STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

KENNETH L. GRADY AND DYLET J. GRADY, on behalf of themselves and all others similarly situated, Plaintiffs, v. BURNET REALTY INC. d/b/a COLDWELL BANKER BURNET, Defendant.	Case No. _____ **SUMMONS**

The State of Minnesota to the Above-Named Defendant:

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the complaint which is herewith served upon you within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: February 20, 2007

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KENNETH L. GRADY AND DYLET J. GRADY, on behalf of themselves and all others similarly situated, Plaintiffs, v. BURNET REALTY INC. d/b/a COLDWELL BANKER BURNET, Defendant.	Case No. _____ **COMPLAINT (Class Action)** Case Type: Other Civil Jury Trial Demanded

FILED PSL
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BY _____ DEPUTY
HENNEPIN DISTRICT COURT ADMINISTRATOR

Plaintiffs Kenneth L. Grady and Dylet J. Grady (hereinafter referred to as "Plaintiffs" or "Gradys") bring this class action on behalf of themselves and the Class of all other similarly situated persons throughout the State of Minnesota as defined below, and allege, upon information and belief, except as to those allegations which specifically pertain to Plaintiffs, which are based upon their personal knowledge, as follows:

I. INTRODUCTION

1. By this conduct, described more fully below, the Gradys and other consumers in the Class have been injured and suffered financial loss and other damage. On behalf of themselves and the Class they seek to represent, the Gradys seek damages, restitution of all amounts paid Burnet, forfeiture of and disgorgement of fees paid Burnet, injunctive, declaratory and other relief, as described more fully below.

II. PARTIES

2. At all times material to this action, Plaintiffs Kenneth L. Grady and Dylet J. Grady have been citizens of the United States of America and of the State of Minnesota. They currently reside in Plymouth, Minnesota with their daughter. Kenneth Grady, until recently, worked at the Ford plant in St. Paul. Dylet Grady works at a spa/salon in St. Paul as a nail technician.

3. At all times material to this action, Burnet has been a corporation engaged in the real estate brokerage business with its headquarters and principal place of business in Edina, Minnesota. Burnet has been licensed as a real estate broker by the State of Minnesota at all times relevant to this action.

4. Burnet is one of the largest real estate brokers in the state of Minnesota both in terms of annual sales volume and number of sales transactions. At relevant times, Burnet's website represented that "[t]oday, Coldwell Banker Burnet is the leading full-service residential real estate company, with more than 3,000 sales associates and 38 offices that annually serve more than 30,000 home buyers and sellers throughout Minnesota and western Wisconsin." http: //www. cbburnet.com/custom modules/dynamiccontent/customcontent.aspx?pageid=28.

5. Burnet conducts its real estate brokerage business activities though sales associates / realtors that it employs and/or contracts with. (Hereinafter "sales associates"). As the licensed broker, Burnet was responsible for the activities of these sales associates. A sales associate can only conduct business under the licensed name of, and on behalf of, the broker for whom the sales associate works and is licensed. Minn. Stat. § 82.22, subd. 6; Minn. Stat. § 82.48 subd. 3.

6. Burnet is affiliated with Burnet Title Co., a company which provides title insurance and real estate settlement and closing services in Minnesota. At relevant times, Burnet's website represented: "Coldwell Banker Burnet works directly with Burnet Title, an affiliate of Coldwell Banker Burnet Home Services....Our pledge to each customer is to provide the best title policy and the best service before, during, and after the closing. Burnet Title is Excellence in Title Services." http://www.cbburnet.com/ custommodules/ dynamiccontent/customcontent.aspx ?pageid=17.

7. From at least January 1, 2000 through the present time, Burnet has been under common ownership with Burnet Title. At all relevant times, both Burnet and Burnet Title have been owned either directly or indirectly by: NRT, Inc.; Coldwell Banker Real Estate Corporation, a subsidiary of Cendant Corporation (NYSE: CD); Realogy Corp.; and/or another common parent company.

8. Profits from both Burnet and Burnet Title flow up to a common parent(s). Burnet, Burnet Title, and their parent company(s) share a common interest in maximizing Burnet Title's business volume, revenue and profits.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this proceeding based on activities conducted in this state by citizens of this state. The Gradys' transaction with Burnet took place in Hennepin County, Minnesota. Numerous acts and decisions related to the subject transaction and challenged practices took place at Burnet's primary offices and facilities, which are located in Hennepin County, Minnesota. As a result, this Court has jurisdiction over the parties and the causes of action alleged by the Gradys and the Class.

10. The Gradys challenge Burnet's deceptive and misleading conduct steering consumers, to which it owed fiduciary duties, to an affiliated title company that it knew or should have known had some of the most expensive insurance rates and settlement service fees in the marketplace, without full and adequate disclosure of all material facts related to the practice, as described more fully below. The Gradys do not challenge or attempt to change or modify the filed insurance rates that Burnet Title charged. Nor do the Gradys claim that the filed rates for title insurance that Burnet Title was bound to apply are discriminatory in and of themselves and subject to change.

11. Venue is proper in this district. Burnet is a corporation with its principal place of business in Hennepin County. The subject transaction between Burnet and the Gradys took place in Hennepin County. Burnet engaged in thousands of transactions with class members in Hennepin County during the class period.

IV. GENERAL ALLEGATIONS

A. The Gradys' Transaction with Burnet

12. On or about June 3, 2003 the Gradys purchased the property at 1407 Morgan Avenue North, Minneapolis, Minnesota 55441 from a third-party seller. The purchase was financed with a $189,800 mortgage provided by a third party lender, Countrywide Home Loans, Inc. See, Plaintiffs' HUD-1 Settlement Statement, attached as Exhibit A.

13. Prior to the time that they entered into a purchase agreement, the Gradys retained the real estate brokerage services of Burnet. Burnet acted as the Gradys' real estate broker with respect to the purchase of the property at 1407 Morgan Avenue.

14. As the Gradys' real estate broker, Burnet and its sales associates represented the Gradys and owed the Gradys fiduciary duties pursuant to both statute and common law. As a result, Burnet was bound to act in the Gradys' best interests throughout the transaction, to perform all duties with reasonable care, to disclose all material facts related to the transaction and its dealings, and to account for all sums and things of value received in the course of the agency relationship.

15. As part of that transaction, the Gradys were required by their lender to purchase a lender's coverage title insurance policy, as well as to have the closing handled by an authorized settlement / escrow agent. Choosing a settlement agent and title company to provide these goods and services is necessary to complete a real estate transaction in Minnesota.

16. Prior to the closing on June 3, 2003 Burnet directed the Gradys to an affiliated title company, Burnet Title, for title insurance and closing services. In turn, Burnet Title charged the Gradys certain fees and premiums for the title insurance and services provided. See, Plaintiffs' HUD-1 Settlement Statement, attached as Exhibit A at lines 1100-1304.

17. Burnet Title is a title insurance agent which issues lender's and owner's coverage title insurance policies underwritten by a third-party insurance company. While not disclosed to its clients, Burnet Title retains at least 75 percent of each insurance premium collected and forwards the remainder to the third-party underwriter. The revenue that Burnet Title receives in these premium splits is in addition to the other distinct fees Burnet Title charges clients for its services and which are itemized on clients' HUD-1 Settlement Statements (*e.g.* settlement/closing fees, title search fees, title examination fees, etc.). The fees that Burnet Title charges its clients are standard fees that are

set forth on a fee schedule distributed to all of its branches. The fees that Burnet Title charged the Gradys and other members of the Class were determined pursuant to that common fee schedule.

18. The fees that Burnet Title charged the Gradys were higher than the fees other providers in the same market would have charged for the same or comparable title insurance and closing services needed to complete the transaction.

19. Burnet Title's fees and charges are amongst the highest, if not the highest, in Minnesota. For instance, on a $250,000 property purchase transaction with $200,000 of mortgage financing, Burnet Title's fees can be several hundred dollars more than the fees charged by lower cost providers in the market for the same or comparable goods and services. See e.g., Fee Comparisons on http://www.titleextra.com; http://www. kohlruschtitle. com/fee_comparison. htm; http:// www.americanhometowntitle. com/cost_comparison.html.

20. At the time that Burnet directed the Gradys to Burnet Title, Burnet knew that there were lower priced alternatives to Burnet Title for the same or comparable goods and services. Despite the fact that low prices are in the clients' best interests, Burnet did not recommend these lower priced providers of title insurance or settlement services to the Gradys.

21. Paying lower prices is in the best interests of Burnet's clients. Knowledge of the existence of lower priced providers of title insurance and closing services is material to clients, like the Gradys. It would have been in the Gradys' best interest for Burnet to disclose the names of lower cost providers of title insurance and settlement services to them.

22. As with other clients it represented, Burnet did not disclose all materials facts to the Gradys related to the referral and Burnet Title's rates. Burnet did not:

a. identify or recommend lower priced providers of title insurance and closing services;

b. disclose the availability of lower priced providers of title insurance and closing services;

c. provide any objective information or comparison of available providers' rates;

d. disclose that Burnet Title has some of the highest fees and rates for title insurance and closing services in Minnesota;

e. disclose that it pressures and trains its sales associates to steer clients' title insurance and settlement service business to Burnet Title, instead of competitors with lower prices;

f. disclose that it provides financial incentives to sales associates to steer clients' title insurance and settlement service business to Burnet Title, instead of lower-priced providers;

g. disclose that it is aware of lower cost providers of title insurance and closing services than Burnet Title.

B. Burnet Steers Its Clients to Burnet Title

23. As part of the brokerage services that Burnet provides to clients like the Gradys, Burnet advises clients about available title insurance and settlement / closing service providers and expects its clients to rely on its advice. At relevant times, Burnet's website represented:

> At Coldwell Banker Burnet, full service is our time honored tradition.
> Our professional sales associates are highly experienced, they have extensive knowledge of the housing market in this region, and they are committed to providing you with a full-service real estate experience. They will work with you through every stage of the home buying and selling transaction and assist in finalizing the details through our convenient in-house mortgage, title, relocation, concierge, and closing services. For you, that means peace of mind.
>
> Our customers tell us that they rely on our sales associates and appreciate our full-service, results-oriented approach. We are proud that for more than 30 years, we have been exceeding our customers' expectations and successfully helping them find the home of their dreams.

http://www.cbburnet.com/custommodules/dynamiccontent/customcontent.aspx?pageid=27. See also, http:// www.dreamhomematchmakers.com (another Coldwell Banker Burnet website):

> What is a Buyer's Representative?
>
> The buyer's representative works for, and owes fiduciary responsibilities to, the real estate buyer and has the buyer's best interests in mind throughout the entire real estate process. A buyer's representative will:
>
> * * *
>
> * Provide a list of potential qualified vendors (e.g. title company, home inspector, etc.) if the buyer does not know of any.
>
> * Most importantly, fully-represent the buyer throughout the real estate transaction.
>
> * * *
>
> What a REALTOR® will do for you
>
> There are many important reasons to use a REALTOR®. Some of the duties your REALTOR® will perform for you include:
>
> * * *
>
> * Helping you prepare for a smooth closing of the transaction.
>
> Coldwell Banker Burnet is Your One-Stop Shopping Resource
>
> Buying or selling a home can be one of the most challenging and wonderful times of your life. At Coldwell Banker Burnet Home Services, we understand that. For more than 30 years we have been an important part of this community helping people with every aspect of home ownership. We're the one, full-service resource you can always count on, helping you buy, own and sell your home as well as providing you with helpful, commonsense advice during every step of the process.
>
> Our full-service offerings include:
>
> * * *
>
> * Comprehensive title insurance and closing services.

24. Burnet routinely attempts to direct its clients to its affiliated title insurance and closing service provider, Burnet Title.

25. As a real estate broker, Burnet and its sales associates owe fiduciary duties imposed by both state statute and common law to the Minnesota home buyers and sellers Burnet contracted to

represent. (Referred to herein as "clients"). Among these fiduciary duties are: (1) the duty of loyalty; (2) the duty to disclose; (3) the duty to exercise reasonable care, and; (4) the duty to account. Minn.Stat. § 82.22 (formerly codified as Minn. Stat. § 82.197).

26. Burnet enters into standard buyer representation and listing contracts with each client in the Class. These contracts confirm Burnet's representation of all class members and establish an agency relationship where fiduciary duties are owed to them.

27. Minn.Stat. § 82.41, subd. 6 and Minn.Stat. § 82.22, subd. 2 require Burnett to provide clients engaging in a residential real property transaction with a written agency disclosure in the form set forth in Minn.Stat. § 82.22, subd. 4. These written disclosures confirm that when Burnett is retained as a buyer's broker, seller's broker, and/or dual agency broker, Burnet acts in a fiduciary capacity and that it owes all of these clients the fiduciary duties described in Minn. Stat. § 82.22, subd. 4.

28. Participants in the real estate industry, such as Burnet, know that consumers do not actively shop for title insurance and closing services, as they may other types of services. Rather, the selection of a title company and settlement agent is typically a matter of recommendation by the client's real estate sales associate. Therefore, title and closing service providers generally compete for business by marketing to and attempting to influence business sources and fiduciaries, such as Burnet's sales associates, opposed to marketing directly to home buyers and sellers, who are their clients-principals.

29. On April 26, 2006, the House Financial Services Committee's Subcommitee on Housing and Community Opportunity held hearings on competition, pricing and illegal activity in

the title insurance / settlement service marketplace. These hearings confirmed that certain practices conducted by participants in the title insurance and closing services industry are anti-competitive and not in the interests of home buyers and sellers. During his Opening Statement, then Chairman of the House Financial Services Committee, Rep. Michael G. Oxley stated: "GAO is finding that instead of focusing on consumers, title agents normally market their business to these real estate providers, creating potential conflict of interest that benefits providers at the expense of the consumer." Opening Statement, Chairman Michael G. Oxley, House Financial Services Committee, Subcommittee on Housing and Community Opportunity, Title Insurance: Cost and Competition, April 26, 2006. See also, United States Government Accountability Office [GAO], Report to Chairman, Committee on Financial Services, House of Representatives, Title Insurance, April 2006, available at www.gao.gov/cgi-bin/getrpt?GAO-06-568.

30. Burnet steers its clients' business to a higher-priced affiliated provider of title insurance and settlement services without disclosing the availability of lower priced, independent services. While Burnet Title and their parent corporation(s) may benefit from the resulting increase in business revenues and profits caused by these efforts, Burnet deprives its clients of an opportunity to save money.

31. Among the activities that Burnet engages in to direct client's business to Burnet Title are the following:

a. Burnet pressures its sales associates to direct their clients' closing and title insurance business to its affiliated title company, Burnet Title, instead of lower-priced competitors.

b. Burnet trains its sales associates to direct their clients' closing and title insurance business to its affiliated title company, Burnet Title, instead of lower-priced competitors. Sales associates are instructed to do their best to ensure that clients use Burnet Title instead of presenting in an objective manner all available options for such services. Sales associates are instructed to recommend Burnet Title over competitors and instructed on how to persuade clients to use Burnet Title's services instead of competitors who may have cheaper rates for comparable title insurance and closing services.

c. Burnet creates internal barriers which make it more difficult for a sales associate to recommend and use a title company other than Burnet Title.

d. Burnet creates barriers and impediments for third party title companies to market their title insurance and services to its sales associates, but assists Burnet Title in marketing its title insurance and services to its sales associates.

e. Burnet offers financial and/or other incentives to its sales associates and/or managers in order to entice them to recommend and direct client's closing and title insurance business to Burnet Title, opposed to other providers. Among the incentive programs offered by Defendant are the Quick Check Program, the Partnership 2000 Program, and/or the Partnership Plan Compensation Program. The Quick Check Program allows Burnet's sales associates to receive their commission check at the time of the closing, opposed to after the closing, provided Burnet Title is used as the settlement agent. This is a benefit which attempts to influence Burnet's sales associates'

decision in recommending a title company because the lure of being paid commissions faster is significant. The Partnership 2000, Partnership Plan Compensation Program and/or other similar programs are incentive programs which allow Burnet's sales associates to enhance their financial compensation through the receipt of financial rewards (such as payment of retirement plan contributions by Burnet; payment of marketing and/or other expenses; the ability to participate in bonus pools; and/or other rewards) that are tied, in part, to the direction of clients' business to Burnet Title.

32. Material facts regarding the above-described programs and practices are not disclosed to class members by Burnet.

33. The above-described programs and practices create a conflict of interest between Burnet and its clients that infects the fiduciary relationship and impairs Burnet's ability to render objective and unbiased advice to its clients.

34. Burnet does not objectively present all material facts about available title insurance and settlement service providers describing their attributes and rates so clients can make an informed choice as to what is in their best interest.

35. Effective August 1, 2004, Minn. Stat. § 82.19 prohibited a licensee from accepting or giving any undisclosed compensation or from realizing any direct or indirect remuneration that inures to the benefit of the licensee on an expenditure made for a principal.

36. Burnet owes fiduciary duties to its clients and therefore is obligated to act in its clients' best interests at all times; avoid conflicts of interests and self-dealing; make a fair, balanced

and objective presentation of all material facts known to it which might affect the clients' rights or interests, without ambiguity or reservation, and not only present selective facts geared towards selling and/or promoting an affiliate's goods and services. Burnet fails to satisfy this standard.

D. Any Affiliated Business Disclosures Burnet Provides Do Not Satisfy Its Obligations As A Fiduciary to Disclose All Material Facts to its Clients.

37. The only disclosure that Burnet provides to its clients regarding Burnet Title's services and its referral activities is a standard form "Affiliated Business Disclosure." These Affiliated Business Disclosures may satisfy the minimum requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. §2601 *et seq.* ("RESPA"), but they do not satisfy the greater obligations of a fiduciary, under common law and state statutes, to fully disclose all material facts known to it which might affect the clients' rights or interests, without ambiguity or reservation. As a fiduciary, Burnet has an affirmative duty to disclose all material facts of which it is aware, that its clients would reasonably want to know, and to act in the clients' best interests. Among the material facts that Burnet does not disclose to clients on the Affiliated Business Disclosures (or otherwise) are those described in Paragraphs 22 and 31 above.

38. As a fiduciary, if Burnet is aware of other lower priced providers of comparable goods and services, then it has to disclose those material facts to its clients in the Class. Instead of affirmatively disclosing all material facts about Burnet Title's fees, the Affiliated Business Disclosures that Defendant provides only deceptively, ambiguously, and incompletely indicate: "There are frequently other settlement service providers available with similar services. You are free to shop around to determine that you are receiving the best services and the best rate for these services." This improperly attempts to shift Burnet's duties and responsibilities to act in its clients'

best interests at all times and to affirmatively disclose all material facts it possesses, without ambiguity or reservation, to its unsuspecting clients.

39. Additionally, the Affiliated Business Disclosures do not convey all material facts about the internal pressures and incentives given to sales associates (and/or managers) to refer clients' business to Burnet Title. Specific facts about the financial benefits flowing to the sales associates from the above-described incentive programs are known to Burnet, yet are not fully disclosed to the clients. Instead the Affiliated Business Disclosures only deceptively, ambiguously, and incompletely provide: "Because of these relationships, the referral of business to these companies may provide us or other related parties noted herein a financial or other benefit. We will not be paid a referral fee as a result of any referral to the non-real estate brokerage companies."

40. Burnet is obligated to obtain the informed consent of its clients after full disclosure of all material facts before engaging in any activity which creates a conflict of interest. Burnet does not do this but rather omits common material facts in its communications with class members.

V. INJURY AND DAMAGE

41. By the above-described conduct and bad faith, Burnet caused actual harm, injury and damage to the Gradys and each member of the Class. Among other things, Burnet: (1) impaired class members' ability to shop and compare a range of title insurance and closing service providers; (2) caused class members to pay more money than necessary for comparable title insurance and closing services than had Burnet fulfilled its fiduciary duties.

42. A broker has a duty not to profit from the subject of the agency without the principal's informed consent, freely given after full disclosure of any facts that might influence the principal's

judgment. All profits made in the course of the agency belong to the principal whether they are the fruits of performance or violation of the agent's duty. By the above-described conduct, Burnet has forfeited its right to compensation from the agency relationship.

CLASS ALLEGATIONS

43. As referred to in this Complaint, the "Class Period" runs from the date six years preceding the date this action was commenced, and continues through the present.

44. The Gradys bring this action, pursuant to Rules 23.01, 23.02(b), and 23.02(c) of the Minnesota Rules of Civil Procedure. The Class which the Gradys seek to represent is defined as:

All citizens of the State of Minnesota who during the Class Period:

(a) were party to a transaction for the purchase or sale of residential real estate;

(b) in Hennepin, Ramsey, Scott, Anoka, Washington, Dakota, or Carver counties;

(c) entered into a buyer representation or listing contract with Burnet for buyer's representation, seller's representation and/or dual representation services as those terms are defined in Minn. Stat. § 82.22;

(d) were referred to Burnet Title for title insurance and/or settlement services;

(e) paid for the goods, insurance and/or services that Burnet Title provided, as depicted on their final HUD-1 Settlement Statement.

(Referred to herein as the "Class"). Specifically excluded from the Class are any employees of Defendant and any employees of the Court.

45. All requirements of MINN. R. CIV. P. 23.01 and 23.02 are satisfied and class certification is proper.

46. **MINN. R. CIV. P. 23.01(a) – Numerosity:** The members of the Class are so numerous that joinder of all members is impracticable. Burnet engaged in more than 10,000

transactions during the Class Period where it directed class members' business to Burnet Title without disclosing all material facts, as described above.

47. **MINN. R. CIV. P. 23.01(b) – Commonality:** There are questions of law or fact common to the claims of all putative class members. Common questions of law and/or fact which are capable of resolution on a classwide basis include, but are not limited to:

a. Whether Burnet's above-described activities breached its fiduciary duties to its clients?

b. What material facts related to the referral of business to an affiliated title company had to be disclosed to Burnet's clients in order to satisfy those fiduciary duties?

c. Whether Burnet satisfied its obligation to act in its clients' best interests at all times?

d. Whether Burnet fully disclosed all conflicts of interest it had with class members it contracted to represent?

e. Whether Burnet made common omissions of material fact?

f. Whether Burnet's conduct omitting material facts constitutes a misrepresentation, misleading statement, deceptive practice under Minn. Stat. § 325F.69 *et seq.*?

g. Whether Burnet satisfied its obligation to fully account for all fees and things of value earned while working on behalf of its client?

h. What type of damages and other relief are due class members?

48. **MINN. R. CIV. P. 23.01(c) – Typicality:** The Gradys' claims are typical of the claims of the members of the Class. The Gradys' claims for relief arise from the same course of conduct that gives rise to the claims of the other class members and are based upon the same legal or remedial theories. The Gradys' interests are aligned with the common questions affecting the class as a whole. All class members seek to correct and to be compensated for the same failure by a

common fiduciary to disclose material facts and to engage in conduct that was in the best interest of its principals.

49. **MINN. R. CIV. P. 23.01(d) – Adequacy:** The Gradys will fairly and adequately represent and protect the interests of the members of the Class and have retained competent counsel experienced in class litigation. The Gradys are members of the Class and do not have interests antagonistic to or in conflict with members of the Class. Neither the Gradys nor their counsel have any interests which might cause them to not vigorously pursue this claim. The Gradys' claims are the same as those of the claims of the Class, which all arise from the same operative facts and are based on the same legal theories.

50. **MINN. R. CIV. P. 23.02(c) – Predominance:** There are questions of law or fact common to the Class which predominate over questions solely affecting individual members of the class. Many of the common questions that predominate are listed in the above section on commonality.

51. **MINN. R. CIV. P. 23.02(c) – Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. The damages suffered by individual Class members are relatively small compared to the burden and expense of individual prosecution of the litigation needed to address Burnet's conduct. Moreover, since Burnet routinely failed to disclose material facts to members of the Class, most class members are not even aware that they have been harmed and paid higher prices. Further, it would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them individually. Even if Class members themselves could afford such individual litigation, the court system could not handle it,

given the size of the Class. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties. It allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

52. **MINN. R. CIV. P. 23.02(b)** - Certification of the Class pursuant to MINN. R. CIV. P. 23.02(b) is also appropriate. The practices complained of are ongoing. Burnet has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and injunctive relief with respect to the members of the Class as a whole. The Gradys seek to enjoin Burnet from further similar acts in the future so that others (including members of the Class who may engage in another transaction with Burnet) are not overcharged in a similar way.

53. Certification pursuant to MINN. R. CIV. P. 23.02(b) is appropriate in addition to certification pursuant to MINN. R. CIV. P. 23.02(c), or in the alternative.

COUNT I
BREACH OF FIDUCIARY DUTY:
Failure to Disclose the Availability of Lower-Cost Title and Closing Services

54. The allegations of each of the preceding paragraphs are incorporated by reference as if fully set forth here.

55. As each class member's real estate broker, Burnet owed each of the class members certain fiduciary duties imposed by both statute and common law. Minn. Stat. § 82.22 (recodified from Minn. Stat. § 82.197 effective August 1, 2004, 2004 Minn. Sess. Law, ch. 203, art. 2, §21).

56. Burnet owed each class member the following fiduciary duties:

a. The Duty of Loyalty: Burnet was obligated to act only in its client's best interest at all times.

b. The Duty to Disclose: Burnet was obligated to disclose to its clients all material facts of which Burnet had knowledge which might reasonably affect the client's interests.

c. The Duty to Exercise Reasonable Care: Burnet was obligated to exercise reasonable care in performing all duties as an agent.

d. The Duty to Account: Burnet was obligated to account to class members for all money and property received as agent for the class members.

57. The fiduciary duty of loyalty requires Burnet to act in good faith toward its clients and to act in its clients' best interests at all times. Acting in good faith requires that brokers disclose all material facts of which the broker has knowledge that might affect its clients' rights or interests.

58. The standard for good faith disclosure under the fiduciary duty of loyalty requires that there be no ambiguity or reservation in the disclosure of information that might affect the clients' rights or interests.

59. Through the above-described conduct, Burnet breached its fiduciary duty of loyalty by failing to disclose in good faith all material facts to clients in the Class, as described above, including its failure to disclose in good faith to its clients that there are other specific providers of title insurance and closing services in the market that charge substantially lower prices than Burnet Title. The availability of specific lower priced providers of title insurance and closing services known to

Burnet is a material fact which should have been disclosed in good faith to class members with particularity. Burnet also breached its fiduciary duty of loyalty to all class members by failing to act only in the best interests of its clients at all times because acquiring knowledge about price ranges in the market for title insurance and closing services—knowledge which Burnet possessed—is in the clients' best interests.

60. In addition, prior to August 1, 2004, Burnet had a fiduciary duty of disclosure which required brokers to "disclose to client(s) all material facts of which [the] broker/salesperson has knowledge which might reasonably affect the client's rights and interests." Minn. Stat. § 82.197 (2004) (recodified and amended effective August 1, 2004, 2004 Minn. Sess. Law ch. 203, art. 2, §21).

61. Burnet breached its fiduciary duty of disclosure to all class members whose closing date preceded August 1, 2004 by failing to disclose to its clients there were other specific providers of title insurance and closing services in the market that charge lower prices than Burnet Title. The availability of specific lower priced providers of title insurance and closing services known to Burnet is a material fact which should have been disclosed to class members with particularity.

62. As a result of Burnet's conduct, the Gradys and all members of the Class have been injured and incurred financial loss and damage.

63. Based on the foregoing, the Gradys and all other members of the Class are entitled to damages, injunctive and equitable relief, including but not limited to restitution and disgorgement of all fees and compensation paid, interest on all such amounts, an award of their legal expenses and fees, and any other relief that is just and proper in the circumstances.

COUNT II
BREACH OF FIDUCIARY DUTY:
Failure to Disclose the Availability of Comparable Title Insurance and Closing Services at a Lower Price

64. The allegations of each of the preceding paragraphs are incorporated by reference as if fully set forth here.

65. Burnet knows that its clients are required to purchase title insurance and/or closing services to complete their primary transaction for the purchase and/or sale of real estate. Burnet knows that its clients generally rely on their real estate broker's and/or sales associate's recommendations of a provider for title insurance and closing services. Burnet is or should be aware of particular lower-priced alternatives to Burnet Title in the markets in which it operates.

66. The ability to purchase the same or comparable title insurance and closing services at a substantially lower cost is a fact material to class members' interests in paying low prices.

67. Burnet breached its duty of loyalty to clients in the Class by routinely directing its clients to Burnet Title for title and closing services instead of referring Plaintiffs to a lower-cost provider of comparable title insurance and closing services.

68. As described above, Burnet breached its fiduciary duty of loyalty to its clients in the Class by failing to disclose in good faith, without reservation or ambiguity, that other providers of title insurance and closing services charge substantially lower prices than Burnet Title for the same or comparable goods and services.

69. Burnet also breached its fiduciary duty of disclosure by failing to disclose to its clients in the Class who closed before August 1, 2004 that there are other specific providers of title

insurance and closing services in the market that charge substantially lower prices than Burnet Title for the same or comparable goods and services.

70. As a result of Burnet's conduct, the Gradys and all members of the Class have been injured and incurred financial loss and damage by purchasing title insurance and closing services from Burnet Title when they could have purchased substantially similar title insurance and closing services for lower prices from other providers.

71. Based on the foregoing, the Gradys and all other members of the Class are entitled to damages, injunctive and equitable relief, including but not limited to restitution and disgorgement of all fees and compensation paid, interest on all such amounts, an award of their legal expenses and fees, and any other relief that is just and proper in the circumstances.

COUNT III
BREACH OF FIDUCIARY DUTY:
Failure to Fully Disclose Incentives and Pressures to Steer Clients to Burnet Title

72. The allegations of each of the preceding paragraphs are incorporated by reference as if fully set forth here.

73. At all relevant times, Burnet and Burnet Title have been owned by the same parent company, which was in a position to profit from Burnet referring its clients to Burnet Title. Burnet, Burnet Title and their common parent(s) share an interest in maximizing each company's revenues and profits.

74. Burnet employed a policy of promoting Burnet Title over alternative providers of title insurance and closing services with lower rates and steering clients in the Class to use Burnet Title instead of those alternative providers.

75. Burnet facilitated this policy by: (a) imposing pressure on sales associates to direct their clients' closing and title insurance business to Burnet Title, instead of lower-priced competitors; (b) training sales associates to direct clients' closing and title insurance business to Burnet Title instead of lower-priced competitors; (c) creating internal barriers which make it more difficult for a sales associate to recommend and use a title company other than Burnet Title; (d) creating impediments for third party title companies to market their goods and services to its sales associates while assisting Burnet Title in doing so, and; (e) offering financial and/or other incentives to its sales associates in order to entice them to recommend and refer class members' closing and title insurance business to Burnet Title, as opposed to other providers.

76. Burnet's interest in routinely arranging for class members to purchase title insurance and closing services from Burnet Title was adverse to the class members' interest in: (a) knowing about specific cost saving alternatives, and (b) paying low prices for title insurance and closing services.

77. By promoting and routinely arranging for clients to use Burnet Title, Burnet acted in its own self-interest and adversely to class members' interests.

78. The standard of disclosure of conflict of interests under the fiduciary duty of loyalty requires that there be no ambiguity or reservation in the disclosure of the conflict and related material facts.

79. Burnet directed class members to its affiliate closing company, Burnet Title, without full and complete disclosure of its adverse and conflicting interests. Burnet did not disclose with any specificity that it: (a) imposes pressure on sales associates to direct their clients' closing and title

insurance business to Burnet Title, instead of lower-priced competitors; (b) trains sales associates to direct clients' closing and title insurance business to Burnet Title instead of lower-priced competitors; (c) creates internal barriers which make it more difficult for a sales associate to recommend and use a title company other than Burnet Title; (d) creates impediments for third party title companies to market their title insurance and services to its sales associates while assisting Burnet Title in doing so, and; (e) offers financial and/or other incentives to its sales associates in order to entice them to recommend and direct class members' closing and title insurance business to Burnet Title, as opposed to other providers.

80. Burnet thereby breached its fiduciary duty of loyalty by acting adversely to class members without fully disclosing its adverse interests.

81. Burnet also breached its fiduciary duty of loyalty by failing to disclose in good faith to class members all material facts of which it had knowledge in connection with the transaction. Among other material facts, Burnet did not disclose in good faith to class members that it had created an interest for itself in steering its clients to Burnet Title.

82. Burnet also breached its fiduciary duty of disclosure by failing to disclose to class members who closed their real estate transaction before August 1, 2004 all material facts which might reasonably affect those class members' rights and interests. Among other material facts, Burnet did not disclose to class members that it had created an interest for its sales associates to steer its clients to Burnet Title.

83. Burnet also breached its fiduciary duty to account to class members by failing to disclose with specificity all sums, compensation, remuneration, benefits and/or other things of value accepted or provided in the course of the agency transaction.

84. As a result of Burnet's conduct, the Gradys and all members of the Class have been injured and incurred financial loss and damage.

85. Based on the foregoing, the Gradys and all other members of the Class are entitled to damages, injunctive and equitable relief, including but not limited to restitution and disgorgement of all fees and compensation paid, interest on all such amounts, an award of their legal expenses and fees, and any other relief that is just and proper in the circumstances.

COUNT IV
BREACH OF FIDUCIARY DUTY:
Failure to Disclose Material Facts Required by Minn. Stat. § 82.19

86. The allegations of each of the preceding paragraphs are incorporated by reference as if fully set forth here.

87. In addition to any common law or other statutory duties to disclose, Minn. Stat. § 82.19, effective August 1, 2004, prohibits a licensee from accepting or giving any undisclosed compensation or from realizing any direct or indirect remuneration that inures to the benefit of the licensee on an expenditure made for a principal. 2004 Minn. Sess. Law ch. 203, art. 2, §19, subd. 2.

88. Both Burnet and its sales associates are licensees with the meaning of Minn. Stat. § 82.19.

89. Burnet and its sales associates accepted and/or gave undisclosed compensation and/or realized direct or indirect remuneration that inured to their benefit on an expenditure made for a principal.

90. Facts related to such activities were material and were required to be fully and completely disclosed in good faith by Burnet to class members who signed representation agreements after August 1, 2004 pursuant to Minn. Stat. § 82.19.

91. Burnet failed to disclose to class members with specificity all sums, compensation, remuneration, benefits and/or other things of value accepted, provided or otherwise exchanged in the course of class members' agency transactions.

92. Violations of Minn. Stat. § 82.19 constitute a breach of the fiduciary duty of the broker. By violating Minn. Stat. § 82.19, Burnet breached its fiduciary duties of loyalty, to account, and of disclosure to class members who signed representation agreements after August 1, 2004.

93. As a result of Burnet's conduct, all members of the Class who signed representation agreements on or after August 1, 2004 have been injured and incurred financial loss and damage.

94. Based on the foregoing, all other members of the Class who signed representation agreements after August 1, 2004 are entitled to damages, injunctive and equitable relief, including but not limited to restitution and disgorgement of all fees and compensation paid, interest on all such amounts, an award of their legal expenses and fees, and any other relief that is just and proper in the circumstances.

COUNT V
VIOLATION OF THE MINNESOTA CONSUMER FRAUD ACT, Minn. Stat. § 325F.69 et. seq.

95. The allegations of each of the preceding paragraphs are incorporated by reference as if fully set forth here.

96. The Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1 provides:

> The act, use or employment by any persons of any fraud, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided herein.

97. Violations of the Consumer Fraud Act are actionable through the private attorney general statute, Minn. Stat. § 8.31, subd. 3a. which provides that:

> In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.

98. Burnet sells goods, intangibles, insurance, real estate, and/or services that fall within the meaning of "merchandise" pursuant to Minn. Stat. § 325F.68, subd. 2.

99. As a fiduciary, Burnet had a duty to disclose to its clients all material facts regarding its arrangements for title insurance and closing services for its clients.

100. Burnet failed to disclose to the Gradys and to all other clients in the Class the material fact that the clients could have obtained lower priced title insurance and closing services from other service providers.

101. Failure by Burnet to make this disclosure was a fraud, misrepresentation or deceptive practice as to the Gradys and as to each of the class members, and thus constitutes violation of the Consumer Fraud Act as to the Gradys and as to each of the class members.

102. Burnet failed to disclose to the Gradys and to all other clients in the Class the material

fact that Burnet Title was one of the higher priced title and closing services in Minnesota.

103. Failure by Burnet to make this disclosure was a fraud, misrepresentation or deceptive practice as to the Gradys and as to each of the class members, and thus constitutes violation of the Consumer Fraud Act as to the Gradys and as to each of the class members.

104. Burnet failed to disclose to the Gradys and to all other clients in the Class the material fact that Burnet sales associates were provided incentives and were under pressure to make arrangements for clients to purchase Burnet Title's title insurance and closing services.

105. Burnet intended that clients in the Class rely on the above-described fraud, misrepresentation or deceptive practice in connection with the sale of such merchandise.

106. The Gradys and all other clients in the Class were injured and suffered financial loss as a result of Burnet's violations of the Consumer Fraud Act. As a result of Burnet's failure to disclose all material facts, clients in the Class were deprived of the information necessary to make an informed choice between Burnet Title and other title insurance and closing service providers, including lower cost service providers. This lost opportunity to bargain for lower priced title insurance and closing services resulted in Burnet's clients paying more for title and closing services than they should have resulting in injury and damage.

107. This lawsuit constitutes a public benefit because Burnet's conduct affected tens of thousands of real estate transactions in Minnesota. This lawsuit also constitutes a public benefit because the Gradys seek an injunction to prevent Burnet from engaging in this conduct in the future.

108. Based on the foregoing, the Gradys and all other members of the Class are entitled to damages, injunctive and equitable relief, including but not limited to restitution and disgorgement of

all fees and compensation paid, interest on all such amounts, an award of their legal expenses and fees, and any other relief that is just and proper in the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the entire Class, request the following relief:

1. An order certifying this case as a class action;

2. A declaratory judgment determining that a justiciable controversy exists between the Plaintiff Class and Burnet with respect to Burnet's conduct as described in this Complaint and determining that Burnet violated the law as described above;

3. Injunctive and equitable relief permanently enjoining Burnet from continuing the practices described above;

4. An order determining that Burnet has forfeited its right to compensation and requiring Burnet to refund to all amounts charged and collected in connection with a residential real estate transaction, together with interest;

5. Actual damages, along with prejudgment interest;

6. An order directing Burnet to disgorge all profits, interest, sums, fees, things of value, and other benefits obtained from the practices described above;

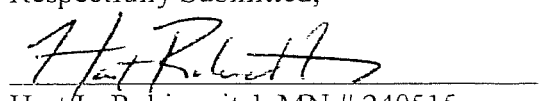
7. An order awarding Plaintiffs and the Class all costs, disbursements and reasonable attorneys' fees incurred in bringing this action;

8. Any other relief as the Court deems just and proper in the premises.

TRIAL BY JURY DEMANDED

Respectfully Submitted,

Dated: February 20, 2007



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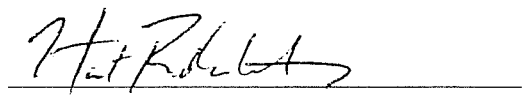
ATTORNEYS FOR PLAINTIFFS AND THE CLASS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: February 20, 2007



Settlement Statement

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0265

B. Type of Loan

1. [ ] FHA 2. [ ] FmHA 3. [X] Conv.Unins. 4. [ ] VA 5. [ ] Conv.Ins.

6. File Number: 3-30650-TDJ

7. Loan Number: 22391310

8. Mortgage Insurance Case Number:

C. NOTE. THIS NOTE IS FURNISHED TO GIVE YOU A STATEMENT OF ACTUAL SETTLEMENT COSTS. AMOUNTS PAID TO AND BY THE SETTLEMENT AGENT ARE SHOWN. ITEMS MARKED "(P.O.C.)" WERE PAID OUTSIDE THE CLOSING; THEY ARE SHOWN HERE FOR INFORMATIONAL PURPOSES AND NOT INCLUDED IN THE TOTALS.

D. Name and Address of Borrower
KENNETH L. GRADY AND DYLET J. GRADY

5700 73RD AVE N

BROOKLYN PARK, MN 55420

E. Name and Address of Seller
GENDECO, LLC

6009 WAYZATA BLVD, #220
ST. LOUIS PARK, MN 55416

F. Name and Address of Lender
COUNTRYWIDE HOME LOANS, INC.
8431 JOINER WAY,
EDEN PRAIRIE, MN 55344

G. PROPERTY LOCATION
1407 MORGAN AVENUE NORTH,
MINNEAPOLIS, MN 55411

H. Settlement Agent
BURNET TITLE

Place of Settlement
7550 FRANCE AVENUE SOUTH,
EDINA, MN 55435

I. Settlement Date / Disbursement Date
6/3/2003 10:00:00 AM/6/3/2003

J. SUMMARY OF BORROWER'S TRANSACTIONS		K. SUMMARY OF SELLER'S TRANSACTIONS	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Purchase Price	$189,800.00	401. Purchase Price	$189,800.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower	$2,394.78	403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance		Adjustments For Items Paid By Seller In Advance	
106. City/Town Taxes		406. City/Town Taxes	
107. County Taxes		407. County Taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower	$192,194.78	420. Gross Amount Due To Seller	$189,800.00
200. Amounts Paid By Or In Behalf Of Borrower		500. Reductions In Amount Due To Seller	
201. Earnest Money	$1,000.00	501. Excess deposit	
202. Principal from Countrywide Home Loans, Inc.	$189,800.00	502. Settlement Charges To Seller (line 1400)	$11,354.82
203. Existing loan(s) taken subject to		503. Existing Loan(s) taken Subject To	
204.		504. Net Payoff to MEI	$138,135.63
205.		505. Payoff of Second Mortgage Loan	
206.		506.	
207.		507.	
208.		508.	
209		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/Town Taxes		510. City/Town Taxes	
211. County Taxes		511. County Taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	$190,800.00	520. Total Reduction Amount Due Seller	$150,490.45
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount Due From Borrower (line 120)	$192,194.78	601. Gross Amount Due To Seller (line 420)	$189,800.00
302. Less Amounts Paid By/For Borrower (line 220)	$190,800.00	602. Less Deductions In Amt. Due To Seller (line 520)	$150,490.45
303. Cash [X] From [ ] To Borrower	$1,394.78	603. Cash [X] To [ ] From Seller	$39,309.55

Payoff(s):

EXHIBIT
tabbies
A

..-TDJ
lement Statement

	Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. Total Sales Commission 189800.00 @ 5 % = 9490.00		
Division of Commission (line 700) As Follows:		
701. $4365.40 to Farrington Realty		
702. $5124.60 to Coldwell Banker Burnet		
703. Commission paid at settlement		$9,490.00
705. Broker Administrative Comm. (Buyer) to Coldwell Banker Burnet	$250.00	
800. Items Payable In Connection With Loan		
801. Loan Origination Fee		
802. Loan Discount		
803. Appraisal Fee to Breitendieloy and Jenkins (POC 225.00)		
804. Credit Report to Land Safe (POC 35.00)		
805. Lender's Inspection Fee		
808. Underwriting Fee to Countrywide Home Loans, Inc.	$225.00	
811. Processing Fee to Countrywide Home Loans, Inc.	$225.00	
812. Flood Cert. Fee to Lendsafe Flood	$25.00	
900. Items Required By Lender To Be Paid In Advance		
901. Interest from 6/3/03 to 6/1/03 @31.2000/day	-$62.40	
902. Mortgage Insurance Premium for		
903. Hazard Insurance Premium for		
1000. Reserves Deposited With Lender		
1001. Hazard Ins Reserve 2 mo @ 37.17 / mo Countrywide Home Loans, Inc.	$74.34	
1002. Mortgage Ins Reserve 0 mo @ 156.08 / mo Countrywide Home Loans, Inc.		
1004. County Tax Reserve 5 mo @ 41.66 / mo Countrywide Home Loans, Inc.	$208.30	
1009. Aggregate Accounting Adjustment from Countrywide Home Loans, Inc.	-$111.48	
1100. Title Charges		
1101. Settlement or closing fee to Burnet Title / First Financial Title	$250.00	$225.00
1102. Title Evidence to Burnet Title		$185.00
1103. Title examination to Burnet Title	$130.00	
1106. Assessment and Search Review to Burnet Title		$30.00
1107. Doc Prep Fee		
1108. Title Insurance to Burnet Title	$552.50	$205.00
1109. Lender's Coverage $189800.00 ($552.50)		
1110. Owner's coverage $189800.00 ($205.00)		
1112. Plat / Inspection and Review to Burnet Title		
1113. Name Search and Review to Burnet Title	$60.00	
1114. Recording Service Charge to Burnet Title	$26.00	
1115. Courier Service & Processing to Burnet Title	$43.00	$64.50
1116. Wire Fee to Burnet Title		$25.00
1200. Government Recording And Transfer Charges		$25.00
1201. Recording Fees: Deed $ 20.00; Mortgage $ 20.00	$40.00	
1202. Mortgage Reg Tax $ 455.52	$455.52	
1203. State Deed Tax $ 645.32		$645.32
1204. Conservation Fee to Burnet Title	$5.00	$5.00
1205.		
1207. Release of Mortgage / COR to Burnet Title		$60.00
1300. Additional Settlement Charges		
1303. Home Warranty to AON		$365.00
1304. Courier Fee to First Financial Title		$30.00
1400. Total Settlement Charges (Enter On Lines 103, Section J And 502, Section K)	$2,394.78	$11,354.82

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief it is true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD Settlement Statement.

BUYERS

Kenneth L. Grady

Dylet J. Grady

SELLERS

Gendaco, LLC

By: Thomas Poland CONTROLLER

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

BURNET TITLE

Date

6/3/2003 10:00:00 AM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

CERTIFICATE OF REPRESENTION AND PARTIES

Date Case Filed: _____ File Number: _____

Kenneth L. Grady, et al. v. Burnet Realty Inc.

Pursuant to Rule 104 (Minnesota General Rules of Practice), this form must be completed and filed with the Court Administrator's Office at the initial filing date. Failure to file this form WILL result in the case being automatically dismissed without prejudice under Rule 41.02.

LIST ALL ATTORNEYS/PRO SE PARTIES INVOLVED IN THIS CASE.

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ATTORNEYS FOR DEFENDANTS
(If not known, name party and address)

Registered Agent:
Corporation Service Company
BURNET REALTY, INC.
d/b/a COLDWELL BANKER BURNET
380 Jackson Street, #418
St. Paul, MN 55101

(continued to next page)

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2/20/07
Date

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Attorney for Plaintiffs