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AUG 12 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
EASTERN DIVISION

ROGER D. SHAHAN and)
LEITA E. SHAHAN)
1900 Beringer Place)
Geneva, OH 44041)

*Individually and on behalf of a class)
of persons similarly situated,)*

Plaintiffs,)

vs.)

TOWER CITY TITLE AGENCY, INC.)
6151 Wilson Mills Road, Suite 110)
Highland Heights, OH 44143)

SERVE ON:)
Craig W. Syby, Esq. Resident Agent)
6151 Wilson Mills Road, Suite 110)
Highland Heights, OH 44143)

and)

TOWER CITY TITLE AGENCY, LLC)
6151 Wilson Mills Road, Suite 110)
Highland Heights, OH 44143)

SERVE ON:)
Marilyn A. Mannarino, President)
6151 Wilson Mills Road, Suite 110)
Highland Heights, OH 44143)

and)

JOHN DOES)
Mortgage Broker, Title Insurance Underwriter,)
Bank, Real Estate Agent, and/or Title Company)
Addresses unknown)

Defendants.)

1:05CV1983

Judge

JUDGE POLSTER

Case No.

COMPLAINT

(Jury Demand Endorsed Hereon)

MAG. JUDGE PERELMAN

Plaintiffs Roger D. Shahan and Leita E. Shahan, on their own behalf and on behalf of the class defined herein, sue Defendants Tower City Title Agency, Inc. (“Tower Inc.”), and Tower City Title Agency, LLC (“Tower LLC”), and for their complaint state as follows:

I. INTRODUCTION

1. This is a class action by homeowners seeking relief from the predatory practices of a title company (Tower Inc.), and a sham affiliated business entity (Tower LLC) for violations of statutory and common law obligations.

2. Tower Inc. relies heavily on mortgage lenders, mortgage brokers, and real estate brokers to obtain business. In order to promote its title services, Tower Inc., as described further below, created Tower LLC with one or more “partners” (including First American Title Insurance Company) – which on information and belief is a sham entity known as an “Affiliated Business Arrangement” – and encourages other entities such as mortgage brokers, real estate agents, and other similar entities to become affiliated with Tower LLC as a way to pay referral fees and kickbacks to the referring entity at the expense of the consumer and in circumvention of the provisions of the Real Estate Settlement Procedures Act (“RESPA”).

3. Upon information and belief, under Defendants’ scheme, Tower Inc. solicited title work from First Ohio Banc, the mortgage broker in the Shahan’s loan, promising that First Ohio Banc could make additional money for each loan referred for closing and title work without performing any additional work.

4. Tower LLC appeared on the settlement documents in transactions closed by Tower Inc. as an entity that had performed *bona fide* and substantial title or closing services. This, however, was false and untrue. Even though Tower LLC charged and was paid a fee by

the consumer in each transaction, Tower LLC, in fact, performed little or no work in connection with the transactions. Moreover, following the settlement, the fees attributable to Tower LLC – which were *in addition to* the customary and usual fee that Tower Inc. charged for title and closing work – were channeled back to First Ohio Banc (and other “affiliates”), who collected the fee without disclosing to the consumer that the monies were paid to reward the real estate agent for the referral of the title and/or settlement work to Tower LLC. In so doing, Tower Inc. was able to systematically and deceptively hide and conceal the fact that Tower LLC was a sham “Affiliated Business Arrangement” and served no purpose in the transaction other than to: (1) permit the affiliated entities to pocket additional monies, paid by the consumer, while providing no additional goods or services; and (2) facilitate the payment of a referral fee and kickback, sponsored by Tower Inc., at the increased expense of the consumer and in violation of the consumer’s rights under state and federal law.

5. Plaintiffs are a class of consumers who entered into mortgage loan transactions using the services of Tower Inc. where the HUD-1 Settlement Statement, or other documents in the loan file, includes a charge for or payment to one or more of Tower LLC.

II. PARTIES

a. The Named Plaintiffs

6. Roger and Leita Shahan are married and sold the property known as 801 Sherman Street, Geneva, Ohio 44041. The closing on the sale of the property occurred on August 13, 2004. In connection with the closing, the Shahans paid a substantial portion of the title and closing fees.

b. **The Co-Conspirators**

7. Conspirator Tower Inc. is an Ohio corporation, with several offices throughout Ohio, including a business office at 6151 Wilson Mills Road, Suite 110, Highland Heights, Ohio. Tower Inc. is licensed to conduct title and mortgage loan-closing services in Ohio, including issuance of title insurance policies. Upon information and belief, Tower Inc. conducts thousands of title services and mortgage loan closings each year.

8. Conspirator Tower LLC, is an Ohio Limited Liability Company with its principal place of business in the Highland Heights office of Tower Inc. Tower LLC is an affiliated business arrangement, owned in whole or in part by Tower Inc. and First American Corporation either directly or through subsidiaries, including but not limited to, First American Title Insurance Company, a wholly-owned subsidiary of First American Corporation. Tower LLC is affiliated with other entities, including but not limited to, First Ohio Banc. Tower LLC is an affiliated business arrangement, and a sham entity within the meaning of the regulations dealing with RESPA and promulgated by the Department of Housing and Urban Development (HUD). Tower LLC was established by Tower Inc. to facilitate the payment of illegal referral fees and kickbacks by Defendant Tower Inc. to affiliates such as First Ohio Banc.

9. Upon information and belief, John Does are affiliated entities with Tower LLC, and participated in the referral scheme set forth above.

III. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction of the counts under RESPA pursuant to 28 U.S.C. § 1331. The Court has subject matter jurisdiction of the counts under state law pursuant to 28 U.S.C. § 1367.

11. This Court has personal jurisdiction over Defendants because each Defendant systematically and continually does business within the judicial district, and the case arises out of Defendants' transactions which occurred within the judicial district.

12. Venue is appropriate in this Court because all Defendants reside in this judicial district, and a substantial part of the events occurred and a substantial part of the property that is the subject of the action is situated within the judicial district. 28 U.S.C. § 1391 (b) and (c).

IV. FACTS APPLICABLE TO ALL COUNTS

13. At all times relevant to this Complaint, Tower Inc. has been in the business of providing title, settlement and escrow services.

14. Tower Inc. obtains much of its business by referrals from other entities such as real estate companies and agents, mortgage lenders, developers, builders, banks and mortgage brokers.

15. First Ohio Banc is a mortgage broker licensed in the State of Ohio.

16. In the regular order of business, First Ohio Banc obtains loans for its customers for the purchase or refinance of real estate and, in connection with the performance of such services, receives fees and commissions, all of which must be disclosed to the consumers under state and federal laws.

17. It is the standard and typical practice of mortgage brokers to refer their clients to the title company and closing agent of their choosing in respect of the settlement of mortgage loans. Accordingly, at all times relevant to this Complaint, Tower Inc. had in place a marketing program designed to solicit referrals of business from mortgage brokers, including First Ohio Banc.

18. Upon information and belief, as part of its communications with mortgage brokers and others in this regard, Tower Inc. has encouraged these entities to become “affiliates” of Tower LLC. On information and belief, these “affiliated” arrangements – which are regulated under rules promulgated to deal with “sham arrangements” under RESPA – were designed to encourage the referral of title work to Tower Inc. while permitting these lenders, brokers and others to make additional monies out of each closing through referral of business to Tower Inc. In particular, Tower Inc. has routinely and customarily encouraged, incited, aided and abetted mortgage brokers and others, including but not limited to First Ohio Banc, to establish “Affiliated Business Arrangements” with Tower LLC.

19. An “affiliated business arrangement” is defined in section 3(7) of the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. § 2601 *et seq.* (12 U.S.C. 2602(7)) as:

[A]n arrangement in which (A) a person who is in a position to refer business incident to or as part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

20. The “affiliated business arrangement,” however, must be a *bona fide* provider of settlement services and not a “sham arrangement used as a conduit for referral fee payments.” *HUD Statement of Policy 1996-2 (Sham Controlled Business Arrangements)*. Such a sham arrangement is illegal, violates federal law and is a deceptive or unfair trade practice under Ohio law, as set forth below.

21. In due course, Tower Inc. organized Tower LLC and enticed First Ohio Banc (and possibly others) to become affiliated with Tower LLC with an intent to defraud the consumer.

22. Although Tower LLC is identified on “HUD-1 Settlement Statements” – which are the official and standard forms used in borrower real estate transactions to identify the charges and categories of charges resulting from the mortgage loan transaction – as receiving fees for the provision of Title Abstract, Title Examination, EPA Endorsement, mortgage payoff negotiation, and other services, in fact, Tower Inc., its agents or employees perform all or substantially all of the title, settlement and escrow services.

23. Upon information and belief, Tower LLC performs little or no work and provides no services that Tower Inc. does not otherwise provide in the course of closing a mortgage loan.

24. Upon information and belief, Tower LLC is inadequately capitalized.

25. Upon information and belief, Tower LLC does not have its own employees but utilizes “loaned employees” or independent contractors.

26. Upon information and belief, Tower LLC does not manage its own business affairs.

27. Upon information and belief, Tower LLC does not market its services competitively.

28. Upon information and belief, Tower LLC does not have separate offices or business locations, but operates out of Tower Inc.’s offices.

29. Upon information and belief, Tower LLC contracts out most or all of the work or services for which they are hired.

30. Upon information and belief, Tower LLC does not compete in the marketplace.

31. Upon information and belief, Tower LLC was formed solely to facilitate illegal payments and kickbacks by co-conspirator Tower Inc. to reward First Ohio Banc and others for having referred the mortgage title and closing work to Tower Inc. in the first place.

32. Although Tower LLC does virtually nothing in respect of the mortgage loan transactions referred by First Ohio Banc and the other affiliates, and closed by Tower Inc., Tower LLC is paid substantial fees by the consumer for purported goods or services rendered in connection with the mortgage loan.

33. The unearned or excessive fees allocable or payable to Tower LLC are reflected on a false and misleading HUD-1 Settlement Statement.

34. The HUD-1 Settlement Statement ostensibly provided the consumer information relating to the relationships between Tower Inc. and Tower LLC and the settlement services that they would perform in respect of the mortgage loan transaction. The HUD-1 Settlement Statement was designed to give the consumer false assurances that Tower LLC was providing necessary, legal and legitimate title services, and to thus lull the consumer into a false sense of legitimacy thereby preventing the consumer from contesting or questioning the charge or range of charges by Tower LLC in connection with the mortgage loan transaction. The HUD-1 Settlement Statement succeeded in this respect.

35. The HUD-1 Settlement Statement concealed the true nature of the relationship between the conspirators, concealed the fact of the bogus and/or excessive payments for certain of the services that would have normally been attributable to Tower Inc. and concealed the fact that the bogus "sham entity" was performing no services, or at the very least was performing redundant services, and supplying no added value in connection with the mortgage loan

transaction. The HUD-1 Settlement Statement also concealed the fact that, as a kickback, referral or split-fee, First Ohio Banc and the other affiliates would be paid an additional fee, above and beyond that already agreed to by the consumer for such affiliates' services, a practice which the conspirators all knew to be illegal and in violation of sections 8(a) and (b) of the Real Estate Settlement Procedures Act, 12 U.S.C. §2607 *et seq.*

36. With these false and misleading statements and omissions, the consumers executed the operative mortgage documents, including but not limited to the HUD-1 Settlement Statement. Following such execution, the monies allocable or payable to Tower LLC on the HUD-1 Settlement Statement were, in part, paid or remitted to First Ohio Banc, for its benefit, even though First Ohio Banc did not perform any title, settlement or escrow services in respect of the mortgage loan transaction.

37. The fees paid to Tower LLC were unearned referral fees and kickbacks and were paid at the expense and to the detriment of consumers. in violation of state and federal law.

38. Upon information and belief, following the settlement, the fees attributable to Tower LLC – which were in addition to the customary and usual fee that Tower Inc. charged for the title and closing work – were channeled back, in part, to First Ohio Banc. First Ohio Banc, with an intent to defraud, collected the fee without disclosing to the consumer that the monies were paid to reward First Ohio Banc for referring the closing and settlement work to Tower Inc.

V. FACTS APPLICABLE TO NAMED PLAINTIFFS

39. On or about July 14, 2004, the Shahans entered into a Purchase Agreement to sell the house at 801 Sherman Street, Geneva, Ohio 44041.

40. The Purchaser, Vincent Fuller, obtained his mortgage loan through mortgage broker First Ohio Banc.

41. On August 13, 2004, the closing was conducted by Tower Inc. at its office on 6151 Wilson Mills Road, Suite 110, Highland Heights, Ohio 44143.

42. As part of the closing services, Tower Inc. delivered to Named Plaintiffs a packet of loan documents, including a false and misleading HUD-1 Settlement Statement and other loan documents and disclosures.

43. Line 1101 of Named Plaintiffs' HUD-1 Settlement Statement identifies that Named Plaintiffs paid "Tower City Title Agency, LLC" \$200.00 for "settlement or closing fee."

44. Line 1103 of Named Plaintiffs' HUD-1 Settlement Statement identifies that Named Plaintiffs paid "Tower City Title Agency, LLC" \$200.00 for "Title examination."

45. Line 1108 of Named Plaintiffs' HUD-1 Settlement Statement identifies that Named Plaintiffs paid "Tower City Title Agency, LLC" \$393.88 for "Title insurance"

46. The HUD-1 Settlement Statement provided to the Named Plaintiffs was prepared by Tower Inc. and was designed, in part, to give Named Plaintiffs false assurances that Tower LLC was providing necessary, legal and legitimate title services to thus lull Named Plaintiffs into a false sense of legitimacy, preventing Named Plaintiffs from contesting or questioning the charge or range of charges by Tower LLC and/or Tower Inc. The document succeeded in this respect.

47. The HUD-1 Settlement Statement concealed from the Plaintiffs the true nature of the relationship between the conspirators, concealed the fact of the bogus payments to Tower LLC and concealed the fact that Tower LLC was performing no services, or adding value to the

performance of settlement. and supplying no goods in connection with the Named Plaintiff's transaction. The HUD-1 Settlement Statement also concealed from Named Plaintiffs the fact that, as a kickback, referral or split-fee, co-conspirator First Ohio Banc would be paid an additional fee, beyond that as portrayed by the HUD 1.

48. Tower LLC performed no substantive work in respect of the transaction. Nonetheless, First Ohio Banc received a payment from Named Plaintiffs' transaction as a kickback or referral fee to reward First Ohio Banc for referring Tower Inc. to perform the title and closing work for Named Plaintiffs' transaction.

49. Even though Tower LLC is identified on Named Plaintiff's HUD-1 as receiving a fee for the various services set forth above in paragraphs 44 through 46 inclusive, upon information and belief, these services were actually performed by co-conspirator Tower Inc., its agents or employees.

50. In connection with the activities giving rise to this action, the Defendants acted with malice, intent and knowledge, and with a wanton disregard for the rights of Plaintiffs and others.

VI. CLASS ACTION ALLEGATIONS AND DEFINITION OF THE CLASS

51. The named Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals pursuant to Fed.R.Civ.P. 23. The class of victims consists of:

All consumers who entered into real estate settlement transactions using the services of Tower Inc. where the HUD-1 Settlement Statements, or other document in the loan file, include a charge for or payment allocable to an affiliated business arrangement or entity.

Excluded from the class are those individuals who now or have ever been executives of Defendants.

52. The class, as defined above, is identifiable. The Named Plaintiffs are members of the class.

53. The class consists, to Plaintiffs' information and belief, of hundreds and perhaps thousands of individuals, and is thus so numerous that joinder of all members is clearly impracticable.

54. There are questions of law and fact which are not only common to the class, but which predominate over any questions affecting only individual class members. The predominating questions include, but are not limited to:

- (a) Whether Tower LLC received illegal referral fees or kickbacks in respect of the mortgage loans involving Tower Inc.;
- (c) Whether First Ohio Banc, as an affiliate of one or more of the Defendants, received illegal referral fees or kickbacks in respect of the mortgage loans involving Tower Inc.;
- (d) Whether the Defendants split fees in connection with the origination of federally-related mortgage loans in violation of RESPA;
- (e) Whether the Defendants committed numerous acts of fraud in furtherance of their scheme;
- (f) Whether Tower LLC was providing bona fide goods or services;
- (g) Whether the payments to Tower LLC violate RESPA;
- (h) Whether Public Law 91-452 applies to the activities of the Defendants;

- (i) Whether Tower LLC was a “sham” affiliated business arrangement;
- (k) Whether the Defendants were part of a conspiracy to defraud the class;
- (l) Whether the Defendants negligently misrepresented the nature of the charges paid to Tower LLC;
- (m) Whether the Defendants or any of them have entered into similar transactions with entities not hereinabove identified, for the purpose of receiving illegal referral fees or kickbacks in respect of mortgage loans.

55. The claims of the Named Plaintiffs are typical of the claims of each member of the class, within the meaning of Fed.R.Civ.P. 23(a)(3), and are based on and arise out of identical facts constituting the wrongful conduct of Defendants.

56. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in class action litigation. Plaintiffs will fairly and adequately represent the interests of the members of the class, within the meaning of Fed.R.Civ.P. 23(a)(4).

57. The prosecution of the separate actions by individual members of the class would create a risk of establishing incompatible standards of conduct for Defendants, within the meaning of Fed.R.Civ.P. 23(b)(1)(A).

58. Defendants’ actions are generally applicable to the class as a whole, and Plaintiffs seek equitable remedies with respect to the class as a whole within the meaning of Fed.R.Civ.P. 23(b)(2).

59. Common questions of law and fact enumerated above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy, within the meaning of Fed.R.Civ.P. 23(b)(3).

**COUNT I – VIOLATION OF THE REAL ESTATE SETTLEMENT
PROCEDURES ACT 12 U.S.C. §2607
(All Defendants)**

60. Plaintiffs reallege and incorporate by reference the allegations set out in Paragraphs 1 through 59, and further allege:

61. Throughout the class period, the Defendants procured and/or provided closing, title or settlement services in respect of residential mortgage loans, including “federally related mortgage loans” as that phrase is defined by RESPA at 12 U.S.C. § 2602(l) and at 24 C.F.R. § 3500.2(3), to the Named Plaintiffs and others. Upon information and belief, the Defendants referred or provided closing, title or settlement services for more than 100 mortgage loans in each of the last three years.

62. At all times during the class period First Ohio Banc conducted business as “mortgage broker,” as that phrase is defined by Regulation X at 24 C.F.R. § 3500.2. As such, the mortgage broker provided to the consumers real estate “settlement services” as that phrase is defined by RESPA at 12 U.S.C. § 2602(3) and 24 C.F.R. § 3500.2.

63. Based upon the foregoing facts, the Defendants each violated RESPA with respect to Plaintiffs and all other class members by giving, paying or receiving fees, kickbacks or other things of value to or from Tower LLC, pursuant to an agreement or understanding that business incident to or a part of a real estate settlement or closing services involving “federally related mortgage loans” would be referred to Tower Inc. by First Ohio Banc.

64. The allocations or payments to Tower LLC constituted a violation of § 8(a) of RESPA, 12 U.S.C. §2607(a), which prohibits the payment of referral fees or kickbacks in connection with the origination of federally-related mortgage loans.

65. The allocations or payments to Tower LLC also constituted a violation of § 8(b) of RESPA, 12 U.S.C. §2607(b), which prohibits the splitting of fees in connection with the origination of federally-related mortgage loans.

COUNT II – NEGLIGENT MISREPRESENTATION
(All Defendants)

66. Plaintiffs reallege and incorporate by reference the allegations set out in Paragraphs 1 through 65, and further allege:

67. Agents or employees of the Defendants negligently and recklessly made the false and misleading representations and omissions alleged herein, including but not limited to those set forth herein, regarding the terms and conditions applicable to Plaintiffs' title and settlement services, intending that Plaintiffs reasonably rely upon the false and misleading representations and omissions to their detriment, which they did.

68. As a direct and proximate result of the false statements, representations and omissions, Plaintiffs were induced, ab initio, to contract for title and settlement services that included a payment to a sham entity that performed no services and supplied no value in respect of the settlement.

69. Defendants, their agents or employees, owed a duty of care to Plaintiffs.

70. Defendants recklessly and negligently breached the duty of care they owed to Plaintiffs by making false representations to Plaintiffs and concealing material facts from them, as set forth herein.

71. Defendants knew, or had reason to know, that Plaintiffs would reasonably rely on the representations and concealments which, as erroneous, would cause loss or injury.

72. Plaintiffs justifiably and reasonably took actions to their detriment as alleged herein, in reliance on the false representations and concealments.

COUNT III – CONSUMER SALES PRACTICES ACT
(All Defendants)

73. Plaintiffs reallege and incorporate by reference the allegations set out in Paragraphs 1 through 72, and further allege:

74. The closing services at issue herein involved a “consumer transaction” and all Defendants were “suppliers,” as those terms are defined in Ohio Revised Code §1345.01(A) and (C).

75. The Defendants violated the Consumer Sales Practices Act, Ohio Revised Code §§ 1341 *et seq.* (the “CSPA”) by concealing the arrangement between them and by extracting fees from the Shahans and the Class they represent by placing charges on the HUD-1 closing statement payable to Tower LLC which were in reality illegal kickbacks.

76. Defendants also violated the CSPA by inciting, encouraging, aiding and abetting Tower LLC’s receipt of funds in connection with mortgage loan transactions when such funds were, in reality, a referral fee or kickback for First Ohio Banc and Defendants Does.

77. Further, Defendants either directly or indirectly conspired to violate the provisions of RESPA by requiring that consumers pay a fee to affiliated business arrangements that perform little or no substantive work in connection with the mortgage closing.

78. Agents or employees of the Defendants intentionally and knowingly made the false and misleading representations and omissions alleged herein, including but not limited to

those set forth herein, regarding the terms and conditions applicable to Plaintiffs' title and settlement services, intending that Plaintiffs reasonably rely upon the false and misleading representations and omissions to their detriment, which they did.

79. The misrepresentations were made as part of a concerted and continuing practice of diverting business to the sham entity, Defendant Tower LLC, for the purpose of making and concealing kickbacks to the mortgage broker for the referral of business.

80. As a direct and proximate result of the fraudulent statements, representations and omissions, Plaintiffs were damaged.

81. Plaintiffs are each entitled to damages in an amount equal to three times their actual damages, and to all other appropriate relief as provided by O.R.C. §1345.09.

COUNT IV -- CIVIL CONSPIRACY
(All Defendants)

82. Plaintiffs reallege and incorporate by reference the allegations set out in Paragraphs 1 through 81, and allege further:

83. The Defendants conspired with each other by common agreement or understanding: (a) acted with malice in concert, (b) for the unlawful purpose of depriving Named Plaintiffs and class members of their rights under the statutory provisions and common law, as alleged herein, (c) for the purpose of unlawfully depriving Plaintiffs and class members of both their money and property.

84. The Defendants, acting with each other, did unlawfully deprive Named Plaintiffs and Class members of both their money and property and the rights alleged herein by the overt acts alleged herein, all of which were performed to advance the conspiracy.

85. The acts and omissions of the Defendants performed in concert for the purpose of advancing the conspiracy caused injury and loss to Named Plaintiffs and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that:

- A. Pursuant to 12 U.S.C. § 2607(d)(2), the Court award Plaintiffs and the class members an amount equal to three times the amount of any and all payments to Tower LLC in respect of each mortgage loan, as well as any and all other amounts or damages allowed to be recovered by RESPA;
- B. Damages in an amount equal to three times their actual damages under the Consumer Sales Practices Act, and to all other appropriate relief as provided by O.R.C. §1345.09.
- C. The Court award punitive damages to be determined by the jury;
- D. The Court award Plaintiffs reasonable costs and attorney's fees pursuant to 12 U.S.C. §2607(d)(2), R.C. § 1345.09 and Ohio common law; and
- E. The Court award Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Attorneys for Plaintiffs

Request for Jury Trial

Plaintiffs demand a trial by jury on all causes of action set forth herein.



Edward Kramer