

SETON HALL LAW SCHOOL  
CENTER FOR SOCIAL JUSTICE  
Civil Litigation Clinic  
833 McCarter Highway  
Newark, NJ 07102  
(973) 642-8700  
Constance DeSena, R. 1:21-3(b)  
Jessica Perl, R. 1:21-3(b)  
Linda E. Fisher, Esq.  
Chinh Q. Le, Esq., R. 1:21-3(c)  
Attorneys for Defendant Intervenor/Third-Party Plaintiffs:  
William and Daphne Webb

Fees waived under N.J.Ct.R. 1:13-2(a)

U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR CSAB MORTGAGE-  
BACKED PASS-THROUGH CERTIFICATES  
SERIES 2006-1,

*Plaintiff*

v.

ALYSSA AZRAN,  
MR. AZRAN, HUSBAND OF ALYSSA  
AZRAN; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC. AS A  
NOMINEE FOR CREDIT SUISSE  
FINANCIAL CORPORATION,

*Defendant(s);*

WILLIAM AND DAPHNE WEBB,  
*Defendant Intervenor.*

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
ESSEX COUNTY

DOCKET NO. F-34390-07

Civil Action

FIRST AMENDED  
ANSWER, COUNTERCLAIM,  
CROSSCLAIM, AND  
THIRD-PARTY COMPLAINT

JURY TRIAL DEMANDED

WILLIAM AND DAPHNE WEBB,  
*Counter-claimants*

v.

U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR CSAB MORTGAGE-  
BACKED PASS-THROUGH CERTIFICATES  
SERIES 2006-1,

*Counter-defendants.*

*(caption continued on second page)*

WILLIAM AND DAPHNE WEBB,  
*Third-Party Plaintiffs/Cross-claimants*

v.

REAL ESTATE INTERNATIONAL, LTD;  
RONALD B. LOSNER; ANM FUNDING,  
LLC; TOVIA FRANKL A/K/A TOVI  
FRANKL; CREDIT SUISSE FINANCIAL  
CORPORATION; DRYDEN ABSTRACT,  
INC.; REAL VALUATION, LLC.,

*Third-Party Defendants;*

ALYSSA AZRAN,  
*Cross-defendant.*

### **CONTESTED ANSWER**

**NOW COME** Defendant Intervenors, William and Daphne Webb (the “Webbs”), whose principle residence is located at 52 Elm Street, Montclair, New Jersey 07042 (the “Property”), the Court having granted intervention on October 31, 2008, on the basis that the Webbs have a real interest in the Property, to answer the foreclosure complaint (the “Complaint”) of Plaintiff U.S. Bank, National Association (“U.S. Bank”) as follows:

#### **FIRST COUNT**

1. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 1 of the First Count, leaving U.S. Bank to its proofs.

2. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 2 of the First Count, leaving U.S. Bank to its proofs.

3. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 3 of the First Count, leaving U.S. Bank to its proofs.

4. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 4 of the First Count, leaving U.S. Bank to its proofs.

5. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 5 of the First Count, leaving U.S. Bank to its proofs.

6. Denied. The Webbs further assert that they are in fact the real parties in interest, as evidenced by the equitable mortgage/sale leaseback contract executed between the Webbs and Ronald Losner and/or Alyssa Azran.

a. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 6(a) of the First Count, leaving U.S. Bank to its proofs.

b. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 6(b) of the First Count, leaving U.S. Bank to its proofs.

i. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in Paragraph 6(b)(i) of the First Count, leaving U.S. Bank to its proofs.

7. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 7 of the First Count, leaving U.S. Bank to its proofs.

8. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 8 of the First Count, leaving U.S. Bank to its proofs.

9. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 9 of the First Count, leaving U.S. Bank to its proofs.

10. The Webbs lack sufficient or knowledge or information to admit or deny the allegations contained in paragraph 10 of the First Count, leaving U.S. Bank to its proofs.

**WHEREFORE**, the Webbs demand judgment against U.S. Bank denying its requested relief.

## **SECOND COUNT**

1. Denied. The Webbs further assert that they are entitled to possession of the land pursuant to their interest in the Property.

2. Denied. The Webbs further assert that U.S. Bank fails to establish that it was properly transferred an enforceable interest in the Note securing the mortgage.

3. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 3 of the Second Count, leaving U.S. Bank to its proofs.

4. The Webbs lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 4 of the Second Count, leaving U.S. Bank to its proofs.

**WHEREFORE**, the Webbs demand judgment against U.S. Bank denying its requested relief.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

**U.S. Bank lacks standing to enforce the Note securing the Property (the “Note”) because U.S. Bank is not a proper assignee and holder of the Note pursuant to N.J.S.A. § 12A:3-201 and Article 3 of the Uniform Commercial Code (“UCC”).**

1. U.S. Bank was not a holder of the Note pursuant to N.J.S.A. § 12A:3-201 and Article 3 of the UCC because the Note was not properly negotiated to U.S. Bank at the time of filing the Complaint.

2. Pursuant to N.J.S.A. § 12A:3-201 and Art. 3 of the UCC, proper assignment of a negotiable note requires proper issuance of the note to the holder or negotiation to the holder.

1. U.S. Bank is not a proper assignee and holder of the Note in question because, upon information and belief, the Note is not properly issued to U.S. Bank as the stated payee, rendering the Note incomplete. Pursuant to N.J.S.A. § 12A:3-109, a note containing bearer paper that does not state a payee may call into question its authenticity.

3. In addition, U.S. Bank is not a proper assignee and holder of the Note because, upon information and belief, the Note was not properly negotiated since U.S. Bank did not have possession of the Note at the time of filing the Complaint.

4. Because U.S. Bank was not a proper holder of the Note, it lacks standing to enforce the Note, and the Complaint should be dismissed.

**WHEREFORE**, the Webbs demand dismissal of the Complaint, and such other relief as the Court deems just and equitable.

## **SECOND AFFIRMATIVE DEFENSE**

**U.S. Bank is not a “holder in due course” and therefore is vicariously liable for the Webbs’ claims and defenses against Credit Suisse Financial Corporation (“Credit Suisse”) and its agent, ANM Funding, LLC (“ANM”) (collectively the “Originators”).**

1. U.S. Bank is liable for claims and defenses arising out of the origination of the mortgage loan because U.S. Bank is not entitled to receive the special protections against third party claims as a “holder in due course” pursuant to N.J.S.A. § 12A:3-302.

2. A “holder in due course” is a holder who not only receives a properly negotiated note or a note issued to it, but also takes the note without notice of any incompleteness, for good value, in good faith, and without notice of default or any claims or defenses against the note.

3. U.S. Bank is not a “holder in due course” of the Note because, upon information and belief, U.S. Bank is not a “holder”: (1) the Note was incomplete, as the bearer paper did not

state U.S. Bank as payee, and (2) the Note was not properly negotiated, as U.S. Bank filed a foreclosure action before taking possession of the Note.

4. Furthermore, U.S. Bank is not a “holder in due course” because, upon information and belief, U.S. Bank took the Note with knowledge of the default and potential foreclosure claims and defenses subject to it.

5. Therefore, U.S. Bank is not protected from third party claims and defenses arising out of the original transaction as a “holder in due course”, and may also be liable for the Originators’ violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*, conspiracy to violation New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*, the New Jersey Civil Racketeer Influenced and Corrupt Organizations Act. N.J.S.A. § 2C:41-2(c), the Truth in Lending Act (15 U.S.C. § 1601, *et seq.*), as well as common law claims for equitable mortgage, fraud, equitable fraud, negligent misrepresentations, conspiracy to commit fraud and misrepresentations, and aiding and abetting. *See Third-Party Complaint, infra.*

**WHEREFORE**, the Webbs demand dismissal of the Complaint, the relief sought in the Counterclaim, and such other relief as the Court deems just and equitable.

### **THIRD AFFIRMATIVE DEFENSE**

**The Webbs are entitled to recoupment because U.S. Bank failed to make proper disclosures pursuant to the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601, *et seq.***

1. U.S. Bank is liable for the failure of Credit Suisse Financial Corporation, the originating lender, to make proper Truth in Lending disclosures pursuant to TILA, 15 U.S.C. § 1601, *et seq.* to Defendant Alyssa Azran.

2. The Webbs hold a valid, equitable mortgage interest in the property, are the real parties in interest herein, and therefore have standing to assert this defense.

3. The improper disclosures include, but are not limited to, misstating the amount financed under the terms of the mortgage. *See* Exhibit A, “Truth in Lending Disclosures”.

4. Therefore, the Webbs are entitled to recoupment of all misstated or overcharged amounts and to rescission of the mortgage by way of recoupment.

**WHEREFORE**, the Webbs demand dismissal of the Complaint, the relief requested in the Fifth Count of the Third-Party Complaint, and such other relief as the Court deems just and equitable.

#### **FOURTH AFFIRMATIVE DEFENSE**

**U.S. Bank lacks standing to seek foreclosure because the mortgage was not assigned to it until after this foreclosure action was filed.**

1. U.S. Bank filed the instant foreclosure action on December 10, 2007, before it had been assigned the mortgage at issue.

2. N.J.S.A. § 46:9-9 requires mortgage assignments to be in writing. A written mortgage assignment between Mortgage Electronic Registration Systems, Inc. and U.S. Bank was not executed until April 9, 2008, approximately four months after filing of the Complaint.

3. Therefore, U.S. Bank did not hold an enforceable interest in the mortgage at the time this action was filed, and it does not have standing to pursue this action.

**WHEREFORE**, the Webbs demand dismissal of the Complaint, and such other relief as the Court deems just and equitable.

## **COUNTERCLAIM**

**NOW COME** Counter-claimants, Daphne and William Webb, to file a counterclaim against U.S. Bank, National Association (“U.S. Bank”), stating as follows:

1. On or about March 27, 2006, Credit Suisse Finance Corporation (“Credit Suisse”) provided a mortgage loan to Alyssa Azran in the amount of \$533,000.00, secured by a property located at 52 Elm Street, Montclair, New Jersey (the “Property”).

2. As alleged more fully in the Third-Party Complaint, *infra*, Credit Suisse engaged in negligent underwriting of this mortgage, and with the assistance of ANM Funding (“ANM”) as its agent, Credit Suisse failed to make appropriate required and truthful disclosures pursuant to state and federal law, made negligent misrepresentations, and aided and abetted a fraudulent foreclosure rescue scam perpetrated by other Third-Party Defendants on the Webbs, which resulted in the creation of an equitable mortgage between the Webbs and Alyssa Azran and/or Ronald Losner, and which led to the filing of the instant Complaint.

3. As alleged in the First and Second Affirmative Defenses, *supra*, U.S. Bank is not entitled to the protections of the “holder in due course doctrine” and is therefore liable for the actions and conduct of Credit Suisse, the mortgage loan originator, and its agent, ANM.

## **FIRST COUNT**

### **Violations of the New Jersey Fair Foreclosure Act (“FFA”), N.J.S.A. § 2A:50-56 *et seq.***

4. The Webbs adopt by reference the preceding paragraphs of this Counterclaim as though fully pled herein.

5. Pursuant to the New Jersey Fair Foreclosure Act, N.J.S.A. § 2A:50-56(a), a lender is required to give a homeowner a notice of intention to foreclose prior to filing a foreclosure complaint.



6. The Webbs hold a real interest in the Property through the equitable mortgage/sale-leaseback transaction and therefore should have been served with the notice of intention to foreclose on the property.

7. U.S. Bank's failure to properly service a notice of intention requires a dismissal of the existing action and the filing of a new action following service on debtor of a valid notice of intention.

**WHEREFORE**, Counter-claimants Daphne and William Webb demand judgment against U.S. Bank for violation of the FFA and dismissal of the Complaint.

## **SECOND COUNT**

### **Vicarious Liability for actions of Credit Suisse and ANM, as agent for Credit Suisse, based on the holder in due course doctrine, N.J.S.A. § 12A:3-302.**

8. U.S. Bank is not a "holder in due course," as explained above, and is therefore vicariously liable for actions of Credit Suisse and ANM, as agents of Credit Suisse, in the following Counts of the Third Party Complaint:

a. First Count for violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq.;

b. Second Count for conspiracy to violate the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq.;

c. Third Count for violations of the New Jersey Civil Racketeer Influenced and Corrupt Organizations Act. N.J.S.A. § 2C:41-2(c);

d. Fourth Count for equitable mortgage;

e. Fifth Count for violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*;

f. Sixth Count for common law fraud;

- g. Seventh Count for common law equitable fraud;
- h. Eighth Count for common law negligent misrepresentation;
- i. Ninth Count for conspiracy to commit fraud and misrepresentation; and,
- j. Tenth Count for aiding and abetting.

**WHEREFORE**, Counter-claimants, Daphne and William Webb, demand judgment against U.S. Bank for remedies as specified in the respective Counts contained in the Third-Party Complaint, *infra*.

### **THIRD COUNT**

#### **Recoupment**

9. The Webbs adopt by reference the preceding paragraphs of this Counterclaim as though fully pled herein.

10. U.S. Bank is not a “holder in due course,” and is therefore vicariously liable for the actions of Credit Suisse.

11. U.S. Bank has been unjustly enriched by the March 27, 2006 mortgage loan provided to Alyssa Azran by Credit Suisse because U.S. Bank has gained the right to receive a stream of income from the mortgage note and also received a mortgage lien securing the note on the subject Property, as a result of the fraudulent transaction.

12. As a result of this fraudulent transaction, the Webbs have been deprived of title to their home and hundreds of thousands of dollars of equity in the Property.

**WHEREFORE**, Counter-claimants, Daphne and William Webb, demand that the amount by which U.S. Bank has been unjustly enriched be returned to them.

## **FOURTH COUNT**

### **Action for Quiet Title**

13. The Webbs adopt by reference the First and Second Affirmative Defenses raised in the Answer, *supra*, as well as the Twelfth Count alleged in the Third Party Complaint and Crossclaim (“Third Party Complaint”), *infra*, as though fully pled herein.

14. N.J. Stat. § 2A:62-1 provides in pertinent part:

Any person in the peaceable possession of lands in this state and claiming ownership thereof, may, when his title thereto, or any part thereof, is denied or disputed . . . maintain an action in the superior court to settle the title to such lands and to clear up all doubts and disputes concerning the same.

15. Daphne Webb obtained title to the Property in 1983 by way of a deed which is recorded at the Office of the Clerk of the County of Essex. William Webb obtained an interest in the Property upon the Webbs’ marriage in 1994.

16. Mrs. Webb has been in continuous peaceful possession of the Property since 1983, and Mr. Webb has been in continuous peaceful possession of the Property since 1994.

17. On or about December 7, 2007, U.S. Bank filed a foreclosure complaint against Alyssa Azran in this matter, asserting its right to foreclose on the mortgage at issue, seize the security for the Note, and assume title to the Property.

18. However, Alyssa Azran does not hold valid title to the Property. She has never been in possession of the Property, and as described more fully in the Third-Party Complaint, *infra*, she obtained title to the Property through a fraudulent scheme that she perpetrated against the Webbs, in concert with the Third Party Defendants.

19. Moreover, U.S. Bank lacks an enforceable legal or equitable claim to the Property because:

a. U.S. Bank is not a proper holder of the Note pursuant to N.J.S.A. § 12A:3-201 and Article 3 of the Uniform Commercial Code; and

b. the mortgage at issue herein was not assigned to U.S. Bank until after this foreclosure action was filed.

20. The Webbs are therefore entitled to quiet title against U.S. Bank.

**WHEREFORE**, Counter-claimants William and Daphne Webb demand judgment against U.S. Bank declaring that it has neither title to nor interest in the Property and that the Webbs are the true titleholders of the Property.

## **THIRD-PARTY COMPLAINT AND CROSSCLAIM**

### **PRELIMINARY STATEMENT**

1. On October 31, 2008, this Court granted intervention to Third-Party Plaintiffs/ Cross-claimants, Daphne and William Webb (the “Webbs”), so that they can defend the foreclosure action that seeks to remove them from the home in which they have lived together for more than 14 years, and importantly, so that they can also seek justice against the Third-Party Defendants and Cross-defendant, Alyssa Azran (collectively, “Third Party Defendants”) – corporate entities and individuals who took advantage of the Webbs in their time of need. The Third-Party Defendants preyed upon the Webbs’ financial distress and lack of economic sophistication by persuading the Webbs to enter into a complex real estate transaction wherein the Webbs surrendered title of their home to a third-party “straw-buyer,” with the promise that they could continue to live there as if they still owned it and, after making monthly payments for eighteen months, the Webbs would re-establish their credit and then repurchase their home (hereinafter referred to as an “equitable mortgage/sale-leaseback transaction”).

2. The Third-Party Defendants robbed the Webbs of the title to and equity in their home, retained most of the proceeds from the transaction, and knowingly induced the Webbs into a transaction that made it impossible for the Webbs to reacquire title. Consequently, the Webbs lost approximately \$400,000.00 in equity in their home by participating in this predatory lending/foreclosure rescue scam operated by Third-Party Defendants.

3. Upon information and belief, Third-Party Defendants have carried out this same sale-leaseback transaction and predatory lending with countless other unwitting and financially unsophisticated homeowners like the Webbs.

4. The Webbs seek relief against Third-Party Defendants for multiple violations of state and federal statutes – to wit: the New Jersey Consumer Fraud Act (N.J.S.A. § 56:8-1, *et seq.*), the New Jersey Civil Racketeer Influenced and Corrupt Organizations Act (N.J.S.A. § 2C:41-2(c)), the New Jersey Fair Foreclosure Act (N.J.S.A. § 2A:50-56, *et seq.*), and the Federal Truth in Lending Act (15 U.S.C. § 1601, *et seq.*) – as well as common law fraud, negligent misrepresentation, equitable fraud, conspiracy to commit fraud and misrepresentation, aiding and abetting, breach of fiduciary duty, quiet title, and unjust enrichment.

### **JURISDICTION & VENUE**

5. This Court has personal jurisdiction over Third-Party Defendants residing in New Jersey pursuant to N.J. Ct. R. 4:4-2(b), and long-arm jurisdiction over non-resident Third-Party Defendants pursuant to N.J. Ct. R. 4:4-5.

6. This Court has proper venue in Essex County, pursuant to N.J. Ct. R. 4:3-2(a), because it is the county in which the real property at issue is situated.

### **PARTIES**

7. William and Daphne Webb are a married couple who have lived together at 52 Elm Street in Montclair, New Jersey (the “Property”) since their marriage in 1994. Mrs. Webb purchased the home in 1983, living in it ever since, and Mr. Webb retained an interest in the Property in 1994.

8. Third-Party Defendant Real Estate International, Ltd. (“REI”) maintains registered corporate offices at 729 Willowbrook Road, Staten Island, New York, and was incorporated in Richmond County, New York on July 13, 2001. REI also maintains offices at 1072 Victory Boulevard, Staten Island, New York, and 4127 Sandy Spit Lane, Jupiter, Florida. REI solicits business from financially distressed homeowners like the Webbs through telephone

and mailing advertisements and then lures these homeowners into foreclosure “rescue” transactions by providing false promises of avoiding foreclosure and rebuilding credit.

9. Third-Party Defendant Ronald B. Losner (“Mr. Losner”), whose principal place of residence is 138 Paulding Avenue, Staten Island, New York, manages REI and solicits financially distressed and unsophisticated homeowners looking to avoid foreclosure. Mr. Losner was disbarred from practicing as an attorney in New York as of December 29, 1995 because of his deceptive business practices, including professional misconduct, fraud, dishonesty and misrepresentation in mortgage lending transactions. *See In the Matter of Ronald B. Losner*, 217 A.D.2d 376 (N.Y. Sup. 1995).

10. Third-Party Defendant ANM Funding, LLC (“ANM”) is a limited liability company incorporated in New York on July 21, 2005, whose principal place of business in this transaction was 3811 13th Avenue, Brooklyn, New York. On information and belief, ANM also maintains offices at 962 Bergen Street, Newark, New Jersey and/or G-10 Brier Hill Court, East Brunswick, New Jersey. Upon information and belief, ANM mortgage brokers maintain a close business relationship with Mr. Losner to secure funding, and otherwise ratify and facilitate the illegal mortgage lending practices of Mr. Losner, Ms. Azran, REI, and their agents.

11. Third-Party Defendant Tovia Frankl a/k/a Tovi Frankl (“Mr. Frankl”) is an employee and agent of ANM Funding who, upon information and belief, holds a close business relationship with Mr. Losner and participated in carrying out the fraudulent scheme.

12. Third-Party Defendant Credit Suisse Financial Corporation (“Credit Suisse”), located at Mortgage Operations Office, 302 Carnegie Center, Suite 200, Princeton, New Jersey, was the original lender of the mortgage at issue in this litigation. Credit Suisse’s U.S. Corporate Headquarters are located at 11 Madison Avenue, New York, New York. Upon information and

belief, Credit Suisse had a relationship with Mr. Losner, REI, ANM, and their agents at all times relevant hereto that included funding, facilitating and ratifying their illegal mortgage lending practices.

13. In addition, Third-Party Defendants Losner, REI, ANM, and Azran served as agents of Credit Suisse for purposes of entering into the subject transaction.

14. Third-Party Defendant Dryden Abstract, Inc. (“Dryden”), a corporation located at One Cherry Hill Plaza Suite 310, Cherry Hill, New Jersey, acted in furtherance of the fraudulent scheme as the closing, settlement, and/or title agent in the March 27, 2006 transactions. In 2008 alone, Dryden has been a named Defendant in two New Jersey lawsuits involving Mr. Losner. *See Jefferson v. Losner*, Burlington County Superior Court, Docket Number L-001171-08 and *Jefferson v. Losner*, Burlington County Superior Court, Docket Number C-000008-08.

15. Third-Party Defendant Real Valuation, LLC (“Real Valuation”), located at 18 Engleberg Terrace, Lakewood, New Jersey, is the corporation that provided the inflated property appraisal in furtherance of the fraudulent scheme.

16. Cross Defendant Alyssa Azran (“Ms. Azran”) acted as a straw-buyer in the sale-leaseback transaction with the Webbs and, upon information and belief, has participated as a straw-buyer in other foreclosure “rescue” schemes with Mr. Losner. Ms. Azran’s driver’s license provides a mailing address of 53 Essex Drive, Staten Island, New York; however, her address as stated on the mortgage documents is 1072 Victory Blvd., Staten Island, New York.

## **STATEMENT OF FACTS**

### **A. Background and Initial Contacts Between the Parties**

17. William and Daphne Webb are married and presently live at 52 Elm Street in Montclair, New Jersey. Mrs. Webb purchased the Property in 1983 and conveyed an interest to



Mr. Webb upon their marriage in 1994. The couple has resided in the home together since their marriage. The Property was secured by a mortgage with Wells Fargo Bank (“Wells Fargo”).

18. In 2003, Mrs. Webb, then seventy-three years old, developed health complications that forced her to cease working. Thereafter, the Webbs incurred substantial medical bills. The Webbs relied on Mr. Webb’s annual income of approximately \$45,000.00 from the New Jersey Transit Authority to pay these bills. However, the Webbs had difficulty paying the medical bills and soon fell behind on their mortgage payments as well. By the end of 2003, Wells Fargo initiated foreclosure proceedings against the Webbs.

19. To stop the foreclosure proceedings, the Webbs filed for bankruptcy in July 2004. Despite entering into a bankruptcy plan, the Webbs had difficulty maintaining their mortgage payments along with the payments to the bankruptcy trustee and other associated legal fees. On or about February 8, 2006, the bankruptcy proceeding was dismissed and the Property went back into foreclosure.

20. Upon information and belief, Mr. Losner and REI target individuals facing bankruptcy and/or foreclosure proceedings by making phone calls or mailing solicitations that promise to save homes from foreclosure. The Webbs received such a phone call from Mr. Losner of REI in or about February 2006.

21. During this initial phone call between the Webbs and Mr. Losner, Mr. Losner lured the Webbs into participating in an alleged eighteen-month credit rehabilitation program. Mr. Losner informed the Webbs that REI could obtain financing for the Webbs that would save their home from foreclosure and eliminate their bankruptcy debt. Mr. Losner explained that REI would temporarily purchase the home from the Webbs, but that the Webbs could continue to live there as if they owned it and would be able to repurchase the Property at the end of the program.

The Webbs believed Mr. Losner and thought that the temporary sale was just a legal technicality to help get the Webbs back on their feet. The Webbs did not understand that the arrangement would cause the Webbs to lose legal ownership of their home, nor did Mr. Losner say anything at anytime to clear up their misunderstanding.

22. During this temporary period, the Webbs agreed to send REI \$2,600.00 per month to cover the mortgage on their home. This amount was approximately the same amount of money the Webbs had been paying to Wells Fargo prior to falling behind on their mortgage payments. Mr. Losner informed the Webbs that if they continued to make these payments each month, and if they obtained two new credit cards, then the Webbs could continue to reside in their home while rebuilding their credit.

23. In or about February 2006 or March 2006, Ms. Azran, an employee of REI, came to the Webbs' home to further discuss the details of the program. Unbeknownst to the Webbs, Ms. Azran was to act as the straw-buyer for the sale of the Property. At no time did Ms. Azran explain to the Webbs that they would no longer be the legal owners of their home once they entered into the arrangement with Mr. Losner and/or REI.

24. To prepare for the sale of the Webbs' home, on or about March 3, 2006, Alan Stubin ("Mr. Stubin") of Real Valuation, LLC appraised the Property. Abraham Green ("Mr. Green"), also of Real Valuation, served as the supervisory appraiser. On or about March 7, 2006, Real Valuation issued an appraisal report (the "Appraisal Report"), which Mr. Stubin and Mr. Green both signed.

25. The Appraisal Report valued the Property at \$820,000.00. Upon information and belief, this appraisal was over-inflated for the benefit of Real Valuation and other Third-Party Defendants because:

a. Upon information and belief, the properties used as “comparables” in the appraisal are not comparable and, for a variety of reasons, had fair market values in excess of the value of the Webb property; and

b. Upon information and belief, initially this appraisal (or one immediately preceding it) valued the Property at \$785,000.00, but this amount was later inflated to increase the alleged value of the Property.

26. The Appraisal Report lists Ms. Azran as the borrower and ANM as the lender. The Appraisal Report further indicates the Property as “currently under contract for sale” and the contract “not available for review.” Upon information and belief, either:

a. these statements in the Appraisal Report are false, misleading, conflicting and/or confusing because two different contracts of sale, dated February 22, 2006 and discussed *infra*, existed at the time of the Appraisal Report and therefore would have been available for review on or before March 3, 2006; or,

b. the contracts of sale are false, misleading, conflicting and/or confusing because Ms. Azran did not in fact execute any contract of sale with the Webbs to purchase the Property until the closing on March 27, 2006, several weeks after the date of the Appraisal Report.

**B. The Real Estate Closing**

27. The closing occurred on March 27, 2006 at the ANM office in Brooklyn, New York. Present at the closing were the Webbs, Mr. Losner, Ms. Azran, Mr. Frankl, and other individuals unknown to the Webbs.

28. Third-Party Defendants present at the closing provided the Webbs with several documents to sign. At no time were the Webbs represented by counsel. The Webbs believed that Mr. Losner and Ms. Azran were looking out for their interests during the transaction.

29. Upon information and belief, the Third-Party Defendants conducted the closing in a hasty, irresponsible, and unprofessional manner, providing the Webbs with multiple copies of the same documents that were fraudulent, misleading, conflicting, and/or confusing.

Contract of Sale

a. Upon information and belief, the Webbs were provided at least two different, conflicting, and incomplete contracts of sale to sign at the closing. *See* Exhibit B, “Contract of Sale #1” and Exhibit C, “Contract of Sale #2”. Each copy included a typed date of February 22, 2006 listed on the first page of the document only. Each copy also indicated that the “Closing will take place on or before March 15, 2006.” However, the closing did not occur until March 27, 2006.

b. The Webbs signed one contract of sale (“Contract of Sale #1”) listing Mr. Losner as the Buyer for a purchase price of \$785,000.00 and a down payment of \$235,500.00. The last page of the Contract of Sale #1 included signature and date lines for Mr. Losner, Mr. Webb, and Mrs. Webb.

c. The Webbs signed another nearly identical contract of sale (“Contract of Sale #2”) at the closing. Upon information and belief, the only difference between the Contract of Sale #1 and the Contract of Sale #2 was that the latter listed Ms. Azran as the Buyer for a purchase price of \$820,000.00 and a down payment of \$269,000.00. The last page of the Contract of Sale #2 includes signature and date lines for Ms. Azran, Mr. Webb, and Mrs. Webb. All three parties signed this document.

d. The Webbs do not have complete copies of either version of the contract of sale because, upon information and belief, Mr. Losner and Ms. Azran failed to provide the Webbs with complete copies of either contract at the closing.

Lease Agreement

e. Upon information and belief, Ms. Azran and Mr. Losner gave the Webbs two different, conflicting, and incomplete lease agreements, one naming Mr. Losner as the landlord (“Lease Agreement #1”) and the other naming Ms. Azran as the landlord (“Lease Agreement #2”). *See* Exhibit D and Exhibit E, respectively. Each copy included a lease term of eighteen months and named the Webbs as tenants of the Property.

f. Both versions of the lease agreement also included a repurchase option at the end of the lease term so long as the Webbs paid a \$45,000.00 “Option Price.” At no point prior to or during the closing did Ms. Azran or Mr. Losner explain to the Webbs that they would have to pay this sum to repurchase their home.

g. Lease Agreement #2 named Ms. Azran as the landlord and listed the Lease Date in handwriting as March 27, 2006. Lease Agreement #2 also indicated in handwriting an eighteenth-month term beginning on April 1, 2006 and ending on September 30, 2007. Lease Agreement #2 listed in handwriting a monthly rent of \$4,982.66, but contained the following typewritten provision:

“Landlord agrees that notwithstanding the monthly rent provided for in the Lease, for each month that the Tenant actually timely pays their rent, they will be given an abatement on that month’s rent and the rent for that month will then be fixed at a sum of \$2,600.00. This provision is limited to a maximum of 18 months.”

h. The Webbs do not have complete copies of either version of the lease agreement because, upon information and belief, Mr. Losner and Ms. Azran did not provide fully executed copies of either of these documents to the Webbs at the closing.

30. During the closing, the Webbs also overheard Mr. Losner and Ms. Azran discuss that Ms. Azran's name would be on the deed. Prior to then, the Webbs had been led to believe that Mr. Losner's name would be on the deed. However, the Webbs did not question Mr. Losner or Ms. Azran over the change because the Webbs reasonably believed, based on Mr. Losner's and Ms. Azran's representations, that their interests were still protected.

Residential Loan Application

31. Upon information and belief, Ms. Azran executed a Residential Loan Application on the same day of the closing, March 27, 2006. *See* Exhibit F. Upon information and belief, Mr. Frankl of ANM and/or Ms. Azran had completed the application on or around March 20, 2006. The Residential Loan Application indicates that Mr. Frankl served as the "Interviewer" and that the application was taken by "mail." The Residential Loan Application, through which Ms. Azran was approved for a \$533,000.000 fixed-rate loan at 7.875% to purchase the Property, is false, fraudulent, and/or deceptive, and because:

- a. Ms. Azran is listed as married and, upon information and belief, Ms. Azran was not married at the time of the transaction;
- b. Ms. Azran was approved for the loan even though the application:
  - i. Did not list any employment information for Ms. Azran;
  - ii. Indicated that Ms. Azran already owned eleven other rental properties with a total market value of \$5,944,000.00, encumbered by a total amount of mortgages and liens of over \$4,000,000.00, with total monthly

mortgage payments exceeding \$30,733.00, yet with a gross rental income from these properties of \$0.00;

iii. Failed to list any liquid assets for Ms. Azran such as bank or savings account, but instead listed only a \$100.00 cash deposit as her only liquid asset;

iv. Calculated the total amount of Ms. Azran's assets as \$11,888,100.00 by (1) erroneously counting the value of the eleven rental properties twice by listing \$5,944,000.00 in both the "Real estate owned" and the "Other Assets" loan application fields and (2) by then adding the \$100.00 in liquid assets to that amount; and,

v. Stated that Ms. Azran's total assets exceeded her total liabilities by more than \$8,000,000.00 by using the deceptive total assets calculation.

32. Ms. Azran certified to Credit Suisse that she completed the Residential Loan Application with "true and complete" information, without making "misrepresentations" and without "omit[ting] any pertinent information." Ms. Azran also authorized Credit Suisse to verify any information contained in the application.

33. Credit Suisse processed and approved the false, fraudulent, and/or deceptive Residential Loan Application that Mr. Frankl and/or Ms. Azran had completed.

#### Affidavits of Title

34. The Webbs and Ms. Azran also executed separate Affidavits of Title at the closing on March 27, 2006. *See* Exhibit G. The Affidavit of Title signed by Ms. Azran is false, fraudulent, and/or deceptive because:

a. It indicates that Ms. Azran “will live at 52 Elm Street, Montclair, NJ 07042” after the closing. Ms. Azran did not in fact live at the Property at any point in time. Moreover, this statement contradicts the Investment Purpose Affidavit, *see* Exhibit H, which Ms. Azran also signed and dated on March 27, 2006, because:

b. It attests that there are “no tenants or other occupants” at the Property, despite the fact that Mr. Losner and/or Ms. Azran furnished the Webbs with at least two different lease agreements at the closing; and,

c. It states that Ms. Azran is not married, which is in direct contradiction to what she stated on her Residential Loan Application.

#### HUD-1 Settlement Statement

35. To consummate the sale, the Webbs and Ms. Azran also executed a HUD-1 Settlement Statement at the closing. *See* Exhibit I. None of the other parties present explained to the Webbs the details of the HUD-1 Settlement Statement. The HUD-1 Settlement Statement was false, fraudulent, deceptive, unfair, misleading, and/or confusing because:

a. It stated that the closing occurred at Dryden’s offices in Cherry Hill, New Jersey, when in fact the closing occurred at ANM’s offices in Brooklyn, New York;

b. It noted that the Webbs’ new mailing address would be in East Orange, New Jersey, despite the fact that the Webbs, Mr. Losner, and Ms. Azran had no expectation that the Webbs would be moving out of their home;

c. It indicated that the Webbs received \$133,047.57 as “cash to seller” at the closing, yet the Webbs received no cash from the transaction. In fact, Mr. Losner explicitly told the Webbs at the closing that the transaction was a “no cash deal;”



d. It stated that Ms. Azran made a \$269,000.00 deposit on the property when, upon information and belief, Ms. Azran made no down payment whatsoever. The HUD-1 Settlement Statement also indicated a “cash from borrower” amount of \$16,733.86 yet, upon information and belief, Ms. Azran did not incur any out-of-pocket expenses at the closing. Instead, upon information and belief, Ms. Azran purchased the Webbs’ home for little more than \$533,000.00, secured by a mortgage loan, in spite of the selling price on the Settlement Statement of \$820,000.00; and,

e. It listed thousands of dollars in various settlement fees and charges for services that, upon information and belief, were either never rendered, entirely fictional, or unnecessary. These fees were paid to entities such as Dryden Abstract, ANM, and Credit Suisse.

36. Upon information and belief, the HUD-1 Settlement Statement satisfied certain debts of the Webbs totally approximately \$415,000.00. However, because Ms. Azran did not put a down payment on the home and because the Webbs received no cash from the transaction, the Webbs lost over \$300,000.00 in equity in their home at the closing.

**C. Post Transaction Consequences**

37. The Webbs dutifully sent payments of \$2,600.00 each month to REI from April 2006 to June 2008. At first, the Webbs addressed the payments to Ms. Azran. However, Mr. Losner eventually requested that the payments be made in his name, and the Webbs complied.

38. Since the March 2006 closing, the Webbs have continued to reside at the home. Neither Mr. Losner, nor Ms. Azran, nor REI has made improvements to the home or has been responsible for maintenance of the Property during this time. Essentially, the Webbs never

stopped acting like the owners of the Property after entering into the transaction with the various Third-Party Defendants.

39. In or around the end of the Lease term in September 2007, the Webbs asked Mr. Losner when they would be able to repurchase the Property. Each time the Webbs broached the subject, Mr. Losner was elusive in his response. On several occasions, Mr. Losner told the Webbs that “it was looking good” and that “something was going to work out” soon.

40. Upon information and belief, Mr. Losner falsely led the Webbs to believe that the Webbs could repurchase their home, yet Mr. Losner had no intention of ever permitting the Webbs to do so.

41. Upon information and belief, between Fall 2007 and Spring 2008, Mr. Losner sent appraisers on behalf of REI to the Webbs home on two different occasions. On two separate occasions, upon information and belief, Mr. Frankl also sent appraisers to the home on behalf of ANM. Each time an appraiser came to the home, the Webbs paid cash for the appraiser’s services. These payments ranged from \$300.00 to \$400.00 each. The Webbs believed that the visits from the various appraisers were procedurally necessary for the Webbs to repurchase their home, and neither Mr. Losner nor Mr. Frankl corrected this misunderstanding. Furthermore, when the Webbs asked Mr. Losner and Mr. Frankl for receipts for the cash payments, both evaded the Webbs’ requests.

42. Upon information and belief, Ms. Azran ceased making mortgage payments on the Property in or around September 2007. U.S. Bank initiated foreclosure proceedings against Ms. Azran on or about December 10, 2007. The Webbs were not served by and received no notice from U.S. Bank as to the foreclosure action.

43. In June 2008, the Webbs learned that their home was in foreclosure for the first time through their former real estate agent Kathy Curry. The Webbs were surprised by the news, especially since the Webbs had faithfully been sending payments to REI since April 2006.

44. When the Webbs learned of the foreclosure, the Webbs stopped sending payments to Mr. Losner in or about June 2008. The Webbs also called Mr. Losner for more information about the foreclosure. Instead of providing the Webbs with an explanation, Mr. Losner simply told the Webbs that “something went wrong.”

45. The Webbs also asked Mr. Losner whether they could repurchase their home at that point, and Mr. Losner responded by insisting the Webbs could only do so if they secured another \$120,000.00 in cash to finance the home. Mr. Losner failed to explain to the Webbs why Mr. Losner had altered the terms of the original agreement between the parties.

46. In or about June 2008, Mr. Frankl of ANM visited the Webbs’ home. Mr. Frankl told the Webbs that they could obtain a new mortgage with payments exceeding \$5,000.00 per month. The Webbs declined Mr. Frankl’s offer because it did not conform to the \$2,600.00 monthly payments that Mr. Losner, Ms. Azran, and REI had promised would be sufficient to cover the mortgage payments on the home.

47. No longer believing that Mr. Losner, Mr. Frankl, and others were looking out for the Webbs’ best interests, the Webbs spoke with Abbott Gorin, Esq. (“Mr. Gorin”), an attorney from Essex-Newark Legal Services (“Legal Services”), on or about July 14, 2008. During this conversation, the Webbs confirmed the current foreclosure proceeding with Mr. Gorin, as well as learned about the Third-Party Defendants’ fraudulent and deceptive behavior at and leading up to the closing on March 27, 2006.

48. After meeting with Mr. Gorin, the Webbs began sending the \$2,600.00 monthly payments to an escrow account in their name at Legal Services.

49. When Mr. Losner realized that the Webbs were sending payments to Legal Services instead of to REI, Mr. Losner began to frequently call the Webbs at home in or about July 2008. Sometimes Mr. Losner would telephone in the middle of the night, demanding to know why the Webbs had ceased sending payments to REI. On one occasion in about mid-August, Mr. Losner came to the Webbs home unannounced at 9:00 in the evening. When Mrs. Webb informed Mr. Losner that the Webbs had retained an attorney, Mr. Losner became very upset and told the Webbs that they were “ungrateful” because REI had saved their home.

50. On September 9, 2008, Mr. Gorin filed a Motion to Intervene on behalf of the Webbs in U.S. Bank’s foreclosure complaint against Ms. Azran. However, a default judgment was then entered against Ms. Azran on September 11, 2008, rendering the motion moot.

51. After that, Mr. Gorin referred the Webbs’ case to the Center for Social Justice (the “Center”). On October 31, 2008, this Court granted the Webbs intervention in this foreclosure action and vacated the default judgment against Ms. Azran.

52. Upon information and belief, Mr. Losner, Ms. Azran, REI, and other Third-Party Defendants have engaged in a pattern and practice of defrauding homeowners like the Webbs through foreclosure rescue scams. On or about November 16, 2005, a lawsuit was initiated in the United States District Court for the Eastern District of New York, Docket Number 1:05-cv-05383, by another distressed homeowner against REI, Mr. Losner, Ms. Azran, and other parties. The suit alleged a similar practice of soliciting a distressed homeowner, inducing the homeowner to relinquish title to the home under a temporary relationship, stripping the homeowner of hard-earned equity in the home, promising that monthly payments would be applied to the mortgage,

and falsifying documents, among other things. *See Armstrong v. Real Estate Int'l, Ltd.*, 2006 WL 354983 (E.D.N.Y. 2006). Upon information and belief, the parties settled in March 2006.

53. Similarly, Mr. Losner and Ms. Azran have been named as defendants in numerous foreclosure complaints, likely indicating their roles as defaulting straw-buyers in similar foreclosure rescue scams elsewhere. Upon information and belief, in 2008 alone, at least seventeen foreclosure complaints have been filed against Mr. Losner, and at least four foreclosure complaints have been filed against Ms. Azran.

54. While the Webbs still reside at 52 Elm Street, the Webbs are greatly concerned that their transactions with Mr. Losner, Ms. Azran, REI, and other Third-Party Defendants will ultimately lead them to lose their home. The Third-Party Defendants took advantage of the Webbs during a vulnerable financial period. As a result of the fraudulent and illegal scheme, the Webbs unknowingly gave up the legal title to the home in which they have lived for several years. The Webbs pray that they will be able to solve this dilemma and remain in their home.

## **FIRST COUNT**

### **AGAINST ALL THIRD-PARTY DEFENDANTS**

#### **Violations of New Jersey Consumer Fraud Act (“CFA”), N.J.S.A. § 56:8-1, *et seq.* (Unconscionable Commercial Practices, False Promises, Misrepresentations and Knowing Omissions of Fact)**

55. The Webbs re-allege herein each of the above allegations of this Third-Party Complaint as though fully pled here.

56. The CFA, N.J.S.A. § 56:8-2 prohibits:

[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate[.]

57. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale[.]” N.J.S.A. § 56:8-1(c).

58. The Third-Party Defendants engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts in connection with the sale of merchandise or real estate, including but not limited to the following acts:

a. soliciting financially unsophisticated consumers, such as the Webbs, with false promises that they could save their home from imminent foreclosure by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

b. inducing distressed consumers, such as the Webbs, to enter into a complex equitable mortgage/sale-leaseback transaction without explaining the nature or the terms of the real estate transaction by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

c. inducing the Webbs, such as the Webbs, to enter into transactions to save their homes, but failing to disclose to the Webbs that they would could only repurchase the homes for substantial sums after the end of the lease term by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

d. representing to the Webbs that there would be little or no costs to participate in a sale/leaseback transaction, when in fact, they charged unconscionable commissions, closing costs and unreasonable fees to the Webbs by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

e. structuring a transaction that strips title of the property from the Webbs and denying the Webbs the equity value in the property by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

f. failing to pay the underlying mortgage and taxes on the Property, making it impossible for the Webbs to repurchase their properties at the end of the lease term by Ms. Azran, Mr. Losner, and/or REI;

g. failing to disclose the existence of the equitable mortgage/sale-leaseback transaction on loan applications to secure funding to purchase the Webbs' home by Mr. Losner, Ms. Azran, Mr. Frankl, REI, ANM, and/or Dryden;

h. affirmatively misrepresenting the appraisal value of the Property by Real Valuation;

i. failing to exercise reasonable due diligence in underwriting the mortgage documents by Credit Suisse;

j. giving false and/or misleading information to the Webbs about the transaction by all Third-Party Defendants; and,

k. failing to provide the Webbs with full and complete copies of sales contracts and other loan documents relevant to their transactions by Mr. Losner, Ms. Azran, Mr. Frankl, REI, ANM, Credit Suisse, and/or Dryden.

59. The above stated false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts were untrue, deceptive and false for the following reasons:

a. Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM never intended to save the Webbs' home from foreclosure. After the Webbs paid all lease payments

according to their equitable mortgage/sale-leaseback contract, the Webbs were denied the opportunity to repurchase their property because Mr. Losner, Ms. Azran, and/or REI defaulted on the underlying mortgage;

b. Third-Party Defendants intentionally failed to inform the Webbs of the nature and details of the transaction so that Third-Party Defendants could benefit financially from the transaction;

c. Credit Suisse knew or should have known that the materials it reviewed for a mortgage in the amount of \$533,000.00, secured by the Property, were false and/or fraudulent, and yet it approved the mortgage anyway; and,

d. The Webbs were induced to enter into a transaction that took title away from the Webbs and denied them home equity that they had acquired during the more than twenty years that the Webbs had owned the Property.

60. Each separate misrepresentation, deception and false promise made by each Third-Party Defendant in this matter constitutes a separate and distinct violation of N.J.S.A. 56:8-2.

61. As a direct and proximate result of the aforementioned acts of Third-Party Defendants, the Webbs suffered an ascertainable loss.

**WHEREFORE**, the Webbs demand judgment against Third-Party Defendants, jointly and severally for:

- a. rendering the fraudulent action as void and unenforceable;
- b. actual damages, consequential, treble, and punitive damages resulting from Third-Party Defendants' fraud;
- c. any reasonable attorney's fees and costs of litigation; and,



- d. other relief as the Court deems just.

## **SECOND COUNT**

### **AGAINST THIRD-PARTY DEFENDANTS RONALD LOSNER, ALYSSA AZRAN, TOVIA FRANKL, REI, AND ANM**

#### **Conspiracy to Violate New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.***

62. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

63. Upon information and belief, Mr. Losner, Ms. Azran, Mr. Frankl, REI and ANM (collectively referred herein as “CFA Conspirators”) entered into an agreement to induce the Webbs to participate in the March 27, 2006 equitable mortgage/sale-leaseback transaction and to remortgage the Property in violation of the CFA, N.J.S.A. § 56:8-1, *et seq.*

64. CFA Conspirators intentionally, knowingly and willfully participated in this scheme by committing overt acts, making misrepresentations and failing to provide material information in furtherance of the agreement, including but not limited to the following false promises, misrepresentations and deceptive business practices:

- a. soliciting the Webbs, as financially unsophisticated consumers with false promises that they could save their homes from imminent foreclosure;
- b. inducing the Webbs, to enter into complex equitable mortgage/sale-leaseback transactions without explaining the nature or the terms of the real estate transactions;
- c. inducing the Webbs to enter into transactions to save their home, but failing to disclose that they would need to repurchase their home for substantial sums after the end of the lease term;

d. representing to the Webbs that there would be little or no costs to participate in a sale/leaseback transaction, when in fact, they charged unconscionable commissions, closing costs and unreasonable fees to the Webbs;

e. structuring a transaction that takes title of the property away from the Webbs and denies the Webbs the equity value in the property;

f. failing to pay the underlying mortgage and taxes on the property, making it impossible for the Webbs to repurchase their property at the end of the lease-term by Ms. Azran, Mr. Losner, and/or REI;

g. failing to disclose the equitable mortgage/sale-leaseback transaction on loan applications to secure loans to purchase the Webbs' home;

h. giving false and/or misleading information to about the nature of the transactions; and,

i. failing to provide the Webbs with full and complete copies of sales contracts and other loan documents relevant to their transactions.

**WHEREFORE**, the Webbs demand judgment against CFA Conspirators, jointly and severally, for:

- a. rendering the fraudulent transaction as void and unenforceable;
- b. actual, consequential, treble, and punitive damages resulting from Third-Party Defendants' fraud;
- c. reasonable attorney's fees and costs of litigation; and
- d. other relief as the Court deems just.

### **THIRD COUNT**

#### **AGAINST THIRD-PARTY DEFENDANTS RONALD LOSNER, ALYSSA AZRAN, TOVIA FRANKL, REI, AND ANM**

##### **Violations of New Jersey Civil Racketeer Influenced and Corrupt Organizations Act (“RICO”), N.J.S.A. § 2C:41-2(c)**

65. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

66. Pursuant to the New Jersey RICO statute, N.J.S.A. § 2C:41-2(c):

It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise’s affairs through a pattern of racketeering activity[.]

67. Third-Party Defendants Mr. Losner, Ms. Azran, Mr. Frankl, REI, and ANM together constitute an enterprise within the meaning of N.J.S.A. § 2C:41-1(c) (hereinafter referred to as “REI Enterprise Defendants”).

68. The REI Enterprise Defendants engage in trade or commerce, or in activities which affect trade or commerce.

69. The REI Enterprise Defendants are persons within the meaning of N.J.S.A. § 2C:41-1(b).

70. The REI Enterprise Defendants were either employed by or associated with REI and/or ANM, and conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity in violation of N.J.S.A. § 2C:41-2(c).

71. RICO defines a pattern of racketeering activity to include two or more incidents of racketeering conduct with “either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.” N.J.S.A. § 2C:41-1(d).

72. The REI Enterprise Defendants participated in crimes under Chapters 20 and 21 of Title 2C of the New Jersey Statutes and under 18 U.S.C.S. § 1344, which had the same or similar purposes, results, participants, victims or methods of commission, were otherwise interrelated by distinguishing characteristics, and were not isolated incidents.

73. Members of the REI Enterprise Defendants – including Mr. Losner, Ms. Azran, and REI – have engaged in a pattern and practice of foreclosure rescue schemes as evidenced by *Armstrong v. Real Estate Int’l, Ltd.*, 2006 WL 354983 (E.D.N.Y. 2006). The high volume of foreclosure complaints naming Mr. Losner and Ms. Azran as defendants further indicates their roles as straw-buyers in the transactions.

74. In addition, the crimes in furtherance of the pattern of racketeering activity perpetrated by REI Enterprise Defendants in this case include:

a. **Theft by deception, N.J.S.A. § 2C:20-4.** By purposefully creating and reinforcing false impressions as to law, value, intention, or other state of mind with the intent of influencing the financially distressed Webbs to enter into an equitable mortgage/sale-leaseback transaction, the REI Enterprise Defendants deceptively and purposefully took money from the Webbs by keeping the sale proceeds from the transaction, charging them excessive and unreasonable fees and loan costs, stripping them of equity in the Property, and denying them the promised opportunity to repurchase their home by failing to pay the underlying mortgage and taxes. Furthermore, REI Enterprise Defendants’ deceptive acts prevented the Webbs from acquiring knowledge of the true nature of the foreclosure “rescue” scheme;

b. **Theft by failure to make required disposition of property received, N.J.S.A. § 2C:20-9.** The REI Enterprise Defendants took the proceeds from the sale of

the Webbs' home for themselves and others, rather than providing the proceeds to the Webbs as they were legally obligated to do;

c. **Deceptive business practices, N.J.S.A. § 2C:21-7(e).** REI Enterprise Defendants falsely advertised to the Webbs that they, in their individual and business capacities, would rescue financially distressed consumers, like the Webbs, from foreclosure by refinancing and re-establishing the Webbs' credit while still permitting the Webbs to remain homeowners;

d. **Bank fraud, 18 U.S.C. § 1344.** By submitting to mortgage lenders and/or brokers documents containing fraudulent information and/or material misrepresentations, REI Enterprise Defendants executed a scheme to defraud the Webbs, as well as financial institutions by making fraudulent misrepresentations for the purpose of obtaining money;

e. **Issuing false financial statements, N.J.S.A. § 2C:21-4(b).** By knowingly issuing and certifying the truth of falsely stated income verification, marriage status, and identification information on mortgage loan applications, deeds, and real estate settlement statements, REI Enterprise Defendants violated N.J.S.A. § 2C:21-4(b); and,

f. **Impersonation, N.J.S.A. § 2C:21-17(a)(1).** By assuming false identities and acting according to such false identities for the purposes of obtaining a financial benefit and defrauding another, REI Enterprise Defendants Mr. Losner, Mr. Frankl, and Ms. Azran (all failing to disclose to the Webbs that they were not representing the Webbs' interest in the sale/leaseback transaction, and Ms. Azran failing to disclose her relationship with REI and the fact that she was single on her residential loan application), violated N.J.S.A. § 2C:21-17(a)(1).

75. The REI Enterprise Defendants have conspired with and amongst themselves and others to violate the provisions of the New Jersey Civil RICO Statute, N.J.S.A. § 2C:41-2.

**WHEREFORE**, the Webbs demand judgment against REI Enterprise Defendants:

- a. rendering the fraudulent transaction as void and unenforceable;
- b. rendering a dissolution of the business entities participating in the enterprise;
- c. for actual damages and punitive damages;
- d. any reasonable attorney's fees and costs of litigation; and,
- e. other relief as the Court deems just.

#### **FOURTH COUNT**

**AGAINST THIRD-PARTY DEFENDANTS RONALD LOSNER, ALYSSA AZRAN, AND CREDIT SUISSE**

#### **Equitable Mortgage**

76. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

77. The deed transfer from the Webbs to Ms. Azran constitutes an equitable mortgage. Under New Jersey law, an absolute deed should be treated as a mortgage when (1) a debt is created from the grantor to the grantee that was not satisfied by the conveyance, demonstrating that the deed was given as security for a debt; (2) the price paid by the grantee is considerably less than the value of the house; and (3) the grantors retain possession of the property as if they are the owners, paying rent to the grantee as if it were a mortgage.

78. To establish whether the deed transfer should constitute the creation of an equitable mortgage, the relevant inquiry focuses on the intent of the parties to have the deed

stand as security for a debt, not whether the parties actually intended to create a relationship of mortgagor and mortgagee. It is the substance of the transaction, not its form, which is relevant.

79. Mr. Losner's and Ms. Azran's acts and statements evidenced their intent to mortgage the Webbs' home. Mr. Losner represented to the Webbs that the transfer of the title to their home would serve as a temporary arrangement to permit the Webbs to save their home from foreclosure. Mr. Losner and Ms. Azran also represented to the Webbs that their monthly payments after the closing would be applied to the mortgage on the property, further evidencing their intent to retain a security interest in the Webbs' home.

80. Accordingly, the deed transfer from the Webbs to Ms. Azran constitutes an equitable mortgage by which Ms. Azran, Mr. Losner, and Credit Suisse took a security interest in the Webbs' home.

**WHEREFORE**, the Webbs demand judgment against Mr. Losner, Ms. Azran, and Credit Suisse:

- a. rendering the March 27, 2006 deed transfer be deemed a mortgage, entitling the Webbs to all the rights and remedies accorded to mortgagors under Federal and State law;
- b. that any subsequent transfer of the security interest to other parties be deemed void on the basis that subsequent transfers did not involve bona fide purchasers or assignees; and,
- c. other relief as the Court deems just.

#### **FIFTH COUNT**

#### **AGAINST THIRD-PARTY DEFENDANTS RONALD LOSNER, ALYSSA AZRAN, AND CREDIT SUISSE**

**Violations of Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, *et seq.***

81. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

82. At the time of the equitable mortgage/sale-leaseback transaction, Mr. Losner and Ms. Azran acted as creditors who regularly engaged in the making of (equitable) mortgage loans to consumers, payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. Mr. Losner and Ms. Azran are therefore subject to the Truth In Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, Federal Reserve Board Regulation Z (Regulation Z), 12 C.F.R. § 226. Mr. Losner and Ms. Azran violated TILA by failing to make any required disclosures to the Webbs whatsoever during the equitable mortgage/sale-leaseback transaction.

83. In addition, as equitable mortgagors, the Webbs have standing to assert claims for TILA violations that Ms. Azran could assert against Credit Suisse. Credit Suisse is subject to the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, Federal Reserve Board Regulation Z (Regulation Z), 12 C.F.R. § 226. Credit Suisse violated the disclosure and rescission requirements of TILA and Regulation Z in the course of the March 27, 2006 transaction by:

a. failing to disclose to Ms. Azran or the Webbs, the proper and accurate amount financed, in violation of 15 U.S.C. § 1638(a)(2) and 12 C.F.R. § 226.18(b). The HUD-1 Settlement Statement indicates that Ms. Azran financed a \$533,000.00 mortgage, whereas Credit Suisse's TILA Disclosure Statement notes an amount financed of \$521,970.39 only, *see* Exhibit A;



b. failing to disclose to the Webbs, upon information and belief, the proper and accurate fees payable that were not *bona fide* or reasonable in amount, in violation of 15 U.S.C. § 1638(a)(3) and 12 C.F.R. § 226.18(d), 226.4;

c. failing to disclose to Ms. Azran or the Webbs, that a security interest was taken in the subject property in violation of 15 U.S.C. § 1638(a)(9) and 12 C.F.R. § 226.18(m); and,

d. failing to disclose and to provide copies to Ms. Azran or the Webbs, the proper and accurate notice of the right to rescind and the date for the expiration of the rescission period in violation of 15 U.S.C. § 1635 and 12 C.F.R. § 226.23(b).

84. Credit Suisse's violations of TILA give the Webbs the right to rescind the equitable loan held by Ms. Azran pursuant to 15 U.S.C. §§ 1635, 1641(d)(1) and 12 C.F.R. § 226.23.

**WHEREFORE**, the Webbs demand judgment against Ms. Azran, Mr. Losner, and Credit Suisse for:

a. return of any money or property that has been given to anyone in connection with the transaction and the termination of U.S. Bank's security interest in the property;

b. damages in an amount to be determined at trial;

c. statutory damages as provided by 15 U.S.C. § 1640;

d. costs and disbursements;

e. any reasonable attorney's fees and costs of litigation; and,

f. other relief as the Court deems equitable and just.

## **SIXTH COUNT**

### **AGAINST THIRD-PARTY DEFENDANTS RONALD LOSNER, ALYSSA AZRAN, TOVIA FRANKL, REI, AND ANM**

#### **Common Law Fraud**

85. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

86. Mr. Losner, Ms. Azran, Mr. Frankl, REI and ANM (collectively referred to herein as “Fraud Defendants”) fraudulently and knowingly induced the Webbs to enter the March 27, 2006 equitable mortgage/sale-leaseback transaction by making intentional misrepresentations and failing to provide material information, including by not limited to the following:

- a. misrepresenting to the Webbs that Fraud Defendants specialized in foreclosure rescue, refinance, and credit repair;
- b. failing to explain to the Webbs at the time of the March 27, 2006 transaction that the Webbs would not maintain legal ownership of their home;
- c. misrepresenting and intentionally failing to inform the Webbs of the nature of the documents they were signing and the details of the transaction;
- d. failing to inform the Webbs that the Fraud Defendants would remortgage the property with a mortgage that is so large and costly that the Webbs could never assume the obligation;
- e. providing Credit Suisse with a security interest in the Property;
- f. misrepresenting to the Webbs that they would be able to recover their home from foreclosure when, in fact, the Fraud Defendants knew that the Webbs would never be able to regain ownership and avoid foreclosure;

g. misrepresenting to the Webbs that the transaction would improve their credit; and,

h. imposing unreasonable, bogus, illegal and inflated charges on the Webbs, directly and indirectly, in the March 26, 2006 transaction.

87. In addition, the Fraud Defendants fraudulently and knowingly conveyed or caused to be conveyed a security interest in the Webbs' property to Credit Suisse by making intentional misrepresentations and failing to provide material information, including but not limited to the submission of a loan application to Credit Suisse when Fraud Defendants knew that they fraudulently obtained title to the Webbs' property.

88. The Webbs suffered serious injury as a proximate result of their reliance on Fraud Defendants' intentional misrepresentations and failures to disclose. The Webbs' injuries include, but are not limited to, having the deed to the Property stolen from them; having a substantial lien in the form of a \$533,000.00 mortgage placed on their home; having lost the equity in their home; facing the uncertainty of foreclosure and eviction; loss of other opportunities; mental and physical anguish; and other damages.

**WHEREFORE**, the Webbs demand judgment against Fraud Defendants:

- a. rendering the fraudulent transaction as void and unenforceable;
- b. for actual damages and punitive damages;
- c. costs and disbursements;
- d. any reasonable attorney's fees and costs of litigation; and,
- e. other relief that this Court deems just.

**SEVENTH COUNT**  
**AGAINST ALL THIRD-PARTY DEFENDANTS**

**Common Law Equitable Fraud**

89. Third-Party Plaintiffs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

90. Third-Party Defendants made misrepresentations and/or omissions of material facts on which they intended the Webbs to rely. Third-Party Defendants' misrepresentations and/or omissions of material facts include but are not limited to the following:

a. misrepresenting to the Webbs that Mr. Losner, Ms. Azran, REI, Mr. Frankl, and/or ANM could save the Webbs' home from foreclosure through a temporary credit-rehabilitation program;

b. misrepresenting to the Webbs that the Webbs could remain in their home during the temporary program and thereafter repurchase their home from Mr. Losner, Ms. Azran and/or REI;

c. misrepresenting to the Webbs that their payments to Mr. Losner, Ms. Azran, and/or REI during this temporary period would be applied to the mortgage on the property;

d. failing to explain to the Webbs by Mr. Losner, Ms. Azran, REI, ANM, Mr. Frankl, Credit Suisse, and/or Dryden that the transaction would strip the Webbs of over \$400,000.00 in equity that they had in the home, as well as deprive them of legal ownership of the home;

e. misrepresenting the fair and accurate appraisal of the Webbs' home prior to the transaction by Real Valuation;

f. misrepresenting to the Webbs that Mr. Losner, Ms. Azran, and/or REI were protecting the Webbs' interests prior to, during, and after the closing;

g. failing to explain to the Webbs by Mr. Losner, Ms. Azran, REI, ANM, Mr. Frankl, Credit Suisse, and/or Dryden the significance of all of the documents that the Webbs signed around and during the closing;

h. misrepresenting to the Webbs by Mr. Losner, Ms. Azran, REI, ANM, Mr. Frankl, Credit Suisse, and/or Dryden that the documents that the Webbs signed during the closing were not based on false or deceptive information;

i. failing to provide the Webbs with complete copies of executed documents in an effort to deprive the Webbs of important information by Mr. Losner, Ms. Azran, REI, ANM, Mr. Frankl, Credit Suisse, and/or Dryden;

j. misrepresenting to the Webbs that Ms. Azran, Mr. Losner, and/or REI would continue making mortgage payments on the property as to avoid foreclosure; and,

k. misrepresenting to the Webbs by Credit Suisse and Dryden that they adequately reviewed documents before agreeing to underwrite the transaction.

91. As a proximate result of the Webbs' reliance on the Third-Party Defendants' misrepresentations and/or omissions of material facts, the Webbs have suffered serious injury and pecuniary losses, including but not limited to, the loss of legal title to the home in which they both have resided since 1994, the loss of over \$400,000.00 in equity, and the danger of eviction from the present foreclosure action.

**WHEREFORE**, the Webbs demand judgment against Third-Party Defendants for:

a. rescission of any contract or agreement related to the equitable mortgage/sale-leaseback transaction and the financing thereof;

b. an award of damages to the Webbs for the loss of equity in their home;  
and,

c. other relief that this Court deems just and proper.

### **EIGHTH COUNT**

#### **AGAINST ALL THIRD-PARTY DEFENDANTS**

##### **Common Law Negligent Misrepresentation**

92. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

93. Third-Party Defendants engaged in the following negligent misrepresentations and negligent failures to disclose material information in furtherance of the fraudulent scheme that robbed the Webbs of title to their home and denied the Webbs their equity in the home:

a. falsely informing the Webbs that the March 27, 2006 transaction would give the Webbs the opportunity to retain possession of the home, refinance the mortgage, and re-establish their credit, by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

b. misrepresenting to the Webbs that Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM specialized in foreclosure rescue, refinance, and credit repair;

c. misrepresenting to the Webbs at the time of the March 27, 2006 transaction that the Webbs would maintain ownership of their home, by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

d. misrepresenting and/or failing to inform the Webbs of the nature of the documents they were signing and the details of the transaction, by Mr. Losner, Ms. Azran, Mr. Frankl, REI, ANM, Credit Suisse, and/or Dryden;

e. failing to inform the Webbs that Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM would remortgage the property with a mortgage that is so large and costly that the Webbs could never assume the obligation;

f. misrepresenting to the Webbs that they would be able to recover their home from foreclosure when, in fact, Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM knew that the Webbs would never be able to regain ownership and avoid foreclosure;

g. misrepresenting to the Webbs that the transaction would improve their credit, by Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM;

h. charging unreasonable, bogus, illegal and inflated charges to the Webbs in the March 26, 2006 transaction, directly and indirectly, by Mr. Losner, Ms. Azran, Mr. Frankl, REI, ANM, Credit Suisse, and/or Dryden;

i. misrepresenting the fair and correct appraisal value of the Property, by Real Valuation; and,

j. failing to exercise reasonable care by permitting Ms. Azran to obtain a mortgage loan without providing any employment information, bank account numbers, and other relevant financial and personal information, by Credit Suisse.

k. misrepresenting that they adequately reviewed all relevant documents before underwriting the transaction and/or failing to disclose that they did not adequately review all relevant documents before underwriting the mortgage, by Credit Suisse; and,

l. misrepresenting that they adequately reviewed all closing documents and/or failing to disclose that they did not adequately review all closing documents by Dryden.

94. Third-Party Defendants failed to exercise reasonable care in disclosing the nature of the March 27, 2006 transaction and the details of the transaction as evidenced by the following examples:

a. Mr. Losner, Ms. Azran, Mr. Frankl, REI, and/or ANM failed to exercise reasonable care in their representations to the Webbs that they would be able to save their home from foreclosure, re-establish their credit and maintain title to the Property;

b. Credit Suisse, as the mortgage lender, and Dryden, as the closing and/or settlement agent in the March 27, 2006 transaction, failed to exercise reasonable care in their representations to the Webbs and failure to exercise reasonable care in their underwriting of the transaction and their reviewing of Ms. Azran's qualifications; and,

c. Real Valuation's failure to exercise reasonable care in providing their inflated appraisal of the Property in furtherance of the fraudulent scheme.

95. As a result, the Webbs justifiably relied on Third-Party Defendants' statements to their detriment and unknowingly deeded their property over to Ms. Azran and/or Mr. Losner, resulting in the loss of title and equity in their home.

**WHEREFORE**, the Webbs demand judgment against Third-Party Defendants for:

a. actual and consequential damages resulting from Third-Party Defendants' negligent actions; and,

b. other relief as the Court deems just.



## **NINTH COUNT**

### **AGAINST RONALD LOSNER, ALYSSA AZRAN, TOVIA FRANKL, REI, ANM, AND DRYDEN**

#### **Conspiracy to Commit Fraud and Misrepresentation**

96. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

97. Third-Party Defendants Mr. Losner, Ms. Azran, Mr. Frankl, REI, ANM, and Dryden (collectively referred to herein as “Fraud Conspiracy Defendants”) entered into an agreement to induce the Webbs to participate in the March 27, 2006 equitable mortgage/sale-leaseback transaction and to re-mortgage the Webbs’ property.

98. The Fraud Conspiracy Defendants participated in this scheme by intentionally, knowingly and willfully committing overt acts and making misrepresentations and failing to provide material information, in furtherance of the agreement, including but not limited:

- a. soliciting financially unsophisticated homeowners, specifically the Webbs, with false promises that they could save their homes from imminent foreclosure;
- b. inducing homeowners, specifically the Webbs, to enter into a complex equitable mortgage/sale-leaseback transaction without explaining the nature or the terms of the real estate transaction;
- c. failing to disclose to homeowners, specifically the Webbs, that they would need to repurchase their home for a substantial sum after the end of the lease term;
- d. representing to homeowners, specifically the Webbs, that there would be little or no costs to participate in a sale/leaseback transaction, when in fact, they charged unconscionable commissions, closing costs and unreasonable fees;

e. structuring a transaction that stripped homeowners, specifically the Webbs, of title to their homes and their equity value in their homes;

f. failing to pay the underlying mortgage and taxes on the property, making it impossible for homeowners, specifically the Webbs, to repurchase their homes at the end of the lease-term by Ms. Azran and Mr. Losner;

g. failing to disclose the equitable mortgage/sale-leaseback transaction on loan applications to secure funding to purchase the Webbs' home;

h. giving false and/or misleading information to homeowners, specifically the Webbs, about the transaction; and,

i. failing to provide the Webbs with full and complete copies of sales contracts and other loan documents relevant to their transactions.

99. The Webbs suffered serious injury as a proximate result of their reliance on the Fraud Conspiracy Defendants' misrepresentations and omissions.

**WHEREFORE**, the Webbs demand judgment against the Fraud Defendants:

- a. rendering the fraudulent transaction as void and unenforceable;
- b. for actual damages and punitive damages;
- c. costs and disbursements;
- d. any reasonable attorney's fees and costs of litigation; and,
- e. other relief that this Court deems just.

#### **TENTH COUNT**

#### **AGAINST CREDIT SUISSE, REAL VALUATION, AND DRYDEN**

#### **Aiding and Abetting**

100. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

101. At all times relevant hereto, Credit Suisse, by and through its affiliates, divisions, enterprises, representatives, employees and agents, knowingly and willfully aided and abetted the fraudulent foreclosure rescue scheme.

102. Credit Suisse's actions were taken with knowledge and acceptance of the fraudulent scheme, which enabled Credit Suisse and U.S. Bank to take a security interest in the Webbs' property and collect other fees and income.

103. Credit Suisse aided and abetted the scheme to defraud the Webbs by providing substantial assistance to Mr. Losner, Ms. Azran, Mr. Frankl, ANM and/or REI. This substantial assistance included, among other things:

- a. providing the funds used to originate the new mortgage loan;
- b. promoting and encouraging minimal underwriting standards; and/or,
- c. failing to conduct adequate due diligence before securing a mortgage on the Webbs' property.

104. As a direct and proximate result of the aiding and abetting by Credit Suisse, the Webbs suffered serious injury.

105. Without Credit Suisse's substantial assistance, involvement, and participation, the fraudulent scheme would not have been possible.

106. Said aiding and abetting renders void and unenforceable any security interest that Mr. Losner and/or Ms. Azran purported to transfer to Credit Suisse.

107. Real Valuation's actions to inflate the appraisal of the property were taken with knowledge and acceptance of the fraudulent scheme, which enabled other Third-Party Defendants to collect higher illegal fees and income from the transaction.

108. Real Valuation aided and abetted the scheme to defraud the Webbs by providing substantial assistance to other Third-Party Defendants in providing property appraisal values in furtherance of the fraudulent transaction.

109. As a direct and proximate result of the aiding and abetting by Real Valuation, the Webbs suffered serious injury.

110. Without Real Valuation's substantial assistance, involvement, and participation the fraudulent scheme would not have been possible.

111. At all times relevant hereto, Dryden, by and through its affiliates, divisions, enterprises, representatives, employees and agents, knowingly and willfully aided and abetted the fraudulent scheme.

112. Dryden's actions as the closing and/or the settlement agent were taken with knowledge and acceptance of the fraudulent scheme, which enabled other Third-Party Defendants to collect high, illegal fees and income from the transaction.

113. Dryden aided and abetted the scheme to defraud the Webbs by providing substantial assistance to other Third-Party Defendants by failing to disclose the nature and details of the transaction to the Webbs at the time of closing as well as negligently carrying its duties as closing agent;

114. As a direct and proximate result of the aiding and abetting by Dryden, the Webbs suffered serious injury including loss of title and equity in their home;

115. Without Dryden's substantial assistance, involvement, and participation the fraudulent scheme would not have been possible.

**WHEREFORE**, the Webbs demand judgment against Credit Suisse, Real Valuation, and Dryden for:

- a. actual damages and punitive damages;
- b. any reasonable attorney's fees and costs of litigation; and,
- c. other relief as the Court deems just.

## **ELEVENTH COUNT**

### **AGAINST DRYDEN**

#### **Breach of Fiduciary Duty**

116. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

117. Upon information and belief, Dryden, by and through its agent, Michael Mattia, served as the closing and/or title agent at the closing on March 27, 2006. Upon information and belief, Dryden received various commissions and/or fees for its services in this transaction.

118. As the closing and/or title agent, Dryden owed a fiduciary duty to the Webbs.

119. Dryden breached its fiduciary duty to the Webbs by,

- a. failing to exercise due diligence in conducting business with other Third-Party Defendants and in reviewing the closing documents to ensure that they were consistent, accurate and properly represented a legal transaction;

- b. knowingly presiding over, facilitating and otherwise providing material support to the other Third-Party Defendants during the closing in which they made fraudulent misrepresentations and/or failed to disclose to the Webbs material facts related to the transaction;

- c. preparing and/or assisting in the preparation of closing documents that were fraudulent, inconsistent, deceptive, and/or blatantly wrong, and which concealed the true nature and details of the transaction; and,

d. knowingly engaging in and aiding and abetting fraud by certifying a HUD-1 Settlement Statement that purported to be a true and correct statement of distribution of funds, when in fact, such funds were not distributed as described.

120. Dryden, in further breach of its fiduciary duty to the Webbs, aided and abetted, conspired with, and/or colluded with other Third-Party Defendants, to engage in the foreclosure rescue scam described herein.

121. The Webbs suffered serious injury and pecuniary losses as a proximate result of Dryden's breach of fiduciary duty, including but not limited to the loss of equity in their home and the commissions and fees that Dryden charged for its services.

**WHEREFORE**, the Webbs demand judgment against Dryden for:

- a. rescission of the contract;
- b. actual damages and consequential damages resulting from Third-Party Defendants' fraud;
- c. any reasonable attorney's fees and costs of litigation; and,
- d. other relief as the Court deems just.

## **TWELFTH COUNT**

### **AGAINST CROSS-DEFENDANT ALYSSA AYZRAN**

#### **Action for Quiet Title**

122. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

123. N.J. Stat. § 2A:62-1 provides in pertinent part:

Any person in the peaceable possession of lands in this state and claiming ownership thereof, may, when his title thereto, or any part thereof, is denied or disputed . . . maintain an action in the superior court to settle the

title to such lands and to clear up all doubts and disputes concerning the same.

124. Daphne Webb obtained title to the Property in 1983 by way of a deed which is recorded at the Office of the Clerk of the County of Essex. William Webb obtained an interest in the Property upon the Webbs' marriage in 1994.

125. Mrs. Webb has been in continuous peaceful possession of the Property since 1983, and Mr. Webb has been in continuous peaceful possession of the Property since 1994.

126. Cross-defendant Alyssa Azran has never been in possession of the Property.

127. The Webbs, rather than Ms. Azran, hold valid title to the Property because:

a. the Fraud Defendants (Mr. Losner, Ms. Azran, Mr. Frankl, REI, and ANM) fraudulently and knowingly induced the Webbs to enter the March 27, 2006 equitable mortgage/sale-leaseback transaction by making fraudulent representations to them;

b. the Webbs did not intend to affect a permanent transfer of title;

c. but for the fraud perpetrated on the Webbs, Ms. Azran would not have obtained title to the Property; and

d. it is against public policy for the Court to recognize Ms. Azran as a valid titleholder in these circumstances.

**WHEREFORE**, the Webbs demand judgment against Cross-defendant Alyssa Azran declaring that she has neither title to nor interest in the Property and that the Webbs are the true titleholders of the Property.

### **THIRTEENTH COUNT**

#### **AGAINST THIRD-PARTY DEFENDANTS RONALD LOSNER, ALYSSA AZRAN, REAL ESTATE INTERNATIONAL, ANM FUNDING, AND TOVI FRANKL**

##### **Unjust Enrichment**

128. The Webbs adopt by reference the preceding paragraphs of this Third-Party Complaint as though fully pled herein.

129. In defrauding the Webbs into the March 27, 2006 transaction, the Fraud Defendants (Mr. Losner, Ms. Azran, Mr. Frankl, REI, and ANM) received the benefits of title to the Webbs' home and approximately \$400,000 of equity in the Property.

130. The Fraud Defendants have not provided the Webbs with payment for this benefit and have been unjustly enriched by the transaction.

**WHEREFORE**, the Webbs demand restitution from Ms. Azran, Mr. Losner, Mr. Frankl, REI, and ANM in the full amount that they have respectively been unjustly enriched.

Dated:

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Chinh Q. Le, Esq., R. 1:21-3(c)  
Linda E. Fisher, Esq.  
Constance DeSena, R. 1:21-3(b)  
Jessica Perl, R. 1:21-3(b)  
SETON HALL LAW SCHOOL  
CENTER FOR SOCIAL JUSTICE  
Civil Litigation Clinic  
833 McCarter Highway  
Newark, NJ 07102  
(973) 642-8700  
Attorneys for Defendant Intervenors/  
Third-Party Plaintiffs  
Daphne and William Webb



### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Linda E. Fisher and Chinh Q. Le, are hereby designated as trial counsel on behalf of Third-Party Plaintiffs, William and Daphne Webb.

### **Rule 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy is not the subject of any other action pending in any Court or of any arbitration proceeding and no such action or proceeding is contemplated. I further certify that there is no other party who should be joined in this action.

Dated:

\_\_\_\_\_  
Chinh Q. Le, Esq., R. 1:21-3(c)  
Attorney for Defendant Intervenor/  
Third-Party Plaintiffs  
William and Daphne Webb

### **JURY DEMAND**

Third-Party Plaintiffs, Daphne and William Webb demand a trial by jury on all issues.

Dated:

\_\_\_\_\_  
Chinh Q. Le, Esq., R. 1:21-3(c)  
Attorney for Defendant Intervenor/  
Third-Party Plaintiffs  
William and Daphne Webb

### **SERVICE UPON ATTORNEY GENERAL**

Service of a copy of the Contested Answer, Affirmative Defense, Third Party Complaint, in this matter is being made upon the Attorney General of the State of New Jersey, pursuant to the Consumer Fraud Act for the purpose of encouraging intervention, by mailing a copy of said

complaint Via Regular Mail to Anne Milgram, Attorney General of New Jersey, Office of the Attorney General, Hughes Justice Complex, P.O. Box 080, Trenton, New Jersey 08652.

Copy to the Director of the New Jersey Division of Consumer Affairs, 124 Halsey Street, Newark, New Jersey 07101.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chinh Q. Le, Esq., R. 1:21-3(c)  
Attorney for Defendant Intervenor/  
Third-Party Plaintiffs  
William and Daphne Webb

**DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS**

Pursuant to R. 4:10-2(b), demand is hereby made that Third-Party Defendants disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment. If so, please attach a copy of each, or in the alternative state, under oath and certification: a) policy number; b) name and address of insurer; c) inception and expiration date; d) names and addresses of all persons insured thereunder; e) personal injury limits; f) property damages limits; and g) medical payment limits.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chinh Q. Le, Esq., R. 1:21-3(c)  
Attorney for Defendant Intervenor/  
Third-Party Plaintiffs  
William and Daphne Webb