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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JAMES E. FRANCE, on behalf of himself
and others similarly situated,

Plaintiff,

v.

TICOR TITLE OF WASHINGTON, INC.,
a Washington corporation,

Defendant

No. 12-2-25688-8-SEA

CLASS ACTION COMPLAINT

I. INTRODUCTION

Plaintiff, James E. France, on behalf of himself and the class of all those similarly situated, as identified below, brings this action against defendant Ticor Title of Washington, Inc. (“Ticor”) for breach of contract, breach of the duty of good faith and fair dealing, violations of Washington’s Consumer Protection Act, breach of fiduciary duty, unjust enrichment, and statutory violations.

II. JURISDICTION AND VENUE

1. Plaintiff James France is a resident of Tacoma, Washington and a Washington citizen. On information and believe, more than two thirds of the class members, as defined herein, are citizens of the State of Washington.

1 2. Defendant Ticor Title of Washington, Inc. provides title insurance,
2 escrow/closing services, and related real estate services to homeowners and real estate
3 professionals within the State of Washington.

4 3. Defendant is a Washington corporation with principal offices in Renton,
5 Washington. Defendant does business in King County, Washington, and elsewhere in the
6 state.

7 4. This Court has jurisdiction over the parties and the subject matter of this
8 lawsuit.

9 5. Venue is proper in King County Superior Court.

10 **III. FACTUAL ALLEGATIONS**

11 6. Plaintiff and the putative class members paid off loans secured by deeds of
12 trust on their real property in Washington as part of the sale or refinance of such property.
13 Ticor acted as the escrow agent for these transactions.

14 7. As part of its duties as the escrow agent for the aforementioned transactions,
15 defendant prepared Settlement Statements, also known as HUD-1s, which are required by
16 law to list, *inter alia*, the expenses charged to plaintiff and other putative class members
17 arising out of the aforementioned real estate transactions.

18 8. On or about September 29, 2008, plaintiff refinanced his home and paid off an
19 existing loan to Accredited Home Lenders. In the Final Settlement Statement prepared by
20 defendant for plaintiff, defendant listed a \$135 "Reconveyance Processing Fee," which it
21 paid to itself. Defendant also listed a \$550 "Settlement or Closing Fee," which it also paid to
22 itself.

1 9. Upon repayment of its loan, Accredited Home Lenders was obligated to
2 reconvey the Deed of Trust on plaintiff's property that secured its loan. Ticor recognized as
3 much in letters to Accredited Home Lenders dated September 8, 2009 and September 29,
4 2008, which requested payoff demands for the existing loan and stated, "This letter will also
5 serve as formal notice that upon receipt of the payoff, the Deed of Trust (including any Line
6 of Credit) will require full reconveyance." In accordance with this obligation, on or about
7 October 16, 2008, Axiom Financial Services, as the Trustee on that Deed of Trust and at the
8 direction of Accredited Home Lenders, prepared and recorded all reconveyance documents
9 that were required as part of the real estate transaction. Ticor did not process, prepare, or
10 record any reconveyance documents, nor was it required to do so.

11
12 10. Upon information and belief, defendant did not perform any services to
13 support its \$135 Reconveyance Processing Fee. Such fee was unreasonable, unnecessary,
14 excessive and impermissible.

15
16 11. Plaintiff trusted and relied upon defendant to make complete disclosures as to
17 the Reconveyance Processing Fee, and had no reason to suspect or question the validity of
18 such fee. He did not suspect that this fee was unreasonable, unnecessary, excessive and
19 impermissible until shortly before filing suit herein.

20
21 12. Upon information and belief, other members of the putative class were
22 similarly charged or overcharged by Ticor for Reconveyance Processing Fees or similarly
23 denominated fees.

24 13. Upon information and belief, the Reconveyance Processing Fees paid by
25 plaintiff and other members of the putative class exceeded or were inconsistent with the
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1 escrow fee schedules filed by Ticor with the Washington State Office of Insurance
2 Commissioner under RCW 48.29.193 & .195.

3 14. Plaintiff signed a form document prepared by Ticor entitled "Escrow
4 Instructions for Refinance Transactions" which constituted a binding contract between
5 plaintiff and Ticor. Among other provisions, the Escrow Instructions provided:
6

7 The tentative closing statement referenced in these instructions is subject to
8 final audit. If any monetary error is discovered, TICOR OF WASHINGTON,
9 INC. shall immediately collect or refund such difference.

10 15. The Escrow Instructions also provided:

11 TICOR OF WASHINGTON, INC.'s responsibility shall be strictly limited to
12 the terms contained in these instructions. Any matters not contained in these
13 instructions are beyond the scope of this escrow and TICOR TITLE OF
14 WASHINGTON, INC. is not responsible for the same.

15 16. Nothing in the Escrow Instructions mentions the provision of reconveyance
16 services by Ticor, and nothing in the Escrow Instructions authorizes, directs, or permits
17 Ticor to undertake such services or to charge plaintiff for such services.

18 17. Upon information and belief, all putative class members signed the same or
19 materially similar Escrow Instructions with Ticor governing the contractual relationship
20 between them.

21 IV. CLASS ALLEGATIONS

22 18. Plaintiff seeks to represent a class consisting of all persons who, within the
23 applicable statute of limitations, were charged Reconveyance Processing Fees or similarly
24 denominated fees by defendant in connection with a real estate transaction in Washington
25 State for which defendant acted as the escrow agent.
26

1 19. Plaintiff brings this action on behalf of himself and all other persons similarly
2 situated pursuant to Superior Court Civil Rule 23(b)(2) or, alternatively, Civil Rule 23(b)(3).

3 The class that plaintiff seeks to represent is composed of potentially thousands of individuals.

4 20. Joinder of all members of the class as defined herein is impractical.

5 21. There are common issues of law and fact affecting the putative class with
6 respect to the application of the law pertaining to plaintiff's claims of breach of contract,
7 breach of the duty of good faith and fair dealing, violation of the Washington Consumer
8 Protection Act, breach of fiduciary duty, unjust enrichment, and statutory violations, and the
9 determination of damages therefrom, because of defendant's conduct.
10

11 22. Plaintiff's claims are typical of the claims of the putative class since plaintiff
12 and all class members sustained damages arising from defendant's wrongful conduct in
13 violation of law as stated in this Complaint.
14

15 23. Plaintiff will fairly and adequately protect the interests of the putative class.
16 Plaintiff does not have interests that are antagonistic to or in conflict with those of the
17 members of the class that plaintiff seeks to represent.

18 24. The interests of the putative class are adequately represented by plaintiff and
19 his counsel. Plaintiff has retained counsel competent and experienced in class and consumer
20 litigation.
21

22 25. This action seeks to enjoin the practices at issue and provide for restitution of
23 fees illegally collected.

24 26. This action is also maintainable as a class action because the questions of law
25 and fact common to the members of the putative class predominate over any questions
26 affecting only individual members and because a class action is superior to other available

1 methods for the fair and efficient adjudication of the controversy. Specifically, all four of the
2 criteria set forth in CR 23(b)(3) have been satisfied in this case. First, the members of the
3 putative class have little, if any, interest in individually controlling the prosecution of
4 separate actions. Second, plaintiff's counsel is not aware of any other litigation concerning
5 the controversy already commenced by members of the class. Third, it is desirable to
6 concentrate the litigation of these claims in this forum given their relationship to the State of
7 Washington. Fourth, few difficulties likely will be encountered in the management of the
8 class action.

9
10 **V. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

11 27. Plaintiff restates and realleges paragraphs 1 through 26 above.

12 28. Plaintiff's and class members' Escrow Instructions with defendant constitute
13 contracts, which define the rights of the parties including what charges, if any, defendant
14 may assess in connection with its services. These instructions did not require or permit
15 defendant to engage in reconveyance processing, to charge for reconveyance processing, or
16 to impose the excessive fees identified herein.

17
18 29. The Escrow Instructions required defendant to refund to plaintiff and other
19 class members any overcharges collected by defendant during the transaction.

20 30. Defendant breached its contractual duties to plaintiff and class members by
21 collecting, and failing to refund, Reconveyance Processing and similarly denominated fees
22 for services that were not authorized and were not performed or that were in excess of the
23 true or reasonable costs incurred in performing such services.

24
25 31. As a proximate result of the breaches of the Escrow Instructions by defendant,
26 plaintiff and the class members have been wronged in that plaintiff and the class paid the

1 unauthorized or excessive fees set forth herein. Plaintiff and the class are entitled to
2 restitution of the unauthorized or excessive fees collected.

3 **VI. SECOND CAUSE OF ACTION: BREACH OF DUTY**
4 **OF GOOD FAITH AND FAIR DEALING**

5 32. Plaintiff restates and realleges the allegations contained in paragraphs 1
6 through 31 above.

7 33. By virtue of the foregoing, defendant breached its duty of good faith and fair
8 dealing in connection with its interpretation and implementation of the terms of its Escrow
9 Instructions and/or contracts with plaintiff and other class members. In particular, defendant
10 breached its duty of good faith and fair dealing with respect to its interpretation and
11 implementation of the terms of the Escrow Instructions set forth in paragraphs 14 and 15
12 above.

13 34. As a proximate result of the breaches of defendant's duty of good faith and
14 fair dealing, plaintiff and the class members have been wronged in that plaintiff and the class
15 paid the unauthorized or excessive fees set forth herein. Plaintiff and the class are entitled to
16 restitution of the unauthorized or excessive fees set forth herein. Plaintiff and the class are entitled to
17 restitution of the unauthorized or excessive fees collected.

18 **VII. THIRD CAUSE OF ACTION: VIOLATION OF**
19 **THE CONSUMER PROTECTION ACT, RCW 19.86**

20 35. Plaintiff restates and realleges the allegations contained in paragraphs 1
21 through 34 above.

22 36. Defendant's practice of requiring plaintiff and the class members to pay
23 Reconveyance Processing and similarly denominated fees constitutes an unfair or deceptive
24 act and practice, which is unlawful and in violation of the Washington Consumer Protection
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1 Act, RCW 19.86. In addition, this practice violates WAC 208-680D-040(3), as amended and
2 recodified at WAC 208-680-540(3).

3 37. By including such unauthorized, excessive and/or unnecessary fees on the
4 Settlement Statement, and by representing or implying that such fees were necessary to
5 complete the real estate transactions involved, defendant's practices had the capacity to
6 deceive reasonable consumers into believing that they must pay these fees before the
7 consumers' real estate transactions could or would be completed. The imposition of these
8 fees further had the capacity to deceive reasonable consumers into believing that Ticor was
9 responsible for and would process the reconveyances of their existing Deeds of Trust, even
10 though Ticor knew or should have known that such reconveyance was the duty of the prior
11 lender and that Ticor would not in fact provide such services. These practices are unfair and
12 deceptive under the Consumer Protection Act.
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14
15 38. Pursuant to RCW 19.86.090, plaintiff and the class seek an injunction against
16 defendant to enjoin further violations by virtue of the practices alleged herein, along with
17 equitable restitution, incidental damages, costs of suit and reasonable attorney's fees.
18 Plaintiff and the class also seek an award of exemplary damages in the amount of three times
19 the amount of restitution paid.
20

21 **VIII. FOURTH CAUSE OF ACTION: VIOLATION OF FIDUCIARY DUTY**

22 39. Plaintiff restates and realleges the allegations contained in paragraphs 1
23 through 38 above.

24 40. Defendant owed a fiduciary duty to plaintiff and the class members to act with
25 scrupulous honesty, skill and diligence as their escrow agent.
26

1 41. By virtue of the foregoing, defendant has breached this fiduciary duty to
2 plaintiff and the class members.

3 42. As a proximate result of the breaches of defendant's fiduciary duty, plaintiff
4 and the class members have been wronged in that plaintiff and the class paid the
5 unauthorized, unnecessary or excessive fees set forth herein. Plaintiff and the class are
6 entitled to be made whole by the restitution of excessive fees collected.
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8 **IX. FIFTH CAUSE OF ACTION: UNJUST ENRICHMENT**

9 43. Plaintiff restates and realleges the allegations contained in paragraphs 1
10 through 42 above.

11 44. By virtue of the foregoing, and by charging for services that it did not perform
12 and that fell outside its contractual agreement with plaintiff and the other class members,
13 defendant has been unjustly enriched at the expense of plaintiff and the class members.
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15 45. As a proximate result of defendant's unjust enrichment, plaintiff and the class
16 members have been wronged in that plaintiff and the class paid the unauthorized,
17 unnecessary, and excessive fees set forth herein. Plaintiff and the class are entitled to be
18 made whole through restitution of the fees collected.

19 **X. SIXTH CAUSE OF ACTION: VIOLATION OF RCW 48.29.193 & .195**

20 46. Plaintiff restates and realleges the allegations contained in paragraphs 1
21 through 45 above.

22 47. RCW 48.29.193 & .195 require, *inter alia*, that title insurance companies file
23 with the Washington State Office of Insurance Commissioner a schedule of fees for
24 providing escrow services. The law also requires that these schedules list all fees that will be
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1 charged, the manner for determining such fees, and identification of fees that are not included
2 in the total escrow fee.

3 48. Plaintiff has requested a copy of the fee schedule in effect at the time of his
4 transaction from Ticor but Ticor has not yet responded. The applicable fee schedule also is
5 not available from the Office of the Insurance Commissioner. However, on information and
6 belief, the Reconveyance Processing Fees charged to plaintiff and other putative class
7 members exceeded or were inconsistent with the filed fee schedules.
8

9 49. RCW 48.29.193 & .195 imply a cause of action for the benefit of consumers
10 of escrow services provided by title insurance companies like defendant.

11 50. By charging plaintiff and members of the class Reconveyance Processing or
12 similarly denominated fees that, upon information and belief, exceeded or were otherwise
13 inconsistent with the filed fee schedules, defendant violated RCW 48.29.193 & .195. As a
14 proximate result of these legal violations, plaintiff and the class members have paid the
15 unauthorized and excessive fees set forth herein. Plaintiff and the class are entitled to
16 restitution of the fees collected.
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18 **XI. RELIEF SOUGHT**

19 WHEREFORE, plaintiff requests relief as follows:

20 A. That the Court certify the identified class pursuant to Civil Rule 23(b)(2) or
21 23(b)(3) with plaintiff as the class representative and the undersigned as class counsel;
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23 B. That the Court enter an injunction permanently forbidding defendant from
24 committing the practices alleged herein in the future or declare the same unlawful;
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1 C. That the Court also enter a judgment in favor of plaintiff and the class against
2 defendant for incidental recovery of damages, directing reimbursement of fees illegally
3 collected, and awarding exemplary damages pursuant to RCW 19.86.090;

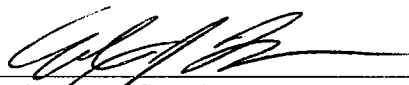
4 D. That the Court award plaintiff and the class their costs, including reasonable
5 attorneys' fees pursuant to RCW 19.86.090 and applicable contracts;

6
7 E. For pre-judgment interest at the highest allowable rate on all liquidated sums,
8 and post-judgment interest on the entire judgment amount awarded at the highest allowable
9 rate; and

10 F. That the Court award such other and further relief that the Court deems just
11 and equitable.

12 DATED: July 31, 2012.

13
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