

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-Against-

RAINY DAY HOLDINGS, LLC,
THE RAINY DAY FOUNDATION, INC.,
DEFAULT MITIGATION SERVICES, LLC,
RICK DEL SONTRO, ROBERT CLUTE,
MICHAEL SHRUM, CHRIS NAILLON,
CHRIS HAUVER, KELLY SCHWEDLAND,
TODD LUDLOW, FRANKLIN FIRST
FINANCIAL, LTD., FREDERICK ASSINI,
ANTONIO BAINES, ANDREW DAURO,
CHRIS BERTMAN, MAX KANE,
JOANN MEDEIROS, WALTER STASHIN,
CONTINENTAL MORTGAGE BANKERS,
INC. d/b/a FINANCIAL EQUITIES, and
GREGG MARCUS,

Defendants.

CV 15

5576

COMPLAINT

Civil Action No.

BIANCO, J.

BROWN, M. J.

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The UNITED STATES OF AMERICA, by its attorney, Kelly T. Currie, Acting United States Attorney for the Eastern District of New York, and Edward K. Newman, John Vagelatos and Robert W. Schumacher, Assistant U.S. Attorneys, alleges for its Complaint as follows:

INTRODUCTION

1. This is a civil mortgage fraud lawsuit brought by the United States against the Rainy Day Foundation, Inc., its associated business entities and principals (the "RAINY DAY DEFENDANTS"), as well as their mortgage lender clients conducting business within the Eastern District of New York and the principals of their mortgage lender clients (the Direct Endorsement Lender Defendants, or "D.E. DEFENDANTS").¹ As set forth below, in at least 865 instances during the period 2008 to 2010, the RAINY DAY DEFENDANTS and the D.E. DEFENDANTS (collectively, the "DEFENDANTS") defrauded, and conspired to defraud, the United States and various banks insured by the Federal Deposit Insurance Corporation ("FDIC"), resulting in millions of dollars of mortgage-losses, and requiring the United States to pay over \$5,605,237 in false claims.

2. The Federal Housing Administration ("FHA") of the Department of Housing and Urban Development ("HUD") is the largest mortgage insurer in the United States. FHA mortgage insurance obliges FHA to pay any outstanding mortgage balance to the mortgage holder, if a mortgage borrower defaults on the mortgage. FHA mortgage insurance makes home ownership possible for millions of American families by protecting lenders against defaults on mortgages, thereby encouraging lenders to make loans to borrowers who might not be able to

¹ The "Rainy Day Defendants" are: Rainy Day Holdings, LLC, The Rainy Day Foundation, Inc., Default Mitigation Services, LLC, Rick Del Sontro, Robert Clute, Michael Shrum, Chris Naillon, Chris Hauver, Kelly Schwedland and Todd Ludlow.

The "Direct Endorsement" or "D.E. Defendants" are Franklin First Financial, Ltd, Frederick Assini, Antonio Baines, Andrew Dauro, Chris Bertman, Max Kane, Joanne Medeiros, Continental Mortgage Bankers, Inc. d/b/a Financial Equities, and Gregg Marcus.

meet conventional underwriting requirements.

3. FHA's Direct Endorsement Program grants participating lenders the authority to originate and certify qualified mortgages for FHA insurance. FHA endorses the mortgages for insurance in reliance on Direct Endorsement lenders' certifications that the mortgages qualify for FHA insurance. By endorsing a qualified mortgage, FHA obligates the United States to insure the holder of that mortgage against default. Accordingly, Direct Endorsement lenders are obligated to follow FHA's statutory and regulatory requirements in originating and certifying mortgages, and FHA relies on the Direct Endorsement lenders' faithful application of those requirements.

4. HUD tracks the delinquency and default ratios of FHA-insured mortgages for Direct Endorsement lenders through its Neighborhood Watch System ("Neighborhood Watch"). Neighborhood Watch is a database which, among other things, identifies lenders that have a high incidence of "Early Payment Defaults," *i.e.*, mortgages defaulting within the first two years after loan origination. Early payment defaults may indicate a problem in a lender's underwriting practices. Neighborhood Watch is HUD's primary means of monitoring Direct Endorsement lender compliance with HUD's underwriting and origination regulations. FHA relies on, and requires, prompt and accurate reporting by Direct Endorsement lenders of all early payment defaults.

5. If Neighborhood Watch indicates that a lender's mortgages are defaulting within the first two years at a rate 100% or higher than other lenders (that is, twice that of other lenders) within the same region ("regional lenders"), HUD has the right to, among other things, audit, immediately suspend or seek to permanently remove the lender from the Direct Endorsement Program.

6. From 2008 to 2010, the D.E. DEFENDANTS' mortgages frequently defaulted within the first two years after closing at rates over 100% higher than other regional lenders. Therefore, in order to avoid scrutiny and potential removal, the D.E. DEFENDANTS entered into contracts with the RAINY DAY DEFENDANTS to fraudulently conceal the D.E. DEFENDANTS' actual early payment default ratios.

7. When mortgage borrowers could not make a payment within the first two years of their loans, and were either delinquent, about to enter into default, or actually in default, the D.E. DEFENDANTS funneled money through the RAINY DAY DEFENDANTS to make the borrowers' monthly payment. The DEFENDANTS made these surreptitious payments ("Emergency Mortgage Grants" or "EMGs") in order to conceal the borrowers' delinquency or default and thereby artificially suppress the D.E. DEFENDANTS' overall delinquency and default ratios as reported in Neighborhood Watch.

8. FHA regulations prohibit Direct Endorsement lenders from making mortgage payments for borrowers. By funneling money through the RAINY DAY DEFENDANTS, the DEFENDANTS concealed the fact that the D.E. DEFENDANTS were the source of the monies for the mortgage payment and that the D.E. DEFENDANTS were violating FHA regulations.

9. In exchange for their role in the fraudulent scheme, the RAINY DAY DEFENDANTS charged fees for every payment they funneled on behalf of the D.E. DEFENDANTS, and thereby generated significant profits for themselves at HUD's expense.

10. By concealing borrower delinquencies and defaults within the first two years of the mortgages, the DEFENDANTS artificially suppressed the D.E. DEFENDANTS' actual comparative delinquency and default ratios. The D.E. DEFENDANTS thereby avoided investigation and administrative action by HUD. This allowed the D.E. DEFENDANTS to

remain in the lucrative business of originating and selling FHA-insured mortgages into the secondary market.

11. The DEFENDANTS' actions further prevented the individual borrowers and secondary purchasers of the mortgages from utilizing HUD's comprehensive Loss Mitigation program, which offers multiple remedies to cure borrower delinquencies and defaults. By delaying or destroying the ability of the borrowers and secondary purchasers to use the Loss Mitigation program to rescue distressed mortgage loans, the DEFENDANTS caused incalculable harm to the individual borrowers. Many of the borrowers identified in this complaint have lost, or are in the process of losing, their homes to foreclosure.

12. After originating and endorsing mortgage loans for FHA insurance, the D.E. DEFENDANTS sold the mortgage loans to FDIC-insured financial institutions, including Wells Fargo, J.P. Morgan Chase, GMAC/ALLY, and U.S. Bank (the "Secondary Purchasers"). When a mortgage defaulted soon after its sale to the Secondary Purchasers (e.g., within 3-6 months), the Secondary Purchasers had the contractual right to compel the D.E. DEFENDANTS to repurchase the mortgages, to indemnify the Secondary Purchasers for losses on the mortgage, or to pay fines and penalties to the Secondary Purchasers. By funneling money through the RAINY DAY DEFENDANTS to pay the borrower's monthly payment, the DEFENDANTS concealed the early payment defaults from the Secondary Purchasers. By concealing the more than 865 mortgage delinquencies and defaults, the DEFENDANTS defrauded the Secondary Purchasers of hundreds of millions of dollars in repurchases, indemnifications and fines.

13. Accordingly, the United States seeks treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; fines under the Financial Institutions Recovery, Reform and Enforcement Act ("FIRREA"), 12 U.S.C. § 1833a; and damages and indemnification under

the common law theories of gross negligence, breach of fiduciary duty and unjust enrichment.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 31 U.S.C. § 3732(a), 28 U.S.C. § 1345, 28 U.S.C. § 1367, 12 U.S.C. § 1833 a(e) and 28 U.S.C. § 1331.

15. Venue lies in this district pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) (2).

THE PARTIES

16. Plaintiff United States of America is the sovereign and body politic.

I. The RAINY DAY DEFENDANTS

17. Defendant RAINY DAY HOLDINGS, LLC ("RDH") is a limited liability corporation, incorporated in Idaho in 2006. RDH's principal place of business was, at all times relevant to this action, located in Baltimore, Maryland. At all times relevant to this action, RDH conducted business in the Eastern District of New York.

18. RDH was founded by four entities: (1) Privado, LLC, an entity owned and controlled by Defendant RICK DEL SONTRO, (2) Market Innovators, LLC, an entity owned and controlled by Defendant TODD LUDLOW, (3) Fi Secure, LLC, an entity owned and controlled by Defendant ROBERT CLUTE, and (4) Forensic Marketing, LLC, an entity owned and controlled by Defendant CHRIS HAUVER. Dynaconnex, an entity owned and controlled by Defendant KELLY SCHWEDLAND, replaced Privado as a member/owner in January 2009. On information and belief, at all relevant times, all RDH profits were divided among these entities and their owners.

19. Defendant the RAINY DAY FOUNDATION, INC. ("RDF") was, at all times relevant to this action, a non-profit 501(c)(3) corporation, organized under the laws of the State

of Maryland in 2006. RDF is domiciled in the District of Columbia. At all times relevant to this action, RDF conducted business in the Eastern District of New York.

20. Defendant DEFAULT MITIGATION SERVICES, LLC ("DMS") is a limited liability corporation, incorporated in Idaho in 2009. DMS's principal place of business was, at all times relevant to this action, located in Boise, Idaho. DMS is the successor entity to RDF with regard to the activities complained of herein.

21. Defendant RICK DEL SONTRO ("DEL SONTRO") was, at all times relevant to this action, the Chief Executive Officer of RDF, whose responsibilities included formation of RDF and related companies, enrollment of HUD Direct Endorsement lenders as RDF clients, and oversight of the day-to-day company activities. DEL SONTRO was also a "Manager/Member" of Privado, LLC, initially one of RDH's partners.

22. Defendant TODD LUDLOW ("LUDLOW") was, at all times relevant to this action, a Senior Vice President of RDF, whose responsibilities included running and directing the operations of RDF's "financial assistance program." LUDLOW was also president of Market Innovators, LLC, one of RDH's partners. LUDLOW was the founder, and served as the "managing partner" of DMS. At all relevant times, LUDLOW served as RDF's contact for Mortgage Source, LLC.

23. Defendant ROBERT CLUTE ("CLUTE") was, at all times relevant to this action, a Senior Vice President of RDF and the Managing Partner of RDH. CLUTE was also "Manager/Member" of Fi Secure, LLC, one of RDH's partners. CLUTE assisted with the general operations of RDF, including coordinating payments of EMGs. At all relevant times, CLUTE also served as RDF's contact for CONTINENTAL MORTGAGE BANKERS, INC.

24. Defendant CHRIS HAUVER ("HAUVER") was, at all times relevant to this action, the "Lender Relations Representative" for RDF. HAUVER also served as an "administrator" at RDF, reviewing and approving deals between RDF and various mortgage lenders. HAUVER was also President of Forensic Marketing, LLC, one of RDH's partners. HAUVER also performed similar services on behalf of DMS.

25. Defendant KELLY SCHWEDLAND ("SCHWEDLAND") was, at all times relevant to this action the President of Dynaconnex, a partner in RDH. SCHWEDLAND also worked at, and marketed DMS's services to mortgage lenders who participated in the Direct Endorsement Program.

26. Defendant MICHAEL SHRUM ("SHRUM") was, at all times relevant to this action, "Delinquency Reduction Services Manager" at RDF. At all relevant times, SHRUM also served as RDF's contact for clients CONTINENTAL MORTGAGE BANKERS, INC., FRANKLIN FIRST FINANCIAL, LTD., Mortgage Source, LLC., Somerset Investors Corp., and Intercontinental Capital Group, Inc..

27. Defendant CHRISTOPHER NAILLON ("NAILLON") was, at all times relevant to this action, an "Account Executive" at RDF, whose responsibilities included proposing RDF's services to mortgage lenders and enrolling them as RDF clients. NAILLON also worked at Defendant DMS.

II. The D.E. DEFENDANTS

A. FRANKLIN FIRST FINANCIAL, LTD.

28. Defendant FRANKLIN FIRST FINANCIAL, LTD. ("FRANKLIN FIRST") is a Direct Endorsement lender. FRANKLIN FIRST is organized as a limited company, incorporated in New York in 1993. FRANKLIN FIRST's principal place of business was, at all times

relevant to this action, located in Melville, New York.

29. Defendant FREDERICK ASSINI ("ASSINI") was, at all times relevant to this action, the Chief Executive Officer of FRANKLIN FIRST, whose responsibilities included oversight of the company's day-to-day operations, including the selection and payment of delinquent and defaulting mortgages originated by FRANKLIN FIRST. ASSINI resides in Oyster Bay, New York.

30. Defendant ANTONIO BAINES ("BAINES") was, at all times relevant to this action, the Senior Vice-President for Operations of FRANKLIN FIRST. BAINES resides in Merrick, New York. BAINES participated in the selection and payment of delinquent and defaulting mortgages originated by FRANKLIN FIRST.

31. Defendant ANDREW DAURO ("DAURO") was, at all times relevant to this action, a manager at FRANKLIN FIRST. DAURO resides in East Meadow, New York. DAURO participated in the selection and payment of delinquent and defaulting mortgages originated by FRANKLIN FIRST.

32. Defendant CHRIS BERTMAN ("BERTMAN") was, at all times relevant to this action, the Chief Operating Officer at FRANKLIN FIRST. BERTMAN resides in Kings Park, New York. BERTMAN participated in the selection and payment of delinquent and defaulting mortgages originated by FRANKLIN FIRST.

B. MORTGAGE SOURCE LLC

33. Mortgage Source, LLC ("Mortgage Source") was, at all times relevant to this action, a Direct Endorsement lender. Mortgage Source was incorporated as a limited liability company in New York in 2002. Mortgage Source's principal place of business was, at all times relevant to this action, located in Garden City, New York.

34. Defendant MAX KANE ("KANE") was, at all times relevant to this action, the Chief Financial Officer of Mortgage Source. KANE's responsibilities included participation in the selection and payment of delinquent and defaulting mortgages originated by Mortgage Source and oversight of the company's day-to-day activities. KANE resides in Great Neck, New York.

35. Defendant JOANN MEDEIROS ("MEDEIROS") was, at all times relevant to this action, the Chief Operating Officer of Mortgage Source. MEDEIROS helped coordinate the payment of delinquent and defaulting mortgages originated by Mortgage Source. MEDEIROS resides in Northport, New York.

C. CONTINENTAL MORTGAGE BANKERS, INC.

36. Defendant CONTINENTAL MORTGAGE BANKERS, INC. d/b/a FINANCIAL EQUITIES ("CONTINENTAL") was, at all times relevant to this action, a Direct Endorsement lender. CONTINENTAL is a corporation, incorporated in New York in 1987. CONTINENTAL's principal place of business was, at all times relevant to this action, located in Westbury, New York.

37. Defendant WALTER STASHIN ("STASHIN") was, at all times relevant to this action, the President of CONTINENTAL, whose responsibilities include participation in the selection and payment of delinquent and defaulting mortgages originated by CONTINENTAL, and oversight of the company's day-to-day activities. STASHIN resides in Massapequa, New York.

D. SOMERSET INVESTORS CORP.

38. Somerset Investors Corp., d/b/a Somerset Mortgage Bankers ("Somerset") was, at all times relevant to this action, a Direct Endorsement lender. Somerset was incorporated in New York in 1979. Somerset's principal place of business was, at all times relevant to this action, located in Melville, New York. In 2010, FHA terminated Somerset's ability to originate FHA-insured mortgages.

39. Defendant GREGG MARCUS ("MARCUS") was, at all times relevant to this action, a managing director at Somerset. MARCUS's responsibilities included participation in the selection and payment of delinquent and defaulting mortgages originated by Somerset, together with oversight of all of Somerset's day-to-day activities. MARCUS resides at Glen Head, New York.

FACTS

I. BACKGROUND

A. FHA Direct Endorsement Program

i. FHA Mortgage Insurance

40. Pursuant to the National Housing Act of 1934, FHA insures home mortgages for qualified first-time and low-income home buyers. 12 U.S.C. § 1709. The FHA only insures mortgage loans issued by approved mortgage lenders to qualified borrowers.

41. FHA mortgage insurance programs help qualified first-time and low-income families become homeowners by facilitating a market for lenders to make loans to otherwise creditworthy borrowers who might otherwise not be able to meet conventional underwriting requirements. Because first-time and low-income home buyers default at higher rates than other borrowers, lenders would require higher mortgage interest rates from these buyers to compensate the lenders against the greater percentage of mortgages that will default and generally leave the

lenders with a loss. By insuring the originating lenders, and the secondary purchasers, of these mortgages against any default losses, FHA lowers mortgage rates for qualified first-time and low-income borrowers.

42. To qualify for FHA mortgage insurance, a mortgage must meet all applicable HUD requirements. Those requirements relate to, among other things, the adequacy of the borrower's income to meet the mortgage payments and other obligations, the borrower's creditworthiness, and the valuation of the property subject to the mortgage.

43. In the event that a borrower defaults on an FHA-insured mortgage, the holder of the mortgage is able to submit a claim to HUD for the costs associated with the defaulted mortgage.

44. In the mortgage industry, the imprimatur of FHA mortgage insurance makes covered mortgages highly marketable for resale both because such mortgages are expected to have met all HUD requirements and because they are insured by the full faith and credit of the United States.

ii. Direct Endorsement Lenders

45. Because of the high demand for FHA-insured mortgages, HUD cannot review every mortgage loan seeking FHA insurance. Instead, HUD relies upon the Direct Endorsement Program.

46. Under the Direct Endorsement Program, HUD does not itself conduct a detailed review of applications for mortgage insurance before a mortgage closes. Rather, approved mortgage lenders ("Direct Endorsement lenders") determine whether loan applicants are eligible for FHA mortgage insurance. See 24 C.F.R. § 203.5(a).

47. A Direct Endorsement lender must comply with HUD underwriting requirements

when making this determination. These underwriting requirements establish the minimum standard of due diligence in underwriting mortgage loans. 24 C.F.R. § 203.5(c). The determination must be predicated on principles consistent with HUD's requirements and must be supported by requisite documentation. See HUD Handbook 4155.1 Rev-5, Mortgage Credit Analysis for Mortgage Insurance, One to Four Family Properties, October 20, 2003 ("Credit Analysis Handbook"), Forward.

48. If the Direct Endorsement lender determines that a mortgage may be approved for FHA insurance in accordance with HUD rules, the lender closes the loan with the borrower. Thereafter, the Direct Endorsement lender certifies that the mortgage qualifies for FHA insurance.

a. Direct Endorsement Lenders Must Certify That The Mortgages Meet All HUD Requirements

49. After closing a qualifying loan to a borrower, a Direct Endorsement lender certifies that the mortgage qualifies for FHA insurance. With each mortgage insurance application submitted to HUD, Direct Endorsement lenders make a number of certifications.

50. Specifically, Direct Endorsement lenders must certify that:

- i. The proposed mortgage meets the income and credit requirements of the governing law in the lender's judgment.
- ii. That the lender's underwriter has used due diligence in underwriting the mortgage.
- iii. That the statements made in its application for insurance are true and correct.
- iv. That the statements made in the Lender's Certificate as part of the Direct Endorsement Approval for a HUD/FHA Insured Mortgage are true and correct.
- v. That the lender's underwriter makes all certifications required by Direct Endorsement Handbook, which include:

1. The mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay. 24 C.F.R. § 203.21.
2. The mortgagor's income is and will be adequate to meet the periodic payments required to amortize the mortgage submitted for insurance. 24 C.F.R. § 203.33.
3. The mortgagor's general credit standing is satisfactory. 24 C.F.R. § 203.34.

51. FHA endorses mortgages in reliance upon the Direct Endorsement lender's certifications that the mortgages may be approved for FHA insurance. After endorsing the mortgage, FHA provides the Direct Endorsement lender with a mortgage insurance certificate.

52. Relying on Direct Endorsement lender certifications eliminates the necessity for a detailed HUD review of each of the loans. See HUD Handbook 4165.1 Rev-2, Endorsement for Insurance for Home Mortgage Programs, 4/6/05, ¶2-15; Direct Endorsement Approval for a HUD/FHA Insured Mortgage, form HUD-92900-A(6/2005).

53. A Direct Endorsement lender's authority to participate in the Direct Endorsement program is a privilege, granted on the basis of the lender's demonstrated qualifications, experience and expertise. See HUD Handbook 4000.4 Rev-1, Single Family Direct Endorsement Program, 9/88, ¶2-1; Handbook 4155.2, 5/9/09, ¶2.A.1.a. The privilege is maintained, in part, by only endorsing for FHA mortgage insurance those mortgages that meet HUD guidelines. Id.

b. Direct Endorsement Lenders Owe Due Diligence Under HUD Regulations

54. HUD requires Direct Endorsement lenders to use the same care in qualifying a loan for FHA insurance as the lenders would use when originating a loan where the lenders themselves would be entirely dependent on the property as security to protect their investment. 24 C.F.R. § 203.5(c).

55. Specifically, Direct Endorsement lenders are required to comply with the following HUD guidelines:

- a. Direct endorsement lenders may only engage in business practices that conform to generally accepted practices of prudent mortgage lenders. See FHA Title II Mortgagee Approval Handbook 4060.1, Section 2-10(D) (REV-2, August 14, 2006).
- b. Direct endorsement lenders may not engage in practices that demonstrate irresponsibility. Id.
- c. Direct endorsement lenders may only pay fees for services permitted by HUD program policy. Id. at Section 2-22.
- d. Direct endorsement lenders are required to function so as to protect the FHA from unacceptable risk. Id. at Section 7-2.

56. Failure to comply with FHA's underwriting requirements may result in the withdrawal of a lender's Direct Endorsement authority.

57. As a condition for maintaining its participation in the Direct Endorsement Program, a Direct Endorsement lender, by its President or Vice-President, must certify to HUD annually that the Direct Endorser conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval. See Title II Yearly Verification Report, Home Office. The officer must further certify that the Direct Endorser is responsible for all its employees' actions. Id. As a requirement for continued participation in the Direct Endorsement Program, the annual certifications are further an explicit condition to ongoing payments on FHA Mortgage Insurance.

c. Direct Endorsement Lenders Owe Due Diligence Under Common Law

58. Direct Endorsement lenders owe FHA a common law duty of due diligence.

59. The exercise of due diligence is an affirmative duty of Direct Endorsement lenders. This duty obligates Direct Endorsement lenders to comply with FHA's rules and regulations.

60. HUD has apprised Direct Endorsement lenders of this common law duty since it first created the Direct Endorsement Program. See 48 Fed. Reg. 11928, 11932 (Mar. 22, 1983) (“The duty of due diligence owed the Department by approved mortgagees is based not only on these regulatory requirements, but also on civil case law.”); id. (“HUD considers the exercise of due diligence an affirmative duty on the part of mortgagees participating in the program.”).

d. Direct Endorsement Lenders Owe A Fiduciary Duty Of Good Faith, Honesty, and Integrity

61. A fiduciary relationship exists between Direct Endorsement lenders and FHA.

62. FHA relies on the Direct Endorsement lenders in endorsing the lender-submitted mortgages for insurance. In so doing, FHA has reposed trust and confidence in the Direct Endorsement lenders’ integrity and fidelity. In exchange for the FHA’s trust and confidence, Direct Endorsement lenders have their mortgages endorsed, without a detailed file review, for FHA insurance, increasing the volume of mortgages that the lender can extend and sell in the secondary market, and increasing the mortgages’ value for resale in the secondary market.

63. HUD’s reliance on the Direct Endorsement lenders’ experience, expertise, underwriting and certifications, in exchange for the Direct Endorsement lenders’ ability to have their mortgages endorsed, without a detailed file review, for FHA insurance, makes the Direct Endorsement lenders fiduciaries of HUD. See Faulkner v. Arista Records, LLC, 602 F. Supp. 2d 470, 482 (S.D.N.Y. 2009) (“A fiduciary relationship arises when one has reposed trust or confidence in the integrity or fidelity of another who thereby gains a resulting superiority of influence over the first.”)

64. Accordingly, Direct Endorsement lenders are obligated to apply “the punctilio of an honor the most sensitive” in their dealings with FHA. Meinhard v. Salmon, 164 N.E. 545, 546 (1928).

65. The Direct Endorsement lenders therefore have a corresponding duty to act towards HUD in good faith, and with honesty and integrity. Further, the Direct Endorsement lenders have an affirmative duty to avoid misleading FHA in any and all circumstances, to avoid conflicts of interest with FHA, to disclose material facts to FHA, and to act according to FHA's rules and regulations in the underwriting of mortgages submitted for FHA insurance.

e. Reporting Requirements

66. Direct Endorsement lenders are required to report loans that are delinquent or in default to HUD each month.

67. It is extremely important for lenders to provide HUD with monthly, up-to-date and accurate reports of delinquent and defaulted mortgages, as well as the status and trends of the HUD-insured mortgages originated by each Direct Endorsement lender. See FHA Title II Mortgagee Approval Handbook 4330.1, Section 7-8 (REV-5, September 29, 1994); HUD Mortgagee Letter 2006-15 (June 8, 2006).

68. These reports show HUD the potential risk to the FHA insurance fund posed by a Direct Endorsement lender's origination activities. Id.

69. HUD tracks FHA-insured mortgage performance nationwide through its Neighborhood Watch system.

iii. Neighborhood Watch

70. HUD monitors Direct Endorsement lenders' origination practices so as to identify lenders who pose a high risk to the FHA's mortgage insurance funds, as well as to permit FHA to take actions to mitigate losses. FHA Title II Mortgagee Approval Handbook 4060.1, Section 8-1 (REV-2, August 14, 2006). FHA's primary means to detect whether the mortgage lenders may be violating FHA standards in originating mortgages, and to monitor compliance with its

underwriting regulations, is through the Neighborhood Watch system ("Neighborhood Watch").

71. Neighborhood Watch is a database tracking system which identifies, among other things, lenders, loan types, and locations by zip code that have a high default ratio within the first two years of the loan ("early payment defaults"). Neighborhood Watch is designed as an Early Warning System to aid FHA staff in monitoring lenders and programs.

72. The data in Neighborhood Watch is compiled from information provided to FHA by Secondary Purchasers of FHA-insured mortgages, or by the entities servicing the mortgages, i.e., the entities receiving the monthly mortgage payments from the borrowers. These entities send FHA a monthly report concerning which borrowers paid their FHA-insured mortgages on time, late, or not paid at all.

73. FHA sorts the loan data in accordance with these monthly reports, breaking out which Direct Endorsement lender originated the delinquent or defaulting loans. FHA can thereby see how a particular Direct Endorsement lender's loans are performing.

74. If Neighborhood Watch reports that a Direct Endorsement lender's mortgages are defaulting at more than 100% higher than other regional lenders, FHA may immediately fine, suspend, or even debar the mortgage lender from the FHA mortgage insurance program.

75. Neighborhood Watch's data is provided by the entity holding or servicing the mortgage. If the monthly payment information is incorrect, Neighborhood Watch's ability to track a Direct Endorsement lender's default ratio is completely defeated.

B. HUD's Loss Mitigation Program

76. HUD requires the holders or purchasers of FHA-insured mortgages to participate in HUD's Loss Mitigation Program. See 24 CFR § 203.355; HUD Mortgagee Letter 2000-05.

77. Mortgage holders must inform borrowers of all available loss mitigation options

within the second month of the borrower's delinquency, prior to an actual default, and are further encouraged beginning to attempt to assist the borrower as soon as the loan becomes delinquent. Mortgage holders are encouraged to identify the underlying cause of borrower's financial issue to determine if the problem is permanent or temporary.

78. The Loss Mitigation program provides a number of different options to help delinquent borrowers. These include forbearance, loan modification, partial claim, and relief through the Home Affordable Modification Program ("FHA-HAMP").

79. Forbearance permits borrowers who are less than twelve months delinquent to obtain a three-month reprieve from paying their mortgage.

80. Loan modification permits the loan holder to reduce a mortgage's market-rate or higher interest rate downwards, so that the borrower can afford the monthly payment. The term of payment for the mortgage is then extended.

81. Partial claim provides a borrower with up to twelve months of advance mortgage payments from HUD. HUD then takes a junior lien on the mortgage, with no interest.

82. Under FHA-HAMP, HUD pays up to 30% of the total owed on the mortgage on the borrower's behalf, with HUD taking a junior lien in return for its payment.

83. Financial institutions holding or servicing loans receive incentive payments for each loan they successfully place into Loss Mitigation.

84. Loans whose defaults are resolved through HUD's Loss Mitigation shortly after their default are significantly *less* likely to redefault at a later time, as opposed to those loans which go into Loss Mitigation at a greater length of time after the initial default. Thus, by delaying the borrowers' abilities to work with the HUD Loss Mitigation program, the RAINY DAY DEFENDANTS and the D.E. DEFENDANTS significantly increased the risk that the

borrowers will redefault on their mortgage loans.

85. By fraudulently concealing the existence of borrowers' delinquencies and defaults, the DEFENDANTS delayed the mortgage from participating, or indeed, denied them the right to participate in the Loss Mitigation program.

C. The Secondary Market

86. At all times relevant to this action, a secondary market existed for the sale of residential mortgages generally, and FHA-insured mortgages in particular.

87. FHA-insured mortgages were valued in the secondary market, because (a) the loans were supposed to meet FHA's strong underwriting criteria, and (b) they were insured by the full faith and credit of the United States against defaults.

88. Various institutions, including the Secondary Purchasers, purchased closed residential mortgages, including FHA-insured mortgages. The Secondary Purchasers purchased the mortgages from the Direct Endorsement lenders pursuant to purchase agreements covering the sale of all mortgages between the parties for a period of time (the "Purchase Agreements").

89. The Purchase Agreements required the Direct Endorsement lender, at the discretion of the Secondary Purchaser, to repurchase any mortgages back from the Secondary Purchaser if the loan defaulted shortly after the initial sale of the loan (e.g., within six months).

90. Alternately, the Purchase Agreements also required the Direct Endorsement lenders to pay penalties to the Secondary Purchaser or to indemnify the Secondary Purchaser, if the loan defaulted soon after the initial sale of the loan (e.g., within six months).

II. THE RAINY DAY SCHEME

A. The End Of Down Payment Assistance And The Inception of the Rainy Day Scheme

91. DEL SONTRO has worked in the American mortgage industry for over a decade.

In 2001, DEL SONTRO was the president of the "Home Down Payment Gift Foundation." This entity funneled money from home sellers to homebuyers, funding the buyers' down payments on their FHA-insured mortgages. Without these funds, the buyers would not have sufficient down payments to qualify for an FHA-insured mortgage.

92. Beginning around 2004, Congress began considering a ban on seller-funded down payment assistance. The ban was considered because seller-funded down payment assistance encouraged borrowers to take out loans they could not afford. Further, recipients of this type of down payment assistance went into foreclosure at three times the rate of other FHA-insured borrowers, taxing the FHA's mortgage insurance funds.

93. While the banning of seller-funded down payment assistance was under discussion, DEL SONTRO, LUDLOW and others began plotting a new scheme to circumvent and illegally profit from FHA's Direct Endorsement program.

94. In 2005, the Home Down Payment Gift Foundation legally changed its name to the RAINY DAY FOUNDATION ("RDF"). DEL SONTRO became RDF's Chief Executive Officer. LUDLOW and CLUTE were RDF's Senior Vice-Presidents. HAUVER was a Lender Relations Representative. SHRUM was the "Delinquency Reduction Services Manager." NAILLON was an Account Representative

95. In 2006, DEL SONTRO wrote up a set of "RAINY DAY NOTES" to himself.

96. In the notes, DEL SONTRO wrote that RDF would "resolve" several "nightmares and potential business killers" for Direct Endorsement lenders who sold their FHA-insured loans on the secondary market. DEL SONTRO wrote that these "potential business killers" included the "extremely high cost of 'buying back' loans" and "the high cost of indemnification" when the loans defaulted.

97. DEL SONTRO further wrote that RDF would “resolve” the “high cost of being placed on the HUD Neighborhood Watch list,” as well as the Direct Endorsement lender’s risk of being stripped of the right to originate FHA loans.

98. DEL SONTRO further wrote that, by using RDF, Direct Endorsement lenders would “[e]ase up the strangle hold they now have on their underwriting guidelines, which would broaden and deepen the kinds of borrowers they can qualify -- equaling an increase in production.” Thus, the RAINY DAY DEFENDANTS were proposing a conspiracy that would allow Direct Endorsement lenders to avoid applying HUD’s strict underwriting guidelines, and continue to make more loans – albeit to unqualified borrowers, many of whom would ultimately default. Greater production would mean greater profit for the Direct Endorsement lenders, but at the cost of heightened risk and potential losses to FHA and any secondary purchasers.

99. As of October 1, 2008, after years of industry-wide debate and discussion, Congress banned seller-funded down payment assistance, such as that offered by the Home Down Payment Gift Foundation.

100. In 2008, in internal e-mail discussions, DEL SONTRO and LUDLOW noted that HUD had “begun an aggressive approach to monitoring the default ratio of FHA approved lenders.” HUD had lowered the default ratio at which HUD would scrutinize a Direct Endorsement lender from 300% to 150% of the regional default ratio.

101. DEL SONTRO and LUDLOW noted that “the bottom line for the lender is once they exceed 150%, they appear on HUD’s radar. It is just better to stay off the radar.”

102. Because “assisting” borrowers at the time of purchase was now prohibited, DEL SONTRO, LUDLOW and CLUTE determined that they would now “assist” borrowers whose mortgages were delinquent, about to default or actually in default. This assistance, however,

would also be in violation of HUD regulations.

103. To do so, DEL SONTRO, LUDLOW and CLUTE planned to funnel EMGs from Direct Endorsement lenders through RDF so as to conceal the origin of mortgage assistance payments to banks servicing the loans of the delinquent borrowers. In April 2009, LUDLOW described the plan termed "Delinquency Reduction Services" or "DRS" as follows. A lender would provide

a large grant to the [Rainy Day] foundation for the purpose of targeting specific borrowers for financial assistance who are either delinquent on their monthly mortgage payments or who are in default on those payments and are located within the jurisdiction of local HUD offices where a lender's default ratio for a branch or branches is higher than average and that lender may face HUD sanctions because of the high default ratio.

104. LUDLOW also stated in the report that "[t]he goal was to find sufficient borrowers that warranted assistance, assist those borrowers, and the default ratio for that [Direct Endorsement lender's] branch in that local HUD office would then be lowered."

B. The Rainy Day Defendants Market And Implement The Scheme

105. In 2008, LUDLOW informed DEL SONTRO that he had sent a Freedom of Information Act request to HUD, asking for a list of all lenders on HUD's Credit Watch list. LUDLOW explained that "I figure that will be a good marketing list" for RDF's efforts.

106. In addition, the RAINY DAY DEFENDANTS intended to market their new scheme to their former Home Downpayment Gift Foundation clients.

107. In a September 19, 2008 e-mail pitching his new scheme, DEL SONTRO wrote to an FHA lender who had used the Home Downpayment Gift Foundation direct payment assistance ("DPA") program. In the e-mail, DEL SONTRO wrote that with "Seller funded DPA going away" he could offer as an alternative, "the ability to fill your slush fund."

108. This "slush fund" comprised the funds RDF received from and held, on behalf of its Direct Endorsement lender clients.

109. The RAINY DAY DEFENDANTS would use the "slush fund" to make mortgage payments for borrowers who could no longer afford their mortgages, avoiding a default and artificially suppressing the lender's default ratio.

110. In exchange for funneling Direct Endorsement lender money to pay a monthly mortgage payment, RDF would collect a fee from the Direct Endorsement lender.

111. The surreptitious payments that were to be made on behalf of the borrowers would, however, be illegal, as admitted by DEL SONTRO. In a mid-2008 presentation describing RDF's services, DEL SONTRO specifically stated that, "It is illegal for a lender to make a mortgage payment on behalf of a borrower."

112. Indeed, DEL SONTRO marketed RDF's "Delinquency Reduction Services" as a slush fund to conceal that mortgage lenders were making payments on loans they had sold. In a May 30, 2008 e-mail to a potential mortgage lender customer, DEL SONTRO stated: "Bill, me and you speaking frank here – This is an emergency slush fund to help your borrowers. I don't know how better to say it! You can't help your borrowers, but as a non-profit we are permitted to do so."

113. In 2008, DEL SONTRO and CLUTE prepared a description of RDF's services for prospective Direct Endorsement lender clients. In the description, DEL SONTRO and CLUTE wrote that Direct Endorsement lenders could enroll borrowers in various two-year Rainy Day "programs." This two-year period was precisely the same period of time that FHA monitored mortgage loan performance to track Direct Endorsement lender compliance with HUD underwriting guidelines, by the Neighborhood Watch program.

114. As described by CLUTE and DEL SONTRO, RDF provided "financial assistance" for all enrolled homeowners who ran into "short-term financial problems." The

funds for this assistance would supposedly be drawn from the "enrollment fees" paid to RDF by its client Direct Endorsement lenders.

115. In reality, RDF simply paid selected loans that were going into default, regardless of the basis of borrower's financial issues.

116. Rather than helping all enrolled borrowers, the point of RDF's scheme was to keep the D.E. DEFENDANTS from losing their ability to originate FHA-insured mortgages and to avoid the lenders having to buy back loans that had defaulted early on.

117. In their marketing materials, DEL SONTRO and CLUTE wrote that a Rainy Day "counselor" would work with each borrower to determine the reason for their mortgage delinquency and analyze the "probability of continued financial difficulty."

118. In fact, Rainy Day "counselors" and "reviewers" frequently advised against making payments on a large number of borrowers' mortgages, due to the borrower's inability to ever pay the mortgage. Nonetheless, the RAINY DAY DEFENDANTS and their Direct Endorsement lender clients repeatedly overrode the "counselors" recommendations, and funneled money from the D.E. DEFENDANTS through RDF to the Secondary Purchasers.

119. From at least late-2008 forward, SCHWEDLAND, an indirect owner in RDH, assisted in marketing the RAINY DAY DEFENDANTS' expanding business to new Direct Endorsement lender clients. In December 2008 and March 2009, on DEL SONTRO's request, SCHWEDLAND prepared lists of the several-hundred most likely Direct Endorsement lenders for targeting by RDF, including one spreadsheet called "RDH Target List." By late spring/early Summer 2009, SCHWEDLAND assisted in marketing RDF's successor's business, when RDF's activities attracted HUD's attention (discussed below at paragraphs 124 - 146).

120. From at least late 2008, HAUVER, a founding partner in RDF, began a program

of outreach to various Direct Endorsement lenders located within the Eastern District of New York. In March 2009, HAUVER was listed as the customer service representative for two clients at RDF, including Ideal Mortgage Bankers d/b/a Lend America.

121. By August 2008, the RAINY DAY DEFENDANTS began making mortgage payments for borrowers who had never been enrolled in any RDF program when their mortgages had closed. Instead, the RAINY DAY DEFENDANTS funneled the D.E. DEFENDANTS' money to the Secondary Purchasers when loans selected by the D.E. DEFENDANTS were in danger of defaulting. The money was paid out of money either "banked" at RDF by the D.E. DEFENDANTS, if available, or "through direct invoicing" of the D.E. DEFENDANTS by RDF for the monies paid out on their behalf. Above and beyond the money the RAINY DAY DEFENDANTS funneled to the Secondary Purchasers, the RAINY DAY DEFENDANTS charged the D.E. DEFENDANTS \$250-\$300 in fees for each loan on which they funneled a payment.

122. Any payment on a mortgage by RDF thus generated a fee for the RAINY DAY DEFENDANTS, even when the mortgage borrower remained unaware of it. Thus, borrowers whose loans were originated by the D.E. DEFENDANTS had their mortgages paid without ever being "enrolled" in the "Rainy Day Program," and without even their knowledge.

123. Many Secondary Purchasers contractually prohibited the D.E. DEFENDANTS, or third parties acting on their behalf, from making mortgage payments on loans sold to the Secondary Purchasers, during the initial period when the loans were subject to a demand for repurchase in the event of an early payment default. Nonetheless, the DEFENDANTS violated the Purchase Agreements between these Secondary Purchasers and the D.E. DEFENDANTS, funneling payments through RDF in order to avoid the various penalties set forth in the Purchase

Agreements.

C. The Rainy Day Defendants Relocate And Rebrand The Scheme

124. In March 2009, HUD's Office of the Inspector General served an administrative subpoena to RDH for documents concerning the "Rainy Day Program." On information and belief, recognizing that their scheme might be coming under scrutiny, DEL SONTRO, LUDLOW, CLUTE, HAUVER, and SCHWEDLAND adopted a similar approach as they had when the Down Payment Assistance Foundation was under fire – they relocated and rebranded. Soon after receiving the administrative subpoena, the RAINY DAY DEFENDANTS organized a new business entity, DEFAULT MITIGATION SERVICES, LLC ("DMS").

125. DMS was organized to conceal the RAINY DAY DEFENDANTS' continued and new efforts to defraud the United States and the Secondary Purchasers.

126. RDF Senior Vice-President LUDLOW became DMS' registered agent and manager. Market Innovators, Inc., a company owned and controlled by LUDLOW, was a member of DMS.

127. The RAINY DAY DEFENDANTS were also concerned that their funneling of monies would result in a loss of RDF's non-profit status, and cause the individual RAINY DAY DEFENDANTS to accrue a massive tax liability.

128. In order to further conceal their operations, the RAINY DAY DEFENDANTS scrambled to find a federally recognized Indian tribe, which they believed might provide cover for RDF and DMS' fraudulent activities through a tribe's semi-sovereign status.

129. HAUVER previously worked on funneling down payment assistance to borrowers through the Lower Brule Sioux Tribe. In June 2009, HAUVER began reaching out to Indian tribes, and also e-mailed an American Indian financial consultant for assistance in setting up a

deal with an Indian tribe. After failing to strike deals with Indian tribes in Mississippi and the Dakotas, DMS and its principals, including LUDLOW, HAUVER and NAILLON, began a business relationship with the Ely Shoshone tribe of Ely, Nevada.

130. DMS' mission statement stated that "[f]inancial assistance is provided through the Ely Shoshone Tribe's Housing Authority."

131. DMS was RDF's successor both in activities and employees. LUDLOW wrote a mortgage lender client that while he still did work on behalf of RDF, despite the fact that "when I began working with the tribe, our attorney told me to separate myself from Rainy Day." LUDLOW further wrote that NAILLON, who also worked at the ostensibly separate DMS, "works for Rainy Day as well."

132. Other RAINY DAY employees also took positions at DMS, as well as at the Ely Shoshone Housing Authority, which they renamed the "Ely Shoshone Finance Authority." RDF employees began using new e-mail addresses at DMS. In addition, some RDF employees, such as HAUVER, also began using Ely Shoshone Finance Authority e-mail addresses.

133. The Ely Shoshone Finance Authority also began to use an office address used previously or concurrently by RDF, DMS and "Positive Alternatives," yet another company owned by LUDLOW.

134. SCHWEDLAND, his company Dynaconnex, and his employees further assisted in the transformation of RAINY DAY into DMS. From mid-2009 forward, SCHWEDLAND assisted in presenting DMS to correspondent mortgage lenders. Beginning in the early summer of 2009, SCHWEDLAND began a concerted effort to market DMS's services to new Direct Endorsement lenders. In June 2009, SCHWEDLAND helped brainstorm names for the "new" services to be provided by DMS – in reality, the same services that had been provided by RDF.

On June 12, 2009, SCHWEDLAND circulated three versions of an "Ely Shoshone Tribe Seal" (subsequently used on DMS marketing materials) to CLUTE, LUDLOW, DEL SONTRO, HAUVER and others. Later that summer, SCHWEDLAND worked on the Ely Shoshone Housing Authority's public website.

135. LUDLOW, NAILLON, HAUVER, DMS and RDF continued funneling money from Eastern District of New York-based mortgage lenders Lend America, FRANKLIN FIRST, Mortgage Source and Somerset to the current Secondary Purchasers by the Ely Shoshone Finance Authority.

136. The RAINY DAY DEFENDANTS continued their fraud by contracting through DMS to "administer" a "grants" program for the Ely Shoshone Housing Finance Authority.

137. In a description of the RDF/DMS enterprise, CLUTE wrote that the "Financial Payment Assistance" provided by DMS consisted of "[t]ransferring money from Lender to Buyer (by Indian Finance Authority)."

138. Direct Endorsement lenders, including FRANKLIN FIRST, Lend America, Somerset, Mortgage Source and Intercontinental Capital Group wire transferred funds to a DMS bank account. DMS then transferred the funds to an Ely Shoshone Housing or Finance Authority account at the same bank. Ely Shoshone Finance Authority employees then called servicing mortgage holders, and used the funds to pay mortgages by "check by phone" transactions, as directed by LUDLOW and others at DMS. The Ely Shoshone tribe received a per transaction fee for each such phone call.

139. None of the defaulting mortgages concealed by DMS were for mortgages owed by members of the Ely Shoshone tribe. Moreover, none of these mortgages were on property situated on any Indian tribe's land. The real estate was located on decidedly non-tribal lands,

such as Brooklyn, New York.

140. By late June 2009, SCHWEDLAND and LUDLOW were tracking the loans on which the Ely Shoshone Housing Authority funneled the Direct Endorsement lenders' money. By late July 2009, SCHWEDLAND was assisting LUDLOW and others in getting information to potential DMS clients on how the scheme worked. At the same time, HAUVER was setting up the electronic database to track information on the loans for which DMS and the Ely Shoshone tribe were funneling the Direct Endorsement lenders' payments.

141. In August 2009, LUDLOW e-mailed a mortgage lender about "a service we began shortly after Rainy Day Foundation severed its relationship" with several of RDF's clients. LUDLOW wrote that DMS was "spun off" from the services that RDF had used "to reduce default ratios and eliminate Early and First Payment Defaults."

142. In mid-to-late August 2009, NAILLON e-mailed a number of Direct Endorsement lenders to describe DMS' services. For example, on August 12, 2009, NAILLON, in an e-mail sent to multiple potential clients, wrote that DMS "was created to assist lenders in eliminating first and early payment default penalties" by providing financial assistance to borrowers that will miss their payments. "[I]f they will cause an EPD penalty or FPD (first payment default) penalty, DMS will arrange for them to receive financial assistance. Financial assistance is provided through the Ely Shoshone Tribe's Housing Authority. The reason it is provided by a housing authority is because as a governmental entity, the assistance they provide is a non-tax event for the borrower." NAILLON added that the "goal of the program is to be a 'quick fix' to a high default ratio which will enable a company to maintain its ability to originate in all its branches..."

143. NAILLON's e-mail neatly lays out the two sets of frauds RDF/DMS and their

clients perpetrated: the first against HUD, which had its ability to track mortgage defaults destroyed by RDF and DMS's illicit suppression of comparative default ratios, and the second against the Secondary Purchasers, who had Early Payment Defaults and "First Payment Defaults" (defaults on the first mortgage payment due after the mortgage was sold to a Secondary Purchaser) concealed from them.

144. SCHWEDLAND's and HAUVER's marketing and other work for DMS continued into 2010. In January 2010, SCHWEDLAND, together with LUDLOW, CLUTE and DEL SONTRO worked on "scripts" for RDF/DMS counselors to use when dealing with delinquent borrowers. On February 18, 2010, DEL SONTRO told SCHWEDLAND and HAUVER to set up "a drip feed e-mail campaign to influence lenders and key NW personnel" at Direct Endorsement lenders.

145. In February 2010, at DEL SONTRO's request SCHWEDLAND and HAUVER prepared a list of 638 Direct Endorsement lenders for marketing purposes, breaking out what an early payment default on any single mortgage cost each of the lenders. SCHWEDLAND and HAUVER highlighted, as potential clients, the 17 Direct Endorsement lenders who incurred the highest costs for each defaulting loan.

146. In March 2010, CLUTE also asked HAUVER to obtain client references for CLUTE to use in new client pitches. Also on March 4, 2010, DEL SONTRO e-mailed LUDLOW, HAUVER, SCHWEDLAND and others, seeking their input on improving the company's finances and on what their future strategy should be. One of the tasks arrived at was to "[d]etermine who 'owns' RDF – leadership."

III. THE DEFENDANTS CONCEAL DELINQUENCIES AND DEFAULTS

147. Over 42 Direct Endorsement lenders, including the D.E. DEFENDANTS, conspired with the RAINY DAY DEFENDANTS to fraudulently make loan payments on the

behalf of borrowers; to artificially conceal the payments from FHA and the Secondary Purchasers; and to cause false information to be submitted to the FHA, which resulted in false, artificially suppressed comparative default ratios for the Direct Endorsement lenders to be submitted to FHA.

148. The ostensibly non-profit RDF and DMS took their fees for these “services” and moved them upwards, paying RDH and its constituent members – the companies owned and controlled by DEL SONTRO, LUDLOW, CLUTE, HAUVER and SCHWEDLAND (Privado, Market Innovators, Fi Secure, Forensic Marketing and Dynaconnex). After paying these companies’ employees, any remaining monies were distributed to the same companies, as RDH “partners.” On information and belief, the monies were then distributed into the hands of DEL SONTRO, LUDLOW, CLUTE, HAUVER, and SCHWEDLAND.

A. Lend America

149. The first D.E. Lender to join in the RAINY DAY DEFENDANT’s scheme was Ideal Mortgage Bankers d/b/a Lend America (“Lend America”).

150. Lend America is a now-defunct Direct Endorsement lender previously located in the Eastern District of New York. Lend America collapsed in early 2010, after its massive mail and wire frauds against the United States were detailed in United States v. Ideal Mortgage Bankers, Ltd., d/b/a Lend America, et al., 09-CV-4484 (E.D.N.Y.) (Bianco, J.), as well as in administrative actions filed by HUD. Its principal, Michael Ashley, entered a consent judgment, barring him from the mortgage industry for life. Lend America itself defaulted in the civil suit, and had a default judgment entered against it that barred the company from originating mortgages.

151. In February 2008, RDF signed an agreement with Lend America to provide

"Delinquency Reduction Services."

152. HAUVER and LUDLOW served as Lend America's "customer representatives" in its relationship with RDF and DMS.

153. LUDLOW described the RDF/DMS scheme: RDF developed "[a] list of defaulting or soon to be defaulting borrowers." RDF then took money from Lend America to "assist" enough borrowers "to keep a branch under a 200% compare ratio...the concept was deemed a success."

154. For example, on March 17, 2008, LUDLOW e-mailed Michael Ashley, Lend America's principal, as well as Lend America employee Joann Cacciaguida, concerning Lend America's Neighborhood Watch default ratio. LUDLOW notified Ashley and Cacciaguida that Lend America's main office, in Melville, New York, had a default ratio of 279% compared to other regional lenders. In other words, loans made from Lend America's main office were defaulting at almost three times the rate of other regional lenders. As a result, Lend America's main office was in danger of immediately losing its ability to originate FHA-insured loans.

155. LUDLOW wrote Ashley that in order to bring the ratio down to below 200%, and thus avoid immediate closure of Lend America's main office, Lend America needed to conceal the actual number of loans in default. LUDLOW wrote that Lend America could make the monthly payments so as to seemingly reduce the number of loans that were currently 90-days late by nine (9) loans.

156. LUDLOW also noted that there were eight (8) additional Lend America loans in danger of going into default once they became 90 days late. LUDLOW wrote that "[w]e need to make sure that none of those loans go 90 days late..."

157. LUDLOW attached a list of Lend America mortgage borrowers, all of whose

mortgages were originated out of Lend America's main Melville office, and whose loans were 60 to 120-days late. LUDLOW wrote that "our goal is to make sure those that are 60 days late made their March payment (so they do not become 90 days late) and then to help 12 of those that are 90 days or more late become 60 days late or less." DEL SONTRO received a copy of the e-mail between LUDLOW and Ashley, and forwarded it to others at RDF and RDH for their review.

158. In response to LUDLOW's e-mails, Lend America sent funds to RDF to pay for mortgage payments on nineteen of the mortgages listed by LUDLOW, together with "fees" for RDF's "services."

159. On or about March 31, 2008, the RAINY DAY DEFENDANTS funneled Lend America's money to pay the nineteen (19) mortgages on the list. These nineteen (19) funneled payments enabled Lend America's main branch to avoid detection, review and removal from the Direct Endorsement Program by the FHA.

160. The RAINY DAY DEFENDANTS' repeated these actions, and thereby enabled Lend America to continue in operation and thereafter originate thousands of more fraudulent loans over the next two years.

161. In March, 2009, Lend America made its annual certification to HUD of compliance with HUD-FHA regulations for the fiscal year ending December 2008. Specifically, its president certified that he knew or was in the position to know whether Lend America's operations "conform to HUD and FHA regulations, handbooks and policies," and that Lend America was "fully responsible for all actions of its employees." Further, the annual certification made the additional, materially false certification that Lend America conformed to all HUD-FHA regulations necessary to maintain its HUD-FHA approval as a Direct Endorser.

162. After the first several months of their contract, Lend America and the RAINY DAY DEFENDANTS agreed that the RAINY DAY DEFENDANTS would need to funnel payments from Lend America on loans to Secondary Purchasers every month, as opposed to every quarter. This was due to Lend America's routine need to conceal delinquent and defaulting loans from HUD and the Secondary Purchasers of Lend America's mortgages.

163. Ashley and others at Lend America were also concerned that many loans originated by Lend America prior to its arrangement with the RAINY DAY DEFENDANTS were going into default, and that these defaults also needed to be concealed from HUD and the Secondary Purchasers. Accordingly DEL SONTRO, LUDLOW and other RDF employees arranged to funnel payments on these earlier loans as well. These particular loans were known as "Prior Borrower Assistance" or "PBA" loans.

164. On these "PBA" loans alone, between March 2008 and April 2009, Lend America paid the RAINY DAY DEFENDANTS an *additional* \$2,152,280 from which to funnel payments to unknowing Secondary Purchasers, so as to conceal the mortgages' delinquencies and defaults.

165. The RAINY DAY DEFENDANTS quickly abandoned the pretense of "loan reviewers" or "counselors" and began funneling money from the D.E. DEFENDANTS to the Secondary Purchasers on the D.E. DEFENDANTS' demand, or whenever the RAINY DAY DEFENDANTS determined that a loan needed to be paid to avoid default or a high default ratio for the D.E. DEFENDANTS.

166. Lend America compiled a monthly list of borrowers whose mortgages were in danger of delinquency or default. After getting approval from Michael Ashley, the list of borrowers was forwarded to the RAINY DAY DEFENDANTS. Accompanying the list was

explicit authorization from Lend America for the RAINY DAY DEFENDANTS to make mortgage payments to Secondary Purchasers in the amounts listed next to each borrower's name. Lend America later reimbursed RDF for the payments, plus an additional servicing fee.

167. Without the RAINY DAY DEFENDANTS' fraudulent concealment of Lend America's horrendous default ratios, both FHA and the Secondary Purchasers would have learned of Lend America's high default ratio years earlier. Several specific examples of Lend America and the RAINY DEFENDANTS' fraud are provided *infra*.

168. In at least 698 instances, the RAINY DAY DEFENDANTS funneled Lend America's money to pay delinquent, defaulting and defaulted mortgages sold by Lend America to Secondary Purchasers, each of which was an FDIC-insured financial institution. These Secondary Purchasers included Wells Fargo (in at least 280 instances), J.P. Morgan Chase (in at least 173 instances), GMAC/ALLY (in at least 61 instances), and U.S. Bank (in at least 37 instances). These illicit payments are set out in Exhibits A-C to this complaint.

169. The loan payments by the RAINY DAY DEFENDANTS, on behalf of Lend America, were false assertions that Lend America was in compliance with FHA's underwriting and loan origination regulations.

170. The false information submitted to HUD resulted in artificially suppressed comparative default ratios, allowing Lend America to continue to originate and endorse for FHA mortgage insurance, loans upon which claims for FHA mortgage insurance were subsequently made.

171. In addition, each mortgage payment funneled by Lend America to the loan servicer, by the RDF or DMS, was a similarly false record and statement that the particular loan had not only been properly underwritten and originated, but further, that the loan had previously

performed well, and had met FHA's standards for performance, if and when the loans were submitted for claims under FHA's mortgage insurance. Indeed, at least 143 of the Lend America loans receiving RDF EMGs went to claim for FHA mortgage insurance.

172. Accordingly, together with Lend America, the RAINY DAY DEFENDANTS caused the presentment of, and conspired to knowingly make, use, or cause to be made or used false records or statements material to getting 143 false or fraudulent claims totaling \$5,460,436 paid or approved by the United States.

i. HUD Terminates Lend America and the Lawsuit to Set the Termination Aside

173. On January 21, 2009, HUD notified Lend America that HUD would terminate the authority of Lend America's main office, in Melville, New York, to originate new FHA-insured mortgages unless Lend America could show that the action was not warranted. HUD stated that it was terminating Lend America's direct endorsement authority because the Melville office's comparative default ratio exceeded 200% as of September 30, 2008.

174. Lend America responded to HUD by letter dated February 20, 2009. The letter was prepared using material provided Lend America by the RAINY DAY DEFENDANTS.

175. In the letter, Lend America falsely stated that nine of the mortgages that were the basis for HUD's comparative default ratio calculation had not actually been in default on September 30, 2008. Lend America further falsely stated that Lend America's Melville office's comparative default ratio was therefore below 200%.

176. Lend America and the RAINY DAY DEFENDANTS were well aware that the 9 borrowers in question were in terrible financial shape and had not made their monthly mortgage payments. Each of the 9 borrowers referred to by Lend America had been unable to pay their mortgages and had not done so for ninety days or more as of September 30, 2008.

177. Additionally, the RAINY DAY DEFENDANTS were aware that another of the nine borrowers could not make his mortgage payments because he was in jail.

178. Moreover, Lend America had fraudulently originated at least 2 of the 9 loans, as set forth by the United States' 2009 complaint against Lend America. (See ¶ 153, *supra*.)

179. On April 22, 2009, HUD notified Lend America that it had terminated Lend America's Melville office's direct endorsement authority.

180. On May 12, 2009, Lend America's counsel – who at the time was also representing RDF with regard to a March, 2009 HUD-OIG subpoena – filed a lawsuit seeking to set aside Lend America's termination. See Ideal Mortgage Bankers, Ltd. v. Shaun Donovan et al., 09-CV-2005 (E.D.N.Y.) (Wexler, J.).

181. In its lawsuit, Lend America falsely stated that HUD had miscalculated the Melville office's default ratio.

182. Moreover, Lend America falsely stated that the “nine *borrowers* identified by Ideal Mortgage” were not in default (emphasis added). See Ideal Mortgage Bankers v. Donovan at ¶ 35).

183. Lend America also falsely stated that Lend America was making charitable “donations” to RDF to help borrowers generally.

184. The payments made to RDF by Lend America were not general charitable donations to fund a program to help unspecified borrowers. Rather, each month Lend America and the RAINY DAY DEFENDANTS determined how many mortgages were about to go into default and therefore cause Lend America's comparative default ratio to exceed 200%. They then identified specific mortgages that were about to go into default, and Lend America surreptitiously funneled money through the RAINY DAY DEFENDANTS to make payments to

avert default, thereby artificially suppressing Lend America's comparative default ratio below 200%.

185. Further, contrary to the statements made in the Lend America lawsuit, RDH and the RDF were not actual not-for-profit organizations, but were in fact entities structured to channel profits to their principles and owners. Lend America's payments to the RAINY DAY DEFENDANTS in fact included fees for their role in the fraudulent scheme.

186. Lend America's complaint also falsely stated that the RAINY DAY DEFENDANTS provided "counseling" to borrowers. Lend America and the RAINY DAY DEFENDANTS in fact made mortgage payments on loans without even consulting the borrowers, let alone providing them with counseling.

187. The complaint further falsely stated that RDF had been assisting borrowers who experience "unforeseen short-term financial problems." In fact, the 9 borrowers at issue in the lawsuit were fundamentally unable to pay their mortgages. Under no circumstances could these borrowers be truthfully termed as having "short-term" problems.

188. Moreover, the complaint falsely stated that Lend America had ceased participating "in any program" where mortgage payments were provided on behalf of mortgage borrowers, "pending resolution of this action." In reality, Lend America made payments through RDF or DMS on at least thirty-eight of its defaulting mortgages while the lawsuit was pending.

189. Relying on Lend America and the RAINY DAY DEFENDANTS' misrepresentation that the actual comparative default ratio of Lend America's Melville office was less than 200%, and without full knowledge of the relationship between the RAINY DAY DEFENDANTS and Lend America, HUD withdrew the termination of Lend America's Melville office from the Direct Endorsement Program on August 25, 2009.

190. As a result of Lend America and the RAINY DAY DEFENDANTS' misrepresentations, Lend America continued originating FHA-insured mortgages, to the great detriment of borrowers as well as the United States.

191. From August 25, 2009 to November 24, 2009, Lend America issued 337 refinanced mortgages to borrowers, while failing to pay off the borrowers' prior mortgages. The United States came to the assistance of these borrowers by insuring that no borrower would be responsible for making payments on more than one mortgage. In doing so, the United States incurred substantial losses of its own.

B. Franklin First

192. In February 2009, the RAINY DAY DEFENDANTS began funneling money for another Eastern District of New York based lender, FRANKLIN FIRST FINANCIAL, LTD. ("FRANKLIN FIRST").

193. FRANKLIN FIRST routinely paid borrowers' mortgages without the borrowers' assent or knowledge.

194. In February 2009, CLUTE and SHRUM contacted BAINES, the "Senior Vice-President for Operations" at FRANKLIN FIRST. CLUTE wrote BAINES that RDF would "reduce delinquencies" and could increase FRANKLIN FIRST's "production volume."

195. In a follow up e-mail to BAINES, SHRUM noted that FRANKLIN FIRST's default compare ratio had risen from 208 to 215% in the last month. SHRUM added that by using RDF's "Delinquency Reduction Service" it would be possible to "assist a selection of loans that are being reported as 90 days late and thereby slow the company default ratio in order to reduce the compare ratio to less than 200%."

196. SHRUM further wrote that at least eight of FRANKLIN FIRST's branch offices "require monitoring", with three having default ratios above 200% of other regional lenders. "If this compare ratio doesn't come down below 200%," SHRUM wrote of one branch, "then I would expect a letter to be received from HUD suspending Franklin's ability to originate in this area."

197. SHRUM noted that by working with the RAINY DAY DEFENDANTS, FRANKLIN FIRST would be able to reduce its comparative default ratios.

198. SHRUM also added that the RAINY DAY DEFENDANTS could also "assist Franklin in avoiding the penalties associated with Early Payment Defaults" assessed by Secondary Purchasers when a borrower missed an early payment.

199. Without RDF's assistance, the FRANKLIN FIRST-originated mortgages would have been rife with delinquencies and defaults.

200. FRANKLIN FIRST funneled large sums of money to RDF to be held in reserve and used when FRANKLIN FIRST commanded.

201. In February 2009, FRANKLIN FIRST transferred \$100,000 to RDF.

202. In February 2009, RDF made payments totaling \$175,720 on at least 72 mortgages originated by FRANKLIN FIRST. These mortgages were held at the time by FDIC-insured banks, including J.P. Morgan Chase, Citibank, and Wells Fargo. RDF charged FRANKLIN FIRST \$17,000 for this "service."

203. In March 2009, FRANKLIN FIRST transferred \$98,000 to RDF.

204. At the end of March 2009, FRANKLIN FIRST wired an additional \$215,000 to RDF. The transaction was from an account entitled "MTG PAYMENTS." The wire transfer instructions state that the funds were for the Default Remediation Services Fund ("DRS Fund").

These funds were banked and held in reserve at RDF for future payments on defaulting mortgages.

205. The RAINY DAY DEFENDANTS regularly analyzed FRANKLIN FIRST's mortgage default ratios, and came up with lists of loans to be paid on by FRANKLIN FIRST by RDF or DMS, so as to artificially lower FRANKLIN FIRST's comparative default ratio to below 200% of other regional lenders. This allowed FRANKLIN FIRST to evade review and discipline by HUD.

206. On September 28, 2009, LUDLOW at DMS e-mailed DAURO concerning "Current Proposed Payments." LUDLOW wrote that FRANKLIN FIRST's current default compare ratio was about 237%. LUDLOW added that "we need to begin providing assistance tomorrow." Further, "due to the potential EPD (early payment defaults) we will not be close to the \$200,000 mark. I show a bottom line of \$220,154.83."

207. One day later, on September 29, 2009, FRANKLIN FIRST sent three wire transfers of funds, totaling \$211,000, to DMS care of Kristi Gaither or LUDLOW. The transfers state that they had been "approved by Frederick Assini."

208. On November 24, 2009, DAURO sent ASSINI an e-mail titled "Indians." DAURO told ASSINI, concerning payments for the artificial reduction of the comparative default ratio, that "I think we need approximately 146,000 to get the number down a little more."

209. On December 30, 2009, FRANKLIN FIRST Chief Operating Officer BERTMAN wrote ASSINI an e-mail titled "Indians," concerning the urgent need for FRANKLIN FIRST to pay \$100,000 to DMS. BERTMAN stated that "I analyzed the number and the bottom line is to pay the money. If we do not, we most likely will be out of business in short order." He added; "unfortunately, for the next several months we will need to keep paying." ASSINI replied "OK

set up wire”.

210. About an hour later, a FRANKLIN FIRST employee e-mailed ASSINI that \$100,000 had been wired to DMS. The subject matter of the wire transfer was deemed “MTG PAYMENTS.”

211. In a January 2010 e-mail titled “Indians,” BERTMAN e-mailed ASSINI that, “[a]s I stated last month we will need to continue to make very large monthly payments. This month we have to pay \$77,000.” Further, he wrote that FRANKLIN FIRST’s plan was “to be under 200 by the 3/31 reporting.”

212. In March 2010, DMS sent a spreadsheet listing DMS’s funneled mortgage payments on behalf of FRANKLIN FIRST. The spreadsheet is headed by DMS’s logo and slogan: “Target Your Default ratio.”

213. The spreadsheet shows 32 payments that DMS funneled towards delinquent, FRANKLIN FIRST-originated mortgages. DMS sent \$56,439.09 in payments on these mortgages to J.P. Morgan Chase, Wells Fargo, Citibank and Countrywide. DMS charged FRANKLIN FIRST an additional \$7,750.00 in fees for funneling these payments, plus wiring costs.

214. On March 29, 2010, DAURO sent an e-mail to BERTMAN entitled “Indians.” Attached to the e-mail was a spreadsheet named “HUD 3-15-10.” The spreadsheet listed hundreds of FRANKLIN FIRST-originated mortgages in default, with comments on many of the loans. In response, BERTMAN e-mailed DAURO and ASSINI that “I set up a wire for \$51,500. This will fix 25 loans and these projects to get us to 195.”

215. FRANKLIN FIRST made plans to artificially suppress its default ratio to below 200% of other regional lenders by March 31, 2010 – when HUD would compile and report the

comparative default ratio. DAURO identified thirty-three loans to be paid on to achieve this goal.

216. Two days before the March 31, 2010 deadline, when FRANKLIN FIRST's default compare ratio would be compiled by HUD, BERTMAN e-mailed others at FRANKLIN FIRST that a \$51,500 wire to the RAINY DAY DEFENDANTS would artificially prop-up twenty-five bad mortgages, and reduce FRANKLIN FIRST's comparative default ratio to 195%.

217. In at least 101 instances, FRANKLIN FIRST funneled money through the RAINY DAY DEFENDANTS to pay delinquent and defaulting mortgages sold by FRANKLIN FIRST to Secondary Purchasers, each of which were FDIC-insured financial institutions. These Secondary Purchasers included Citibank, J.P. Morgan Chase, and Wells Fargo. These illicit payments are set out in Exhibit D to this complaint.

C. Intercontinental Capital Group

218. In late 2008, the RAINY DAY DEFENDANTS began funneling money for another Eastern District of New York based lender, International Capital Group, Inc. ("ICG").

219. In October 2008, LUDLOW e-mailed a contract for RDF's services to DIMISA, a partner and Managing Director of ICG, together with an addendum for what LUDLOW termed "clean-up work (what we call Delinquency Reduction Services)."

220. On December 18, 2008, ICG funneled payments through the RAINY DAY DEFENDANTS on four ICG-originated loans, each already two loan payments delinquent, so as to avoid the loans' default.

221. As with Lend America, the RAINY DAY DEFENDANTS frequently made mortgage payments on ICG-originated loans without the mortgage borrower's knowledge.

222. As of April 2009, ICG had "donated" at least \$59,417 to the RAINY DAY

DEFENDANTS, to funnel to the Secondary Purchasers, so as to conceal delinquent or defaulted mortgages.

223. In at least ten instances, ICG funneled money through the RAINY DAY DEFENDANTS to pay delinquent and defaulting mortgages sold by ICG to Secondary Purchasers, each of which were FDIC-insured financial institutions. These Secondary Purchasers included Citibank. These illicit payments are set out in Exhibit E to this complaint.

D. Mortgage Source

224. In late 2008, the RAINY DAY DEFENDANTS began funneling money for another Eastern District of New York based lender, Mortgage Source, LLC. ("Mortgage Source").

225. On March 27, 2009, SHRUM and LUDLOW wrote to Mortgage Source Chief Operating Officer MEDEIROS, who had previously worked at Lend America. LUDLOW explained to MEDEIROS that there would usually be funds from Mortgage Source in an RDF account from which RDF could "pull" funds to make mortgage payments on delinquent and defaulting mortgages. LUDLOW characterized the money earmarked for Mortgage Source originated loans as a "contribution" to RDF.

226. LUDLOW further wrote that "We can either proceed by helping all those who need assistance, all those who need assistance and qualify for assistance, or you can direct us as to which ones you would like us to assist."

227. LUDLOW agreed with MEDEIROS and Mortgage Source Chief Financial Officer KANE that Mortgage Source would direct RDF as to exactly which loans were to be paid. MEDEIROS subsequently assisted in selecting which loans Mortgage Source should pay by RDF, and also coordinated the wiring of funds to RDF to make the payments.

228. Mortgage Source then identified six loans that were in danger of early payment defaults. On the morning of March 30, 2009, RDF sent Mortgage Source an invoice that detailed the amount of money required in order to bring the selected mortgages up to date. Mortgage Source immediately wired the amount, \$20,620.61, to RDF. Shortly thereafter, the RAINY DAY DEFENDANTS used the funds to make payments on the six loans identified by Mortgage Source.

229. On or about May 22, 2009, DEL SONTRO sent a letter to KANE. The letter purported to terminate the agreement between Mortgage Source and RDF. In a follow up e-mail, however, LUDLOW wrote KANE telling him "not to be alarmed" about the letter: "it's all part of what I would like to discuss with you." LUDLOW further sought to meet with KANE within the week, "to discuss new developments."

230. DEL SONTRO's termination of RDF's contract with Mortgage Source was a sham. As discussed *supra* at paragraphs 124 - 146, after receiving a HUD-OIG subpoena, the RAINY DAY DEFENDANTS moved their slush fund operations over to a new limited liability corporation, DMS. As discussed *supra*, DMS was RDF's successor.

231. On or about June 23, 2009, one month after RDF purportedly terminated its relationship with Mortgage Source, LUDLOW sent KANE a new contract between DMS and Mortgage Source for the same services as had been offered by RDF. The new contract states that DMS's services will "assist Lender in quickly reducing the number of loans Lender originated which are or will be reported as 'in default' in order to help Lender comply with Investor and HUD guidelines." Moreover, "[w]hile DMS will assist homeowners, the goal of the Services is to assist Lenders in managing their default ratios."

232. In July 2009, LUDLOW wrote KANE complaining that some Mortgage Source employees were still e-mailing "cases" to RDF, instead of DMS.

233. On July 23, 2009, LUDLOW forwarded a report to Mortgage Source put together by Kristi Gaither, who now worked at both RDF and DMS. The report showed that Mortgage Source needed to pay DMS approximately \$105,000 to conceal Mortgage Source's comparative default ratio to the point where HUD would see a false rate below 200%.

234. On July 31, 2009, Mortgage Source and KANE wired \$16,848.45 to RDF's successor, DMS, in order to make payments on five loans. When informed by a Mortgage Source employee that the wire was about to be sent, KANE responded that "this better help our numbers!"

235. In at least five instances, Mortgage Source, MEDEIROS and KANE funneled money through the RAINY DAY DEFENDANTS to pay delinquent and defaulting mortgages sold by Mortgage Source to Secondary Purchasers, each of which were FDIC-insured financial institutions. These illicit payments are set out in Exhibit F to this complaint.

E. Continental Mortgage Bankers

236. In late 2008, the RAINY DAY DEFENDANTS began funneling money for another Eastern District of New York based lender, CONTINENTAL MORTGAGE BANKERS, INC. d/b/a FINANCIAL EQUITIES ("CONTINENTAL").

237. CONTINENTAL'S owner, STASHIN, selected defaulting loans, and coordinated secret payments by CONTINENTAL on these loans by the RAINY DAY DEFENDANTS, with various RAINY DAY DEFENDANTS' personnel.

238. On January 19, 2009, for example, RDF employee SHRUM e-mailed a spreadsheet to STASHIN, with a copy to CLUTE. SHRUM wrote that "As we discussed, I

believe working with the 60's...will be our most effective use of resources this month...Preventing more loans from going 90, while at the same time increasing the number of performing insured loans will reduce your default ratio."

239. The spreadsheet listed five loans that were sixty days late, and four loans that were ninety days late. Both groups included loans where STASHIN was listed as the underwriter of the failing mortgage, whose delinquency or default would be concealed by CONTINENTAL and the RAINY DAY DEFENDANTS.

240. In March 2009, SHRUM again e-mailed STASHIN a spreadsheet. SHRUM wrote that "I recommend that we focus our efforts on the loans being reported as 60 days late... (b)y assisting or otherwise ensuring that these loans are able to make a payment, Continental will remain below 200%. If you would like to bring your compare ratio closer to 150%, this will require assisting loans shown as 90 days late..."

241. The March spreadsheet showed eight loans that were sixty days late, two loans that were ninety days late, and nine loans that were more than ninety days late.

242. In at least eight instances, CONTINENTAL funneled money to pay delinquent and defaulting mortgages sold by CONTINENTAL to Secondary Purchasers, each of which were FDIC-insured financial institutions. These Purchasers included J.P. Morgan Chase and Wells Fargo. These illicit payments are set out in Exhibit G to this complaint.

F. Somerset Investors

243. In late December 2008, the RAINY DAY DEFENDANTS began funneling money for another Eastern District of New York based lender, Somerset Investors Corp. d/b/a Somerset Mortgage Bankers ("Somerset").

244. Somerset's owner, MARCUS, conspired with the RAINY DAY DEFENDANTS to conceal defaults on Somerset-originated mortgages and further, to artificially suppress Somerset's comparative default ratios using transmissions in interstate commerce by means of wire communications.

245. MARCUS supervised and approved all said payments to RDF, so as to defraud the Secondary Purchasers and HUD. For example, on March 27, 2009, a Somerset employee e-mailed MARCUS to obtain his permission to wire a \$62,595 "contribution" to RDF. The e-mail listed 16 Somerset-originated mortgages, together with the sums that were going to be paid toward these mortgages with monies funneled through RDF, so as to conceal their delinquency or default. MARCUS quickly gave his approval.

246. In at least thirty-nine instances, Somerset and MARCUS funneled money through the RAINY DAY DEFENDANTS to pay delinquent and defaulting mortgages sold by Somerset to FDIC-insured financial institutions. The loans were held by J.P. Morgan Chase, Wells Fargo, and Citibank. These illicit payments are set out in Exhibit H to this complaint.

247. The payments made on the underlying loans by Somerset to the Mortgage Purchasers, by the RAINY DAY DEFENDANTS, and the resulting false, artificially suppressed comparative default ratios, each served as a false assertion of quality as to Somerset's underwriting and loan origination practices. The falsely low comparative default ratios further allowed Somerset to continue to originate and endorse for FHA mortgage insurance, loans upon which claims for FHA mortgage insurance were subsequently made.

248. In addition, each payment funneled by Somerset on a loan to the loan servicer, by RDF or DMS, was a similarly false record and statement that the particular loan had not only been properly underwritten and originated, but further, that the loan had previously performed

well, and had met FHA's standards for performance, if and when the loan was submitted for claims under FHA's mortgage insurance. Indeed, at least 1 of the Somerset loans receiving RDF EMGs went to claim for FHA mortgage insurance.

249. In 2010, Somerset made its annual certification to HUD of compliance with HUD-FHA regulations for the fiscal year ending December 2009. Specifically, the annual certification made the materially false certification that Somerset conformed to all HUD-FHA regulations necessary to maintain its HUD-FHA approval as a Direct Endorser.

250. Accordingly, together with MARCUS, the RAINY DAY DEFENDANTS caused the presentment of, and conspired to knowingly make, use, or cause to be made or used false records or statements material to getting a false or fraudulent claim paid of \$144,801 approved by the United States.

IV. REPRESENTATIVE EXAMPLES OF THE ILLICIT PAYMENTS

251. From 2008 to 2010, the RAINY DAY DEFENDANTS and the D.E. DEFENDANTS participated in a conspiracy to defraud the United States and the Secondary Purchasers by concealing the D.E. DEFENDANTS' delinquencies, defaults, and actual comparative default ratios. As set forth *supra*, the DEFENDANTS acted in furtherance of the conspiracy by, among other things, making payments funneled through the RAINY DAY DEFENDANTS on loans originated by the D.E. DEFENDANTS.

252. This pattern and practice of illicit payments is illustrated by the representative examples below:

Loan 1: RB, Staten Island, New York

253. In July 2007, Lend America originated a mortgage to borrower RB of Staten Island, New York. Lend America certified the mortgage to HUD for FHA insurance. In reliance

on Lend America's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

254. In late July 2007, Lend America sold RB's mortgage to Secondary Purchaser J.P. Morgan Chase.

255. Eight months after the loan closed, on or about March 30, 2008, the RAINY DAY DEFENDANTS funneled at least one month's payment of \$2571.07 on RB's mortgage, from Lend America to J.P. Morgan Chase.

256. Despite their conceit of working with and "helping" borrowers, RDF did not inform RB that RDF was paying the mortgage. Further, RDF performed no analysis of RB's financial situation before funneling Lend America's monies to pay the mortgage payment to J.P. Morgan Chase. RDF informed neither J.P. Morgan Chase nor RB that it used Lend America's money to make the mortgage payment.

257. After RDF funneled the March 2008 payment to J.P. Morgan Chase, RDF employee Kristi Gaither reviewed RB's finances and summarized them thus: "We made a payment in March, unknown to them and they haven't made one since. When we made the payment in March they were 2 months behind now they are 4. Most of the husband's income is unverifiable." Gaither concluded that "I don't believe they can afford the payments on the house."

Loan 2: JC, Staten Island, New York

258. On January 19, 2007, Lend America originated a mortgage to borrower JC of Staten Island, New York. Lend America certified the mortgage to HUD for FHA insurance. In reliance on Lend America's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

259. Shortly after the loan's closing, Lend America sold JC's mortgage to Secondary Purchaser J.P. Morgan Chase.

260. On or about March 31, 2008, the RAINY DAY DEFENDANTS funneled \$2773.62 to pay a delinquent mortgage payment from Lend America to J.P. Morgan Chase on JC's mortgage.

261. By August 2008, JC again could not pay her mortgage. On September 4, 2008, RDF "counselor" Tina Del Sontro noted that JC did "not make enough money to afford the home." Tina Del Sontro noted that JC had unstable income and that "a co-signer was necessary in order for her to close on the loan" at the time Lend America originated it. Further, even with the cosigner's income, JC had "a monthly deficit of \$2,853.66."

262. On September 25, 2008, despite JC's manifest inability to regularly pay her mortgage, the RAINY DAY DEFENDANTS again funneled one month's mortgage payment from Lend America to J.P. Morgan Chase to conceal the loan's default and the borrower's inability to pay the mortgage.

Loan 3: TK, Nesconset, New York

263. On or about November 2, 2007, Lend America fraudulently originated an FHA-insured mortgage to borrower TK of Nesconset, New York. Lend America submitted a forged Verification of Employment ("VOE"), Mortgage Credit Analysis Worksheet ("MCAW") and a fraudulent Uniform Residential Loan Application ("URLA") to HUD. These documents drastically inflated TK's income, doubling it. The documents also falsely reduced the ratios of TK's income to his mortgage payment, to a percentage that permitted FHA mortgage insurance to be issued on the loan. In reality, TK's income-to-mortgage payment and income-to-total monthly debt ratios significantly exceeded FHA guidelines, and indicated that TK would have

difficulty paying his mortgage.

264. In reliance on Lend America's certification as a Direct Endorsement lender and based on the file filled with forged documents, HUD endorsed TK's mortgage for FHA insurance.

265. Several days after its origination, Lend America sold TK's mortgage to Secondary Purchaser Wells Fargo.

266. On or about June 25, 2008, the RAINY DAY DEFENDANTS funneled a \$2,782.90 payment from Lend America to Wells Fargo on TK's mortgage.

267. The RAINY DAY DEFENDANTS sent the June 2008 payment on TK's mortgage without any review whatsoever of TK's finances.

268. Two months later, in August 2008, borrower TK still could not pay his mortgage. By August 2008 he was three months behind on his mortgage payments. Despite the lack of any legitimate reason to pay the delinquent loan payments, RDF counselor Kristi Gaither recommended that RDF pay \$7,191.88, constituting the three late months of mortgage payments, to Wells Fargo.

269. On August 29, 2008, the RAINY DAY DEFENDANTS funneled the \$7,191.88 payment to Wells Fargo from Lend America. The three months' worth of payments concealed TK's default on the mortgage from HUD and Wells Fargo.

270. TK remained an object of concern for both Lend America and the RAINY DAY DEFENDANTS. In April 2009, RDF employee Troy Tarter prepared a spreadsheet, titled "Lend America Oh-Crap." TK appeared on the spreadsheet, with a note that he again was three months delinquent on his mortgage payment to Wells Fargo.

Loan 4: MH, Tahlequah, Oklahoma

271. On or about March 28, 2008, Lend America originated a mortgage to borrower MH of Tahlequah, Oklahoma. Lend America certified the mortgage to HUD for FHA insurance. In reliance on Lend America's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

272. Shortly after the loan closing, Lend America sold MH's mortgage to Secondary Purchaser Wells Fargo.

273. On May 27, 2008, two months after the loan was originated, RDF employee Veronica Genovese reviewed the mortgage in order to determine whether it qualified for an "Emergency Grant." After reviewing MH's finances, Genovese concluded that "Rainy Day cannot assist with one mortgage payment of \$803.32. She is short almost \$900.00 every month."

274. Nonetheless, six days later, on June 4, 2008, the RAINY DAY DEFENDANTS funneled an \$803.32 payment from Lend America to Wells Fargo on MH's mortgage. By doing so, Lend America and the RAINY DAY DEFENDANTS concealed the loan's early payment default from the mortgage's holder, WELLS FARGO, as well as from HUD.

275. Despite the funneled payment, MH eventually defaulted on her loan, resulting in a \$108,402.00 claim on the mortgage insurance to HUD. HUD further suffered a loss of \$78,468.00 on its sale of the property.

Loan 5: BJ, White Pine, Tennessee

276. On September 19, 2007, Lend America originated a mortgage to borrower BJ of White Pine, Tennessee. Lend America certified the mortgage to HUD for FHA insurance. In reliance on Lend America's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

277. Shortly after the loan was closed, Lend America sold BJ's mortgage to Secondary Purchaser Wells Fargo.

278. On December 10, 2008, RDF employee Kristi Gaither noted that BJ was three months behind on the mortgage and "has no income at this time." Gaither recommended that RDF not make a payment toward the mortgage, based on BJ's inability to pay her mortgage in any fashion.

279. Nonetheless, on January 6, 2009, the RAINY DAY DEFENDANTS funneled a \$3,378.72 payment from Lend America to Wells Fargo towards BJ's mortgage.

280. Despite the funneled payment, BJ eventually defaulted on her loan, resulting in a \$98,328.00 claim on the mortgage insurance. HUD further suffered a loss of \$43,477.00 on the sale of the property.

Loan 6: J & CN, Orlando, Florida

281. On or about March 14, 2008, Lend America originated a mortgage to borrowers J & CN of Orlando, Florida. Lend America certified the mortgage to HUD for FHA insurance. In reliance on Lend America's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

282. Shortly thereafter, Lend America sold J & CN's mortgage to Secondary Purchaser J.P. Morgan Chase.

283. On July 17, 2008, RDF "Counselor" Kristi Gaither reviewed J & CN's finances and noted that CN "is a school bus driver that usually gets employment in the summer months." This summer, she hadn't. Accordingly, Gaither recommended that one month's payment plus late fee be funneled from Lend America to J.P. Morgan Chase. On July 25, 2008, RAINY DAY DEFENDANTS funneled a \$1778.85 payment from Lend America to J.P. Morgan Chase on J &

CN's mortgage.

284. Five months later, on December 10, 2008, RDF reviewer Gaither noted that the mortgage was now three months late. Gaither added; "I don't think they've made a payment since the last time we assisted. They know that [C] will be off EVERY summer and need to plan accordingly." Gaither therefore recommended that RDF not pay on the mortgage.

285. Despite Gaither's review and recommendation, the RAINY DAY DEFENDANTS funneled three more months' payments from Lend America to J.P. Morgan Chase, to conceal the loan's default.

286. Despite a total of four months' worth of funneled payments, J & CN eventually defaulted on their loan.

Loan 7: GA, Vernon, Connecticut

287. On or about April 15, 2008, Lend America originated a mortgage to borrower GA of Vernon, Connecticut. Lend America certified the mortgage to HUD for FHA insurance. In reliance on Lend America's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

288. Shortly after the loan's origination, Lend America sold GA's mortgage to Secondary Purchaser GMAC/ALLY.

289. In December 2008, RDF reviewer Kristi Gaither noted that GA was having difficulty paying his loan. GA, however, had submitted no documents to show why he could not make the mortgage payment. She recommended that RDF make no payments on the mortgage. It was further noted that this was a first payment default.

290. Nonetheless, the RAINY DAY DEFENDANTS funneled a \$1751.58 mortgage payment from Lend America to GMAC/ALLY, on or around February 27, 2009.

291. Despite the funneled payment, GA eventually defaulted on his loan, resulting in a \$219,297.28 claim on the FHA mortgage insurance. HUD further incurred a loss of \$155,417.00 on the sale of this property.

Loan 8: CS, Jacksboro, Tennessee

292. On February 8, 2008, FRANKLIN FIRST originated a mortgage to borrower CS of Jacksboro, Tennessee. FRANKLIN FIRST certified the mortgage to HUD for FHA insurance. In reliance on FRANKLIN FIRST's certification, HUD endorsed the mortgage for FHA insurance.

293. Shortly after the closing, FRANKLIN FIRST sold CS' mortgage to Secondary Purchaser Bank of America.

294. On or about March 19, 2009, RDF employee Veronica Genovese reviewed CS's finances to determine whether he would be able to pay his mortgage in the future. After determining that this was not the case, Genovese recommended that RDF not make a payment toward CS's mortgage.

295. On March 19, 2009, RDF notified BAINES and DAURO that RDF would not be making a payment on borrower CS's mortgage, based on Genovese's determination. BAINES immediately forwarded the e-mail to DAURO and CLUTE. CLUTE in turn e-mailed Genovese, asking her to explain her recommendation. Genovese then wrote to CLUTE with her grounds for declining the loan, including that "when I asked him if he could pay next month (April), if we assisted with a payment, he said no." Genovese added that "[h]e falls out of our guidelines that the homeowner has to show the ability to pay the mortgage after [RDF] assists. I also asked him if we would pay half that he could pay half and he said no again."

296. Nonetheless, two week later, on March 31, 2009, the RAINY DAY DEFENDANTS funneled two months of payments, totaling \$1,462.58, from FRANKLIN FIRST to Citibank.

297. On April 2, 2009, RDF e-mailed ASSINI and DAURO to notify them that a payment of \$1462.58 had been paid toward CS's mortgage.

298. Four months later, in August 2009, CS was again three months behind on his mortgage. Despite funneling more money to Citibank, DAURO complained to LUDLOW and other DMS employees, that some previous month's payments remained entirely unpaid.

299. DMS employee Kristi Gaither wrote to DAURO and LUDLOW in response. Gaither explained that the mortgage holder took the money sent by DMS. In addition, DMS had arranged for a check held in escrow by Citibank to be applied to the past due payments on the mortgage. Borrower CS was in such bad financial shape, however, that the check bounced. Gaither concluded: "I think we need to completely disregard any monies that the borrowers have in suspense, it seems like all of the issues we are having are with people that have money in suspense."

300. Despite the several months' worth of funneled payments, CS continues to remain delinquent on the loan.

Loan 9: DW, Jacksonville, Florida

301. On May 6, 2008, FRANKLIN FIRST provided a refinanced mortgage to borrower DW of Jacksonville, Florida. FRANKLIN FIRST certified the mortgage to HUD for FHA mortgage insurance.

302. Shortly after the loan was closed, FRANKLIN FIRST sold DW's mortgage to J.P. Morgan Chase.

303. According to documents in FRANKLIN FIRST's loan file, but for a monthly Social Security disability payment, the only other income DW had was a \$700.00 monthly "gift" from her former employer. This gift was purportedly to continue until her death. Nonetheless, within less than a year, DW sought money from RDF. DW made no mention of the \$700.00 monthly gift. Instead, she claimed that her only source of income beyond her social security payment was money from her son. When her son lost his job, her social security payment proved too small to cover the mortgage. DW was at least \$665.00 short every month.

304. An RDF "counselor" reviewed DW's situation and noted that DW "is not able to stay current with all her bills...I recommend not paying on this client again."

305. Nonetheless, on or about August 31, 2009, the RAINY DAY DEFENDANTS funneled a \$1741.56 payment from FRANKLIN FIRST to J.P. Morgan Chase on DW's mortgage.

Loan 10: WP, Bellefonte, Pennsylvania

306. On January 18, 2008, Somerset originated a mortgage to borrower WP of Bellefonte, Pennsylvania. Somerset certified the mortgage to HUD for FHA insurance. In reliance on Somerset's certification as a Direct Endorsement lender, HUD endorsed the mortgage for FHA insurance.

307. Shortly after the loan's closing, Somerset sold WP's mortgage to Secondary Purchaser J.P. Morgan Chase.

308. On January 12, 2009, RDF employee Amanda Dutton reviewed the mortgage in order to determine whether it qualified for an "Emergency Grant." Dutton noted that WP had only \$43.13 in surplus funds left him each month. Accordingly, Dutton recommended that RDF not make an emergency mortgage payment.

309. Nonetheless, on January 31, 2009, the RAINY DAY DEFENDANTS funneled a \$1464.94 payment from Somerset to J.P. Morgan Chase on WP's mortgage.

310. Despite the funneled payment on WP's mortgage, WP remains delinquent on his mortgage.

FIRST CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(1), and as amended, 31 U.S.C. § 3729(a)(1)(A)

Presentment of False Claims: Rainy Day Defendants and Lend America

311. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

312. The United States seeks relief against RICK DEL SONTRO, ROBERT CLUTE, MICHAEL SHRUM, TODD LUDLOW, CHRIS NAILLON, CHRIS HAUVER, KELLY SCHWEDLAND, The RAINY DAY FOUNDATION INC., RAINY DAY HOLDINGS, LLC and DEFAULT MITIGATION SERVICES, LLC (collectively, the "RAINY DAY DEFENDANTS"), under the False Claims Act, 31 U.S.C. § 3729(a)(1), and as amended, 31 U.S.C. § 3729(a)(1)(A).

313. As set forth above, the RAINY DAY DEFENDANTS violated the False Claims Act by knowingly presenting or causing to be presented, false and fraudulent claims for payment or approval, to wit: claims on FHA mortgage insurance on Lend America-originated mortgages, as set forth in Exhibit A.

314. By reason of the false claims the RAINY DAY DEFENDANTS and others caused to be presented, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

SECOND CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(3), and as amended, 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(C)

Conspiracy to Present False Claims: Rainy Day Defendants and Lend America

315. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

316. The United States seeks relief against the RAINY DAY DEFENDANTS under the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(3), and as amended, 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(C).

317. As set forth above, the RAINY DAY DEFENDANTS violated the False Claims Act by conspiring to present, or cause to be presented, false and fraudulent claims for payment or approval, to wit: claims on FHA mortgage insurance on Lend America-originated mortgages, as set forth in Exhibit A.

318. By reason of the conspiracy to cause presentment of false claims of the RAINY DAY DEFENDANTS and others, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

THIRD CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(2), and as amended, 31 U.S.C. § 3729(a)(1)(B)

Making or Using False Records or Statements: Rainy Day Defendants and Lend America

319. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

320. The United States seeks relief against the RAINY DAY DEFENDANTS under the False Claims Act, 31 U.S.C. § 3729(a)(2), and as amended, 31 U.S.C. § 3729(a)(1)(B).

321. As set forth above, the RAINY DAY DEFENDANTS violated the False Claims

Act, by knowingly making, using, or causing to be made or used, false records or statements material to getting false or fraudulent claims paid or approved by the Government, to wit: false annual certifications, and false information resulting in artificially suppressed comparative default ratios and the payments made on the underlying loans by Lend America to the Mortgage Purchasers, by the RAINY DAY DEFENDANTS.

322. By reason of the RAINY DAY DEFENDANTS and others making or using false records or statements material to getting false or fraudulent claims paid or approved by the Government, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

FOURTH CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(2) and (a)(3), and as amended, 31 U.S.C. § 3729(a)(1)(B) and (a)(1)(C)

Conspiracy to Make or Use False Records or Statements: Rainy Day Defendants and Lend America

323. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

324. The United States seeks relief against the RAINY DAY DEFENDANTS under the False Claims Act, 31 U.S.C. § 3729(a)(2) and (a)(3), and as amended, under 31 U.S.C. § 3729(a)(1)(B) and (a)(1)(C).

325. As set forth above, the RAINY DAY DEFENDANTS violated the False Claims Act, by conspiring to make, use or cause to be made or used, false records or statements material to getting false or fraudulent claims paid or approved by the Government, to wit: false annual certifications, and false information resulting in artificially suppressed comparative default ratios and the payments made on the underlying loans by Lend America to the Mortgage Purchasers, by the RAINY DAY DEFENDANTS.

326. By reason of the RAINY DAY DEFENDANTS and others conspiring to make or use false records or statements material to getting false or fraudulent claims paid or approved by the Government, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

FIFTH CLAIM FOR RELIEF

Violations of the Financial Institutions Recovery, Reform and Enforcement Act (FIRREA), 12 U.S.C. § 1833a

Rainy Day Defendants and Lend America

(a) **Violations of 18 U.S.C. § 1341/Mail Fraud as to Financial Institutions**

327. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

328. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

329. As set forth above, the RAINY DAY DEFENDANTS and others violated 18 U.S.C. § 1341, and aided and abetted violations of § 1341, see § 2, by knowingly and intentionally devising a continuing scheme and artifice to defraud J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank of money and property, to wit: monies owed for the repurchase of Lend America-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank due to early payment defaults of mortgages in default.

330. For the purpose of executing said scheme and artifice and attempting to do so, the RAINY DAY DEFENDANTS placed, deposited or caused to be placed or deposited things to be sent or delivered by the United States Postal Service or private or commercial interstate carrier,

specifically the conduct set out at paragraphs 149-168 and at Exhibit B.

331. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1341, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit B, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(b) Conspiracy to Violate 18 U.S.C. § 1341/Mail Fraud as to Financial Institutions

332. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

333. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

334. As set forth above, the RAINY DAY DEFENDANTS and others violated 18 U.S.C. § 1341 by conspiring to devise a continuing scheme and artifice to defraud J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank of money and property, to wit: monies owed for the repurchase of Lend America-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank due to early payment defaults of mortgages in default.

335. For the purpose of executing said scheme and artifice and attempting to do so, the RAINY DAY DEFENDANTS placed, deposited or caused to be placed or deposited things to be sent or delivered by the United States Postal Service or private or commercial interstate carrier, specifically the conduct set out at paragraphs 149-168 and at Exhibit B.

336. By reason of the RAINY DAY DEFENDANTS violations of 18 U.S.C. § 1341, the United States is entitled to a civil penalty as required by law for each of the violations set forth herein in Exhibit B, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(c) Violations of 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

337. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

338. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

339. As set forth above, the RAINY DAY DEFENDANTS and others violated 18 U.S.C. § 1343, and aided and abetted violations of § 1343, see § 2, by knowingly and intentionally devising a continuing scheme and artifice to defraud J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank of money and property, to wit: monies owed for the repurchase of Lend America-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank due to early payment defaults of mortgages in default.

340. For the purpose of executing said scheme and artifice and attempting to do so, the RAINY DAY DEFENDANTS transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 149-168 and Exhibit C.

341. By reason of the RAINY DAY DEFENDANTS violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the violations set forth in Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(d) Conspiracy to Violate 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

342. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

343. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

344. As set forth above, the RAINY DAY DEFENDANTS and others violated 18 U.S.C. § 1343, by conspiring to devise a continuing scheme and artifice to defraud J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank of money and property, to wit: monies owed for the repurchase of Lend America-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank due to early payment defaults of mortgages in default.

345. For the purpose of executing said scheme and artifice and attempting to do so, the RAINY DAY DEFENDANTS transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 149-168 and at Exhibit C.

346. By reason of the RAINY DAY DEFENDANTS violations of 18 U.S.C. § 1343 the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(e) Violations of 18 U.S.C. § 1344/Bank Fraud

347. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

348. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

349. As set forth above, the RAINY DAY DEFENDANTS and others violated 18 U.S.C. § 1344, and aided and abetted violations of § 1344, see § 2, by knowingly and intentionally devising a continuing scheme and artifice to defraud the financial institutions, to

wit: J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank of money and property under said financial institutions' custody and control by means of false and fraudulent pretenses, representations or promises, to wit: money or property being monies owed for the repurchase of Lend America-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on, to wit: loans, and penalties due and owing J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank due to early payment defaults of Lend America-originated mortgages in default.

350. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(f) Conspiracy to Violate 18 U.S.C. § 1344/Bank Fraud

351. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

352. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

353. As set forth above, the RAINY DAY DEFENDANTS and others violated 18 U.S.C. § 1344, by conspiring to and knowingly and intentionally devising a continuing scheme and artifice to defraud the financial institutions, to wit: J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank of money and property under said financial institutions' custody and control by means of false and fraudulent pretenses, representations or promises, said money or property being monies owed for the repurchase of Lend America-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank due to early payment defaults of Lend America-

originated mortgages in default.

354. By reason of the RAINY DAY DEFENDANTS violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(g) Violations of 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institutions' Transactions

355. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

356. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

357. As set forth above, the RAINY DAY DEFENDANTS violated 18 U.S.C. § 1005, and aided and abetted violations of § 1005, see § 2, by participating, sharing or receiving money, profit or benefits derived through the defrauding of an agency of the United States of America, to wit: HUD, through the transactions or acts of FDIC-insured financial institutions, to wit: J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank.

358. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(h) Conspiracy to Violate 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institutions' Transactions

359. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

360. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

361. As set forth above, the RAINY DAY DEFENDANTS violated 18 U.S.C. § 1005

by conspiring to participate, share or receive money, profit or benefits derived through the defrauding of an agency of the United States of America, to wit: HUD, through the transactions or acts of FDIC-insured financial institutions, to wit: J.P. Morgan Chase, GMAC/ALLY, Wells Fargo and U.S. Bank.

362. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(i) Violations of 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from HUD by Mortgage Lending Company Transactions

363. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

364. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

365. As set forth above, the RAINY DAY DEFENDANTS together with Lend America, a mortgage company, and others violated 18 U.S.C. § 1006, and aided and abetted violations of § 1006, see § 2, by knowingly and intentionally defrauding the United States and by participating, sharing, or receiving money, profits and benefits thereof through transactions or acts of Lend America.

366. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(j) Conspiracy to Violate 18 U.S.C. § 1006/ Fraudulent Receipt of Money, Profits or Benefits from HUD by Mortgage Lending Company Transactions

367. The United States incorporates by reference paragraphs 1 through 310 as if fully

set forth in this paragraph.

368. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

369. As set forth above, the RAINY DAY DEFENDANTS together with Lend America, a mortgage company, and others violated 18 U.S.C. § 1006 by conspiring to defraud the United States and to participate, share, or receive money, profits and benefits thereof through transactions or acts of Lend America.

370. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(k) Violations of 18 U.S.C. § 1014/Making False Statements or Reports For the Purpose of Influencing the FHA

371. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

372. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

373. As set forth above, the RAINY DAY DEFENDANTS, together with Lend America and others, violated 18 U.S.C. § 1014, and aided and abetted violations of § 1014, see § 2, by knowingly making false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom Lend America had made mortgage loans could not make payments on the loans, and by artificially suppressing Lend America's default ratio and providing the falsely low comparative default ratios to FHA. By doing so, the RAINY DAY DEFENDANTS and Lend America sought to avoid FHA review and termination of Lend America's ability to originate FHA-insured loans, and for FHA-insured loans originated

by Lend America to continue to qualify for payment of claims for FHA mortgage insurance.

374. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1014, by making false statements and reports for the purposes of influencing action of the FHA, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(I) Conspiracy to Violate 18 U.S.C. § 1014/Making False Statements or Reports For the Purpose of Influencing the FHA

375. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

376. The United States seeks relief against the RAINY DAY DEFENDANTS under FIRREA, 12 U.S.C. § 1833a.

377. As set forth above, the RAINY DAY DEFENDANTS, together with Lend America and others, violated 18 U.S.C. § 1014 by conspiring to make false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom Lend America had made mortgage loans could not make payments on the loans, and by artificially suppressing Lend America's default ratio and providing the falsely low comparative default ratios to FHA. By doing so, the RAINY DAY DEFENDANTS and Lend America sought to avoid FHA review and termination of Lend America's ability to originate FHA-insured loans, and for FHA-insured loans originated by Lend America to continue to qualify for payment of claims for FHA mortgage insurance.

378. By reason of the RAINY DAY DEFENDANTS' violations of 18 U.S.C. § 1014, by conspiring to make false statements and reports for the purposes of influencing action of the FHA, the United States is entitled to a civil penalty as required by law for the violations set forth at Exhibit C, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

SIXTH CLAIM FOR RELIEF

Unjust Enrichment: Rainy Day Defendants and Lend America

379. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

380. Because of the actions of the RAINY DAY DEFENDANTS, together with those of Lend America and others, the RAINY DAY DEFENDANTS have been unjustly enriched to the detriment of the United States, by fraudulently and artificially suppressing the comparative default ratio of Lend America, so that Lend America would be able to continue originating FHA-insured mortgages; and by said defendants' delaying the eventual default of FHA-insured mortgages, so that the United States would be subject to claims under the mortgages' FHA mortgage insurance.

381. As a result, the RAINY DAY DEFENDANTS are liable to the United States, in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF

Violations of FIRREA, 12 U.S.C. § 1833a: Rainy Day Defendants and Franklin First Financial, Ltd.

(a) Violations of 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

382. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

383. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

384. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and

FRANKLIN FIRST and others violated 18 U.S.C. § 1343, and aided and abetted violations of § 1343, see § 2, by knowingly and intentionally devising a continuing scheme and artifice to defraud financial institutions Citibank, J.P. Morgan Chase, and Wells Fargo of money and property, to wit: monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing said financial institutions due to early payment defaults of mortgages in default.

385. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 192-217 and at Exhibit D.

386. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit D, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(b) Conspiracy to Violate 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

387. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

388. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

389. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON,

HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1343 by conspiring to and by knowingly and intentionally devising a continuing scheme and artifice to defraud financial institutions Citibank, J.P. Morgan Chase, and Wells Fargo of money and property, to wit: monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing said financial institutions due to early payment defaults of mortgages in default.

390. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 192-217 and at Exhibit D.

391. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1343, by knowingly and intentionally devising a continuing scheme and artifice to defraud Citibank, J.P. Morgan Chase, and Wells Fargo of money and property, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit D pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(c) Violations of 18 U.S.C. § 1344/Bank Fraud

392. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

393. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

394. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1344, and aided and abetted violations of § 1344, see § 2, by defrauding, by a continuing scheme and artifice, financial institutions, to wit: Citibank, J.P. Morgan Chase, and Wells Fargo, of money and property under Citibank, J.P. Morgan Chase, and Wells Fargo's custody and control by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing the Citibank, J.P. Morgan Chase, and Wells Fargo due to early payment defaults of mortgages in default.

395. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit D pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(d) Conspiracy to Violate 18 U.S.C. § 1344/Bank Fraud

396. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

397. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

398. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1344 by conspiring to defraud, by a

continuing scheme and artifice, financial institutions, to wit: Citibank, J.P. Morgan Chase, and Wells Fargo, of money and property under Citibank, J.P. Morgan Chase, and Wells Fargo's custody and control by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing Citibank, J.P. Morgan Chase, and Wells Fargo due to early payment defaults of mortgages in default.

399. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit D, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(e) Violations of 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institution Transactions

400. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

401. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

402. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1005, and aided and abetted violations of § 1005, see § 2, by participating, sharing, or receiving money, profits or benefits derived from the defrauding an agency of the United States of America, to wit: HUD, through the transactions

or acts of financial institutions, to wit: Citibank, J.P. Morgan Chase, and Wells Fargo.

403. By reason of defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1005, the United States is entitled to civil penalties as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(f) Conspiracy to Violate 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institution Transactions

404. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

405. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

406. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1005 by conspiring to participate, share, or receive money, profits or benefits derived from the defrauding an agency of the United States of America, to wit: HUD, through the transactions or acts of financial institutions, to wit: Citibank, J.P. Morgan Chase, and Wells Fargo.

407. By reason of defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1005, the United States is entitled to civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(g) Violations of 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from the United States by Transactions or Acts of a Mortgage Lender

408. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

409. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

410. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1006, and aided and abetted violations of § 1006, see § 2, by participating, sharing or receiving money, profits or benefits from the defrauding of the United States through the acts of FRANKLIN FIRST, a Mortgage Lender.

411. By reason of defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1006, the United States is entitled to civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(h) Conspiracy to Violate 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from the United States by Transactions or Acts of a Mortgage Lender

412. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

413. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

414. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON,

HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST and others violated 18 U.S.C. § 1006 by conspiring to participate, share or receive money, profits or benefits from the defrauding of the United States through the acts of FRANKLIN FIRST, a Mortgage Lender.

415. By reason of defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1006, the United States is entitled to civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(i) Violations of 18 U.S.C. § 1014/Making False Statements or Reports For the Purpose of Influencing the FHA

416. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

417. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

418. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST, together with others, violated 18 U.S.C. § 1014, and aided and abetted violations of § 1014, see § 2, by knowingly making false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom FRANKLIN FIRST had made mortgage loans could not make payments on the loans. By concealing that the borrowers could not pay their mortgages by FRANKLIN FIRST's payment of the mortgages through RDF, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and

FRANKLIN FIRST, artificially suppressed FRANKLIN FIRST's comparative default ratio, as compiled and computed by the FHA. By doing so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST sought to avoid termination of FRANKLIN FIRST's ability to originate FHA-insured loans, and for FHA-insured loans originated by FRANKLIN FIRST to continue to qualify for payment of claims for FHA mortgage insurance.

419. By reason of defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1014, the United States is entitled to civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(j) Conspiracy to Violate 18 U.S.C. § 1014/Making False Statements For the Purpose of Influencing the FHA

420. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

421. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST under FIRREA, 12 U.S.C. § 1833a.

422. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST, together with others, violated 18 U.S.C. § 1014 by conspiring to make false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom FRANKLIN FIRST had made mortgage loans could not make payments on the loans. By concealing that the borrowers could not pay their mortgages by FRANKLIN FIRST's payment of the mortgages through RDF, DEL SONTRO, CLUTE,

SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST, artificially suppressed FRANKLIN FIRST's comparative default ratio, as compiled and computed by the FHA. By doing so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST sought to avoid termination of FRANKLIN FIRST's ability to originate FHA-insured loans, and for FHA-insured loans originated by FRANKLIN FIRST to continue to qualify for payment of claims for FHA mortgage insurance.

423. By reason of defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST's violations of 18 U.S.C. § 1014, the United States is entitled to civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

EIGHTH CLAIM FOR RELIEF

Gross Negligence: Franklin First Financial, Ltd.

424. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

425. Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST owed the United States a duty of reasonable care and a duty to conduct due diligence.

426. As set forth above, Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST breached their duties to the United States.

427. As set forth above, Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST recklessly disregarded their duties to the United States.

428. As a result of Defendants ASSINI, BAINES, DAURO, BERTMAN and

FRANKLIN FIRST's gross negligence, the United States incurred losses relating to the FHA-insured mortgages endorsed by Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST.

429. As a result of the foregoing, the United States is entitled to compensatory and punitive damages, in an amount to be determined at trial.

NINTH CLAIM FOR RELIEF

Breach of Fiduciary Duty: Franklin First Financial, Ltd.

430. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

431. Defendant FRANKLIN FIRST was a fiduciary of the United States, specifically HUD, and owed HUD fiduciary duties.

432. As a fiduciary, FRANKLIN FIRST had a duty to ensure that only prompt and accurate reporting of which borrowers were in default on their mortgages was provided to HUD.

433. As a fiduciary, FRANKLIN FIRST had the obligation to act in the utmost good faith, honesty, candor, integrity, fairness and undivided loyalty and fidelity in its dealings with the United States.

434. As a fiduciary, FRANKLIN FIRST had a duty to refrain from taking advantage of the United States by the slightest misrepresentation, to make full and fair disclosures to the United States of all material facts, and to take on the affirmative duty of employing reasonable care to avoid misleading the United States in all circumstances.

435. As set forth above, FRANKLIN FIRST breached its fiduciary duties to the United States by willfully causing misleading, inaccurate and false information concerning mortgage loan defaults and FRANKLIN FIRST's default ratios to be provided to HUD.

436. DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH and DMS aided and abetted this breach of fiduciary duties by knowingly inducing or participating in the breach.

437. As a result of this breach of fiduciary duties, the United States has and will pay insurance claims and has and will incur losses relating to FHA-insured mortgages originated by FRANKLIN FIRST.

438. By virtue of the above, the United States is entitled to compensatory and punitive damages, in an amount to be determined at trial.

TENTH CLAIM FOR RELIEF

Unjust Enrichment: Franklin First Financial, Ltd.

439. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

440. Defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST have been unjustly enriched to the detriment of the United States, by fraudulently and artificially suppressing the comparative default ratio of FRANKLIN FIRST, so that FRANKLIN FIRST would be able to continue originating FHA-insured mortgages, and by delaying the eventual default of FHA-insured mortgages, so that the United States would be subject to claims under the mortgages' FHA mortgage insurance.

441. As a result, Defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, RDF, RDH, DMS, ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST are liable to the United States, in an amount to be determined at trial.

ELEVENTH CLAIM FOR RELIEF

Indemnification: Franklin First Financial, Ltd.

442. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

443. Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST owed the United States a duty of reasonable care and a duty to not defraud the United States.

444. As set forth above, Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST breached their duties to the United States.

445. As a result of these Defendants breaching their duties to the United States, the United States has paid and will pay future mortgage insurance claims and incur future losses, relating to FHA-insured mortgages endorsed by ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST.

446. By virtue of the above, the United States is entitled to indemnification of its losses relating to FHA-insured mortgages endorsed by Defendants ASSINI, BAINES, DAURO, BERTMAN, and FRANKLIN FIRST.

TWELFTH CLAIM FOR RELIEF

Violations of FIRREA, 12 U.S.C. § 1833a: Rainy Day and Intercontinental Capital Group, Inc.

(a) Violations of 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

447. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

448. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

449. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH

18 U.S.C. § 1343, and aided and abetted violations of § 1343, see § 2, by knowingly and intentionally devising a continuing scheme and artifice to defraud Citibank, to wit: monies owed for the repurchase of mortgage loans set forth at Exhibit E that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing Citibank due to early payment defaults of mortgages in default.

450. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 218-223 and Exhibit E.

451. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the 11 violations set forth at Exhibit E, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(b) Conspiracy to Violate 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

452. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

453. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

454. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1343, by conspiring to devise a continuing scheme and artifice to defraud Citibank, to wit: monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing Citibank due to early payment defaults of mortgages in default.

455. For the purpose of executing said scheme and artifice and attempting to do so,

DEL SONTRO, SHRUM, LUDLOW, RDF and RDH transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 218-223 and Exhibit E.

456. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's, violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the 11 violations set forth at Exhibit E, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(c) Violations of 18 U.S.C. § 1344/Bank Fraud

457. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

458. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

459. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1344, and aided and abetted violations of § 1344, see § 2, by knowingly and intentionally devising a continuing scheme and artifice to defraud a financial institution, to wit: Citibank, of money and property under Citibank's custody and control by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing Citibank due to early payment defaults of mortgages in default.

460. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for each of the 11 violations set forth at Exhibit E, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(d) Conspiracy to Violate 18 U.S.C. § 1344/Bank Fraud

461. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

462. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

463. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1344 by conspiring to, and by knowingly and intentionally devising a continuing scheme and artifice to defraud a financial institution, to wit: Citibank, of money and property under Citibank's custody and control by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing Citibank due to early payment defaults of mortgages in default.

464. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's conspiring to violate 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for each of the 11 violations set forth at Exhibit E, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(e) Violations of 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institution Transactions

465. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

466. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

467. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated

18 U.S.C. § 1005, and aided and abetted violations of § 1005, see § 2, by participating, sharing, or receiving money, profits or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions and acts of an FDIC-insured financial institution, to wit: Citibank.

468. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(f) Conspiracy to Violate 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institution Transactions

469. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

470. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

471. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1005 by conspiring to participate, share, or receive money, profits or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions and acts of an FDIC-insured financial institution, to wit: Citibank.

472. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's conspiracy to violate 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(g) Violations of 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from the United States by Transactions or Acts of a Mortgage Lender

473. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

474. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

475. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF, RDH and others violated 18 U.S.C. § 1006, and aided and abetted violations of § 1006, see § 2, by participating, sharing or receiving money, profits or benefits derived from defrauding the United States through the acts of ICG, a mortgage lender.

476. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's, violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(h) Conspiracy to Violate 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from the United States by Transactions or Acts of a Mortgage Lender

477. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

478. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

479. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1006 by conspiring to participate, share or receive money, profits or benefits derived from the defrauding of the United States through the acts of ICG, a mortgage lender.

480. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's conspiracy to violate 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(i) Violations of 18 U.S.C. § 1014/Making False Statements or Reports for the Purpose of Influencing the FHA

481. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

482. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF and RDH under FIRREA, 12 U.S.C. § 1833a.

483. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1014, and aided and abetted violations of § 1014, see § 2, by knowingly making false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom ICG had made mortgage loans could not make payments on the loans. By said concealment, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH artificially suppressed ICG's comparative default ratio, as compiled and computed by the FHA. By doing so, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH sought to avoid termination of ICG's ability to originate FHA-insured loans. Said Defendants further seek for FHA-insured loans originated by ICG to continue to qualify for payment for claims on their FHA mortgage insurance.

484. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's, violations of 18 U.S.C. § 1014, the United States is entitled to a civil penalty as required by law pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(j) Conspiracy to Violate 18 U.S.C. § 1014/Making False Statements For the Purpose of Influencing the FHA

485. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

486. The United States seeks relief against DEL SONTRO, SHRUM, LUDLOW, RDF

and RDH under FIRREA, 12 U.S.C. § 1833a.

487. As set forth above, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH violated 18 U.S.C. § 1014 by conspiring to make false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom ICG had made mortgage loans could not make payments on the loans. By said concealment, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH artificially suppressed ICG's comparative default ratio, as compiled and computed by the FHA. By doing so, DEL SONTRO, SHRUM, LUDLOW, RDF and RDH sought to avoid termination of ICG's ability to originate FHA-insured loans. Said Defendants further seek for FHA-insured loans originated by ICG to continue to qualify for payment for claims on their FHA mortgage insurance.

488. By reason of DEL SONTRO, SHRUM, LUDLOW, RDF and RDH's violations of 18 U.S.C. § 1014, the United States is entitled to a civil penalty as required by law pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

THIRTEENTH CLAIM FOR RELIEF

Violations of FIRREA, 12 U.S.C. § 1833a: Rainy Day Defendants and Mortgage Source, LLC

(a) Violations of 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institution

489. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

490. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE under FIRREA, 12 U.S.C. § 1833a.

491. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others violated 18 U.S.C. § 1005,

and aided and abetted violations of § 1005, see § 2, concerning those loans set out in Exhibit F, by knowingly and intentionally participating, sharing, or receiving money, profit or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions or acts of said financial institutions, to wit: Countrywide Home Mortgage.

492. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE's violations of 18 U.S.C. § 1005, the United States is owed civil penalties pursuant to FIRREA, 12 U.S.C. §1833a(a) and (c)(1).

(b) Conspiracy to Violate 18 U.S.C. § 1005/ Receipt of Fraud Proceeds from HUD by Financial Institution's Transactions

493. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

494. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE under FIRREA, 12 U.S.C. § 1833a.

495. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others violated 18 U.S.C. § 1005 by conspiring to participate, share, or receive money, profits or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions or acts of said financial institutions, to wit: Countrywide Home Mortgage.

496. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE's violations of 18 U.S.C. § 1005, the United States is owed civil penalties pursuant to FIRREA, 12 U.S.C. §1833a(a) and (c)(1).

(c) Violations of 18 U.S.C. § 1006/Fraudulent Receipt of Benefits from HUD through Mortgage Company Transactions

497. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

498. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE under FIRREA, 12 U.S.C. § 1833a.

499. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others violated 18 U.S.C. § 1006, and aided and abetted violations of § 1006, see § 2 by participating, sharing or receiving money, property or benefits, derived from the defrauding of the United States, through the acts of Mortgage Source, a mortgage company.

500. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE's violations of 18 U.S.C. § 1006, the United States is owed civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(d) Conspiracy to Violate 18 U.S.C. § 1006/Fraudulent Receipt of Benefits from HUD through Mortgage Company Transactions

501. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

502. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE under FIRREA, 12 U.S.C. § 1833a.

503. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others violated 18 U.S.C. § 1006 by conspiring to participate, share or receive money, property or benefits, derived from the

defrauding of the United States, through the acts of Mortgage Source, a mortgage company.

504. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE's violations of 18 U.S.C. § 1006, the United States is owed civil penalties pursuant to FIRREA, 12 U.S.C. §1833a(a) and (c)(1).

(e) Violations of 18 U.S.C. § 1014/Making False Statements or Reports for the Purpose of Influencing the FHA

505. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

506. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE under FIRREA, 12 U.S.C. § 1833a.

507. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others violated 18 U.S.C. § 1014, and aided and abetted violations of § 1014, see § 2, by knowingly making false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom Mortgage Source made mortgage loans could not make payments on the loan, by artificially suppressing Mortgage Source's comparative default ratio and providing the falsely low comparative default ratios to FHA. By doing so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others sought to avoid FHA review and termination of Mortgage Source's ability to originate FHA-insured loans, and for FHA-insured loans originated by Mortgage Source to continue to qualify for payment of claims for FHA mortgage insurance.

508. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE's violations of 18 U.S.C. § 1014, the

United States is owed civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(f) Conspiracy to Violate 18 U.S.C. § 1014/Making False Statements or Reports for the Purpose of Influencing the FHA

509. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

510. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE under FIRREA, 12 U.S.C. § 1833a.

511. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others violated 18 U.S.C. § 1014 by conspiring to make false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom Mortgage Source made mortgage loans could not make payments on the loan, by artificially suppressing Mortgage Source's comparative default ratio and providing the falsely low comparative default ratios to FHA. By doing so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE and others sought to avoid FHA review and termination of Mortgage Source's ability to originate FHA-insured loans, and for FHA-insured loans originated by Mortgage Source to continue to qualify for payment of claims for FHA mortgage insurance.

512. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, RDF, RDH, DMS, MEDEIROS and KANE's violations of 18 U.S.C. § 1014, the United States is owed civil penalties pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

FOURTEENTH CLAIM FOR RELIEF

Gross Negligence: Mortgage Source, LLC

513. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

514. Defendants MEDEIROS and KANE owed the United States a duty of reasonable care and a duty to conduct due diligence.

515. As set forth above, Defendants MEDEIROS and KANE breached their duties to the United States.

516. As set forth above, Defendants MEDEIROS and KANE and others recklessly disregarded their duties to the United States.

517. As a result of Defendants MEDEIROS and KANE's gross negligence, the United States paid insurance claims, and has and will incur losses relating to the FHA-insured mortgage originated by Defendants MEDEIROS and KANE.

518. As a result of the foregoing, the United States is entitled to compensatory and punitive damages, in an amount to be determined at trial.

FIFTEENTH CLAIM FOR RELIEF

Unjust Enrichment: Mortgage Source, LLC

519. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

520. Defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, RDF, RDH, DMS, MEDEIROS and KANE have been unjustly enriched to the detriment of the United States, by fraudulently and artificially suppressing the comparative default ratio of Mortgage Source, so that Mortgage Source would be able to continue originating FHA-insured mortgages; and by delaying the eventual default of FHA-insured mortgages, so that the United States would

be subject to claims under the mortgages' FHA mortgage insurance.

521. As a result, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, RDF, RDH, DMS, MEDEIROS and KANE are liable to the United States, in an amount to be determined at trial.

SIXTEENTH CLAIM FOR RELIEF

Indemnification: Mortgage Source, LLC

522. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

523. Defendants MEDEIROS and KANE owed the United States a duty of reasonable care and a duty to not defraud the United States.

524. As set forth above, Defendants MEDEIROS and KANE breached their duties to the United States.

525. As a result of these Defendants' breaching their duties to the United States, the United States has paid and will pay future mortgage insurance claims and incur future losses, relating to FHA-insured mortgages endorsed by MEDEIROS and KANE.

526. By virtue of the above, the United States is entitled to indemnification of its losses relating to FHA-insured mortgages endorsed by Defendants MEDEIROS and KANE.

SEVENTEENTH CLAIM FOR RELIEF

Violations of FIRREA, 12 U.S.C. § 1833a: Rainy Day Defendants and Continental Mortgage Bankers, Inc.

(a) Violations of 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

527. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

528. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM,

LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

529. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1343, and aided and abetted violations of § 1343, see § 2, by devising a continuing scheme and artifice to defraud J.P. Morgan Chase and Wells Fargo of, to wit: monies owed for the repurchase of those mortgage loans identified in Exhibit G that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase and Wells Fargo due to early payment defaults of mortgages in default.

530. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 236-242 and Exhibit G.

531. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the 8 violations set forth at Exhibit G, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(b) Conspiracy to Violate 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

532. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

533. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

534. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH,

STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1343 by conspiring to devise a continuing scheme and artifice to defraud J.P. Morgan Chase and Wells Fargo of, to wit: monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase and Wells Fargo due to early payment defaults of mortgages in default.

535. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 236-242 and Exhibit G.

536. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the 8 violations set forth at Exhibit G, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(c) Violations of 18 U.S.C. § 1344/Bank Fraud

537. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

538. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

539. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1344, and aided and abetted violations of § 1344, see § 2, by devising a continuing scheme and artifice to defraud the financial institutions, to wit: J.P. Morgan Chase and Wells Fargo of money and property under their custody and control by means of false and fraudulent pretenses, representations or

promises; said money or property being monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase and Wells Fargo due to early payment defaults of mortgages in default.

540. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for each of the 8 violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(d) Conspiracy to Violate 18 U.S.C. § 1344/Bank Fraud

541. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

542. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

543. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1344 by conspiring to devise a continuing scheme and artifice to defraud financial institutions, to wit: J.P. Morgan Chase and Wells Fargo of money and property under their custody and control by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase and Wells Fargo due to early payment defaults of mortgages in default.

544. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for each of the 8 violations alleged herein, pursuant to

FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(e) Violations 18 U.S.C. § 1005 /Fraudulent Receipt Money, Profits or Benefits from HUD by Financial Institution Acts or Transactions

545. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

546. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

547. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1005, and aided and abetted violations of § 1005, see § 2, by participating, sharing, or receiving money, profits or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions and acts of financial institutions, to wit: J.P. Morgan Chase and Wells Fargo.

548. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(f) Conspiracy to Violate 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institution Acts or Transactions.

549. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

550. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

551. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1005 by conspiring to participate, share, or receive money, profit or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions and acts of financial

institutions, to wit: J.P. Morgan Chase and Wells Fargo.

552. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(g) Violations of 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from HUD by Mortgage Lender's Acts or Transactions

553. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

554. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

555. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1006, and aided and abetted violations of § 1006, see § 2, by participating, sharing or receiving money, profits or benefits derived from the defrauding of the United States, through the acts of CONTINENTAL, a mortgage company.

556. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(h) Conspiracy to Violate 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from HUD by Mortgage Lender's Acts or Transactions

557. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

558. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

559. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1006 by conspiring to participate, share or receive money, profit or benefits derived from the defrauding of the United States, through the acts of CONTINENTAL, a mortgage company.

560. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN, MANZO and CONTINENTAL's violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(i) Violations of 18 U.S.C. § 1014/Making False Statements or Reports for the Purpose of Influencing the FHA

561. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

562. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

563. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1014, and aided and abetted violations of § 1014, see § 2, by knowingly making false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom the CONTINENTAL had made mortgage loans could not make payments on the loans. By concealing that the borrowers could not pay their mortgages, by CONTINENTAL's payment of the mortgages through RDF, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others artificially suppressed CONTINENTAL's comparative default ratio, as compiled and computed by the FHA. By doing so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others sought

to avoid termination of the CONTINENTAL's ability to originate FHA-insured loans, and further to continue the ability of FHA-insured loans originated by CONTINENTAL to qualify for payment of claims for FHA mortgage insurance.

564. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1014, the United States is entitled to a civil penalty as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(j) Conspiracy to Violate 18 U.S.C. § 1014/False Statements for the Purpose of Influencing the FHA

565. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

566. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL under FIRREA, 12 U.S.C. § 1833a.

567. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others violated 18 U.S.C. § 1014 by conspiring to make false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom the CONTINENTAL had made mortgage loans could not make payments on the loans. By concealing that the borrowers could not pay their mortgages, by CONTINENTAL's payment of the mortgages through RDF, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others artificially suppressed CONTINENTAL's comparative default ratio, as compiled and computed by the FHA. By doing so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL and others sought to avoid termination of the CONTINENTAL's ability to originate FHA-insured loans, and further to continue the ability of FHA-insured loans originated by CONTINENTAL to qualify for payment of claims for FHA mortgage insurance.

568. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF, RDH, STASHIN and CONTINENTAL's violations of 18 U.S.C. § 1014, the United States is entitled to a civil penalty as required by law, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

EIGHTEENTH CLAIM FOR RELIEF

Gross Negligence: Continental Mortgage Bankers, Inc.

569. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

570. Defendants STASHIN and CONTINENTAL owed the United States a duty of reasonable care and a duty to conduct due diligence.

571. As set forth above, Defendants STASHIN and CONTINENTAL breached their duties to the United States.

572. As set forth above, Defendants STASHIN and CONTINENTAL recklessly disregarded their duties to the United States.

573. As a result of the gross negligence of Defendants STASHIN and CONTINENTAL, the United States has paid insurance claims, and incurred losses, relating to the FHA-insured mortgage endorsed by Defendants STASHIN and CONTINENTAL.

574. As a result of the foregoing, the United States is entitled to compensatory and punitive damages, in an amount to be determined at trial.

NINETEENTH CLAIM FOR RELIEF

Breach of Fiduciary Duty: Continental Mortgage Bankers, Inc.

575. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

576. Defendant CONTINENTAL was a fiduciary of the United States, specifically

HUD, and owed HUD fiduciary duties.

577. As a fiduciary, CONTINENTAL had a duty to ensure that only prompt and accurate reporting of which borrowers were in default on their mortgages was provided to HUD.

578. As a fiduciary, CONTINENTAL had the obligation to act in the utmost good faith, honesty, candor, integrity fairness and undivided loyalty and fidelity in its dealings with the United States.

579. As a fiduciary, CONTINENTAL had a duty to refrain from taking advantage of the United States by the slightest misrepresentation, to make full and fair disclosures to the United States of all material facts, and to take on the affirmative duty of employing reasonable care to avoid misleading the United States in all circumstances.

580. As set forth above, CONTINENTAL breached its fiduciary duties to the United States by willfully causing misleading, inaccurate and false information concerning mortgage loan defaults and CONTINENTAL's default ratios to be provided to HUD.

581. DEL SONTRO, CLUTE, SHRUM, LUDLOW, RDF and RDH aided and abetted this breach of fiduciary duties by knowingly inducing or participating in the breach.

582. As a result of this breach of fiduciary duties, the United States has and will pay insurance claims and has and will incur losses relating to FHA-insured mortgages originated by CONTINENTAL.

583. By virtue of the above, the United States is entitled to compensatory and punitive damages, in an amount to be determined at trial.

TWENTIETH CLAIM FOR RELIEF

Unjust Enrichment: Continental Mortgage Bankers, Inc.

584. The United States incorporates by reference paragraphs 1 through 310 as if fully

set forth in this paragraph.

585. Defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, STASHIN and CONTINENTAL have been unjustly enriched to the detriment of the United States, by fraudulently and artificially suppressing the CONTINENTAL's comparative default ratio, so that CONTINENTAL would be able to continue originating FHA-insured mortgages; and by delaying the eventual default of FHA-insured mortgages, so that the United States would be subject to claims under the mortgages' FHA mortgage insurance.

586. As a result, Defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS, STASHIN and CONTINENTAL are liable to the United States, in an amount to be determined at trial.

TWENTY-FIRST CLAIM FOR RELIEF

Indemnification: Continental Mortgage Bankers, Inc.

587. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

588. Defendants STASHIN and CONTINENTAL owed the United States a duty of reasonable care and a duty to not defraud the United States.

589. As set forth above, Defendants STASHIN and CONTINENTAL breached their duties to the United States.

590. As a result of these Defendants' breaching their duties to the United States, the United States has paid and will pay future mortgage insurance claims and incur future losses, relating to FHA-insured mortgages endorsed by STASHIN and CONTINENTAL.

591. By virtue of the above, the United States is entitled to indemnification of its losses

relating to FHA-insured mortgages endorsed by Defendants STASHIN and CONTINENTAL.

TWENTY-SECOND CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(1), and as amended, 31 U.S.C. § 3729(a)(1)(A)

Presentment of False Claims: Somerset Investors Corp.

592. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

593. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under the False Claims Act, 31 U.S.C. § 3729(a)(1), and as amended, 31 U.S.C. § 3729(a)(1)(A).

594. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS by knowingly presenting or causing to be presented a false and fraudulent claim for payment or approval, to wit: a claim on FHA mortgage insurance on Somerset-originated mortgages, as set forth in Exhibit H.

595. By reason of the false claim DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS caused to be presented, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

TWENTY-THIRD CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(3), and as amended, 31 U.S.C. § 3729(a)(1)(A) and (a)(1)(C)

Conspiracy to Present False Claims: Somerset Investors Corp.

596. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

597. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM,

LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under the False Claims Act, 31 U.S.C. § 3729(a)(1) and (a)(3), and as amended, 31 U.S.C. § 3729(a)(1)(a) and (a)(1)(c).

598. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS violated the False Claims Act by conspiring to present, or causing to be presented a fraudulent claim for payment or approval, to wit: a claim on FHA mortgage insurance on a Somerset-originated mortgage.

599. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS conspiring to cause the presentment of a false claim to the United States, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

TWENTY-FOURTH CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(2), and as amended, 31 U.S.C. § 3729(a)(1)(B)

Making or Use of False Records or Statements: Somerset Investors Corp.

600. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

601. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under the False Claims Act, 31 U.S.C. § 3729(a)(2), and as amended, 31 U.S.C. § 3729(a)(1)(B).

602. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS violated the False Claims Act by knowingly making, using, or causing to be made or used false records or statements material to

getting a false or fraudulent claim paid or approved by the Government, to wit: false annual certifications, and false information resulting in artificially suppressed comparative default ratios and the underlying loans that were paid by Somerset to the Mortgage Purchasers, by DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, and RDH.

603. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS making or using, or causing to be made or used, false records or statements material to getting false or fraudulent claims paid or approved by the Government, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

TWENTY-FIFTH CLAIM FOR RELIEF

Violations of the False Claims Act, 31 U.S.C. § 3729(a)(2) and (a)(3), and as amended, 31 U.S.C. § 3729(a)(1)(B) and (a)(1)(C),

Conspiracy to Make or Use False Records or Statements: Somerset Investors Corp.

604. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

605. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under the False Claims Act, 31 U.S.C. § 3729(a)(2) and (a)(3), and as amended, 31 U.S.C. § 3729 (a)(1)(b) and (a)(1)(c).

606. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS violated the False Claims Act by conspiring to make or use, or causing to be made or used, false records or statements material to getting a false or fraudulent claim paid or approved by the Government, to wit: false annual

certifications, and false information resulting in the artificially suppressed comparative default ratios and the underlying loans that were paid by Somerset Investors to the Mortgage Purchasers, by DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, and RDH.

607. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's conspiracy to make or use or causing to be made or used false records or statements material to getting false or fraudulent claims paid or approved by the Government, the United States has been damaged in an amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

TWENTY-SIXTH CLAIM FOR RELIEF

Violations of FIRREA, 12 U.S.C. § 1833a: Rainy Day Defendants and Somerset Investors Corp.

(a) Violations of 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

608. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

609. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

610. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1343, and aided and abetted violations of § 1343, see § 2, by devising a continuing scheme and artifice to defraud J.P. Morgan Chase, Wells Fargo and Citibank of money and property, to wit: monies owed for the repurchase of Somerset-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties

due and owing J.P. Morgan Chase, Wells Fargo and Citibank due to early payment defaults of mortgages in default.

611. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 243-250 and Exhibit H.

612. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit H, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(b) Conspiracy to Violate 18 U.S.C. § 1343/Wire Fraud as to Financial Institutions

613. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

614. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

615. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1343 by conspiring to devise a continuing scheme and artifice to defraud J.P. Morgan Chase, Wells Fargo and Citibank of money and property, to wit: monies owed for the repurchase of Somerset-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, Wells

Fargo and Citibank due to early payment defaults of mortgages in default.

616. For the purpose of executing said scheme and artifice and attempting to do so, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others transmitted and caused to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds, specifically the conduct set out at paragraphs 226-232 and Exhibit H.

617. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1343, the United States is entitled to a civil penalty as required by law for each of the violations set forth at Exhibit H, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(2).

(c) Violations of 18 U.S.C. § 1344/Bank Fraud

618. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

619. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

620. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1344, and aided and abetted violations of § 1344, see § 2, by devising a continuing scheme and artifice to defraud financial institutions, to wit: J.P. Morgan Chase, Wells Fargo and Citibank of money and property under J.P. Morgan Chase, Wells Fargo and Citibank's custody and control, by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of Somerset-originated mortgage loans that had suffered

an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, Wells Fargo and Citibank due to early payment defaults of Somerset-originated mortgages in default.

621. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(d) Conspiracy to Violate 18 U.S.C. § 1344/Bank Fraud

622. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

623. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

624. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1344 by conspiring to devise a continuing scheme and artifice to defraud financial institutions, to wit: J.P. Morgan Chase, Wells Fargo and Citibank of money and property under J.P. Morgan Chase, Wells Fargo and Citibank's custody and control, by means of false and fraudulent pretenses, representations or promises; said money or property being monies owed for the repurchase of Somerset-originated mortgage loans that had suffered an early payment default, monies owed for indemnification of losses on said loans, and penalties due and owing J.P. Morgan Chase, Wells Fargo and Citibank due to early payment defaults of Somerset-originated mortgages in default.

625. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1344, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(e) Violations of 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institutions' Transactions

626. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

627. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

628. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1005, and aided and abetted violations of § 1005, see § 2, by participating, sharing, or receiving money, profits or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions and acts of financial institutions, to wit: J.P. Morgan Chase, Wells Fargo and Citibank.

629. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(f) Violations of 18 U.S.C. § 1005/Fraudulent Receipt of Money, Profits or Benefits from HUD by Financial Institutions' Transactions

630. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

631. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

632. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1005 by conspiring to participate, share, or receive money, profit or benefits derived from the defrauding of an agency of the United States of America, to wit: HUD, through the transactions and acts of financial institutions, to wit: J.P. Morgan Chase, Wells Fargo and Citibank.

633. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1005, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(g) Violations of 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from HUD by Mortgage Lender's Acts or Transactions

634. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

635. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

636. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C.

§ 1006, and aided and abetted violations of § 1006, see § 2, by participating, sharing or receiving money, profits or benefits derived from the defrauding of the United States, through the acts of Somerset, a Mortgage Lender.

637. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(h) Conspiracy to Violate 18 U.S.C. § 1006/Fraudulent Receipt of Money, Profits or Benefits from HUD by Mortgage Lender's Acts or Transactions

638. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

639. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

640. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1006 by conspiring to participate, share or receive money, property or benefits, derived from the defrauding of the United States, through the acts of Somerset, a Mortgage Lender.

641. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1006, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(i) **Violations of 18 U.S.C. § 1014/Making False Statements or Reports for the Purpose of Influencing the FHA**

642. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

643. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

644. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1014, and aided and abetted violations of § 1014, see § 2, by knowingly making false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom Somerset had made mortgage loans could not make payments on the loans. By concealing that the borrowers could not pay their mortgages, these Defendants artificially suppressed Somerset's comparative default ratio, as compiled and computed by the FHA. By doing so, the RAINY DAY DEFENDANTS and others sought to avoid FHA's termination of Somerset's ability to originate FHA-insured loans, and for FHA-insured loans originated by Somerset to continue to qualify for payment of claims for FHA mortgage insurance.

645. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1014, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

(j) **Conspiracy to Violate 18 U.S.C. § 1014/False Statements For the Purpose of Influencing the FHA**

646. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

647. The United States seeks relief against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS under FIRREA, 12 U.S.C. § 1833a.

648. As set forth above, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS and others violated 18 U.S.C. § 1014 by conspiring to make false statements and reports for the purpose of influencing action of the FHA, to wit: by concealing that the borrowers to whom Somerset had made mortgage loans could not make payments on the loans. By concealing that the borrowers could not pay their mortgages, these defendants artificially suppressed Somerset Investors' comparative default ratio, as compiled and computed by the FHA. By doing so, the RAINY DAY DEFENDANTS and others sought to avoid FHA's termination of Somerset's ability to originate FHA-insured loans, and for FHA-insured loans originated by Somerset to continue to qualify for payment of claims for FHA mortgage insurance.

649. By reason of DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, HAUVER, SCHWEDLAND, RDF, RDH, DMS and MARCUS's violations of 18 U.S.C. § 1014, the United States is entitled to a civil penalty as required by law for the violations alleged herein, pursuant to FIRREA, 12 U.S.C. § 1833a(a) and (c)(1).

TWENTY-SEVENTH CLAIM FOR RELIEF

Gross Negligence: Somerset Investors Corp.

650. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

651. Defendant MARCUS owed the United States a duty of reasonable care and a duty to conduct due diligence.

652. As set forth above, Defendant MARCUS breached his duties to the United States.

653. As set forth above, Defendant MARCUS recklessly disregarded his duties to the United States.

654. As a result of Defendant MARCUS's gross negligence, the United States has paid insurance claims and incurred losses relating to the FHA-insured mortgages endorsed by Defendant MARCUS.

655. As a result of the foregoing, the United States is entitled to compensatory and punitive damages, in an amount to be determined at trial.

TWENTY-EIGHTH CLAIM FOR RELIEF

Unjust Enrichment: Somerset Investors Corp.

656. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

657. Defendants DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, RDF, RDH, DMS and MARCUS have been unjustly enriched to the detriment of the United States, by fraudulently and artificially suppressing the comparative default ratio of Somerset, so that Somerset would be able to continue originating FHA-insured mortgages; and by said Defendants' delaying the eventual default of FHA-insured mortgages, so that the United States would be subject to claims under the mortgages' FHA mortgage insurance.

658. As a result, DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, RDF, RDH, DMS and MARCUS are liable to the United States, in an amount to be determined at trial.

TWENTY-NINTH CLAIM FOR RELIEF

Indemnification: Somerset Investors Corp.

659. The United States incorporates by reference paragraphs 1 through 310 as if fully set forth in this paragraph.

660. Defendant MARCUS owed the United States a duty of reasonable care and a duty to not defraud the United States.

661. As set forth above, Defendant MARCUS breached his duties to the United States.

662. As a result of Defendant MARCUS breaching his duties to the United States, the United States has and will pay future mortgage insurance claims and incur future losses, related to FHA-insured mortgages originated by Somerset.

663. By virtue of the above, the United States is entitled to indemnification of its losses relating to FHA-insured mortgages endorsed by Defendant MARCUS.

CONCLUSION


WHEREFORE, the United States respectfully requests that Judgment be entered in its favor and against DEL SONTRO, CLUTE, SHRUM, LUDLOW, NAILLON, SCHWEDLAND, HAUVER, RDF, RDH, DMS, FRANKLIN FIRST, KANE, MEDEIROS, ASSINI, BAINES, BERTMAN, STASHIN, CONTINENTAL and MARCUS, as follows:

- a. For treble the United States damages for past claims paid by the United States and damages which the United States sustained because of the Defendants' acts, in an amount to be determined at trial;
- b. For such civil penalties as are required by law;
- c. For an award of costs pursuant to 31 U.S.C. § 3729(a)(3);
- d. For an award of such further relief as is proper.

Dated: Brooklyn, New York
September 28, 2015

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