

# EXHIBIT A

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

**D'ALAN E. BAUGH**

and

**WILLIAM AND SHARON JOHNSON**

and

**MICHAEL AND JANE WALSH**

Plaintiffs,

v.

**THE FEDERAL SAVINGS BANK**

Defendant.

Civil Action No.: SAG-17-1735

---

**AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, D'Alan Baugh, William and Sharon Johnson, and Michael and Jane Walsh, on behalf of themselves and on behalf of the entire class of persons similarly situated, by and through their attorneys, Michael Paul Smith and Melissa L. English of Smith, Gildea & Schmidt, LLC, and Timothy F. Maloney and Veronica B. Nannis of Joseph, Greenwald and Laake, PA, as co-counsel hereby file this Amended Class Action Complaint against The Federal Savings Bank, and state as follows:

**INTRODUCTION**

1. Plaintiffs are borrowers who currently have or had a federally related mortgage loan, as defined by 12 U.S.C. § 2602, originated and/or brokered by Defendant The Federal Savings Bank ("FSB"), which was or is secured by Plaintiffs' residential real property. For the

purposes of procuring title insurance and to facilitate the escrow and settlement process, Plaintiffs used Genuine Title, LLC as a result of FSB's referral thereto.

2. Plaintiffs and Class Members were victims of an illegal kickback scheme whereby FSB branch managers, loan officers, agents, and/or other employees received unearned fees and kickbacks paid by Genuine Title, LLC, Competitive Advantage Media Group, LLC, and/or Brandon Glickstein, Inc., in violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* ("RESPA"). These kickbacks were paid pursuant to a quid pro quo agreement for kickbacks in exchange for the referrals of FSB borrowers. Neither FSB nor any of its employees and/or agents receiving the kickbacks performed any title or settlement services associated with the kickbacks.
3. These kickbacks were fraudulently concealed by FSB and Genuine Title from Plaintiffs and Class Members and were omitted from Plaintiffs and Class Members' HUD-1s and other required loan documents in an effort to hide the kickbacks from Plaintiffs and Class Members. These kickbacks were further concealed by FSB and Genuine Title through a sham Title Services Agreement entered between the parties that masked the kickbacks as payments for services provided, where in fact, no services were actually provided.

### **PARTIES**

4. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 as a class action on their own behalf and on behalf of the entire class of people similarly situated.
5. Plaintiff D' Alan Baugh is a resident of Howard County, Maryland.
6. Plaintiffs William and Sharon Johnson are residents of Spotsylvania, Virginia.
7. Plaintiffs Michael and Jane Walsh are residents of New Kent County, Virginia.

8. Defendant The Federal Savings Bank (“FSB”) is a federally-chartered bank regulated by the Office of Comptroller of the Currency, with its headquarters and principal office located in Chicago, Illinois. It is engaged in the business of consumer mortgage lending and maintains several loan production offices (LPOs) in Maryland. During the relevant time frame, FSB was, and is currently a licensed mortgage lender in Maryland.

**JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.
10. This Court has personal jurisdiction over FSB because at all relevant times and currently FSB transacts business in Maryland.
11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) and (c)(2) because FSB is subject to this Court’s personal jurisdiction, a substantial part of the conduct, events and omissions giving rise to the claims occurred within this District, and FSB systematically and continually transacted business in this District during the applicable time period and currently transacts business in this District.

**FACTUAL ALLEGATIONS FOR INDIVIDUAL AND CLASS RELIEF**

12. Congress enacted RESPA in 1974 as a response to the abuses in the real estate settlement process. Congress found that kickbacks and unearned fees in the settlement process resulted in unnecessarily high settlement charges and other harms to residential mortgage borrowers.
13. 12 U.S.C. § 2607 states in relevant part:
  - (a) Business Referrals. No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

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

14. 12 U.S.C. § 2607(d)(2) states in relevant part:

Any person or persons who violate the prohibitions or limitations of [12 USC § 2607] shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

15. The purpose of 12 U.S.C. § 2607 is to eliminate payment of unearned fees in connection with settlement services provided in federally related mortgage transactions, to protect consumers from unnecessarily high settlement charges caused by certain abusive practices, and to protect against other harms to consumers resulting from coordinated business relationships for settlement services. *See* 12 U.S.C. § 2601.

16. Genuine Title was at all times relevant hereto a title services company licensed under the laws of various states, including Maryland, and regulated by the Maryland Insurance Commissioner and had their principal place of business in the state of Maryland.

17. At all relevant times, FSB's employees and/or agents were licensed mortgage brokers and/or authorized loan officers (collectively referred to herein as "Referring Brokers"). At all relevant times the Referring Brokers were acting within scope of the business relationship and duties of their employment on behalf of FSB, specifically seeking borrowers ("FSB Borrowers") and securing loans for residential mortgages through FSB and/or brokering such loans through FSB to other lenders with whom FSB authorized, referring FSB Borrowers to title companies, and working with title companies to close

these loans. All activities, including the Referring Brokers' interaction with Genuine Title, were for the benefit of FSB.

### **The Kickback Scheme**

18. Beginning in 2009, and continuing until or about early 2014, Genuine Title perpetrated the Kickback Scheme by adopting a business model and practice of paying kickbacks to mortgage lenders and brokers (including FSB) for the referral of mortgage loans for settlement services.
19. Genuine Title paid kickbacks in several forms, including but not limited to: (1) "Referring Cash", (2) "Free Marketing Materials" (including postage, leads and other data and information, and direct mail production), and (3) "Marketing Credits."

### **Referring Cash**

20. Genuine Title paid Referring Cash directly to lenders, their branch managers, loan officers, employees, and/or agents in exchange for referrals of loans for settlement services.
21. The Referring Cash kickbacks correlated to the volume of referrals to Genuine Title by the lenders' branch managers, loan officers, employees, and/or agents.
22. The Referring Cash kickbacks were paid either out of Genuine Title's Operating Account or out of companies operated by Genuine Title's principals.
23. In or about 2006, Brandon Glickstein, Genuine Title's lead marketing and account representative, formed Brandon Glickstein, Inc. (hereinafter "BGI") for the purpose of "advertising and marketing and to engage in any other lawful purpose and business." *See* relevant SDAT Records, attached hereto as **Exhibit 1**.
24. BGI was another one of the conduits through which Genuine Title made Referring Cash payments.

25. Genuine Title calculated and paid Referring Cash kickbacks monthly and the kickbacks paid in a given month were equal to a per unit payment for each referred loan closed by Genuine Title in the previous month.
26. Referring Cash kickbacks were paid and received solely pursuant to the referral agreement and in furtherance of the Kickback Scheme and were not related to any legitimate services rendered by either Genuine Title or the person or lender receiving the kickback.

**Free Marketing Materials**

27. Genuine Title also paid kickbacks in the form of Free Marketing Materials.
28. The Free Marketing Materials were paid by Genuine Title and/or by Competitive Advantage Media Group, LLC (hereinafter “CAM”), a company formed by Brandon Glickstein, Genuine Title’s lead marketing and account representative. CAM was created “to provide marketing services to businesses.” *See* relevant SDAT Records, attached hereto as **Exhibit 2**. The Resident Agent for CAM at the time of organization was Jonathan S. Bach, Esq., the in-house attorney for Genuine Title. Additionally, the address for CAM was the same physical address of Genuine Title. On or about May 13, 2013, CAM changed its Resident Agent and Resident Agent’s address to Michael N. Mercurio at 8171 Maple Lawn Boulevard, Suite 200, Fulton, Maryland 20759. *See* **Exhibit 2**.
29. CAM was formed in part to facilitate Genuine Title’s payment of kickbacks and unearned fees in exchange for referring borrowers to Genuine Title.
30. As part of and in furtherance of the Kickback Scheme, Genuine Title, either directly and/or through CAM, paid for marketing materials that were provided to mortgage branch managers, brokers, loan officers, and/or other employees at lenders.

31. These Free Marketing Materials included, but were not limited to: the culling and selecting of the highest value leads to send mail that would most closely match the mortgage products and programs that the lender would be featuring, payment for sales leads, payment for inserting, and folding of mail pieces and/or postage. See B. Glickstein 9/15/16 Dep. at 16:7-18:18, attached hereto as **Exhibit 3**.
32. Genuine Title provided Free Marketing Materials under the referral agreement whereby the receiving branch manager, broker, loan officer, and/or other employee agreed to refer all loans generated by the Free Marketing Materials to Genuine Title for settlement services. See **Exhibit 3**, 43:4-13.
33. The Free Marketing Materials kickbacks were paid and received solely pursuant to the referral agreement and in furtherance of the Kickback Scheme and were not related to any services rendered by either Genuine Title or the person receiving the kickback.

### **Marketing Credits**

34. Genuine Title also paid kickbacks in the form of Marketing Credits applied to invoices for marketing services lenders purchased from CAM. While in operation, CAM provided full marketing services to primarily smaller and/or regional lenders. These marketing services included designing, writing, and printing marketing letters and other solicitation materials sent out on behalf of the lender, culling and selecting the highest value leads to send mail that would most closely match the mortgage products and programs that the lender would be featuring, and procuring sales leads. **Exhibit 3** at 16:7-18:18.
35. As part of and in furtherance of the kickback scheme, Genuine Title entered into a referral agreement whereby a lender, branch, and/or the loan officer (collectively, “Lender”) would agree to refer loans to Genuine Title for settlement services and in return Genuine Title



agreed to pay for marketing credits to be applied against that Lender's bill for services purchased from CAM.

36. The Marketing Credit kickbacks were calculated monthly and the Marketing Credit in a given month was determined on a per unit amount for each referred loan closed by Genuine Title in the previous period.
37. Genuine Title paid CAM the amount of the Marketing Credit and, in turn, CAM applied the Marketing Credit against the Lender's bill for CAM services.
38. This credit system was used by all parties to conceal, and did so conceal, the Kickback Scheme from borrowers, including Plaintiffs and Class Members, and regulators.
39. The Referring Cash, Free Marketing Materials, and Marketing Credits were provided as a quid pro quo, and pursuant to and with an understanding and agreement that the lenders' branch managers, loan officers, agents, and/or employees receiving the Referring Cash, Free Marketing Materials, and Marketing Credits would refer borrowers to Genuine Title for real estate title and settlement services, including performing a title search and procuring title insurance.
40. Plaintiffs believe and therefore aver that the payment and receipt of Referring Cash, Free Marketing Materials, and/or Marketing Credits were not disclosed on any line of the borrowers' GFEs, HUD-1s or any other required loan documents in order to intentionally and fraudulently conceal, and did in fact conceal, the Kickback Scheme from borrowers, including Plaintiffs and other Class Members, and regulators.
41. While Genuine Title would have preferred to compete by providing lower pricing of its title and settlement services to borrowers instead of paying kickbacks, the payment of kickbacks was the more effective way to increase Genuine Title's market share in the title

and settlement services market, even though it was prohibited by law. *See* J. Zukerberg 5/20/16 Aff. ¶ 6, attached hereto as **Exhibit 4**.

42. Genuine Title has admitted that no title services were provided by any lender receiving kickbacks associated with the kickbacks, in whatever form those kickbacks were paid. *See id.*

43. Genuine Title has admitted that borrowers, including Plaintiffs and Class Members, paid the cost of the concealed kickbacks out of the title and settlement costs charged by Genuine Title and identified on their HUD-1s. *See id.*

#### **The Federal Savings Bank's Participation in the Kickback Scheme**

44. Genuine Title's records indicate that from 2012 through 2014, FSB referred approximately 1,000 loans to Genuine Title for settlement services.

45. Upon information and belief and Genuine Title's and FSB's continuing pattern of practice, beginning in 2012 and continuing through 2014, FSB and licensed mortgage brokers employed by FSB received kickbacks in the form of Referring Cash, Marketing Materials, and/or Marketing Credits and other things of value from Genuine Title and/or CAM in exchange for referrals of FSB borrowers to Genuine Title for settlement services, in violation of RESPA.

46. During the relevant time period, Referring Broker Chris Infantino was employed by FSB as a branch manager and/or senior vice president at FSB's Columbia, Maryland branch.

47. Under a referring agreement with Genuine Title ("Referring Agreement"), Mr. Infantino received and accepted Marketing Materials and/or Marketing Credits kickbacks paid by Genuine Title in exchange for the referral of FSB borrowers to Genuine Title. *See Exhibit 5*, J. Zukerberg 4/24/14 Dep., 133:4-9; 140:16-141:10.

48. Mr. Infantino and his branch in fact referred loans to Genuine Title under this Agreement and received kickbacks in the form of Marketing Materials and/or Marketing Credits for these referrals. *Id.* at 140:16-141:10.
49. Plaintiffs believe and therefore aver that, based upon a continuing pattern of practice, other currently known or unknown Referring Brokers employed by FSB participated in the Kickback Scheme.
50. Plaintiffs additionally believe and therefore aver that, based upon a continuing pattern of practice, Genuine Title provided, and currently known and unknown Referring Brokers employed by FSB received, other things of value in exchange for referring borrowers to Genuine Title.
51. Additionally, in order to continue to provide settlement services to FSB borrowers, FSB required Genuine Title to enter a “Title Services Agreement.” Genuine Title and FSB entered into the Title Services Agreement on or about May 22, 2013.
52. This Title Service Agreement was in fact, a sham agreement. While it states that FSB would provide services to Genuine Title in the course of the settlement of loans, FSB in fact did not provide the services as stated in the agreement.
53. However, FSB still required and demanded Genuine Title to pay the amount associated with those services of \$175 per loan referred to Genuine Title, and Genuine Title did pay \$175 for each referred loan. The Title Services Agreement was simply an effort to conceal the kickbacks paid by Genuine Title for the referral of FSB loans to Genuine Title under a Referring Agreement and was not for any services provided.
54. It was agreed that the kickbacks would be paid directly to FSB.

55. The Title Services Agreement was intended by FSB to conceal and did conceal Genuine Title's payment, and FSB's receipt and acceptance, of kickbacks. In this respect, Genuine Title's Title Service Agreement with FSB was a sham.
56. Genuine Title paid FSB \$175 per settled loan referred to Genuine Title, regardless of whether FSB provided any settlement service on the loan. Genuine Title treated and understood this amount as a kickback and consistent with the pay-to-play environment in which Genuine Title was operating. *See Exhibit 5*, at 134:15-21; 154:1-21; 64:19-165:6.
57. When Genuine Title failed to pay FSB for referred loans, FSB insisted on and demanded payment from Genuine Title, even going so far as to send a threatening demand letter to Genuine Title, despite the fact that it had not provided any of the services provided for in the Title Services Agreement in exchange for the Referring Cash payments.
58. Plaintiffs believe, and therefore aver, based on FSB's and Genuine Title's continuing pattern of practice under the Title Services Agreement, that the Title Services Agreement was a sham agreement, and FSB and Genuine Title used the Agreement to conceal, and did so conceal, the kickbacks and Kickback Scheme from Plaintiffs, Class Members, and regulators.
59. The Referring Cash kickbacks were paid by Genuine Title directly to FSB. *See Exhibit 6*, Genuine Title checks to The Federal Savings Bank.
60. The payment by Genuine Title and acceptance by FSB of the kickbacks were solely for the referral of borrowers to Genuine Title.
61. Plaintiffs were charged for settlement services related to their federally-related mortgage by Genuine Title while FSB was engaging in the Kickback Scheme.

62. As a result of the Kickback Scheme, Plaintiffs and Class Members were deprived of kickback-free settlement services and impartial and fair competition, as required by 12 U.S.C. § 2607.
63. Plaintiffs and Class Members paid more for their settlement services because neither FSB nor its Referring Brokers or other employees or agents performed services in exchange for the kickbacks paid and kickbacks were paid instead of lower charges to the consumers. *See Exhibit 3, ¶ 6.*

### **FACTS FOR INDIVIDUAL CLASS REPRESENTATIVES**

64. In or about March 2013, Plaintiff D'Alan Baugh obtained a residential mortgage from FSB's Columbia branch managed by Chris Infantino in relation to the refinancing of his residential real property in Howard County, Maryland.
65. FSB referred Plaintiff Baugh to Genuine Title for title and settlement services. On the basis of this referral, Plaintiff Baugh used Genuine Title for title and settlement services and settled on March 25, 2013. Plaintiff Baugh paid Genuine Title for title and settlement services.
66. In or about September 2013, Plaintiffs William and Sharon Johnson obtained a refinance of their primary residence at 7327 Cloverhill Road, Spotsylvania, Virginia 225511 through Brandon Dunn, a broker at FSB's Columbia branch, managed by Chris Infantino.
67. FSB referred Plaintiffs William and Sharon Johnson to Genuine Title for title and settlement services. On the basis of this referral, Plaintiffs William and Sharon Johnson used Genuine Title for title and settlement services and settled on September 5, 2013. Plaintiffs William and Sharon Johnson paid Genuine Title for title and settlement services.

68. In or about July 2013, Plaintiffs Michael and Jane Walsh obtained a refinance of their primary residence at 3349 Ridge Road, Quinton, Virginia 23141 through Matthew Winger, a Vice President and loan officer at FSB's Columbia branch.
69. FSB referred Plaintiffs Michael and Jane Walsh to Genuine Title for title and settlement services. On the basis of this referral, Plaintiffs Michael and Jane Walsh used Genuine Title for title and settlement services and settled on July 17, 2013. Plaintiffs Michael and Jane Walsh paid Genuine Title for title and settlement services.
70. FSB referred Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh to Genuine Title for title and settlement services pursuant to an agreement with Genuine Title for Referring Cash, Marketing Materials, and/or Marketing Credits as a quid pro quo for referrals to Genuine Title and did so receive Referring Cash, Marketing Materials, and/or Marketing Credits from Genuine Title.
71. Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh paid Genuine Title for those title and settlement services. A portion of that payment was illegally split and shared with FSB through the payment of the illegal kickbacks to FSB and/or its Referring Brokers.
72. As a pattern of practice, and as a precondition to closing a loan or refinance, FSB required borrowers to fully participate in the loan transaction, including receiving and signing government-required loan documents before and at a loan closing.
73. Plaintiff Baugh fully participated in his loan transaction as evidenced by his loan funding on or about March 29, 2013.
74. Plaintiffs William and Sharon Johnson fully participated in their loan transaction as evidence by their loan funding on or about September 10, 2013.

75. Plaintiffs Michael and Jane Walsh fully participated in their loan transaction as evidenced by their loan funding on or about July 22, 2013.
76. Under federal law, FSB is required to provide each borrower with a Good Faith Estimate (“GFE”) within three days of taking a loan application. On the GFE, the loan officer or broker “must state here all charges that all loan originators involved in this transaction will receive.” 12 C.F.R. 1024, App’x C – Instructions for Completing Good Faith Estimate (GFE) Form.
77. As a pattern of practice, and in an effort to conceal its fraud, FSB did not report on Plaintiff Baugh’s, Plaintiffs William and Sharon Johnson’s, Plaintiffs Michael and Jane Walsh’s, or on any FSB borrower’s GFE the kickback received from Genuine Title under the Referring Agreements, despite the fact that the kickbacks were charged to and paid by the borrowers and received and accepted by FSB.
78. As a result of this act of concealment, no FSB borrower, including Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh, received a GFE associated with an FSB originated or brokered loan reflecting a payment of any kind from Genuine Title to FSB. Therefore, FSB borrowers, including Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh, did not know and could not have known of the kickback, or the Kickback Scheme, before the closing of their loan or at any time thereafter.
79. RESPA requires that each borrower receive a HUD-1 Settlement Statement. 12 U.S.C. § 2603(a). The purpose of the HUD-1 statement is to, among other things, “conspicuously and clearly itemize all charges imposed upon the borrower. . . .” *Id.* Under regulations imposed by the federal government, “[t]he loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.” 12 C.F.R. §

1024.8(b). As such, FSB was responsible for all information included in the HUD-1 that was then generated by Genuine Title.

80. Despite being required by law to report the amounts paid and received as a result of the transaction, FSB and Genuine Title omitted the fact and amount of the kickbacks from all lines and sections of Plaintiff's HUD-1 settlement statement and all other required loan documents in an effort to intentionally conceal the kickbacks from Plaintiff, and did so conceal the kickbacks from Plaintiff.
81. As a pattern of practice, and in an effort to conceal its fraud, FSB did not provide to Genuine Title for inclusion in the HUD-1 any information necessary to itemize the kickback payments made to FSB by Genuine Title under the Referring Agreements, despite the fact that the kickbacks were charged to and paid by the borrowers.
82. As a pattern of practice and in an effort to conceal its fraud, Genuine Title purposefully did not produce a HUD-1 Settlement Statement that itemized the kickbacks paid to and received and accepted by FSB under the Referring Agreement, despite the fact that the kickbacks were charged to and paid by the borrowers. *See Exhibit 4, ¶ 6; Exhibit 3, 159:15-160:1.*
83. As a result of these acts of concealment, no FSB borrower, including Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh, received a HUD-1 statement reflecting a payment of any kind from Genuine Title to FSB, and did not know and could not have known of the kickback, or the Kickback Scheme, at or after the closing of their loan.
84. Because no payment from Genuine Title to FSB was disclosed on their HUD-1s, Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh did not have, and could



not have had, any knowledge of the kickbacks during or after the settlement on their mortgage loans, or that a portion of their payments to Genuine Title for title and settlement services were illegally split and shared with FSB through the payment of the illegal kickbacks to FSB or its Referring Brokers.

85. As a direct and proximate cause of the actions of FSB, Plaintiffs Baugh, William and Sharon Johnson, and Michael and Jane Walsh, and other Class Members were deprived of impartial and fair competition between settlement service providers in violation of RESPA and paid more for said settlement services, in addition to other harms.

### **CLASS ACTION ALLEGATIONS**

86. The allegations in the above stated paragraphs are incorporated by reference as if fully restated herein.
87. Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals pursuant to Fed. R. Civ. P. 23, and the alleged class is defined as follows, with the following two subclasses:

All individuals in the United States who were borrowers on a federally related mortgage loan (as defined under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2602) originated or brokered by The Federal Savings Bank for which Genuine Title provided a settlement service, as identified in Section 1100 on the HUD-1, between January 1, 2009, and December 31, 2014. Exempted from this class is any person who, during the period of January 1, 2009 through December 31, 2014, was an employee, officer, member and/or agent of The Federal Savings Bank, Genuine Title LLC, Competitive Advantage Media Group LLC, Brandon Glickstein, Inc., and/or Dog Days Marketing, LLC.

Subclass 1: The Pre-TSA subclass is comprised of all FSB Class Members whose federally related FSB mortgage loan closed on or before May 22, 2013.

Subclass 2: The Post-TSA subclass is comprised of all FSB Class Members whose FSB federally related FSB mortgage loan closed on or after May 23, 2013.

88. There are questions of law and fact common to the claims of each and all members of the Class. These common questions include, but are not limited to:
- a. Whether FSB and/or its employees and/or agents received unearned fees and illegal kickbacks from Genuine Title and/or CAM for the referral of business to Genuine Title;
  - b. Whether payments to FSB and/or its employees and/or agents violated RESPA;
  - c. Whether Plaintiffs and Class Members were forced to pay more for said settlement services;
  - d. Whether FSB actively concealed the Kickback Scheme to avoid detection by Plaintiffs and Class Members;
  - e. Whether Plaintiffs and the Class are entitled to treble damages under RESPA;
  - f. Whether Plaintiffs and the Class are entitled to attorneys' fees and expenses under RESPA;
  - g. Whether Genuine Title and FSB failed to disclose and concealed to Plaintiffs and Class Members that Genuine Title, CAM, BGI, and/or DDM was participating with banks, referring branch managers, loan officers, employees, and/or agents and failed to disclose and concealed, among other things, their coordinated business arrangements and/or relationships; and
  - h. Whether despite exercising reasonable due diligence, Plaintiffs and Class Members did not and could not have learned of the illegal kickbacks and the Kickback Scheme until contacted by counsel.

89. These common issues of law and fact, and the common statutory measure of damages under 12 U.S.C. § 2607(d)(2), predominate over any question affecting only individual Class Members.
90. Due to Genuine Title and FSB's omission of kickbacks from any line or section of Plaintiffs' GFEs, HUD-1s, or other loan documents, Plaintiffs and Class Members did not know and could not know of the kickbacks or the Genuine Title Kickback Scheme before, during, or after the time of settlement of their residential mortgage loans.
91. Due to Genuine Title and FSB's efforts to conceal the kickbacks from Plaintiffs, Class Members and regulators, by Genuine Title's payment of the kickbacks pursuant to a sham Title Services Agreement and multi-layered credit system, which were extraordinary circumstances beyond Plaintiffs' control, Plaintiffs did not, and could not have discovered the Kickback Scheme before, at the time of, or after the settlement of their residential mortgage loans and within the statutory filing period. No reasonable borrower diligence or investigation would have uncovered the fact, mechanics, and extent of this illegal kickback scheme until contacted by counsel.
92. Plaintiffs acted reasonably and diligently. Plaintiffs did not and could not through any reasonable diligence have known about the concealed Kickback Scheme until contacted by undersigned counsel on or about May 3, 2017.
93. Plaintiffs' transactions and the course of events thereafter as well as Plaintiffs' claims exemplify the working of the Kickback Scheme, and are typical of the transactions and claims involving all members of the proposed class.
94. Plaintiff's damages for the RESPA violations are subject to a statutory measure of damages equal to three times the amount of any charges paid for settlement services, as set forth in

12 U.S.C. §2607(d)(2). This statutory measure of damages is common to all Class Members.

95. Plaintiffs will fairly and adequately protect the interests of the Class. The interests of the named Plaintiffs and all other members of the Class are identical.
96. Plaintiffs' counsel has substantial experience in complex litigation and class action proceedings and will adequately represent the Class's interests. Counsel have been approved by this Court as adequate class counsel. *See Fangman v. Genuine Title*, 1:14-cv-00081-RDB, 2016 U.S. Dist. LEXIS 154582, at \*36 (D. Md. Nov. 8, 2016).
97. The Class consists, upon information and belief, of over one thousand borrowers, and thus are so numerous that joinder of all members is impracticable.
98. Separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for FSB.
99. This action entails questions of law and fact common to Class Members that predominate over any questions affecting only individual Plaintiffs, and, therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.
100. Most members of the Class are unaware of their rights to prosecute a claim against Defendant.
101. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action, but if he or she does, he or she may exclude himself or herself from the class upon the receipt of notice under Fed. R. Civ. P. 23(c).

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

102. Plaintiffs incorporate the above stated paragraphs as if restated herein.
103. All transactions at issue in the instant complaint are incident to or part of real estate settlement services involving federally related mortgage loans and thereby are subject to the provisions of RESPA, 12 U.S.C. § 2601, *et seq.*
104. At all relevant times, Genuine Title was subject to the provisions of RESPA, 12 U.S.C. § 2601, *et. seq.*
105. As a lender and/or broker and/or servicer of federally related mortgage loans, FSB is subject to the provisions of RESPA, 12 U.S.C. § 2601, *et seq.*
106. Genuine Title and/or CAM paid FSB kickbacks and/or things of value in exchange for referrals of business to Genuine Title in violation of RESPA, 12. U.S.C. § 2607(a) and (b).
107. FSB and/or by and through its brokers, loan officers, employees, and/or agents received things of value for referrals of business as part of real estate settlement services provided to Plaintiffs and Class Members, in violation of RESPA, 12 U.S.C. § 2607(a) and (b).
108. All loans referred to Genuine Title as part of the Kickback Scheme were secured by first or subordinate liens on residential real property and were made in whole or in part by FSB and/or its affiliates whose deposits or accounts are insured by the Federal Government and/or who are regulated by an agency of the Federal Government.
109. The payment and/or arranging of payment of kickbacks to FSB by Genuine Title and/or CAM and FSB's receipt thereof constitute a violation of § 8(a) of RESPA, which prohibits the payment of referral fees or kickbacks pursuant to an agreement in connection with the origination or brokering of federally related mortgage loans.
110. The kickbacks paid by Genuine Title and/or CAM to FSB were also made solely for the purpose of Genuine Title receiving referrals and no services were actually performed by

FSB in connection with the receipt of these payments and/or things of value, in violation of 12 U.S.C. § 2607(b), which prohibits the splitting of fees in connection with the origination of federal related mortgage loans.

111. Genuine Title and FSB fraudulently, actively concealed the kickbacks paid to Referring Brokers from Plaintiffs and Class Members by refusing to list the kickbacks on Plaintiffs and Class Members' HUD-1 settlement statements and settlement documents, and failed and refused to disclose their coordinated business arrangement and by engaging in an elaborate payment scheme to conceal the illegal kickbacks.
112. Despite acting reasonably and exercising due diligence, Plaintiffs and Class Members did not and could not have known about the Kickback Scheme until contacted by undersigned counsel.
113. As a direct and proximate cause of Genuine Title's actions, Plaintiffs and Class Members used Genuine Title for title and settlement services, paid for said services and were deprived of impartial and fair competition and the costs paid by Plaintiffs and Class Members to Genuine Title for settlement services would have been lower.

WHEREFORE:

- a. Plaintiffs respectfully demand this Court to certify this class action pursuant to Federal Rule of Civil Procedure 23 and set this matter for trial; and
- b. Demand judgment for Plaintiffs and Class Members against The Federal Savings Bank and award Plaintiffs and Class Members an amount equal to:
  1. Treble damages for settlement services charged by Genuine Title, including, but not limited to, title insurance premiums, in an amount equal to three times the

- amount of any charge paid for such settlement services, pursuant to 12 U.S.C. § 2607(d)(2);
2. Reasonable attorneys' fees, interest and costs pursuant to 12 U.S.C. § 2607(d)(5);
- and
3. Such other and further relief as this Court deems proper.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Timothy F. Maloney, Esq. #03381  
Veronica B. Nannis, Esq. #15679  
Joseph, Greenwald & Laake  
6404 Ivy Lane, Suite 400  
Greenbelt, Maryland 20770  
(301) 220-2200 / (301) 220-1214 (fax)  
Email: tmaloney@jgllaw.com  
vnannis@jgllaw.com  
mbenevento@jgllaw.com  
*Co-Counsel for Plaintiffs and Class Members*

\_\_\_\_\_/s/\_\_\_\_\_  
Michael Paul Smith, Esq. #23685  
Melissa L. English, Esq. #19864  
Smith, Gildea & Schmidt, LLC  
600 Washington Avenue, Suite 200  
Towson, MD 21202  
(410) 821-0070 / (410) 821-0071 (fax)  
Email: mpsmith@sgs-law.com  
menglish@sgs-law.com  
szadrozny@sgs-law.com  
*Counsel for Plaintiffs and Class Members*

### **PRAYER FOR JURY TRIAL**

Plaintiffs and Class Members hereby request a trial by jury on the foregoing Class Action Complaint.

\_\_\_\_\_/s/\_\_\_\_\_  
Timothy F. Maloney, Esq. #03381  
Veronica B. Nannis, Esq. #15679  
Joseph, Greenwald & Laake  
6404 Ivy Lane, Suite 400  
Greenbelt, Maryland 20770  
(301) 220-2200 / (301) 220-1214 (fax)  
Email: tmaloney@jgllaw.com  
vnannis@jgllaw.com

\_\_\_\_\_/s/\_\_\_\_\_  
Michael Paul Smith, Esq. #23685  
Melissa L. English, Esq. #19864  
Smith, Gildea & Schmidt, LLC  
600 Washington Avenue, Suite 200  
Towson, MD 21202  
(410) 821-0070 / (410) 821-0071 (fax)  
Email: mpsmith@sgs-law.com  
menglish@sgs-law.com

mbenevento@jgllaw.com

*Co-Counsel for Plaintiffs and Class Members*

szadrozny@sgs-law.com

*Counsel for Plaintiffs and Class Members*