

**IN THE SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY, LAW DIVISION**

ROBERT AND KIM SUMMERS, individually	)	
and on behalf of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Case No.
v.	)	
	)	
PHH MORTGAGE CORPORATION,	)	
	)	Complaint and Jury Demand
Defendant.	)	

**CLASS ACTION COMPLAINT**

Plaintiffs Robert and Kim Summers, bring this complaint against Defendant PHH Mortgage Corporation (“PHH” or the “Defendant”) on behalf of themselves and all persons similarly situated, and allege as follows:

**I. GENERAL FACTUAL ALLEGATIONS**

1. The Federal Housing Administration (“FHA”), a part of the United States Department of Housing and Urban Development (“HUD”), provide loans backed by the federal government, offering advantages to the lender. For example, FHA lending requirements are more flexible than traditional real estate lending requirements, which allows lenders to approve loans with lower down payments or for borrowers with lower credit scores. This allows lenders to approve additional loans, leading to additional profits for the lender.

2. Lenders also enjoy the protection of the federal government: if a borrower is unable to make payments under a loan’s terms, the FHA insures the lender against financial loss resulting from that default.

3. In exchange for those benefits, FHA lenders must agree to certain HUD regulations governing their relationships with borrowers. These regulations provide various protections to the borrowers.

4. Standard FHA-guaranteed loans reference these HUD regulations in both the Note and the Mortgage. *See, e.g., Ex. A* (Summers Mortgage), ¶¶ 8 (“Lender may collect fees and charges authorized by the Secretary [of Housing and Urban Development]), 9(d) (“**Regulations of HUD Secretary:** In many circumstances regulations issued by the Secretary will limit Lender’s rights”); *Ex. B* (Summers Note), ¶ 6(B) (“If Borrower defaults by failing to pay in fully any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest) (emphasis added).

5. As noted in the Mortgage, these HUD regulations put limits on the fees lenders are permitted to charge borrowers, and such fees are permissible only if “authorized by the Secretary.” This standard language is common to all FHA-backed mortgages.

6. One such fee governed by the HUD regulations is a property inspection fee. HUD regulations permit a lender to charge a borrower a property inspection fee only when the lender has been unsuccessful in contacting the homeowner by telephone and has obtained knowledge that the property is vacant:

The mortgagee, upon learning that a property is subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant.

24 C.F.R. § 203.377 (emphasis added).

7. This regulation prevents lenders from charging property inspection fees if the lender has no reason to believe a borrower's home is unoccupied. *See* HUD Handbook, 4330.1 REV-5 9-9(A)(c)(2)(d) ("If there is evidence that the mortgagee knew the mortgagor was still in occupancy, such as documented communication with the mortgagor, counseling agency, the mortgagor's attorney or the local HUD office, such charges are inappropriate and must not be charged to the mortgagor or included on a claim for insurance benefits").

8. Contrary to HUD regulations, PHH has a policy of indiscriminately charging borrowers property inspection fees regardless of whether the home is actually vacant or abandoned. Prior to charging these fees, PHH takes no steps to confirm whether a borrower's property is in fact vacant or abandoned. PHH uses these unnecessary and illegal property inspection fees to enhance its profits.

9. The HUD Servicing Guidelines place the onus on the mortgagee to establish vacancy. *HUD Servicing Guidelines, Chapter 9, § 4330.1, 9-9 Inspection, Preservation and Protection Requirements, A. Inspections (a) (1)* ("When the mortgage is in default and a payment is not received within 45 days of the due date and efforts to reach the mortgagor or occupant at least by telephone have been unsuccessful, the mortgagee must perform a visual inspection of the mortgaged property to determine if it has become vacant or abandoned.") (emphasis added); *see also* 24 C.F.R. § 203.377. Only then may such inspections occur.

10. In addition, "[i]f there is evidence that the mortgagee knew the mortgagor was still in occupancy, such as documented communication with the mortgagor, counseling agency, the mortgagor's attorney or the local HUD Office, such charges are inappropriate and must not be charged to the mortgagor or included on a claim for insurance benefits." *HUD Servicing*

*Guidelines, Chapter 9, § 4330.1, 9-9 Inspection, Preservation and Protection Requirements, A. Inspections (d).* As described further below, PHH was indeed aware that the subject Property was occupied, but nevertheless performed and sought reimbursement for its unnecessary and prohibited follow-on inspections.

11. These unconscionable and intentional practices are designed to maximize fees assessed on borrowers' accounts when they are already struggling with a potential default and cause the borrowers to suffer an ascertainable loss as defined in the applicable statute.

## **II. THE PARTIES**

12. Plaintiffs are residents of Freehold, New Jersey and citizens of the State of New Jersey.

13. Defendant PHH is a corporation organized and existing under the laws of New Jersey.

## **III. JURISDICTION AND VENUE**

14. The Court has jurisdiction over the parties and claims asserted herein as both parties are located here.

15. Venue is proper in this Court because the facts and activities underlying this lawsuit occurred primary and substantially in this County, and the subject property for which PHH provided the FHA-backed loan is located in this County.

## **IV. FACTS SPECIFIC TO PLAINTIFFS**

16. On April 3, 2009, Plaintiff Robert Summers ("Mr. Summers") executed a Mortgage and Note for the purchase of a home located at 244 Daffodil Drive, Freehold, NJ 07728 (the "Property"). *See* Ex. A; Ex. B. Plaintiffs have occupied the Property continuously since April 2009.

17. The loan Mr. Summers received from PHH was an FHA insured loan, and the Mortgage contained the above-quoted language noting that PHH could only charge fees authorized by the HUD regulations. Ex. A, ¶ 8.

18. Beginning in April 2009 and continuing for years thereafter, PHH communicated with Plaintiffs at the Property address on a regular basis, including by sending certified and first-class mail address to Plaintiffs at the Property address, which Plaintiffs accepted at that address.

19. Furthermore, beginning in or around September 2016, Plaintiffs and PHH were involved in active litigation regarding a loan modification, throughout which the parties were in court and communicating regarding the Property and Plaintiffs' continuing occupancy thereof on a regular basis. These communications, and filings made during the course of that litigation, confirm PHH's knowledge that Plaintiffs were occupying the Property. Furthermore, during the course of that litigation, Plaintiffs swore under penalty of perjury that they were in fact occupying the Property.

20. In or around March 2016, notwithstanding years of communication with Plaintiffs at the Property address, PHH began assessing property inspection fees to Plaintiffs. From March 2016 through December 2018, PHH assessed *at least* nineteen (19) separate property inspection fees to Plaintiffs.

21. Plaintiffs occupied the Property throughout the entire period PHH was charging these fees. PHH had no reason to believe that the Property was vacant or that an inspection was necessary. In fact, during this time, PHH was in regular contact with Plaintiffs and was aware that Plaintiffs were living in the Property.

22. Additionally, plaintiff was assessed inspection fees more frequently than what was permitted by FHA, inflating the amount claimed as due.

## V. CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action as a class action and seek certification under New Jersey Court Rule 4.32 of the following class and subclass (collectively the “Class”):

All New Jersey residents who within the applicable statute of limitations, obtained an FHA-guaranteed loan from PHH and were charged property inspection fees while occupying the property serving as collateral for said loan, and/or were charged property inspection fees more frequently than once every 30 days, after a determination of the occupancy status of the property was ascertained regardless of the occupancy status of the property.

24. Excluded from the Class are Defendant; any entity in which Defendant has a controlling interest, and any of its subsidiaries, affiliates, officers, directors of PHH, or employees; any authorized dealers; and any legal representative, heir, successor, or assignee of PHH. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

25. This proceeding has been brought and may properly be maintained as a class action pursuant to New Jersey Court Rule 4:32.

26. Numerosity/Impracticability of Joinder: The members of the Class are so numerous that joinder of all members is impracticable. Plaintiffs reasonably estimate that there are thousands of Class members. The precise number of Class members can be readily ascertained by reviewing documents in Defendant’s possession, custody, and control.

27. Commonality and Predominance: There is a well-defined community of interest and common questions of law and fact, which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary

from one Class member to another and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendant breached the terms of the Mortgage and/or Note by charging unauthorized fees;
- b. Whether Defendant breached the terms of the Mortgage and/or Note by conducting illegal and unnecessary property inspections;
- c. Whether Defendant's actions violated HUD regulations;
- d. Whether Defendant took appropriate, or any, steps to determine if the properties at issue were vacant prior to charging borrowers inspection fees;
- e. Whether Defendant's actions were false, fraudulent, deceptive, unconscionable, and/or misleading; and caused the class members to suffer an ascertainable loss as defined in the New Jersey Consumer Fraud Act, and
- f. Whether Plaintiffs and the Class are entitled to injunctive relief.

28. Typicality: The representative Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all Class members have suffered the same injuries as a result of Defendant's wrongful conduct. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

29. Adequacy: Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the members of the Class they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and

Plaintiffs intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

30. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. Furthermore, as the damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation presents the potential for inconsistent or contradictory judgments. There will be no difficulty in the management of this class action. A class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

31. Defendant has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

## **VI. CAUSES OF ACTION**

### **COUNT I – BREACH OF CONTRACT**

32. Plaintiffs incorporate by reference the allegations in paragraphs 1-31 as if fully set forth herein.

33. The terms of Plaintiffs' and the Class members' mortgages incorporate the HUD regulations governing FHA-backed loans. These regulations limit the fees Defendant may properly charge, permitting only those fees "authorized by the Secretary."

34. Despite this requirement, Defendant repeatedly charged unauthorized, and therefore illegal, property inspection fees.



35. Defendant's conduct in charging these unauthorized fees constituted a breach of its express contractual obligations to Plaintiffs and the Class.

36. As a result of Defendant's breaches, Plaintiffs and the Class have suffered damages.

### **COUNT II – INJUNCTIVE RELIEF**

37. Plaintiffs incorporate by reference the allegations in paragraphs 1-31 as if fully set forth herein.

38. The actions of Defendant show that it is Defendant's policy and procedure to ignore HUD regulations and state law.

39. Plaintiffs and the Class members are entitled to an injunction barring Defendant from further collection of any amounts for illegal and improper property inspection fees.

40. Plaintiffs and the Class members are entitled to an injunction prohibiting Defendant from filing claims based on such non-existent debts.

### **COUNT III – VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT (N.J.S.A. § 56:8-1 *et seq.*)**

41. Plaintiffs incorporate by reference the allegations in paragraphs 1-31 as if fully set forth herein.

42. The New Jersey Consumer Fraud Act ("CFA") prohibits "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate."

43. Defendant is a "person" within the meaning of the CFA.

44. Defendant engaged in unconscionable, deceptive, and/or fraudulent commercial practices by assessing, seeking to collect, and actually collecting property inspection fees to which it had no legal right, in violation of HUD regulations. These clear violations of federal regulations expressly designed to protect homeowners, specifically homeowners already in financial distress, are unconscionable on their face.

45. Defendant's practices were likely to, and did in fact, deceive, and mislead members of the public like Plaintiffs and the Class members, to their detriment.

46. Plaintiffs and the Class members have suffered an ascertainable loss as a direct result of PHH's employment of these unconscionable, deceptive and/or fraudulent commercial practices.

**COUNT IV – VIOLATION OF TRUTH-IN-CONSUMER CONTRACT,  
WARRANTY AND NOTICE ACT  
(N.J.S.A. §§ 56:12-14, et seq.)**

47. Plaintiffs incorporate by reference the allegations in paragraphs 1-31 as if fully set forth herein.

48. The Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA") was enacted over thirty years ago because "[f]ar too many consumer contracts, warranties, notices and signs contain provisions which clearly violate the rights of consumers. Even though these provisions are legally invalid or unenforceable, their very inclusion in a contract, warranty, notice or sign deceives a consumer into thinking that they are enforceable and for this reason the consumer often fails to enforce his rights." Statement, Bill No. A1660, 1981 N.J. Laws, Chapter 454, Assembly No. 1660, page 2.

49. The primary goal of the TCCWNA is to prevent confusion and deception among consumers as to both their legal rights, and the responsibilities of businesses operating in New

Jersey. TCCWNA accomplishes this goal by prohibiting the use of illegal terms in consumer contracts and notices.

50. Defendant is a “seller, lessor, creditor, lender or bailee” under the TCCWNA. N.J.S.A. § 56:12-15.

51. Plaintiffs are “consumer[s]” under the TCCWNA. *Id.*

52. The Mortgage and Note are each a “consumer contract” or “consumer notice or sign” under the TCCWNA. N.J.S.A. §§ 56:12-1 and 56:12-15.

53. The Mortgage and Note violate the TCCWNA because they include provisions that violate clearly established legal rights and responsibilities. N.J.S.A. § 56:12-15. 116. More specifically, the Mortgage provides that that “Lender may inspect the property if the property is vacant or abandoned *or the loan is in default*” (emphasis added). The latter provision, however, runs counter to, and violates, the relevant HUD regulations setting forth the mandatory prerequisites for such inspections.

54. PHH’s imposition of the fees charged for these improper inspections and efforts to collect those fees as debt have injured Plaintiffs

55. Pursuant to N.J.S.A. § 56:12-17, Plaintiff and the Class are entitled to a civil penalty of not less than \$100.00, or for actual damages, or both, together with reasonable attorney’s fees and court costs, and any additional relief the court deems appropriate.

#### **PRAYER FOR RELIEF**

56. WHEREFORE, for all these reasons, Plaintiffs, individually and on behalf of all others similarly situated, seeks relief as follows:

- i. Certification of the Class set forth above;

- ii. Appointment of Plaintiffs as class representatives and Plaintiffs' attorneys as Class Counsel;
- iii. Damages and/or the disgorgement of all sums improperly charged and/or collected by Defendant from Plaintiffs and the Class;
- iv. An injunction preventing Defendant from engaging in the conduct complained of herein;
- v. Interest;
- vi. Attorneys' fees, costs, and expenses; and
- vii. Such other and further relief as the Court deems just and proper.

Dated: September 20, 2022

/s/ Edward Hanratty

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#### CERTIFICATION OF NO OTHER ACTION

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief, other than those contained in D.N.J. bankruptcy court case #19-20123 CMG . Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [PHH Mortgage Corporation Charges Improper Property Inspection Fees, Class Action Alleges](#)

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