2 **UNJUST ENRICHMENT**

3 94. Plaintiffs reallege and incorporate by reference the preceding allegations.

4 95. As a result of the Reconveyance Scheme, Defendants have received a benefit  
5 from Plaintiffs and the Class in the form of the reconveyance fees Plaintiffs and the Class paid to  
6 Defendants, which fees were duplicative, unearned and unreasonable and made in addition to  
7 the escrow fee charged by Defendants for no additional or nominal settlement services.

8 96. Defendants are aware of the receipt of the above-described benefits.

9 97. Defendants received the above-described benefits to the detriment of Plaintiffs  
10 and each of the other members of the Class.

11 98. Defendants continue to retain the above-described benefits to the detriment of  
12 Plaintiffs and the Class.

13 99. As a result of Defendants' unjust enrichment, Plaintiffs and the Class have  
14 sustained damages in an amount to be determined at trial and seek full disgorgement and  
15 restitution of Defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the  
16 unlawful or wrongful conduct alleged above.

17 **COUNT V**

18 **BREACH OF FIDUCIARY DUTY**

19 100. Plaintiffs reallege and incorporate by reference the preceding allegations.

20 101. In the course of acting as an escrow agent, Defendants served as a fiduciary to the  
21 Plaintiffs and members of the Class. The fiduciary duty of an escrow agent includes the  
22 obligation to act with scrupulous honesty and to refrain from self-dealing that harms the  
23 principal. Specific fiduciary duties of an escrow agent include: (a) disclosing all material facts  
24 concerning the agent's services; (b) charging fees only for services actually performed and  
25 charges actually incurred and not in substantial excess to costs; and (c) performing services in  
26 accord with legal duties.



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1 **VIII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs demand judgment as follows:

3 A. For an order declaring that this action may be maintained as a class action  
4 pursuant to Federal Rules of Civil Procedure, Rule 23, and for an order certifying this case as a  
5 class action and appointing Plaintiffs as Class representatives;

6 B. For an order declaring that: (i) Plaintiffs and the Class were charged duplicative,  
7 unearned and unreasonable fees for reconveyance by Defendants; (ii) Defendants were obligated  
8 to inform Plaintiffs and the Class that their prior lenders were providing reconveyance  
9 processing at no cost or had included charges for reconveyance processing in the amounts paid  
10 by Plaintiffs and the Class to pay off their prior loans; (iii) Defendants required the use of a  
11 settlement services provider; and (iv) Defendants violated RESPA and the laws of the states by  
12 these acts and by failing to inform Plaintiffs and the Class of the true nature of the reconveyance  
13 fees that Defendants charged and by failing to charge and collect only the agreed fees for the  
14 settlement services provided by Defendants;

15 C. For an order declaring that Defendants breached their fiduciary and agency duties  
16 to Plaintiffs and members of the Class by carrying out the Reconveyance Scheme;

17 D. For an order issuing a permanent injunction requiring Defendants to (1) inform all  
18 customers and potential customers in writing that reconveyance processing may be performed by  
19 their prior lenders; and (2) refund to customers any amounts collected as reconveyance fees  
20 where reconveyance processing was not in fact provided by Defendants;

21 E. For an order requiring Defendants to refund the illegal and deceptive charges for  
22 reconveyance fees to Plaintiffs and the Class;

23 F. For judgment for Plaintiffs and the Class on their claims in an amount to be  
24 proven at trial, for compensatory damages caused by Defendants' unfair or deceptive practices;  
25 along with exemplary damages to each Class member for each violation;

26



1 G. For judgment for Plaintiffs and the Class on their RESPA claim, in an amount to  
2 be proven at trial, for three times the amount of reconveyance fees paid to Defendants by  
3 Plaintiffs and the Class;

4 H. For restitution of all improperly collected charges and interest, and the imposition  
5 of an equitable constructive trust over all such amounts for the benefit of Plaintiffs and members  
6 of the Class;

7 I. For an order awarding Plaintiffs and the Class their attorney's fees and costs; and

8 J. Such other and further relief as may appear necessary and appropriate.

9 **IX. JURY TRIAL DEMANDED**

10 Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury of the claims alleged  
11 herein.

12 DATED: May 14, 2008.

13 HAGENS BERMAN SOBOL SHAPIRO LLP

14 By \_\_\_\_\_

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