

FILED

2007 MAY 23 PM 4:01

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

BY _____

1 PETER D. KEISLER
Assistant Attorney General
2 GEORGE S. CARDONA
United States Attorney
3 ARTHUR R. GOLDBERG
Assistant Branch Director
4 RACHEL J. HINES
Trial Attorney
5 Federal Programs Branch
Civil Division
6 Department of Justice
20 Massachusetts Avenue, NW
7 Washington, DC 20001
Telephone: (202) 514-5532
8 Facsimile: (202) 318-7604
9 Attorneys for Plaintiff

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14
15 ALPHONSO JACKSON, Secretary of
the United States Department
16 of Housing and Urban Development,

17 Plaintiff,

18 v.

19 PROPERTY I.D. CORP.
1001 Wilshire Boulevard
20 Los Angeles, CA 90017

21 REALOGY CORP. F/K/A CENDANT CORP.
1 Campus Drive
22 Parsippany, NJ 07054

23 NRT/COLDWELL BANKER RESIDENTIAL
BROKERAGE CORP.
24 339 Jefferson Road
Parsippany, NJ 07054

25 MASON-MCDUFFIE REAL ESTATE
26 D/B/A PRUDENTIAL CALIFORNIA REALTY
F/K/A DUTRA REALTY ENTERPRISES INC.
27 5724 West Las Positas Boulevard
Suite 100
28 Pleasanton, CA 94588

CV 07-03372 mmm (JLX)

Civil No.: _____

Complaint

1 PICKFORD REALTY LTD.
2 D/B/A PRUDENTIAL CALIFORNIA REALTY
3 12544 High Bluff Drive, Suite 420
4 San Diego, CA 92130

5 PICKFORD GOLDEN STATE MEMBER LLC
6 12544 High Bluff Drive, Suite 420
7 San Diego, CA 92130

8 PROPERTY I.D. of EAST BAY, LLC
9 1001 Wilshire Boulevard
10 Los Angeles, CA 90017

11 PROPERTY I.D. ASSOCIATES, LLC
12 1001 Wilshire Boulevard
13 Los Angeles, CA 90017

14 PROPERTY I.D. GOLDEN STATE, LLC
15 1001 Wilshire Boulevard
16 Los Angeles, CA 90017

17 Defendants.

18 **COMPLAINT**

19 Plaintiff, the Secretary of the United States Department of Housing and Urban
20 Development ("HUD"), through his undersigned counsel, alleges as follows:

21 **INTRODUCTION**

22 1. Plaintiff brings this action to enjoin violations of Section 8 of the Real Estate
23 Settlement Procedures Act of 1974 ("RESPA"), 12 U.S.C. § 2607, and its implementing
24 regulations at 24 C.F.R. Part 3500. The underlying allegations arise out of Property I.D.
25 Corporation's ("Property I.D.") creation and operation of three sham entities with four brokerage
26 companies (Realogy Corporation, NRT Incorporated/Coldwell Banker Residential Brokerage
27 Company, Mason-McDuffie Real Estate, and Pickford Realty Ltd. (hereinafter the "Referring
28 Parties"). The sole purpose of the three sham entities (Property I.D. Associates, LLC, Property
I.D. of East Bay, LLC, and Property I.D. Golden State, LLC, collectively, the "Joint Ventures")
was for Property I.D. to funnel kickbacks to the Referring Parties in exchange for the referral of
settlement service business and for Property I.D. and the Referring Parties to split unearned fees

1 in violation of RESPA §§ 2607(a), (b).

2 2. HUD seeks a permanent injunction enjoining the RESPA violations, an
3 accounting and disgorgement of all ill-gotten gains, and other relief as set forth below.

4 **JURISDICTION**

5 3. This Court has jurisdiction over the subject matter of this action pursuant to 12
6 U.S.C. § 2614 and 28 U.S.C. §§ 1331, 1345.

7 **VENUE**

8 4. Venue is proper in the Central District of California pursuant to 28 U.S.C.
9 § 1391(b)(2) as it is the district in which a substantial part of the events giving rise to the claims
10 occurred.

11 **PARTIES**

12 5. Plaintiff Alphonso Jackson is the Secretary of HUD and brings this action in his
13 official capacity.

14 6. Defendant Property I.D. is a California corporation whose primary business is the
15 sale of hazard disclosure reports to prospective sellers and buyers of real property in California.
16 Its principal place of business is 1001 Wilshire Boulevard, Los Angeles, California. Property
17 I.D. is a provider of settlement services as defined by 12 U.S.C. § 2602(3) and 24 C.F.R.
18 § 3500.2. Property I.D. is also sued as the successor to Sunrun Corporation, which was a partner
19 in and manager of one of the Joint Ventures.

20 7. Defendant Realogy Corporation is a Delaware corporation with headquarters in
21 Parsippany, New Jersey. Realogy is a national real estate brand franchisor that does business in
22 California. Until July 31, 2006, it was known as the Cendant Corporation. Realogy's franchise
23 brands include Century 21, Coldwell Banker Residential Brokerage Corporation, and ERA.
24 These real estate brand franchises are providers of settlement services as defined by 12 U.S.C.
25 § 2602(3) and 24 C.F.R. § 3500.2.

26 8. Defendant NRT is a subsidiary of Realogy and is a Delaware corporation with
27
28

1 headquarters in Parsippany, New Jersey. NRT is the largest owner and operator of residential
2 real estate brokerages in the United States and does business in California. Its operations are
3 affiliated with Realogy's franchise brands, including Coldwell Banker Residential Brokerage
4 Corporation. Coldwell Banker Residential Brokerage Corporation is a subsidiary of NRT and
5 does business in California. Coldwell Banker is the operating company for the NRT-owned-and-
6 operated Coldwell Banker offices in Southern California. These real estate brokerages are
7 providers of settlement services as defined by 12 U.S.C. § 2602(3) and 24 C.F.R. § 3500.2.

8 9. Defendant Mason-McDuffie Real Estate, formerly known as Dutra Realty
9 Enterprises Inc. and now doing business as Prudential California Realty in Northern California, is
10 a real estate broker and franchise of Prudential Real Estate. Mason-McDuffie Real Estate and
11 Prudential California Realty are providers of settlement services as defined by 12 U.S.C.
12 § 2602(3) and 24 C.F.R. § 3500.2.

13 10. Defendant Pickford Realty Ltd., which does business as Prudential California
14 Realty in Southern California, is a real estate broker and franchise of HomeServices, Inc.
15 Pickford Realty Ltd. and Prudential California Realty are providers of settlement services as
16 defined by 12 U.S.C. § 2602(3) and 24 C.F.R. § 3500.2.

17 11. Defendant Pickford Golden State Member, LLC, is a subsidiary of HomeServices,
18 Inc. and is a provider of settlement services as defined by 12 U.S.C. § 2602(3) and 24 C.F.R.
19 § 3500.2.

20 12. Defendant Property I.D. Associates, LLC, is a joint venture formed on March 6,
21 2000, by Property I.D., Realogy (Cendant), and NRT/Coldwell Banker. Its principal place of
22 business is 1001 Wilshire Boulevard, Los Angeles, California.

23 13. Defendant Property I.D. of East Bay, LLC, is a joint venture formed by Property
24 I.D. and Dutra Realty Enterprises, Inc. now known as Mason-McDuffie Real Estate and doing
25 business as Prudential California Realty on January 19, 1999. Its principal place of business is
26 1001 Wilshire Boulevard, Los Angeles, California.

1 goods and services. 24 C.F.R. § 3500.14(g)(2). Referrals are not compensable services. Id.
2 § 3500.14(b).

3 19. Another exemption, § 2607(c)(4), applies to affiliated businesses arrangements if
4 the following three criteria are met: (1) the consumer is informed of the arrangement in a written
5 affiliated business arrangement disclosure statement and is provided with a written estimate of
6 charges; (2) the use of the affiliated business is not required; and (3) the only thing of value
7 received from the arrangement is a return on ownership interest. 12 U.S.C. § 2607(c)(4); 24
8 C.F.R. § 3500.15. Whether a thing of value is a return on ownership interest is determined on a
9 case by case basis. 24 C.F.R. § 3500.15(b)(3)(iii).

10 20. To take advantage of the affiliated business arrangement exemption, the
11 settlement service provider must be a legitimate settlement service provider and not a sham
12 business. HUD has issued a policy statement, HUD Statement of Policy 1996-2, which sets forth
13 various factors to be considered in determining whether a business is a bona fide provider of
14 settlement services and therefore eligible to claim the exemption. These factors include
15 reviewing the business's capital and net worth, whether it has its own employees, management,
16 and office space, whether it seeks business in the marketplace, and whether it performs actual
17 services or contracts them out to an entity that formed it.

18 FACTUAL BACKGROUND

19 21. Beginning in the 1980s, California courts began to hold a seller or a seller's agent
20 liable for the conveyance of property subsequently devalued by certain hazards such as flooding,
21 fires, or earthquake fault lines. In 1997, California codified the requirement of disclosure by
22 enacting a law that obligates transferors of certain real estate and/or their agents to provide a
23 "Natural Hazard Disclosure Statement" as part of the sale of real property. Cal. Civ. Code
24 § 1103. A Natural Hazard Disclosure Statement identifies whether the property is located within
25 hazardous areas, including flood areas, fire hazard severity zones, and earthquake and seismic
26 fault zones. If the disclosure statement is prepared by an expert in natural hazard discovery and
27

1 is provided as part of the real estate purchase transaction, the seller is relieved of liability. Id.

2 22. After the passage of section 1103, California companies formed to meet consumer
3 demand for expert reports that would satisfy the seller's disclosure requirements for the purchase
4 of real estate. The Natural Hazard Disclosure Statement requirement in California is customarily
5 effectuated by sellers with the purchase of a hazard disclosure report.

6 23. Property I.D., the largest of these hazard disclosure report providers, was
7 incorporated on February 10, 1994.

8 24. Since its creation, Property I.D. has charged a fee of \$99.00 for its hazard
9 disclosure reports if the purchaser pays at the time the report is ordered (when the property is
10 listed for sale). The cost of a hazard disclosure report is \$114.00 if the purchaser defers payment
11 until settlement. The vast majority of reports are paid for out of escrow at settlement.

12 25. Hazard disclosure reports are purchased and provided by sellers, buyers, or their
13 agents as part of the purchase and settlement of real estate involving federally related mortgage
14 loans. These reports are purchased only when a transfer of real property is pending, whether the
15 report is purchased prior to or during an actual or prospective settlement for the sale of real
16 estate.

17 26. Over the period of last ten years, Property I.D. formed a number of limited
18 liability companies ("LLCs"), including the Defendant Joint Ventures, with other settlement
19 service providers in the position to refer settlement service business to Property I.D., including
20 the Defendant Referring Parties. Each of the Joint Ventures was subject to an Operating
21 Agreement.

22 27. Under the Operating Agreements, each of the Joint Ventures was designed for
23 Property I.D. to own 50% of the Joint Venture and the Referring Party or Parties to own 50% of
24 the Joint Venture.

25 28. The Joint Ventures did not compete in the marketplace for business from other
26 real estate brokers. The only source of business was derived by referrals from its partner
27

1 Referring Party. When customers were referred to the Joint Ventures and purchased hazard
2 disclosure reports, it was Property I.D. and not the Joint Ventures that produced the reports. The
3 Joint Ventures did not seek hazard disclosure report business from any entity or person other than
4 its partner Referring Party. The Joint Ventures did not produce or provide the reports or perform
5 any business functions independently from Property I.D.

6 29. The Joint Ventures are all located at the Property I.D. building at 1001 Wilshire
7 Boulevard, and they all share the same phone, fax, email, and website with Property I.D. None
8 of the Joint Ventures has its own employees; they share employees with Property I.D. and with
9 each other. With the exception of Property I.D. Associates, the Joint Ventures share Property
10 I.D. bank accounts and do not have their own bank accounts. The Joint Ventures also do not
11 have their own liability insurance.

12 30. The reported expenses of the Joint Ventures--rent, payroll, and property taxes--
13 varied according to their percentage of revenue. Property I.D. deducted approximately \$50 per
14 report, which was approximately half of the price charged for the report and split the remaining
15 \$50 between itself and the Referring Party member.

16 31. Each Operating Agreement also stated that the Referring Party was to use its
17 efforts to promote the Joint Venture and seek the use of the Joint Venture hazard disclosure
18 reports for the customers of its franchisees, salespersons, and agents. The Referring Parties had
19 no other responsibilities and did not bill the Joint Ventures for their services.

20 32. The Referring Parties used a variety of methods to get their agents and franchisees
21 to refer customers to Property I.D. and their respective Joint Ventures, including but not limited
22 to: (a) providing pre-printed listing contracts with Property I.D. pre-selected as the hazard
23 disclosure report provider; (b) using seller disclosure packets with the Property I.D. logo;
24 (c) using "Addendum to Offers" that required the agent to assume liability for ordering
25 non-Property I.D. reports; (d) offering a deduction on the agent's errors and omissions insurance
26 policy for a claim on any property that had a Property I.D. hazard disclosure report; (e) giving the
27

1 Referring Parties' franchises' branch managers a portion of the referral fee in their bonuses;
2 (f) implementing a mandatory policy that advised buyers to purchase Property I.D. hazard
3 disclosure reports, even though the buyer had no liability under California law; (g) implementing
4 a policy to automatically notify Property I.D. of new agent listings; (h) using training materials
5 and agent checklists which listed Property I.D. rather than providing options to select a hazard
6 disclosure report provider; (i) allowing Property I.D. to contact agents directly to discuss how to
7 get customers to purchase more reports; and (j) having agents attend free Property I.D.-sponsored
8 events in which agents were escorted by limousine to luncheons in which Property I.D. was
9 presented as the superior product.

10 33. In return for these referrals, the Referring Parties were paid, on a quarterly basis, a
11 per-report referral fee of approximately \$25 for each hazard disclosure report, or one quarter of
12 the total report cost.

13 34. Property I.D. and the Referring Parties accumulated substantial profits as a result
14 of the Joint Ventures.

15 35. In August 2005, HUD issued investigatory subpoenas to, among others, the
16 Defendant-companies sued here. Only after Defendants were served with HUD's investigatory
17 subpoenas did Property I.D. suspend the referral fee payments to the Referring Parties. One of
18 the Joint Ventures, Property I.D. Associates, was formally terminated in August 2006 after HUD
19 informed Realogy and NRT/Coldwell Banker that it was proceeding with its investigation. There
20 remains a dispute among Realogy, NRT/Coldwell Banker, and Property I.D. about additional
21 referral fee payments. The other two Joint Ventures have not been terminated.

22 36. Property I.D. is holding additional referral fee payments for the Referring Parties.
23 Unless enjoined, Property I.D. may resume making these kickback payments to the Referring
24 Parties, and the Referring Parties may resume accepting these kickback payments.

25 37. Property I.D. and the Referring Parties are and remain settlement service providers
26 in the position to refer, and accept referrals, of settlement service business.

1 CLAIM I

2 (Violation of RESPA, 12 U.S.C. § 2607(a))

3 38. Plaintiff incorporates and realleges paragraphs 1-37 herein.

4 39. The preparation and sale of hazard disclosure reports to sellers and buyers of real
5 estate constitutes the provision of settlement services under RESPA.

6 40. By forming the Joint Ventures which by agreement caused the Referring Parties to
7 refer settlement service business incident to federally related mortgage loans to Property I.D. in
8 return for Property I.D. giving the Referring Parties, and the Referring Parties accepting, things
9 of value, Property I.D., the Referring Parties, and the Joint Ventures violated, and may in the
10 future violate, RESPA § 2607(a).

11 41. Defendants cannot avail themselves of the § 2607(c)(2) exemption. Property I.D.
12 and the Joint Ventures were not paying for any actual or bona fide services or products, and the
13 Referring Parties were not being paid for any actual or bona fide services or products.

14 42. Defendants cannot avail themselves of the § 2607(c)(4) exemption. The Joint
15 Ventures do not comply with § 2607(c)(4) because they are not bona fide settlement service
16 providers. Defendants also fail to meet the requirements of the exemption because the Referring
17 Parties received payments based on the volume of referrals, not based on ownership interest, and
18 constructively required the use of the Joint Ventures.

19 43. Because Defendants only suspended referral payments when they learned of
20 HUD's investigation of their practices, because two of the three Joint Ventures have not been
21 terminated, because Property I.D. continues to hold referral payments for Referring Parties, and
22 because Defendants remain settlement service providers in the position to refer, and accept
23 referrals, of settlement service business, they have the ability to resume operation of the Joint
24 Ventures and the illegal kickback scheme unless permanently enjoined.

25 44. Defendants accumulated substantial referral fee profits from the illegal sham
26 arrangements in violation of RESPA § 2607(a), which should be disgorged.

1 CLAIM II

2 (Violation of RESPA, 12 U.S.C. § 2607(b))

3 45. Plaintiff incorporates and realleges paragraphs 1-44 herein.

4 46. The preparation and sale of hazard disclosure reports to sellers and buyers of real
5 estate constitutes the provision of settlement services under RESPA.

6 47. By entering into agreements in which Property I.D. would give and the Referring
7 Parties would accept a portion of a charge for a settlement service incident to federally related
8 mortgage loans without performing any actual services, Defendants violated, and may in the
9 future violate, RESPA § 2607(b).

10 48. Defendants cannot avail themselves of the § 2607(c)(2) exemption. Property I.D.
11 and the Joint Ventures were not paying for any actual or bona fide services or products, and the
12 Referring Parties were not being paid for any actual or bona fide services or products.

13 49. Defendants cannot avail themselves of the § 2607(c)(4) exemption. The Joint
14 Ventures do not comply with § 2607(c)(4) because they are not bona fide settlement service
15 providers. Defendants also fail to meet the requirements of the exemption because the Referring
16 Parties received payments based on the volume of referrals, not based on ownership interest, and
17 constructively required the use of the Joint Ventures.

18 50. Because Defendants only suspended referral payments when they learned of
19 HUD's investigation of their practices, because two of the three Joint Ventures have not been
20 terminated, because Property I.D. continues to hold these unearned payments for the Referring
21 Parties, and because Defendants remain settlement service providers in the position to give or
22 accept unearned payments, they have the ability to resume operation of the Joint Ventures and
23 the illegal fee-splitting scheme unless permanently enjoined.

24 51. Defendants accumulated substantial unearned profits from the illegal sham
25 arrangements in violation of RESPA § 2607(b), which should be disgorged.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays that the Court, pursuant to 12 U.S.C. § 2607(d)(4) and its equitable authority:

1. Enter a permanent injunction enjoining Defendants from violating Sections 8(a) and (b) of RESPA; and
2. Order an accounting of the illegally obtained profits; and
3. Order the disgorgement of such profits, with interest; and
4. Order that the Secretary be reimbursed for all costs associated with filing and prosecuting this lawsuit; and
5. Grant such other relief as the Court determines just and proper.

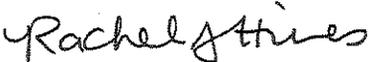
Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

GEORGE S. CARDONA
United States Attorney

OF COUNSEL

JOHN P. OPITZ
Associate General Counsel for
Finance and Regulatory Compliance
PETER S. RACE
Assistant General Counsel for
Finance and Regulatory Compliance
KIRSTEN IVEY-COLSON
BENJAMIN K. GIBBS
Attorney-Advisors
Office of General Counsel
U.S. Department of Housing and
Urban Development
451 7th Street SW
Washington, DC 20410


ARTHUR R. GOLDBERG
Assistant Branch Director
RACHEL J. HINES
Trial Attorney
Federal Programs Branch, Room 7314
Civil Division
Mailing Address
P.O. Box 883
Washington, DC 20044
Delivery Address
20 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: (202) 514-5532
Facsimile: (202) 318-7604

Dated: May 23, 2007

Attorneys for Plaintiff