UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

HARRY JONES and GLORY JONES
on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

CLASS ACTION
JURY DEMAND

CENTRAL LOAN ADMINISTRATION
& REPORTING d/b/a CENLAR FSB and AMERICAN
SECURITY INSURANCE COMPANY,

Defendants.
____/

CLASS ACTION COMPLAINT

Plaintiffs file this class action complaint on behalf of themselves and all others similarly situated against Central Loan Administration & Reporting d/b/a Cenlar FSB ("Cenlar") and American Security Insurance Company ("ASIC").

INTRODUCTION

1. Cenlar is an operating subsidiary of CCC, and a privately held, federally chartered savings bank. Cenlar is the leading sub-servicer of U.S. mortgage loans and has been servicing residential mortgage loans since 1970. As of late 2015, Cenlar was servicing approximately 1.65 million loans totaling $351 billion. Cenlar has had an arrangement with ASIC and its affiliates during the class period whereby ASIC performs many of Cenlar's mortgage-servicing functions and is the exclusive provider of force-placed insurance ("FPI") coverage for homeowners with mortgage loans owned or serviced by Cenlar.

2. In exchange for providing ASIC with the exclusive right to monitor the entire

Cenlar loan portfolio and force-place their own insurance coverage, ASIC provides Cenlar with various kickbacks that Defendants attempt to disguise as legitimate compensation. These kickbacks include but are not limited to one or more of the following: (1) unearned "commissions" paid to Cenlar or its affiliate for work purportedly performed to procure individual policies; (2) "expense reimbursements" allegedly paid to reimburse Cenlar for expenses it incurred in the placement of force-placed insurance coverage on homeowners; (3) payments of illusory reinsurance premiums that carry no commensurate transfer of risk; and (4) free or below-cost mortgage-servicing functions that ASIC performs for Cenlar. Because of these kickbacks, Cenlar essentially receives a rebate on the cost of the force-placed insurance; however, Cenlar homeowners ultimately bear the cost of these kickbacks because Cenlar and ASIC do not pass on these rebates to the borrower. The charges for force-placed insurance are deducted from borrowers' escrow accounts and Defendants attempt to disguise the kickbacks as legitimate by characterizing them as income earned by Cenlar when, in fact, they are unearned, unlawful profits.

3. After years of hard-fought litigation in class actions brought across the nation, many before this Court, and after extensive investigations by numerous state and federal insurance regulators, some of the wrongful practices that are the subject of this lawsuit have abated or been prohibited. By certifying the specific classes proposed by Plaintiffs against Cenlar, the Court will avail hundreds of thousands of Cenlar homeowners who were directly affected by these practices of their only opportunity to seek monetary damages, and Plaintiffs of the opportunity to ensure that Defendants will cease their illegal practices for all Cenlar borrowers nationwide for years to come.

4. During the proposed class period, ASIC and Cenlar treated Plaintiffs and every putative class member in an identical manner pursuant to their standard policies and procedures

by: (1) notifying them that their coverage had lapsed and new coverage had been forced with the same cycle of form letters; (2) forcing coverage for every borrower from one master policy that covered Cenlar's entire loan portfolio; (3) forcing new coverage in the same manner for every member of the proposed classes; and (4) including the same impermissible costs in the amounts charged every putative class member for coverage.

5. Lenders and servicers, like Cenlar here, force place insurance coverage when a borrower fails to obtain or maintain proper hazard, flood, or wind insurance coverage on the property that secures his or her loan. Under the typical mortgage agreement, if the insurance policy lapses or provides insufficient coverage, the lender has the right to "force place" new coverage on the property to protect its interest and then charge the borrower the cost of coverage. The Defendants' force-placed insurance scheme takes advantage of the broad discretion afforded the lenders and servicers in standard form mortgage agreements.

6. The money to finance force-placed insurance schemes comes from unsuspecting borrowers who are charged inflated amounts for force-placed insurance by lenders or servicers – Cenlar here. Borrowers are required to pay the full amount that the lender or servicer initially pays to the insurer – here ASIC and affiliates – despite the fact that a considerable portion of that amount is kicked back to the lender or servicer in the manner described above. Cenlar gets the benefit of an effective rebate from ASIC that it does not pass on to the borrower. Instead it charges the borrower the full amount, purportedly for the cost of insurance coverage. Lenders and servicers, like Cenlar, and their exclusive force-placed insurers, ASIC, manipulate the force-placed insurance market so that Cenlar selects an insurer, ASIC, that will provide it with the most incentives for its business and keep the exclusive relationship in place. Cenlar and ASIC then reap their unconscionable profits entirely at the expense of the unsuspecting borrowers.

7. At a recent hearing on force-placed insurance held by the National Association of Insurance Commissioners ("NAIC"), Birny Birnbaum, the foremost expert on the force-placed insurance market, illustrated the staggering growth in profits that Defendants' schemes have reaped in recent years:[1]

LPI Premiums Have Quadrupled Since 2004

Year	*Gross Written Premium ($ Millions)*	*Net Written Premium ($ Millions)*
2004	$1,485	$796
2005	$1,832	$919
2006	$2,163	$1,074
2007	$3,058	$1,647
2008	$4,000	$2,209
2009	$5,181	$3,049
2010	$5,915	$3,223
2011	$5,692	$3,450
2004-2011	$29,326	$16,368

2009-2011 GWP Understated, Reporting Errors by QBE

CEJ LPI Presentation to NAIC 13 August 9, 2012

8. Assurant, Inc. which works through its subsidiaries, like ASIC, is one of two major insurance companies that has controlled close to 100% of the market for force-placed insurance in .recent years. As shown below, Assurant held 58.6% of the nationwide market share for force-placed insurance in 2011. Together, Assurant and QBE/Balboa, the other major insurer that held a significant market share2, controlled 99.7% of the market in the same year, and held no less than 96.1% of the market between 2004 and 2011. Mortgage lenders and servicers sustain the insurers' monopoly by agreeing to purchase all force-placed insurance from the two insurers in exchange

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[1] This graph and the ones that follow were taken from Mr. Birnbaum's presentation to the NAIC on August 9, 2012. The presentation is available at: http://www.naic.org/documents/committees_c_120809_public_shearing_lender_placed_insurance_presentation_birnbaum.pdf.

2 In 2015, QBE sold its FPI business and is now transitioning out of the market.

for kickbacks and other benefits.

Assurant and QBE Are the Market for LPI: Countrywide Market Share

Year	Assurant	QBE/Balboa	Assurant + QBE/Balboa
2004	68.2%	29.8%	98.0%
2005	69.7%	26.4%	96.1%
2006	79.2%	19.5%	98.7%
2007	74.0%	25.4%	99.4%
2008	74.2%	25.5%	99.7%
2009	57.2%	42.4%	99.7%
2010	56.2%	43.5%	99.7%
2011	58.6%	41.1%	99.7%

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9. Florida has been at the epicenter of all force-placed insurance activity nationwide—more than one-third of all force-placed p0olicies are placed in Florida, three times more than in California, which has the second-highest volume.

10. In his presentation to the NAIC, Mr. Birnbaum illustrated the astounding rise in force-placed insurance policies in Florida:

LPI Premium by State: Florida Has Become Ground Zero

	2004	2005	2006	2007	2008	2009	2010	2011
FL	10.6%	10.8%	13.3%	17.9%	22.9%	34.3%	36.7%	35.1%
CA	20.8%	19.3%	21.2%	23.5%	24.3%	14.0%	11.1%	10.2%
TX	10.6%	10.7%	8.8%	8.7%	7.0%	5.6%	5.6%	6.1%
NY	3.6%	3.6%	4.5%	4.4%	4.3%	4.7%	5.4%	5.6%
IL	3.0%	3.3%	3.9%	3.7%	3.9%	4.4%	4.1%	4.6%
NJ	2.9%	2.7%	2.9%	2.7%	2.7%	2.9%	3.4%	4.0%
MI	4.2%	4.4%	4.4%	5.8%	3.6%	2.7%	2.2%	2.0%
OH	3.6%	3.8%	3.5%	2.7%	2.4%	2.2%	2.3%	2.9%
GA	3.4%	3.2%	3.2%	2.4%	2.3%	2.3%	2.3%	2.3%
PA	2.6%	2.6%	2.7%	1.8%	1.8%	1.8%	1.7%	1.8%

CEJ LPI Presentation to NAIC 15 August 9, 2012

11. Defendants' self-dealing and collusion in the force-placed insurance market has caused substantial harm to the named Plaintiffs and the proposed classes they seek to represent.

Plaintiffs do not challenge the cost of the FPI *per se*, nor do they challenge the insurance rates filed in any State by ASIC – which are filed for commercial policies that Cenlar is obligated to pay per the agreements between Defendants. This class action seeks to redress that harm on behalf of the Plaintiffs and the proposed class members relating to Defendants' manipulation of the force-placed insurance process and the amounts Cenlar chooses to charge its borrowers: Cenlar receives an effective rebate on the cost of the FPI but does not pass the rebate on to the borrowers.

PARTIES

Plaintiffs

12. Plaintiffs Harry Jones and Glory Jones are citizens of the State of Florida. They are natural persons over the age of 21 and otherwise *sui juris*.

Defendants

13. Defendant AMERICAN SECURITY INSURANCE COMPANY is a Delaware corporation and an indirect subsidiary of Assurant Inc., writing force-placed insurance policies in all fifty states and the District of Columbia with its principal address in Atlanta, Georgia. ASIC along with its affiliates often operate under the trade name "Assurant Specialty Property." ASIC contracts with the lenders to act as a force-placed insurance vendor and take over certain mortgage servicing functions. Its duties include but are not limited to, tracking loans in their mortgage portfolio, new loan boarding, loss draft functions, escrow analysis, handling customer service duties, and securing force-placed insurance policies on properties when a borrower's insurance has lapsed. ASIC's actuarial department which sets the rates for force-placed insurance is located in Miami, Florida.

14. Defendant CENLAR is an operating subsidiary of CCC and a privately-held company with headquarters in Ewing, New Jersey. Cenlar is mortgage servicer and conducts business throughout the United States, including specifically in this District.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.).

16. Plaintiffs are citizens of the State of Florida with property in Miami-Dade County. Defendants are citizens of various other states but are registered to do business in the aforementioned states. The amount in controversy exceeds $5,000,000 and there are at least one hundred members of the putative class.

17. This Court has jurisdiction over Defendants because they are foreign corporations authorized to conduct business in Florida, are doing business in Florida or have registered with the Florida Secretary of State, or do sufficient business in Florida, have sufficient minimum contacts with Florida, or otherwise intentionally avail themselves of the Florida consumer market through the promotion, marketing, sale, and service of mortgages or other lending services and insurance policies in Florida. This purposeful availment renders the exercise of jurisdiction by this Court over Defendants and their affiliated or related entities permissible under traditional notions of fair play and substantial justice.

18. In addition, this Court has subject-matter jurisdiction under CAFA because the amount in controversy exceeds $5 million and diversity exists between Plaintiffs and the Defendants. 28 U.S.C. § 1332(d)(2). Further, in determining whether the $5 million amount in controversy requirement of 28 U.S.C. § 1332(d)(2) is met, the claims of the putative class members are aggregated. 28 U.S.C. § 1332(d)(6).

19. Venue is proper in this forum pursuant to 28 U.S.C. § 1391. Defendants transact business and may be found in this District.

20. All conditions precedent to this action have occurred, been performed, or have been waived.

FACTUAL ALLEGATIONS

21. Permitting a lender to forcibly place insurance on a mortgaged property and charge the borrower for the cost of the coverage is neither a new concept nor a term undisclosed to borrowers in mortgage agreements. The standard form mortgage agreements owned or serviced by Cenlar include a provision requiring the borrower to maintain hazard insurance coverage, flood insurance coverage if the property is located in a Special Flood Hazard Area as determined by the Federal Emergency Management Agency, and wind insurance coverage on the property securing the loan, and in the event the insurance lapses, permit the lender to obtain force-placed coverage and charge the borrower for the cost rather than declare the borrow in default.

22. What is unknown to borrowers and not disclosed in the mortgage agreements is that Cenlar has exclusive arrangements with ASIC and its affiliates, to manipulate the force-placed insurance market and charge borrowers more for force-placed insurance than what Cenlar itself pays. The charges are inflated to provide Cenlar and its affiliates with kickbacks in the form of "commissions," "qualified expense reimbursements," or reinsurance arrangements, and to cover the cost of discounted mortgage servicing functions, and other unmerited charges. The borrower is then forced to pay these inflated amounts.

The Force-Placed Insurance Scheme

23. ASIC has entered into an exclusive arrangement with Cenlar to provide various mortgage servicing functions at below-cost; mortgage servicing functions that are properly

Cenlar's responsibility and that Cenlar is paid to perform by the owners of loans. ASIC also contracts to monitor Cenlar's mortgage loan portfolio and force-place insurance when an individual borrower's voluntary policy lapses, both obligations properly borne by Cenlar. In addition to the subsidized mortgage services Cenlar receives from ASIC, a percentage of borrowers' force-placed insurance charges are "kicked back" and paid directly to Cenlar.

24. The scheme works as follows. Cenlar contracts for ASIC to take over various mortgage servicing functions and for a master insurance policy that covers its entire portfolio of mortgage loans. In exchange, ASIC and its affiliates are given the exclusive right to be the sole force-place insurance provider on property securing a loan within the portfolio when the borrower's insurance lapses or the lender/servicer determines the borrower's existing insurance is inadequate.

25. ASIC and its affiliates monitor Cenlar's entire loan portfolio for lapses in borrowers' insurance coverage. Once a lapse is identified, an automated cycle of notices, purporting to come from Cenlar but actually generated by ASIC, is sent to the borrowers to inform them that insurance will be purchased and force-placed if the voluntary coverage is not continued. In reality, however, the master policy is already in place and Cenlar does not purchase a new policy on the individual borrower's behalf, rather, a certificate of insurance from the master policy is automatically issued by ASIC. If a lapse continues, the borrower is notified that insurance is being force-placed at his or her expense.

26. No individualized underwriting ever takes place for the force-placed coverage. Insurance is automatically placed on the property and the inflated amounts, including the unlawful kickbacks, are charged to the borrower. In many instances, the insurance lapse is not discovered for months or even years after the fact. Despite the absence of any claim or damage to the property

during the period of lapse, coverage is placed on the property and the borrower is charged for the "cost" of the retroactive coverage.

27. Cenlar then pays ASIC for the certificate of insurance, which issues from the already-existing master policy. It is Cenlar, not the borrower, that is obligated to pay ASIC for the force-placed insurance pursuant to the agreements between Cenlar and ASIC (and which borrowers are not parties to), that govern the mortgage servicing functions that ASIC performs as well as the procurement of the master policy, and are executed and already in place before any borrower's coverage lapses.

28. Once coverage issues and Cenlar has paid ASIC the full amount invoiced, ASIC kicks back a set percentage of that amount to Cenlar without Cenlar performing any functions related to the placement of coverage or incurring any costs. The kickbacks paid to Cenlar or its affiliates are falsely labeled as "commissions," "reinsurance payments," or "expense reimbursements." Upon information and belief, any Cenlar affiliate that receives the kickback passes along that payment to Cenlar, sometimes in the form of "soft dollar" or other credits.

29. The payment is not compensation for work performed; it is an effective rebate on the premium amount, reducing the cost of coverage that Cenlar pays to ASIC. The "commissions" or "expense reimbursements" are not legitimate reimbursements for actual costs, nor are they payments that have been earned for any work done by Cenlar or an affiliate related to the placement of the insurance; they are unlawful kickbacks to Cenlar for the exclusive arrangement to force-place insurance.

30. The money paid back to Cenlar and its affiliates is not given in exchange for any services provided by them; it is simply grease paid to keep the force-placed machine moving. In an attempt to mask the kickbacks as legitimate, ASIC, in letters purporting to come from Cenlar,

will often disclose to the borrower that Cenlar or its affiliates may earn commissions or compensation as a result of the forced placement of new coverage. In reality, however, no work is ever done by Cenlar or its affiliates to procure insurance for that particular borrower because the coverage comes through the master policy already in place – and the process is largely automated by ASIC. As a result, no commission or compensation is "earned" and, in addition, neither Cenlar nor its affiliates incur any costs in relation to force-placing insurance on any particular borrower and therefore no "expense reimbursement" is due.

31. Once the certificate of insurance is issued on an individual borrower, Cenlar then charges the borrower the full, "pre-rebate" amount for the coverage while purporting to charge the borrower the cost of the insurance coverage in keeping with the borrower's mortgage agreement. The inflated amount is either deducted from the borrower's mortgage escrow account or added to the balance of the borrower's loan.[3] The borrower's escrow account is depleted irrespective of whether other escrow charges, such as property taxes, are also due and owing. Through the process of an escrow analysis or adjustment, the borrower's mortgage payment is significantly increased.

32. Under this highly profitable force-placed insurance scheme, Cenlar is incentivized to purchase and force-place insurance coverage with artificially inflated premiums on a borrower's property because the higher the cost of the insurance policy, the higher the kickback. And, as a result of the kickbacks, Cenlar effectively pays a reduced amount for force-placed insurance coverage but does not pass these savings on to its borrowers.

33. ASIC and Cenlar also enter into agreements for ASIC to provide mortgage

[3] On some occasions, when a borrower does not have an escrow account, an escrow account with a negative balance is created and the borrower is charged to bring the balance to zero.

servicing activities on Cenlar's entire loan portfolio at below cost. These activities include, but are not limited to, services such as new loan boarding, escrow administration, and loss draft functions – many of which have little or nothing to do with force-placed insurance. ASIC offers to take on these mortgage servicing functions – which are Cenlar's responsibility pursuant to its agreements with the owners of the loans – at a discount to maintain its exclusive right to force-place insurance on Cenlar borrowers. Indeed, ASIC does not perform these services for a lender without also being the exclusive provider of force-placed insurance.

34. The full costs of the servicing activities are added into the force-placed amounts which are then passed on to the borrower. ASIC and its affiliates are able to provide these services at below cost because of the enormous profits they make from the hyper-inflated amounts charged for force-placed insurance. However, because insurance-lapsed mortgaged property typically comprises only 1-2% of the lenders' total mortgage portfolio, the borrowers who pay the charges from Cenlar unfairly bear the entire cost to service the entire loan portfolio – despite many of the services having nothing to do with force-placed insurance. These charges, passed on to Plaintiffs and the proposed Class members, are not properly chargeable to the borrower because they are expenses associated with the servicing of all the loans and the loan servicers are already compensated for these activities by the owners of the loans (e.g., Fannie Mae).

35. The small percentage of borrowers who are charged for force-placed insurance shoulder the costs of monitoring Cenlar's entire loan portfolio, effectively resulting in a kickback.

36. In addition, upon information and belief, ASIC enters into essentially riskless "captive reinsurance arrangements" with Cenlar's affiliates to "reinsure" the property insurance force-placed on borrowers. A recent *American Banker* article illustrated this reinsurance problem using JPMorgan Chase's program by way of example:

> JPMorgan and other mortgage servicers reinsure the property insurance they buy on behalf of mortgage borrowers who have stopped paying for their own coverage. In JPMorgan's case, 75% of the total force-placed premiums cycle back to the bank through a reinsurance affiliate. This has raised further questions about the force-placed market's arrangements. . . .
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> Over the last five years, Chase has received $660 million in reinsurance payments and commissions on force-placed policies, according to New York's DFS. . . .
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> Of every hundred dollars in premiums that JPMorgan Chase borrowers pay to Assurant, the bank ends up keeping $58 in profit, DFS staff asserted. The agency suggested the bank's stake in force-placed insurance may encourage it to accept unjustifiably high prices by Assurant and to avoid filing claims on behalf of borrowers, since that would lower its reinsurer's returns.
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> The DFS staff also questioned the lack of competition in the industry, noting that Assurant and QBE have undertaken acquisitions that give them long-term control of 90% of the market. Further limiting competition are the companies' tendency to file identical rates in many states, Lawsky and his staff argue.

J. Horwitz, *Chase Reinsurance Deals Draw New York Regulator's Attacks*, AM. BANKER, May 18, 2012, *available at* http://www.americanbanker.com/issues/177_97/chase-reinsurance-deals-regulator-attack-1049460-1.html.

37. Cenlar's reinsurance program, like those of other lenders, is simply a way to funnel profits, in the form of ceded premiums, to Cenlar at borrowers' expense. While reinsurance can, and often does, serve a legitimate purpose, here it does not. On information and belief, Cenlar or its affiliates enter into reinsurance agreements with ASIC that provide that the insurer will return significant percentages of the force-placed insurance charges by way of ceded reinsurance premiums to Cenlar affiliates or subsidiaries – which in turn pass on these profits to Cenlar. The ceded premiums are nothing more than a kickback to Cenlar and a method for Cenlar to profit from the forced placement of new coverage. Indeed, while Cenlar or its affiliates purportedly provided reinsurance, they did not assume any real risk.

38. The amounts charged borrowers are also inflated by the interest that accrues on the amounts owed for force-placed coverage; when Cenlar adds the charge for the force-placed insurance to a homeowner's mortgage balance, it thereby increases the interest paid over the life of the loan by the homeowner to the lender.

39. The actions and practices described above are unconscionable and undertaken in bad faith with the sole objective to maximize profits. Borrowers who for whatever reason have stopped paying for insurance or are under-insured on mortgaged property are charged hyper-inflated and illegitimate noncompetitive amounts for force-placed insurance. These charges are inflated to include undisclosed kickbacks to the Defendants or their affiliates (who, as described above, perform little to no functions related to the force-placement of the individual policies), as well as the cost of captive reinsurance arrangements, and discounted mortgage servicing functions.

40. Borrowers have no say in the selection of the force-placed insurance carrier or the terms of the force-placed insurance policies. Force-placed policies are commercial insurance policies with rates and premiums intended for all lender or servicer clients of ASIC in a particular State and are meant to protect their interest in the property.[4] The terms are determined by the lender or servicer - Cenlar, and the insurer - ASIC. Because they are commercial policies, borrowers cannot purchase or directly pay ASIC for the force-placed policies on their own.

41. Plaintiffs here do not challenge Cenlar's right to force place insurance in the first instance. They challenge Defendants' manipulation of the force-placed insurance market whereby Cenlar selects a force-placed provider, ASIC, that will provide it the best package of kickbacks that provide effective rebates to Cenlar and with an eye toward artificially inflating the amounts

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[4] Indeed, ASIC's master insurance policy is entitled "Mortgagee Interest Protection" and it is the lender or servicer named as the insured on the certificates that are issued.

charged for force-placed insurance to maintain those unlawful kickback arrangements. That is, lenders or servicers, like Cenlar, are financially motivated to utilize the insurer, like ASIC, that offers it the best financial benefit in the terms of "commissions," "expense reimbursements," discounted mortgage servicing functions, or ceded reinsurance premiums.

Government and Regulatory Scrutiny of the Force-Placed Industry

42. It is no surprise that these practices have come under increased scrutiny in recent years by the government and regulators. For example:

- At hearings before the New York Department of Financial Services ("NYDFS") on May 17, 2012 related to the force-placed insurance market, the Superintendent of Financial Services, Benjamin Lawsky, stated that the Department's initial inquiry uncovered "serious concerns and red flags" which included: 1) exponentially higher premiums, 2) extraordinarily low loss ratios, 3) lack of competition in the market, and 4) tight relationships between the banks, their subsidiaries, and insurers. He went on to state:

  > In sum when you combine [the] close and intricate web of relationships between the 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 questions….

- On March 21, 2013, the NYDFS's, investigation into force-placed insurance practices "produced a major settlement with the country's largest 'force-placed' insurer, Assurant, Inc. . . . [The settlement] includes restitution for homeowners who were harmed, a $14 million penalty paid to the State of New York, and industry-leading reforms that will save homeowners, taxpayers, and investors millions of dollars going forward through lower rates."[5] Further, under the Consent Order entered, Assurant and its subsidiaries (including Defendant ASIC here), are prohibited from paying commissions to any servicers or entity affiliated with a servicer on

[5] *See Cuomo Administration Settles with Country's Largest Force-Placed Insurer, Leading Nationwide Reform Effort and Saving Homeowners, Taxpayers, and Investors Millions of Dollars*, Dep't of Fin. Servs., Mar. 21, 2013, *available at*, http://www.dfs.ny.gov/about/press2013/pr1303211.htm.

force-placed insurance policies obtained by the servicer.[6]

- The National Association of Insurance Commissioners (NAIC) has expressed concern with the "reverse competition" in the force-placed insurance market whereby the insurers compete by offering mortgage lenders and servicers a share in the profits, rather than by offering lower prices. The NAIC's website explains:

  > A key regulatory concern with the growing use of lender-placed insurance is "reverse competition," where the lender chooses the coverage provider and amounts, 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.[7]

- The Consumer Financial Protection Bureau's new regulations on force-placed insurance became final on January 17, 2013 and prohibit servicers of federally regulated mortgage loans from force-placing insurance unless the servicer has a reasonable basis to the believe the borrower's insurance has lapsed and require the servicer to provide three notices of the force-placement in advance of issuing the certificate of insurance.[8]

- On October 7, 2013 ASIC entered into a Consent Order with the Florida Office of Insurance Regulation ("FLOIR") because of FLOIR's "concerns regarding ASIC's business practices." ASIC agreed to cease some of the same practices complained of here including:

  - Paying "commissions" to a Servicer or its affiliate;
  - Reinsuring force-placed policies with a captive insurer of the Servicer;
  - Providing free or below-cost outsourced services to Servicers; and
  - Making incentive payments, including payment of expenses to

6 *See* http://www.dfs.ny.gov/about/ea/ea130321.pdf, at 9.

7 *See* http://www.naic.org/cipr_topics/topic_lender_placed_insurance.htm.

8 *See* Consumer Financial Protection Bureau Proposes Rules to Protect Mortgage Borrowers" available at http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-rules-to-protect-mortgage-borrowers/

Servicers.[9]

- On December 18, 2013, Fannie Mae issued its Servicing Guide Announcement related to force-placed insurance that, among other things, prohibits servicers from including any commissions, bonuses, or other incentive compensation in the amounts charged to borrowers for force-placed insurance and further requires that the force-placed insurance carrier cannot be an affiliated entity of the servicer.[10]

43. This action is brought to put an end to Defendants' exclusive, collusive, and uncompetitive arrangements. Plaintiffs seek to recover the improper charges passed on to them and other Cenlar borrowers nationwide through their claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, tortious interference with a contract or advantageous business relationship, and violations of the Federal Truth in Lending Act ("TILA"), and the Racketeer Influenced and Corrupt Organizations Act ("RICO").

Plaintiffs – Harry Jones and Glory Jones

44. Plaintiff Harry Jones took a mortgage loan from Prospect Mortgage, LLC in December 2010 on a property in Miami-Dade County, Florida. At all relevant times, the mortgage loan was serviced by Cenlar.

45. In December 2012, Mr. Jones executed a Quit Claim Deed on the property for his daughter-in-law, Glory Jones. Ms. Jones has been responsible for all mortgage and escrow payments since that time.

46. Paragraphs 4 and 7 of the Jones' mortgage contract state in pertinent part as follows:

> 4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or

[9] *See In the Matter of American Security Insurance Company*, http://www.assurantspecialtyproperty.com/Documents/FL_ASIC_Consent_Order_100713.pdf

[10] *See* https://www.fanniemae.com/content/announcement/svc1327.pdf

subsequently erected, against any hazards, casualties, and contingencies, including fire, for which the Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure al improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by the Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

…

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the

> Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.
>
> Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.
>
> Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any party of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

Plaintiffs' mortgage contract is attached as **Exhibit A**.

47. In or around December of 2013, Plaintiffs voluntary hazard insurance policy lapsed. Cenlar then purchased a hazard force-placed insurance policy through ASIC and force-placed it on their property. Plaintiffs have had a force-placed policy through ASIC on the property since that time and have either paid or still owe the amounts for the force-placed charges to Cenlar.

48. Pursuant to the automated procedures in place, Plaintiffs received letters regarding the force-placement of the ASIC insurance including a letter renewing the insurance on February 4, 2016 which purportedly came from Cenlar but was in fact sent by ASIC.

49. The letter misrepresented to Plaintiffs that Cenlar would be charging them for the "cost" of the insurance and that the higher "cost" of the force-placed insurance policy was "because the insurance we purchase is issued automatically without evaluating the risk of insuring your property," when in fact Cenlar does not charge borrowers the cost of the insurance because as a result of the kickbacks, it pays less for the insurance than what it charges to Plaintiffs and other

borrowers. Further the higher cost of the force-placed insurance policy was due to the kickback scheme that Defendants have enacted and not due to lack of a risk evaluation.[11]

50. At no time did any Defendants disclose, in the letters or by any other means, that an exclusive relationship between Cenlar and ASIC was in place and that because of the kickbacks, provided to Cenlar, it would effectively be paying a less than what it would charge to Plaintiffs and the Class for the force-placed insurance coverage.

51. It was also never disclosed to Plaintiffs or the Class members that the amounts charged them covered below cost mortgage-servicing functions that ASIC performs for Cenlar and that Plaintiffs and the putative Class members charges would be subsidizing these functions that are often not related to the placement of insurance, that are already paid for by the owners of the loans, and therefore are not properly charged to them. The amounts kicked back to Cenlar were not reduced from the amount charged resulting in Plaintiffs paying more than the "cost" of the insurance.

52. All putative Class members received materially similar letters pursuant to the automated procedures used by Defendants.

53. There are no material differences between these Defendants' actions and practices directed to Plaintiffs and their actions and practices directed to the putative class.

CLASS ALLEGATIONS

A. Class Definitions

54. Plaintiffs bring this action against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated. Plaintiffs

11 In his testimony before the NYDFS, an insurance expert, Robert Hunter, argued that, "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 NYDFS Testimony at 5.

seek to represent the following classes:

Nationwide class:

All borrowers who, within the applicable statutes of limitation, were charged for a force-placed insurance policy through Cenlar or its affiliates, entities, or subsidiaries. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

Florida Subclass:

All Florida borrowers who, within the applicable statutes of limitation, were charged for a force-placed insurance policy through Cenlar or its affiliates, entities, or subsidiaries. Excluded from this class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

55. Plaintiffs reserve the right to modify or amend the definitions of the proposed classes before the Court determines whether certification is appropriate.

56. Defendants subjected Plaintiffs and the respective Class members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner.

B. Numerosity

57. The proposed classes are so numerous that joinder of all members would be impracticable. Defendants sell and service millions of mortgage loans and insurance policies in Florida as well as nationwide. The individual Class members are ascertainable, as the names and addresses of all Class members can be identified in the business records maintained by Defendants. The precise number of Class members for the classes numbers at least in the thousands and can only be obtained through discovery, but the numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

C. <u>Commonality</u>

58. There are questions of law and fact that are common to Plaintiffs' and Class members' claims. These common questions predominate over any questions that go particularly to any individual member of the Classes. Among such common questions of law and fact are the following:

a. Whether Defendants charged borrowers for unnecessary insurance coverage including, but not limited to, insurance coverage that exceeded the amount required by law or the borrowers' mortgages;

b. Whether Cenlar breached its mortgage contracts with Plaintiffs and the Class members by charging them for force-placed insurance that included illegal kickbacks (including unwarranted commissions or qualified expense reimbursements, and reinsurance payments) and by charging Plaintiffs and the Class members for servicing their loans;

c. Whether Cenlar has been unjustly enriched at the expense of the Plaintiffs and the Class members;

d. Whether Cenlar breached the implied covenant of good faith and fair dealing by seeking out a force-placed insurer that would provide it the best deal in terms of kickbacks and by entering into exclusive arrangements with ASIC and/or its affiliates, which resulted in Cenlar paying less for the force-placed insurance coverage than what it charged to Plaintiffs and the Class members;

e. Whether Defendants manipulated forced-placed insurance purchases in order to maximize their profits to the detriment of Plaintiffs and the Class members;

f. Whether Cenlar or its affiliates perform any work or services in exchange for the "commissions" or other "compensation" they collect;

g. Whether the "qualified expense reimbursements" received by Cenlar are for true expenses or are just kickbacks pursuant to their exclusive relationship with ASIC;

h. Whether Cenlar's charges to Plaintiffs and the Class members are inflated to include kickbacks and unwarranted "commissions" or "expense reimbursements;"

i. Whether Cenlar's charges are inflated to compensate for mortgage servicing activities that ASIC and its affiliates provide to Cenlar, and which are not chargeable to Plaintiffs and the Class members under the terms of their mortgages;

j. Whether the charges are inflated to include the cost of an unlawful captive reinsurance arrangement;

k. Whether Cenlar violated the federal Truth in Lending Act ("TILA") by conditioning its extensions of credit on the purchase of insurance through an affiliate, in direct contravention of the anti-coercion disclosures included in borrowers' mortgages;

l. Whether Cenlar violated TILA by failing to disclose kickbacks charged to Plaintiffs and the Class members in their mortgages;

m. Whether ASIC intentionally and unjustifiably interfered with Plaintiffs' and the Class members' rights under the mortgage contracts by paying kickbacks and providing free or below-cost mortgage servicing functions to Cenlar or its affiliates thereby inducing a breach of the contract;

n. Whether Defendants were associated with the enterprise and agreed and conspired to violate the federal RICO statutes; and

o. Whether Plaintiffs and the Class members are entitled to damages and/or injunctive relief as a result of Defendants' conduct.

D. <u>Typicality</u>

59. Plaintiffs are members of the Classes they seek to represent. Plaintiffs' claims are typical of the Class members' claims because of the similarity, uniformity, and common purpose of the Defendants' unlawful conduct. Each Class member has sustained, and will continue to sustain, damages in the same manner as Plaintiffs as a result of Defendants' wrongful conduct.

E. <u>Adequacy of Representation</u>

60. Plaintiffs are adequate representatives of the classes they seek to represent and will fairly and adequately protect the interests of that class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no hostility between Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

61. To prosecute this case, Plaintiffs have chosen the undersigned law firms, which are very experienced in class action litigation and have the financial and legal resources to meet the

substantial costs and legal issues associated with this type of litigation.

F. <u>Requirements of Fed. R. Civ. P. 23(b)(3)</u>

62. The questions of law or fact common to Plaintiffs' and each Class member's claims predominate over any questions of law or fact affecting only individual members of the class. All claims by Plaintiffs and the unnamed Class members are based on Defendants' scheme regarding the force-placed insurance policies and their deceptive and egregious actions involved in securing the force-placed policy.

63. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

64. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

G. <u>Superiority</u>

65. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

> (a) Joinder of all class members would create extreme hardship and inconvenience for the affected customers as they reside all across the states;
>
> (b) Individual claims by class members are impractical because the costs to pursue individual claims exceed the value of what any one class member has at stake. As a result, individual class members have no interest in prosecuting and controlling separate actions;
>
> (c) There are no known individual class members who are interested in individually controlling the prosecution of separate actions;
>
> (d) The interests of justice will be well served by resolving the common disputes of potential class members in one forum;
>
> (e) Individual suits would not be cost effective or economically maintainable as individual actions; and

(f) The action is manageable as a class action.

H. Requirements of Fed. R. Civ. P. 23(b)(1) & (2)

66. Prosecuting separate actions by or against individual Class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.

67. Defendants have acted or failed to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I

BREACH OF CONTRACT
(against Cenlar)

68. Plaintiffs re-allege and incorporate paragraphs 1-53 as if fully set forth herein and further allege as follows.

69. Plaintiffs and all similarly situated Class members have mortgages that are owned and/or serviced by Cenlar.

70. Plaintiffs and these Class members' mortgages are written on uniform mortgage forms and contain substantially similar provisions regarding force-placed insurance requirements and its placement by Cenlar. The force-placed provisions from Plaintiffs' mortgages are set forth above in paragraph 46.

71. Plaintiffs' mortgages require that they maintain insurance on their property and provide that if they fail to do so, then the lender may obtain insurance coverage to protect its interest in the property, "force place" the coverage, and charge the borrower the cost.

72. Cenlar, however, charges Plaintiffs and other borrowers more than its "cost" of

coverage. After Cenlar pays ASIC a premium for its master policy, ASIC pays Cenlar gratuitous kickbacks in the form of unmerited and falsely labeled, "qualified expense reimbursements," unearned "commissions," riskless reinsurance payments, and subsidies for discounted mortgage-servicing functions. These amounts are effective rebates on the cost of coverage, and are not applied to protecting Cenlar's rights or risk in the collateral for borrowers' mortgage loans. Cenlar breached the mortgage agreements by, among other things, not giving borrowers the benefit of these rebates and thus charging Plaintiffs and Class members more than its actual cost of coverage.

73. Cenlar has also breached Plaintiffs' and the Class members' mortgage agreements by charging Plaintiffs and the Class members for excess and unnecessary force-placed insurance coverage, as such coverage does not protect Cenlar's rights in their collateral or cover their risk.

74. Plaintiffs and the Class members have suffered damages as a result of the Cenlar's breaches of the contract.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated class members, seek compensatory damages resulting from the Cenlar's breach of contract, as well as injunctive relief preventing them from further violating the terms of the Class members' mortgages. Plaintiffs further seek all relief deemed appropriate by this Court, including attorneys' fees and costs.

COUNT II

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (against Cenlar)

75. Plaintiffs re-allege and incorporate paragraphs 1-53 as if fully set forth herein and further allege as follows.

76. A covenant of good faith and fair dealing is implied in every contract and imposes upon each party a duty of good faith and fair dealing in its performance. Common law calls for

substantial compliance with the spirit, not just the letter, of a contract in its performance.

77. Where an agreement affords one party the power to make a discretionary decision without defined standards, the duty to act in good faith limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party.

78. Plaintiffs' and the Class members' mortgage contracts allow Cenlar to force place insurance coverage on the borrower in the event of a lapse in coverage, but do not define standards for selecting an insurer or procuring an insurance policy.

79. Cenlar is afforded substantial discretion in force-placing insurance coverage. It is permitted to unilaterally choose the company from which it purchases force-placed insurance and negotiates any price for the coverage it procures. Cenlar has an obligation to exercise the discretion afforded it in good faith, and not capriciously or in bad faith. Plaintiffs do not seek to vary the express terms of the mortgage contract, but only to insure that Cenlar exercises its discretion in good faith.

80. Cenlar breached the implied covenant of good faith and fair dealing by, among other things:

(a) Manipulating the force-placed insurance market by selecting insurers (here, ASIC and its affiliates) that will provide the best package of kickbacks and artificially inflate force-placed insurance charges to include the kickbacks to Cenlar or its affiliates and by failing to seek competitive bids on the open market and instead contracting to create "back room" deals whereby an exclusive arrangement is in place for ASIC to issue its own insurance coverage without Cenlar seeking a competitive price;

(b) Exercising its discretion to choose a force-placed insurance policy in bad faith and in contravention of the parties' reasonable expectations, by purposefully selecting force-placed insurance policies with artificially inflated charges to maximize its own profits;

(c) Assessing inflated and unnecessary insurance policy charges against Plaintiffs and the Class and misrepresenting the reason for the cost of the policies;

(d) Receiving an effective rebate on the force-placed insurance coverage but not passing that rebate on to the borrower, thereby creating the incentive to seek the highest-priced premiums possible;

(e) Charging Plaintiffs and the Class the cost of having the vendor perform its obligation of servicing its mortgage portfolio, which is not properly chargeable to Plaintiffs or the Class;

(f) Charging Plaintiffs and the Class for expense reimbursements or commissions when the insurance is prearranged, no work is done by Cenlar or its affiliates, no expenses related to the placement of the force-placed insurance are incurred, and no commission is due; and

(h) Charging Plaintiffs and the Class an inflated charge for the force-placed insurance due to the captive reinsurance arrangement.

81. As a direct, proximate, and legal result of the aforementioned breaches of the covenant of good faith and fair dealing, Plaintiffs and the Class have suffered damages.

WHEREFORE, Plaintiffs, on behalf of themselves and similarly situated Class members, seek a judicial declaration that the amounts charged and the terms of the force-placed insurance policies violate the duties of good faith and fair dealing. Plaintiffs also seek damages resulting from the Cenlar's breaches of its duties. Plaintiffs further seek all relief deemed appropriate by this Court, including attorneys' fees and costs.

COUNT III

UNJUST ENRICHMENT
(against Cenlar)[12]

82. Plaintiffs re-allege and incorporate paragraphs 1-53 as if fully set forth herein and further allege as follows.

83. Cenlar received benefits from Plaintiffs and Class members in the form of

[12] Plaintiffs plead their unjust enrichment claim against Cenlar in the alternative to their contractual claims against them.

unwarranted kickbacks, including "expense reimbursements" or "commissions," captive reinsurance arrangements, and subsidized loan servicing costs.

84. Cenlar entered into an agreement whereby the insurance vendor – here, ASIC and its affiliates – would provide below cost mortgage servicing activities and cover Cenlar's entire portfolio of loans with a master policy and issue certificates of insurance when a borrower's voluntary policy lapsed. Cenlar would then charge Plaintiffs and the Class amounts for the force-placed insurance that had been artificially inflated to include the kickbacks described above and then retain the amounts of those kickbacks for itself. The force-placed policies imposed on borrowers therefore cost less than what Cenlar actually paid for them.

85. ASIC paid kickbacks directly to Cenlar or its affiliates in order to be able to exclusively provide force-placed insurance policies. ASIC and its affiliates were mere conduits for the delivery of the kickbacks and improper charges to Cenlar or its affiliates.

86. These payments directly benefitted Cenlar and/or its affiliates and were taken to the detriment of the borrower. The kickbacks (in the form reimbursements, commissions, or reinsurance arrangements, as well as subsidized costs) were subsumed into what Cenlar charged to borrowers for the force-placed insurance and ultimately paid by them. Therefore, Cenlar had the incentive to charge and collect unreasonably inflated prices for the force-placed policies.

87. Further, Cenlar was unjustly enriched through financial benefits in the form of increased interest income and other fees that resulted when the amounts for the force-placed insurance policies were added to the Class members' mortgage.

88. As a result, Plaintiffs and the Class members have conferred a benefit on Cenlar.

89. Cenlar had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on it.

90. Cenlar will be unjustly enriched if it is allowed to retain the aforementioned benefits, and each Class member is entitled to recover the amount by which Cenlar was unjustly enriched at his or her expense.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated Class members, demand an award against Cenlar in the amounts by which it has been unjustly enriched at Plaintiffs' and the Class Members' expense, and such other relief as this Court deems just and proper.

COUNT IV

TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP (against ASIC)

91. Plaintiffs re-allege and incorporate paragraphs 1-53 as if fully set forth herein and further allege as follows.

92. Plaintiffs and the Class members have advantageous business and contractual relationships with Cenlar pursuant to the mortgage contracts. Plaintiffs and the Class members have legal rights under these mortgage contracts. For example, Plaintiffs and the Class members have a right not to be charged exorbitant charges in bad faith for forced-place insurance.

93. ASIC has knowledge of the mortgage contracts and the advantageous business and contractual relationships between Plaintiffs and the Class members and Cenlar. ASIC is not a party to the mortgage contracts, nor is it a third-party beneficiary of the mortgage contracts. Further, ASIC does not have any beneficial or economic interest in the mortgage contracts.

94. ASIC, in bad faith and with the intent to maximize all the Defendants' profits, intentionally and unjustifiably interfered with Plaintiffs' and the Class's rights under the mortgage contracts, as described above, by, *inter alia*, entering into an exclusive relationship with Cenlar and its affiliates, whereby they provide kickbacks (in the form of unmerited expense

reimbursements or commissions, or reinsurance premiums without the corresponding risk, as well as below cost mortgage servicing) to Cenlar in exchange for the exclusive right to force-place insurance at inflated and unnecessary amounts which are purposefully and knowingly charged to Plaintiffs and the Class members.

95. Plaintiffs and the Class members have been damaged as a result of ASIC's interference with their mortgage contracts by being charged bad faith, exorbitant, and illegal charges for force-placed insurance in contravention of their rights under the mortgages.

WHEREFORE, Plaintiffs, on behalf of themselves and all Class members similarly situated, seek a judgment in their favor against ASIC for the actual damages suffered by them as a result of ASIC's tortious interference. Plaintiffs also seek all costs of litigating this action, including attorneys' fees.

COUNT V

VIOLATIONS OF THE TRUTH IN LENDING ACT, 15 U.S.C. § 1601, et seq. (against Cenlar)

96. Plaintiffs re-allege and incorporate paragraphs 1-53 as if fully set forth herein and further allege as follows.

97. Plaintiffs' and the Class Members' mortgages were consumer credit plans secured by their principal dwellings, and were subject to the disclosure requirements of the Truth in Lending Act ("TILA"), 15 U.S.C.§ 1601, *et seq.*, and all related regulations, commentary, and interpretive guidance promulgated by the Federal Reserve Board.

98. Cenlar is a "creditor" as defined by TILA because it owned and/or serviced Plaintiffs' mortgages and changed the terms of the mortgages so as to create a new mortgage obligation, of which Cenlar was the creditor.

99. Pursuant to TILA, Cenlar was required to accurately and fully disclose the terms of

the legal obligations between the parties. *See* 12 C.F.R. § 226.17(c).

100. Cenlar violated TILA, specifically 12 C.F.R. § 226.17(c), when it: (i) added force-placed insurance charges to Plaintiffs' mortgage obligations and failed to provide new disclosures; and (ii) failed at all times to disclose the amount and nature of the kickbacks, reinsurance, discount mortgage servicing, and other profiteering involving Cenlar and/or its affiliates as a result of the purchase of force-placed insurance.

101. When Cenlar changed the terms of Plaintiffs' mortgages to allow previously unauthorized kickbacks and insurance amounts in excess of its interests in the property, it changed the finance charge and the total amount of indebtedness, extended new and additional credit through force-placed insurance charges, and thus created a new debt obligation. Under TILA, Cenlar was then required to provide a new set of disclosures showing the amount of the insurance charges (i.e. finance charges) and all components thereof. On information and belief, Cenlar increased the principal amount under Plaintiffs' mortgages when it force-placed the insurance, which was a new debt obligation for which new disclosures were required.

102. Cenlar adversely changed the terms of Plaintiffs' loan after origination in order to allow a kickback on the force-placed insurance charges. These kickbacks are not authorized in the mortgage in any clear and unambiguous way. Cenlar never disclosed to borrowers the amount of the "commissions," "expense reimbursements," or other unearned profits paid to them or their affiliate.

103. Cenlar also violated TILA by adversely changing the terms of Plaintiffs' loan after origination by requiring and threatening to force-place more insurance than necessary to protect its interest in the property securing the mortgages.

104. Acts constituting violations of TILA occurred within one year prior to the filing of

the original Complaint in this action, or are subject to equitable tolling because Cenlar's kickbacks, reinsurance, and other unearned revenue-generating scheme was the subject of secret agreements among it and its affiliates and was concealed from borrowers.

105. Plaintiffs and Class members have been injured and have suffered a monetary loss arising from Cenlar's violations of TILA.

106. As a result of Cenlar's TILA violations, Plaintiffs and Class members are entitled to recover actual damages and a penalty of $500,000.00 or 1% of Cenlar's net worth, as provided by 15 U.S.C. § 1640(a)(1)-(2).

107. Plaintiffs and Class members are also entitled to recovery of attorneys' fees and costs to be paid by Cenlar, as provided by 15 U.S.C. § 1640(a)(3).

WHEREFORE, Plaintiffs, on behalf of themselves and all Class members similarly situated, seek a judgment in their favor against Cenlar awarding actual damages and a penalty of $500,000.00 or 1% of Cenlar's net worth, as provided by 15 U.S.C. §1640(a)(1)-(2), as well as of attorneys' fees and costs to be paid by Cenlar, as provided by 15 U.S.C. § 1640(a)(3).

COUNT VI

Violation of RICO, 18 U.S.C. § 1962(c)
(Plaintiffs against All Defendants)

108. Plaintiffs incorporate paragraphs 1-53 herein as if fully set forth herein and further allege as follows.

109. At all relevant times, Defendants were employed by and associated with an illegal enterprise, and conducted and participated in that enterprise's affairs, through a pattern of racketeering activity consisting of numerous and repeated uses of the interstate mails and wire communications to execute a scheme to defraud, all in violation of RICO, 18 U.S.C. § 1962(c).

110. The RICO enterprise, which engaged in and the activities of which affected

interstate and foreign commerce, was comprised of an association in fact of entities and individuals that included Cenlar, its affiliates, and ASIC and its affiliates.

111. The members of the RICO enterprise had a common purpose: to increase and maximize their revenues by forcing Plaintiffs and Class members to pay inflated amounts for force-placed insurance through a scheme that inflated such amounts to cover kickbacks and expenses associated with servicing Cenlar's entire loan portfolio, and concealing from Plaintiffs and Class members the true nature of those charges. Defendants shared the bounty of their enterprise by sharing the illegal profits generated by the joint scheme.

112. The RICO enterprise functioned over a period of years as a continuing unit and had a maintained an ascertainable structure separate and distinct from the pattern of racketeering activity.

113. Cenlar and ASIC conducted and participated in the affairs of this RICO enterprise through a pattern of racketeering activity that projects into the future, lasted more than one year, and that consisted of numerous and repeated violations of federal mail and wire fraud statutes, which prohibit the use of any interstate or foreign wire or mail facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.

114. ASIC directed and controlled the enterprise as follows:

a. ASIC specifically developed and implemented guidelines and standards for the timing and content of the cycle of deceptive letters sent to borrowers about force-placed insurance, to which Cenlar agreed;

b. ASIC drafted the language of the fraudulent letters and correspondence to borrowers that was specifically designed to deceive borrowers into believing that they were coming from the Cenlar. The letters fraudulently misrepresented the true nature of the "cost" of the insurance forced on their properties, and these letters were approved by the Cenlar;

c. ASIC ran the day-to-day operations of the force-placed scheme by, *inter alia*, tracking Cenlar's portfolio, mailing a cycle of form letters to borrowers notifying them that insurance coverage would be forced, and misrepresenting to borrowers both that they would be charged only the costs of coverage and that a Cenlar affiliate would be paid as compensation for work performed;

d. ASIC paid kickbacks to Cenlar and its affiliates to maintain Defendants' exclusive relationship and keep their force-placed scheme moving forward;

115. Cenlar directed and controlled the enterprise as follows:

a. Cenlar outsourced loan servicing functions to ASIC, including authorizing ASIC to send the three-letter cycle of notice letters to borrowers informing them that coverage was being forced on their properties;

b. Cenlar charged borrowers amounts for coverage above and beyond its true cost of coverage, without disclosing to borrowers that it had received a rebate on the "premium" indicated in their notice letters;

c. Cenlar deducted amounts from borrowers' escrow accounts for forced coverage, knowing that the amounts deducted exceeded its cost of coverage;

d. Cenlar charged borrowers interest on the amounts already charged for forced coverage, knowing that the amounts deducted exceeded its cost of coverage.

116. Both Defendants directed and controlled the enterprise as follows:

a. by directing, controlling, and creating an enterprise and arrangement by which the Cenlar would receive unearned kickbacks;

b. by directing, controlling, and creating an enterprise and arrangement by which Cenlar would receive illegitimate revenues (ultimately charged to borrowers) in the form of direct payments, debt forgiveness, expense reimbursements, or "commissions," that were merely bribes to keep the exclusive relationship in place and not disclosing same to borrowers;

c. by directing, controlling, and creating an enterprise and program by which Cenlar never charged the borrowers its actual or effective cost of the force-placed insurance policies;

d. by directing, controlling, and creating an enterprise and program where ASIC took money directly from borrowers escrow accounts and took amounts which are not the actual or effective "cost" for lender placed insurance but instead, including

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illegal bribes and kickbacks;

e. by designing and directing an exclusive arrangement by which Defendants manipulated the force-placed insurance market in order to artificially inflate the amounts they charge to borrowers for force-placed insurance. The charges were inflated to provide the Cenlar and their affiliates with kickbacks disguised as "commissions" or expense reimbursements, or to cover the cost of discounted mortgage servicing, and/or to provide the Cenlar with other forms of kickbacks. ASIC and its affiliates benefit by securing business from the Cenlar—it provides kickbacks to them at the expense of the borrowers who are charged the inflated charges;

f. by developing and implementing guidelines and criteria to determine when force-placed insurance is placed an a borrower's home, in what amount, for what coverages and for what period of time—all of which resulted in inferior and more expensive insurance that covered time periods where no claims were made or resulted in "double coverage;" and

g. by developing and implementing an automated system to send the cycle of deceptive letters to borrowers, to determine the type, time period and amount of substandard and unnecessary coverage, and to remove or charge borrowers' escrow accounts automatically for improper and inflated charges.

117. In order to further its control and direction of the enterprise, ASIC paid bribes and kickbacks to Cenlar disguised as commissions, direct payments, reinsurance premiums, expense reimbursements, and below-cost mortgage servicing functions.

118. As part of and in furtherance of the scheme to defraud, Defendants made numerous material omissions and misrepresentations to Plaintiffs and Class members with the intent to defraud and deceive them.

119. For example, ASIC, with the approval of the Cenlar, sent form letters to Plaintiffs on Cenlar letterhead through the U.S. mail, stating that Cenlar would purchase or renew force-placed coverage if voluntary insurance was not secured by a certain date. These Defendants represented in the letters that Cenlar would purchase the required coverage and charge the borrower "the cost of the insurance." In making these statements, Defendants knowingly and intentionally

falsely stated that the amounts for force-placed insurance that Plaintiffs were charged represented the actual cost of the insurance premiums, when in fact such amounts also included kickbacks and other costs paid as bribes to the Cenlar, and Plaintiffs were charged significantly more than Cenlar had paid for coverage.

120. Defendants had a duty to correct this mistaken impression. These misrepresentations and omissions were material, as they helped Defendants advance their scheme to charge Plaintiffs unreasonably high amounts for force-placed insurance and were designed to lull Plaintiffs and the Class into believing that the charges were legitimate. Plaintiffs (and other homeowners) would not have paid, or would have contested these specific charges had Defendants disclosed that the illegal bribes and kickbacks were included and that these forced-charges did not represent simply the cost of the required insurance coverage. One such letter was sent to Plaintiffs on February 4, 2016 through U.S. mail.

121. ASIC and its affiliates, with the approval of the Cenlar and on Cenlar letterhead, also sent Plaintiffs force-placed insurance notices through the U.S. mail informing them that force-placed insurance would cost more "because the insurance we purchase is issued automatically without evaluating the risk of insuring your property," when in fact, the inflated amounts charged to Plaintiffs and the class were due to kickbacks provided to Cenlar and included in the amounts charged Plaintiffs and the Class members. Defendants had a duty to correct this mistaken impression.

122. This misrepresentation was material, as it gave Defendants a colorable reason to charge Plaintiffs unreasonably inflated amounts for insurance and would have influenced Plaintiffs' decisions whether to pay the charges or contest them. For example, had Plaintiffs known that Cenlar was effectively paying much less than what it charged to Plaintiffs; Plaintiffs would not

have paid or would have contested the charges for force-placed insurance. One such letter was sent to Plaintiffs on February 4, 2016 through U.S. mail.

123. For the purpose of executing the scheme to defraud, Defendants sent, mailed, and transmitted, or caused to be sent, mailed, or transmitted, in interstate or foreign commerce numerous materials, including but not limited to the notices and letters described above informing Plaintiffs and Class members that they could charge Plaintiffs and Class members unreasonably high amounts for force-placed insurance.

124. This scheme to defraud proximately injured Plaintiffs and the Class members because it prevented them from making an informed decision regarding whether to dispute or pay the force-placed charges, or whether to allow new coverage to be placed on their property. Had they known that the charges had been artificially inflated to include kickbacks and other improper charges and that Cenlar was actually paying less than what it charged Plaintiffs and the Class members, they would not have paid them or would have contested them. Defendants also transferred sums among themselves, including but not limited to kickbacks, in furtherance of their scheme to defraud Plaintiffs and Class members, in violation of the wire fraud statutes.

125. By reason and as a result of Defendants' conduct and participation in the racketeering activity alleged herein, Defendants have caused damages to Plaintiffs and Class members in the form of unreasonably high force-placed insurance premiums.

WHEREFORE, Plaintiffs and Class members seek compensatory and treble damages, and attorneys' fees and costs, pursuant to 18 U.S.C. § 1964(c).

COUNT VII
Violation of RICO, 18 U.S.C. § 1962(d)
(Plaintiffs against all Defendants)

126. Plaintiffs incorporate paragraphs 1-53 and 108-125 as if fully set forth herein and

further allege as follows.

127. At all relevant times, Defendants were associated with the enterprise and agreed and conspired to violate 18 U.S.C. § 1962(d). Defendants agreed to conduct and participate, directly and indirectly, in the conduct and affairs of the enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

128. Cenlar and ASIC illegally agreed to violate RICO, 18 U.S.C. § 1962(d), by, *inter alia*:

a. Agreeing that ASIC and its affiliates would be Cenlar's exclusive force-placed insurance providers and would provide Cenlar and effective rebate on the cost of the insurance, through the aforementioned kickbacks, that would not be passed on to the borrowers and thereby extracting unreasonably inflated amounts from Cenlar's customers;

b. Agreeing that ASIC would monitor Cenlar's mortgage portfolios for lapses in voluntary insurance and would, with the approval of Cenlar, send misleading notices to borrowers. These misleading notices would inform the borrowers that if new coverage were not procured, coverage would be forced, the borrower would be charged "the cost of the insurance" and earned "commissions" payments would be paid to a Cenlar affiliate;

c. Entering into illusory commission or other agreements in order to disguise the true nature of the amounts charged to borrower under the guise of force-placed insurance; and

d. Agreeing to commit two or more predicate acts as described above in Count VI.

129. Upon information and belief, Cenlar affiliates pass profits from this scheme to Cenlar through credits in their general ledge accounts.

130. Defendants committed and caused to be committed a series of overt acts in furtherance of the conspiracy and to affect the objects thereof, including but not limited to the acts

set forth above.

131. As a result of Defendants' violations of 18 U.S.C. § 1962(d), Plaintiffs and Class members suffered damages in the form of unreasonably high force-placed insurance premiums.

WHEREFORE, Plaintiffs and Class members seek compensatory and treble damages, and attorneys' fees and costs, pursuant to 18 U.S.C. § 1964(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated individuals, demand judgment against Defendants as follows:

(1) Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) and (2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs and their counsel to be representatives of the Class;

(2) Enjoining Defendants from continuing the acts and practices described above;

(3) Awarding damages sustained by Plaintiffs and the Class members as a result of Cenlar's breaches of the subject mortgage contracts and the implied covenant of good faith and fair dealing, together with pre-judgment interest;

(4) Finding that Cenlar has been unjustly enriched and requiring it to refund all unjust benefits to Plaintiffs and the Class, together with pre-judgment interest;

(5) Finding that ASIC has tortuously interfered with Plaintiffs' mortgage contracts and awarding them actual damages as a result of that interference;

(6) Awarding Plaintiffs and the Class costs and disbursements and reasonable allowances for the fees of Plaintiffs' and the Class's counsel and experts, and reimbursement of expenses;

(7) Awarding actual damages and a penalty of $500,000 or 1% of Cenlar's net worth as provided by 15 U.S.C. § 1640 (a)(1)-(2), and attorneys' fees and costs as provided by 15 U.S.C. § 1640 (a)(3)

(8) Awarding damages sustained by Plaintiffs and the Class as a result of ASIC's tortious interference;

(9) Awarding compensatory and treble damages, and attorneys' fees and costs under the federal RICO statute; and

(10) Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted this 23rd day of June, 2016.

By: /s/ *Adam M. Moskowitz*

Adam M. Moskowitz, Esq. Florida Bar No. 984280 amm@kttlaw.com Thomas A. Tucker Ronzetti, Esq. Florida Bar No. 965723 tr@kttlaw.com Rachel Sullivan, Esq. Florida Bar No. 815640 rs@kttlaw.com Robert J. Neary, Esq. Florida Bar No. 81712 rn@kttlaw.com **KOZYAK TROPIN & THROCKMORTON** 2525 Ponce de Leon Blvd., 9th Floor Coral Gables, FL 33134 Telephone: (305) 372-1800 Facsimile: (305) 372-3508 *Counsel for Plaintiffs*	Aaron S. Podhurst, Esq. Florida Bar No. 63606 apodhurst@podhurst.com Peter Prieto, Esq. Florida Bar No. 501492 pprieto@podhurst.com jgravante@podhurst.com Matthew Weinshall, Esq. Florida Bar No. 84783 mweinshall@podhurst.com **PODHURST ORSECK, P.A.** City National Bank Building 25 West Flagler Street, Suite 800 Miami, Florida 33130 Telephone: 305-358-2800 Facsimile: 305-358-2382 *Counsel for Plaintiffs*
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[redacted] JONES
LDG
GINNIE MAE RETAINED
[redacted]
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DATE:01/20/2011 03:19:06 PM
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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

[redacted]

This Instrument Prepared By:
Joy Boone

Return To:
PowerLink Settlement Services
Attention: Post Close, 4th Floor
345 Rouser Road PLH 117279
Coraopolis PA 15108

[redacted]

[Space Above This Line For Recording Data]

MORTGAGE

FHA CASE NO.
[redacted]

MIN: [redacted]

THIS MORTGAGE ("Security Instrument") is given on DECEMBER 30, 2010. The mortgagor is HARRY JONES, Single

("Borrower").

This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS") as Mortgagee. MERS is the nominee for Lender, as hereinafter defined, and Lender's successors and assigns. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. ([redacted] MERS.
PROSPECT MORTGAGE, LLC, A LIMITED LIABILITY COMPANY ("Lender") is organized and existing under the laws of DELAWARE, and has an address of 15301 VENTURA BLVD, SUITE D300, SHERMAN OAKS, CALIFORNIA 91403.
Borrower owes Lender the principal sum of SEVENTY-SIX THOUSAND TWENTY-TWO AND 00/100 Dollars (U.S. $ 76,022.00).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on JANUARY 1, 2041. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in MIAMI-DADE County, Florida:
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF
A.P.N.: [redacted]

HJ

which has the address of 11297 SW 155TH LANE [Street]
MIAMI [City], Florida 33157 [Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

FIRST, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

SECOND, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

THIRD, to interest due under the Note;

FOURTH, to amortization of the principal of the Note; and

FIFTH, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty

days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

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9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 DAYS from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 DAYS from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any

(initials)

demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

KJ

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

20. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

21. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)].

- [ ] Condominium Rider
- [x] Planned Unit Development Rider
- [ ] Non-Owner Occupancy Rider
- [ ] Graduated Payment Rider
- [ ] Adjustable Rate Rider
- [ ] Other [Specify]
- [ ] Growing Equity Rider
- [ ] Rehabilitation Loan Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in pages 1 through 9 of this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Harry Jones (Seal)
-Borrower
HARRY JONES
11297 SW 155TH LANE, MIAMI,
FL 33187

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Witness:

Witness:

[Space Below This Line For Acknowledgment]

STATE OF FLORIDA

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 31st day of December 2010

by HARRY JONES

who is personally known to me or who has produced Drivers License (Type of Identification)

as identification.

Signature

FELIX J. REIMUNDO
Notary Public - State of Florida
My Comm. Expires Jun 24, 2014
Commission # [redacted]
Bonded Through National Notary Assn.

(Seal)

Felix J. Reimundo
Name of Notary

Title

Serial Number, if any