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Mr. Jonathan Alexander Galente, Mr. James
D. Winfrey, and Does 2 through 10;

PLAINTIFFS,

vs.

Cardinal Financial Company, Limited
Partnership, and Does 11 through 20;

DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CIVIL PART
COUNTY OF HUDSON

DOCKET NO. **HUD-L-000082-23**
CIVIL ACTION

**FIRST AMENDED COMPLAINT AND
JURY DEMAND**

INTRODUCTION

Plaintiffs Jonathan Alexander Galente and James D. Winfrey (“Plaintiffs”), acting for themselves and others similarly situated and by and through undersigned counsel, brings this action for relief and seek certification of this matter as a class action on behalf of a class of all individuals residing in the State of New Jersey who obtained a “Residential Mortgage Loan” in New Jersey between January 10, 2017 and January 9, 2023 from any Defendant, and who were charged a processing fee or underwriting fee on that mortgage (“the class”). This action seeks monetary and equitable relief.

“Residential Mortgage Loan” has the meaning assigned by N.J. Stat. § 17:11C-53, i.e., any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or on residential real estate upon which is constructed or intended to be constructed a dwelling.

BACKGROUND FACTS

1. To protect its homeowners, the State of New Jersey strictly limits which types of fees can be charged by residential mortgage lenders and mortgage brokers.
2. New Jersey mortgage lenders and mortgage brokers may charge an “application fee” to cover their routine overhead costs. However, N.J. Code § 17:11C-74 prohibits the charging of “underwriting fees” and “processing fees.” According to N.J. Admin. Code § 3:1-16.2(a)(7)(xv), underwriting and processing fees offer no additional “benefit to the borrower” and are instead a way of double-charging for costs “associated with the lender's overhead.”
3. To protect its homeowners, the State of New Jersey also regulates who may engage in the mortgage business. Before originating or selling any mortgage loan, a lender or broker must successfully complete 20 hours of education in general mortgage education, including 4 hours of education specifically focused on New Jersey mortgage law. This education teaches lenders and brokers that New Jersey prohibits the charging of underwriting and processing fees.
4. To maintain their license, a lender or broker must complete another 12 hours of mortgage education each year, including 2 hours of education specifically focused on New Jersey mortgage law. No lender or broker may take the same class two years in a row. These

continuing education requirements remind lenders and brokers that New Jersey prohibits the charging of underwriting and processing fees.

5. Each Defendant is a large business that typically employs at least 20 loan officers, each of which must complete all of the educational requirements described above.
6. As part of the ordinary course of their business, the loan officers at each Defendant discuss and compare their loans to develop a common understanding of best practices in their industry. The loan officers at each Defendant are also subject to review and supervision by managers and executives who likewise are responsible to ensure compliance with best practices.
7. As a result of paragraphs 3 through 6, all of the Defendants are institutionally aware of New Jersey's prohibition on charging underwriting fees and processing fees. Even if one loan officer were somehow unaware that these fees are unlawful, they would find out that underwriting fees and processing fees are unlawful as part of normal conversation with their colleagues and managers.
8. Nevertheless, it is the pattern and practice of each Defendant to charge underwriting fees and/or processing fees on most of their Residential Mortgage Loans. Each Defendant originates, finances, and/or brokers thousands of Residential Mortgage Loans per year that include underwriting fees and/or processing fees despite knowing that such fees are prohibited under New Jersey law.
9. Collectively, these unlawful "junk" fees cause a direct loss to New Jersey homeowners of over \$1 million each year. The underwriting and processing fees serve no purpose other than to wrongfully enrich lenders and brokers at the expense of innocent homeowners.

PARTIES

10. Defendant Cardinal Financial Company, Limited Partnership (“Cardinal”) and DOES 1 through 10 are mortgage lenders and/or mortgage brokers licensed in the State of New Jersey and doing business in the State of New Jersey and in the County of Hudson who have charged underwriting fees to New Jersey homeowners.
11. Defendant Cardinal Financial Company, Limited Partnership (“Cardinal”) and DOES 1 through 10 are mortgage lenders and/or mortgage brokers licensed in the State of New Jersey and doing business in the State of New Jersey and in the County of Hudson who have charged processing fees to New Jersey homeowners.
12. Plaintiff Jonathan Alexander Galente (“Mr. Galente”) is a homeowner and resident in the State of New Jersey who is over the age of 21.
13. Plaintiff James D. Winfrey (“Mr. Winfrey”) is a homeowner and resident in the State of New Jersey who is over the age of 21 and who is being substituted as Doe 1.
14. Plaintiffs Does 2 through 10 are other homeowners and residents in the State of New Jersey who are over the age of 21 and who may be added as additional class representatives.

CLASS ACTION CERTIFICATION ALLEGATIONS

15. This action is brought by Plaintiffs as a class action pursuant to Rule 4:32, et seq. on behalf of themselves and a class of all other similarly situated persons, such class consisting of all homeowners who purchased a home in New Jersey between January 10, 2017 and December 31, 2022 who received a mortgage on that home from at least one Defendant and who were charged an underwriting fee and/or a processing fee on that mortgage (“the class”).
16. Plaintiffs are members of the class that they seek to represent.

17. The Class is believed to number hundreds of persons, the joinder of whom is impracticable, except via a class action.
18. There are important questions of law and fact common to the proposed class, including but not limited to whether Defendants knowingly charged junk fees while originating mortgages, and whether these junk fees are unlawful.
19. The claims of the representative parties are typical of the claims of the proposed class in that all of the representative parties have a mortgage on which at least one junk fee was charged, and because the junk fees are similar in structure from one mortgage to the next.
20. The class representative(s) will fairly and adequately protect the interests of the proposed class because their interests are well-aligned with the interests of prospective class members, in that both represented and unrepresented class members were charged unlawful junk fees and seek a refund of those fees together with appropriate penalties.
21. Defendants have acted and failed to act on grounds generally applicable to the proposed class, in that Defendants have charged unlawful junk fees to the entire proposed class, thereby making appropriate final injunctive relief or corresponding declaratory relief to the class as a whole.
22. Questions of law and fact common to the members of the proposed class predominate over any questions affecting individual members of the proposed class, and a class action would be superior to other available methods for the fair and efficient adjudication of the controversy, in that:
 - a. individual members of the proposed class have little or no interest in individually controlling the prosecution of separate actions, because the damages owed to each member are readily calculable based on statutory formulas;

- b. there is no litigation known to Plaintiffs concerning the controversy that has already been commenced by or against members of the class;
 - c. it would be desirable to concentrate the litigation of the claims in this forum because the unlawful practices complained of occurred throughout the State of New Jersey, and the claims in this complaint all deal with New Jersey law and with New Jersey homeowners and with lenders who are licensed by New Jersey to do business in the State of New Jersey;
 - d. there are no special difficulties likely to be encountered in the management of this class action;
 - e. permitting class action certification supports the remedial policy goals behind the Consumer Fraud Act, N.J.S.A. 56:8-1, et seq., under which Plaintiff has pled a *prima facie* case; and
 - f. resolving this litigation on a class action basis will promote substantial economies and efficiencies for the judicial system.
23. Plaintiffs have retained counsel experienced and skilled in complex tort and class action litigation.
24. Plaintiffs have no conflict of interest in the maintenance of this class action.

COUNT 1

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

25. All Defendants concealed, suppressed, and omitted the fact that they were charging unlawful junk fees with the intent that Plaintiffs rely upon such concealment, suppression, and omission.

26. All Defendants used deception, false pretense, and misrepresentation to disguise the fact that they were charging unlawful junk fees.
27. All Defendants engaged in unconscionable commercial practices by charging unlawful junk fees.
28. The unlawful junk fees were charged in connection with the sale and advertisement of real estate.
29. The fact that Defendants charged unlawful junk fees was material in that it increased the price that Plaintiffs paid for their homes.
30. As a result of the conduct complained of in this count, Plaintiffs suffered an ascertainable loss of money in the amount of the unlawful fees that were charged.
31. Plaintiffs are consumers of services within the class of people protected by the New Jersey Consumer Fraud Act.
32. As a result of the conduct complained of in this count, Defendants acquired money by means of unlawful practices within the meaning of N.J. Statutes § 56:8-2 and § 56:8-2.11.
33. Wherefore, Plaintiffs and the putative class seek the return of all moneys unlawfully acquired by Defendants, together with threefold damages, reasonable attorney's fees, filing fees, reasonable costs of suit, and all other appropriate legal and equitable relief pursuant to N.J. Statutes § 56:8-2.11 and N.J. Statutes § 56:8-19.

COUNT 2

NEW JERSEY CONSUMER FINANCE LICENSING ACT

34. Defendants all charged fees that were not expressly authorized by N.J. Code § 17:11C-74 *et. seq.* and that were not expressly authorized by the Commissioner by regulation.

Specifically, Defendants charged junk fees such as underwriting fees and processing fees, and these fees were unlawful under N.J. Code § 17:11C-75(l).

35. Defendants have failed to truthfully account for the money received through unlawful junk fees, in that Defendants have presented the fees as lawful when the fees were not lawful.
36. Defendants have failed to deliver to Plaintiffs the money that Defendants received through unlawful junk fees pursuant to N.J. Code § 17:11C-75(p). Defendants are not entitled to retain this money under the circumstances, i.e., after Defendants unlawfully charged said fees when Defendants knew or should have known that said fees were unlawful.
37. Wherefore, Plaintiffs and the putative class seek the return of all moneys unlawfully acquired by Defendants.

COUNT 3

BAD FAITH “POINTS” ON MORTGAGE LOANS

38. Defendants frequently charged fees labeled as “points” on the Closing Disclosures of their mortgages. Points are permitted under New Jersey law if and only if they are directly tied to a material decrease in the borrower’s interest rate. In other words, the purpose of “points” is to allow borrowers to pay more money up front in order to have lower interest fees later on.
39. The fees labeled as “points” on these mortgages were not *bona fide* discount points because they did not result in a lowering of the interest rate charged to the borrower.
40. It is the pattern and practice of many of Defendants’ employees to routinely add points to a mortgage without any legitimate justification. These employees do not present borrowers

with a choice of interest rates. Instead, these employees simply use points to extract additional cash from homeowners. The extra money paid in points does not provide the homeowners with any corresponding benefits.

41. Defendants have actual and/or constructive knowledge that many of their employees are adding points to their mortgages in bad faith.
42. Defendants have taken no significant action to deter their employees from adding bad faith points to mortgages.
43. Points added in bad faith that do not operate to lower the borrower's interest rate do not qualify as "discount points" within the meaning of N.J. Code § 17:11C-74(a)(6) or N.J. Code § 17:11C-74(c)(6).
44. Points added in bad faith that do not operate to lower the borrower's interest rate do not fit within the definition of any of the other fees permitted by N.J. Code § 17:11C-74 *et seq.*, and are therefore unlawful.
45. Defendants have knowingly and willfully failed to deliver to Plaintiff the money that these Defendants received through unlawful bad faith points pursuant to N.J. Code § 17:11C-75(p). Defendants are not entitled to retain this money under the circumstances, i.e., after Defendants unlawfully charged said bad faith points when Defendants knew or should have known that said points were unlawful.
46. Wherefore, Plaintiffs and the putative class seek the return of all moneys unlawfully acquired by Defendants together with threefold that amount in damages pursuant to N.J. Code § 17:11C-33(b).

COUNT 4

BREACH OF CONTRACT

47. Defendants agreed to charge only lawful fees to Plaintiffs in connection with Plaintiffs' Residential Mortgage Loans.
48. Defendants charged illegal fees to Plaintiffs in connection with Plaintiffs' Residential Mortgage Loans.
49. Said charges were contrary to Defendants' agreements and constitute a breach of those agreements.
50. Defendants were in contractual privity with Plaintiffs with respect to Plaintiffs' Residential Mortgage Loans.
51. Defendants owed to Plaintiffs a covenant of good faith and fair dealing in connection with the performance of the contracts for Plaintiffs' Residential Mortgage Loans.
52. Defendants violated the covenant of good faith and fair dealing by charging unlawful junk fees and bad faith points that Plaintiffs could not reasonably or fairly be expected to pay.
53. Wherefore, Plaintiffs and the putative class seek contractual, consequential, and incidental damages, to wit: a refund of all illegal fees and bad faith points, and of all interest that was paid upon those illegal fees and bad faith points, together with costs of suit and reasonable attorney's fees.

COUNT 5

CONVERSION

54. Plaintiffs lawfully owned and possessed a particular sum of money, to wit, the money that was charged by Defendants via Defendants' unlawful junk fees and bad faith points.
55. By charging unlawful junk fees and bad faith points, Defendants seized and acquired control of this sum of money and converted that money to Defendants' own use, without the informed consent of Plaintiffs.

56. On information and belief, Defendants intentionally engaged in the conduct complained of in this count, in that Defendants knew that Plaintiffs would not have agreed to pay illegal fees or bad faith points, knew that the underwriting fees, processing fees, and/or bad faith points charged by Defendants were illegal, and nevertheless took money from Plaintiffs on the basis of these illegal fees and bad faith points.
57. Wherefore, Plaintiffs and the putative class seek return of the converted assets, together with punitive damages sufficient to deter similar acts of conversion and uphold the dignity of the law.

COUNT 6

NEGLIGENT MISREPRESENTATION

58. Defendants are subject matter experts, merchants, and experienced professionals with respect to Residential Mortgage Loans, in that they routinely and repeatedly create, administer, and/or sell these loans for profit. Such activities constitute a primary element of the business through which Defendants earn their income.
59. Defendants held themselves out to Plaintiffs and to the public as subject matter experts, as merchants, and as experienced professionals with respect to Residential Mortgage Loans.
60. Defendants represented to Plaintiffs that the underwriting fees, processing fees, and/or bad faith points charged on their Residential Mortgage Loans were lawful and proper.
61. Plaintiffs reasonably relied on Defendants' representations with respect to the nature of these fees. Under the circumstances, Plaintiffs and the putative class members were entitled to trust Defendants' representations about the character of Defendants' fees. Because each Defendant works with hundreds of mortgage loans each year and each putative class member is unlikely to work with more than one mortgage loan every few years, Plaintiffs

and the putative class members rationally deferred to Defendants' expertise in the nature of the fees being charged by Defendants.

62. Defendants knew or should have known that Plaintiffs were relying on Defendants' representations and expertise with respect to the character of the fees being charged by Defendants.
63. Defendants had a duty to Plaintiffs to accurately represent the character of the fees Defendants were charging.
64. If Defendants were uncertain as to whether a fee was lawful, Defendants had a duty to research and investigate the character of that fee before representing to Plaintiffs that the fee was lawful.
65. Defendants' representations to Plaintiffs that Defendants' underwriting fees, processing fees, and/or bad faith points were lawful were inaccurate.
66. On information and belief, Defendants did not conduct adequate research regarding the character of the fees Defendants were charging to Plaintiffs and the putative class members.
67. Defendants fell short of their duty of care to accurately represent the character of the fees Defendants were charging.
68. As a result of Defendants' negligent misrepresentations with respect to the nature of the fees Defendants were charging, Plaintiffs lost money in the amount of the fees and bad faith points that were unlawfully charged.
69. Wherefore, Plaintiffs and the putative class seek the return of the unlawfully charged fees and bad faith points, together with consequential damages such as the interest paid by Plaintiffs and the putative class on those fees and bad faith points.

COUNT 7

UNJUST ENRICHMENT

70. Defendants acquired money from Plaintiffs and the putative class members as a result of the unlawful junk fees and bad faith points charged by Defendants.
71. Defendants did not perform any service or tender any item of value in exchange for the money acquired via the unlawful junk fees or bad faith points.
72. Defendants have no moral or ethical entitlement to the money they acquired via the unlawful junk fees or bad faith points.
73. The amount of the money that Defendants unjustly acquired by charging unlawful junk fees and bad faith points is readily ascertainable and calculable based on the closing documents associated with each Residential Mortgage Loan.
74. Defendants were therefore unjustly enriched at the expense of Plaintiffs in the amount of the unlawful junk fees and bad faith points charged by Defendants.
75. Wherefore, Plaintiffs and the putative class members seek the return of the unlawful junk fees and bad faith points charged by Defendants.

COUNT 8

FRAUD

76. Defendants materially misrepresented the nature of the underwriting fees, processing fees, and bad faith points charged by Defendants. Although said fees were unlawful, Defendants represented those fees as lawful. Moreover, although said fees were not associated with any item or service of value, Defendants represented those fees as associated with useful services.

77. Defendants knew and believed that these representations were false. Defendants were well aware that they were not entitled to charge underwriting fees, processing fees, or bad faith points. Moreover, Defendants were well aware that such fees are not connected to any useful services.
78. Defendants intended for Plaintiffs and the putative class to rely on these representations. Defendants' business plan involved convincing Plaintiffs to pay unlawful fees by misrepresenting those fees as lawful. Defendants' purpose in describing the fees as "underwriting fees," "processing fees," or "discount points" was to mislead Plaintiffs into thinking that the fees were lawful fees based on the provision of useful services to Plaintiffs.
79. Plaintiffs did in fact reasonably rely on Defendants' misrepresentations. Given the disparity in experience and skill between professional mortgage loan officers and ordinary homebuyers who only infrequently purchase a home, it was reasonable for Plaintiffs and the putative class members to trust Defendants' assertions with respect to the character of Defendants' own fees. Moreover, the New Jersey Statutes amply demonstrate an intent to protect homebuyers from inaccurate residential loan statements. In other words, it is reasonable for Plaintiffs to have trusted Defendants' statements because the Legislature wants such statements to be trustworthy in order to facilitate fair and rapid transactions in the field of real estate.
80. As a result of Defendants' intentional misrepresentations and Plaintiffs' reasonable reliance on those misrepresentations, Plaintiffs suffered damages, in that Plaintiffs paid unlawful fees that Plaintiffs would not otherwise have agreed to pay.
81. Said conduct on defendants' part constitutes the commission of legal and/or equitable fraud

against plaintiffs.

82. Defendants' conduct as aforesaid was wanton, reckless, willful, outrageous, and/or intentional.
83. Wherefore, Plaintiffs and the putative class seek to recover the fraudulently obtained funds pursuant to N.J.S.A. § 2A:32-1, *et seq.*, together with interest, court costs, attorney's fees, an award of punitive damages sufficient to deter similar fraudulent conduct, and such other and further relief as the Court shall deem equitable and just.

MORTGAGE JUSTICE, LLC



DATED: 3/17/2023

Jason Green-Lowe, Esq.

JURY DEMAND PURSUANT TO R. 4:35-1

Pursuant to R. 4:35-1, relative to all issues raised in the instant action that are so triable, Plaintiffs hereby demand a trial by six (6) jurors.

NOTICE PURSUANT TO R. 1:7-1(b)

PLEASE TAKE NOTICE that to the extent applicable and pursuant to R. 1:7-1(b) and/or statutory or common law authority, Plaintiffs may, at the time of closing argument, suggest to the trier of fact with the respect to any element of damages, that unliquidated damages be calculated on a time-unit basis, without reference to a specific sum.

NOTICE PURSUANT TO R. 1:5-1(a) AND R. 4:17-4(c)

Take notice that, pursuant to R. 1:5-1(a) and R. 4:17-4(c), Plaintiffs hereby demand that each party named in the complaint that serves or receives pleadings of any nature (including discovery requests) to or from any other party to the action, forward copies of same along with any documents provided in answer or response thereto to counsel for Plaintiffs and take notice that this is a continuing demand.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), Jason Green-Lowe is designated as trial counsel in this matter.

CERTIFICATION PURSUANT TO R. 4:5-1(B)(2) AND (3)

Jason Green-Lowe hereby certifies as follows pursuant to R. 4:5-1(b)(2) and (3):

1. I am counsel for Plaintiffs and as such I make this certification from personal knowledge derived from my handling of Plaintiffs' instant case.
2. Upon my initial review of this case, the matters in controversy in this action are not the subject of any other action pending in any other court or of a pending arbitration proceeding, that no other action or arbitration proceeding is currently contemplated and that I am unaware of any other parties who currently should be joined to this action.
3. Confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).
4. I hereby certify that the information contained in this certification is true and correct and that, if such information is willfully false, I understand that I am subject to punishment.

MORTGAGE JUSTICE, LLC



DATED: 3/17/2023

Jason Green-Lowe, Esq.