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Hawaii Attorney General Joins Bipartisan Coalition Fighting to Protect Nearly One Million Homeowners

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a bipartisan coalition of 33 attorneys general in opposing a proposed class action settlement that would permit a mortgage servicer to profit from illegal payment processing fees charged to homeowners making normal mortgage payments online or by phone. The coalition filed a motion for leave to file an amicus brief, opposing the proposed settlement in *Morris et al. v. PHH Mortgage Corporation, et al.*, where mortgage servicer PHH Mortgage Corporation and its predecessor corporation, Ocwen Loan Servicing, LLC (collectively PHH), would be able to continue to profit from illegal processing fees the company has been charging to nearly one million homeowners nationwide, including homeowners residing in Hawaii.

“The proposed class action settlement is unconscionable because it allows a bad actor to continue acting badly,” said Attorney General Connors. “Moreover, it does little to make whole the homeowners who have been harmed by these illegal fees and does not present an acceptable resolution for impacted Hawaii residents.”

For years, PHH charged nearly one million homeowners an illegal fee — ranging from \$7.50 to \$17.50 — each time a homeowner made a monthly mortgage payment online or by phone, despite most Americans paying their mortgages one of these two ways. Nowhere in these homeowners’ mortgage contracts is there authorization for such fees and PHH does not charge “processing” fees for any other customers, including those who pay by check or those who set up automatic debit payments.

Under the terms of the proposed settlement — which was hastily entered into only five months after the complaint was filed — PHH will not only be permitted to continue to charge these illegal fees, but will be able to actually increase fees — up to \$19.50 per month — for the remaining life of the loan, which, for many homeowners, could be another 20 to 30 years. In exchange, homeowners will receive a paltry, and for some, illusory, one-time monetary payment. Further, the proposed settlement seeks to authorize these unlawful fees through an unwritten, mass amendment of the mortgages — a violation of most states’ statutes of frauds, a centuries old legal doctrine that

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requires contracts related to property to be in writing and signed by the parties. This unwritten, mass amendment also means PHH will evade many states' recording requirements for modified mortgages, resulting in confusion and enabling PHH to avoid state and local recording fees.

Additionally, the coalition — led by New York Attorney General Letitia James and Minnesota Attorney General Keith Ellison — objects to the inadequacy of the monetary relief, as the proposed settlement is designed to ensure that a portion of the monetary relief intended for homeowners will actually end up in PHH's hands. Homeowners whose loans are still serviced by PHH will not receive any direct monetary payments for prior unlawful payments received by PHH. Instead, these homeowners will only receive a credit to their account that will only be applied to the unpaid principal balance of the mortgage after any late fees are first paid — costing homeowners more in the end. Moreover, any settlement funds not distributed to the class member homeowners will be returned to PHH, ensuring the settlement further benefits PHH and not impacted class members.

Joining Attorney General Connors, James, and Ellison in filing today's amicus request is a bipartisan coalition of attorneys general from Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia, and the District of Columbia.

A copy of the amicus brief can be found [here](#).

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