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10 **United States District Court**
11 **District of Massachusetts**

12 Victor Aduayi and Adeneye O.
13 Adesanya-Aduayi, Individually and On
14 Behalf of All Others Similarly Situated

15 Plaintiffs,

16 v.

17 PHH Mortgage Services and Newrez
18 LLC,

19 Defendant

) Case No.:

) **[Class Action]**

) **COMPLAINT FOR DAMAGES**
) **FOR VIOLATIONS OF THE REAL**
) **ESTATE SETTLEMENT**
) **PROCEDURES ACT, 12 U.S.C. §**
) **2601, ET SEQ.**

) **Jury Trial Demanded**

20 **Introduction**

21 1. Victor Aduayi (“Plaintiff Victor”) and Adeneye O. Adensanya-Aduayi
22 (“Plaintiff Adeneye”), (or jointly referred to as “Plaintiffs”) bring this Class
23 action complaint on behalf of themselves, individually, and all others
24 similarly situated, by and through their attorneys, against Defendants PHH
25 Mortgage Services (“PHH”) and Newrez LLC (“Newrez”), (or jointly
26 referred to as “Defendants”) and alleges upon information and belief as
27 follows:
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- 1 2. Plaintiffs make these allegations on information and belief, with the
2 exception of those allegations that pertain to Plaintiffs, or to Plaintiffs’
3 counsel, which Plaintiffs allege on personal knowledge.
- 4 3. While many violations are described below with specificity, this Complaint
5 alleges violations of each statute cited in its entirety.
- 6 4. Unless otherwise indicated, the use of Defendants’ names in this Complaint
7 includes all agents, employees, officers, members, directors, heirs,
8 successors, assigns, principals, trustees, sureties, subrogees, representatives,
9 and insurers of the Defendants.
- 10 5. Congress found “that significant reforms in the real estate settlement process
11 are needed to ensure that consumers throughout the Nation are provided with
12 greater and more timely information on the nature and costs of the
13 settlement process and are protected from unnecessarily high settlement
14 charges caused by certain abusive practices that have developed in some
15 areas of the country.” 12 U.S.C. § 2601.
- 16 6. To address this finding, Congress passed the Real Estate Settlement
17 Procedures Act, 12 U.S.C. 2601 et. seq., (“RESPA”) in 1974.
- 18 7. The Consumer Financial Protection Bureau (“CFPB”) is the primary
19 regulatory agency authorized by Congress to supervise and enforce
20 compliance of RESPA.
- 21 8. The CFPB periodically issues and amends mortgage servicing rules under
22 Regulation X, 12 C.F.R. § 1024, RESPA’s implementing regulation. 12
23 U.S.C. § 2617.
- 24 9. Under RESPA and Regulation X, loan servicers, including Defendants, must
25 provide borrowers with specific account information available to them in the
26 regular course of business upon receiving a Qualified Written Request
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1 (“QWR”) or a Request for Information (“RFI”) from the borrower. 12
2 U.S.C. § 2605(e)(1)(A); 12 C.F.R §§ 1024.35(a).

3 10. A servicer must respond within 30 days to a QWR for information or an RFI
4 in one of two ways: (1) provide the requested information, or (2) conduct a
5 “reasonable search” for the requested information and provide the borrower
6 with written notification explaining the basis for the servicer’s determination
7 that the requested information is “not available.” 12 C.F.R. §
8 1024.35(d)(1)(i) – (ii).

9 11. In its official commentary to Regulation X, the CFPB outlines what
10 constitutes “not available.” Information is “not available” if: “[1.] The
11 information is not in the servicer's control or possession, or [(2.)] The
12 information cannot be retrieved in the ordinary course of business through
13 reasonable efforts.” 12 C.F.R. § 1024, Supp. I, ¶ 36(d)(1)(ii).

14 12. As an example of “available” information, the CFPB provides the
15 following in its official commentary to Regulation X:

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18 A borrower requests a copy of a telephonic
19 communication with a servicer. The servicer's
20 personnel have access in the ordinary course of
21 business to audio recording files with organized
22 recordings or transcripts of borrower telephone
23 calls and an identify the communication
24 referred to by the borrower through reasonable
25 business efforts. The information requested by the
26 borrower is **available to the servicer.** 12 C.F.R. §
27 1024, Supp. I, ¶ 36(d)(1)(ii) (bold face added).

28 13. Defendants have neglected to fulfill its duty to provide information available
to it in the regular course of business to Plaintiffs upon receipt of Plaintiffs’
QWR and RFI.

1 14. As alleged in greater detail below, Defendants have demonstrated a “pattern
2 or practice” of failing to adequately respond to borrowers’ requests for
3 account information, which makes Defendants liable for statutory damages
4 in an amount up to \$2,000 for each failure to adequately respond. 12 U.S.C §
5 2605(f).

6 15. Notwithstanding this glaring failure to abide by its statutory duty, and
7 despite Plaintiffs informing Defendants of its failure, Defendants continue to
8 incorrectly state that “[a]ll communications with the vendors, collection
9 notes, recorded calls, and notes, transcripts of phone call [sic] are for internal
10 purposes only.”

11 **Jurisdiction and Venue**

12 16. This court has subject matter jurisdiction over this action under 28 U.S.C
13 1331 because the action arises out of violations of RESPA, a federal law.

14 17. This Court has personal jurisdiction over Defendants because Defendants
15 conduct business in Massachusetts and maintains significant contacts within
16 the state.

17 18. Venue is appropriate in the United States District Court for the District
18 of Massachusetts pursuant to 28 U.S.C 1391 for the following reasons: (i)
19 Plaintiffs reside in Plymouth County, Massachusetts which is within this
20 judicial district; (ii) the conduct complained of herein occurred within this
21 judicial district; and (iii) Defendants conducted business within this judicial
22 district at all relevant times.

23 **Parties**

24 19. Plaintiffs are residents and citizens of Plymouth County, in the State of
25 Massachusetts.

26 20. On information and belief, Newrez’s principal place of business and
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1 headquarters is in Fort Washington, Pennsylvania.

2 21. On information and belief, PHH’s principal place of business and
3 headquarters is in West Palm Beach, Florida.

4 **Factual Allegations**

5 22. Plaintiffs incorporate by reference all of the above paragraphs of this
6 Complaint as if fully stated herein.

7 23. On July 29, 2022, Plaintiffs mailed a Qualified Written Request to Notice of
8 Error and Request to PHH Mortgage Services. In this letter, in paragraphs
9 seventeen and eighteen, Plaintiffs asked for several documents including
10 “[a] copy of any and all recordings...[and a] copy of any and all transcripts
11 of conversations with [Plaintiffs] or any other person concerning [Plaintiffs’]
12 account.” Information pursuant to the Real Estate Settlement Procedures
13 Act, 12 U.S.C. § 2605(e), and Regulation X, 12 C.F.R. §§ 1024.35, 1024.36.

14 24. On or about August 26, 2022, Plaintiffs’ counsel received a partial
15 response to Plaintiffs’ July 29, 2022 Qualified Written Request from
16 Defendant PHH.

17 25. In this response, Defendant PHH failed to provide any of the requests
18 recordings.

19 26. On November 29, 2022, Plaintiffs, through Plaintiffs’ counsel, sent a
20 second Qualified Written Request to PHH, again specifically requesting the
21 recordings and transcripts of conversations.

22 27. On January 5, 2023, Defendants mailed Plaintiffs’ counsel a letter that
23 stated:

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26 Thank you for the recent communication regarding the
27 account referenced above in which you requested that we
28 respond to the queries outlined in the correspondence. All

1 communications with the vendors, collection notes,
2 recorded calls and notes, transcripts of phone call are for
3 internal purposes only. Therefore, we are unable to
4 provide with any details related to the recorded calls,
5 texts, notes or transcripts as requested...We trust that the
6 information provided has fully addressed the concern.

7 28.Plaintiffs are informed and believe and hereupon allege that Defendants
8 have refused to produce recordings for possibly hundreds if not thousands of
9 consumers that have requested them.

10 29.Plaintiffs are informed and believe and hereupon allege that Defendants
11 have the ability to easily produce the requested recordings through
12 reasonable business efforts.

13 30.Plaintiffs are informed and believe and hereupon allege that Defendants
14 have no proper basis to conclude that telephone recordings and transcripts
15 are “for internal purposes only.”

16 31.Defendants blanket refusal to Plaintiffs appears to be a uniform template
17 response sent to many consumers, which shows a pattern and practice of
18 non-compliance with RESPA.

19 32.Furthermore, at least two requests were made by Plaintiffs for the recordings
20 in question and Defendants failed to produce the recordings in response to
21 each request which further illustrates its pattern and practice of non-
22 compliance.

23 **Choice of Law**

24 33.The State of Massachusetts has sufficient interest in the conduct at issue in
25 this complaint, such that Massachusetts law may be uniformly applied to the
26 claims of the proposed Class.
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1 34. Defendants do substantial business in Massachusetts, and a significant
2 portion of the proposed Class are located in Massachusetts. Moreover,
3 Defendants avail itself to these Massachusetts citizens by soliciting directly
4 to them.

5 35. The State of Massachusetts also has the greatest interest in applying its law
6 to Class members' claims. Massachusetts' governmental
7 interest include protecting resident consumers against unfair or
8 deceptive acts or practices. *Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp.*,
9 640 N.E.2d 1101, 1104 (Mass. 1994).

10 36. If other states' laws were applied to Class members' claims, Massachusetts'
11 interest in discouraging resident corporations from engaging in the sort of
12 unfair and deceptive practices alleged in this complaint would be
13 significantly impaired.
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15 37. Massachusetts could not effectively regulate companies like Defendants,
16 which does business throughout the United States, if it can only ensure
17 remuneration for consumers from one of the 50 states affected by conduct
18 that runs afoul of its laws.

19 **Class Action Allegations**

20 38. Plaintiffs bring this action on behalf of themselves and on behalf of all
21 others similarly situated (the "Class"), pursuant to Federal Rule Civil
22 Procedure 23(b)(1), (b)(2) and/or (b)(3).

23 39. The putative Class that Plaintiffs seek to represent is composed of:
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26 All persons within the United States who have or have
27 had a mortgage loan with Defendants and who within
28 three years from the filing of this Complaint have
requested copies of audio recordings or transcripts of

1 phone calls between themselves and Defendants pursuant
2 to 12 U.S.C. § 2605(e)(1)(A) and 12. C.F.R. § 1024.36
3 and who have subsequently been denied access to those
4 audio recordings by Defendants.

5 40. Excluded from the Class are any of Defendants’ officers, directors,
6 employees, affiliates, legal representatives, attorneys, heirs, and assigns, and
7 any entity in which Defendants have a controlling interest. Judicial officers
8 presiding over this case, its staff, and immediate family members, are also
9 excluded from the Class.

10 41. Plaintiffs do not know the number of members in the Class but believes the
11 Class members number in the several thousands, if not more. Such
12 information can be ascertained through Discovery from records maintained
13 by Defendants. Thus, this matter should be certified as a Class action to
14 assist in the expeditious litigation of this matter.

15 42. There is a well-defined community of interest among the members of the
16 Class because common questions of law and fact predominate, Plaintiffs’
17 claims are typical of the members of the Class, and Plaintiffs’ can fairly and
18 adequately represent the interests of the Class.

19 43. Common questions of law and fact exist as to all members of the Class and
20 predominate over any questions affecting solely individual members of the
21 Class. Among the questions of law and fact common to the Class are:

- 22 a. Whether Defendants failed to provide audio recordings of telephone
23 calls between Defendants and Class members as required under
24 RESPA;
- 25 b. Whether Defendants failed to conduct a “reasonable investigation” as
26 required pursuant to 12 C.F.R. § 1024.35(d)(1)(i) – (ii);
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- c. Whether Plaintiffs and the Class are entitled to damages under 12 U.S.C§ 2605(f);
- d. Whether Defendants demonstrates a “pattern or practice” of failing to respond to borrowers’ QWRs and RFIs.) Whether Defendants’ conduct violates 12 U.S.C. 2601 et. seq.; and
- e. Whether Plaintiffs and the putative Class and Subclass members are entitled to injunctive relief as sought herein

44. Plaintiffs’ claims are typical of those of the other Class members because Plaintiffs, like every other Class member, requests audio recordings or transcripts of telephone calls between Plaintiffs and Defendants, and Defendants refused to provide them.

45. Plaintiffs will fairly and adequately protect the interests of the Class and Subclass. Moreover, Plaintiffs have no interest that is contrary to or in conflict with those of the Class they seek to represent during the Class Period.

46. In addition, Plaintiffs have retained competent counsel experienced in Class action litigation to further ensure such protection and intend to prosecute this action vigorously.

47. The prosecution of separate actions by individual members of the Class and would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendants in the State of Massachusetts and would lead to repetitious trials of the numerous common questions of fact and law in the State of Massachusetts. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a Class action. As a result, a Class action is superior to

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other available methods for the fair and efficient adjudication of this controversy.

48. Proper and sufficient notice of this action may be provided to the Class members through direct mail and email.

49. Moreover, the Class members’ individual damages are insufficient to justify the cost of litigation, so that in the absence of Class treatment Defendants’ violations of law inflicting substantial damages in the aggregate would not be remedied without certification of the Class.

50. Absent certification of this action as a Class action, Plaintiffs and the members of the Class will continue to be damaged by Defendants’ refusal to comply with RESPA.

First Cause of Action

Violations Of The

Real Estate Settlement Procedures Act, 12 U.S.C 2601 et. Seq.

51. Plaintiffs re-allege and incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

52. Plaintiffs’ loans with Defendants were at all times relevant a “federally related mortgage loan” as defined by 12 U.S.C. 2602(1).

53. Defendants are, and was at all times, a loan “servicer” as defined by 12 C.F.R. § 1024.3.

54. Each plaintiff and Defendant are “persons” as defined by 12 U.S.C. § 2602(5).

55. A failure to follow regulations promulgated by the CFPB in Regulation X is per se a violation of RESPA. 12 U.S.C. § 2605(k).

56. Plaintiffs’ request for audio recordings was both a QWR pursuant to 12 U.S.C. § 2605(e)(1)(A) and an RFI pursuant 12 C.F.R. 1024.36.

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57. Audio recordings and transcripts of phone calls with borrowers are information “available in the regular course of business” to Defendants. See 12 C.F.R. § 1024, Supp. I, ¶ 36(d)(1)(ii).

58. Defendants failed to provide Plaintiffs with requested information available to Defendants in the ordinary course of business. Consequently, Defendants violated 12 U.S.C. § 2605(e), 12 U.S.C. § 2605(k) and 12 C.F.R. 1024.36.

59. Defendants further violated 12 U.S.C. § 2605(e), 12 U.S.C. § 2605(k), and 12 C.F.R. 1024.36 by failing to adequately investigate and respond to Plaintiffs’ requests.

60. Plaintiffs are informed and believe that at least 40 other similarly-situated borrowers who have requested audio recordings or transcripts of telephone calls between themselves and Defendants only to be likewise denied access to that information by Defendants. This is sufficient to demonstrate a “pattern or practice” under RESPA. As such, Defendants are liable for statutory damages in the amount of up to \$2,000 per violation pursuant to 12 U.S.C 2605(f)

Prayer For Relief

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiffs the following relief against Defendant:

- That the Court determine this action may be maintained as a Class Action by certifying this case as a Class Action as to the Class;
- That the Court appoint Plaintiffs to serve as the Class Representatives in this matter and appoint Plaintiffs’ Counsel as Class Counsel;
- That Defendants’ wrongful conduct alleged herein be adjudged and

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decreed to violate the statutes and laws asserted herein; and

- That Plaintiffs and the Class be awarded injunctive relief prohibiting such conduct in the future.
- Injunctive relief prohibiting such conduct in the future.
- Injunctive relief ordering Defendants to release audio recordings and transcripts of telephone calls to Plaintiff and Class members.
- Statutory damages in an amount of \$2,000 per violation to each of the named Plaintiffs individually and to each member of the Class pursuant to 12 U.S.C 2605(f)
- An award of actual damages according to proof per violation to each of the named Plaintiffs individually and to each member of the Class pursuant to 12 U.S.C. 2605 (f).
- Attorneys’ fees and costs
- Any and all further relief that this Court deems just and proper.

Trial By Jury

61. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Date: April 20, 2023

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges PHH Mortgage, NewRez Refuse to Provide Copies of Phone Call Recordings, Transcripts](#)
