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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT

17 THE CENTRAL DISTRICT OF CALIFORNIA

18 DENISE P. EDWARDS, individually and  
19 on behalf of all others similarly situated

20 Plaintiffs,

21 v.

22 THE FIRST AMERICAN  
23 CORPORATION, FIRST AMERICAN  
24 TITLE INSURANCE COMPANY

25 Defendants.

CASE NO. CV07-03795 SJJ (FFMx)

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 PLAINIFF Denise P. Edwards on behalf of herself and a class of all  
2 others similarly situated alleges as follows:

### 3 INTRODUCTION

4 1. This is a class action by consumers seeking relief from the predatory  
5 practices of a title insurer that violate the Real Estate Settlement Procedures Act  
6 of 1974, as amended, 12 U.S.C. §§ 2601 *et seq.* ("RESPA").

7 2. Plaintiffs seek redress for defendants' wholesale, purposeful  
8 violations of RESPA. That statute flatly prohibits both giving and accepting any  
9 "thing of value" in return for referrals of title insurance business. Congress  
10 enacted RESPA in 1974 to ensure consumers were "protected from unnecessarily  
11 high settlement charges" that resulted from "abusive practices" such as  
12 "kickbacks and referral fees" used by title insurers and others.

13 3. Defendants First American Title Insurance and The First American  
14 Corporation are among the largest title insurance underwriters in the United  
15 States and its corporate parent. They rely largely on title agents to obtain  
16 business. Despite the law's prohibitions, they have embarked on a nationwide  
17 policy aimed at enlarging their market share by paying large sums of money to  
18 individual title agencies (in at least one case, \$2 million or more) in exchange for  
19 exclusive referral agreements which funnel all of the companies' business to  
20 defendants, and are not disclosed to consumers. Defendants have thus created  
21 undisclosed "Captive Title Insurance Arrangements," which are prohibited by  
22 RESPA precisely because of their potential for harm to consumers.

23 4. Plaintiffs are a class of consumers who purchased title insurance  
24 through a title agency (a) owned, in part, by First American and (b) operated  
25 under an exclusive agency agreement.

26 5. Defendants' exclusive (and secret) referral agreements have thus  
27 injured all members of the proposed plaintiff class in precisely the same way: by  
28 denying them critical information about the cost of title insurance, in a way

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1 calculated – to quote Congress’s words from 1974 – “to increase unnecessarily  
2 the costs” of title insurance. Plaintiffs therefore request appropriate relief,  
3 including the fees illegally received by Defendants, trebled in accordance with  
4 federal law.

### 5 PARTIES

#### 6 The Named Plaintiff

7 6. Denise P. Edwards is a resident of Ohio, and is employed by United  
8 Cerebral Palsy. Ms. Edwards purchased her home at 1136 East 170<sup>th</sup> Street,  
9 Cleveland, OH 44110, on or about September 29, 2006.

#### 10 The Defendants

11 7. The First American Corporation (“First American”) is a California  
12 corporation, with its principal office in Santa Ana, California. First American  
13 Corporation operates across the country in approximately 2,100 offices,  
14 employing nearly 35,000 people. First American owns a number of subsidiaries,  
15 including co-Defendant First American Title Insurance Company.

16 8. First American Title Insurance Company (“First American Title”) is  
17 also a California corporation, wholly-owned by First American Corporation, also  
18 with its principal place of business in Santa Ana, California. First American  
19 Title issues title insurance policies directly and through agents across the  
20 country.

### 21 JURISDICTION AND VENUE

22 9. This Court has subject matter jurisdiction under RESPA pursuant to  
23 28 U.S.C. § 1331.

24 10. This Court has personal jurisdiction over Defendants because each  
25 Defendant systematically and continually does business within the judicial  
26 district, and the principal place of business for each Defendant is within the  
27 judicial district.

28

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1 11. Venue is appropriate in this Court because all Defendants reside in  
2 this judicial district. 28 U.S.C. §§ 1391(b) and (c).

3 **GENERAL FACTUAL ALLEGATIONS**

4 12. At all times relevant to this Complaint, First American Title has  
5 been in the business of issuing title insurance, and has been a wholly-owned  
6 subsidiary of First American Corporation.

7 13. First American Title obtains a substantial portion of its title  
8 insurance business through referrals from title agents.

9 14. It is the standard and typical practice of title agents to refer their  
10 clients to a title insurance issuer with respect to the settlement of real estate  
11 transactions. Accordingly, at all times relevant to this Complaint, First American  
12 Corporation and First American Title had in place a program to identify and  
13 contract with title agencies to act as exclusive referring agents to First American  
14 Title.

15 15. In 1998, for example, First American Corporation paid a kickback  
16 to Tower City Title Agency, LLC in Cleveland, Ohio ("Tower City") in order to  
17 obtain an agency agreement providing that Tower City would exclusively refer  
18 all title insurance underwriting to First American Title. This Captive Title  
19 Insurance Arrangement was designed to secure increased market share of title  
20 insurance business for First American Title by paying the owners of Tower City  
21 additional monies to refer title insurance underwriting exclusively to First  
22 American Title.

23 16. In order to give the kickback the appearance of legitimacy, First  
24 American Corporation agreed to "purchase" a 17.5% minority interest in Tower  
25 City. The purchase price for the minority interest, \$2 million (\$500,000 in cash,  
26 and First American Corporation stock then valued at \$1.5 million) was  
27 significantly more than the book value of Tower City. First American made the  
28 payment without any significant investigation into the value of Tower City.

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1 Subsequently, in 2004, First American made an additional cash payment of  
2 \$804,825 to Tower City.

3 17. Although First American Corporation became, on paper, a 17.5%  
4 minority owner in Tower City in 1998, neither Tower City, First American  
5 Corporation, nor First American Title ever disclosed the nature of their business  
6 relationship to consumers using the services of Tower City with respect to  
7 mortgage loan transactions. Instead, Tower City referred insurance underwriting  
8 exclusively to First American Title and deprived the consumer of opportunities  
9 required by federal law, such as the opportunity to compare prices on the open  
10 market.

11 18. Moreover, although ostensibly a part owner in Tower City, First  
12 American Corporation has received only nominal profit distributions from Tower  
13 City. Indeed, the other owners of Tower City have simply used Tower City's  
14 operating account to pay personal expenses, such as private school tuitions,  
15 medical bills and other personal items, thereby reducing or eliminating what  
16 would have been profits to First American Corporation without any objection  
17 from First American Corporation.

18 19. As further evidence that First American's plan was simply to pay a  
19 kickback, First American does not exercise its right to appoint one member to the  
20 Tower City board of directors, nor does it review Tower City's annual financials.

21 20. As part of the "purchase agreement," Tower City was required to  
22 enter into an exclusive agency agreement with First American Corporation's  
23 wholly-owned subsidiary, First American Title. Prior to the kickback from First  
24 American Corporation, Tower City referred substantial title insurance business to  
25 other title insurance underwriters such as Stewart Title Guaranty Company, Old  
26 Republic National Title Insurance Company, and United General Title Insurance  
27 Company. Since the kickback, Tower City has referred virtually all of its title  
28 insurance business to First American Title.

1           21. Upon information and belief, First American's Captive Title  
2 Insurance Arrangement with Tower City has been repeated in similar fashion  
3 through the "purchase" of ownership interests in dozens of other title agencies  
4 throughout the country. According to First American's most recent 10-K, in  
5 2006 alone First American bought equity interests in eleven companies and  
6 purchased the minority interests remaining in four companies already included in  
7 the company's consolidated financials. Also in 2006, First American made 34  
8 additional acquisitions in the title insurance industry.

9                           **FACTS APPLICABLE TO NAMED PLAINTIFF**

10           22. On or about September 29, 2006, Ms. Edwards settled on the  
11 purchase of her home at 1136 East 170<sup>th</sup> Street, Cleveland, Ohio 44110.

12           23. Tower City Title Agency, LLC was the settlement agent and  
13 conducted the closing at its office located at 6151 Wilson Mills Road in  
14 Highland Heights, Ohio.

15           24. Lines 1109 and 1110 of the HUD-1 Settlement Statement show  
16 premiums for title insurance, both lender's and owner's coverage, totaling  
17 \$728.85. Ms. Edwards paid \$455.43 of the premium and the seller, Mark  
18 Watson, paid the remaining \$273.42, as shown on Line 1108 of the HUD-1.

19           25. Pursuant to the Captive Title Insurance Arrangement, Tower City  
20 Title Agency, LLC referred the title insurance to First American Title, which  
21 issued both the lender and owner policies.

22                           **CLASS ACTION ALLEGATIONS**

23           26. The named Plaintiff brings this action on behalf of herself and all  
24 other similarly situated individuals pursuant to *Fed. R. Civ. P.* 23. The class of  
25 victims consists of:

26           All consumers who from June 12, 2006 to the present entered into  
27 mortgage loan transactions using the services of a title agency or  
28 similar entity owned in part by First American Corporation, or its

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1 subsidiaries, in which the HUD-1 Settlement Statement, or other  
2 document in the loan file, includes a charge or payment for title  
3 insurance issued by First American Title Insurance Company.

4  
5 Excluded from the class are those individuals who now or have ever  
6 been executives of Defendants.

7  
8 27. The class, as defined above, is identifiable. The Named Plaintiff is  
9 a member of the class.

10 28. The class consists, upon information and belief, of thousands and  
11 perhaps tens or hundreds of thousands of individuals, and is thus so numerous  
12 that joinder of all members is clearly impracticable.

13 29. There are questions of law and fact which are not only common to  
14 the class, but which predominate over any questions affecting only individual  
15 class members. The predominating questions include, but are not limited to:

16 (a) Whether title agents or similar entities partially owned  
17 by First American Corporation or its subsidiaries received illegal  
18 referral fees or kickbacks in respect of the title insurance issued by  
19 First American Title Insurance Company;

20 (c) Whether First American Corporation's payments to  
21 title agents or similar entities for partial ownership interests in the  
22 title agents or similar entities for exclusive title insurance referrals  
23 to First American Title violated RESPA;

24 (d) Whether Tower City, or any of the other title agencies  
25 owned in part by Defendants, referred title insurance business to  
26 First American Title Insurance Company;

27 (e) Whether title insurance is a settlement service under  
28 RESPA;

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1 (f) Whether the Defendants or any of them have entered into  
2 similar arrangements with title agents not herein above identified, for the  
3 purpose of receiving exclusive referrals in exchange for the payment of  
4 illegal fees or kickbacks; and,

5 (g) Whether the title agents that were purchased in part by  
6 Defendants, are affiliates of Defendants.

7 30. The claims of the Named Plaintiff are typical of the claims of each  
8 member of the class, within the meaning of *Fed. R. Civ. P. 23(a)(3)*, and are  
9 based on and arise out of identical facts constituting the wrongful conduct of  
10 Defendants.

11 31. Plaintiff is committed to pursuing this action and has retained  
12 competent counsel experienced in class action litigation. Plaintiffs will fairly  
13 and adequately represent the interests of the members of the class, within the  
14 meaning of *Fed. R. Civ. P. 23(a)(4)*.

15 32. The prosecution of separate actions by individual members of the  
16 class would create a risk of establishing incompatible standards of conduct for  
17 Defendants, within the meaning of *Fed. R. Civ. P. 23(b)(1)(A)*.

18 33. Defendants' actions are generally applicable to the class as a whole,  
19 and Plaintiff seeks equitable remedies with respect to the class as a whole within  
20 the meaning of *Fed. R. Civ. P. 23(b)(2)*.

21 34. Common questions of law and fact enumerated above predominate  
22 over questions affecting only individual members of the class, and a class action  
23 is the superior method for fair and efficient adjudication of the controversy,  
24 within the meaning of *Fed. R. Civ. P. 23(b)(3)*.

25 35. The class is manageable and, following certification, each member  
26 of class who can be located through the information which is readily available  
27 from their mortgage transaction, shall receive individual notice through the  
28 United States mails.



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**COUNT I**  
**VIOLATION OF THE REAL ESTATE SETTLEMENT**  
**PROCEDURES ACT, 12 U.S.C. §2607**  
**(All Defendants)**

36. Plaintiffs reallege and incorporate by reference the allegations set out in Paragraphs 1 through 35 and further allege:

37. Throughout the class period, the Defendant First American Title Insurance Company provided title insurance in respect of residential real estate transactions, including "federally related mortgage loans" as that phrase is defined by RESPA at 12 U.S.C. § 2602(l) and at 24 C.F.R. § 3500.2(3), to the named Plaintiff and other consumers. Upon information and belief, the Defendants provided title insurance for more than a million mortgage loans during the class period.

38. At all times during the class period, title agencies owned in part by First American Corporation, including but not limited to Tower City Title Insurance Agency, LLC, contracted with the named Plaintiff and other class members and, as such provided to the Plaintiff and other Class members real estate "settlement services" as that phrase is defined by RESPA at 12 U.S.C. § 2602(3) and 24 C.F.R. § 3500.2(16), including title insurance.

39. Based upon the foregoing facts, the Defendants each violated RESPA with respect to Plaintiff and the Class by giving, paying or receiving fees, kickbacks or other things of value to or from title agencies or similar entities owned in part by First American Corporation, including but not limited to Tower City Title Agency, LLC, pursuant to agreements or understandings that business incident to or a part of a real estate settlement or closing services involving "federally related mortgage loans" would be referred to First American Title.

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1           40. The more than \$2 million in payments to Tower City Title Agency,  
2 LLC and similar payments to other title agents or similar entities by First  
3 American Corporation or its subsidiaries were separate from any division of title  
4 insurance premiums that are permitted under § 8(c) of RESPA, 12 U.S.C. §  
5 2607(c).

6           41. The more than \$2 million in payments to Tower City Title Agency,  
7 LLC and similar payments to other title agents or similar entities by First  
8 American Corporation constituted violations of § 8(a) of RESPA, 12 U.S.C. §  
9 2607(a), which prohibits the payment of referral fees or kickbacks in connection  
10 with the origination of federally-related mortgage loans.

11           WHEREFORE, Plaintiffs pray that the Court:

12           A. Pursuant to 12 U.S.C. § 2607(d)(2), award Plaintiff and the class  
13 members an amount equal to three times the amount of any and all payments to  
14 title agents owned in part by First American Corporation or its subsidiaries,  
15 including but not limited to Tower City Title Agency, LLC, for title insurance in  
16 respect of each mortgage loan transaction, as well as any and all other amounts  
17 or damages allowed to be recovered by RESPA;

18           B. Certify this case as a Plaintiff Class action pursuant to *Fed. R. Civ.*  
19 *P.* 23(b)(1), (2) and/or (3);

20           C. Permanently enjoin and restrain the Defendants and their agents,  
21 employees, representatives and all persons acting on their behalf from charging  
22 and/or collecting any fees attributable to title insurance referred by Tower City  
23 Title Agency, LLC or any other title agent owned in part by First American  
24 Corporation or its subsidiaries;

25           D. Award pre-judgment interest;

26           E. Award Plaintiffs their reasonable costs and attorney's fees; and

27           F. Award Plaintiffs such other and further relief as the Court deems  
28 just and proper.

**DEMAND FOR JURY TRIAL**

42. Plaintiffs demand a jury trial as to all triable issues.

DATED: June 11, 2007

Respectfully submitted,

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