UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KEVIN FINCH, MARC WERNER and DONNA WERNER, individually and on behalf of all others similarly situated, Plaintiffs, v. PHH MORTGAGE CORPORATION, Defendant.	Civil Action No.________________ **CLASS ACTION COMPLAINT** JURY TRIAL DEMANDED

I. INTRODUCTION

1. This is a proposed class action brought by Plaintiffs Kevin Finch, Marc Werner, and Donna Werner ("the Werners"), (all collectively, "Plaintiffs"), individually and on behalf of all persons who have or had residential mortgage loans serviced by Defendant PHH Mortgage Corporation ("PHH") and, in connection therewith, were required to pay for lender-placed or "force-placed" hazard insurance policies which involved the payment of a kickback in the form of below-market-rate portfolio tracking, expense reimbursement or any other monetary and/or nonmonetary remuneration to PHH. The allegations herein are based upon personal knowledge concerning Plaintiffs and their own acts and upon

information and belief as to all other matters. The allegations that are not based on Plaintiffs' personal knowledge result from investigation by Plaintiffs' counsel.

2. Plaintiffs challenge, as further described herein, PHH's practice of purchasing force-placed hazard insurance through Assurant, Inc. subsidiaries American Security Insurance Company ("ASIC"), Standard Guaranty Insurance Company ("SGIC"), and/or Voyager Indemnity Insurance Company ("Voyager") (collectively "Assurant Specialty Property"), pursuant to agreements that return a financial benefit to PHH. Such agreements are unrelated to any contractual or other *bona fide* interest in protecting the lender's interest in the loan, and result in unauthorized, unjustified and unfairly inflated costs to the borrower for force-placed hazard insurance in violation of law.

3. PHH acted together with Assurant Specialty Property to exploit PHH's ability to force-placed hazard insurance in order to reap additional, unjustified profits in the forms of payments disguised as "expense reimbursements," below-market-rate portfolio tracking, subsidized mortgage servicing, and other forms of consideration at the expense of borrowers whose hazard insurance was force-placed. These charges were not legitimately related to the cost of the force-placed insurance or to the legitimate purpose for which force-placed insurance may be purchased – which is to protect the lender's interest in the property.

4. As a condition to funding a borrower's loan, mortgage lenders typically require that borrowers purchase and agree to maintain hazard insurance on the secured property.

5. When borrowers fail to maintain their hazard insurance policies, mortgage servicers, purchase policies, known as "force-placed insurance" ("FPI") or "lender-placed insurance" ("LPI") policies covering the secured property. PHH and Assurant Specialty Property entered into exclusive contracts that establish that certain Assurant, Inc. subsidiaries, namely ASIC, SGIC and Voyager, will provide these force-placed hazard insurance policies to PHH. PHH then charges borrowers amounts – purportedly to pay for such insurance – by diverting the borrowers' monthly mortgage payments and/or debiting the borrowers' escrow accounts.

6. Borrowers have no say in the selection of the force-placed insurance carrier or the terms of the force-placed insurance policies. Borrowers also have no opportunity to comparison-shop for force-placed insurance policies. The terms and conditions of the insurance policy, as well as the cost of the policy, are determined by the servicer and the insurer, rather than negotiated between the borrower and the insurer. *See* Testimony of J. Robert Hunter, of the Consumer Federation of America dated May 17, 2012 at 10 ("Hunter NYDFS Testimony"), attached as Exhibit 1.

7. Such policies provide less coverage and are substantially more costly than the borrowers' original policies, while providing improper, undisclosed and lucrative financial benefits to PHH which are unrelated to the provision of force-placed hazard insurance.

8. In some instances, borrowers are charged retroactively for coverage before the borrowers are notified of the force-placement of the coverage.

9. Further, such policies often provide unnecessary or duplicative coverage in that they are improperly backdated to collect premiums for time periods during which the mortgagor has absolutely no risk of loss because there is other existing coverage in place or there has been no covered loss to the property during the time period when the policy was backdated.

10. Servicers like PHH also go so far as to actually outsource their insurance processing to the force-placed insurance provider, such as Assurant Specialty Property. The provider then continuously monitors the servicer's mortgage portfolio and verifies the existence of insurance on each mortgaged property. In the event that borrowers do not maintain adequate insurance coverage, the insurer promptly issues an insurance certificate on the property on behalf and for the benefit of the servicer. *See* Jeff Horwitz, *Ties to Insurers Could Land Mortgage Servicers in More Trouble*, American Banker (Nov. 10, 2010, 12:00 pm), available at http://www.americanbanker.com/issues/175_216/ties-to-

insurers-servicers-in-trouble-1028474-1.html (referred to herein as "Ties to Insurers") (last visited Mar. 14, 2014).

11. PHH has entered into such an exclusive outsourcing arrangement with Assurant Specialty Property. Thus, Assurant Specialty Property performs all of the insurance processing and other tasks related to the provision of force-placed insurance.

12. The web of relationships among PHH and Assurant Specialty Property and the arrangements between and among them served to funnel profits to themselves and their affiliates that they were not entitled to receive.

13. As one journalist recently observed:

> In the pantheon of modern-day mortgage abuses, force-placed insurance hasn't attracted much attention. But it generates hundreds of millions of dollars a year in fees and commissions for insurance companies, banks and other financial institutions. Policies are sometimes backdated to cover periods that have already passed.
>
> In essence, critics say, high-priced insurance policies cover a time when no events happened. And often, the mortgage company and the force-placed-insurance company are affiliated, with the mortgage company receiving a "service fee" in return for the business. But homeowners don't know that.

See Dave Lieber, *Everyone Profits Off Force-Placed Insurance, Except Homeowner*, Star-Telegram (Oct. 1, 2011), attached as Exhibit 2.

14. These very practices have drawn the scrutiny of state and federal bodies charged with the oversight of force-placed insurance. In October 2011, a number of mortgage servicers and insurers, including PHH, received subpoenas from the New York Department of Financial Services ("NYDFS") with respect to lender-placed insurance activities dating back to September 2005.

15. The NYDFS conducted hearings on May 17, 18 and 21, 2012, during which the force-placed insurance practices of servicers and their affiliates, subsidiaries and bank partners were among the topics addressed by witnesses and in written testimony. Superintendent Benjamin N. Lawsky noted in his opening statement that the Department's initial inquiry uncovered "serious concern and red flags" which included: (1) exponentially higher premiums for force-placed insurance than regular homeowners insurance; (2) extraordinarily low loss ratios; (3) harm to distressed borrowers; (4) lack of competition in the market; (5) force-placed insurance has become a major profit center for both banks and insurers; and (6) "tight relationships between banks, their subsidiaries and insurers." As Superintendent Lawsky summarized, the net result of these practices:

> In sum, when you combine [the] close and intricate web of relationships between banks and insurance companies on the one hand, with high premiums, low loss ratios and lack of competition on the other hand, it raises serious issues and questions….

Opening Statement of Benjamin M. Lawsky, Superintendent of NYDFS, May 17, 2012, attached as Exhibit 3.

16. The NYDFS heard testimony from several servicers and insurers as well as noted experts in the course of its force-placed insurance investigation. *See, e.g.*, Testimony of John Frobose, President of ASIC ("ASIC NYDFS Testimony") submitted to the NYDFS, attached as Exhibit 4; Testimony of Birny Birnbaum on behalf of the Center for Economic Justice, May 21, 2012 ("Birnbaum NYDFS Testimony"), attached as Exhibit 5; and the Hunter NYDFS Testimony.

17. As a result of its investigation, NYDFS found:

> that insurers and banks built a network of troubling relationships and payoffs that helped drive premiums sky high. Those improper practices created significant conflicts of interest and saddled homeowners, taxpayer, and investors with millions of dollars in unfair and unnecessary costs.
>
> Indeed, even though banks and servicers are the one who choose which force-placed insurance policy to purchase, the high premiums are ultimately charged to homeowners, and in the event of foreclosure…

See New York Department of Financial Services Press Release dated March 21, 2013 ("NYDFS March 21, 2013 Press Release"), attached as Exhibit 6.

18. The NYDFS investigation further found that these practices resulted in a market characterized by "reverse competition." The insurers competed by

offering servicers and lenders a share in the profits, rather than by offering lower prices. *Id.*

19. The National Association of Insurance Commissioners ("NAIC") is the standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the Districts of Columbia and five U.S. territories. The NAIC established standards and best practices, conducts peer review, and coordinates regulatory oversight. Pursuant to these duties, the NAIC also investigated the force-placed insurance industry and found those practices so troubling that it held public hearings on August 9, 2012. *See* NAIC Promises Greater Focus on Force-Placed Insurance as CFPB Proposes Rules, attached as Exhibit 7. The NAIC, like the NYDFS, found there to be enough troublesome information regarding the force-placed insurance industry and its associated practices to warrant its full attention.

20. The NAIC includes a discussion of "reverse competition" and lender-placed insurance on its website:

> Concern[s] have also been raised over whether the growing use of lender-placed insurance is "reverse competition," where the lender chooses the coverage provider and amount, yet the consumer is obligated to pay the cost of coverage. Reverse competition is a market condition that tends to drive up prices to the consumers, as the lender is not motivated to select the lowest price for coverage since the cost is born by the borrower. Normally competitive forces tend to drive down costs for consumers. However, in this case, the

> lender is motivated to select coverage from an insurer looking out for the lender's interest rather than the borrower.

http://www.naic.org/cipr_topics/topic_lender_placed_insurance.htm (last visited Mar. 14, 2014).

21. As a result of the NYDFS investigation into force-placed insurance practices, the NYDFS and Assurant, Inc. and its subsidiaries entered into a Consent Order pursuant to which Assurant, Inc. and its subsidiaries agreed to make changes in their force-placed insurance practices and to reduce the rates charged to borrowers whose insurance was force-placed. Certain borrowers whose insurance was force-placed will be entitled to a restitution of a portion of the force-placed charges which they paid. Assurant, Inc. and its subsidiaries also agreed to pay the sum of fourteen million dollars ($14,000,000) to the NYDFS. *See* Consent Order, In the Matter of American Security Insurance Company, American Bankers Insurance Company of Florida, and Assurant, Inc. at 6 ("NYDFS Consent Order") attached as Exhibit 8.

22. For their part, servicers like PHH have no incentive to comparison shop for the best rate. Rather, servicers are financially motivated to utilize the insurer that offers the best financial benefit to the servicer in terms of the below-cost portfolio monitoring and tracking, expense reimbursement, and other things of value that are established as part of the secret arrangements among the servicers,

insurers and their affiliates. As these payments (*i.e.*, kickbacks) to PHH are funded entirely by a portion of the charges assessed to the borrower whose hazard insurance policy is force-placed by PHH, the servicer actually has an incentive to purchase the *highest* priced insurance, an interest diametrically opposed to that of the borrower. *See, e.g.*, Hunter NYDFS Testimony at 1.

23. As noted by Birny Birnbaum:

> The incentives and potential for abuse in the administration of LPI [lender placed insurance] are great. Consumers do not request the insurance, but are forced to pay for it. The cost of LPI is much higher than a policy the borrower would purchase on his or her own. Lenders have incentive to force-place the insurance because the premium includes a commission to the lender and, in some cases, the insurance is reinsured through a captive reinsurer of the lender, resulting in additional revenue to the lender from the force-placement of the coverage.

See July 28, 2011 Testimony of Birny Birnbaum, Executive Director of the Center for Economic Justice, Before the U.S. House of Representatives Subcommittee on Insurance, Housing and Community Opportunity Committee on Financial Services, attached as Exhibit 9.

24. Here, instead of disguising the kickback as a "commission," PHH and Assurant Specialty Property labeled the illicit payments "expense reimbursements."

25. These "expense reimbursements" were nothing more than payments made by Assurant Specialty Property to PHH in exchange for PHH agreeing to use

Assurant Specialty Property as its exclusive force-placed hazard insurance provider.

26. Additionally, PHH conspired with Assurant Specialty Property to also include within the amounts charged to Plaintiffs and members of the proposed Classes expenses associated with servicing *all* the loans serviced by PHH. Consequently, the small percentage of borrowers who pay for force-placed insurance shoulder the costs of monitoring PHH's entire loan portfolios – resulting, effectively, in a kickback to PHH and the enrichment of PHH at the borrower's expense. *See* Testimony of Birny Birnbaum on Behalf of the Center for Economic Justice for the Florida Office of Insurance Regulation (July 3, 2012), attached as Exhibit 10 ("Birnbaum Florida Testimony").

27. Moreover, PHH is already separately compensated for performing the loan servicing functions, for which force-placed borrowers are ultimately charged, as a result of its loan servicing obligations.

28. Furthermore, PHH and Assurant Specialty Property conspired to charge borrowers for more force-place more insurance coverage than required or permitted.

29. In this action, Plaintiffs challenge PHH's practice of purchasing force-placed hazard insurance from a provider pursuant to agreements that return a financial benefit to PHH and scheme members that is unrelated to any contractual

or other *bona fide* interest in protecting the lender's interest in loan, and which results in unauthorized, unjustified and unfairly inflated charges to the borrower for force-placed hazard insurance in violation of law.

30. PHH's unlawful actions include, as described in further detail below, *inter alia:* (a) using the mail and wires to conduct a scheme to defraud Plaintiffs and the Classes by abuse of their authority to force-place hazard insurance to generate unjustified profits for itself which were not disclosed to borrowers whose insurance was force-placed; (b) electing to purchase higher-priced insurance policies from Assurant Specialty Property in exchange for payments from Assurant Specialty Property; (c) conspiring to take advantage of PHH's contractual authority to force-place Plaintiffs' and Members of the Classes' hazard insurance by entering into pre-arranged agreements to acquire high-priced, force-placed insurance, thereby diminishing any benefit to be gained by borrowers through open market or competitive purchasing environment, and return an undisclosed and improper financial benefit to PHH in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(d); (d) entering into pre-arranged agreements designed to yield exorbitant force-placed insurance charges to class members in order to maximize PHH's own profits without any regard whatsoever for competitive pricing, to the detriment of borrowers; (e) backdating the force-placed insurance policies to charge for

retroactive and unnecessary coverage; (f) receiving "kickbacks" in the form of purported expense reimbursements, below-cost portfolio monitoring and tracking services, and/or other things of value from providers of force-placed insurance (including Assurant and its subsidiaries and affiliates) for the procurement of the force-placed policies; (g) improperly exploiting their ability to manage and gain access to escrow funds in breach of fiduciary obligations relating to the management of escrow funds in order to increase profits; (h) misrepresenting the reasons for the high cost of force-placed insurance to Plaintiffs and Class members; (i) failing to inform Plaintiffs and Class members that force-placed insurance practices did not only protect its interest in Plaintiffs' and Class members' properties but also generated unwarranted profits for itself in violation of RICO, 18 U.S.C. § 1962(c); (j) misrepresenting that force-placed hazard insurance costs more because it is provided without underwriting; (k) tying the purchase of insurance to a requirement that borrowers effectively pay for the cost of monitoring the entire portfolio, and (l) force-placing hazard insurance coverage in excess of the unpaid principal balance eon the mortgage.

31. Plaintiffs assert herein the following claims: (1) claims for violation of RICO 18 U.S.C. §§ 1962(c), as further described below; (2) claims for engaging in a conspiracy to defraud Plaintiffs and the Classes in violation of RICO 18 U.S.C. § 1962(d); (3) state/common law claims against PHH for breach of its

contractual obligations, including the implied covenant of good faith and fair dealing, owed to Plaintiffs and the other Class members; (4) state/common law claims against PHH for breach of fiduciary duties/misappropriation of escrow funds held and managed by PHH for the purpose of paying Escrow Items in accordance with the terms of Plaintiffs' mortgages; (5) claims for violation of California Business and Professions Code §§ 17200, *et. seq*.; and (6) claims for engaging in unconscionable, deceptive and/or fraudulent business practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq*.

32. In the present action, Plaintiffs do not challenge the rates of their force-placed hazard insurance provider as excessive nor PHH's right to force-place insurance. Rather, Plaintiffs challenge, among other things and as further described herein, PHH's *decision to purchase* force-placed hazard insurance from Assurant, Inc. and/or one of its affiliates pursuant to an exclusive agreement which imposed charges unrelated to the provision of force-placed insurance on borrowers who were force-placed, such that the prices far exceeded borrower-purchased hazard insurance (while providing substantially less coverage), in order to provide a financial benefit to PHH. As such, Plaintiffs seek statutory and compensatory damages, punitive damages, declaratory, injunctive, restitutionary and other equitable relief.

33. In all respects, this conduct attributable to PHH herein is without justification, serving only to enrich PHH and Assurant Specialty Property at significant cost to the borrowers who were forced to pay for or charged for force-placed insurance.

II. JURISDICTION AND VENUE

34. This Court has original diversity jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) ("CAFA"). Plaintiffs and many members of the Class are citizens of different states than PHH. The amount in controversy in this action exceeds $5,000,000, and there are more than 100 members in the proposed Class.

35. Personal jurisdiction is conferred by 18 U.S.C § 1965(a), which allows a party to institute a civil RICO action in any district in which a defendant "resides, is found, has an agent, or transacts his affairs." Alternatively, 18 U.S.C. § 1965(B) provides that as long as one defendant is subject to service in a particular district, additional parties residing in other districts may be brought before the forum court, in the court's discretion, to the extent that "the ends of justice require."

36. This Court also has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

37. Venue is proper in this District under 28 U.S.C. § 1391(b) and 12 U.S.C. § 2614 because PHH regularly conducts business in this District, and/or a substantial part of the events giving rise to the claims occurred in this District.

III. PARTIES

A. Plaintiffs

1. Kevin Finch

38. Plaintiff Kevin Finch resides in Los Angeles, California and is a citizen of California.

39. On or about March 4, 2011, Finch obtained a mortgage loan in the amount of $580,000 from UBS AG, Tampa Branch secured by his primary residence. *See* March 4, 2011 Finch Deed of Trust ("Finch Mortgage"), attached hereto as Exhibit 11.

40. The servicing rights to Finch's mortgage were subsequently transferred to PHH in or around March 2011. *See* March 1, 2011 Notice of Servicing Transfer, attached hereto as Exhibit 12.

41. The March 1, 2011 Notice of Servicing Transfer stated, "Your mortgage will soon be serviced by PHH in the name of UBS Mortgage…PHH will ensure that you receive the same high level of service that you experienced with UBS when you obtained your home financing." *Id.*

42. The mortgage loan was then assigned, sold or transferred from UBS to Fannie Mae on or about March 31, 2011. *See* April 14, 2011 Notification of Assignment, attached hereto as Exhibit 13.

43. Subsequent communications to Plaintiff Finch were addressed from PHH's New Jersey business addresses and were, in fact, issued by PHH "in the name of UBS Mortgage."

2. Plaintiffs Marc and Donna Werner

44. Plaintiffs Marc and Donna Werner resided in Long Grove, Illinois and were citizens of Illinois at all times material to this action.

45. On or about August 30, 2004, the Werners obtained a mortgage loan in the amount of $1,610,000 from Merrill Lynch Credit Corporation secured by their primary residence. *See* August 30, 2004 Werner Mortgage ("Werner Mortgage"), attached hereto as Exhibit 14.

46. Upon information and belief, the servicing rights with respect to the Werner Mortgage were subsequently sold or transferred to PHH.

B. Defendant

47. Defendant PHH is a New Jersey corporation. It is a citizen of New Jersey with its principal place of business located in Mount Laurel, New Jersey. *See* excerpts from PHH Corporation, Form 10-K 23, Item 2 (Feb. 28, 2012), stating "Our principal offices are located at 3000 Leadenhall Road, Mt. Laurel,

New Jersey 08054," attached as Exhibit 15; PHH Corporation, Proxy Statement (Schedule 14A), General Information About The 2012 Annual Meeting (Apr. 27, 2012), listing 3000 Leadenhall Road, Mt. Laurel, New Jersey as its principal place of business attached hereto as Exhibit 16.

48. PHH describes itself as an industry-leading provider of mortgage services operating across the United States, and closing, in 2011, $52 billion in mortgage financing. *See* PHH Corporation Company Overview, attached hereto as Exhibit 17, available at http://corporate.phh.com/phoenix.zhtml?c=187859&p=irol-homeprofile (last visited Mar. 14, 2014).

C. Non-Parties Affiliated with the RICO Enterprise

49. Assurant, Inc., is a Delaware corporation. "Assurant, Inc. is a provider of specialty insurance products in the U.S. and select worldwide markets." *See* http://www.assurant.com/about/ (last accessed Mar. 14, 2014). Assurant, Inc. has four operating segments – Assurant Solutions, Assurant Specialty Property, Assurant Health, and Assurant Employee Benefits. Assurant, Inc. Executive Vice President, Gene Mergelmeyer, directs the force-placed insurance operations of Assurant, Inc. through Assurant Specialty Property. Assurant, Inc. is one of the two dominant providers of force placed insurance in the United States. NYDFS Consent Order at 3.

50. Assurant Specialty Property is the Assurant, Inc. division and operating segment which deals with the force-placement of borrower's homeowners insurance, including specifically, hazard insurance. *See* http://www.assurantspecialtyproperty.com/lendingsolutions/Mortgage_LenderPlaced.html (last accessed Mar. 14, 2014). Assurant Specialty Property is not a separately incorporated company; rather, Assurant, Inc. controls the force-placed operations of its subsidiaries through Assurant Specialty Property. Assurant, Inc. Executive Vice President Gene Mergelmeyer serves as President and CEO of Assurant Specialty Property.

51. American Security Insurance Company is a Delaware corporation with its principal place of business in Atlanta, Georgia and is a subsidiary of Assurant, Inc. that does business throughout the United States. *See* Assurant 2012 10-K at Exhibit 21.1 attached hereto as Exhibit 18. ASIC writes force-placed insurance policies in all fifty states and the District of Columbia. ASIC also provides services to PHH in relation to its force-placed insurance practices, including, but not limited to: (1) tracking borrower's loan to determine the existence of hazard insurance; (2) placing force-placed insurance for PHH when there has been a lapse, and (3) handling all customer services duties related to force-placed insurance. The force-placed policies issued to Finch and the Werners were underwritten by ASIC.

52. Standard Guaranty Insurance Company is a Delaware corporation with its principal place of business in Georgia. SGIC is a 100% owned by ASIC, and is a subsidiary of Assurant, Inc., that does business throughout the United States. Assurant, Inc. controls SGIC through its Assurant Specialty Property business segment. SGIC is one of the Assurant, Inc. insurance company subsidiaries through which Assurant Specialty Property writes force-placed insurance.

53. Voyager Indemnity Insurance Company is a Georgia corporation. Voyager is 100% owned by American Bankers Insurance Group, which is 100% owned by Interfinancial, Inc., which is 100% owned by Assurant, Inc. Assurant, Inc. controls Voyager through its Assurant Specialty Property business segment. Voyager is one of the Assurant, Inc. insurance company subsidiaries through which Assurant Specialty Property writes force-placed insurance.

IV. FACTUAL ALLEGATIONS

A. PHH Abused Discretion Provided to it Under Mortgage Agreements to Generate Hidden and Unearned Profits

54. Assurant Specialty Property, through Assurant, Inc. affiliates ASIC, SGIC, and Voyager, and PHH have entered into contracts relating to all aspects of the force-placement of hazard insurance for borrowers whose loans were serviced by PHH.

55. Each loan serviced by PHH is secured by a mortgage or deed of trust on the underlying property.

56. In order to ensure that the mortgagee's interest in the secured property is protected, mortgage loan contracts typically allow the lender or third-party servicer, such as PHH, to "force-place insurance" when the homeowner fails to maintain the insurance; the amounts disbursed for the procurement of such insurance become additional debt secured by the mortgage. For example, Paragraph 5 of the Finch and Werner Mortgages contains such a provision. *See* Ex. 11, at ¶5 (Finch Mortgage); Ex. 14, at ¶5 (Werner Mortgage). Thus, the failure of the borrower to maintain hazard insurance is clearly contemplated by the mortgage contract and such a failure by the borrower does not result in a material failure to perform under the mortgage contract.

57. The discretion afforded PHH, however, to force-place insurance is limited by the bounds of reasonable conduct and by the express terms of the mortgage itself.

58. PHH routinely exceeds the bounds of reasonableness and the spirit, intent and letter of the mortgage contract by force-placing insurance in a manner and in amounts that are not required to protect the lender's interest in the property and through other conduct described herein with respect to the force-placement of insurance.

59. The typical mortgage contract does not disclose that the lender or other servicer will receive a financial benefit in connection with the force-placed insurance policy. Instead, the contract limits the authority of the mortgage servicer to force-place insurance sufficient to protect the lender's interest in the secured property. *See* Ex. 11, at ¶9 (Finch Mortgage); Ex. 14, at ¶9 (Werner Mortgage).

60. Plaintiffs' and Class Members' mortgage agreements misrepresent to borrowers that the full charge of the force-placed insurance is to protect the lender's interest in the secured property, when in fact some charges are unrelated to the legitimate protection of the lender's interest in the property. The contracts do not disclose that PHH will receive below-cost portfolio monitoring and tracking services, reimbursed expenses or other monies from Assurant Specialty Property for purchasing the insurance from them pursuant to a pre-arranged side agreement. The mortgage agreements also do not disclose that this payment will be funded from the charges for the force-placed insurance.

61. These lender-placed or force-placed insurance policies are almost always more expensive than standard insurance coverage, as evidenced by Plaintiffs' policies as discussed herein and attached as exhibits.

62. While the force-placed insurance policy is primarily for the benefit of the lender, the cost for it, including the improper charges complained of herein, are passed on to the borrower.

63. Once a lender and/or servicer receives evidence that a borrower has obtained his/her own insurance policy, the forced-placed coverage should be fully or partially canceled.

B. PHH Received Kickbacks From Assurant Specialty Property Through Cash Payments Disguised As "Expense Reimbursement"

64. The force-placement of insurance policies is a lucrative business for the loan servicers and force-placed insurers. Here, PHH force-placed Plaintiffs' insurance with Assurant Specialty Property in accordance with an exclusive, pre-arranged agreement whereby Assurant Specialty Property has agreed to pay PHH amounts disguised as "expense reimbursements" in exchange for PHH agreeing to purchase higher-priced force-placed insurance from Assurant Specialty Property.

65. Under the "expense reimbursement" arrangement, the loan servicer submits monthly invoices to the force-placed insurance provider detailing "qualified expenses" for which it seeks reimbursement. The force-placed insurer then reimburses the loan servicer for those "qualified expenses," typically capped as a percentage of the net written premiums.

66. However, the "qualified expenses" are merely expenses incurred as part of the loan servicer's routine loan servicing activities. Thus, because the

mortgage servicer is already required to perform these activities, and is separately compensated to perform such activities by the mortgagees (such as Fannie Mae), these "expense reimbursements" are in reality nothing more than direct payments made to loan servicers in exchange for entering into an exclusive arrangement with the force-placed insurance provider.

67. As explained in the NYDFS Consent Order:

> ASIC pays some mortgage servicers what it characterizes as the servicers' "qualified expenses" related to force-placed insurance. These payments are typically an amount capped at a percentage of the premium force placed on the servicer's portfolio and appear to be substitutes for commissions; ASIC typically pay the "qualified expenses" only to servicers that do not have affiliated insurance agencies or brokers."

See NYDFS Consent Order at 7.

68. PHH has entered into such an expense reimbursement arrangement with Assurant Specialty Property, through Assurant Inc. subsidiaries ASIC, SGIC and Voyager.

69. Specifically, in or around in or around August 1999, PHH (then known as Cendant Mortgage Corp.) entered into a Hazard Plus Insurance Administration Agreement ("HazPlus Agreement") whereby Assurant Specialty Property agreed to be the force-placed hazard insurance provider to PHH.

70. As an incentive to enter into this arrangement, whereby Assurant Specialty Property would become the exclusive force-placed hazard insurance

provider for PHH, Assurant Specialty Property agreed to pay PHH an "Expense Reimbursement" that purported to cover "qualified expenses" incurred by PHH in connection with force-placed insurance.

71. This "Expense Reimbursement" served no purpose other than to provide a direct monetary benefit (kickback) to PHH in exchange for agreeing to use Assurant Specialty Property as its exclusive force-placed insurance provider. Indeed, John Frobose, ASIC President & CEO, and President of Assurant Specialty Property, Lending Solutions, has acknowledged before the NYDFS, that the amounts charged for force-placed insurance include expense reimbursements to servicers, which are considered expenses related to acquiring business. *See* Frobose NYDFS Testimony, at 10.

72. However, the costs and expenses for which PHH was being reimbursed were expenses associated with PHH's routine loan servicing functions.

73. Upon information and belief, on a monthly basis, Assurant Specialty Property paid to PHH:

- salaries and wages for PHH employees;
- incentive bonuses for PHH employees;
- medical and dental benefits for PHH employees;
- 401(k) contributions for PHH employees;
- payroll taxes for PHH employees;
- supplies such as envelopes, pens, paper, and paperclips;
- a portion of PHH's office space in New Jersey;

- payments made by PHH to another outsourced service provider, Accenture, for setting up hazard polices on PHH's loan servicing platform at origination; and
- "click charges" for accessing PHH's loan servicing platform.

74. These are costs affiliated with functions that PHH was required to perform as a loan servicer and was being compensated for by investors/owners of the mortgages being serviced.

75. Under no circumstances should the cost of these loan servicing functions be imbedded in the amounts charged to borrowers under the guise of "insurance."

76. Assurant, Inc. and its affiliates have agreed to cease paying these expense reimbursements with respect to borrowers in New York in the NYDFS Consent Order. *See* NYDFS Consent Order at 10 ("The New York [Force-Placed Insurance] Companies shall not make any payments, including but not limited to the payment of expenses, to servicers, lenders, or their affiliates…).

C. PHH Improperly Passed on Servicing Costs to Borrowers Who Were Required to Pay for Force-Placed Insurance

77. Moreover, PHH conspired with Assurant Specialty Property whereby PHH would perform loan servicing functions at below-market rates – the true cost of which was then included in the amounts charged to borrowers as "insurance."

78. As part of their servicing arrangements with investors, such as Fannie Mae and Freddie Mac, PHH is paid to monitor the investor's portfolio of loans to

verify that acceptable hazard insurance is in place. To the extent the servicer's monitoring indicates a lapse in coverage, servicers are required to send proper notification to borrowers prior to purchasing force-placed insurance.

79. Portfolio monitoring and notification in connection with force-placement are basic loan servicing functions that servicers such as PHH are obligated, and separately compensated, to perform through loan servicing agreements. However, as Fannie Mae clarified in a March 6, 2012 Request for Proposal ("RFP") issued in connection with force-placed insurance, while:

> Servicers are responsible for providing tracking services, per Fannie Mae Guidelines . . . Servicers have chosen to outsource the Insurance Tracking and associated administrative process to third parties, the largest of which are affiliated with Lender Placed Insurers . . . [servicers are being paid] twice for Insurance Tracking services; once via the servicing fee that Fannie Mae [or other investors/owners] pays to Servicers, and again via the Lender Placed Insurance premiums, since those premiums may include or subsidize the costs of tracking services (to the extent that insurers are providing such services).

See Fannie Mae Request For Proposal dated March 6, 2012 attached as Exhibit 19.

80. Under the HazPlus Agreement, Assurant Specialty Property agreed to not only issue insurance policies, but to also provide certain outsourced loan servicing functions in accordance with terms set forth in a separate Outsourcing Agreement.

81. In exchange for these services, PHH agreed to pay Assurant Specialty Property a fee. However, the amount charged is far below the amount it costs to perform such loan monitoring functions.

82. To make up the difference, PHH conspired with Assurant Specialty Property to include the actual cost to perform these functions into the amount charged to borrowers and represented as the cost of force-placed insurance. *See* Frobose NYDFS Testimony, at 10 (included in the amounts charged to PHH in connection with force-placed insurance is the "cost of exposure tracking, processing and activities to monitor insurance coverage").

83. While PHH may be obligated to perform these functions as a loan servicer, it is not permitted to pass the cost to perform these functions on to borrowers whose insurance was force-placed.

84. Additionally, in or around mid-2004, as the initial five (5) year term of the HazPlus Agreement was coming to a close, PHH and Assurant Specialty Property began negotiating an extension.

85. As part of these negotiations, based on PHH's knowledge of industry practice, PHH considered engaging in: (1) a "revenue sharing" arrangement whereby PHH would utilize a "broker" in order to receive part of the revenue from premiums paid to the force-placed insurance carrier, and/or (2) a "reinsurance

arrangement" whereby PHH would also receive a portion of the force-placed insurance premiums as ceded reinsurance.

86. Ultimately, however, in lieu of receiving such "commissions" or "reinsurance premiums" (because PHH decided that the "business risk" of utilizing these forms of revenue sharing was too great), PHH opted to construct its relationship in such a way to receive alternate forms of monetary benefits.

87. In 2004, as the extension was being negotiated, PHH's insurance department employed approximately 40 employees. As part of the contract extension negotiations, however, instead of providing kickbacks through reinsurance or broker commissions, Assurant Specialty Property agreed to take on additional outsourced loan servicing functions, such as: processing loss drafts and performing customer service functions. This in turn allowed PHH to reduce the staffing in its insurance department from 40 employees to 10 employees.

88. Despite this significant increase in responsibility, and concomitant 75% reduction in the size of PHH's insurance department, Assurant Specialty Property did not commensurately increase the fee charged for outsourcing; rather, Assurant Specialty Property and PHH conspired to include the cost to perform these functions in the amount charged to borrowers as force-placed insurance.

89. Industry insiders acknowledge that force-placed insurance premiums are "a lot more expensive than other alternatives" because the administrative costs

"are bundled into the costs of the premium." *See* Testimony of Joseph Markowicz (PRP Claims), Public Hearing on Private Lender-Placed Insurance, Property and Casualty Insurance (C) Committee Market Regulation and Consumer Affairs (D) Committee, National Association of Insurance Commissioners, August 9, 2012, ("Markowicz Testimony") attached as Exhibit 20, available at http://www.naic.org/documents/committees_c_120809_public_hearing_lender_placed_insurance_testimony_markowicz.pdf (last visited Mar. 14, 2014). Mr. Markowicz also confirmed that administrative costs "tend to keep premium costs high" because expenses "which include the administrative work of the letter campaigns and tracking services provided to the loan servicer" are bundled into the premium. *Id.*

90. In effect, Assurant Specialty Property is providing below cost administrative services to servicers like PHH, and recouping those costs from borrowers whose insurance is force-placed. Through this arrangement, PHH receives a kickback in the form of reduced loan servicing expenses, the cost of which it passes on to force-placed borrowers, in exchange for entering into an exclusive relationship with its exclusive, high-priced provider, Assurant Specialty Property.

D. <u>PHH Also Charges Borrowers For Redundant Or Otherwise Unnecessary Insurance</u>

91. PHH has routinely required borrowers to pay for unnecessary insurance coverage through Assurant Specialty Property. Such examples include, without limitation: (a) requiring borrowers to pay for insurance coverage that exceeds the amount necessary to protect unpaid principal balance on the secured property; (b) backdating force-placed insurance policies, thus requiring borrowers to pay for retroactive coverage despite the fact that the time has lapsed and no risk of loss exists for such period; (c) requiring borrowers to pay for force-placed insurance policies despite the existence of a Lender's Loss Payable Endorsement that already protects the lender's interest in the property; and (d) passing on charges to borrowers who are force-placed that are unrelated to the provision of force-placed insurance.

92. Force-placed hazard insurance policies should not be backdated. The NAIC has indicated that insurance is "prospective in nature." Requiring borrowers to pay for backdated insurance coverage to cover time periods during which there is already no risk of loss is improper. *See*, e.g., Ties to Insurers ("'[Insurance policies] should not be back-dated to collect premiums for a time period that has already passed'" (quoting the NAIC)).

93. Moreover, many hazard insurance policies contain a Lender's Loss Payable Endorsement. This endorsement typically protects the lender for a period

of at least ten days after the termination of the insurance policy and is a protection already paid for by the borrowers in the price of their voluntary policies. Accordingly, PHH's practice of force-placing insurance policies effective immediately following the termination of the borrower's policy and charging borrowers expensive premiums for such insurance is unlawful, unfair and unconscionable because borrowers are charged for needless and duplicative insurance coverage.

94. Furthermore, it is well established that an insurance contract is void if the named insured lacks an insurable interest in the property covered under the contract. A lender's insurable interest in the loan collateral is the outstanding loan balance; accordingly, a lender's insurable interest in the mortgaged property is the outstanding loan balance on the mortgage.

95. Moreover, for all or certain mortgages, PHH is only authorized to force-place insurance coverage amounts calculated as the lesser of the prior coverage amounts or outstanding loan balance; however, PHH maintained a policy whereby insurance coverage was force-placed at the last known coverage amount.

96. Additionally, PHH routinely force-places insurance coverage greater than the outstanding principal balance on the loans despite the fact that the lender is the named insured on the force-placed policies and only has an insurable interest equal to the outstanding principal balance.

E. PHH's Practices Improperly Inflate Amounts Charged to Borrowers for Force-Placed Insurance

97. By accepting below-cost portfolio monitoring and tracking services for which it is already compensated by the owners of the mortgages, expense reimbursements and/or agreeing to other payments, PHH forces the borrower to pay for both the actual cost of the insurance policy and the cost of the kickback.

98. As *American Banker* observed, "[w]hile servicers that partner with force-placed insurers customarily perform little of the work in monitoring their portfolios for lapses and writing policies, payments to them are simply a cost of doing force-placed business." *See* Ties to Insurers; *See also* NYDFS March 21, 2013 Press Release at 2; Hunter NYDFS Testimony at 1. These costs are ultimately paid by the borrowers and serve to unjustly and unlawfully enrich all scheme participants including PHH and those with whom the borrower has no contractual relationship, such as Assurant, Inc. and its affiliates.

99. Thus, PHH's arrangements with Assurant Specialty Property tend to keep the amounts charged to borrowers for force-placed insurance artificially inflated over time because a portion of the charges assessed to borrowers is not actually being paid to cover actual risk, but are simply funding hidden profits to the servicer. Amounts paid to servicers such as expense reimbursements and below-market rate outsourced services have become a part of the cost of doing business for force-placed insurance providers. As a result, the charges assessed to

borrowers for force-placed insurance incorporate the payment of such costs of doing business for Assurant Specialty Property - to the detriment of consumers.

F. PHH Cannot Justify the High Cost of Force-Placed Insurance

100. Servicer explanations for the high cost of force-placed insurance are "unsupported by any evidence." See Birnbaum NYDFS Testimony at 1.

101. Servicers also attempt to blame the exorbitant cost of force-placed insurance on the fact that the policy is issued without the benefit of a prior inspection of the property. However, according to the National Consumer Law Center, as a general matter, insurers do not routinely inspect residential properties in the course of underwriting. *Id.*

102. Force-placed insurance policies are not underwritten on an individual policy basis. Rather, servicers' contracts with force-placed insurance providers require, or at least permit, the insurer to automatically issue these policies when a borrower's insurance coverage is not maintained.

103. As J. Robert Hunter in his recent testimony before the New York Financial Services Department testified, "lack of underwriting should also result in much lower acquisition expenses for FPI insurers, since no sales force is required to place the insurance." See Hunter NYFSD Testimony at 5. Yet it does not. Instead, as a result of the arrangement between PHH and Assurant and/or its

affiliates who participate in monitoring, placing and administering force-placed insurance, consumers are gouged.

104. Force-placed insurer subsidiaries are highly profitable businesses. "Among a published ranking of companies with the strongest operating insurance subsidiaries, several bank holding companies stand out . . . . Companies with insurance subsidiaries providing force-placed property insurance were at the top of the list." See http://www.mainstreet.com/print/18604 (last visited Mar. 14, 2013). Servicers commonly attempt to justify the high price of force-placed insurance policies by pointing to the higher risk associated with the lack of individual policy underwriting. However, as American Banker noted:

> [t]hough part of the extra expense can be explained by the higher risks associated with insuring the homes of delinquent borrowers, force-placed policies generate profit margins unheard of elsewhere in the insurance industry—even after accounting for the generous commissions and other payments that servicers demand.

See Ties to Insurers.

105. Birny Birnbaum, in his testimony before the New York Department of Financial Services, also presented statistics collected by the NAIC reflecting nationwide loss ratios for LPI hazard insurance during the 2004-2011 period as being, on average, more than 35 percentage points lower than the ratios for commercially available homeowners policies. *See* Birnbaum NYDFS Testimony at 9. When confined to the period from 2007-2011, the disparity between force-

placed hazard insurance loss ratios and those of commercially available homeowners policies was nearly 43 percentage points. *Id.*

106. Moreover, because the policies are not individually underwritten, the force-placed insurer is spared the costs associated with individual underwriting, which should actually decrease the cost of insurance. *See* Birnbaum NYDFS Testimony at 26.

107. While forced-placed insurers and servicers often attempt to justify the amounts charged to borrowers for force-placed insurance by arguing that force-placed insurance rates in certain states are filed with the respective state's insurance regulator, and are thus not subject to challenge, this defense is wholly inapplicable to Plaintiffs' claims regarding PHH's misconduct in passing on the improper charges to borrowers whose hazard insurance was force-placed.

108. In those states where force-placed insurance rates are filed with state insurance regulators, the filed rate only encompasses rates charged between insurer and lender/servicers – not the reasonableness of rates charged by the lender/servicers to borrowers. The state insurance departments do not decide the premiums which would be reasonable as between a lender and its borrowers.

109. Thus, Borrowers pay amounts for force-placed insurance that are bloated with charges unrelated to the cost of force-placing their insurance.

110. The small percentage of borrowers who paid for force-placed insurance also shouldered the costs of monitoring PHH's entire loan portfolio – effectively providing subsidies to PHH paid by borrowers whose insurance was force-placed.

G. As Servicer, PHH's Interest In The Force-Placed Insurance Is The Reimbursed Expenses, Below-Cost Servicing And Other Remuneration It Receives

111. Although it may appear that servicers such as PHH force-place hazard insurance on mortgaged properties to protect against their risk of losing any amounts in the event of damage to the collateral, such "risk" is illusory.

112. While lenders originate mortgages, these mortgages are frequently packaged into securities and sold to investors, often Fannie Mae or Freddie Mac. Thereafter, either a servicing affiliate of the originating lender or another servicer, such as PHH, services those mortgages for a fee on behalf of the purchaser of the mortgages but neither the originating lender nor the servicers bears the risk that the mortgagees will default on the loan or that the collateral on the loan will become impaired. Rather, that risk is borne by the borrower and/or the current lender/owner of the loan.

113. Such servicers, including PHH, thus receive a kickback in the form of below-cost portfolio monitoring and tracking services, while charging the owners of the mortgages the actual cost for those same services. The costs of the below-

cost services provided by the force-placed insurance provider (i.e. the actual cost to provide these services to PHH by Assurant Specialty Property) are bundled with the amounts charged to borrowers under the guise of "force-placed insurance policies." This has the perverse effect of impairing the properties which are the lender's collateral on their mortgage loans and risking the investment of their own customers. There is no risk to the servicer's own "investment."

H. PHH Charged Plaintiffs for Redundant and Otherwise Unnecessary Insurance Pursuant to Lucrative Pre-Arranged Agreements

1. Plaintiff Kevin Finch

114. As required by the mortgage loan, Finch maintained a hazard insurance policy through Fireman's Fund Insurance Company (the "Fireman's Fund Policy", attached hereto as Exhibit 21) to protect the dwelling as well as other structures, personal property and liability through August 2012. The Fireman's Fund Policy provided $812,000 in dwelling coverage, $162,400 in "other structures" coverage, $582,400 in personal property coverage and $300,000 in personal liability coverage at an annual premium of $3,013.81. This policy contained a Lender's Loss Payable Endorsement, as is standard in California.

115. Finch did not renew the Fireman's Fund Policy, which expired on August 16, 2012.

116. The Fireman's Fund Policy specifically excluded coverage for fire risk because Finch's property was located in a high risk fire area. However, Finch maintained a separate policy through California Fair Plan that provided fire coverage (the "Fair Plan Policy"). *See* June 14, 2012 California Fair Plan Policy Renewal, attached hereto as Exhibit 22.

117. The Fair Plan Policy provided fire hazard coverage in the amounts of $702,668 in dwelling coverage and $228,000 in personal property coverage at an annual premium of $1,541. *See id.*

118. On or about October 26, 2012, PHH notified Finch of the need to maintain adequate hazard insurance. *See* October 26 Notice of Insurance Requirement, attached hereto as Exhibit 23.

119. Subsequently, on or about November 30, 2012, PHH force-placed a 60-day binder of hazard insurance on Finch's property. The force-placed policy had an annual premium of $6,639, which was charged to Finch's escrow account. *See* Finch November 30, 2012 Notice of Force Placement, attached hereto as Exhibit 24 (the "Finch ASIC Policy").

120. The Finch ASIC Policy covered the period September 12, 2012 through September 12, 2013 and provided dwelling-only coverage in the amount of $832,000. As indicated in the 2011 letter notifying Plaintiff that PHH had taken

over servicing from UBS, the notice bore "UBS" letterhead but PHH was the servicer. *Id.*

121. The November 30, 2012 letter stated in part, "We may incur expenses in placing this insurance binder and policy. Such expenses are recoverable by us as stated in your loan documents. Part of the policy premium charged to your escrow account may be used by [ASIC] to reimburse us for these expenses." *See id.*

122. This statement was false and misleading because the "expenses" included in the amounts charged to Finch were not recoverable by PHH from Finch. PHH was separately compensated for the amounts it subsequently charged to borrowers and also received a substantial portion of the charges assessed to Finch in connection with the force-placed policies in the form of below-cost portfolio tracking services and expense reimbursements not related to the provision of insurance.

123. The November 30, 2012 letter was also false and misleading in that it omitted any mention of PHH's receipt of below-cost portfolio monitoring services from Assurant Specialty Property and that the true cost of this service would be included in the amounts charged to Finch purportedly for force-placed insurance.

124. Subsequently, a full year policy was issued and the entire $6,639 was charged to Finch's escrow account on or about January 7, 2013. *See* 2013 Finch Account Activity Statement, attached hereto as Exhibit 25.

125. The Finch ASIC Policy was purchased by PHH on or around November 30, 2012 and backdated to September 12, 2012. *See* Finch ASIC Policy.

126. The force-placed policy provided $832,000 in coverage for the dwelling only (*see id.*), but the unpaid principal balance on Finch's mortgage was substantially less than that amount.

127. The Finch ASIC policy forced-placed by PHH cost over $2,000.00 more than Finch's combined Fair Plan Policy ($1,586) and Fireman's Fund Policy ($3,013.81). In addition, the Finch ASIC Policy provided significantly less coverage because it did not provide personal property, liability or other coverages provided by Finch's voluntary policies.

128. On or about September 25, 2013, PHH notified Finch of the renewal of the force-placed policy. The terms of the coverage were similar, and the force-placed insurer remained the same, but the rate was reduced to $4,987 from $6,639 (*see* Finch ASIC Renewal, attached hereto as Exhibit 26) as a result of a settlement between certain Assurant, Inc. affiliates and the California Department of Insurance whereby ASIC agreed to reduce its lender-placed insurance rates in the

state by 30.5%. Brian Browdie, *Assurant Agrees to Cut Force-Placed Premiums in California*, American Banker (Oct. 23, 2012).

129. The September 23, 2013 letter stated in part, "We have incurred expenses in placing this policy. Such expenses are recoverable by us as stated in your loan documents. Part of the policy premium charged to your escrow account may be used by [ASIC] to reimburse us for these expenses." *See* Finch ASIC Renewal.

130. As previously noted, this statement was false and misleading. PHH was separately compensated for the amounts it subsequently charged to borrowers and also received a substantial portion of the charges assessed to Finch in connection with the force-placed policies in the form of below-cost portfolio tracking services and expense reimbursements not related to the provision of insurance.

2. Plaintiffs Marc and Donna Werner

131. The Werners obtained a homeowner's insurance policy from the Chubb Group of Insurance ("Chubb"), through the Great Northern Insurance Company ("Great Northern"), to protect the dwelling, as well as other structures, personal property, and liability (the "Great Northern Policy"). That policy had an annual premium of $4,505 for the period February 26, 2010 through February 26, 2011. The policy provided the following coverage: (a) dwelling - $3,584,000; (b)

contents - $1,433,600; and (c) liability - $1,000,000. The policy also provided for "extended replacement cost" coverage, so that if the cost to rebuild the structure exceeded the policy limits, the costs would still be covered, in addition to numerous other coverages. *See* Great Northern Policy, attached as Exhibit 27.

132. On or about January 4, 2011, the Werners' home was severely damaged. They subsequently submitted a claim against their homeowners' policy, and the insurance company began emergency payment on the claim.

133. Great Northern renewed their homeowners' insurance policy prior to the expiration date upon the Werners' payment of the full year's premium. However, Great Northern then mailed a Notice of Cancellation for the Werners' homeowners' policy on or about March 1, 2011. The effective date of cancellation was September 2, 2011. *See* Notice of Cancellation, Nonrenewal, Declination or Change in Policy Premium/Coverage, attached as Exhibit 28.

134. In a letter dated March 8, 2011, PHH notified the Werners that it had received a Notice of Cancellation with an effective date of June 9, 2011. *See* PHH Mortgage Service Center Letter dated March 8, 2011, attached as Exhibit 29.

135. In a letter dated August 4, 2011, PHH notified the Werners that it had received a Notice of Cancellation with an effective date of September 2, 2011. *See* PHH Mortgage Service Center Letter dated August 4, 2011, attached as Exhibit 30.

136. PHH sent another letter dated September 13, 2011, stating: "We have tried to contact you via the telephone but with no success. There is an Insurance issue on your Mortgage Loan that needs to be resolved." *See* PHH Mortgage Service Center Letter dated September 13, 2011, attached as Exhibit 31.

137. In a letter dated December 1, 2011, PHH notified the Werners that it had force-placed a hazard insurance policy on their property through ASIC, backdated to September 2, 2011 (the "Original 2011 Werner ASIC Policy"). The Declarations and full force-placed policy was attached to the letter, indicating that the policy was effective from September 2, 2011 to September 2, 2012. It provided dwelling only coverage of $3,656,000 with an annual premium of $47,108. *See* Exhibit 32.

138. The December 1, 2011 letter stated in part, "We have incurred expenses in placing this policy. Such expenses are recoverable by us as stated in your loan documents. Part of the policy premium charged to your escrow account may be used by [ASIC] to reimburse us for these expenses." *See id.*

139. As previously noted, this statement was false and misleading. The December 1, 2011 letter did not mention PHH's receipt of below-cost portfolio monitoring services from Assurant Specialty Property and kickbacks disguised as expense reimbursements.

140. The Original 2011 Werner ASIC Policy was charged to the Werners' escrow account. *See id.* ("[T]he premium has been billed to your escrow account.")

141. The Original 2011 Werner ASIC Policy provided coverage at the last known coverage amount, which vastly exceeded both the original mortgage loan amount and the unpaid principal balance of the Werner Mortgage at the time the policy was placed.

142. In a letter dated April 19, 2012, PHH informed the Werners', "We have tried to contact you via the telephone but with no success. There is an Insurance issue on you Mortgage Loan that needs to be resolved." *See* PHH Mortgage Service Center Letter dated April 19, 2012, attached as Exhibit 33.

143. In a letter dated September 14, 2012, PHH sent the Werners a Confirmation of Cancellation for the Original 2011 Werner ASIC Policy effective September 2, 2011. The reason for the cancellation was "Named Insured's Request." *See* Lender-Placed Insurance Confirmation of Cancellation dated September 14, 2012, attached as Exhibit 34.

144. In a letter dated September 23, 2012 PHH notified the Werners that it had force-placed a hazard insurance policy on their property through ASIC, backdated to September 2, 2012 (the "2012 Werner ASIC Policy") (attached as Exhibit 35). The Declarations and full force-placed policy was attached to the

letter, indicating that the policy was effective from September 2, 2012 to September 2, 2013. It provided dwelling only coverage of $2,244,857 with an annual premium of $28,925. *See id.*

145. The September 23, 2012 letter stated in part, "We have incurred expenses in placing this policy. Such expenses are recoverable by us as stated in your loan documents. Part of the policy premium charged to your escrow account may be used by [ASIC] to reimburse us for these expenses." *See id.* As previously stated, this statement was false and misleading.

146. The 2012 Werner ASIC Policy was charged to the Werners' escrow account. *See id.*

147. The 2012 Werner ASIC Policy provided coverage at the last known coverage amount, which vastly exceeded both the original mortgage loan amount and the unpaid principal balance of the Werner Mortgage at the time the policy was placed.

148. In a letter dated October 30, 2012, PHH notified the Werners that it had force-placed a hazard insurance policy on their property through ASIC, backdated to September 2, 2011 (the "Second 2011 Werner ASIC Policy"). The Declarations and full force-placed policy was attached to the letter, indicating that the policy was effective from September 2, 2011 to September 2, 2012. It

provided dwelling only coverage of $2,444,857 with an annual premium of $28,925. *See* Exhibit 36.

149. The October 30, 2012 letter stated in part, "We have incurred expenses in placing this policy. Such expenses are recoverable by us as stated in your loan documents. Part of the policy premium charged to your escrow account may be used by [ASIC] to reimburse us for these expenses." *See id*. As previously noted, this statement is false and misleading.

150. The Second 2011 Werner ASIC Policy was charged to the Werners' escrow account. *See id*.

151. The Second 2011 Werner ASIC Policy provided coverage that vastly exceeded both the original mortgage loan amount and the unpaid principal balance of the Werner Mortgage at the time the policy was placed.

152. Only after considerable time and effort expended by the Werners did PHH eventually agree to have the property insured at an amount less than the last known coverage amount.

153. PHH also backdated the Second Werner ASIC Policy 13 months after the effective date, during a time when PHH knew there was no risk of loss.

154. On or about December 26, 2013, the Werners' paid off the remaining balance of the Werner Mortgage. *See* Satisfaction of Mortgage dated December 26, 2013, attached as Exhibit 37.

I. <u>Government Response</u>

155. As discussed above, force-placed insurance practices of mortgage lenders and servicers, insurance providers and insurance producers are currently the subject of a number of government investigations prompted by concerns that consumers are being gouged when they are force-placed in insurance following a lapse in their policies.

156. Thus, state attorneys general are cognizant of, and have taken action, to put a stop to servicers' abusive practices concerning force-placed insurance. Recently, a coalition of forty-nine (49) state attorneys general entered into an historic joint state-federal settlement agreement with the country's five largest loan servicers ("National Mortgage Settlement") to address numerous problems that have surfaced during the foreclosure crisis. *See* www.nationalmortgagesettlement.com/ (official website established by the government relating to the settlement).

157. Among other terms, the settlement essentially prohibits servicers from profiting from force-placed insurance. Specifically, under the settlement, mortgage servicers: (a) shall not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has not paid for property insurance; (b) cannot force-place insurance that is in excess of the replacement cost of the improvements on the secured property; (c) must work with the borrower to

continue or reestablish the existing homeowner's policy; (d) shall continue to make payments if there is a lapse in payment and the payments are escrowed regardless of homeowner payment; and (e) must purchase the force-placed insurance at a commercially reasonable price. *See* Consent Judgment, *United States of America v. Bank of America Corp*., No. 1:12-cv-00361-RMC (D.D.C. Apr. 14, 2012) (ECF No. 14 Section VII).

158. The Consumer Financial Protection Bureau issued two notices on proposed rules "to protect homeowners from surprises and costly mistakes by their mortgage servicers," which included specific provisions for "avoiding costly force-placed insurance." *See* Consumer Financial Protection Bureau Proposes Rules to Protect Mortgage Borrowers" available at http://www.consumerfinance.gov /newsroom/consumer-financial-protection-bureau-proposes-rules-to-protect-mortgage-borrowers/ (last visited Mar. 14, 2014).

159. These rules became final on January 17, 2013. The new regulations prohibit servicers of federally regulated mortgage loans from force-placing insurance unless a servicer has a reasonable basis to believe that the borrowers insurance has lapsed. Servicers must provide notice of force-placement three times at 45, 30 and 15 days in advance of issuing a policy. Moreover the charge for any service that was actually performed must "bear a reasonable relationship to the servicers cost of providing the service. A servicer cannot force-place insurance if

the borrower has an existing escrow account if the servicer can continue the existing insurance, even if the servicer must advance the funds for the insurance." *See* Summary of Final Mortgage Servicing Rules dated January 17, 2013 available at http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-proposes-rules-to-protect-mortgage-borrowers (last visited Mar. 14, 2014). *See also*, 12 CFR 1024.

160. In its March 6, 2012 RFP, Fannie Mae stated that it had conducted an "extensive internal review" of the lender-placed insurance process, and found that the process "can be improved through unit price reductions and fee transparency to the benefit of both the taxpayers and homeowners." In particular, Fannie Mae made the following observations:

- "Lender Placed Insurers often pay commissions/fees to Servicers for placing business with them. The cost of such commissions/fees is recovered in part or in whole by the Lender Placed Insurer from the premiums[.]"
- "The existing system may encourage Servicers to purchase Lender Placed Insurance from Providers that pay high commissions/fees to the Servicers and provide tracking, rather than those that offer the best pricing and terms . . . . Thus, the Lender Placed Insurers and Servicers have little incentive to hold premium costs down."
- "[M]uch of the current lender placed insurance cost borne by Fannie Mae results from an incentive arrangement between Lender Placed Insurers and

> Servicers that disadvantages Fannie Mae and the homeowner."

See Fannie Mae RFP, Exhibit 19.

161. Fannie Mae stated that it sought to "[r]estructure the business model to align Servicer incentives with the best interest of Fannie Mae and homeowners." Among other things, Fannie Mae sought to "[e]liminate the ability of Servicers to pass on the cost of commissions/fees to Fannie Mae" and to "[s]eparate the commissions and fees for Insurance Tracking Services from the fees for Lender Placed Insurance to ensure transparency and accountability." *Id.* at 3.

162. On March 25, 2013, the Federal Housing Finance Agency ("FHFA") issued a Notice regarding Lender Placed Insurance. This Notice "sets forth an approach to address certain practices relating to lender placed insurance that the [FHFA] considers contrary to prudent business practices [and] to appropriate administration of Fannie Mae and Freddie Mac (the Enterprises) guaranteed loans," and which result in "litigation and reputational risks." *See* Federal Housing Finance Agency, No. 2013-05 Lender Placed Insurance, Terms and Conditions attached as Exhibit 38.

163. FHFA prohibits:

> Certain Sales Commissions. The Enterprises shall prohibit sellers and servicers from receiving, directly or indirectly, remuneration associated with placing coverage with or maintaining placement with particular insurance providers.

The FHFA acknowledged:

- "Reportedly, premiums for lender placed insurance are generally double those for voluntary insurance and, in certain instances, significantly higher." *Id.* at 2.

- "[T]he multiples involved may not reflect claims experience..." *Id.*

- "Loss ratios for lender placed insurance are significantly below those for voluntary hazard insurance and some states have required or have considered rate reductions of 30 percent or more." *Id.*

- "Concerns about lender placed insurance costs, compensation and practices have been raised by the National Association of Insurance Commissioners, state regulators, the Consumer Financial Protection Bureau, state attorneys general and consumer organizations. Generally, the focus has centered on excessive rates and costs passed on to borrowers, as well as commissions and other compensation paid to servicers by carriers. In order to keep lender placed insurance costs to the Enterprises as low as possible, practices that provide incentives for and do not deter higher costs should be avoided." *Id.* at 3.

I. **PHH's Policies and Practices Artificially Inflate The Amounts Charged to Borrowers for Force-Placed Insurance**

164. As American Banker observed, "[w]hile servicers that partner with force-placed insurers customarily perform little of the work in monitoring their portfolios for lapses and writing policies, payments to them are simply a cost of

doing force-placed business." *See* Ties to Insurers, *supra*. These costs are ultimately paid by the borrowers.

165. Industry analysts have opined that referral fees, commissions and other payments to bank affiliates explain why insurers' overhead, which is ultimately passed on to borrowers, is higher, implying paydays for servicers amounting to hundreds of millions of dollars per year. *See, e.g.*, Birnbaum NYDFS Testimony.

166. The charges that PHH chose to impose upon borrowers for force-placed insurance also unlawfully included the cost of portfolio monitoring and tracking services for PHH's entire loan portfolio, the cost of which was then passed onto the small percentage of borrowers who properties were force placed. *See id.*

167. The charges assessed to borrowers whose hazard insurance was force-placed by the Assurant and/or one its affiliates also included unlawfully the cost of payments to PHH in the form of expense reimbursements.

168. PHH's practices, acting in concert with the Assurant and/or one its affiliates, of profiting from the force-placement of insurance policies tend to keep charges for force-placed insurance artificially inflated over time because a percentage of the charges assessed to borrowers are not actually being paid to cover actual risk. Instead, PHH and the Assurant and/or one its affiliates conspired

to assess charges unrelated to the legitimate protection of lender's interest in the property of borrowers whose policies were force-placed. Amounts paid to servicers and their affiliates as below-cost portfolio monitoring and tracking services and expense reimbursements have become a part of the cost of doing business for force-placed insurance providers.

169. PHH's conduct, in concert with that of the Assurant and/or one its affiliates, has threatened and, indeed, stifled competition. As the NAIC recently opined when asked whether the pricing in the area of force-placed insurance is competitive, servicers have "no incentive to select a competitively priced product, but instead would be more concerned with selecting one they know best protects the bank's interests or one where they are provided with an incentive or inducement to enter into the transaction." *See* Ties to Insurers, *supra*.

170. Indeed, industry analysts have opined that referral fees, commissions and other payments to bank affiliates explain why insurers' overhead, which is ultimately passed on to borrowers, is higher – implying paydays for servicers, such as PHH, amount to hundreds of millions of dollars per year. *Id.*

V. PHH ENGAGED IN MAIL AND WIRE FRAUD

171. The illegitimate "expense reimbursement" and borrower-subsidized outsourced loan servicing scheme constitutes mail and/or wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

A. The Erroneous Notice and Bills to Borrowers

172. As PHH's insurance tracking subcontractor, Assurant Specialty Property issues standardized "cycle letters" to borrowers printed on the servicer's letterhead demanding evidence of insurance and warning that force-placed insurance will be purchased if such evidence is not forthcoming.

173. As John Frobose, Assurant Specialty Property, Lending Solutions, President, explained, the letter cycle process typically includes three steps: (1) at the date of the expiring voluntary policy, ASIC sends a letter informing the homeowner that the servicer does not have proof of the required coverage; (2) 30 days after the expiration of the voluntary policy, ASIC sends a letter stating the lender or servicer does not have proof of insurance and warning that a force-placed policy will be purchased if proof is not received within 24 to 30 days; and (3) 60 days after the expiration of the voluntary policy, a letter is a sent informing the homeowner that the force-placed policy has been placed and provides the details of that policy. *See* ASIC NYDFS Testimony, at 4-5.

174. Here, Assurant Specialty Property and PHH issued a Notice of Insurance Requirement to Finch on October 26, 2012 (*see* Ex. 23), and a second notice on November 30, 2012 (*see* Ex. 24), indicating that PHH has "secured temporary insurance coverage in the form of a sixty day binder" through ASIC. Borrowers also receive standardized monthly billing statements from PHH. The

notices and billing statements are false, fraudulent, and reasonably calculated to deceive persons of ordinary prudence and comprehension.

175. The notices do not disclose that borrowers are being charged amounts paid to PHH in exchange for PHH agreeing to use Assurant Specialty Property as PHH's exclusive force-placed hazard insurance provider, or that force-placed borrowers are being charged costs associated with PHH's routine loan servicing functions.

176. Additionally, the notices falsely state that, if force-placement should occur, borrowers' escrow accounts will be charged the premium or cost of insurance when, in fact, those borrowers' escrow accounts are also charged for loan servicing, and amounts disguised as "expense reimbursements," below-cost portfolio monitoring, and/or the cost associated with PHH's routine loan servicing functions.

177. The notices and statements issued to borrowers are fraudulent in themselves and are also designed to lull borrowers into believing that no fraudulent scheme is occurring and that Defendants are simply exercising PHH's rights under borrowers' mortgage loan agreements. By lulling Plaintiffs and the Classes into a false sense of security, the notices and statements are designed to make it less likely that borrowers will object to the improper charges, complain to the authorities, or bring lawsuits.

B. The Scheme Constitutes "Honest Services" Fraud

178. The scheme alleged herein constitutes "honest services" fraud in violation of 18 U.S.C. § 1346.

179. The wire fraud and mail fraud statutes make it a crime to, *inter alia*, devise a scheme to deprive another of "honest services."

180. The mail fraud statute reads in relevant part as follows: "Whoever, having devised …any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises …[uses the mails in furtherance of the scheme shall be punished by imprisonment or fine or both]." 18 U.S.C. § 1341.

181. The wire fraud statute is in relevant respects identical. *See* 18 U.S.C. § 1343.

182. In *McNally v. United States*, 483 U.S. 350 (1987), the Supreme Court interpreted this statutory language to apply only to deprivations of property and not to encompass "the right to have [one's] affairs conducted honestly." *Id*. at 352. In response to *McNally*, Congress broadened the scope of the mail and wire fraud statutes by enacting 18 U.S.C. § 1346. That section provides: "For the purposes of this chapter [including § 1341 and § 1343], the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right to honest services." 18 U.S.C. § 1346.

183. Through 18 U.S.C. § 1346, Congress brought scheme to deprive another of honest services within the scope of the mail and wire fraud statutes.

184. At all relevant times, PHH owed legal duties to render services to loan owners. In all cases, those duties included maintenance of continuous hazard insurance coverage on secured properties. The values of PHH's services depended on PHH's rendering those services in an honest manner. Nevertheless, PHH misused its position as the servicer of the loans to extract bribes and kickbacks from Assurant. PHH thereby breached its obligation to render "honest services" to loan owners. PHH and Assurant Specialty Property devised a scheme or artifice to defraud loan owners of their intangible right to PHH's honest services through kickbacks.

185. The wire and mail fraud violations of PHH, including "honest services" fraud, constitute predicate acts under RICO. The pattern of racketeering activity alleged herein has proximately harmed Plaintiffs and the Classes.

VI. CLASS ACTION ALLEGATIONS

186. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), (b)(2) and/or (b)(3) on behalf of the following Classes for the maximum time period allowable by law:

> a nationwide class consisting of all persons who, within the applicable statute of limitations, have or had a residential mortgage loan or line of credit serviced by PHH, and had hazard insurance force-placed upon the

> secured property through Assurant, Inc. or an Assurant, Inc. subsidiary (the "Nationwide Class"); or
>
> a California subclass consisting of all persons who, within the applicable statute of limitations, have or had a residential mortgage loan or line of credit serviced by PHH, secured by property located in the State of California and had hazard insurance force-placed upon the secured property through Assurant, Inc. or an Assurant, Inc. subsidiary (the "California Class"); or
>
> an Illinois subclass consisting of all persons who, within the applicable statute of limitations, have or had a residential mortgage loan or line of credit serviced by PHH, secured by property located in the State of Illinois and had hazard insurance force-placed upon the secured property through Assurant, Inc. or an Assurant, Inc. subsidiary (the "Illinois Class");

The Nationwide Class, California Class, and Illinois Class are referred to collectively as the "Classes." The California Class and Illinois Class are collectively referred to as the "State Subclasses."

187. The Classes exclude Defendant and any entity in which Defendant has a controlling interest, and their officers, directors, legal representatives, successors and assigns. The Classes also exclude government entities and judicial officers that have any role in adjudicating this matter.

188. The Classes are each so numerous that joinder of all members is impracticable.

189. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

190. Plaintiffs' claims are typical of the claims of the Classes.

191. There are questions of law and fact common to the Classes, the answers to which will advance the resolution of the claims of all of the Classes' members and that include, without limitation:

- The nature, scope and implementation of PHH's unlawful, improper and fraudulent acts;
- Whether PHH maintained a policy of referring force-placed insurance business to insurers pursuant to pre-arranged agreements;
- Whether PHH received below-cost portfolio monitoring and tracking services or any other payments or things of value from its exclusive force-placed insurance provider, Assurant and/or its affiliates;
- Whether PHH participated in arrangements that involved kickbacks;
- Whether PHH received expense reimbursements from Assurant, Inc. and/or its affiliates and misrepresented those reimbursements to borrowers;
- Whether PHH received financial benefits from the force-placed insurance providers in the form of insurance monitoring, tracking and processing services;
- Whether PHH disguised amounts charged to borrowers in order to permit PHH to collect amounts from force-placed borrowers in excess of what PHH was entitled to collect from those borrowers;
- Whether PHH improperly backdated force-placed insurance policies;
- Whether PHH placed unnecessary or duplicative force-placed insurance;

- Whether PHH's conduct constituted an unconscionable business practice;
- Whether PHH breached the implied covenant of good faith and fair dealing in Plaintiffs' and members of the Classes' mortgages or loan contracts;
- Whether PHH breached the terms of Plaintiffs' and members of the Classes' mortgages or loan contracts;
- Whether PHH's business practices alleged herein are deceptive acts or practices;
- Whether PHH breached its fiduciary duty to Plaintiffs and members of the Classes;
- Whether PHH conspired with Assurant Specialty Property in furtherance of the unlawful acts alleged herein;
- Whether PHH engaged in mail and wire fraud;
- Whether PHH engaged in a pattern of racketeering activity;
- Whether the scheme described between PHH and Assurant Specialty Property is an enterprise within the meaning of 18 U.S.C. § 1961(4);
- Whether the scheme described between PHH and Assurant Specialty Property resulted in injury to Plaintiffs' and the Classes' business or property;
- Whether PHH and Assurant Specialty Property misrepresented the amounts charged to borrowers as force-placed insurance;
- Whether PHH's conduct constituted an unfair, unlawful or fraudulent business practice in violation of the California Business and Professions Code, §§17200 *et seq*.;
- Whether PHH is liable to Plaintiffs and the Classes for damages, and if so, the measure of such damages; and

- Whether Plaintiffs and the Classes are entitled to declaratory, injunctive, restitutionary and other equitable relief.

192. These and other questions of law and fact are common to the Classes and predominate over any questions affecting only individual members of the Classes.

193. The same common issues predominate with respect to all Class members, regardless of whether their loans were originated by or merely serviced by PHH.

194. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have no claims antagonistic to those of the Classes. Plaintiffs have retained counsel competent and experienced in complex nationwide class actions, include all aspects of this litigation. Plaintiffs' counsel will fairly, adequately and vigorously protect the interests of the Classes.

195. Class action status is warranted under Rule 23(b)(1)(A) because the prosecution of separate actions by or against individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Classes, which would establish incompatible standards of conduct for PHH.

196. Class action status is also warranted under Rule 23(b)(1)(B) because the prosecution of separate actions by or against individual members of the Classes would create a risk of adjudications with respect to individual members of the

Classes which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

197. Class action status is also warranted under Rule 23(b)(2) because PHH has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

198. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to the members of the Classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. §§ 1961-1968

199. Plaintiffs hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

200. Plaintiffs, each member of the Classes, and PHH are "persons," as that term is defined in 18 U.S.C. §§ 1961(3) and 1962(c).

The Enterprise

201. For purposes of this claim, the RICO "enterprise" is an association-in-fact, as the term is defined in 18 U.S.C. §§ 1961(4) and 1962(c), consisting of PHH, and Non-Parties Affiliated with the RICO Enterprise identified above, including their respective officers, directors, employees, agents and direct and indirect subsidiaries (the "Enterprise"). The Enterprise is separate and distinct from the persons that constitute the Enterprise.

202. The Enterprise was primarily managed by PHH in conjunction with Assurant Specialty Property, an unincorporated Assurant, Inc. operating segment currently headed by Gene Mergelmeyer, (Assurant, Inc. Executive Vice President, and President & CEO of Assurant Specialty Property) and John Frobose (President, Lending Solutions, Assurant Specialty Property) that organized the fraudulent scheme and procured the involvement of PHH.

203. As the parent company, Assurant, Inc. was able to direct and coordinate the actions of its subsidiaries ASIC, SGIC and Voyager to effectuate the scheme. Specifically, Assurant, Inc. directed and coordinated the implementation of: (1) the "expense reimbursement" arrangement facilitated through HazPlus Administration Agreements, and (2) outsourcing agreements that enabled PHH and Assurant Specialty Property to defraud borrowers into subsidizing portfolio

tracking services and paying expenses associated with PHH's routine loan servicing functions.

204. Due to the complexity and scale of the RICO conspiracy, the fraud could not have been accomplished solely through a single entity. Accordingly, Assurant, Inc. acted through its Assurant Specialty Property operating segment to direct and coordinate the operations of its subsidiaries.

205. Furthermore, because the RICO conspiracy involved not just the provision of insurance, but also involved the provision of outsourced loan servicing functions, Assurant, Inc. was able to utilize the vast workforce falling under the Assurant Specialty Property umbrella without specifically designating between insurance functions and outsourced loan servicing functions. For example, upon information and belief, Assurant, Inc. coordinated and directed the activities of its subsidiaries so that expenses incurred in connection with outsourced loan servicing activities performed by ASIC employees were included in amounts charged to borrowers with force-placed insurance written on SGIC paper.

206. The companies and individuals that constitute the Enterprise were associated for the common purpose of defrauding borrowers and loan owners by overcharging them for force-placed insurance with respect to loans serviced by PHH. The purpose thereof was to induce borrowers to pay for loan servicing costs

for which PHH was separately compensated, and additional amounts disguised as "expense reimbursements" that served no *bona fide* purpose but were designed to funnel payments to PHH in exchange for retaining Assurant Specialty Property as PHH's exclusive force-placed insurance provider.

207. At all relevant times, the Enterprise was engaged in and its activities affected interstate commerce. The proceeds of the Enterprise were distributed to its participants, PHH, Assurant, Inc., ASIC and SGIC.

208. The Enterprise operated from at least 1999. Its operation is ongoing. The Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which the participants engage.

The Pattern of Racketeering Activity

209. At all relevant times, in violation of 18 U.S.C. § 1962(c), Assurant Specialty Property and PHH conducted the affairs of the Enterprise through a pattern of racketeering activity as defined in RICO, 18 U.S.C. § 1961(5) by virtue of the conduct described in this complaint. PHH and Assurant Specialty Property have conducted the affairs of the Enterprise and participated in the operation and management thereof at least through the following conduct:

a) PHH entered into servicing agreements with owners and/or holders of whole loans. The servicing agreements provide, *inter alia*, that PHH is obligated to maintain continuous hazard insurance on the secured properties.

b) PHH then entered into agreements with Assurant Specialty Property, through ASIC, SGIC and Voyager, in which PHH agreed to use Assurant Specialty Property as its sole and exclusive provider of force-placed hazard insurance.

c) In exchange for PHH agreeing to use Assurant Specialty Property as its sole and exclusive force-placed hazard insurance providers, Assurant Specialty Property agreed to funnel a portion of the costs of the force-placed insurance charges back to PHH through "expense reimbursements.

d) However, these expense reimbursements are not legitimate, but instead were designed solely as a mechanism to funnel money back to PHH as a *quid pro quo* for using Assurant Specialty Property as its exclusive force-placed hazard insurance provider.

e) The amounts disguised as "expense reimbursements" were in reality expenses associated with PHH's routine loan servicing functions – not expenses separately incurred in entering into an agreement with Assurant Specialty Property.

f) These payments were disguised as "expense reimbursement" to hide the true nature of these payments.

g) In exchange for PHH agreeing to use Assurant Specialty Property as its sole and exclusive force-placed hazard insurance providers, Assurant Specialty Property further agreed to funnel a portion of the force-placed insurance charges back to PHH through the provision of below-cost portfolio monitoring and other outsourced loan servicing functions.

h) PHH paid Assurant Specialty Property below-market rates for these services, the actual cost of which Assurant Specialty Property then recoups through the amounts PHH charges to borrowers and pays Assurant Specialty Property.

i) As a *quid pro quo* for these payments and benefits, PHH continues to procure force-placed insurance from Assurant Specialty Property and continues to outsource insurance tracking to Assurant Specialty Property.

j) PHH retains these amounts for itself, billing and charging borrowers for both force-placed insurance and the cost of these outsourcing activities. These amounts reduce PHH's costs, but those savings are not passed through to the borrowers. PHH then charges borrowers' escrow accounts for these amounts.

k) Additionally, when borrowers make their mortgage payments, PHH subtracts the inflated amounts billed for force-placed insurance off the top before applying any balance to principal, interest or other charges.

l) Because amounts paid for force-placed insurance constitute "servicing advances," PHH's "servicing advances" are improperly inflated by the failure to pass through the rebates/kickbacks to borrowers. PHH reimburses itself from the proceeds of the loans based on the inflated servicing advances.

m) Assurant Specialty Property and PHH conspired to calculate the amounts purportedly due and issue notices to borrowers fraudulently setting forth the balances owed for force-placed insurance based on the full prices of charges without subtracting the illicit payments.

n) Additionally, the notices falsely describe the balances as reflecting the price of the insurance. In fact, the costs of the coverage are less than the stated balances because of the illicit payments artificially inflate the amount charged to borrowers.

o) Moreover, PHH "advanced" less than the stated balances because the illicit payments effectively reduced the amounts advanced.

p) Furthermore, under borrowers' loan agreements, PHH is only entitled to reimbursements for its costs that are related to the placement of the insurance. The amounts demanded are extra-contractual, exceeding the amounts legally due under borrowers' mortgage loan agreements, because they are in excess of PHH's costs. PHH issues statements to borrowers incorporating the fraudulently inflated force-placed insurance charges.

q) The notices and statements are designed to lull borrowers into believing that no fraudulent scheme is occurring and that PHH and

Assurant Specialty Property are simply exercising PHH's rights under borrowers' mortgage loan agreements. PHH and Assurant Specialty Property send these unremarkable statements through the mail to lull Plaintiffs and the Classes into a false sense of security, making it less likely that borrowers will object to the improper charges, complain to the authorities, or bring lawsuits.

r) Correspondence between PHH and Assurant Specialty Property were further exchanged by means of wire communication in interstate commerce writings.

s) Additionally, amounts extracted from borrowers by way of the fraudulent scheme were exchanged between PHH and Assurant by way of wire transfer.

The Predicate Acts of Mail and Wire Fraud Including "Honest Services" Fraud

210. The pattern of racketeering activity consisted of mail and/or wire fraud in violation of 18 U.S.C. §§ 1341 and 1343. Specifically, PHH and Assurant Specialty Property engaged in an intentional scheme or artifice to defraud borrowers whose mortgages were serviced by PHH and to obtain money or property from said borrowers and loan owners through false or fraudulent pretenses, representations and promises.

211. The conduct of PHH and Assurant Specialty Property in violation of the mail and wire fraud statutes included, without limitation, a fraudulent scheme to deprive the loan owners of their intangible rights to PHH's "honest services" through bribes and kickbacks in violation of 18 U.S.C. § 1346. As alleged above, PHH owed a contractual obligation to render residential mortgage loan servicing

duties to the loan owners. PHH owed a duty to render those services in an honest manner. Nevertheless, PHH conspired with Assurant Specialty Property to extract payments from borrowers over and above amounts those borrowers were obligated to pay. PHH thereby breached its obligations to render "honest services." PHH and Assurant intentionally and willfully conspired and participated in PHH's "honest services" violations. Specifically, each of the members of the Enterprise participated in devising and carrying out the scheme through the activities alleged above.

212. The bribes, kickbacks, false statement and omissions, and mail and/or wire communications of PHH and Assurant in furtherance of the scheme constituted predicate acts of mail and/or wire fraud.

213. It was reasonably foreseeable to PHH and Assurant that the mails and/or wires would be used in furtherance of the scheme, and the mails and/or wires were in fact used to further and execute the scheme.

214. The nature and pervasiveness of the Enterprise necessarily entailed frequent wire and/or mail transmissions. The precise dates of such transmissions cannot be alleged without access to the books and records of PHH and Assurant. Nevertheless, Plaintiffs can allege such transmissions generally.

215. For the purpose of furthering and executing the scheme, PHH and Assurant Specialty Property regularly transmitted and caused to be transmitted by

means of wire communication in interstate commerce writings, electronic data and funds, and also regularly caused matters and things to be placed in post offices or authorized depositories, or deposited or caused to be deposited matters or things to be sent or delivered by private or commercial interstate carrier. For example:

a) PHH and Assurant issued materially false and misleading notices relating to force-placed insurance to borrowers via mail;

b) PHH and Assurant also communicated to borrowers with respect to force-placed insurance issues by telephone;

c) PHH issued monthly statements incorporating the falsely overstated force-placed policy charges to borrowers via mail and/or wire;

d) PHH issued materially false and misleading remittance reports, monthly servicing reports and annual certifications of compliance to loan owners via the mail and/or electronically via wire;

e) PHH received force-placed insurance payments from borrowers via mail and/or wire;

f) PHH transmitted a portion of force-placed premiums to Assurant Specialty Property via mail and/or wire; and

g) On information and belief, Assurant Specialty Property transmitted funds to and from the Assurant, Inc. subsidiaries via mail and/or wire.

216. PHH and Assurant Specialty Property utilized the mails and/or wires for the purpose of furthering and executing the scheme. PHH, with assistance from Assurant Specialty Property, issues standardized notices to borrowers each time hazard insurance is force placed.

217. For example, PHH issued a Notice of Insurance Requirement to Finch on October 26, 2012, and a Notice of Temporary Insurance Coverage on November 30, 2012. Borrowers also received standardized monthly billing statements from PHH.

218. PHH also issued similar correspondence to the Werners dated December 1, 2012 and September 23, 2012.

219. These letters contained both affirmative misrepresentations about the nature of the charges, and were also intended to deceive borrowers into believing that the charges assessed to their account were legitimate. For example, the above listed correspondence included a representation that: "***We have incurred expenses in placing this policy***. Such expenses are recoverable by us as stated in your loan documents." *See* e.g. Exs. 23, 26, 32, 35 (emphasis added). However, the expenses actually recovered by PHH were not associated with the placement of insurance.

220. Indeed, PHH was already "reimbursed" by Assurant Specialty Property for performing these loan servicing functions, and was additionally provided other outsourcing functions at below-market rates.

221. Plaintiffs and other borrowers within the Classes also received standardized monthly billing statements from PHH. The identification of amounts charged to borrowers for force-placed insurance on these billing statements also

played a role in furthering the overall scheme to defraud, as it allowed PHH to collect unauthorized amounts from borrowers.

222. These are only examples of certain instances of the pattern of racketeering activity consisting of mail and/or wire fraud violations engaged in by PHH and Assurant Specialty Property. Each electronic and/or postal transmission was incident to an essential part of the scheme. As detailed above, PHH and Assurant Specialty Property engaged in similar activities with respect to each member of the Classes.

223. Each such electronic and/or postal transmission was incident to an essential part of the scheme.

224. Additionally, each such electronic and/or postal transmission constituted a predicate act of wire and/or mail fraud in that each transmission furthered and executed the scheme to defraud borrowers.

225. PHH and Assurant Specialty Property each participated in the scheme to defraud knowingly, willfully and with a specific intent to defraud borrowers into paying and/or incurring falsely inflated, unauthorized charges in connection with force-placed insurance policies.

226. The predicate acts of mail and wire fraud constitute a pattern of racketeering activity as defined in 18 U.S.C. § 1961(5). The predicate acts were not isolated events, but related acts aimed at the common purpose and goal of

defrauding borrowers and loan owners to pay and incur the falsely inflated, unauthorized charges with respect to force-placed insurance and thereby enable PHH and Assurant to reap illicit profits.

227. PHH and Assurant were common participants in the predicate acts. Their activities amounted to a common course of conduct, with similar pattern and purpose, intended to deceive borrowers.

The Predicate Acts of Extortion, Attempted Extortion, and Conspiracy to Commit Extortion

228. The pattern of racketeering activity also consisted of extortion, attempted extortion, and conspiracy to commit extortion in violation of the Hobbs Act, 18 U.S.C. § 1951(a).

229. As alleged above, the mortgage loan agreements of Plaintiffs and the Class authorize the lender to charge borrowers the costs of any force placed insurance placed on their property. Nothing in the agreements authorizes the lender to charge any amount in excess of the lender's cost. Pursuant to the scheme alleged herein, however, Plaintiffs and the Class were charged amounts in excess of PHH's costs with respect to the borrower's property. The amounts that PHH received reduced the amount that should be billed to borrowers. Nevertheless, PHH charged borrowers based on the full *purported* price of the force-placed insurance scheme.

230. At all relevant times, by virtue of the conduct alleged above, PHH and Assurant Specialty Property induced, and attempted and conspired to induce, Plaintiffs and the Classes to pay these amounts, which were in excess of the amounts necessary, reasonable or appropriate to protect the lender's security interest in the property and therefore not due under their respective mortgage loan agreements, through the wrongful use of actual or threatened fear of economic harm. Specifically, PHH and Assurant Specialty Property used, and attempted and conspired to use, the actual or threatened fear of foreclosure to induce Plaintiffs and the Classes to pay the improper charges imposed.

231. As alleged above, the mortgage loan agreements of Plaintiffs and the Classes entitled PHH to charge borrowers for force-placed insurance. The mortgage loan agreements provide, in words or substance, that any force placed insurance charges "shall become additional debt of Borrower secured by this Security Instrument . . . ," and that the lender or its authorized servicer is entitled to foreclose to collect any unpaid amounts due.

232. The notices that PHH and Assurant Specialty Property issued to Plaintiffs and the Classes in furtherance of the scheme explicitly warned that the force-placed insurance charges imposed are the borrowers' responsibility, and that such charges would be included in any statements going forward, and that they

would seek to collect the insurance charges by adding it borrowers' monthly mortgage payment.

233. Mortgage loan servicers routinely collect unpaid force-placed insurance charges through foreclosure. Superintendent Lawsky found that lender-placed insurance charges frequently "push distressed homeowners over the foreclosure cliff." *See* Ex. 3.

234. By virtue of the facts alleged above, these communications were objectively designed to inform Plaintiffs and the Class: (i) that PHH possessed the power to collect any unpaid force-placed insurance charges through foreclosure; and (ii) that PHH would exploit that power and foreclose if borrowers failed to pay the force-placed insurance charges that were imposed.

235. Additionally, by virtue of the facts alleged above, PHH and Assurant Specialty Property agreed to engage in the acts alleged above, and intentionally performed acts, including, without limitation, the acts alleged above, that, under the circumstances as PHH and Assurant Specialty Property believed them to be, constituted violations of the Hobbs Act and/or substantial steps in the commission of a Hobbs Act violation. Moreover, PHH and Assurant Specialty Property thereby affected and intended to affect interstate commerce.

236. Plaintiffs and the Class received nothing of value in exchange for payment of the excess force-placed insurance charges.

Injury to Plaintiffs and the Classes

237. As a direct and proximate result of violations of 18 U.S.C. § 1962(c) by PHH, Plaintiffs and the Classes have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c). Plaintiffs and the Classes paid and/or were charged falsely inflated, unauthorized insurance charges by reason, and as a direct, proximate and foreseeable result, of the scheme alleged.

238. Moreover, overcharging Plaintiffs and the Classes for force-placed insurance was an integral and necessary part of the scheme, as those overcharges constituted purported servicing advances that PHH was entitled to recoup from the proceeds of the loans.

239. Under the provisions of 18 U.S.C. § 1964(c), PHH is jointly and severally liable to Plaintiffs and the Classes for three times the damages sustained, plus the costs of bringing this suit, including reasonable attorneys' fees.

COUNT TWO

VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1962(d) - RICO

240. Plaintiffs hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

241. RICO, 18 U.S.C. § 1962(d), provides that it "shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."

242. PHH has violated 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c) with Assurant Specialty Property.

243. As set forth in Count Three, above, at all relevant times, Plaintiffs and the Classes were "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(c).

244. As also set forth above, at all relevant times, defendant PHH was a "person" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(d).

245. PHH and Assurant Specialty Property formed the previously alleged association-in-fact Enterprise, within the meaning of 18 U.S.C. § 1961(4), for the common purpose of fraudulently overcharging borrowers and loan owners with respect to force-placed insurance. The purpose thereof was to induce borrowers and loan owners to pay or incur fraudulently inflated, unauthorized charges with respect to force-placed insurance.

246. The Enterprise was engaged in, and its activities affected interstate commerce within the meaning of 18 U.S.C. § 1962(c).

247. As set forth in Count Three, above, PHH conducted or participated, directly or indirectly, in the conduct of the Enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5) in violation of 18 U.S.C. § 1962(c).

248. PHH and Assurant Specialty Property were each associated with the Enterprise and agreed and conspired to violate 18 U.S.C. § 1962(c), and agreed to conduct and participate, directly or indirectly, in the conduct of the affairs of the Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(d).

249. PHH and Assurant Specialty Property committed and caused to be committed a series of overt acts in furtherance of the conspiracy and to affect the objects thereof.

250. As a direct and proximate result of the overt acts and predicate acts of in furtherance of violating 18 U.S.C. §1962(d) by conspiring to violate 18 U.S.C. § 1962(c), Plaintiffs and the Classes have been and are continuing to be injured in their business and property in an amount to be determined at trial. Such injuries include, but are not limited to, fraudulently inflated charges with respect to force-placed insurance, as a direct, proximate and foreseeable result of the scheme alleged herein.

251. Under the provisions of 18 U.S.C. § 1964(c), the PHH is jointly and severally liable to Plaintiffs and the Classes for three times the damages sustained, plus the costs of bringing this suit, including reasonable attorneys' fees.

COUNT THREE

BREACH OF CONTRACT, INCLUDING BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

252. Plaintiffs hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

253. PHH has originated and/or serviced loans evidenced by substantially similar standard form notes, form mortgage contracts and form deeds of trust.

254. To the extent that the mortgage contracts of Plaintiffs and the Classes permitted PHH to unilaterally "force-place" insurance, PHH was contractually permitted to do so in a reasonable manner, *i.e.*, only to the extent reasonably necessary to protect the mortgagee's interest in the secured property.

255. Nonetheless, PHH imposed or collected amounts that exceeded the amounts reasonable, necessary or appropriate to protect the mortgagee's interest in the property. Such practices have included, without limitation: (a) requiring borrowers to pay for insurance coverage that exceeds the amount necessary to protect the mortgagee's interest in the secured property; (b) backdating force-placed insurance policies, thus requiring borrowers to pay for retroactive coverage despite the fact that time has lapsed and no loss occurred during the lapsed period; and (c) requiring borrowers to pay for forced-placed insurance policies despite the existence of a Lender's Loss Payable Endorsement or standard mortgage clause that already protects the lender's interest in the property.

256. Specifically, Paragraph 9 of both the Finch Mortgage and the Werner Mortgage includes a limiting provision providing that in the event the borrower fails to maintain hazard insurance on their properties, the lender "may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property." *See* Ex. 11, at ¶ 9 (Finch Mortgage) ("Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property"); Ex. 14 , at ¶9 (Werner Mortgage) (same).

257. While the limiting provision afforded the PHH the discretion to force-place insurance on Plaintiffs' properties under the insurance provision contained in Paragraph 5 of their mortgage agreements, PHH failed to act in a "reasonable" or "appropriate" manner.

258. Amounts charged to Plaintiffs and Class Members that included illicit "Expense Reimbursement" and outsourcing costs were attributable to PHH's routine loan servicing functions – they were not the cost of insurance.

259. By force-placing insurance in the manner described herein, PHH has breached its explicit contractual obligations owed to Plaintiffs and the Classes.

260. As a direct, proximate, and legal result of the aforementioned breach of the express terms of the mortgage contracts, Plaintiffs and the Classes have suffered damages and are entitled to the relief sought herein.

261. In addition, every contract contains an implied covenant of good faith and fair dealing.

262. The mortgage contracts of Plaintiffs and the Classes each contained an implied covenant of good faith and fair dealing, pursuant to which PHH was bound to exercise the discretion afforded it under the mortgage contract in good faith and to deal fairly with Plaintiffs and the Classes in that regard.

263. To the extent that the mortgage contracts of Plaintiffs and the Classes permitted PHH to unilaterally "force-place" insurance, PHH was obligated not to exercise its discretion by acting in bad faith (for its own financial gain for the purposes of maximizing profits at borrowers' expense).

264. PHH breached its duties of good faith and fair dealing in at least the following respects, among others:

- Failing to make any effort to maintain borrowers' existing insurance policies and, instead – for the sole purpose of maximizing its own profit – forcing borrowers to pay for insurance policies from providers of PHH's choice. These policies needlessly came with substantially greater premiums, while providing less coverage than borrowers' existing policies;

- Abusing its discretion to choose a force-placed insurance provider and policy in bad faith and in contravention of the parties' reasonable expectations, by purposefully forcing borrowers to pay for both; (i) the actual costs of protecting the mortgagee's interest in the property; and (ii) the cost of the payments and other things of value PHH accepted from the force-placed insurance provider;

- Failing to seek competitive bids on the open market or otherwise making good faith efforts to reasonably exercise its discretion and instead selecting force-placed insurance providers according to pre-arranged secret deals whereby the insurance policies are continually purchased at excessive costs through the same companies in order to produce additional profits for PHH;

- Assessing excessive, unreasonable, and unnecessary insurance policy premiums against Plaintiffs and the Classes and misrepresenting the reason for the cost of the policies;

- Collecting a portion of the force-placed charges assessed to Plaintiffs and the Classes and not passing that portion on to the borrower, thereby creating the incentive to seek the highest-priced premiums possible;

- Backdating force-placed insurance policies to cover time periods which already passed and for which there was no risk of loss;

- Misrepresenting in its force-placed insurance notices that borrowers were obligated to pay for backdated insurance coverage for periods during which the lender had no risk of loss due to the passing of time or the lender's coverage under a Lender's Loss Payable Endorsement or "standard mortgage clause;"

- Procuring force-placed insurance policies to cover time periods during which the mortgagee is already covered pursuant to a Lender's Loss Payable Endorsement or "standard mortgage clause;" and

- Failing to provide borrowers with any meaningful opportunity to opt out of having their force-placed insurance policies provided by an insurer with whom PHH has an agreement to pay monies or provide other things of value to PHH in return for being an exclusive provider of force-placed hazard insurance for PHH's portfolio of loan.

265. As a direct, proximate, and legal result of the aforementioned breaches of the covenant of good faith and fair dealing, Plaintiffs and the members of the Classes have suffered damages in an amount to be proven at trial.

COUNT FOUR

BREACH OF FIDUCIARY DUTY/MISAPPROPRIATION OF FUNDS HELD IN TRUST

266. Plaintiffs hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

267. Pursuant to Plaintiffs' mortgages (and those of the Classes), PHH is entitled to: hold and/or control funds in escrow and control the establishment, funding requirements and maintenance of escrow accounts for the purposes of paying insurance premiums and other items set forth in borrowers' mortgages. *See* Ex. 11, at ¶ 3 (Finch Mortgage); Ex. 14 , at ¶3 (Werner Mortgage). PHH is also obligated under the mortgages to return any excess escrow funds in accordance with the terms of the mortgages.

268. To reimburse itself for amounts paid by PHH to ASIC for force-placed hazard insurance, PHH paid itself from Plaintiffs' escrow accounts.

269. PHH was obliged to hold, manage and control any escrow funds in trust, and owes Plaintiffs and members of the Classes the highest fiduciary duty with respect to the handling of such funds.

270. PHH breached its fiduciary duty to Plaintiffs and the members of the Classes by, *inter alia*: (a) engaging in self-dealing by unilaterally using Plaintiffs' and Class Members' escrow accounts generate additional profits for PHH; (b) profiting from unnecessary and excessive force-placed insurance policies that were purchased from escrow funds at the expense of Plaintiffs and the members of the Classes; (c) unilaterally utilizing the escrow funds to pay for unnecessary and duplicative insurance for purposes of increasing its profits; and (d) improperly depleting the escrow funds (including assessing negative balances) for unnecessary, unauthorized and duplicative hazard insurance resulting in additional costs and injury to Plaintiffs and the members of the Classes.

271. These actions were undertaken by PHH in bad faith solely for the benefit of PHH and were not intended to benefit Plaintiffs or other borrowers.

272. As a direct result of PHH's actions and subversion of Plaintiffs' interest to PHH's own interests in reaping additional, extravagant and unauthorized fees and profits, Plaintiffs and the members of the Classes have suffered injuries in the form of unnecessary and excessive escrow charges, unnecessary and improper depletion of escrow funds intended for and properly allocated to other Escrow Items, a loss of funds from their escrow accounts and/or loss of equity in the property due to increases in the amounts due under the mortgage to cover escrow shortfalls.

273. Plaintiff and members of the Classes are entitled to all damages resulting from PHH's breach of its fiduciary obligations and misappropriation of escrow funds. In addition, Plaintiff and the Classes are entitled to punitive damages because PHH acted in bad faith in deliberate and/or reckless disregard of their rights and PHHs's obligation to hold their escrow funds in trust.

COUNT FIVE

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200

(ON BEHALF OF THE CALIFORNIA CLASS)

274. Plaintiff Finch hereby incorporates by reference the preceding paragraphs as if they were fully set forth herein.

275. Plaintiff Finch brings this section 17200 claim on behalf of himself and all California borrowers who were (1) charged for force-placed insurance that included charges unrelated to the legitimate protection of lender's interest in secured property to be paid to PHH or its affiliates, or (2) force-placed into backdated or unnecessary insurance policies.

276. PHH was required to adhere to the requirements of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq*. ("UCL"), when conducting business with Finch and members of the California Class.

277. Throughout the Class Period, PHH has regularly conducted business throughout the State of California.

278. The UCL prohibits any "unlawful" business act or practice. PHH has violated the UCL's prohibition against engaging in unlawful acts or practices by violating RICO 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d).

279. Plaintiffs reserve the right to allege other violations of law that constitute other unlawful business acts or practices.

280. The UCL also prohibits any "unfair" business act or practice. As detailed in the preceding paragraphs, PHH engaged in unfair business acts or practices by, among other things, assessing charges to borrowers for below-cost portfolio monitoring and tracking services, expense reimbursements and other things of value disguised as legitimate charges for force-placed hazard insurance as authorized by their mortgages to protect the mortgagee's interest in the secured properties in order to fund illicit payments to PHH, and by force-placing borrowers into back-dated and unnecessary insurance policies.

281. PHH systematically engaged in these unfair and unlawful business practices to the detriment of Finch and other members of the California Class.

282. The harm caused by these business practices vastly outweighs any legitimate business utility they possibly could have.

283. Plaintiff Finch and other members of the Classes have been injured and have suffered a monetary loss as a result of PHH's violations of the UCL. They are entitled to restitution in an amount to be determined at trial, and an injunction requiring Defendant to cease its unlawful and unfair business practices as described herein.

284. As a result of PHH's violations of the UCL, Plaintiff Finch is also entitled to recover attorneys' fees and costs to be paid by PHH, as provided by Cal. Code of Civil Procedure § 1021.5 and other applicable law.

COUNT SIX

VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, *et seq.*

(ON BEHALF OF THE ILLINOIS CLASS)

285. Plaintiff March and Debra Werner hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

286. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq*. provides, in pertinent part: "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact … in the conduct of any trade or commerce are hereby declared unlawful whether

any person has in fact been misled, deceived or damage thereby…." *See* 815 ILCS 505/2.

287. PHH's business practices alleged herein are deceptive acts or practices and, thus, constitute multiple, separate and independent violations of 815 ILCS 505/1, *et seq*. These deceptive acts and practice include, without limitation:

a) Failing to make any effort to maintain borrowers' existing insurance policies and, instead, for the sole purpose of maximizing their own financial gain, purchasing and charging borrowers for force-placed insurance policies from a provider of Defendant's choice. These policies needlessly came with substantially greater charges, while providing less coverage than borrowers' existing policies;

b) Choosing a force-placed insurance provider and policy in bad faith and in contravention of the parties' reasonable expectations, by purposefully forcing borrowers to pay for more than the cost of protecting the lender's interest in the secured property;

c) Selecting force-placed insurance providers according to pre-arranged secret deals whereby the insurance policies are continually purchased through the same company;

d) Assessing excessive, unreasonable and unnecessary insurance policy premiums against the Werners and the Illinois Class and misrepresenting the reason for the cost of the policies;

e) Backdating force-placed insurance policies to cover time periods which have already passed and for which there was already absolutely no risk of loss;

f) Misrepresenting in force-placed insurance notices that borrowers were obligated to pay for backdated insurance coverage for periods during which the lender had no risk of loss due to the passing of time and/or the lender's coverage under a

Lender's Loss Payable Endorsement or standard mortgage clause;

g) Procuring force-placed insurance policies to cover time periods during which the mortgagee is already covered pursuant to a Lender's Loss Payable Endorsement or "standard mortgage clause;"

h) Failing to provide borrowers with any opportunity to opt out of having their force-placed insurance policies provided by an insurer with whom PHH had a side arrangement for the purpose of funneling money from the charges assessed to borrowers to itself;

i) Misrepresenting that the charges imposed for force-placed insurance were to protect the borrowers' and PHH's "mutual interests in the property" and that any portions of the premiums returned to PHH were for expenses incurred in connection with forced-placing insurance; and

j) Engaging in other unfair or unlawful conduct as described in this Complaint.

288. PHH engaged in these deceptive acts or practices in the conduct of business, trade or commerce in the State of Illinois.

289. PHH's communications with the Werners and the Illinois Class members in which they notify mortgagees that force-placed insurance has been or will be purchased on the mortgaged property and communications or documents which purport to describe or proscribe PHH's practices of force-placed insurance are directed to consumers as that term is defined under Illinois Law.

290. PHH's deceptive acts or practices alleged herein are likely to mislead reasonable consumers acting reasonably under the circumstances, including the Werners and members of the Illinois Class.

291. PHH's deceptive acts or practices alleged herein constitute consumer-oriented conduct in that PHH's deceptive acts or practices were directed to, and affected, consumers of mortgage and home insurance products, including the Werners and the Illinois Class members.

292. PHH's deceptive acts or practices alleged herein have a broad, adverse impact on consumers, including the Werners and the Illinois Class members.

293. PHH's deceptive acts or practices alleged herein are part of a pattern of conduct by PHH to defraud consumers, are ongoing and are likely to continue to harm the public and frustrate the public interest in commercially reasonable and non-deceptive insurance and mortgage servicing practices between PHH and the residents of Illinois whose mortgages they service.

294. PHH's deceptive acts or practices alleged herein have been furthered, in part, through a pattern of standard written communications disseminated broadly by or on behalf of PHH to thousands of Illinois residents whose mortgages they service.

295. PHH's deceptive acts or practices alleged herein are material in that they relate to matters that would reasonably be expected to be important to a reasonable consumer in making his or her decision whether to do business with PHH.

296. The Werners and the Illinois Class members were injured as a direct or proximate result of PHH's deceptive acts or practices set forth in this Complaint. PHH's deceptive acts or practices caused injury and damages to the Werners and the Illinois Class members in an amount to be proven at trial, including paying excessive and commercially unreasonable assessed charges for homeowners insurance.

297. The Werners and the Illinois Class members seek to recover their actual damages, injunctive relief, costs and reasonable attorneys' fees, pursuant to 815 ILCS 505/1, *et seq*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendant and in favor of Plaintiffs and the Classes and award the following relief:

A. That this action be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as representatives of the Classes and Plaintiffs' counsel as counsel for the Classes;

B. That the conduct alleged herein be declared, adjudged and decreed to be unlawful;

C. Compensatory, consequential, and general damages in an amount to be determined at trial;

D. An award of treble the amount of damages suffered by Plaintiffs and members of the Classes as proven at trial plus interest and attorneys' fees and expenses pursuant to 18 U.S.C. §§ 1962(c) and (d);

E. Restitution, injunctive relief, costs and reasonable attorneys' fees, pursuant to Cal. Code of Civil Procedure § 1021.5 and other applicable law;

F. Actual damages, injunctive relief, costs and reasonable attorneys' fees, pursuant to 815 ILCS 505/1, *et seq*.;

G. Restitution and/or disgorgement of Defendant's ill-gotten gains, and the imposition of an equitable constructive trust over all such amounts for the benefit of the Classes;

H. A judgment declaring that Defendant must cease the activities described herein, and provide members of the Classes with adequate remedies, including, without limitation, refunds or credits of all unfair, unlawful or otherwise improper force-placed insurance charges, and provide for adequate policies and procedures to ensure that Defendant's unlawful conduct does not continue, including, without limitation, that Defendant: (a) is prohibited from force-placing

insurance when the servicer knows or has reason to know that the borrower has a policy in effect that meets the minimum requirement of the loan documents; (b) is prohibited from force-placing excessive hazard insurance; (c)) is prohibited from splitting fees, giving or accepting kickbacks or referral fees, or accepting anything of value in relation to the purchase or placement of force-placed insurance; (d) must make reasonable efforts to continue or reestablish the borrower's existing insurance policy if there is a lapse in payment; (e) must purchase any force-placed insurance for a commercially reasonable price; and (f) is prohibited from backdating force-placed insurance policies absent evidence of damage to the property or claims arising out of the property during any lapse periods;

I. Costs and disbursements of the action;

J. Pre- and post-judgment interest;

K. Reasonable attorneys' fees;

L. Treble damages pursuant to 18 U.S.C. 1964(c); and

M. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Respectfully submitted,

Date: March 17, 2014

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

s/ Peter A. Muhic
Edward W. Ciolko
Peter A. Muhic
Tyler S. Graden
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

NIX PATTERSON & ROACH, LLP
Jeffery J. Angelovich
Michael B. Angelovich
Brad Seidel
205 Linda Drive
Daingerfield, TX 75638
Telephone: (903) 645-7333
Facsimile: (903) 645-4415

Attorneys for Plaintiffs