

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK, by  
ELIOT SPITZER, Attorney General of the State of  
New York,

Plaintiffs,

**AMENDED  
COMPLAINT**

-against-

ISAAC KATZ, YOEL SILBERSTEIN, AMENOPHIS  
ALLEYNE, SHAYA SAKS, THEODORE WELZ,  
BENZION FRANKEL, REPHOEL A. WEITZNER,  
DEVON CLARKE, JOSEPH TREFF, ERIK B.  
JOHNSON and JEFFERY RICHARDSON,

Index No. 405062/06

Defendants.

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The People of the State of New York, by and through their attorney, Eliot Spitzer,  
Attorney General of the State of New York, as and for their complaint, allege, upon information  
and belief, as follows:

**PRELIMINARY STATEMENT**

1. Pursuant to New York Executive Law § 63(12) and New York General Business Law (“GBL”) § 349, plaintiffs the People of the State of New York, by Eliot Spitzer, Attorney General of the State of New York (“plaintiffs”) bring this action against defendants – a group of real estate owners, mortgage brokers, attorneys, appraisers and their agents – who together repeatedly have engaged in illegal, discriminatory, fraudulent and deceptive practices in connection with real estate transactions with New York consumers. Plaintiffs seek injunctive relief, restitution, damages, penalties and costs against

defendants.

2. Since 2002, the real estate owners have engaged in a property flipping scheme. They purchased homes in minority areas of Brooklyn at cheap prices and then sought out minorities with excellent credit to purchase these often decrepit or otherwise uninhabitable properties at inflated prices. The real estate owners and their agents lured the buyers into the scheme with promises that these purported “investment properties” could be purchased with no money down. They never disclosed that these “no money down” deals would be accomplished through fraud. Unlike legitimate “no money down” real estate purchases, these “no money down” deals rested on deceiving the lenders into believing that these were traditional home purchases where buyers make 10-20% down payments and pay their own closing costs, such as title insurance, homeowner’s insurance premiums and attorneys’ fees.
3. Mortgage brokers enlisted by the real estate owners and/or their agents prepared loan applications that exaggerated the buyers’ assets and falsely claimed that the buyers would be making substantial equity investments in the deals. Appraisers provided false appraisal reports to support the inflated sales prices of the homes. Real estate attorneys representing the sellers, the buyers and the lenders cloaked the transactions with an air of legitimacy and deceived the lenders and others into believing the deals had occurred as stated in the loan closing documents.
4. As a result of these fraudulent and discriminatory acts, banks issued mortgages for transactions that the buyers could not afford. The real estate owners walked away with handsome profits – in one case, they made almost \$150,000 on a property they purchased

the very same day they sold it to a minority buyer. The rest of the mortgage proceeds were used to pay the fees of the remaining defendants; to cover closing costs that the banks were led to believe the borrowers would be paying out-of-pocket; and to provide, in some instances, funds to make repairs to the homes.

5. Not only has this scheme resulted in financial harm to the lenders, who had to foreclose on several of the properties, it also has caused substantial injury to the minority buyers and the largely minority communities where the properties are located.
6. Saddled with huge and expensive mortgages, many of the buyers could not afford their monthly mortgage payments. They exhausted their savings in a fruitless effort to avoid default. Their once-excellent credit was ruined, and some of the properties went into foreclosure.
7. The scheme also artificially inflated the sales prices of neighborhood properties, thereby adversely affecting even individuals who had no involvement with the transactions. As part of the scheme, deeds and other public records were filed that reflected sales prices substantially higher than those actually obtained for the properties. As appraisers and others relied upon these sales in assessing the market value of comparable properties in those areas, the inflated sales prices infected the local market. The scheme thus artificially increased the prices of comparable homes in these minority neighborhoods to the detriment of individuals seeking to buy homes there.
8. Defendants' illegal scheme has defrauded several New York residents out of significant sums of money. Unless enjoined, defendants will continue to engage in this scheme and cause substantial injury to New York residents.

## **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to (a) New York Executive Law § 63(12), which authorizes the Attorney General to seek injunctive relief, restitution, and damages against any person that engages in repeated fraud or illegality in the conduct of business and (b) GBL Article 22-A, § 349 which empowers plaintiffs to seek injunctive relief, restitution, and civil penalties against any person that engages in deceptive acts and practices in the conduct of business. The Court also has jurisdiction over this action pursuant to its general jurisdiction under the New York Constitution, art. VI, § 7, and New York Judiciary Law § 140-b.
10. Venue is proper in this county pursuant to New York CPLR § 503(a) because plaintiffs reside and have an office in New York County.

## **PARTIES**

11. Plaintiffs, the People of the State of New York, are represented by their chief legal officer, Eliot Spitzer, Attorney General of the State of New York, who brings this action pursuant to the authority granted him under New York Executive Law § 63(1) and (12), and GBL § 349.
12. Defendant Isaac Katz (“Katz”) resides at 496A Bedford Avenue, Brooklyn, New York, and maintains a business at 164 Clymer Street, Brooklyn, New York. Together with defendant Yoel Silberstein, Katz was an owner and/or agent of a number of business entities created to buy and/or sell real estate that was ultimately sold to minority buyers as part of the scheme.
13. Defendant Yoel Silberstein (“Silberstein”) resides at 94 Ross Street, Brooklyn, New

York, and maintains a business at 93 Taaffe Place, Brooklyn, New York. Together with Katz, Silberstein was an owner and/or agent of a number of business entities created to buy and/or sell real estate that was ultimately sold to minority buyers as part of the scheme.

14. Defendant Amenophis Alleyne (“Alleyne”) resides at 946 West Third Street, Plainfield, New Jersey. At all relevant times, Alleyne assisted Katz and Silberstein (the “Sellers”) in identifying prospective minority home purchasers and convincing them to purchase Brooklyn homes owned, directly or indirectly, by the Sellers at inflated prices.
15. Defendant Shaya Saks (“Saks”) resides at 174 South Eighth Street, Brooklyn, New York. At all relevant times, Saks worked as a mortgage broker and prepared false loan applications that persuaded lenders to extend mortgages to minority home buyers in connection with their purchase of real estate owned, directly or indirectly, by the Sellers or Alleyne.
16. Defendant Theodore Welz a/k/a Teddy Welz (“Welz”) resides at 407 Berry Street, Brooklyn, New York. At all relevant times, Welz worked as a mortgage broker and prepared false loan applications that persuaded lenders to extend mortgages to minority home buyers in connection with their purchase of real estate owned, directly or indirectly, by the Sellers or by Alleyne.
17. Defendant Benzion Frankel (“Frankel”) is an attorney licensed to practice law in the State of New York, maintaining an office at 1716 Coney Island Avenue, Suite 400, Brooklyn, New York. Frankel served as a lender attorney in the scheme to sell real estate owned, directly or indirectly, by the Sellers or by Alleyne to minority home buyers at

inflated prices.

18. Defendant Rephoel A. Weitzner (“Weitzner”) is an attorney licensed to practice law in the State of New York, maintaining an office at 134 Broadway, Suite 616, Brooklyn, New York. Weitzner served as a lender attorney in the scheme to sell real estate owned, directly or indirectly, by the Sellers or by Alleyne to minority home buyers at inflated prices.
19. Defendant Devon Clarke (“Clarke”) is an attorney licensed to practice law in the State of New York, maintaining an office at 188 Montague Street, Brooklyn, New York. Clarke served as a closing attorney in the fraudulent scheme to sell homes owned by the Sellers or by Alleyne to minority home buyers at inflated prices. Clarke generally purported to represent the minority home buyers at the closings, but on occasion, represented Alleyne or Alleyne’s relatives when they acted as sellers.
20. Defendant Joseph Treff (“Treff”) is an attorney licensed to practice law in the State of New York, maintaining an office at 134 Broadway, Brooklyn, New York. Treff served as the attorney for the Sellers in the fraudulent scheme to sell homes owned by the Sellers, directly or indirectly, to minority home buyers at inflated prices.
21. Defendant Erik B. Johnson (“Johnson”) resides at 27 Waterview Avenue, Ronkonkoma, New York, and maintains a business called Johnson and Rose Appraisal Services, also in Ronkonkoma, New York. At all relevant times, Johnson held himself out as a real estate appraiser and prepared and submitted multiple appraisal reports concerning real estate located within the State of New York, including those sold to minority buyers as part of the scheme. He currently holds a license as a New York State Certified Residential Real

Estate Appraiser (ID# 45000032416), which expires on December 29, 2007.

22. Defendant Jeffery Richardson (“Richardson”) resides at 481 Schenectady Avenue, Brooklyn, New York. At all relevant times, Richardson held himself out as a real estate appraiser and prepared and submitted appraisal reports to lenders concerning properties located within the State of New York, including those sold to minority buyers as part of the scheme.
23. The Attorney General has provided defendants with pre-litigation notice pursuant to New York Executive Law § 63(12) and GBL § 349(c).

### **FACTUAL BACKGROUND**

24. Since 2002, defendants have engaged in a wide-ranging fraud to unload distressed homes at inflated prices on unsuspecting minority home buyers. This scheme has defrauded lenders out of millions of dollars in mortgages and has destroyed the financial standing of the minority home buyers who were its victims.

### **Targeting of Minority Borrowers**

25. Beginning in or about 2002, Katz and Silberstein (collectively, the “Sellers”) formed several corporations and other entities for the purpose of buying and selling real estate for a quick profit. Through those entities, Katz and Silberstein purchased a number of properties in predominantly minority areas of Brooklyn, including Bushwick, East New York and Bedford-Stuyvesant. Katz and Silberstein typically acquired the properties at foreclosure sales or otherwise at distressed prices.
26. Sometime in 2002, Katz and Silberstein met Alleyne through a mutual acquaintance who was also involved in real estate transactions. They told Alleyne – who is black – that he

could purchase residential properties as investments without having to make a down payment. They informed Alleyne that if he had good credit, he could purchase one or more multi-family homes and then rent out the apartments to tenants with government housing subsidies. Although Alleyne understood from the Sellers that the banks would not be provided with full and accurate information about the transactions, he agreed to participate in the scheme and to purchase some of the properties.

27. Katz and Silberstein later recruited Alleyne to find other minority buyers with good credit to purchase the Sellers' real estate properties in minority neighborhoods of Brooklyn. As Silberstein later described Alleyne's role, "[t]he *schvartzer* brought in the *schvartzers*." (*Schvartzer* is a derogatory term in Yiddish for a black person.) The Sellers told Alleyne that they would pay him a finder's fee – about \$10,000 per transaction – for each sale that was consummated. Alleyne found several buyers, all of whom were black.
28. In addition to finding buyers for Katz and Silberstein, Alleyne also helped to arrange a number of other, similar deals for different sellers, including himself. All of the buyers Alleyne found for these sales in minority areas of Brooklyn were also black.
29. Alleyne told the minorities he targeted for the scam that they could acquire one or more investment properties with no money down so long as they had good credit. Alleyne claimed that his own investments in this regard had been successful and encouraged the minorities whom he approached to take advantage of this opportunity.
30. Alleyne further assured the prospective buyers that the Sellers would assist them in finding tenants through the federal Section 8 program, which provides subsidies to

private landlords who rent to low-income tenants. He also represented that the prospective buyers would get cash back at the closings to make any necessary repairs to the properties.

31. The Sellers, in some instances, also encouraged the minority buyers to take advantage of these “no money down” deals.
32. At no time did Alleyne, Katz or Silberstein explain to the minority buyers that the “no money down” deals they were offering would only be obtained by misrepresenting the true nature of the transactions to the lenders. Neither Alleyne nor Katz or Silberstein ever informed the buyers that the transactions would be presented to the banks as traditional home purchases where buyers make substantial down payments of 10-20% of the purchase price and pay their own closing costs out-of-pocket. Nor did these three defendants ever tell the minority buyers that their assets and/or income would be inflated on the loan applications. Katz, Silberstein and Alleyne also failed to inform the buyers that the banks would not be told that part of the mortgage proceeds would be used to finance renovations to the properties.
33. Based on the representations of Alleyne and the Sellers, several minority individuals agreed to purchase one or more properties in minority areas in Brooklyn. Many of these individuals had not even been in the market for a home when Alleyne approached them. In addition, the vast majority of the buyers Alleyne found were first-time home buyers with little or no understanding of the home-buying or mortgage processes.
34. Alleyne and/or the Sellers told the prospective home buyers that all they needed to do to start the process was to provide their Social Security number for a credit check. Alleyne

and/or the Sellers then forwarded the Social Security numbers to a mortgage broker, typically Welz or Saks, to run a credit report.

35. The Sellers and Alleyne would proceed with a prospective buyer only if the buyer had good credit. Good credit was essential because the scheme hinged on the buyers obtaining reduced documentation loans. Reduced documentation loans do not require borrowers to provide proof or verification of key financial attributes such as income, assets or down payment funds. In return for not having to provide documentation of assets or income, borrowers pay a significantly higher interest rate than they would for traditional full documentation loans. Financial institutions typically will extend reduced documentation loans only to individuals with good credit.
36. These loan programs thus presented an opportunity for the Sellers and their cohorts to defraud lenders of substantial funds. Using reduced documentation loan programs, the Sellers and their agents were able to obtain huge mortgages for the minority buyers based on fabricated sales prices and fictitious buyer assets, income, and equity investments in the properties.
37. Alleyne took prospective minority buyers who passed the credit check to see various properties but typically did not take them inside. Alleyne offered an array of excuses as to why the properties could not be seen or inspected. The truth was that the properties were typically in a terrible state of neglect and disrepair and, in some instances, were not even owned by the Sellers until shortly before – and sometimes not until the same day as – the sale to the minority home buyers.
38. Alleyne did not hold a license to broker real estate in New York State during the relevant

period.

### **Fraudulent Mortgage Applications**

39. Once the minority buyers passed the credit check, mortgage brokerage employees (“Mortgage Brokers”), often Saks or Welz, took over and completed mortgage applications for the buyers.
40. Buyers were asked to sign blank loan application forms and to provide personal employment and financial information. The Mortgage Brokers then prepared the loan applications and forwarded the completed applications to one or more lenders. The minority buyers typically did not see the completed applications prior to their submission to the banks by the Mortgage Brokers.
41. Consistent with his representations that these were “no money down” deals, Alleyne quoted purchase prices for the properties that equaled the amount of the mortgages the Mortgage Brokers sought on the buyers’ behalf. Without the buyers’ knowledge, however, the Mortgage Brokers prepared and submitted to lenders mortgage applications that listed sales prices for the homes that were substantially higher than the mortgages being sought.
42. The Mortgage Brokers also exaggerated the buyers’ assets and income in the loan applications. They misrepresented that buyers had substantial bank account balances that they knew the buyers did not possess. Further, the Mortgage Brokers misrepresented that the borrowers had put down earnest money and would be making down payments of 10-20% of the purchase price.
43. The Mortgage Brokers sought reduced documentation loans for the minority buyers’

because they knew that the lenders would not require verification of the buyers' assets, income or ability to make the substantial down payments identified in the loan applications.

44. The Mortgage Brokers made other material misrepresentations in the loan applications. They represented that some buyers were employed when they knew the buyers were not. They further stated that the buyers intended to occupy the homes as a primary residence when they knew the buyers had no intention of doing so and were purchasing the homes as investment properties. Finally, in situations where buyers were induced into purchasing multiple properties, the Mortgage Brokers did not indicate in subsequent loan applications that the buyers had previously purchased other homes and had substantial outstanding mortgages for such properties.
45. In those instances where lenders requested supporting documents, false information (prepared by one or more of the defendants or others working in concert with them) was submitted to the banks, including:
  - a. fake bank statements to corroborate false claims of substantial bank deposits;
  - b. a fake letter from a buyer's former employer to corroborate false claims of current employment;
  - c. fictitious rental verifications to corroborate false claims about a buyer's current housing arrangements; and
  - d. false written confirmation that a buyer had paid a deposit to the Sellers.

### **Fraudulent Appraisals**

46. The Mortgage Brokers obtained and submitted appraisal reports that inflated the value of

- the properties being purchased.
47. The appraisals were conducted by a number of appraisers (collectively, the “Appraiser Defendants”), including Gordon Powell (now deceased) and defendants Johnson and Richardson.
  48. The appraisal reports prepared by the Appraiser Defendants, which were submitted to the lenders, contained numerous material misrepresentations, including:
    - a. inaccurate descriptions of the property being appraised (the “subject property”) or the neighborhood in which it was located;
    - b. inaccurate descriptions of the comparable properties (“comparables”) that were used to judge the market value of the subject property; and
    - c. selection of comparables that were substantially larger, superior in style, and/or located in more expensive neighborhoods than the subject property.
  49. As a result of such misrepresentations, most of the appraisal reports significantly inflated the market value of the subject property. The values of individual properties were generally inflated by at least \$50,000, and in some cases by more than \$100,000.
  50. The Appraiser Defendants knew or should have known that their appraisal reports, which contained these misrepresentations, were false.
  51. In reliance on the false loan applications and appraisal reports, the lenders approved the mortgages. On information and belief, the lenders would not have extended the mortgages had they known the truth about the transactions, the financial assets and income of the buyers, and the value of the properties.

**Fraudulent Conduct by Lender Attorneys at the Closings**

52. The attorneys for the lenders, typically Frankel and Weitzner, were indispensable to the scheme. Violating their fiduciary duties to their clients, these attorneys disbursed the mortgage proceeds to the Sellers and others even though the transactions that occurred at the closings were materially at odds with the terms set forth both in the lenders' instructions and in the closing documents that the attorneys had themselves prepared.
53. As is customary in brokered loans, the Mortgage Brokers selected the attorneys to act as lender attorneys for the closings. The Mortgage Brokers typically chose Frankel and Weitzner, from a list of available attorneys in the area, to represent the lender at the closings. Although selected by the Mortgage Brokers, the lender attorneys in fact represent the lender at the closing and owe fiduciary and ethical duties to the lender.
54. Once a loan was ready to close, the lender sent closing instructions to its attorney and wired the net mortgage proceeds into that attorney's escrow account. The closing instructions set forth the terms of the transaction approved by the lender. The instructions also directed the lender attorney not to close the loan or disburse the funds if the transaction deviated from those terms. Thus, as lender attorneys, Frankel and Weitzner were obligated not to proceed with the closings if the transactions did not occur as set forth in the instructions.
55. The lender attorneys were also responsible for preparing and submitting to the lender truthful and accurate HUD-1 settlement statements ("HUD-1's"). HUD-1's disclose the key terms of a real estate transaction, including sales price, closing costs, loan amount, and "cash due" from the buyer at the closing.
56. The lender attorneys repeatedly breached these obligations. First, they proceeded with

the closings even though they knew or should have known that the buyers had not made the substantial down payments – ranging from \$30,000 to over \$260,000 – that were contemplated in the closing documents, including the HUD-1’s that they themselves had prepared. Because those down payments were not made, the sales prices actually paid at closing were substantially lower than those set forth in the closing instructions.

57. Second, they submitted HUD-1’s to the lenders that they knew or should have known contained materially false information, including:
  - a. representations that the buyers had made substantial payments at closing; and
  - b. inflated sales prices.
58. The mortgage proceeds the lender attorneys disbursed were used to pay 100% of the true purchase price – a sum that was substantially lower than the stated sales price, but still large enough for the Sellers to reap profits that were typically well in excess of \$100,000. Thus, contrary to the provisions of the loan closing documents and the lender’s expectations, the buyers obtained no equity stake whatsoever in the homes they were purchasing.
59. In addition, the mortgage proceeds were used to pay the fees of the various defendants, including Alleyne, who received between \$5,000 and \$15,000 per transaction. The proceeds also covered borrower-obligated closing costs, such as title insurance, homeowner’s insurance, and attorneys’ fees. Further, in many instances, some of the proceeds were disbursed to the buyers themselves, purportedly for repairs or renovations of the properties. Nowhere did the closing instructions authorize, or the HUD-1’s reflect, such disbursements, which in some cases exceeded \$20,000.

### **Other Fraudulent Conduct at the Closings**

60. Alleyne arranged for the buyers to be represented by Clarke at the closing. At each closing, Clarke reviewed the closing documents, including the HUD-1's. Clarke instructed his clients to sign the HUD-1's, verifying that the terms set forth therein accurately reflected the disbursements made at closing, even though he knew the buyers had not made, and would not be making, any of the substantial payments described in those documents.
61. Clarke also explained to the buyers how much they would be getting back for repairs and/or renovations. At some closings, Clarke prepared handwritten notes explaining the distribution of funds. As the notes reveal, Clarke was fully aware that the true sales prices for the transactions were substantially lower than the sales prices represented to the lenders:
  - a. At the March 2003 closing of the sale of a Lafayette Avenue property, Clarke wrote that the seller would be receiving \$337,306, although the sales price represented to the lender in the HUD-1's and other documents was \$425,000.
  - b. At the March 2003 closing of the sale of a Chauncey Street property, Clarke described \$226,500 as the "seller agreed price" even though the closing documents listed a sales price of \$290,000.
  - c. At the November 2003 closing of the sale of a Lafayette Avenue property, Clarke prepared a memorandum noting a "PP," or purchase price, of \$425,000 despite the fact that the HUD-1's presented to the lender listed the sales price as \$518,000.

62. Treff typically represented the Sellers or their real estate corporations at the closings.
63. Treff was aware that, contrary to what was claimed in the closing documents, his clients did not receive earnest money deposits from the buyers or down payments at closing.
64. At several of the closings, Treff attempted to cover up the fraud by portraying the cash shortfall from the buyer as a seller's concession. For example, at the December 2002 closing of the sale of an East 55<sup>th</sup> Street property, Treff drafted, and had Katz and the buyer sign, an agreement to this effect. This purported agreement was never provided to the lender, and Treff had his client sign the related HUD-1, which made no mention of the concession and indicated instead that the buyer had made a substantial down payment.
65. Despite the irregularities he observed, Treff continued to represent the Sellers at closings where the buyers never provided the monies stated in the HUD-1's.
66. To cover up the fraud, Clarke and Treff prepared false Real Property Transfer Reports and/or false Real Property Transfer Tax Returns (collectively, "Transfer Documents") that were submitted to the New York City Department of Finance. The Transfer Documents listed the sharply inflated prices contained in the loan applications and closing documents, not the significantly lower sales prices actually paid by the buyers. Clarke and Treff filed these forms even though they knew or should have known that the sales prices listed therein were false.
67. In each transaction, one of the Sellers, Alleyne or their representatives signed the false HUD-1's and Transfer Documents, despite knowing that material financial information contained therein was untrue.

## **Illustrative Transactions**

68. Defendants' scheme involved numerous fraudulent transactions, some of which are detailed below.

### **Sale of East 55<sup>th</sup> Street Property to Borrower A**

69. In 2002, Borrower A was seeking to leave a difficult living situation. Borrower A spoke with Alleyne, who was related to her niece's husband and had previously helped her niece find a home. Alleyne promised Borrower A that, as long as she had good credit, she could purchase a home with no money down and receive money back for repairs. He asked Borrower A for her Social Security number, and later told Borrower A that he had found a one-family attached home in Brooklyn that would cost \$260,000. That property, located on East 55<sup>th</sup> Street, was owned by Katz.
70. Borrower A was then introduced to Saks, who completed and filed applications for mortgages totaling \$289,750, an amount significantly in excess of the sales price that had been represented to her. Those applications contained a number of material falsehoods. For example, they represented that Borrower A had bank deposits of about \$37,000, which was untrue, and included falsified bank statements from Astoria Federal Savings Bank purporting to corroborate these deposits. In addition, although Saks knew that Borrower A would not be making any down payment, the application stated that the purchase price was \$305,000 and that she would pay about \$35,000 at closing.
71. Johnson's appraisal of the property, which was submitted to the lender in connection with the loan applications, was false and misleading. In his report, Johnson inaccurately described the neighborhood in which the subject property was located. In deriving an

estimate of value, he relied on sales of properties that were larger than, distant from, or otherwise not comparable to the subject property. As a result of these and other inaccuracies, the value of the property was overstated by over \$50,000.

72. GreenPoint Mortgage Funding approved mortgages in the amount of \$289,750 and the closing was set for December 9, 2002, at Treff's office. At the closing, Borrower A was represented by Clarke; Katz was represented by Treff; and the lender was represented by Weitzner. Alleyne also attended the closing and received a check for \$10,000.
73. Weitzner prepared a HUD-1 stating that Borrower A owed \$30,068.62 at the closing. In fact, as Weitzner knew or should have known, Borrower A put no money into this transaction at the closing. Indeed, at the closing, Weitzner issued a check to Borrower A in the amount of \$10,749.75 (to cover repairs to the property) and a check to Clarke in the amount of \$700 (to cover Borrower A's attorney's fees). As such, the true sales price was about \$45,000 lower than the price disclosed to the lender.
74. Clarke reviewed the closing documents, including the false and misleading HUD-1 and loan applications, but nonetheless instructed Borrower A to sign them and proceed with the transaction. He also negotiated the amount of money she would receive for repairs to the property.
75. Treff was aware that Borrower A had not provided the funds due at closing, as set forth in the HUD-1. Treff attempted to cover up the fraud by preparing a handwritten agreement that portrayed the shortfall as a seller's concession: "Seller and Purchaser agree that due to the condition of the property Seller has granted Purchaser a discount of \$45,000.00." This purported concession was sufficient to cover what Borrower A

allegedly owed Katz (about \$30,000) and what Borrower A received in cash at the closing (about \$11,000). However, the HUD-1 and other documents submitted to GreenPoint made no mention of this concession.

76. Notwithstanding the purported concession, Clarke and Treff prepared Transfer Documents that again falsely listed the sales price as \$305,000.
77. As a result of the fraud, GreenPoint issued mortgages for \$290,000 when the true sales price was \$260,000, not the \$305,000 stated in the loan application, the HUD-1, and the other documents submitted to the lender.
78. Borrower A has had substantial difficulty meeting her expensive mortgage obligations. Borrower A managed to avoid foreclosure only by working several jobs to pay her mortgage.

#### **Sale of Lafayette Avenue Property to Borrower B**

79. In a 2003 sale to Borrower B, the Sellers made over \$100,000 when they flipped a Bedford-Stuyvesant property they had acquired a mere two weeks earlier.
80. In 2003, Borrower B – a friend of Alleyne’s sister-in-law – met Alleyne. Sometime thereafter in 2003, Alleyne began to speak with Borrower B about acquiring real estate. Alleyne promised Borrower B that, as long as he had good credit, Borrower B could purchase one or more homes with no money down and receive money back for repairs. He asked Borrower B for his Social Security number, and later showed Borrower B several properties in Brooklyn that he might purchase. One of those properties was a Lafayette Avenue home, which was owned by 440 Cleveland Realty, one of the entities controlled by the Sellers. Borrower B was told the property would cost about \$380,000.

81. Borrower B was introduced to Welz, who completed and filed an application for a mortgage of \$382,500. That application contained a number of material falsehoods. For example, although Welz knew that Borrower B would not be making any down payments, the application stated that the purchase price was \$425,000 and that he would pay approximately \$67,000 at the closing. It also stated that Borrower B was employed at the time and that Borrower B intended to occupy the property as his primary residence, neither of which was true.
82. Powell's appraisal of the property, which was submitted to the lender in connection with the loan application, was false and misleading. In his report, Powell inaccurately described the neighborhood in which the subject property was located. In deriving an estimate of value, he relied on sales of properties that were larger than or otherwise not comparable to the subject property. As a result of these and other inaccuracies, the value of the property was overstated by at least \$65,000.
83. RBMG, Inc. approved a mortgage in the amount of \$382,500 and the closing was set for March 12, 2003, at Treff's office. At the closing, Borrower B was represented by Clarke; the Sellers were represented by Treff; and the lender was represented by Frankel. Alleyne also attended the closing and received a check for \$10,000.
84. Frankel prepared a HUD-1 stating that Borrower B owed \$40,842.54 at the closing. In fact, as Frankel knew or should have known, Borrower B put no money into this transaction at the closing. Indeed, at the closing, Frankel issued a check to Borrower B in the amount of \$18,707.21 (to cover repairs to the property) and a check to Clarke in the amount of \$1,200 (to cover Borrower B's attorney's fees).

85. Clarke reviewed the closing documents, including the false and misleading HUD-1 and loan application, but nonetheless instructed Borrower B to sign them and proceed with the transaction. He also negotiated the amount of money Borrower B would receive for repairs to the property. Finally, Clarke prepared a handwritten document showing that the Sellers received only \$337,306 after all closing costs and other expenses were paid out of the mortgage proceeds. As such, although the sales price disclosed to the lender was \$425,000, Clarke knew that the true sales price was about \$90,000 lower.
86. Like Clarke, Treff was aware that Borrower B had not provided the funds due at closing and that the Sellers had received far less than the alleged sales price. Treff prepared and included in his records a “Closing Statement” stating that Borrower B had received a \$90,000 “[p]roperty condition discount” and that “the total amount paid to seller was \$337,306.00.” However, the closing documents submitted to RBMG, including the HUD-1 his client signed at the closing, made no mention of this discount.
87. Notwithstanding the purported discount, Clarke and Treff prepared Transfer Documents that falsely listed the sales price as \$425,000.
88. As a result of the fraud, RBMG issued a mortgage for \$382,500 when the true sales price was about \$337,000, not the \$425,000 stated in the loan application, the HUD-1, and the other documents submitted to the lender.
89. Although the Sellers received only \$336,000, they still made a quick and substantial profit on the sale of the property, which they had purchased (through 440 Cleveland Realty) for only \$230,000 two weeks prior to the sale to Borrower B. The rest of the mortgage proceeds were used to pay the fees of the various defendants and other

borrower-obligated closing costs.

90. Borrower B also purchased two other properties – one on Chauncey Street and another on Halsey Street – in similar transactions at or around the time of his purchase of the Lafayette Avenue property. Borrower B was unable to generate sufficient rental income to cover his substantial carrying charges on the three properties, and stopped making payments on his loans in 2004. While he managed to sell the Lafayette Avenue property, the other two properties went into foreclosure and were later sold at a loss to the lenders.

#### **Sale of Cleveland Street Property to Borrower C**

91. The Sellers made about \$150,000 in a 2003 sale of a home they sold to Borrower C the very day they acquired the property.
92. In 2003, Borrower C – a former co-worker of Borrower B – was introduced to Alleyne. Alleyne promised him that, as long as he had good credit, he could purchase one or more homes with no money down and receive money back for repairs. He asked for Borrower C's Social Security number, and later showed Borrower C several properties in Brooklyn that he might purchase. One of those properties was a Cleveland Street home, which was owned by 865 Belmont Realty Corporation, one of the entities controlled by the Sellers.
93. Borrower C was introduced to Welz, who completed and filed an application for a mortgage of \$413,000. That application contained a number of material falsehoods. For example, although Welz knew that Borrower C would not be making any down payment, the application stated that the purchase price was \$470,000 and that he would pay approximately \$77,000 at the closing. It also falsely stated that Borrower C intended to occupy the property as his primary residence. Although Borrower C was presented with

a copy of the application for his signature, the application Borrower C saw was blank except for his name, his Social Security number, and the loan amount.

94. Welz also submitted false documents – including letters confirming Borrower C’s current rental, employment, and source of funds for the purchase – in connection with the loan application.
95. Richardson’s appraisal of the property, which was submitted to the lender in connection with the loan application, was false and misleading. In his report, Richardson inaccurately described both the subject property and its neighborhood. In deriving an estimate of value, he relied on sales of properties that were larger than, distant from, or otherwise not comparable to the subject property. As a result of these and other inaccuracies, the value of the property was overstated by over \$100,000.
96. Florida Bank Mortgage approved a mortgage in the amount of \$413,000 and the closing was set for May 20, 2003, at Frankel’s office. At the closing, Borrower C was represented by Clarke; the Sellers were represented by Treff; and the lender was represented by Frankel. Alleyne also attended the closing and received a check for \$10,000.
97. Frankel prepared a HUD-1 stating that Borrower C owed \$77,147.54 at the closing. In fact, as Frankel knew or should have known, Borrower C put no money into this transaction at the closing. Indeed, at the closing, Frankel issued a check to Borrower C in the amount of \$24,269.02 (to cover repairs to the property) and two checks to Clarke totaling \$2,500 (to cover Borrower C’s attorney’s fees). As such, the true sales price was more than \$100,000 lower than the price disclosed to the lender.

98. Clarke reviewed the closing documents, including the false and misleading HUD-1 and loan application, but nonetheless instructed Borrower C to sign them and proceed with the transaction. He also negotiated the amount of money Borrower C would receive for repairs to the property.
99. Even though Borrower C paid no money in connection with this transaction, Treff prepared and included in his records a “Closing Statement” indicating that Borrower C had paid the Sellers \$125,000 by check at the closing. In addition, Clarke and Treff prepared Transfer Documents that falsely listed the sales price as \$470,000.
100. As a result of the fraud, Florida Bank Mortgage issued a mortgage for \$413,000 when the true sales price was less than \$370,000, not the \$470,000 stated in the loan application, the HUD-1, and the other documents submitted by defendants to the lender.
101. Although the Sellers received less than \$370,000, they still made a quick and substantial profit on the sale of the property, which they purchased (through 865 Belmont Realty) for only \$205,000 on the very same day as the sale to Borrower C. Although Katz and Silberstein did not receive the full \$470,000 in mortgage proceeds that their fraudulent scheme garnered – since the buyer put no money down and all closing costs were paid from those proceeds – they still made almost \$150,000 on this same-day purchase-and-sale.
102. Borrower C also purchased two other properties – one on Belmont Avenue and another on Hart Street – in similar transactions at or around the time of his purchase of his Cleveland Street property. Borrower C was unable to generate sufficient rental income to cover his substantial carrying charges on the three properties, and stopped making

payments on his loans in 2004. All three properties went into foreclosure and were later sold.

### **Harms Caused by the Transactions**

103. Defendants, and in particular the Sellers, reaped substantial profits from these flip sales, which resulted in substantial harm to many of the minority buyers who were recruited to purchase homes as part of the scheme.
104. First, contrary to the representations Alleyne made to induce the minority buyers to participate in the scheme, the minority buyers received little or no assistance from defendants following closing, even though many of them had difficulty getting their properties fit for habitation and finding tenants.
105. Second, the minority buyers took out huge loans at very high rates of interest, and in many cases assumed far more debt than their income and assets could support.
106. As a result, several buyers were unable to generate sufficient rental income to cover their substantial carrying charges, which were sometimes in excess of \$10,000 per month. After sinking substantial amounts of money into the properties and exhausting their savings, these buyers stopped making payments on their loans, resulting in foreclosure and serious damage to their credit. Some have had difficulty obtaining credit of any sort and even securing rental housing.
107. Other buyers have avoided default only by working several jobs in order to carry their large and expensive mortgages.
108. The transactions have also harmed the largely minority neighborhoods in which the homes are located. The artificially inflated sales prices recorded in the deeds and other

records that the defendants caused to be filed with government agencies infected the residential sales market in those communities. Appraisers, real estate agents, prospective home buyers and others relied on these inflated prices in valuing comparable homes in the areas. The scheme thus artificially raised home prices in these minority neighborhoods, adversely impacting individuals seeking to purchase homes there.

109. The transactions also have victimized the lenders, each of which was defrauded of hundreds of thousands of dollars in mortgage loans that would not have been extended had the lenders been provided with accurate information about the transactions, the buyers, and the properties.

**FIRST CAUSE OF ACTION:**  
**NEW YORK GENERAL BUSINESS LAW § 349**

110. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York State.
111. By acting as real estate sellers, brokers, attorneys, and appraisers in the transactions, defendants each conducted “business” or provided a “service” within the meaning of New York General Business Law § 349.
112. Each of the defendants engaged in one or more the following deceptive acts and practices in connection with these real estate transactions:
- a. failing to disclose to the prospective buyers that the sales prices represented to the banks in the loan applications and closing documents would be substantially higher than what the buyer had agreed to pay;
  - b. failing to disclose to the prospective buyers that the purported “no money down”

deals would be presented to the lenders as conventional transactions in which the buyer made a 10-20% equity investment in the home;

- c. failing to disclose to the prospective buyers that the mortgages sought would be reduced documentation loans that carry higher interest rates than traditional mortgages;
- d. misrepresenting the buyers' assets, income and sometimes even employment in the loan applications;
- e. misrepresenting the sales prices of the transactions in the loan applications, contracts of sale, closing documents, HUD-1's and Transfer Documents;
- f. misrepresenting the value of the properties in appraisal reports;
- g. submitting false documents to support loan applications;
- h. instructing the buyers to sign closing documents they knew contained false and misleading information;
- i. preparing and submitting loan applications, HUD-1's and other material to banks, and Transfer Documents to the New York City Department of Finance, that contained false and misleading information;
- j. disbursing loan proceeds owed to the sellers to cover borrower-obligated closing costs and to provide borrowers with money for repairs and renovations; and
- k. failing to make the repairs and/or renovations promised to the buyers in advance of closing or to provide the buyers promised assistance in finding tenants for the properties.

113. By engaging in the foregoing deceptive conduct, defendants have engaged in numerous

violations of New York General Business Law § 349.

**SECOND CAUSE OF ACTION:**  
**NEW YORK EXECUTIVE LAW § 63(12)**  
**Repeated Fraudulent Business Conduct**

114. New York Executive Law § 63(12) proscribes repeated and persistent fraudulent or illegal acts in the carrying on, conducting, or transaction of business within New York State.
115. In their capacity as real estate sellers, brokers, attorneys and appraisers, defendants carried on, conducted and transacted business in connection with these real estate transactions.
116. As set forth above, defendants, and each of them, have repeatedly engaged in fraudulent acts and practices in connection with the transactions. As such, defendants have engaged in repeated and persistent fraudulent conduct in violation of New York Executive Law § 63(12).

**THIRD CAUSE OF ACTION:**  
**NEW YORK EXECUTIVE LAW § 296**  
**(Against Katz, Silberstein, Alleyne, Saks and Welz)**

117. New York Executive Law § 296(5)(a)(2) makes it unlawful “for the owner, . . . or other person having the right to sell, . . . a housing accommodation, . . . or any agent or employee thereof” to “discriminate against any person because of race . . . in the terms, conditions or privileges of the sale.”
118. In each transaction involved in the scheme, Katz and Silberstein, either directly or indirectly, owned or had the right to sell the residential properties at issue, and those properties are “housing accommodations” under Section 292(10).

119. Katz and Silberstein, through their agent or employee Alleyne, targeted blacks for this real estate scheme, enlisting Alleyne to find black buyers to purchase often run-down homes in predominantly black neighborhoods in Brooklyn. As Silberstein later described Alleyne's role, "[t]he *schvartzer* brought in the *schvartzers*."
120. Katz and Silberstein, with the assistance of their agents Alleyne, Saks and Welz, then used the good credit of these minority buyers to swindle substantial sums from lenders for these properties by securing expensive "low-documentation" mortgages through fabricated loan applications.
121. As a result of this scheme, the Sellers were able to unload their properties quickly – sometimes in less than a day – at a tidy profit. The minority buyers meanwhile often were stuck with decrepit or otherwise uninhabitable homes that they could neither rent nor live in, and with expensive, large mortgages that the Sellers and their agents Alleyne, Saks and Welz knew the buyers could not afford. Several of the buyers were unable to maintain their mortgage payments, leading to default, foreclosure, and serious damage to their credit.
122. The intentional targeting of minority buyers of real estate in minority neighborhoods in Brooklyn for these fraudulent and destructive real estate transactions constitutes discrimination "because of race . . . in the terms, conditions or privileges of the sale" of the properties at issue.
123. By engaging in the foregoing discriminatory conduct, Katz, Silberstein, Alleyne, Saks and Welz have violated New York Executive Law § 296(5).

**FOURTH CAUSE OF ACTION:**  
**NEW YORK CIVIL RIGHTS LAW § 40-c**

**(Against Katz, Silberstein, Alleyne, Saks and Welz)**

124. New York Civil Rights Law § 40-c provides, in relevant part that “[n]o person shall, because of race, . . . be subjected to discrimination in his or her civil rights, . . . by any other person.”
125. By intentionally targeting minority buyers of real estate in minority neighborhoods in Brooklyn, Katz, Silberstein, and their agents Alleyne, Saks and Welz, discriminated against such buyers in these transactions on the basis of race.
126. By engaging in the foregoing discriminatory conduct, Katz, Silberstein, and their agents Alleyne, Saks and Welz have violated New York Civil Rights Law § 40-c.

**FIFTH CAUSE OF ACTION:**  
**NEW YORK EXECUTIVE LAW § 63(12)**  
**Discriminatory Housing Practices**  
**(Against Katz, Silberstein, Alleyne, Saks and Welz)**

127. As set forth in the Third and Fourth Causes of Action above, Katz, Silberstein, Alleyne, Saks and Welz repeatedly violated New York Executive Law § 296(5) and New York Civil Rights Law § 40-c by intentionally targeting minority buyers of real estate in minority neighborhoods in Brooklyn.
128. These repeated violations of New York Executive Law § 296(5) and New York Civil Rights Law § 40-c constitute repeated and persistent illegal conduct in violation of New York Executive Law § 63(12).
129. Katz, Silberstein, Alleyne, Saks and Welz have thereby also violated New York Executive Law § 63(12).

**SIXTH CAUSE OF ACTION:**  
**NEW YORK EXECUTIVE LAW § 63(12)**  
**Violations of New York Real Property Law § 440 et seq.**

**(Against Alleyne)**

130. New York Real Property Law §§ 440(1) and 440-a make it unlawful for any person who “for another and for a fee . . . lists for sale . . . or attempts to negotiate a sale . . . of an estate or interest in real estate” without a real estate broker’s license.
131. In numerous transactions involved in the scheme, Alleyne, without a real estate broker’s license, received a fee for finding potential home buyers and persuading them to purchase homes; obtaining the prospective buyers’ Social Security numbers to assess whether they had good enough credit to qualify for the transactions; and securing an attorney for the buyers at the closing.
132. By engaging in such conduct, Alleyne acted as a real estate broker for the buyers within the meaning of New York Real Property Law § 440(1). As a result, Alleyne was required to have a real estate broker’s license under New York Real Property Law § 440-a.
133. At all relevant times, Alleyne did not have the required real estate broker’s license. Alleyne thus repeatedly has violated New York Real Property Law § 440 et seq., and has thereby also further violated New York Executive Law § 63(12).

**SEVENTH CAUSE OF ACTION:**  
**NEW YORK EXECUTIVE LAW § 63(12)**  
**Breach of Fiduciary Duty and Duty of Care**  
**(Against Clarke, Frankel, and Weitzner)**

134. As the attorney for the buyers in many of the transactions, Clarke had a fiduciary duty to exercise the utmost good faith and loyalty toward his clients, as well as a duty of care to review the closing documents for accuracy and compliance with the law. These documents contained material misrepresentations and falsehoods. Clarke knew or should

have known that the documents were false and misleading, and was obligated to report this fact to his clients. In failing to do so, he breached his duties to his clients.

135. Likewise, as the attorneys for the lenders, Frankel and Weitzner had a fiduciary duty to exercise the utmost good faith and loyalty toward their clients, as well as a duty of care to ensure that the transactions comported with the lenders' closing instructions. They proceeded with the closings and disbursed the lenders' funds even though they knew or should have known that the transactions did not comport with the lenders' closing instructions. Frankel and Weitzner submitted to their clients HUD-1's containing material misrepresentations and/or omissions. In failing to report the true details of the transactions to their clients and to ensure that the closing comported with their clients' instructions, Frankel and Weitzner breached their duties to their clients.
136. The repeated breaches of the duties owed by Clarke, Frankel, and Weitzner to their clients during the course of the transactions constitute repeated and persistent illegal conduct in violation of New York Executive Law § 63(12).
137. Clarke, Frankel, and Weitzner have thereby further violated New York Executive Law § 63(12).

**EIGHTH CAUSE OF ACTION**  
**NEW YORK EXECUTIVE LAW § 63(12)**  
**Violation of USPAP Standards**  
**(Against Johnson and Richardson)**

138. Pursuant to 19 N.Y.C.R.R. § 1106.1, all appraisal assignments must be conducted and presented in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP").
139. Standards Rule 1.1 of USPAP provides that, in developing a real property appraisal, an

appraiser must not “commit a substantial error of omission or commission that significantly affects an appraisal.”

140. Standards Rule 2.1 of USPAP provides: “Each written . . . real property appraisal report must . . . clearly and accurately set forth the appraisal in a manner that will not be misleading.” Similarly, the Ethics rule of USPAP provides that an appraiser must not “use or communicate a misleading or fraudulent report.”
141. By including inaccurate and misleading information in their appraisal reports to inflate the value of the properties they were appraising, Johnson and Richardson have repeatedly and persistently violated the USPAP standards described above and thus 19 N.Y.C.R.R. § 1106.1.
142. Johnson’s and Richardson’s violations of 19 N.Y.C.R.R. § 1106.1 constitute repeated and persistent illegal conduct in violation of New York State Executive Law § 63(12).
143. Johnson and Richardson have thereby further violated New York Executive Law § 63(12).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that a judgment and order be issued:

- A. Permanently enjoining defendants, their employees, agents, successors, heirs and assigns, directly or indirectly, from engaging in the fraudulent and illegal practices alleged herein;
- B. Enjoining Katz, Silberstein, and Alleyne from engaging in the business of purchasing and selling real estate;
- C. Enjoining Saks and Welz from engaging in the mortgage brokerage business;
- D. Enjoining Richardson and Johnson from engaging in the appraisal business;

- E. Directing all defendants to pay restitution and compensatory damages to the buyers and lenders harmed by their fraudulent conduct;
- F. Directing all defendants to disgorge to New York State their profits from their participation in the fraudulent transactions;
- G. Directing Katz, Silberstein, Alleyne, Saks, and Welz to pay punitive damages to each person aggrieved by their discriminatory conduct pursuant to New York Executive Law § 297;
- H. Directing Katz, Silberstein, Alleyne, Saks, and Welz to pay civil fines and penalties of \$100,000 each to New York State for each unlawful discriminatory act pursuant to New York Executive Law § 297;
- I. Directing Katz, Silberstein, Alleyne, Saks, and Welz to pay plaintiffs reasonable attorney's fees pursuant to Executive Law § 297;
- J. Directing Katz, Silberstein, Alleyne, Saks, and Welz to pay a penalty of \$500 to each person aggrieved by their discriminatory conduct pursuant to New York Civil Rights Law § 40-d;
- K. Directing Alleyne to pay a penalty of four times the commissions he earned to the persons aggrieved by his conduct as an unlicensed real estate broker pursuant to New York Real Property Law § 442-e(3);
- L. Directing each defendant to pay a civil penalty of \$500 to the State of New York for each violation of General Business Law Article 22-a pursuant to GBL § 350-d;
- M. Awarding plaintiffs \$2,000 in costs against each defendant pursuant to CPLR § 8303(a)(6); and



N. Granting plaintiffs such other and further relief as this Court finds appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

Dated: New York, New York  
November 24, 2006

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