

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----  
TCF National Bank,

No. \_\_\_\_\_

Plaintiff,

vs.

Market Intelligence, Inc.; Fidelity  
National Information Services, Inc.; LSI  
Appraisal, LLC; and Lender Processing  
Services, Inc.,

Defendants.

-----  
**COMPLAINT**

Demand for Jury Trial  
-----

Plaintiff TCF National Bank complains of Defendants Market Intelligence, Inc.; Fidelity National Information Services, Inc.; LSI Appraisal, LLC; and Lender Processing Services, Inc., and alleges:

1. This action concerns “evaluations and appraisals of residential real properties for the purpose of determining estimated market value.” Defendant Market Intelligence, Inc., performed such “evaluations and appraisals” for Plaintiff TCF National Bank. But the evaluations and appraisals negligently inflated the properties’ values, inducing the Plaintiff to enter into loans into which the Plaintiff would not have entered but for the inflated values, and for higher amounts than if

the values had been realistic rather than inflated, resulting in financial losses when the Plaintiff foreclosed on or charged off the mortgages.

### **Jurisdiction and Venue**

2. This Court has jurisdiction over this action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

3. Venue properly lies in this judicial district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

### **Parties**

4. Plaintiff TCF National Bank is a national banking association located in Arizona, Colorado, Illinois, Indiana, Michigan, Minnesota, South Dakota, and Wisconsin, and its main office in Sioux Falls, South Dakota. For this pleading's purposes, "TCF" means Plaintiff TCF National Bank.

5. Defendant Market Intelligence, Inc., is a Massachusetts corporation with its principal place of business in Milford, Massachusetts. For this pleading's purposes, "MI" means Defendant Market Intelligence, Inc.

6. Defendant Fidelity National Information Services, Inc., is a Delaware corporation with its principal place of business in Jacksonville, Florida.

7. Defendant LSI Appraisal, LLC, is a Delaware limited-liability company with its principal place of business in Wilmington, Delaware.

8. Defendant Lender Processing Services, Inc., is a Delaware corporation with its principal place of business in Jacksonville, Florida.

9. On information and belief, Defendant Fidelity National Information Services, Inc., or Defendant LSI Appraisal, LLC, or Defendant Lender Processing Services, Inc., is the successor in interest to Defendant Market Intelligence, Inc., with respect to the Agreement that is this action's subject matter. Defendant Fidelity National Information Services, Inc., or Defendant LSI Appraisal, LLC, or Defendant Lender Processing Services, Inc., is therefore the real party in interest with respect to TCF's claims.

### **Facts**

10. TCF loans money to consumers for residential mortgages in Minnesota and other states.

11. MI offers property-valuations services for residential real estate.

12. Sometime in late 2001, TCF and MI began discussing a contract under which MI would sell property-valuation products and services to TCF.

13. MI marketed itself and its products and services to TCF with materials that stated:

### QUALITY CONTROL

Market Intelligence understands that our clients rely on our property evaluation and appraisal products to make important financial decisions. The estimates of market value which we provide are an integral part of both the loss mitigation process, and collateral underwriting for consumer lending. Quality is a function of teamwork, all hands in the organization working together focused on the same goal; serving the client. Quality Control begins with the careful selection and supervision of our field agents, and continues through a 100% review process by qualified real estate analysts and appraisers.

14. MI knew and understood that TCF would be using and relying upon its products and services in underwriting loans for residential mortgages.

15. MI knew and understood that its property-evaluation practices, and the resulting quality of its property-evaluation products and services, would directly and materially affect TCF's risk and exposure in loaning money for residential mortgages.

16. On or about June 11, 2002, TCF and MI entered into the Agreement to Purchase Services. For this pleading's purposes, the "Agreement" means the Agreement to Purchase Services (June 11, 2002). This complaint attaches a copy of the Agreement as Exhibit A.

17. The Agreement (¶ 1) provided that "MI agrees to provide to TCF, and TCF agrees to purchase from MI, services, which include, but are not limited to, evaluations and appraisals of residential real properties for the purpose of determining estimated market value."

18. The Agreement (§ 4(A)(3)) described various available products and services, including “Evaluation Services” including a “Field Asset Verification (FAV),” as to which the Agreement provided:

The FAV is a residential real property evaluation derived from a process that combines an external data source value (previous appraisal, automated estimate, prior sales price, etc.) with a “drive-by” exterior inspection of the subject property by an agent licensed in residential real estate in the state in which the subject property is located. The agent, who may be an appraiser but is usually a real estate agent, also provides at least one comparable sale, and other local market data. This produce is intended primarily for use in consumer/home equity lending and the second mortgage market. The field Asset Verification is not an appraisal and does not include either (a) a physical inspection of the interior of the subject property, or (b) photographs of the interior or exterior of the property, although photographs will be provided on request as will additional market data such as active listings.

19. From 2002 through 2005, TCF ordered and MI performed Field Asset Verifications in connection with 2,989 residential mortgage loans that TCF originated. These loans were worth about \$300 million.

20. On February 11, 2005, pursuant to the Agreement (§ 2), TCF terminated the Agreement effective June 11, 2005.

21. After TCF terminated the Agreement, TCF discovered that many Field Asset Verifications performed by MI had grossly overestimated the value of properties whose mortgages were in default or foreclosure.

22. The decline in the properties' value between the Field Asset Verification and the default or foreclosure was so significant that it could not be fairly attributed entirely to the declining real-estate market.

23. The inflated values in MI's Field Asset Verifications resulted from gross negligence, malfeasance, or willful misconduct by MI or its agents.

24. For example, MI's agents sometimes—

- (a) ignored comparable sales in the relevant market that were more similar than the comparable sale on which the agent based his or her value;
- (b) ignored comparable sales in the same building;
- (c) ignored the property's tax-assessed value, and instead arrived at a value that was often as high as double the assessed value;
- (d) failed to consider issues about the property's condition that were easily visible from the street; and
- (e) blindly relied on the property owner's estimate without independently analyzing the property's value.

25. The inflated values in MI's Field Asset Verifications induced TCF to enter into loans that TCF would not have entered into if the values had been realistic rather than inflated.

26. The inflated values in MI's Field Asset Verifications induced TCF to enter into loans for higher amounts than TCF would have loaned if the values had been realistic rather than inflated.

27. TCF suffered financial losses when it foreclosed on, or charged off, mortgages as to which MI had performed a Field Asset Verification that resulted in an inflated value.

28. As of August 2008, TCF calculated that at least 32 such mortgages had gone into default, where the properties' inflated value according to MI's Field Asset Verifications was at least \$1,629,000 more than their realistic value.

29. On August 11, 2008, TCF demanded that MI compensate TCF for its losses due to MI's gross negligence with respect to the 32 defaulted loans.

30. MI requested further information on the loans. TCF responded by furnishing detailed information about five typical loans. MI never responded after TCF furnished the additional information that MI requested.

31. As of this complaint's date, the financial losses that TCF suffered when it foreclosed on, or charged off, mortgages as to which MI had performed a Field Asset Verification that resulted in an inflated value were at least \$3,323,242. That amount will increase if TCF must foreclose on or charge off other mortgages as to which MI performed a Field Asset Verification that resulted in an inflated value.

32. All conditions precedent have been performed or have occurred.

**Count I**  
**Fraudulent Inducement**

33. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

34. MI marketed its products and services, including its Field Asset Verifications, by making these statements to TCF:

- (a) "To really meet the needs of real estate lenders, MI combines the speed and data of today's information providers with the street smarts of veteran real estate appraisers."
- (b) "100% QUALITY REVIEW All evaluations and appraisals are reviewed for quality as part of the MI process. Field work is reviewed and signed off by a qualified real estate appraiser."
- (c) "... [E]valuations must be written, contain enough information to support an estimate of value, describe the property and its condition and use, and be conducted by individuals with relevant training or experience and knowledge."

35. TCF believed and relied upon MI's statements.

36. TCF's reliance upon MI's statements was justified.

37. MI's statements were false:



- (a) The Field Asset Verifications were often performed by agents who were not “veteran real estate appraisers,” and without the meaningful involvement of “veteran real estate appraisers” in the process.
- (b) The Field Asset Verifications were not “reviewed for quality” in any meaningful way (or any such review was so grossly negligent as to be meaningless and worthless).
- (c) The Field Asset Verifications often did not “contain enough information to support an estimate of value,” did not adequately or competently “describe the property and its condition and use,” and were not “conducted by individuals with relevant training or experience and knowledge.”

38. TCF’s assent to the Agreement was induced by MI’s false statements.

39. TCF would not have entered into the Agreement but for MI’s false statements.

40. MI’s false statements directly and proximately damaged TCF.

41. TCF is entitled to damages in an amount according to proof.

**Count II**  
**Negligent Appraisal**

42. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

43. Each Field Asset Verification that MI performed for TCF was an "appraisal" and a "real estate appraisal" within the meaning of Minn. Stat. § 82B.021, subd. 6.

44. TCF is a "person" within the meaning of Minn. Stat. § 82B.021, subd. 20.

45. TCF has been injured by MI's violation of the standards, duties, prohibitions, or requirements of Minn. Stat. § 82B.20, including but not necessarily limited to these violations:

- (a) on information and belief, MI's agents who performed the Field Asset Verifications failed to meet the minimum qualifications established by Minnesota Statutes chapter 82B, in violation of Minn. Stat. § 82B.20, subd. 2(2);
- (b) MI failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal, in violation of Minn. Stat. § 82B.20, subd. 2(6);

- (c) MI engaged in negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal, in violation of Minn. Stat. § 82B.20, subd. 2(7); and
- (d) MI and its agents have violated standards of professional practice, in violation of Minn. Stat. § 82B.20, subd. 2(13).

46. MI's negligent appraisal directly and proximately damaged TCF.

47. TCF is entitled to damages in an amount according to proof.

48. TCF is entitled to its costs and disbursements herein, including its costs of investigation and reasonable attorney's fees pursuant to Minn. Stat. § 8.31, subd. 3a (as provided in Minn. Stat. § 82B.24, subd. 2).

## **Count II Gross Negligence**

49. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

50. The inflated values in MI's Field Asset Verifications resulted from gross negligence, malfeasance, or willful misconduct by MI or its agents.

51. For example, MI's agents sometimes—

- (a) ignored comparable sales in the relevant market that were more similar than the comparable sale on which the agent based his or her value;

- (b) ignored comparable sales in the same building;
  - (c) ignored the property's tax-assessed value, and instead arrived at a value that was often as high as double the assessed value;
  - (d) failed to consider issues about the property's condition that were easily visible from the street; and
  - (e) blindly relied on the property owner's estimate without independently analyzing the property's value.
52. MI's gross negligence directly and proximately damaged TCF.
53. TCF is entitled to damages in an amount according to proof.

**Count IV  
Fraud**

54. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

55. On August 29, 2002, TCF's executive vice-president Tim B. Meyer wrote to Ted Mara of MI:

Attached is a Field Asset Verification done by Market Intelligence in August 2002. This account was caught by one of my Regional Managers and raises some questions that I hope you can shed some light on.

A customer purchased the property one year ago for \$149,000 and the county assessed tax value is \$120,000. The customer estimated the property value at \$235,000 and TCF subsequently ordered a FAV. The FAV came back at a value of \$210,000.

We acknowledge that Minnesota has had higher than normal appreciation as compared to other markets in the country, but given

the significant value increase, my Regional Manager, at our own expense, ordered a full appraisal on the property which subsequently was completed and valued the property at \$165,000.

I would appreciate it if you could help us reconcile the significant difference between the FAV value and the appraisal. It seems unlikely that there would be this much disparity in the values, since in the FAV process, a real estate broker or appraiser is actually the one doing the driveby.

I would appreciate a response in writing such that we can continue to have comfort level with the quality of work that Market Intelligence does in our market.

56. MI responded to Mr. Meyer's letter by assuring TCF that MI was not engaged in practices that would produce a "significant difference between the FAV value and the appraisal" in other cases.

57. MI intended to induce TCF's reliance upon MI's assurances so that TCF would keep ordering Field Asset Valuations.

58. TCF believed and relied upon MI's assurances.

59. TCF's reliance was justified.

60. MI's assurances were false. MI was engaged in practices that would produce a "significant difference between the FAV value and the appraisal" in other cases.

61. MI's false assurances directly and proximately damaged TCF.

62. TCF is entitled to damages in an amount according to proof.

**Count V**  
**Consumer Fraud**

63. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

64. TCF is a "person" within the meaning of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, subd. 3, and is accordingly entitled to the Act's protection.

65. The Field Asset Verifications that MI sold to TCF are "merchandise" within the meaning of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, subd. 3.

66. TCF's purchase of each Field Asset Verifications from MI was a "sale" within the meaning of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, subd. 3.

67. MI's acts and omissions constitute "unlawful practices" within the meaning of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1, and thereby violate the Act to TCF's damage.

68. MI's fraud directly and proximately damaged TCF.

69. TCF is entitled to damages in an amount according to proof.

70. TCF is entitled to its costs and disbursements herein, including its costs of investigation and reasonable attorney's fees pursuant to Minn. Stat. § 8.31, subd. 3a.

**Count VI**  
**Deceptive Trade Practices**

71. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

72. MI's acts constitute deceptive trade practices in violation of the Uniform Deceptive Trade Practices Act.

73. MI has used a deceptive representation in connection with the Field Assets Verifications, which constitutes a deceptive trade practice in violation of the Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44(4), to TCF's damage.

74. MI represented that its Field Assets Verifications had characteristics that they did not have, which constitutes a deceptive trade practice in violation of the Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44(5), to TCF's damage.

75. MI represented that its Field Assets Verifications were of a particular standard, quality, or grade, but they were of another standard, quality, or grade, which constitutes a deceptive trade practice in violation of the Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44(7), to TCF's damage.

76. MI has willfully engaged in these and other deceptive trade practices, knowing them to be deceptive.

77. TCF's damage results directly and proximately from MI's deceptive trade practices.

78. TCF is entitled to damages in an amount according to proof.

79. TCF is entitled to its costs, including attorneys' fees, under Minn. Stat. § 325D.45, subd. 2(2).

**Count VII**  
**Interference with Business Relations**

80. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.

81. MI interfered with TCF's actual and prospective contractual and noncontractual business relations and advantage with its borrowers.

82. MI is not a party to TCF's business relationship with its borrowers.

83. MI's interference was intentional, improper, and without justification.

84. The damage that TCF has suffered results directly and proximately from MI's interference.

85. TCF is entitled to damages in an amount according to proof.



**Count VIII**  
**Breach of Covenant of Good Faith & Fair Dealing**

86. TCF adopts by reference and realleges the statements in this pleading's other paragraphs.
87. The Agreement contained an implied covenant of good faith and fair dealing.
88. MI owed and owes to TCF a duty of good faith and fair dealing.
89. TCF has dealt fairly and in good faith with MI.
90. MI has not dealt fairly and in good faith with TCF.
91. MI has injured TCF's right to receive the fruits of the agreement, to TCF's damage.
92. The damage that TCF has suffered results directly and proximately from MI's breach.
93. TCF is entitled to relief remedying MI's breach.

**Demand for Jury Trial**

94. TCF demands a trial by jury of any issue triable of right by a jury.

**Prayer for Relief**

Wherefore TCF demands judgment against the Defendants:

- (a) for general damages in an amount according to proof;

- (b) for its costs and disbursements herein, including its costs of investigation and reasonable attorney's fees pursuant to Minn. Stat. § 8.31, subd. 3a, and Minn. Stat. § 325D.45, subd. 2(2); and
- (c) for such other and further relief as may be just and equitable.

September 21, 2011.

FAEGRE & BENSON LLP

s/ Brian Melendez

Brian Melendez, No. 223633 (Minn.)  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
Ph. 612.766.7309  
Fax 612.766.1600

Attorneys for Plaintiff  
TCF National Bank

fb.us.5288017.03