

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

JILL BEZEK, et al., *

Plaintiffs, *

v. * **Case No.: 1:17-cv-02902-SAG**

**FIRST NATIONAL BANK OF
PENNSYLVANIA, as successor to
FIRST MARINER BANK, by and
through merger with HOWARD
BANK,** *

Defendant. *

* * * * *

**FIRST NATIONAL BANK OF PENNSYLVANIA’S ANSWER AND AFFIRMATIVE
DEFENSES TO CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Defendant, First National Bank of Pennsylvania (“FNB”), as successor to First Mariner Bank, by and through merger with Howard Bank, by its undersigned counsel, hereby submits this Answer and Affirmative Defenses in response to the Class Action Complaint filed by Plaintiffs, Jill Bezek and Michelle Harris, and states as follows:

INTRODUCTION

1. FNB admits only that Plaintiffs are borrowers who obtained mortgage loans from First Mariner and that Genuine Title, LLC provided settlement services in connection with such loans. FNB denies the remainder of the allegations set forth in Paragraph 1. FNB further states that the allegations in the first sentence contain legal conclusions to which no response is required.

2. FNB denies the allegations set forth in Paragraph 2. FNB further states that the allegations in Paragraph 2 contain legal conclusions to which no response is required. FNB further

denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

3. FNB denies the allegations set forth in Paragraph 3. FNB further states that the allegations in Paragraph 3 contain legal conclusions to which no response is required. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

PARTIES

4. The allegations set forth in Paragraph 4 constitute conclusions of law to which no response is required. To the extent a response is required, First Mariner denies the allegations set forth in Paragraph 4. First Mariner further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

5. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 and, therefore, denies the same.

6. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 and, therefore, denies the same.

7. FNB admits that it is the successor in interest to First Mariner Bank by virtue of its merger with Howard Bank. Except as expressly admitted, the allegations in Paragraph 7 constitute conclusions of law to which no response is required. To the extent further response is required, however, FNB denies the allegations set forth in Paragraph 7.

JURISDICTION AND VENUE

8. The allegations set forth in Paragraph 8 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 8.

9. The allegations set forth in Paragraph 9 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 9.

10. The allegations set forth in Paragraph 10 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 10.

11. The allegations set forth in Paragraph 11 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 11.

FACTUAL ALLEGATIONS FOR INDIVIDUAL AND CLASS RELIEF

12. The allegations set forth in Paragraph 12 constitute conclusions of law to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 12.

13. The allegations set forth in Paragraph 13 constitute a recitation of law and characterizations of federal statutes to which no response is required.

14. The allegations set forth in Paragraph 14 constitute a recitation of law and characterizations of federal statutes to which no response is required.

15. The allegations set forth in Paragraph 15 constitute conclusions of law and characterizations of federal statutes to which no response is required. To the extent a response is required, FNB denies the allegations set forth in Paragraph 15.

16. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 and, therefore, denies the same.

17. FNB admits only that certain former First Mariner employees were mortgage loan officers who assisted consumers in obtaining mortgage loans. FNB denies the remaining allegations in Paragraph 17.

The Kickback Scheme

18. FNB denies the allegations set forth in Paragraph 18 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 18 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

19. FNB denies the allegations set forth in Paragraph 19 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 19 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

Referring Cash

20. FNB denies the allegations set forth in Paragraph 20 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 20 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

21. FNB denies the allegations set forth in Paragraph 21 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 21 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further states that the documents attached as Exhibits 1 and 2 speak for themselves.

22. FNB denies the allegations set forth in Paragraph 22 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 22 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

23. FNB denies the allegations set forth in Paragraph 23 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 23 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

24. FNB denies the allegations set forth in Paragraph 24 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 24 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

25. FNB denies the allegations set forth in Paragraph 25 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 25 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

26. FNB denies the allegations set forth in Paragraph 26 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 26 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

27. FNB denies the allegations set forth in Paragraph 27 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 27 pertain to persons or entities

other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

Free Marketing Materials

28. FNB denies the allegations set forth in Paragraph 28 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 28 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

29. FNB denies the allegations set forth in Paragraph 29 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 29 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

30. FNB denies the allegations set forth in Paragraph 30 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 30 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

31. FNB denies the allegations set forth in Paragraph 31 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 31 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

32. FNB denies the allegations set forth in Paragraph 32 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 32 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth

of the allegations and, therefore, denies the same. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

33. FNB denies the allegations set forth in Paragraph 33 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 33 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

Marketing Credits

34. FNB denies the allegations set forth in Paragraph 34 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 34 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

35. FNB denies the allegations set forth in Paragraph 35 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 35 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

36. FNB denies the allegations set forth in Paragraph 36 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 36 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

37. FNB denies the allegations set forth in Paragraph 37 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 37 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

38. FNB denies the allegations set forth in Paragraph 38 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 38 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

Turn Down Credits

39. FNB denies the allegations set forth in Paragraph 39 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 39 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

40. FNB denies the allegations set forth in Paragraph 40 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 40 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

41. FNB denies the allegations set forth in Paragraph 41 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 41 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

42. FNB denies the allegations set forth in Paragraph 42 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 42 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

43. FNB denies the allegations set forth in Paragraph 43 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 43 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

44. FNB denies the allegations set forth in Paragraph 44 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 44 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

45. FNB denies the allegations set forth in Paragraph 45 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 45 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

46. FNB denies the allegations set forth in Paragraph 46 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 46 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

47. FNB denies the allegations set forth in Paragraph 47 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 47 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further states that Exhibit 5 speaks for itself.

48. FNB denies the allegations set forth in Paragraph 48 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 48 pertain to persons or entities other

than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

49. FNB denies the allegations set forth in Paragraph 49 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 49 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

50. FNB denies the allegations set forth in Paragraph 50 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 50 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

51. FNB denies the allegations set forth in Paragraph 51 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 51 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

52. FNB denies the allegations set forth in Paragraph 52 to the extent that they relate to First Mariner. To the extent that the allegations in Paragraph 52 pertain to persons or entities other than First Mariner, FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

First Mariner's Participation in the Kickback Scheme

53. FNB denies the allegations in Paragraph 53.

54. FNB admits only that Angela Pobletts, Tony Sergi, Brad Restivo, Walter Alton, and Tom Bowen were previously employed by First Mariner. FNB denies the remaining allegations set forth in Paragraph 54.

55. FNB admits only that Angela Pobletts was previously employed by First Mariner. FNB denies the remaining allegations set forth in Paragraph 55. FNB further states that the documents attached as Exhibit 7 speak for themselves.

56. FNB admits only that Tony Sergi was previously employed by First Mariner. FNB denies the remaining allegations set forth in Paragraph 56. FNB further states that the documents attached as Exhibit 8 speak for themselves.

57. FNB denies the allegations in Paragraph 57.

58. FNB denies the allegations in Paragraph 58.

59. FNB denies the allegations in Paragraph 59.

60. FNB denies the allegations in Paragraph 60.

61. FNB denies the allegations in Paragraph 61.

62. FNB denies the allegations in Paragraph 62. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

63. FNB denies the allegations in Paragraph 63. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

FACTS FOR INDIVIDUAL CLASS REPRESENTATIVES

64. FNB admits only that Plaintiff Jill Bezek obtained a residential mortgage loan from First Mariner. FNB lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 64 and, therefore, denies the same.

65. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 and, therefore, denies the same.

66. FNB denies the allegations in Paragraph 66.

67. FNB denies the allegations in Paragraph 67.

68. FNB denies the allegations in Paragraph 68. FNB further states that the referenced HUD-1 speaks for itself.

69. FNB denies the allegations in Paragraph 69. FNB further states that the referenced HUD-1 speaks for itself.

70. FNB denies the allegations in Paragraph 70.

71. In response to the allegations in Paragraph 71, FNB states that Plaintiff's loan closing complied with the applicable legal requirements. FNB denies the remaining allegations in Paragraph 71.

72. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 72 and, therefore, denies the same.

73. FNB admits only that Plaintiff Michelle Harris obtained a residential mortgage loan from First Mariner. FNB lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 73 and, therefore, denies the same.

74. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 74 and, therefore, denies the same.

75. FNB denies the allegations in Paragraph 75.

76. FNB denies the allegations in Paragraph 76.

77. FNB denies the allegations in Paragraph 77. FNB further states that the referenced HUD-1 speaks for itself.

78. FNB denies the allegations in Paragraph 78. FNB further states that the referenced HUD-1 speaks for itself.

79. FNB denies the allegations in Paragraph 79. FNB further states that the referenced HUD-1 speaks for itself.

80. In response to the allegations in Paragraph 80, FNB states that Plaintiff's loan closing complied with the applicable legal requirements. FNB denies the remaining allegations in Paragraph 80.

81. FNB lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 81 and, therefore, denies the same.

82. Paragraph 82 contains legal conclusions and characterizations of a federal regulation to which no response is required. To the extent a response is required, FNB denies any allegations that are inconsistent with the applicable federal law and regulation.

83. FNB denies the allegations in Paragraph 83. FNB further states that the referenced Good Faith Estimate Form speaks for itself.

84. FNB denies the allegations in Paragraph 84. FNB further states that the referenced Good Faith Estimate Form speaks for itself.

85. Paragraph 85 contains legal conclusions and characterizations of federal statutes and regulations to which no response is required. To the extent a response is required, FNB denies any allegations that are inconsistent with the applicable federal law and regulations.

86. FNB denies the allegations in Paragraph 86.

87. FNB denies the allegations in Paragraph 87.

88. FNB denies the allegations in Paragraph 88.

89. FNB denies the allegations in Paragraph 89. FNB further states that the referenced HUD-1 speaks for itself.

90. FNB denies the allegations in Paragraph 90.

91. Paragraph 91 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 91. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

CLASS ALLEGATIONS

92. FNB adopts and incorporates by reference its Answers to Paragraphs 1-91.

93. Paragraph 93 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 93. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

94. Paragraph 94 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 94, including all sub-parts. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

95. Paragraph 95 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 95. FNB further denies that

Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

96. FNB denies the allegations in Paragraph 96. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

97. FNB denies the allegations in Paragraph 97. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

98. FNB denies the allegations in Paragraph 98.

99. FNB denies the allegations in Paragraph 99. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

100. Paragraph 100 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 100. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

101. Paragraph 101 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 101. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

102. Paragraph 102 contains legal conclusions to which no response is required. To the extent a response is required, FNB lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 102 and, therefore, denies the same. FNB

further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

103. Paragraph 103 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 103. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

104. Paragraph 104 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 104. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

105. Paragraph 105 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 105. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

106. Paragraph 106 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 106. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

107. Paragraph 107 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 107. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

COUNT I
Violation of the Real Estate Procedures Act (RESPA),
12 U.S.C.

108. FNB adopts and incorporates by reference its Answers to Paragraphs 1-107 of the Complaint.

109. Paragraph 109 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 109.

110. Paragraph 110 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in Paragraph 110 and, therefore, denies the same.

111. Paragraph 111 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB admits only that RESPA by its terms governs residential mortgage loan closings for which First Mariner was the lender.

112. Paragraph 112 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 112.

113. Paragraph 113 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 113. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

114. Paragraph 114 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 114.

115. Paragraph 115 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 115.

116. Paragraph 116 contains legal conclusions and characterizations of a federal statute to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 116.

117. Paragraph 117 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 117. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23. FNB further states that the referenced HUD-1 speaks for itself.

118. Paragraph 118 contains legal conclusions to which no response is required. To the extent a response is required, FNB denies the allegations in Paragraph 118. FNB further denies that Plaintiffs have satisfied, or can satisfy, the prerequisites for class certification under Federal Rule of Civil Procedure 23.

119. FNB denies the allegations in Paragraph 119.

120. FNB admits that it is the successor in interest to First Mariner Bank by virtue of its merger with Howard Bank. Except as expressly admitted, the allegations in Paragraph 120 constitute conclusions of law to which no response is required. To the extent further response is required, however, FNB denies the allegations set forth in Paragraph 120.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations—namely, the one-year statute of limitations set forth in RESPA, 12 U.S.C. § 2607—because their loans closed more than one year before the filing of this action.
3. Plaintiffs are not entitled to relief from the aforementioned statute of limitations under any theory of fraudulent concealment or equitable tolling because, among other reasons, Plaintiffs failed to exercise due diligence to discover the alleged basis for their claims against First Mariner.
4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
5. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.
6. Plaintiffs' claims are barred, in whole or in part, by the doctrines of settlement, release, and/or payment.
7. Plaintiffs' claims are barred, in whole or in part, by the doctrines of set off and/or off-set.
8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.
9. Plaintiffs' claims are barred, in whole or in part, by the actions or inaction of Plaintiff.
10. Plaintiffs lack standing because they have not suffered a concrete and particularized injury. Plaintiffs paid fair market value for the settlement services at issue in the Complaint and, therefore, have not sustained any cognizable injury-in-fact.

11. Any damages or injuries that Plaintiffs allegedly sustained resulted from circumstances and conditions beyond the control of First Mariner and/or from the actions or inactions of third parties over which First Mariner lacked control.

12. Plaintiffs' claims fail as a matter of law because the individuals alleged to have engaged in the alleged kickback scheme were not working within the scope of their employment with First Mariner.

13. Any damages or injuries that Plaintiffs allegedly sustained are *de minimis*, remote, speculative, and/or transient.

14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate their damages and/or avoid the damages claimed in the Complaint, if any.

15. The acts and statements of First Mariner were, at all relevant times, fair and reasonable and were performed in good faith based on all the relevant facts known to First Mariner. First Mariner did not directly or indirectly perform any acts that would constitute a violation of Plaintiffs' rights.

16. At all relevant times, First Mariner complied with all applicable federal, state, and local laws and regulations.

17. Plaintiffs have failed to join one or more indispensable parties.

18. This Court should not certify this matter as a class action because Plaintiffs cannot satisfy the requirements of Federal Rule of Civil Procedure 23.

19. FNB reserves the right to amend, correct, update, and/or supplement its Affirmative Defenses, if necessary.

WHEREFORE, Defendant, First National Bank of Pennsylvania, as successor to First Mariner Bank, by and through merger with Howard Bank, respectfully requests that the Court

dismiss Plaintiffs' Class Action Complaint with prejudice, issue a determination that this action may not be maintained as a class action, award it reasonable attorneys' fees and costs incurred in defending this action, and grant any such other and further relief as the Court deems just and appropriate.

Dated: May 12, 2022

Respectfully submitted,

/s/Michael Blumenfeld

Michael E. Blumenfeld (Bar No. 25062)

Peter W. Sheehan, Jr. (Bar No. 29310)

Ashley W. Wetzel (Bar No. 20196)

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*Attorneys for Defendant, First National Bank
of Pennsylvania, as successor to First
Mariner Bank, by and through merger with
Howard Bank*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2022, a copy of the foregoing was electronically filed via CM/ECF and served on all counsel of record, pursuant to the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Maryland.

/s/ Michael E. Blumenfeld

Michael E. Blumenfeld