

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY,
FLORIDA

I. CASE STYLE:

MADELAINE MARTORELLA

Plaintiff,

vs.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS INDENTURE TRUSTEE
FOR AMERICANHOME MORTGAGE
INVESTMENT TRUST 2006-1, AND
AMERICAN HOME MORTGAGE
SERVICING, INC.

Defendants.

Case No.:

Judge:

2012 CA 0 04301 XMA MB

FILED
2012 MAR -6 PM 3:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

II. TYPE OF CASE: (If the case fits more than one type of case, select the most definitive category.)
If the most descriptive label is a subcategory (is indented under a broader category), place an X in both
the main category and subcategory boxes.

- | | |
|--|--|
| <input type="checkbox"/> Condominium | <input type="checkbox"/> Homestead residential foreclosure \$0-\$50,000 |
| <input checked="" type="checkbox"/> Contracts and indebtedness | <input type="checkbox"/> Homestead residential foreclosure \$50,001-\$249,999 |
| <input type="checkbox"/> Eminent domain | <input type="checkbox"/> Homestead residential foreclosure \$250,000 or more |
| <input type="checkbox"/> Auto Negligence | <input type="checkbox"/> Nonhomestead residential foreclosure \$0-\$50,000 |
| <input type="checkbox"/> Negligence - other | <input type="checkbox"/> Nonhomestead residential foreclosure \$50,001-\$249,999 |
| <input type="checkbox"/> Business governance | <input type="checkbox"/> Nonhomestead residential foreclosure \$250,000 or more |
| <input type="checkbox"/> Business torts | <input type="checkbox"/> Other real property actions \$0-\$50,000 |
| <input type="checkbox"/> Environmental/Toxic Tort | <input type="checkbox"/> Other real property actions \$50,001-\$249,999 |
| <input type="checkbox"/> Third party indemnification | <input type="checkbox"/> Other real property actions \$250,000 or more |
| <input type="checkbox"/> Construction defect | <input type="checkbox"/> Professional malpractice |
| <input type="checkbox"/> Mass Tort | <input type="checkbox"/> Malpractice-business |
| <input type="checkbox"/> Negligent security | <input type="checkbox"/> Malpractice-medical |
| <input type="checkbox"/> Nursing home negligence | <input type="checkbox"/> Malpractice-other professional |
| <input type="checkbox"/> Premises Liability-commercial | <input type="checkbox"/> Other |
| <input type="checkbox"/> Premises Liability-residential | <input type="checkbox"/> Antitrust/Trade regulation |
| <input type="checkbox"/> Products liability | <input type="checkbox"/> Business transaction |

- | | |
|--|--|
| <input type="checkbox"/> Real property/Mortgage foreclosure | <input type="checkbox"/> Constitutional challenge-statute or ordinance |
| <input type="checkbox"/> Constitutional challenge-
proposed amendment | <input type="checkbox"/> Libel/Slander |
| <input type="checkbox"/> Corporate trusts | <input type="checkbox"/> Shareholder derivative action |
| <input type="checkbox"/> Discrimination | <input type="checkbox"/> Securities litigation |
| <input type="checkbox"/> employment or other | <input type="checkbox"/> Trade secrets |
| <input type="checkbox"/> Insurance claims | <input type="checkbox"/> Trust litigation |
| <input type="checkbox"/> Intellectual property | |

III. REMEDIES SOUGHT (check all that apply):

- ☒ monetary;
☒ non-monetary declaratory or injunctive relief;
☐ punitive

IV. NUMBER OF CAUSES OF ACTION: [11]

(Specify) Florida Deceptive and Unfair Trade Practice Act against AHMSI; FDUTPA against AHMSI and American Home Trust on behalf of Subclass 1; FDUTPA against AHMSI on behalf of Subclass 2; FDUTPA against American Home Trust and AHMSI on behalf of Subclass 3; Breach of Contract against AHMSI; Breach of Contract against AHMSI and American Home Trust on behalf of Subclass 1; Breach of Contract against AHMSI on behalf of Subclass 2; Breach of Contract against AHMSI and American Home Trust on behalf of Subclass 3; FCCPA against AHMSI on behalf of Subclass 2; FCCPA against AHMSI and American Home Trust on behalf of Subclass 3; Unjust Enrichment against AHMSI on behalf of the Class

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☒ yes
☐ no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☐ no
☒ yes (If "yes," list all related cases by name, case number and court.)

Wells Fargo Bank, NA, etc., vs Julie Ann Rico, etc., et ux, et al; Case No.502009

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

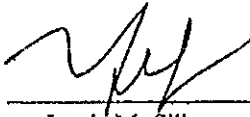
CA034657XXXXMBAD

- ☒ yes
☐ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

DATE: March 16th, 2012.

SILBER & DAVIS
Attorney for Plaintiff
1806 Old Okeechobee Road
West Palm Beach, FL 33409
(561) 615-6262

By: 
Louis M. Silber
Fla. Bar No. 176031

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FILED

CLASS ACTION COMPLAINT

Plaintiff MADELAINE MARTORELLA, on behalf of herself and all others similarly situated, by and through her undersigned counsel, brings this complaint against DEUTSCHE BANK NATIONAL TRUST COMPANY AS INDENTURE TRUSTEE FOR AMERICAN HOME MORTGAGE INVESTMENT TRUST 2006-1 and AMERICAN HOME MORTGAGE SERVICING, INC., and respectfully alleges the following:

1. This is a class action complaint against Defendants for both damages in excess of Fifteen Thousand (\$15,000.00) Dollars and equitable relief.
2. Plaintiff MADELAINE MARTORELLA is a resident of Palm Beach County, Florida.
3. Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY AS INDENTURE TRUSTEE FOR AMERICAN HOME MORTGAGE INVESTMENT TRUST 2006-1 ("AMERICAN HOME TRUST"), is a Delaware statutory trust doing business in Palm Beach County, Florida. AMERICAN HOME TRUST was formed in May, 2007,

and consists of a pool of mortgage loans having an aggregate initial principal balance of approximately \$1,973,444,000. Approximately 15.24% of the mortgage properties in the AMERICAN HOME TRUST mortgage pool are located in Florida. AMERICAN HOME TRUST is one of twelve investment trusts organized by its sponsor American Home Mortgage Acceptance, Inc. ("American Home Mortgage"), between July, 2004 and April, 2007 for the purpose of pooling mortgages and selling asset-backed securities. The aggregate initial principal value of all the mortgaged loans in investment trusts organized by American Home Mortgage was approximately \$28,283,178,000.

4. Defendant AMERICAN HOME MORTGAGE SERVICING, INC. ("AHMSI") is a Delaware corporation with a principal place of business in Texas. AHMSI is authorized to do and doing business in Palm Beach County, Florida. AHMSI is a loan servicer of mortgage loans. In November, 2007, AHMSI acquired the servicing rights set forth in a Servicing Agreement, dated March 29, 2006 for the loans in the AMERICAN HOME TRUST. At the same time, AHMSI also acquired the servicing rights for the loans in the other investment trusts organized by American Home Mortgage. In April, 2008, AHMSI acquired the servicing rights for loans in investment trusts organized by AMERICAN HOME Mortgage Corporation and in February, 2009, AHMSI acquired the servicing rights on 185,000 loans from Citigroup, Inc.'s residential lending unit. As of June 30, 2009, AHMSI serviced approximately 575,000 loans with an unpaid principal balance of over \$100 billion.

FACTUAL ALLEGATIONS

5. MARTORELLA is the title owner, and mortgagor of property described in Official Records Book 19795, Page 1718, of the Public Records of Palm Beach County (the "MARTORELLA Property").

6. AMERICAN HOME TRUST purports to own and hold the standard form

Note and Mortgage on the MARTORELLA Property.

7. AMERICAN HOME TRUST has appointed AHMSI to service the loan evidenced by a standard form Note and the Mortgage on the MARTORELLA Property.

8. AHMSI services the loan on the MARTORELLA Property, and the properties owned by other members of the Class, acting as agent for AMERICAN HOME TRUST, and other note holders. When it assumed the servicing of MARTORELLA's loan, and the loans of other members of the Class, AHMSI assumed the obligations of under the standard form Note and Mortgage.

9. Under the standard form mortgage agreements entered into by MARTORELLA and the members of the Class, all rights and obligations contained therein were subject to the requirements and limitations of federal law and Florida law.

10. Under the standard form mortgage agreement entered into by MARTORELLA, and members of the Class, if the homeowner fails to keep up their property insurance premiums, then AHMSI may step in and buy a property insurance policy on behalf of the homeowner to ensure the homes remains insured. Such policies commonly are referred to as "force-placed insurance."

11. In exercising any rights under the standard form mortgage agreement to purchase forced-placed insurance, AHMSI had to act in a manner consistent with the implied covenant of good faith and fair dealing implied in the standard form mortgage which: (a) required AHMSI to be honest in its dealings and not purposefully to take actions that would unfairly prevent MARTORELLA, and the members of the Class, from enjoying their rights or benefits under the standard form mortgage agreement or disappoint their reasonable expectations; and (b) required that even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless subject to an obligation that it be exercised in good faith and to observe reasonable

limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

12. In early 2009, AHMSI, acting as agent for AMERICAN HOME TRUST, wrongly claimed that MARTORELLA did not have property insurance on the MARTORELLA Property as required by her mortgage agreement, and purchased force-placed insurance on the MARTORELLA Property through a specialty insurance carrier named Empire Indemnity Insurance Company ("Empire").

13. As a result, MARTORELLA's insurance premium increased nearly fourfold, as reflected in the increase in her monthly escrow fees from \$499.31 per month to \$1,924.81 per month.

14. MARTORELLA immediately notified AHMSI of its error and provided AHMSI with proof of her insurance coverage on the MARTORELLA Property.

15. Despite being in constant contact with AHMSI about its error, AMERICAN HOME TRUST sued MARTORELLA to foreclose on the MARTORELLA Property in June 2009 based upon the fact that AHMSI had wrongly quadrupled her monthly escrow and refused to accept the correct monthly payment from her.

16. In August, 2009, AHMSI acknowledged its error, and notified MARTORELLA that the force-placed policy had been cancelled. However, AHMSI refused to remove one month's worth of coverage even though MARTORELLA had continuous coverage as shown by the declaration page that she had previously provided to AHMSI.

17. According to a recent article in the American Banker, Horowitz, J., "Ties to Insurances Could Land Mortgage Servicers in More Trouble," (November 10, 2010) (the "American Banker Article") forced placed insurance is much more expensive -- indeed "astronomically priced" -- when compared to regular insurance. Force-placed insurance

often is two to four times (but up to ten times) more costly than regular hazard insurances policies. At the same time, force-placed insurance policies provide less comprehensive insurance coverage and do not include protection for a home's contents or liability coverage, both part of a typical homeowners' policy. The additional premiums charged for force-placed insurance are far out of line with any additional risk associated with forced-placed insurance coverage. The premiums imposed for force-placed insurance are neither bona fide nor reasonable, and do not bear a reasonable relationship to the insurable risk.

18. According to the American Banker Article, behind the servicers' insurance practices lie a conflict of interest that aligns servicers and their force-place-insurer partners against the borrowers. Force-placed insurance is frequently placed with an insurance carrier in exchange for commissions, reinsurance fees or other remuneration paid by the insurance company to the mortgage servicers, such as AHMSI. Instead of purchasing less expensive policies, which would benefit the borrowers, the mortgage servicers such as AHMSI place the policies with the force-placed insurers that pay them commissions, or other remuneration, thus driving up the premiums for force-placed insurance.

19. According the J. Robert Hunter of the Consumer Federal of America, "The problem is that these lenders have set up sweetheart deals with insurance companies and get all sorts of kickbacks, so that the price doubles, triples, or quadruples. In fact, it's not unusual for it to go up five or 10 times." Hunter says insurers do face added risk if they offer such policies without the usual underwriting. It's possible, for instance, that a homeowner facing foreclosure might neglect repairs and expose a home to additional damage. But he says the added risk might justify a premium 10 or 20 percent higher, not 200 to 1,000 percent. "I've had insurers tell me, 'We can't compete - our rates are

too low, and we can't kick back enough money [to the mortgage lender]," " says Hunter, a former Texas insurance commissioner.

20. Because there is "no arm's-length transaction here, [it] creates all sorts of incentives for the servicer to force-place excessive insurance and overcharge consumers for policies that provide minimal benefit," said Diane Thompson, of counsel for the National Consumer Law Center. "Servicers and insurers have turned this into a gravy train."

21. The interests of the servicers and the insurance carriers are so aligned, in fact, that in many cases there ceases to be a clear difference between the entity purchasing insurance and the entity selling it.

22. On information and belief, AHMSI engaged in the foregoing abusive practices when it force-placed insurance upon MARTORELLA, and the other members of the Class, which benefitted AHMSI.

23. On information and belief, the insurance carriers with which AHMSI placed the policies paid commissions, reinsurance fees and/or other remuneration in exchange to obtain force-placed insurance business from AHMSI.

CLASS REPRESENTATION ALLEGATIONS

24. Plaintiff incorporates paragraphs 1-23 by reference.

25. Pursuant to Florida Rule of Civil Procedure 1.220, MARTORELLA brings this complaint on behalf of all persons within the State of Florida who have or had residential mortgages serviced by AHMSI as agent for AMERICAN HOME TRUST, or any other note holder, and for whom AHMSI purchased force-placed property insurance at any time from November 1, 2007 to the present (the "Class").

26. Pursuant to Florida Rule of Civil Procedure 1.220, MARTORELLA brings this complaint on behalf of the following Subclasses:

a. A subclass of all persons within the State of Florida who have or had residential mortgages serviced by AHMSI as agent for AMERICAN HOME TRUST, and for whom AHMSI purchased force-placed property insurance at any time from November 1, 2007 to the present ("Subclass 1");

b. A subclass of all persons within the State of Florida who have or had residential mortgages serviced by AHMSI as agent for AMERICAN HOME TRUST, or any other note holder, and for whom AHMSI purchased force-placed property insurance at any time from November 1, 2007 to the present, and who had sufficient property insurance coverage in effect at the time ("Subclass 2"); and

c. A subclass of all persons within the State of Florida who have or had residential mortgages serviced by AHMSI as agent for AMERICAN HOME TRUST, and for whom AHMSI purchased force-placed property insurance at any time from November 1, 2007 to the present, and who had sufficient property insurance coverage in effect at the time ("Subclass 3").

27. Upon completion of discovery with respect to the scope of the Class and Subclass, MARTORELLA reserves the right to amend the Class and Subclass definitions.

28. Numerosity:

a. The Class: On information and belief, the number of members of the Class is so numerous that joinder of all of them is impractical. MARTORELLA's belief is based on the fact that (a) as of June 30, 2009, AHMSI serviced approximately 575,000 loans with an unpaid principal balance of over \$100 billion, (b) and approximately 10 – 15% of those loans are for properties in the State of Florida.

b. Subclass 1: On information and belief, the number of members of the Subclass 1 is so numerous that joinder of all of them is impractical. MARTORELLA's belief is based on the fact that (a) the AMERICAN HOME TRUST consists of a pool of mortgage loans having an aggregate initial principal balance of approximately \$1,973,444,000; and (b) approximately 15.24% of the mortgage properties in the AMERICAN HOME TRUST mortgage pool are located in Florida.

c. Subclass 2 and 3: On information and belief, the number of members of Subclass 2 and 3 is so numerous that joinder of them is impractical. On information and belief, AHMSI and AMERICAN HOME TRUST, have engaged in a pattern and practice of force-placing insurance on individual who, like MARTORELLA, who had sufficient property insurance in effect at the time.

29. Subclass 1, 2 and 3 shall sometimes be referred collectively herein as the Subclasses.

30. The members of this Class and Subclasses will be ascertained from the records of AHMSI and the AMERICAN HOME TRUST.

31. Commonality: MARTORELLA's claims raise questions of law and fact that are common to each member of the Class and the Subclasses that predominate over any questions affecting any individual members including, inter alia, the following:

a. Whether AHMSI and AMERICAN HOME TRUST breached the mortgage agreements with the members of the Class and the Subclasses, and the covenant of good faith, fair dealing, and commercial reasonableness contained therein, when AHMSI, acting as agent for AMERICAN HOME TRUST, and other note holders, purchased force-placed insurance on property owned by MARTORELLA and the members of the Class at grossly excessive premiums

and in exchange for undisclosed commissions, reinsurance fees or other remuneration;

b. Whether AHMSI and AMERICAN HOME TRUST breached the mortgage agreements with the members of the Class and the Subclass, and the covenant of good faith, fair dealing, and commercial reasonableness contained therein, when AHMSI, acting as agent for AMERICAN HOME TRUST, and other note holders, unnecessarily purchased force-placed insurance coverage for mortgagors who had sufficient homeowners' coverage already in effect.

c. Whether AHMSI was unjustly enriched when it purchase force-placed insurance on property owned by MARTORELLA and the members of the Class at grossly excessive premiums and in exchange for undisclosed commissions, reinsurance fees or other remuneration;

d. Whether Defendant AHMSI was unjustly enriched when it unnecessarily purchased force-placed insurance coverage for mortgagors who had sufficient homeowners' coverage already in effect;

e. Whether AHMSI and AMERICAN HOME TRUST violated the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") when AHMSI, acting as agent for AMERICAN HOME TRUST, and other note holders, purchased force-placed insurance on property owned by MARTORELLA and the members of the Class at grossly excessive premiums and in exchange for undisclosed commissions, reinsurance fees or other remuneration.

f. Whether AHMSI and AMERICAN HOME TRUST violated the FDUTPA when AHMSI, acting as agent for AMERICAN HOME TRUST, and other note holders, unnecessarily purchased force-placed insurance coverage for mortgagors who had sufficient homeowners' coverage already in effect; and

g. Whether Defendant AHMSI and AMERICAN HOME TRUST violated the Florida Consumer Collection Practices Act when AMHSI, acting as agent for AMERICAN HOME TRUST, and other note holders, threatened, and or purchased, force-placed insurance on property owned by MARTORELLA and the Class and the Subclass, when it knew that such property already was sufficiently covered by property insurance.

32. Typicality: The claims of the MARTORELLA are typical of the claims of each member of the Class and the Subclasses in that MARTORELLA alleges a common course of conduct by AHMSI and AMERICAN HOME TRUST towards members of the Class and the Subclass. MARTORELLA and the other members of the Class and Subclass seek identical remedies under identical legal theories, and there is no antagonism or material factual variation between MARTORELLA's claim and those of the Class or the Subclasses.

33. Adequacy: MARTORELLA is a Florida resident who will fairly and adequately protect and represent the interest of each member of the Class and the Subclass. Additionally, MARTORELLA is fully cognizant of her responsibilities as a Class Representative, and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

34. MARTORELLA bring this action under Rule 1.220(b)(3) because the questions of law and fact common to her claims and the claims of each member of the Class and the Subclasses predominate over any question of law or fact affecting only individual members of the Class and the Subclasses. Additionally, the prosecution of separate claims, by or against individual members of the Class and the Subclasses would create a risk which would, as a practical matter, be dispositive of the interest of other members of the Class and the Subclasses who are not parties to the adjudication,

or would substantially impair or impede the ability of other members of the Class and the Subclasses who are not parties to the adjudication to protect their interests. Class Representation is therefore clearly superior to other available methods for the fair and efficient adjudication of this controversy.

35. MARTORELLA also brings this action under Rule 1.220(b)(2) because the Defendants have acted or refused to act on grounds generally applicable to all members of the Class and the Subclasses, thereby making final Injunctive and/or declaratory relief concerning the Class and the Subclasses as a whole appropriate. In the absence of appropriate injunctive and/or declaratory relief, the Defendants will continue to violate Florida statutory and common law. The Defendants' uniform conduct towards MARTORELLA and other members of the Class and the Subclasses make certification under Rule 1.220 (b) (2) appropriate.

FIRST CLAIM FOR RELIEF

Violations of Florida Deceptive and Unfair Trade Practice Act

(Against AHMSI on behalf of the Class)

36. Plaintiff incorporates paragraphs 1-35 by reference.

37. The claim is being brought against AHMSI on behalf of MARTORELLA and the Class.

38. AHMSI are engaged in commerce in the State of Florida, as defined by §501.203(8), Florida Statutes, and are therefore subject to the provisions contained in §501.201 et seq., Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). AHMSI is a loan servicer of mortgage loans. AHMSI forced the members of the Class to purchase a product – insurance – at exorbitant rates. On information and belief, AHMSI was paid commissions or other remunerations by the insurance carriers.

39. MARTORELLA and the members of the Class are "consumer[s]" as defined by §501.203(7), Florida Statutes, and as such is entitled to the protection of FDUTPA.

40. In exercising any rights under the standard form mortgage agreement to purchase forced-placed insurance, AHMSI was required to be honest in its dealings and not purposefully to take actions that would unfairly prevent MARTORELLA, and the members of the Class, from enjoying their rights or benefits under the standard form mortgage agreement or disappoint their reasonable expectations; and to exercise any discretion it had under the mortgage agreement in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

41. By reason of the conduct alleged herein, the Defendants engaged in unfair and deceptive business practices in violation of FDUTPA, Fl. St. §§501.201, et seq. Defendants' conduct violated FDUTPA in at least the following respects:

- a. AHMSI purchased force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage; and
- b. AHMSI was paid undisclosed commissions, reinsurance fees or other remuneration by Empire and other insurance carriers in exchange for agreeing to force-place insurance with said carriers.

42. As a result of AHMSI's violations of FDUTPA, MARTORELLA and the members of the Class have been aggrieved and are, thus, entitled to damages under the FDUTPA.

43. As redress for AHMSI's repeated and ongoing violations of these consumer protection statutes, MARTORELLA and the members of the Class are

entitled to, inter alia, damages and declaratory relief.

WHEREFORE, Plaintiff MADELAINE MARTORELLA, respectfully requests this Court enter an Order granting the following relief:

- a. award MARTORELLA and the members of the Class damages pursuant to §501.211(2), Florida Statutes;
- b. enter a declaratory judgment to the effect that AHMSI has engaged in unfair, unconscionable, and deceptive business practices, in violation of the FDUTPA as set forth in §501.211(1), Florida Statutes;
- c. enter a prohibitive injunction enjoining AHMSI from further violations of the FDUTPA and further requiring the return of all ill gotten gains received by charging said amounts; and
- d. award MARTORELLA her reasonable attorneys' fees and costs incident to the bringing of this action, pursuant to §501.211 Florida Statutes.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

SECOND CLAIM FOR RELIEF

Violations of Florida Deceptive and Unfair Trade Practice Act

(Against AMERICAN HOME TRUST and AHMSI on behalf of Subclass 1)

44. Plaintiff incorporates paragraphs 1-35 by reference.
45. This claim is being brought against AMERICAN HOME TRUST and AHMSI on behalf of MARTORELLA and Subclass 1.
46. AMERICAN HOME TRUST and AHMSI are engaged in commerce in the State of Florida, as defined by §501.203(8), Florida Statutes, and are therefore subject to the provisions contained in FDUTPA, §501.201 et seq., Florida Statutes. AHMSI is a loan servicer of mortgage loans. AHMSI and AMERICAN HOME TRUST forced the members of Subclass 1 to purchase a product – insurance – at exorbitant rates. On

information and belief, AHMSI was paid commissions or other remunerations by the insurance carriers.

47. MARTORELLA and the members of Subclass 1 are "consumer[s]" as defined by §501.203(7), Florida Statutes, and as such is entitled to the protection of FDUTPA.

48. In exercising any rights under the standard form mortgage agreement to purchase forced-placed insurance, AHMSI and AMERICAN HOME TRUST were required to be honest in its dealings and not purposefully to take actions that would unfairly prevent MARTORELLA, and the members of Subclass 1, from enjoying their rights or benefits under the standard form mortgage agreement or disappoint their reasonable expectations; and to exercise any discretion it had under the mortgage agreement in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

49. By reason of the conduct alleged herein, the AMERICAN HOME TRUST and AHMSI engaged in unfair and deceptive business practices in violation of FDUTPA, Fl. St. §§501.201, et seq. AMERICAN HOME TRUST's and AHMSI's conduct violated FDUTPA in at least the following respects:

- a. AHMSI and AMERICAN HOME TRUST purchased force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage; and
- b. AHMSI was paid undisclosed commissions, reinsurance fees or other remuneration by Empire and other insurance carriers in exchange for force-placing insurance with said carriers.

50. As a result of AMERICAN HOME TRUST's and AHMSI's violations of

FDUTPA, MARTORELLA and the members of Subclass 1 have been aggrieved and are, thus, entitled to damages under the FDUTPA.

51. As redress for AMERICAN HOME TRUST's and AHMSI's repeated and ongoing violations of these consumer protection statutes, MARTORELLA and the members of Subclass 1 are entitled to, inter alia, damages and declaratory relief.

WHEREFORE, Plaintiff MADELAINE MARTORELLA, respectfully requests this Court enter an Order granting the following relief:

a. award MARTORELLA and the members of the Subclass 1 damages pursuant to §501.211(2), Florida Statutes;

b. enter a declaratory judgment to the effect that the AMERICAN HOME TRUST and AHMSI have engaged in unfair, unconscionable, and deceptive business practices, in violation of the FDUTPA as set forth in §501.211(1), Florida Statutes;

c. enter a prohibitive injunction enjoining AMERICAN HOME TRUST and AHMSI from further violations of the FDUTPA and further requiring the return of all ill gotten gains received by charging said amounts; and

d. award MARTORELLA her reasonable attorneys' fees and costs incident to the bringing of this action, pursuant to §501.211 Florida Statutes.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

THIRD CLAIM FOR RELIEF

Violations of Florida Deceptive and Unfair Trade Practice Act

(Against AHMSI on behalf of the Subclass 2)

52. Plaintiff incorporates paragraphs 1-35 by reference.

53. The claim, is being brought against AHMSI on behalf of MARTORELLA and Subclass 2.

54. AHMSI is engaged in commerce in the State of Florida, as defined by §501.203(8), Florida Statutes, and are therefore subject to the provisions contained in §501.201 et seq., Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). AHMSI is a loan servicer of mortgage loans. AHMSI forced the members of Subclass 2 to purchase a product – insurance – at exorbitant rates. On information and belief, AHMSI was paid commissions or other remunerations by the insurance carriers.

55. MARTORELLA and the members of Subclass 2 are "consumer[s]" as defined by §501.203(7), Florida Statutes, and as such is entitled to the protection of FDUTPA.

56. In exercising any rights under the standard form mortgage agreement to purchase forced-placed insurance, AHMSI was required to be honest in its dealings and not purposefully to take actions that would unfairly prevent MARTORELLA, and the members of Subclass 2, from enjoying their rights or benefits under the standard form mortgage agreement or disappoint their reasonable expectations; and to exercise any discretion it had under the mortgage agreement in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

57. By reason of the conduct alleged herein, the Defendants engaged in unfair and deceptive business practices in violation of FDUTPA, Fl. St. §§501.201, et seq. Defendants' conduct violated FDUTPA in at least the following respects:

- a. AHMSI purchased force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage;
- b. AHMSI was paid undisclosed commissions, reinsurance fees or other

remuneration by Empire and other insurance carriers in exchange for agreeing to force-place insurance with said carriers; and

c. AHMSI failed to recognize that consumers in Subclass 2 had sufficient insurance policies in effect, and then force placed insurance policies unnecessarily.

58. As a result of AHMSI's violations of FDUTPA, MARTORELLA and the members of Subclass 2 have been aggrieved and are, thus, entitled to damages under the FDUTPA.

59. As redress for AHMSI's repeated and ongoing violations of these consumer protection statutes, MARTORELLA and the members of the Subclass 2 are entitled to, inter alia, damages and declaratory relief.

WHEREFORE, Plaintiff MADELAINE MARTORELLA, respectfully requests this Court enter an Order granting the following relief:

a. award MARTORELLA and the members of Subclass 2 damages pursuant to §501.211(2), Florida Statutes;

b. enter a declaratory judgment to the effect that AHMSI has engaged in unfair, unconscionable, and deceptive business practices, in violation of the FDUTPA as set forth in §501.211(1), Florida Statutes;

c. enter a prohibitive injunction enjoining AHMSI from further violations of the FDUTPA and further requiring the return of all ill gotten gains received by charging said amounts; and

d. award MARTORELLA her reasonable attorneys' fees and costs incident to the bringing of this action, pursuant to §501.211 Florida Statutes.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

FOURTH CLAIM FOR RELIEF

**Violations of Florida Deceptive and Unfair Trade Practice Act
(Against AMERICAN HOME TRUST and AHMSI on behalf of Subclass 3)**

60. Plaintiff incorporates paragraphs 1-35 by reference.

61. This claim is being brought against AMERICAN HOME TRUST and AHMSI on behalf of MARTORELLA and Subclass 3.

62. AMERICAN HOME TRUST and AHMSI are engaged in commerce in the State of Florida, as defined by §501.203(8), Florida Statutes, and are therefore subject to the provisions contained in FDUPA, §501.201 et seq., Florida Statutes. AHMSI is a loan servicer of mortgage loans. AHMSI and AMERICAN HOME TRUST forced the members of Subclass 3 to purchase a product – insurance – at exorbitant rates. On information and belief, AHMSI was paid commissions or other remunerations by the insurance carriers.

63. MARTORELLA and the members of Subclass 3 are "consumer[s]" as defined by §501.203(7), Florida Statutes, and as such is entitled to the protection of FDUTPA.

64. In exercising any rights under the standard form mortgage agreement to purchase forced-placed insurance, AHMSI and AMERICAN HOME TRUST were required to be honest in their dealings and not purposefully to take actions that would unfairly prevent MARTORELLA, and the members of Subclass 3, from enjoying their rights or benefits under the standard form mortgage agreement or disappoint their reasonable expectations; and to exercise any discretion it had under the mortgage agreement in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

65. By reason of the conduct alleged herein, the AMERICAN HOME TRUST and AHMSI engaged in unfair and deceptive business practices in violation of FDUTPA,

Fl. St. §§501.201, et seq. AMERICAN HOME TRUST's and AHMSI's conduct violated FDUTPA in at least the following respects:

- a. AHMSI and AMERICAN HOME TRUST purchased force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage;
- b. AHMSI was paid undisclosed commissions, reinsurance fees or other remuneration by Empire and other insurance carriers in exchange for force-placing insurance with said carriers.
- c. AHMSI and AMERICAN HOME TRUST failed to recognize that consumers in Subclass 3 had sufficient insurance policies in effect, and then force placed insurance policies unnecessarily.

66. As a result of AMERICAN HOME TRUST's and AHMSI's violations of FDUTPA, MARTORELLA and the members of Subclass 3 have been aggrieved and are, thus, entitled to damages under the FDUTPA.

67. As redress for AMERICAN HOME TRUST's and AHMSI's repeated and ongoing violations of these consumer protection statutes, MARTORELLA and the members of Subclass 3 are entitled to, *inter alia*, damages and declaratory relief.

WHEREFORE, Plaintiff MADELAINE MARTORELLA, respectfully requests this Court enter an Order granting the following relief:

- a. award MARTORELLA and the members of Subclass 3 damages pursuant to §501.211(2), Florida Statutes;
- b. enter a declaratory judgment to the effect that the AMERICAN HOME TRUST and AHMSI have engaged in unfair, unconscionable, and deceptive

business practices, in violation of the FDUTPA as set forth in §501.211(1), Florida Statutes;

c. enter a prohibitive injunction enjoining AMERICAN HOME TRUST and AHMSI from further violations of the FDUTPA and further requiring the return of all ill gotten gains received by charging said amounts; and

d. award MARTORELLA her reasonable attorneys' fees and costs incident to the bringing of this action, pursuant to §501.211 Florida Statutes.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

FIFTH CLAIM FOR RELIEF

Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

(Against the AHMSI on behalf of the Class)

68. Plaintiff incorporates paragraphs 1-35 by reference.

69. This claim is being brought against AHMSI on behalf of MARTORELLA and the Class.

70. In servicing the loans, AHMSI acts as an agent for AMERICAN HOME TRUST and the other note holders, who are in direct contractual privity with MARTORELLA and the other borrowers in the Class. When it took over the servicing of the loans of MARTORELLA and the Class, AHMSI assumed the obligations of the loan agreements, and the contractual privity of AMERICAN HOME TRUST and the other note holders is thereby imputed to AHMSI as servicer.

71. The standard form mortgage agreements of MARTORELLA and the members of the Class are binding contracts.

72. AHMSI breached the mortgage agreements by engaging in conduct that violated Florida law as alleged herein.

73. In addition, under Florida law, each of those mortgage agreements

contained an implied covenant of good faith and fair dealing.

74. The implied covenant of good faith and fair dealing required each party to the contract to be honest in its dealings and not purposefully to take actions that would unfairly prevent other parties from enjoying their rights or benefits under the contract or disappoint their reasonable expectations.

75. The implied covenant of good faith and fair dealing further required that even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless subject to an obligation that it be exercised in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

76. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

77. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

78. AHMSI has breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by purchasing force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the

cost of a typical homeowners' policy, and provided less extensive coverage.

79. AHMSI has further breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by taking undisclosed commissions, reinsurance fees or other remuneration from insurance carriers in exchange for force-placing insurance with such carriers.

80. MARTORELLA and members of the Class have sustained damages as a result of the AHMSI's breach of the mortgage agreements and the covenant of good faith and fair dealing contained therein.

WHEREFORE, Plaintiff MADELAINE MARTORELLA respectfully requests this Honorable Court to enter judgment in favor of the MARTORELLA and the Class and award damages as a result of the AHMSI's breach of the mortgage agreements and the implied covenant of good faith and fair dealing, and to further award attorney's fees pursuant to the Mortgage and Florida Statute §57.105(7).

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

SIXTH CLAIM FOR RELIEF

Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

(Against the AHMSI and AMERICAN HOME TRUST on behalf of Subclass 1)

81. Plaintiff incorporates paragraphs 1-35 by reference.

82. This claim is being brought against AHMSI and AMERICAN HOME TRUST on behalf of MARTORELLA and Subclass 1.

83. In servicing the loans, AHMSI acts as an agent for AMERICAN HOME TRUST, who is in direct contractual privity with MARTORELLA and the other borrowers in Subclass 1. When it took over the servicing of the loans of MARTORELLA and Subclass 1, AHMSI assumed the obligations of the loan agreements, and the contractual privity of AMERICAN HOME TRUST is thereby imputed to AHMSI as

servicer.

84. The standard form mortgage agreements of MARTORELLA and the members of Subclass 1 are binding contracts.

85. AHMSI and AMERICAN HOME TRUST breached the mortgage agreements by engaging in conduct that violated Florida law as alleged herein.

86. In addition, under Florida law, each of those mortgage agreements contained an implied covenant of good faith and fair dealing.

87. The implied covenant of good faith and fair dealing required each party to the contract to be honest in its dealings and not purposefully to take actions that would unfairly prevent other parties from enjoying their rights or benefits under the contract or disappoint their reasonable expectations.

88. The implied covenant of good faith and fair dealing further required that even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless subject to an obligation that it be exercised in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

89. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

90. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad

faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

91. AHMSI and AMERICAN HOME TRUST breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by purchasing force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage.

92. AHMSI has further breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by taking undisclosed commissions, reinsurance fees or other remuneration from insurance carriers in exchange for force-placing insurance with such carriers.

93. MARTORELLA and members of Subclass 1 have sustained damages as a result of the AHMSI's breach of the mortgage agreements and the covenant of good faith and fair dealing contained therein.

WHEREFORE, Plaintiff MADELAINE MARTORELLA respectfully requests this Honorable Court to enter judgment in favor of the MARTORELLA and Subclass 1 and award damages as a result of AHMSI's and AMERICAN HOME TRUST's breach of the mortgage agreements and the implied covenant of good faith and fair dealing, and to further award attorney's fees pursuant to the Mortgage and Florida Statute §57.105(7).

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

SEVENTH CLAIM FOR RELIEF

Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

(Against the AHMSI on behalf of Subclass 2)

94. Plaintiff incorporates paragraphs 1-35 by reference.

95. This claim is being brought against AHMSI on behalf of MARTORELLA and Subclass 2.

96. In servicing the loans, AHMSI acts as an agent for AMERICAN HOME TRUST, who are in direct contractual privity with MARTORELLA and the other borrowers in Subclass 2. When it took over the servicing of the loans of MARTORELLA and Subclass 2, AHMSI assumed the obligations of the loan agreements, and the contractual privity of AMERICAN HOME TRUST is thereby imputed to AHMSI as servicer.

97. The standard form mortgage agreements of MARTORELLA and the members of Subclass 2 are binding contracts.

98. MARTORELLA and the members of Subclass 2 each had sufficient homeowners insurance in effect at the time that AHMSI, acting as agent for AMERICAN HOME TRUST and other note holders, purchased force-placed insurance on their behalf.

99. AHMSI breached the mortgage agreements when AHMSI, acting as agent for AMERICAN HOME TRUST and other note holders, purchased force-placed insurance for MARTORELLA and the members Subclass 2 who had sufficient homeowners insurance in effect.

100. AHMSI further breached the mortgage agreements by engaging in conduct that violated Florida law as alleged herein.

101. In addition, under Florida law, each of those mortgage agreements contained an implied covenant of good faith and fair dealing.

102. The implied covenant of good faith and fair dealing required each party to the contract to be honest in its dealings and not purposefully to take actions that would unfairly prevent other parties from enjoying their rights or benefits under the contract or

disappoint their reasonable expectations.

103. The implied covenant of good faith and fair dealing further required that even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless subject to an obligation that it be exercised in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

104. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

105. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

106. AHMSI breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by purchasing force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage.

107. AHMSI has further breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by taking undisclosed commissions, reinsurance fees or other remuneration from insurance carriers in exchange for

force-placing insurance with such carriers.

108. MARTORELLA and members of Subclass 2 have sustained damages as a result of the AHMSI's breach of the mortgage agreements and the covenant of good faith and fair dealing contained therein.

WHEREFORE, Plaintiff MADELAINE MARTORELLA respectfully requests this Honorable Court to enter judgment in favor of the MARTORELLA and Subclass 2 and award damages as a result of AHMSI's and AMERICAN HOME TRUST's breach of the mortgage agreements and the implied covenant of good faith and fair dealing, and to further award attorney's fees pursuant to the Mortgage and Florida Statute §57.105(7).

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

EIGHTH CLAIM FOR RELIEF

Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

(Against the AHMSI and AMERICAN HOME TRUST on behalf of Subclass 3)

109. Plaintiff incorporates paragraphs 1-35 by reference.

110. This claim is being brought against AHMSI and AMERICAN HOME TRUST on behalf of MARTORELLA and Subclass 3.

111. In servicing the loans, AHMSI acts as an agent for AMERICAN HOME TRUST, who are in direct contractual privity with MARTORELLA and the other borrowers in Subclass 3. When it took over the servicing of the loans of MARTORELLA and Subclass 3, AHMSI assumed the obligations of the loan agreements, and the contractual privity of AMERICAN HOME TRUST is thereby imputed to AHMSI as servicer.

112. The standard form mortgage agreements of MARTORELLA and the members of Subclass 3 are binding contracts.

113. MARTORELLA and the members of Subclass 3 each had sufficient

homeowners insurance in effect at the time that AHMSI, acting as agent for AMERICAN HOME TRUST, purchased force-placed insurance on their behalf.

114. AHMSI breached the mortgage agreements when AHMSI, acting as agent for AMERICAN HOME TRUST and other note holders, purchased force-placed insurance for MARTORELLA and the members Subclass 3 who had sufficient homeowners insurance in effect.

115. AHMSI further breached the mortgage agreements by engaging in conduct that violated Florida law as alleged herein.

116. In addition, under Florida law, each of those mortgage agreements contained an implied covenant of good faith and fair dealing.

117. The implied covenant of good faith and fair dealing required each party to the contract to be honest in its dealings and not purposefully to take actions that would unfairly prevent other parties from enjoying their rights or benefits under the contract or disappoint their reasonable expectations.

118. The implied covenant of good faith and fair dealing further required that even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless subject to an obligation that it be exercised in good faith and to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.

119. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

120. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

121. AHMSI breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by purchasing force-placed insurance at exorbitant and commercially unreasonable premiums that were typically 2 to 4 times the cost of a typical homeowners' policy, and provided less extensive coverage.

122. AHMSI has further breached the mortgage agreements and the covenant of good faith and fair dealing contained therein by taking undisclosed commissions, reinsurance fees or other remuneration from insurance carriers in exchange for force-placing insurance with such carriers.

123. MARTORELLA and members of Subclass 3 have sustained damages as a result of the AHMSI's breach of the mortgage agreements and the covenant of good faith and fair dealing contained therein.

WHEREFORE, Plaintiff MADELAINE MARTORELLA respectfully requests this Honorable Court to enter judgment in favor of the MARTORELLA and Subclass 3 and award damages as a result of AHMSI's and AMERICAN HOME TRUST's breach of the mortgage agreements and the implied covenant of good faith and fair dealing, and to further award attorney's fees pursuant to the Mortgage and Florida Statute §57.105(7).

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

NINTH CLAIM FOR RELIEF

Violation of the Florida Consumer Collection Practices Act

(Against AHMSI on Behalf of Subclass 2)

124. Plaintiff incorporates paragraphs 1-35 by reference.

125. This claim is brought against AHMSI on behalf of MARTORELLA and Subclass 2 for damages and declaratory and injunctive relief on account of its collection practices in violation of the Florida Consumer Collection Practices Act, F.S. § 559.72.

126. In its business of collecting debts and in attempting to collect the debt, AHMSI has used the United States mails, telephones and other means and instrumentalities of interstate commerce.

127. Fla. Stat. § 559.72(9) states, that in collecting consumer debts, no person shall:

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

128. MARTORELLA and the members of Subclass 2 are "debtors" and "consumers" as defined by F.S. § 559.55(2).

129. AHMSI is a "debt collector" as defined by F.S. § 559.55(6).

130. The debts of MARTORELLA and members of the Subclass 2 are "consumer debts" as defined by F.S. § 559.55(1), in that they are obligations or alleged obligations of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

131. AHMSI, acting as agent for AMERICAN HOME TRUST, and other note holders, asserted in communications to MARTORELLA and the members of the Class that MARTORELLA and the members of the Subclass 2 were required to pay for forced place insurance policies on their properties. However, AHMSI, acting as agent for

AMERICAN HOME TRUST, and other note holders knew, when making these assertions that MARTORELLA and the members of Subclass 2 already had adequate insurance prior to AHMSI's purchase of force placed insurance. AHMSI, acting as agent for AMERICAN HOME TRUST, and other note holders thus knew that their claims were not legitimate and that MARTORELLA and the members of Subclass 2 were not under any legal obligation to pay for additional force placed insurance.

132. AHMSI had actual knowledge that MARTORELLA did not owe the above-referenced amounts to AHMSI, as they were so notified by MARTORELLA. In addition, in a suit brought by the Texas Attorney General against AHMSI, the Texas Attorney General accuses AHMSI of engaging in a pattern and practice of force-placing insurance policies upon consumers who have policies in effect.

133. This intentional and knowing conduct by AHMSI constituted an improper debt collection practice in violation of the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55, et seq.. Specifically, this intentional and knowing conduct violated § 559.72(9), which makes it illegal to "[c]laim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist."

134. On account of the foregoing violations, MARTORELLA has retained the undersigned attorneys and has agreed to pay them a reasonable fee for their services.

135. Due to the violations of Florida law by the AHMSI, as set forth above, MARTORELLA and the members of Subclass 2 have been damaged and are entitled to an award of damages (actual and/or statutory) and to declaratory and injunctive relief.

WHEREFORE, MARTORELLA prays the Court award her and the members of Subclass 2 damages and equitable relief, together with court costs and attorney's fees, pursuant to Florida Statutes Section 559.77(2), and such other and further relief as the

Court deems just and proper. Additionally, MARTORELLA requests that AHMSI be enjoined from any and all further illegal collection practices.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

TENTH CLAIM FOR RELIEF

Violation of the Florida Consumer Collection Practices Act

(Against AHMSI and AMERICAN HOME TRUST on Behalf Subclass 3)

136. Plaintiff incorporates paragraphs 1-35 by reference.

137. This claim is brought against AHMSI and AMERICAN HOME TRUST on behalf of MARTORELLA and Subclass 3 for damages and declaratory and injunctive relief on account of its collection practices in violation of the Florida Consumer Collection Practices Act, F.S. § 559.72.

138. In its business of collecting debts and in attempting to collect the debt, AHMSI and AMERICAN HOME TRUST has used the United States mails, telephones and other means and instrumentalities of interstate commerce.

139. Fla. Stat. § 559.72(9) states, that in collecting consumer debts, no person shall:

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

140. MARTORELLA and the members of Subclass 3 are "debtors" and "consumers" as defined by F.S. § 559.55(2).

141. AHMSI and AMERICAN HOME TRUST is a "debt collector" as defined by F.S. §559.55(6).

142. The debts of MARTORELLA and the members of Subclass 3 are "consumer debts" as defined by F.S. §559.55(1), in that they are obligations or alleged

obligations of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

143. AHMSI, acting as agent for AMERICAN HOME TRUST, asserted in communications to MARTORELLA and the members of Subclass 3 that MARTORELLA and the members of Subclass 3 were required to pay for forced place insurance policies on their properties. However, AHMSI, acting as agent for AMERICAN HOME TRUST, knew, or should have known, when making these assertions that MARTORELLA and the members of Subclass 3 already had adequate insurance prior to AHSMI's purchase of force placed insurance. AHMSI, acting as agent for AMERICAN HOME TRUST, knew, or should have known, that their claims were not legitimate and that MARTORELLA and the members of Subclass 3 were not under any legal obligation to pay for additional force placed insurance.

144. AHMSI had actual knowledge that MARTORELLA did not owe the above-referenced amounts to AHMSI, as they were so notified by MARTORELLA. In addition, in a suit brought by the Texas Attorney General against AHMSI, the Texas Attorney General accuses AHMSI of engaging in a pattern and practice of force-placing insurance policies upon consumers who have policies in effect.

145. This intentional and knowing conduct by AHMSI, acting as agent for AMERICAN HOME TRUST, constituted an improper debt collection practice in violation of the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55, et seq.. Specifically, this intentional and knowing conduct violated § 559.72(9), which makes it illegal to "[c]laim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist."

146. On account of the foregoing violations, MARTORELLA has retained the undersigned attorneys and has agreed to pay them a reasonable fee for their services.

147. Due to the violations of Florida law by the AHMSI, as set forth above, MARTORELLA and the members of Subclass 3 have been damaged and are entitled to an award of damages (actual and/or statutory) and to declaratory and injunctive relief.

WHEREFORE, MARTORELLA prays the Court award her and the members of Subclass 3 damages and equitable relief, together with court costs and attorney's fees, pursuant to Florida Statutes Section 559.77(2), and such other and further relief as the Court deems just and proper. Additionally, MARTORELLA requests that AHMSI and AMERICAN HOME TRUST be enjoined from any and all further illegal collection practices.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

ELEVENTH CLAIM FOR RELIEF

Unjust Enrichment

(Against AHMSI on behalf of the Class)

148. MARTORELLA incorporates paragraphs 1-35 by reference.

149. MARTORELLA, on behalf of herself and the members of the Class, asserts a common law claim for unjust enrichment against AHMSI.

150. AHMSI knowingly received and retained wrongful benefits and funds from MARTORELLA and members of the Class. In so doing, AHMSI acted with conscious disregard for the rights of MARTORELLA and members of the Class.

151. By means of the AHMSI's wrongful conduct alleged herein, AHMSI knowingly provided services to MARTORELLA and members of the Class that are unfair, unconscionable, and oppressive; thus, AHMSI's acceptance and retention of the benefit under circumstances that make it inequitable for them to retain it without paying

the value thereof.

152. As a result of the AHMSI's wrongful conduct as alleged herein, It has been unjustly enriched at the expense of, and to the detriment of, MARTORELLA and members of the Class.

153. AHMSI's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

154. Under the common law doctrine of unjust enrichment, it is inequitable for the AHMSI to be permitted to retain the benefits it received, and is still receiving, without justification, from its forced placed insurance policies and practices which it received in an unfair, unconscionable, and oppressive manner. AHMSI's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment. The financial benefits derived by AHMSI rightfully belong to MARTORELLA and the members of the Class.

155. MARTORELLA and members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff MADELAINE MARTORELLA respectfully requests this Honorable Court to enter judgment in favor of the MARTORELLA and the Class on account of AHMSI's unjust enrichment and compel AHMSI to disgorge in a common fund for the benefit of MARTORELLA and the members of the Class all wrongful or inequitable proceeds it received. A constructive trust should be imposed upon all wrongful or inequitable sums received by AHMSI traceable to MARTORELLA and the members of the Class. Further this Court should award attorney's fees to MARTORELLA pursuant to the Mortgage and Florida Statute §57.105(7).

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

CO-COUNSEL FOR MARTORELLA

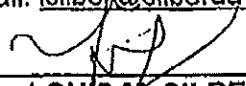
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