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LATOYA GRAVES

J. Camp
CLERK DISTRICT COURT

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*,
HECTOR H. BALDERAS, Attorney General,

Plaintiff,

v.

D-202-CV-2016 **CV 2016 07636**

JSS OF ALBUQUERQUE, LLC,
A Domestic Limited Liability Company;
JESUS CANO, individually and as
sole member of JSS of Albuquerque, LLC,
XYZ CORPORATIONS 1-10; and
JOHN/JANE DOES 1 through 10,

DENISE BARELA SHEPHERD

Defendants.

**COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF,
RESTITUTION, CIVIL PENALTIES, AND EQUITABLE RELIEF**

COMES NOW Plaintiff the STATE OF NEW MEXICO, *ex rel.* HECTOR H. BALDERAS, Attorney General, by Assistant Attorney Joshua A. Spencer, and brings this suit seeking temporary and permanent injunctive relief, declaratory relief, rescission of contracts, restitution, disgorgement, and other equitable relief, and civil penalties against Defendants JSS of Albuquerque, LLC (“JSS”) and Jesus Cano (“Cano”) (Cano and JSS collectively, “Defendants”) for violations of the New Mexico Unfair Practices Act (“NMUPA”), NMSA 1978, §§ 57-12-1 to 57-12-26 (1953, as amended through 2003) and the New Mexico Mortgage Loan Originator Act (“NMMLOLA”), NMSA 1978, §§ 58-21B-1 to 58-21B-24 (2009). Upon application of the New Mexico Real Estate Commission to the Attorney General, this suit also seeks relief for violations of the New Mexico Real

Estate License Law (“NMRELA”), NMSA 1978, §§ 61-29-1 to 61-29-29 (1959, as amended through 2013). As grounds therefore, Plaintiff states as follows:

I. INTRODUCTION

1. The State of New Mexico regulates the businesses of real estate services and home financing for the protection of the public. Persons seeking to engage in the business of real estate services must obtain and maintain licensing from the New Mexico Real Estate Commission. In New Mexico, a person may obtain licensing as a qualifying broker or as an associate broker. A qualifying broker license authorizes a person to register and operate a brokerage (licensed real estate business) in New Mexico. A qualifying broker may offer and provide real estate services independently or engage other qualifying brokers or associate brokers to provide these services through the brokerage. A qualifying broker however remains responsible for all real estate activities within the brokerage. An associate broker license authorizes a person to offer and provide real estate services in New Mexico only through an association with or under contract with a qualifying broker. An associate broker is prohibited from engaging in the business of real estate services independent of a qualifying broker. Persons seeking to engage in the business of home financing must obtain and maintain a mortgage loan originator license from the New Mexico Financial Institutions Division as well as register with the nationwide mortgage licensing system and registry.

2. At one time, Cano was licensed as an associate broker in New Mexico. However, at present, Cano’s associate broker license is expired and he has not sought renewal. Cano has never been licensed as a mortgage loan originator in New Mexico.

3. While licensed as an associate broker, Cano registered and commenced operation of the business JSS of Albuquerque, LLC. Through JSS, Cano began to offer and provide real estate services and home financing in New Mexico, business activities in which he continues to engage through the date of this Complaint.

4. In particular, Cano offers and provides real estate services for "Repo Homes" (foreclosed homes) or otherwise distressed homes (homes for which the homeowners are at risk of mortgage default or foreclosure) in Bernalillo, Sandoval, and Valencia counties in New Mexico. The New Mexico Real Estate Commission does not list Cano as an associate broker under JSS. In fact, the New Mexico Real Estate Commission lists no qualifying broker under JSS and has no listing whatsoever for a brokerage (licensed real estate business) named "JSS of Albuquerque, LLC." Cano offers and provides real estate services to consumers in New Mexico through his business JSS without proper licensing to operate an independent real estate brokerage and despite the expiration of his associate broker license.

5. In connection with his real estate services, Cano also offers and provides home financing to consumers through his business JSS. The New Mexico Financial Institutions Division lists no mortgage loan originator license for Cano or any other individual at JSS. Moreover, the nationwide mortgage licensing system and registry lists no license for Cano or for JSS. Cano offers and provides home financing in New Mexico through his business JSS despite the fact that neither he nor anyone else at JSS is or has ever been licensed as a mortgage loan originator.

6. In addition to violations of regulated business activities, Defendants' real estate service and home financing activities reveal a pattern and practice of unfair and deceptive trade practices and unconscionable trade practices. Notably, Defendants target their business activities toward a vulnerable subset of Spanish-speaking, Hispanic or Latino consumers who are underserved by the conventional real estate services and home mortgage finance industries due to income and/or credit issues. This subset of consumers also lacks knowledge of and experience with the home buying process. Defendants know that this subset of consumers faces barriers to home buying, but also know that this subset of consumers is less likely to report wrongdoing against them due to distrust and/or fear of law enforcement authorities.

7. Defendants, through a series of misrepresentations and/or omissions of material facts related to their business activities, have deceived and induced members of this subset of consumers to retain them for real estate services and home financing. In some of the most egregious examples, Defendants misrepresented and/or omitted the condition of the homes they offered for sale or sold to consumers. These homes contained substandard housing conditions, including defective electrical wiring and/or defective plumbing. For their own gain, Defendants exploit a vulnerable subset of consumers, who have significant barriers to home buying. Defendants also take advantage of these consumers' lack of knowledge and experience with the home buying process to a grossly unfair degree. The serious imbalance in knowledge, experience, and bargaining power between Defendants and consumers results in a gross disparity between the value

consumers receive and the price consumers pay for Defendants' real estate services and home financing.

8. Defendants' violations of regulated business activities and unfair, deceptive, and unconscionable business practices compromise the family savings, welfare, and dream of homeownership of many New Mexicans. They also adversely impact New Mexico's neighborhoods, communities, and economy.

II. PARTIES, JURISDICTION, AND VENUE

9. Plaintiff, Hector H. Balderas, is the duly elected Attorney General of the State of New Mexico. The Attorney General has a statutory duty to prosecute on behalf of the State in all actions when, in his judgment, the interests of the State require action. NMSA 1978, § 8-5-2(B). Specifically, the Attorney General has a statutory mandate to enforce the NMUPA and the NMMLOLA for the protection of the public. *See* § 57-12-8(A); *see also* § 58-21B-21(B). Upon application of the New Mexico Real Estate Commission, the Attorney General may also maintain an action in the name of the state to prosecute violations of the NMRELA. *See* § 61-29-17(B).

10. JSS is a Limited Liability Company registered under the laws of the State of New Mexico on May 20, 2010. JSS maintains its principal place of business in Bernalillo County, New Mexico. At all times relevant, JSS has been engaged in trade and commerce in New Mexico. *See* § 57-12-2(C). JSS offers and provides consumers real estate services and home financing toward "Repo Homes" or otherwise distressed homes in Bernalillo County and other counties in New Mexico.

11. Cano is a resident of Bernalillo County, New Mexico. Cano is the sole member, registered agent, owner, principal, officer, financial executive, and operations manager of JSS. Cano is behind JSS' scheme to sell to and finance "Repo Homes" or otherwise distressed homes to consumers in New Mexico. In his various capacities at JSS, Cano engaged in the acts, omissions, and practices alleged in this Complaint. Due to his involvement in the running and managing of JSS' business, Cano was in control and had power to prevent the wrongdoing against consumers in New Mexico. Cano is personally liable under the legal theory of "officer's liability," discussed in detail below.

12. Upon information and belief, Defendants XYZ CORPORATIONS 1-10 are various corporations and/or business entities which have participated in the unlawful acts alleged herein and whose names are not known at the present time. Plaintiff will seek leave of the Court to amend this Complaint to reflect their true names when they have been ascertained.

13. Defendants JOHN/JANE DOES 1-10 are any officers, principals, trustees, employees, managers, agents, members, representatives, or investors who have participated in the unlawful acts alleged herein and whose names are not known at the present time. Plaintiff will seek leave of the Court to amend this complaint to reflect their true names when they have been ascertained.

14. Whenever in this Complaint reference is made to any act of any individual defendant, such reference shall be deemed to mean the personal act of said defendant or the act of said defendant's employees, members, agents or other representatives acting within their scope of employment or authority.

15. Whenever in this complaint reference is made to any act of any corporate defendant, said reference shall be deemed to mean the act of said defendant's officers, directors, members, employees, and agents or other representatives or within their scope of employment or authority.

16. This District Court has jurisdiction over this matter and the parties because JSS' principal place of business is in Bernalillo County, because Cano resides in Bernalillo County, and because all or some of the alleged violations occurred or are occurring in Bernalillo County, New Mexico. *See* § 57-12-8(A); *see also* § 58-21B-21(B); § 61-29-17(C); § 8-5-2(B) and (J); Article VI, § 13 of the New Mexico Constitution.

17. Venue is proper in this District Court because Defendants reside in, their principal place of business is located in, and all or some of the alleged violations occurred or are occurring in Bernalillo County, New Mexico. *See* §§ 61-29-17(C); *see also* § 58-21B-21(B); § 57-12-8(A).

III. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. Defendants' business scheme consists of offering and providing real estate services and home financing.

18. Since on or about May 20, 2010 and continuing thereafter, Defendants have offered and provided real estate services and home financing to consumers in Bernalillo, Sandoval, and Valencia counties in New Mexico.

19. Defendants' real estate services include selling or offering to sell real estate; buying or offering to buy real estate; or negotiating the purchase or sale of real estate.

20. More specifically, Defendants find “Repo Homes” (foreclosed homes) or otherwise distressed homes (homes for which the homeowners are at risk of mortgage default or foreclosure) for consumers who seek to buy homes.

21. At the time consumers retain Defendants’ business, Defendants do not actually own these homes.

22. At the time consumers retain Defendants for real estate services and home financing each consumer is required to sign a contract entitled “*Contrato de Intento de Compra*” [Intent to Purchase Contract] (“Spanish Contract”), a copy of which is attached as **Exhibit A**.¹

23. Recently, Defendants have used a second contract entitled “Letter of Intent to Purchase and Good Faith Deposit Contract” (“English Contract”), a copy of which is attached as **Exhibit B**. Defendants utilize the English Contract for the transaction although the consumers to whom they target their business are monolingual Spanish-speakers or Spanish-language dominant.

24. The Spanish Contract is a one-page, standardized document prepared by Defendants for acceptance by any consumer who retains Defendants for real estate services and home financing in New Mexico.

¹ The original contract is written entirely in Spanish. The Plaintiff has included a translation of the contract in English for the Court’s benefit. The document labeled “Exhibit A” is Defendants’ original contract. The document labeled “Exhibit A-1” is Plaintiff’s English translation of the contract.

25. The English Contract is a three-page, standardized document prepared by Defendants for acceptance by any consumer who retains Defendants for real estate services and home financing in New Mexico.

26. Consumers have no input as to the language contained in the body of these contracts and no option to bargain or negotiate any terms of these contracts other than the purchase price of the property.

27. At the time consumers retain Defendants, consumers are required to pay a “good faith deposit.”

28. These deposits have ranged in amount from \$1,500 to \$46,000.

29. In the Spanish Contract, Defendants represent to consumers that upon being retained they will “buy and close” on a specified property. Defendants represent to consumers that they will acquire title to homes “directly from the bank.”

30. In the English Contract, Defendants represent only that they will “buy” a particular piece of real estate specified in the contract. Defendants further state that “JSS of Albuquerque, LLC, does not on the date of execution of this instrument, own the real estate that is the subject matter of this contract.”

31. In other words, Defendants do not own an inventory of homes to offer for sale to consumers. At the time the contract is executed between the parties, Defendants do not own the specified home. Instead, Defendants seek at risk homes to purchase and acquire legal title, which they then sell to consumers.

32. In connection with Defendants’ real estate services, Defendants provide consumers an extension of credit consisting of a real estate contract on said homes. Other

than the purchase price of the home, the terms of the real estate contract are non-negotiable. Consumers are obligated to pay off the homes in full or take the extension of credit in order to purchase said homes from Defendants.

B. Defendants' business scheme is aimed at a vulnerable, underserved subset of Hispanic or Latino, Spanish-speaking consumers who are unknowledgeable of and inexperienced with the home buying process.

33. Defendants' real estate services and home financing business scheme is targeted toward a vulnerable subset of Spanish-speaking, Hispanic or Latino consumers.

34. These consumers are underserved by the conventional real estate services and home mortgage finance industries due to income and/or credit issues.

35. This subset of consumers also lack knowledge of and experience with the home buying process.

36. Defendants promote their business to this subset of consumers through various means:

- a. Defendants' business is located in a predominantly Hispanic or Latino area of Albuquerque, Bernalillo County, New Mexico in which a large number monolingual, Spanish-speakers reside.
- b. Defendants maintain a prominent roadside sign outside of their business which contains the wording in Spanish: "*REPOS JSS*," "*COMPRA Y VENTA*," and "*CASAS TERENOS COMERCIAL*" [*"REPOS JSS*," "*BUY & SALE*," and "*HOMES LAND COMMERCIAL*"]. (emphasis in original)

- c. Defendants advertise their business exclusively, if not predominantly, in the Spanish language.
- d. Defendants promote their business through marketing activities like posting JSS flyers in local businesses primarily patronized by Spanish-speaking customers and at church services attended by primarily Spanish-speaking congregation members.

37. Cano uses his identity as a Hispanic or Latino and a Spanish-speaker to further his business scheme. Cano's shared cultural identity and shared language with this subset of consumers allows him to gain their trust. JSS is staffed by employees who share the same cultural identity and language as their target consumers. Defendants exploit this trust, along with the consumers' barriers in accessing real estate services and home financing, and their lack of knowledge of and experience with home buying for their own financial gain.

C. Cano offered and provided real estate services through JSS under his associate broker license, but independent of an affiliation with a qualifying broker.

38. In New Mexico, a broker license is required to engage in the business of offering and providing real estate services. *See* § 61-29-1.

39. "Real estate services" broadly encompass a variety of real estate activities, including selling or offering to sell real estate; buying or offering to buy real estate; or negotiating the purchase, sale or exchange of real estate. *See* §§ 61-29-2(A)(3), (11).

40. A person may obtain one of two types of broker licensing in New Mexico an associate broker or a qualifying broker.

41. If licensed as an associate broker, a person must be associated with or be engaged under contract with a qualifying broker to conduct the business of that qualifying broker. *See* § 61-29-2(A)(3); *see also* 16.61.17.8 NMAC.

42. An associate broker is prohibited from offering and providing independent real estate services since that is the scope of authority of a qualifying broker. *See* § 61-29-1; *see also* § 61-29-2(A)(11).

43. Cano held an associate broker license issued by the New Mexico Real Estate Commission from on or about March 13, 2003 through July 31, 2015.

44. This license authorized Cano to engage in the business of real estate services under qualifying broker Stephen M. Burke, the owner of the brokerage (licensed real estate business) Red Mesa Realty, LLC based in Rio Rancho, Sandoval County, New Mexico.

45. However, on or before May 20, 2010, Cano commenced operation of the business JSS of Albuquerque, LLC through which he began to offer and provide real estate services to consumers in New Mexico.

46. On or about May 20, 2010, Cano registered JSS in New Mexico.

47. Cano's business activities through JSS were wholly independent of his affiliation with Mr. Burke and Red Mesa Realty, LLC. For instance:

- a. The New Mexico Real Estate Commission does not currently list and has never listed JSS under qualifying broker Stephen M. Burke;
- b. None of Defendants' contracts with consumers for real estate services make any reference to Stephen M. Burke or to Red Mesa Realty, LLC;

- c. Defendants' contracts with consumers for real estate services bear only the business name "JSS of Albuquerque, LLC" in the heading although associate brokers are prohibited from engaging in any real estate activity under any trade name other than that of his affiliated qualifying broker. *See* 16.61.17.9 NMAC; and
- d. Defendants' Spanish Contracts state that "Jesus Cano is a real estate agent for JSS," and are signed by Cano as "Jesus Cano as a real estate agent for JSS."
- e. Defendants' English Contracts state that "Jesus Cano, the principle of PROSPECTIVE SELLER, JSS of Albuquerque, LLC, is a licensed New Mexico Real Estate Agent . . ." (emphasis in original)

48. In the context of the real estate profession, the term "agent" has a very specific meaning. An agent is a person who has been authorized to act by that associate broker's qualifying broker. *See* § 61-29-2(A)(2). However, as described above, qualifying broker Stephen M. Burke and his brokerage Red Mesa Realty, LLC are completely absent from Defendants' real estate services transactions.

D. Defendants do not act as "Owner-Sellers" when engaging in the business of real estate services.

49. A person who as owner offers for sale or sells his or her own property is exempt from the real estate broker licensing requirements. *See* § 61-29-2(C)(1).

50. However, at the time consumers retained Defendants, Defendants did not actually own the homes for which they offered real estate services.

51. In the Spanish Contract, Defendants state that they “will buy and close” on the specified property for which consumers contract their services.

52. Defendants also state that “JSS of Albuquerque, LLC only buys a property when and if there exists a possible purchaser for the property.”

53. Moreover, Defendants’ contract states that “JSS OBTAINS THESE PROPERTIES DIRECTLY FROM THE BANK.” (emphasis in original)

54. In the English Contract, Defendants clearly state that JSS “does not on the date of execution of this instrument, own the real estate that is the subject matter of this contract.”

55. Since Defendants did not own the properties for which they offered real estate services, Defendants were required to comply with all state broker licensing requirements, including affiliating with a qualifying broker.

E. Cano continues to offer and provide real estate services through JSS although his real estate broker license has expired.

56. Cano’s associate broker license expired on or about July 31, 2015.

57. Cano has not applied for a renewal of his license with the New Mexico Real Estate Commission since his license expired.

58. At present, no person at JSS is licensed to engage in the business of real estate services, yet Defendants continued to offer and provide real estate services.

59. Defendants continue to represent in their Spanish Contract for real estate services that “Jesus Cano is a real estate agent for JSS.”

60. Cano signs the Spanish Contracts as “Jesus Cano as a real estate agent for JSS.”

61. Defendants represent in their English Contract for real estate services that Cano is “a licensed New Mexico Real Estate Agent”

F. Defendants offer and provide home financing although no person at JSS is licensed as a mortgage loan originator.

62. As of July 31, 2010, an individual must obtain a license from the New Mexico Financial Institutions Division to engage in the business of a mortgage loan originator with respect to any dwelling located in New Mexico and must register with the nationwide mortgage licensing system and registry. *See* § 58-21B-4.

63. A “mortgage loan originator” is defined as “an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.” § 58-21B-3(K).

64. A “residential mortgage loan” is “any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or is intended to be constructed a dwelling as so defined . . .” § 58-21B-3(Q).

65. A “dwelling” is defined as “a residential structure that contains one to four units whether or not that structure is attached to real property.” § 58-21B-3(D).

66. Since July 31, 2010, Defendants, in connection with their real estate services, have unlawfully offered extensions of credit to consumers in New Mexico to

finance the purchase of the Repo Homes or otherwise distressed homes they offer consumers.

67. Defendants' home finance offers consist of real estate contracts on said homes.

68. In the Spanish Contract, these offers contain financial terms like those found in other types of home financing contracts in that they state: the principal amount of the subject home Defendants will finance, an interest rate to be applied to the balance, the monthly payment amount to be paid by consumer, and the monthly payment date.

69. In the English Contract, these offers state the principal amount of the subject home Defendants will finance and an interest rate to be applied to the balance.

70. The New Mexico Financial Institutions Division lists no mortgage loan originator license for Cano.

71. The New Mexico Financial Institutions Division does not list a mortgage company by the name of "JSS of Albuquerque, LLC."

72. The nationwide mortgage licensing system and registry, also known as the National Mortgage Licensing System ("NMLS"), has no listing for a "Jesus Cano."

73. The NMLS has no listing for a "JSS of Albuquerque, LLC."

74. No other person at JSS has ever been or is currently licensed as a mortgage loan originator in New Mexico.

G. Cano's home finance offers through JSS are not directed at immediate family members and he does not act as an "Owner-Financier" when making home finance offers to consumers through JSS.

75. An individual may be exempted from the mortgage loan originator licensing requirement if the individual offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual. *See* § 58-21B-4(B)(2).

76. However, Cano cannot claim an "Immediate Family Member" exemption from the mortgage loan originator licensing requirements since the business transactions at issue in this Complaint do not involve members of his immediate family.

77. Additionally, an individual may be exempted from the mortgage loan originator licensing requirement if the individual offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property. *See* § 58-21B-4(B)(3).

78. Cano cannot claim an "Owner-Financier" exemption from the mortgage loan originator licensing requirements since he does not own the homes he offers to finance for consumers in connection with real estate services.

H. Defendants' contracts for real estate services and home financing consist of contracts of adhesion.

79. Upon retaining Defendants for real estate services and home financing, Defendants require each consumer to sign a contract.

80. The contract is a standardized contract prepared by Defendants for acceptance by any consumer who retains Defendants for real estate services and home financing in New Mexico.

81. Consumers have no input as to the language in the body of the contract and no option to bargain or negotiate any terms of the contract other than the purchase price of the property. Consumers can take the boilerplate contract or leave it.

82. However, Defendants seek this subset of consumers because they have few or no options when it comes to home buying. This subset of consumers face language barriers that limit their access to information about the home buying process and to competent professional services. This subset of consumers face income and/or credit barriers that place conventional mortgages out of their reach. Cano, on the other hand, as a formerly licensed associate real estate broker, possesses great knowledge about real estate transactions and real estate law in comparison to the subset of consumers he targets. As a condition of licensing, Cano completed courses in real estate principles and practice, and real estate law. Defendants are also familiar with real estate transactions through their day-to-day business activities. Because of these gross disparities, from the inception of the contract, Defendants possess overwhelming bargaining power over consumers.

I. Defendants' contracts with consumers fail to explain Defendants' process for "purchasing and closing" on homes, fail to give notice of risks, and overstate likelihood of success.

83. In their Spanish Contract, Defendants state that in exchange for a deposit, consumers commit "a que *JSS of Albuquerque, LLC compre y cierre*" ["JSS of Albuquerque, LLC will buy and close"] on specified properties.

84. Defendants also state that "[e]l cliente tambien debe dar el máximo de 60 dias, para que *JSS compre y cierre dicha propiedad, incluyendo todos los preparativos*

legales”] [“[t]he client shall give the maximum of 60 days, for JSS to purchase and close on said property, including all the necessary legal preparation”].

85. Defendants state that “*JSS ADQUIERE ESTAS PROPIEDADES DIRECTAMENTE DEL BANCO . . .*” [“JSS OBTAINS THESE PROPERTIES DIRECTLY FROM THE BANK. . .”] (emphasis in original)

86. Defendants state in the English Contract that they will “buy” a specified piece of real estate.

87. Defendants state they will make “good faith efforts to purchase the subject property.”

88. Other than this meager information, Defendants provide no further details about the process by which they intend to perform on their contracts with consumers.

89. In the Spanish Contract, Defendants mention in passing a possibility that their efforts might not succeed due to “*problemas financieros o legales*” [“financial or legal problems”], but provide no information as to the extent of the risk involved in the process.

90. In the English Contract, Defendants mention only that JSS “does not guarantee” that the property will be purchased.

91. Instead of apprising consumers about the risks involved, Defendants provided assurances about the success of their process. In the Spanish Contract they demand that “[*e*]l cliente tambien debe dar el máximo de 60 dias, para que JSS compre y cierre dicha propiedad, incluyendo todos los preparativos legales”][“the client should also allow a maximum of 60 days, so that JSS can buy and close on said property, including all the legal preparations”].

92. At the time the parties sign the contract, Defendants do not own the homes for which they offer real estate services and home financing.

93. Since Defendants are in the business of offering to sell “Repo Homes” or otherwise distressed homes, legal title to these homes is either:

- a. Embroiled in judicial proceedings to which Defendants are party to or had control over; or,
- b. If not wrapped up in judicial proceedings, the legal title is otherwise encumbered.
- c. Even where these homes are up for sale at public auction, Defendants must compete with other bidders for the homes.

94. Each of the above scenarios presents circumstances that materially impede Defendants’ ability to perform their contracts with consumers. Defendants fail to disclose these impediments and the risk involved with purchasing “Repo Homes” and otherwise distressed homes in their contracts with consumers.

J. Defendants represent that consumers’ deposits or payments will be held in a third-party escrow account. However, Defendants do not deposit the money with an escrow company, and then fail to account for the money when the contracts fail and consumers demand refunds.

95. In exchange for an offer of real estate services and home financing, Defendants demand from consumers a “good faith” deposit.

96. Consumers’ deposits have ranged in value from \$1,500 to \$46,000.

97. In the Spanish Contract, Defendants represent that while Defendants render their real estate services, consumers’ money “*sera depositado con una tercera persona de*

la compañía American Escrow”] [“shall be deposited with a third-party of the company, American Escrow”].

98. In the English Contract, Defendants represent that “said deposit will be held in an escrow account by PROSPECTIVE SELLER until such time as acquisition of the subject property can be completed and proposed sale consummated.”

99. However, at no time after Defendants take possession of consumers’ deposits or down payments do Defendants provide consumers any proof that their money has actually been escrowed. This has been especially problematic in the event of Defendants’ breach of contract, which results in the consumers demanding a refund.

100. In New Mexico, a person who engages in the business or acts in the capacity of an associate broker or qualifying broker in New Mexico, with or without a New Mexico real estate broker’s license, has thereby submitted to the jurisdiction of the state and is subject to all penalties and remedies available for any violation of the state’s real estate licensing law. *See* 61-29-1.

101. Pursuant to the state licensing law, real estate brokers have a duty to promptly account for all money or property received by the broker. *See* 16.61.19.8(F) NMAC.

102. Cano, having sought, obtained, and maintained an associate broker license for over a decade, was aware of his duty to account for money he received from consumers.

103. Defendants have refused to refund consumers’ deposits, have failed to provide consumers with an accounting of the funds or any information regarding the escrow account.

104. Defendants have promised to return consumers' money within a specified number of days, but have failed to deliver the refund within that period of time again without accounting for the whereabouts of the money.

K. Defendants falsely represent to consumers that a real estate contract is equivalent to a conventional mortgage.

105. In their Spanish Contracts with consumers Defendants represent that a real estate contract, or an "R.E.C" as Defendants refer to these instruments, "*es igual a una hipoteca, con la diferencia que (R.E.C) es asumible*" [is the same as a mortgage, with the difference being that (R.E.C.) is assumable"].

106. However, several material legal differences exist between conventional mortgages and seller-financed real estate contracts such as Defendants offer consumers. For example, when a buyer finances a home purchase pursuant to a mortgage, legal title to the home is immediately transferred over to the buyer subject to a mortgage. In contrast, where a home purchase is financed pursuant to a seller-financed real estate contract, the seller retains legal title to the home until the buyer pays the real estate contract in full.

107. Also, in the event of a default in payment by the buyer, buyers' rights are substantially more limited in the case of a seller-financed real estate contract than in the case of a conventional mortgage. In the case of a conventional mortgage, the lending bank must initiate judicial foreclosure proceedings against the home owner to collect on the debt. Additionally, after a foreclosure judgment is entered, the home owner retains a right to redeem a conventional mortgage for a period of time thereafter. Unlike the protections offered by a mortgage, a buyer who defaults on a seller-financed real estate contract could

face imminent eviction by the seller as well as lose all of the payments made on the property through the date of the default. Defendants do not disclose these material differences and risks to consumers.

L. Defendants fail to timely refund consumers' deposits after the parties mutually agree to terminate the contract.

108. In the Spanish Contract, Defendants' refund policy states that if one of the parties "*desean terminar el contrato será necesario hacer una "Terminación de Contrato", para que el deposito sea devuelto a este future comprador*" ["wishes to terminate the contract, it shall be necessary to draft a "Contract Termination", so that the deposit can be returned to this future buyer"].

109. In the English Contract, Defendants provide for no refund policy other than in the event Defendants cannot acquire the property.

110. Consumers have sought to terminate their contracts with Defendants and demanded refunds of their deposits or down payments from Defendants for various reasons which include:

- a. Defendants delayed beyond the sixty-day period in buying and closing on the specified homes;
- b. Consumers discovered Defendants were simultaneously offering the same home to other consumers;
- c. Consumers discovered a real estate broker not associated with Defendants showing the same home to other consumers;

- d. Consumers discovered Defendants were inflating the price of the home; and,
- e. Consumers discovered substandard living conditions in the home, which Defendants failed to disclose to consumers.

111. When consumers have complained to Defendants about these issues, Defendants engage in a series of tactics to stall having to issue refunds. For example:

- a. Defendants have offered consumers repeated assurances that they are getting closer or are on the verge of acquiring legal title to the specified homes;
- b. Defendants have also offered to allow consumers to occupy homes meanwhile Defendants continue with their real estate services; and
- c. Defendants have even avoided all contact with consumers.

112. When consumers finally grow tired of Defendants' unmet promises or excuses for not performing on the contract, they demand refunds of their deposits from Defendants.

113. According to the Spanish Contract, Defendants are to complete a one-page termination notice with consumers in which they promise to return consumers' deposits or down payments within a specified number of days.

114. Defendants have routinely failed to deliver on their promises to refund consumers' deposits or down payments within the period allotted and instead have retained consumers' deposits.

115. Defendants have failed to issue a refund of consumers' money until either the Plaintiff became involved in a dispute resolution effort or until consumers sued Defendants in small claims court.

M. Defendants fail to notify consumers of the presence of substandard housing conditions in the homes the offer to sell consumers.

116. Real estate brokers have a duty to provide clients written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction. 16.61.19.7(H) NMAC.

117. Defendants attempt to avoid this duty by inserting a boilerplate disclaimer into their contracts related to the condition of homes they offered to sell consumers.

118. Defendants' disclaimer in their Spanish Contract states that "*JSS ADQUIERE ESTAS PROPIEDADES DIRECTAMENTE DEL BANCO, POR LO TANTO NO TIENE CONOCIMIENTO DE MOJO NI PLOMO EN ESTAS PROPIEDADES . . . [t]ampoco tiene conocimiento de ninguna condicion de plomeria ni electricidad*" ["JSS OBTAINS THESE PROPERTIES DIRECTLY FROM THE BANK, AND THEREFORE DOES NOT HAVE KNOWLEDGE OF MOLD OR LEAD IN THESE PROPERTIES. . . neither has knowledge of any condition of plumbing or electricity"]. (emphasis in original)

119. Defendants' disclaimer in their English Contract states that Defendants have "never lived in or occupied the subject real estate, and is unaware of the full details of the condition thereof. . .the full responsibility for inspection of the real estate that is the subject of this Agreement lies with the Buyer, and that said responsibility includes inspection and testing for mold, lead, or other toxic substances, as well as but not limited

to, inspection and testing of the plumbing, electrical fixtures and integrity of the structures and foundations that are present on said real estate.”

120. However, after Defendants and consumers entered into contracts for real estate services and home financing, consumers discovered that the homes Defendants offered to sell or sold them contained substandard living conditions including:

- a. Defective plumbing; and,
- b. Defective electrical wiring.

121. In discovering these substandard conditions consumers promptly notified Defendants of these conditions.

122. In response to a consumer’s complaint about the substandard conditions of the home, Defendants promised to repair the home, but then failed to make the necessary repairs.

123. Also, in response to consumers’ complaints about the substandard conditions of the home, Defendants encouraged consumer to “invest in the home” by repairing the home themselves. This resulted in consumers spending thousands of dollars of out-of-pocket expenses to repair the home.

124. Because of Defendants’ years of experience as an associate broker, Defendants knew that “Repo” or otherwise distressed homes are likely to have substandard conditions. Defendants’ foreknowledge is demonstrated by their attempt to disclaim responsibility for these substandard housing conditions in their contracts.

IV. VIOLATIONS OF THE NEW MEXICO REAL ESTATE LICENSING LAW ("NMRELA"), NMSA 1978, §§ 61-29-1 to 61-29-29

(UNAUTHORIZED REAL ESTATE SERVICES)

COUNT ONE

125. Plaintiff re-alleges and incorporates the factual allegations set forth above.

126. While licensed as an associate broker Cano, through JSS, engaged in the business of real estate services in New Mexico outside of an affiliation with a qualifying broker in violation of the NMRELA. *See* § 61-29-1.

COUNT TWO

127. Plaintiff re-alleges and incorporates the factual allegations set forth above.

128. After his broker license expired, Cano, through JSS, engaged in the business of real estate services in New Mexico, which he continues to do through the date of this Complaint in violation of the NMRELA. *See* § 61-29-1.

(BREACH OF BROKER DUTIES)

COUNT THREE

129. Plaintiff re-alleges and incorporates the factual allegations set forth above.

130. A person who engages in the business or acts in the capacity of a broker in New Mexico, with or without a license, is subject to the jurisdiction of the state. *See* § 61-29-1. Cano was at one time licensed as an associate broker and after the expiration of his license continued to act in the capacity of a broker. Given his experience in having sought, obtained, and maintained an associate broker license for over a decade, Cano was aware of his duty to account for all money or property received from consumers. In spite of this

knowledge, Defendants failed to place into escrow the consumers' good faith deposits. Defendants also failed to account for the consumers' good faith deposits after taking possession of the money. Finally, Defendants failed to return the good faith deposits upon demand of refund from consumers.

131. Defendants' failure to escrow, refund when demanded, or account for consumers' money constitutes a violation of Cano's duty as an associate broker to promptly account for all money or property received in violation of the NMRELA. *See* § 61-29-1; *see also* 16.61.19.8(F) NMAC.

COUNT FOUR

132. Plaintiff re-alleges and incorporates the factual allegations set forth above.

133. Since Defendants are in the business of selling "Repo Homes" and otherwise distressed homes, they know or should have known that many of these homes have fallen into serious disrepair. Since Defendants buy the homes they are in a position to easily discover substandard housing conditions. However, Defendants attempt to disclaim their duty to inform consumers of substandard housing conditions by inserting a boilerplate disclaimer clause into their contracts. Defendants knowingly sold to consumers homes containing substandard housing conditions including, defective electrical wiring and plumbing. Defendants' attempts to circumvent their duty to inform and outright failure to inform consumers of these adverse material facts constitute violations of NMRELA. *See* § 61-29-1; *see also* 16.61.19.8(H) NMAC.

134. For the immediate protection of consumers in New Mexico, the Attorney General petitions this court for temporary and permanent injunctive relief against Defendants. *See* § 61-29-17(B).

135. Having previously sought, obtained, and maintained an associate broker license from the New Mexico Real Estate Commission, Cano is familiar with his duties, licensing requirements, and professional responsibilities. He was aware that his associate broker license prohibited him from offering and providing real estate services outside of an affiliation with a qualifying broker, yet he proceeded to do so through JSS. Cano was also aware of the state's prohibition on offering and providing unlicensed real estate services, yet he proceeded to offer and provide such services to consumers through JSS. On this basis, the Attorney General seeks civil penalties of \$5,000.00 for each of Defendants' willful violation of the NMRELA. *See* 61-29-17(C).

136. As permitted by law, the Attorney General also seeks recovery of attorney fees and costs incurred in the investigation and prosecution of Defendants' violations of the NMRELA. *See* § 61-29-17(C).

**V. VIOLATIONS OF THE NEW MEXICO MORTGAGE LOAN
ORIGINATOR LICENSING ACT ("NMMLOLA"),
NMSA 1978, §§ 58-21B-1 to 58-21B-24**

(UNAUTHORIZED MORTGAGE LOAN ORIGINATION)

COUNT THREE

137. Plaintiff re-alleges and incorporates the factual allegations set forth above.

138. In connection with their real estate services, Defendants offer and provide home financing to consumers although neither Cano nor anyone else at JSS is or has ever

been licensed as a mortgage loan originator in New Mexico in violation of the NMMLOLA. *See* § 58-21B-4(A).

139. For the immediate protection of consumers in New Mexico, the Attorney General petitions this court for temporary and permanent injunctive relief against Defendants prohibiting them from engaging in unlicensed home financing business activities in New Mexico. *See* § 58-21B-21(B).

140. Moreover, as a direct result of Defendants' unlicensed home financing activities, Defendants have been unjustly enriched. The Attorney General petitions this court for an order of restitution, in an amount to be determined at trial, requiring Defendants to disgorge all monies received as a result of their unlawful business practices. *See* § 58-21B-21(B).

VI. VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT, NMSA 1978, §§ 57-12-1 to 57-12-26

141. Plaintiff re-alleges and incorporates the factual allegations set forth above.

142. The NMUPA prohibits unfair or deceptive trade and unconscionable trade practices in the conduct of any trade or commerce. *See* § 57-12-3.

143. The NMUPA defines an "unfair or deceptive trade practice" as an "act specifically declared unlawful pursuant to the NMUPA, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit . . . that may, tends to or does deceive or mislead any person." *See* § 57-12-2(D).

144. The NMUPA further defines an "unfair or deceptive trade practice" as:

- a. “[R]epresenting that goods or services have sponsorship, approval, characteristics. . .that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that the person does not have.” § 57-12-2(D)(5);
- b. “[U]sing exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.” § 57-12-2(14);
- c. “[S]tating that a transaction involves rights, remedies or obligations that it does not involve” § 57-12-2(D)(15); and,
- d. “[F]ailing to deliver the quality or quantity of goods or services contracted for.” § 57-12-2(D)(17).

145. The NMUPA defines an “unconscionable trade practice” as “an act or practice in connection with. . . the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts that to a person’s detriment: (1) takes advantage of a lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.” § 57-12-2(E).

**(FALSE REPRESENTATION OF APPROVAL, STATUS, OR
AFFILIATION THAT THE PERSON DOES NOT HAVE)**

COUNT FOUR

146. Plaintiff re-alleges and incorporates the factual allegations set forth above.

147. In their contracts for real estate services with consumers, Defendants represented that “Jesus Cano is a real estate agent for JSS” and that Cano “is a licensed New Mexico Real Estate Agent.” These statements are misleading because although at one time Cano held an associate broker license issued by the New Mexico Real Estate Commission, this license only authorized him to work in affiliation with a qualifying broker. This license did not authorize him to engage in the business of real estate services independently through his own business. Defendants have continued to make these statements in their contracts after Cano’s license expired. This statement is false because New Mexico prohibits unlicensed real estate services.

148. Defendants’ statements that “Jesus Cano is a real estate agent for JSS” and that Cano “is a licensed New Mexico Real Estate Agent” have the tendency to deceive or mislead a person. Defendants target a subset of consumers who face language access issues and who lack knowledge and experience with the home buying process. These consumers may not know how to verify a real estate broker’s license. Defendants know the challenges these consumers face to home buying, but exploit them for their gain. Defendants’ statements that “Jesus Cano is a real estate broker with JSS” and that Cano “is a licensed New Mexico Real Estate Agent” violate the NMUPA because they could deceive consumers about Cano’s status as a broker or approval by the New Mexico Real Estate Commission. *See* § 57-12-3; *see also* § 57-12-2(D)(5).

COUNT FIVE

149. Plaintiff re-alleges and incorporates the factual allegations set forth above.

150. Cano's real estate license expired on or about July 31, 2015, which meant he was no longer authorized to engage in the business of an associate broker. Cano knew he was required to renew his license, having done so for over a decade. Although Cano's license expired, Defendants continued to misrepresent to consumers that "Jesus Cano is a real estate agent for JSS" and that Cano "is a licensed New Mexico Real Estate Agent."

151. Defendants violated the NMUPA through their misrepresentations identifying Cano "as a real estate agent" and "a licensed New Mexico Real Estate Agent" after his license expired. These statements deceived or had the tendency to deceive consumers into believing that Cano had approval or status as a licensed real estate professional in New Mexico, when he did not. *See* § 57-12-3; *see also* § 57-12-2(D)(5).

COUNT SIX

152. Plaintiff re-alleges and incorporates the factual allegations set forth above.

153. In connection with their real estate services, Defendants have offered and provided home financing in the form of real estate contracts to consumers in New Mexico. Defendants engaged in the business of offering home financing to consumers notwithstanding the fact that neither Cano nor any other person at JSS is currently or has ever been licensed as a mortgage loan originator in New Mexico.

154. Given his previous experience in seeking, obtaining, and maintaining a real estate license and his business experience in assisting a qualifying broker, Cano knew that licensing was required to provide home financing in New Mexico. Although they lacked licensing, Defendants proceeded to offer home financing through JSS.

155. Defendants targeted consumers who would not be able to distinguish between the type of licensing required to offer real estate services and the type of licensing required to offer home financing. Defendants offered a one-stop, home buying and financing shop for consumers. Defendants' offering home financing and real estate services in the same business have the tendency to mislead consumers into believing they have approval or status to engage in home financing, when in fact they do not. *See* §§ 57-12-3; 57-12-2(D)(5).

**(USE OF EXAGGERATION, INNUENDO OR AMBIGUITY AS TO A
MATERIAL FACT OR AN OMISSION OF A MATERIAL FACT)**

COUNTS SEVEN

156. Plaintiff re-alleges and incorporates the factual allegations set forth above.

157. Upon being retained for real estate services, Defendants represent to consumers that they "will purchase and close" on specified homes which they "obtain directly from the bank" or simply that they will "buy" a specified piece of real estate. Defendants represent they will then sell these homes to consumers pursuant to real estate contracts. However, other than providing this meager information, Defendants provide no details about the process by which they intend to "obtain" homes from the bank or "buy" these properties. Defendants do not apprise consumers of the challenges and risks involved in purchasing "Repo" homes and otherwise distressed homes other than stating that Defendants may not buy and close on a property due to "financial or legal problems" or that JSS "does not guarantee that the property will be purchased."

158. In the face of a myriad of uncertainties, Defendants exaggerate the likelihood of success involved in their home buying process. Defendants represent that "the

client should. . . allow a maximum of 60 days, so that JSS can buy and close on said property, including all the legal preparations.” In practice however, Defendants routinely breach this promise to deliver homes to consumers within 60 days and then fail or refuse to refund consumers’ deposits.

159. Defendants’ ambiguous description of their “Repo” home and distressed home acquisition process, their failure to apprise consumers of the challenges and risks involved in this process, and their exaggeration of the likelihood of success deceives and induces consumers into paying Defendants substantial deposits and retaining them for real estate services and home financing in violation of the NMUPA. *See* § 57-12-3; *see also* § 57-12-2(D)(14).

**(MISREPRESENTATION OF THE RIGHTS, REMEDIES OR OBLIGATIONS
INVOLVED IN A TRANSACTION)**

COUNT EIGHT

160. Plaintiff re-alleges and incorporates the factual allegations set forth above.

161. In their Spanish Contract with consumers Defendants represented that a real estate contract, or an “R.E.C” as Defendants refer to these instruments, “*es igual a una hipoteca, con la diferencia que (R.E.C) es asumible*” [is the same as a mortgage, with the difference being that (R.E.C.) is assumable”]. This statement is false because several material legal differences exist between conventional mortgages and real estate contracts. When a buyer finances a home purchase pursuant to a mortgage, legal title to the home is immediately transferred over to the buyer subject to a mortgage. In contrast, where a home purchase is financed pursuant to a seller-financed real estate contract, the seller retains legal

title to the home until the buyer pays the real estate contract in full. Additionally, seller-financed real estate contracts offer buyers substantially fewer protections than conventional mortgages in the event of a default in payment by the buyer. Unlike a real estate contract, a conventional mortgage requires the lender to initiate judicial foreclosure proceedings against the home owner to collect on the debt. Also unlike a real estate contract, the home owner retains a right to redeem a conventional mortgage for a period of time after the foreclosure judgment is entered.

162. Defendants have advanced training in real estate policies and procedures and real estate law. Given their experience in assisting consumers with the home buying process, Defendants heavily interfaced with the home finance industry and knew or should have known the differences in rights real estate contracts and conventional mortgages provided buyers. By misrepresenting the material differences in the rights, remedies or obligations involved in a real estate contract, Defendants deceived and induced consumers to retain them for real estate services and home financing in violation of the NMUPA. *See* §§ 57-12-3; 57-12-2(D)(15).

(FAILING TO DELIVER QUALITY OF SERVICES CONTRACTED FOR)

COUNT NINE

163. Plaintiff re-alleges and incorporates the factual allegations set forth above.

164. Upon retaining Defendants for real estate services and home financing, consumers paid Defendants a good faith deposits. Defendants represented to consumers that this money would be placed in escrow with a third-party company. However, after taking possession of this money Defendants failed to account for its whereabouts and use,

particularly when consumers demanded refunds. By representing that consumers' money will be placed in escrow, Defendants deceived and induced consumers to pay them deposits and down payments which consumers expected would be placed in safe-keeping in an escrow account. Defendants not only breached their broker duty to provide prompt accounting for all money or property they received, but also violated the NMUPA by failing to deliver to consumers the quality of services the parties contracted for. *See* § 57-12-3; *see also* § 57-12-2(D)(17).

COUNT TEN

165. Plaintiff re-alleges and incorporates the factual allegations set forth above.

166. Defendants include a refund procedure in their real estate services and home finance Spanish Contract with consumers which involves the execution of a contract termination notice between the parties. In this notice, Defendants promise to return consumers' money within a specified period of time. However, Defendants regularly renege on their promises and fail to return consumers' money within the time period allotted. Defendants' false and deceptive promises have forced consumers to file complaints with Plaintiff's office or to sue Defendants in small claims court in order to recover their deposits.

167. By contracting to issue refunds to consumers, but then failing to issue these refunds, Defendants failed to deliver the quality of services consumers contracted for in violation of the NMUPA. *See* § 57-12-3; *see also* § 57-12-2(D)(17).

COUNT ELEVEN

168. Plaintiff re-alleges and incorporates the factual allegations set forth above.

169. Because Cano had sought, obtained, and maintained an associate broker license for over a decade, he knew of his duty to disclose adverse material facts, including the existence of any substandard conditions in the houses he offered to sell consumers. Also, because of his years of experience dealing in “Repo” homes or otherwise distressed homes, Cano knew these homes were likely to have substandard conditions.

170. Despite this knowledge, Defendants attempted to defeat their duty to disclose substandard housing conditions by inserting a boilerplate disclaimer clause into their contracts with consumers. Defendants’ foreknowledge is demonstrated by their attempt to disclaim responsibility for defective plumbing and electrical wiring—the very conditions consumers discovered in the homes.

In one case, consumers were forced to abandon the deal and seek a refund after paying Defendants a deposit of \$46,000. Defendants have yet to refund consumers this money. In another case, Defendants encouraged consumers to “invest in the home” by repairing it themselves. This resulted in consumers spending thousands of dollars of out-of-pocket expenses to repair the home.

171. By failing to disclose substandard conditions to the consumers they offer to sell “Repo” homes or otherwise distressed homes, Defendants not only violate the duties of brokers under the NMRELA, but also fail to deliver the quality of services consumers contracted for in violation of the NMUPA. *See* §§ 57-12-3; *see also* 57-12-2(D)(17).

(UNCONSCIONABLE TRADE PRACTICES)

COUNT TWELVE

172. Plaintiff re-alleges and incorporates the factual allegations set forth above.

173. Defendants' business activities reveal a pattern and practice of unfair, deceptive, and unconscionable trade practices in offering and providing real estate services and home financing to consumers.

174. Consumers take advantage of a vulnerable subset of Hispanic or Latino consumers' economic barriers and lack of knowledge and experience with the home buying process to a grossly unfair degree. From the inception of the business relationship, there is an extreme imbalance in bargaining power between Defendants and consumers. Whereas most of these consumers have never purchased a home, Defendants possess a decade of experience in real estate services. In the past, Cano has sought, obtained, and maintained professional licensing as an associate broker. As a condition of licensing, Cano completed courses in real estate principles and practice, and real estate law. In working in affiliation with a qualifying broker, through their day-to-day business activities, Cano gained familiarity with real estate transactions. As a result of his knowledge and experience, Cano is in a position of authority, which he abuses, in entering transactions with consumers.

175. Defendants maintain absolute control of the relationship from the time they are retained by consumers. Defendants determine the good faith deposit amount that consumers will pay to start the process. Defendants appear to have no set of guiding principles for setting this amount, which has resulted in consumers paying deposits ranging from \$1,500 to \$46,000.

176. Moreover, consumers have no active role in the memorialization of the parties' agreement. Defendants present consumers with a standardized document prepared by Defendants for acceptance by any consumer who retains Defendants for real estate

services and home financing. Recently, Defendants started using an English Contract regardless of whether the consumer is a monolingual Spanish-speaker or Spanish-language dominant. Consumers have no input as to the language contained in the body of the contract and no option to bargain or negotiate any terms of the contract other than the ultimate purchase price of the property. Consumers can take the boilerplate contract or leave it. However, Defendants know this subset of consumers have few or no options when it comes to home buying, which is the reason they target these consumers in the first place.

177. Defendants' contracts with consumers are intentionally ambiguous and omit information material to the success of the agreement. Defendants provide no meaningful explanation as to how they will actually perform on the contract. The contracts state only that Defendants will "purchase and close" on homes which they "obtain directly from the bank" or simply that Defendants will "buy" a specified piece of real estate. Although Defendants could confront a myriad of challenges in attempting to acquire "Repo" homes and distressed homes, Defendants do not apprise consumers of these risks other than stating that they may not buy a home due to "financial or legal problems" or that JSS "does not guarantee that the property will be purchased." Instead, Defendants exaggerate the likelihood of success representing that Defendants will complete their closing "at a maximum of 60 days. . .including all the necessary legal preparation."

178. It is only after the ink dries on the contracts and consumers have paid Defendants substantial deposits that consumers realize, through a host of problematic circumstances, that they have been exploited by Defendants. For example, consumers learn that Defendants were simultaneously offering the same home to other consumers; that

Defendants have inflated the price of the home; or that Defendants have offered to sell or sold them a home containing substandard living conditions. In other cases, Defendants delay beyond the sixty-day period in buying and closing on the specified homes, with no explanation from Defendants. In facing these circumstances, consumers demand refunds of their deposits. In response, Defendants provide empty assurances about their performance on the contracts, promise to refund consumers' money, but fail to do so in the time allotted, or completely ignore consumers' calls.

179. Consumers are left with no other recourse against Defendants other than to file a complaint with Plaintiff's office or sue Defendants in small claims court to recover their money.

180. Defendants' unfair, deceptive, and unconscionable business practices in the course of rendering professional real estate services grossly take advantage of consumers' lack to knowledge and experience with home buying to consumers' detriment in violation of the NMUPA. *See* 57-12-3; *see also* 57-12-2(E).

I. COMMON LAW FRAUD

181. Plaintiff re-alleges and incorporates the factual allegations set forth above.

182. The Attorney General brings a claim against Defendants based on common law fraud pursuant to its *parens patriae* authority for the purpose of protecting its citizens for unfair, deceptive, and unconscionable trade practices.

183. Defendants made fraudulent misrepresentations to New Mexico consumers about their authority to engage in regulated business activities.

184. Defendants represented to consumers that they held licensing that authorized them to engage in independent real estate services and in home financing through JSS. Specifically, Defendants, in their Spanish Contract with consumers represented that “Jesus Cano is a real estate agent for JSS” and in their English Contract represented that Cano “is a licensed New Mexico Real Estate Agent.” Defendants represented to consumers in their Spanish Contract that upon payment of a “good faith deposit,” Cano could “obtain homes directly from the banks” to then sell to consumers on real estate contracts. In their English Contract, Defendants simply represented that they would “buy” a specified piece of real estate to sell to consumers.

185. Defendants knew that these representations were false because:

- a. At the time he was licensed, Cano held an associate broker license which prohibited him from engaging in the business of real estate services outside an affiliation with a qualifying broker.
- b. JSS has never had and through the date of this Complaint does not have an affiliation with a qualifying broker.
- c. Upon expiration of his associate broker license, Cano failed to renew it with the New Mexico Real Estate Commission, which prohibited him from engaging in unlicensed real estate services.
- d. Neither Cano, nor anyone else at JSS, ever held a mortgage loan originator license, which is required to engage in home financing.

186. Defendants knew they were engaged in regulated in professional business activities for which they either lacked proper licensing or held no licensing. Defendants

intentionally withheld information from consumers related to the limitations of Cano's associate broker license when valid, information related to the expiration of Cano's associate broker license, and information related to Defendants' lack of mortgage loan originator licensing.

187. Defendants' knew the consumers who were the target of their real estate services and home finance scheme a vulnerable subset of Hispanic or Latino individuals with few or no options when it comes to home buying. Defendants knew that these consumers due to language barriers had limited access to information about the home buying process and to competent professional services. Defendants also knew that these faced income and/or credit barriers that place conventional mortgages out of their reach. Having this knowledge, Defendants knowingly deceived consumers with the goal of induce them to pay Defendants substantial deposits.

188. As a result of Defendants' misrepresentations, to their detriment, consumers relied on Defendants to provide them real estate services and home financing. They paid Defendants "good faith" deposits ranging in value from \$1,500 to \$46,000 under the belief that they would receive a home for themselves and their families. Not only did Defendants fail to deliver these homes or delivered substandard homes, they unlawfully retained consumers' deposits, depriving them and their families of these funds.

189. The Attorney General requests that this Court declare Defendants' real estate services and home financing business scheme to be an unlawful pursuant to the NMUPA. *See* § 57-12-3; *see also* § 57-12-2(D); § 57-12-2(E).

190. The Attorney General further petitions this court for an order of restitution, in an amount to be determined at trial, requiring Defendants to disgorge all monies received as a result of their unlawful business practices. *See* § 57-12-8.

II. REQUEST FOR DECLARATORY RELIEF

COUNT THIRTEEN

191. Plaintiff re-alleges and incorporates the factual allegations set forth above.

192. Plaintiff requests that this Court declare all transactions of the Defendants sharing the same or similar unlawful real estate services and home financing scheme in violation of the NMRELA, the MLOLA, and the UPA to be unenforceable as a matter of New Mexico law.

193. Plaintiff requests that this Court declare null and void all real estate services and home financing contracts as well as any real estate contracts financed by Defendants obtained in violation of the NMRELA, the MLOLA, and UPA.

III. PETITION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

COUNT FOURTEEN

194. Plaintiff re-alleges and incorporates the factual allegations set forth above.

195. Defendants' business activities violate state laws regulating the business of real estate services and home financing and reveal a pattern and practice of exploiting New Mexico consumers through the use of deceptive acts and business practices.

196. On this basis, the New Mexico Attorney General petitions the Court for temporary or permanent injunctive relief pursuant to the NMRELA, the NMMLOLA, and the NMUPA. *See* § 61-29-17(B); *see also* § 58-21B-21(B) and §57-12-8.

197. When seeking injunctive relief pursuant to the NMMLOLA and the NMUPA, the Attorney General is not required to post bond. *See* § 58-21B-21(B); *see also* §57-12-8(A).

IV. EQUITABLE RECOVERY UNDER PRINCIPLES OF RESTITUTION AND UNJUST ENRICHMENT

COUNT FIFTEEN

198. Plaintiff re-alleges and incorporates the factual allegations set forth above.

199. As a direct and proximate result of Defendants' real estate services and home financing scheme, including but not limited to, Defendants' collection of "good faith" deposits from consumers, Defendants have been unjustly enriched.

200. This Court should find that Defendants have been unjustifiably enriched and order Defendants to disgorge all monies received as a result of their unlawful business practices.

V. JESUS CANO IS PERSONALLY LIABLE

COUNT SIXTEEN

201. Plaintiff re-alleges and incorporates the factual allegations set forth above.

202. A director of a corporation has a duty to act to prevent injuries to third parties where he has knowledge, amounting to acquiescence, of the corporation's wrongful

acts. *C & H Const. & Paving Co., Inc. v. Citizens Bank*, 1979-NMCA-077, ¶ 12, 93 N.M. 150 citing *Taylor v. Alston*, 1968-NMCA-082, ¶ 3, 79 N.M. 643.

203. Officers or agents are individually liable for violations of law committed by the corporation if the officers or agents participated in or directed the acts or practices, had knowledge and authority to control the acts or practices or acquiesced or sanctioned the acts or practices. *Lobato v. Pay Less Drug Stores, Inc.* 261 F.2d 406, 408-09 (10th Cir. 1958).

204. As owner, officer, manager and member of JSS, Cano participated in and directed the acts of JSS and its agents, representatives, and employees. He had the knowledge and authority to control the acts and practices of the company and sanctioned such acts or practices that resulted in violations of the NMRELA, NMMLOLA, and the NMUPA. Based on the foregoing, Cano is personally liable for these violations of law.

WHEREFORE, Plaintiff respectfully requests that:

- A. The Court issue a temporary injunction restraining the Defendants from engaging in the conduct alleged herein.
- B. The Court issue an order freezing Defendants' assets related to the real estate services and home financing business activities JSS of Albuquerque, LLC until such time as a Receiver or neutral party can verify whether consumers were or were not victims of Defendants' enterprise.
- C. For the appointment of a Receiver to manage the assets of JSS of Albuquerque, LLC related to its real estate and home financing business activities for later

disgorgement and refund to the consumers harmed by Defendants' unlawful activities.

- D. The Court determine and adjudge that Defendants' real estate and home financing scheme violated the NMRELA, the NMMLOLA, and the NMUPA.
- E. The Court determine and adjudge that Defendants' real estate and home financing scheme is fraudulent.
- F. The Court issue a permanent injunction restraining the Defendants from engaging in conduct which is found to be unlawful pursuant to the NMRELA, the NMMLOLA, and the NMUPA.
- G. The Court rescind all of Defendants' real estate services and home financing contracts and all real estate contracts associated with the same or similar unlawful business scheme.
- H. The Court order the Defendants to pay restitution to all persons for any monies which were acquired through any practice found to be unlawful pursuant to the NMMLOLA and the NMUPA.
- I. The Court order Defendants to disgorge all monies collected pursuant to real estate services and home financing contracts and pursuant to any real estate contracts associated with the same or similar unlawful business scheme.
- J. The Court order the Defendants to pay to the State of New Mexico a civil penalty of up to FIVE THOUSAND DOLLARS (\$5,000.00) per willful violation of the NMRELA and the NMUPA.

- K. The Court determine and adjudge that Cano is personally liable, as a corporate owner, officer, or manager having knowledge and authority to direct the acts of JSS, for any violations of the NMRELA, the NMMLOLA, and the NMUPA by JSS.
- L. The Court order the Defendants to reimburse the New Mexico Office of the Attorney General for its attorney fees and costs incurred in the investigation and prosecution of this matter.
- M. For such other relief as the Court deems just and proper.

Respectfully Submitted,

HECTOR H. BALDERAS,
ATTORNEY GENERAL

/s/ Joshua A. Spencer

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CONTRATO DE INTENTO DE COMPRA

FECHA: [REDACTED]

Este contrato es entre JSS of Albuquerque, LLC y [REDACTED] el cual estipula que el comprador se compromete a depositar la cantidad de \$ 3,000, la cual servirá como un deposito de buena fe y compromete a dicho PRE comprador a que JSS of Albuquerque, LLC compre y cierre la propiedad localizada en [REDACTED]. El cliente(s) [REDACTED] se compromete a proceder con la compra de dicha propiedad. El cliente también debe dar el máximo de 60 días, para que JSS compre y cierre dicha propiedad, incluyendo todos los preparativos legales. Si JSS of Albuquerque, LLC NO logra comprar y cerrar la propiedad debido a problemas financieros o legales, JSS se compromete a regresar el deposito en su totalidad a [REDACTED]. Si JSS of Albuquerque, LLC logra comprar dicha propiedad en los 60 días mencionados, y el comprador [REDACTED] desea cancelar la compra, el comprador pierde su deposito, lo cual servirá para hacer pagos mensuales a los inversionistas mientras JSS of Albuquerque, LLC encuentra nuevos compradores. [REDACTED] entienden que JSS of Albuquerque, LLC compra una propiedad solo y cuando exista un posible comprador para la propiedad. El comprador entiende que su dinero sera depositado con una tercera persona de la compañía American Escrow. Si alguno de los dos partidos, ya sea [REDACTED] o JSS of Albuquerque, LLC desean terminar el contrato será necesario hacer una "Terminación de Contrato", para que el deposito sea devuelto a este futuro comprador. El comprador entiende que Jesus Cano es un agente de bienes y raizes el cual no representa al comprador si no es uno de los manejadores de JSS of Albuquerque, LLC. Este será recompensado por parte de JSS y no por dicho comprador (es). **JSS ADQUIERE ESTAS PROPIEDADES DIRECTAMENTE DEL BANCO, POR LO TANTO NO TIENE CONOCIMIENTO DE MOJO NI PLOMO EN ESTAS PROPIEDADES. SI EL COMPRADOR DESEA HACER LAS INSPECCIONES PUEDE HACERLO.** Tampoco tiene conocimiento de ninguna condición de plomería ni electricidad.

Esta propiedad será vendida en un contrato de bienes y raizes(R.E.C), lo cual es igual a una hipoteca, con la diferencia que (R.E.C) es asumible. Este (R.E.C) es de 12% de interés, precio de 75,000. Menos el enganche. Pagos aproximados de 350.00, mas impuestos y aseguranza.

Este pago debe ser entregado de 30 a 40 días después de que se les entregue la llave de la propiedad.

[REDACTED]
[REDACTED]

[Handwritten Signature]

JSS of Albuquerque, LLC

El cliente comprende y acepta los términos de este contrato. Si hay dudas o preguntas debe comunicarse con el agente o el representante asignado

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JSS of Albuquerque LLC
Phone: (505) 503-1780
Fax: (505) 212-0767
1116 Bridge Blvd. SW
Albuquerque, NM 87105

INTENT TO PURCHASE CONTRACT

DATE:

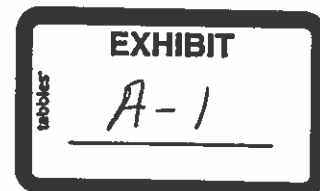
This contract is between JSS of Albuquerque, LLC and _____, which stipulates that the buyer promises to deposit an amount of \$ _____, which shall serve as a deposit of good faith and obligates said PRE buyer that JSS Albuquerque LLC will buy and close on the property located at _____. The client(s) _____ promise to proceed with the purchase of said property. The client shall also allow the maximum of 60 days, for JSS to buy and close on said property, including all of the necessary legal preparation. If JSS of Albuquerque, LLC DOES NOT buy and close on the property due to financial or legal problems, JSS promises to return the total deposit to _____. If JSS of Albuquerque, LLC purchases said property within the 60 days mentioned and the buyer _____ wishes to cancel the purchase, the buyer will forego his deposit, which will be used to make monthly payments to the investors meanwhile JSS of Albuquerque, LLC locates new buyers. _____ understands that JSS of Albuquerque, LLC only buys a property when and if there exists a possible buyer for the property. The buyer understands that his money shall be deposited with a third party of the company American Escrow. If one of the two parties, be it either _____ or JSS of Albuquerque, LLC wish to terminate the contract it shall be necessary to draft a "Contract Termination", so that the deposit can be returned to this future buyer. The buyer understand that Jesus Cano is a real estate agent and does not represent the buyer but is a manager of JSS of Albuquerque, LLC. He shall be paid by JSS and not by said buyer (s). JSS OBTAINS THESE PROPERTIES DIRECTLY FROM THE BANK, THEREFORE HAS NO KNOWLEDGE OF MOLD NOR LEAD IN THESE PROPERTIES. IF THE BUYER WISHES TO CONDUCT THESE INSPECTIONS, HE MAY DO SO. He also has no knowledge of any condition of plumbing or electricity.

This property shall be sold on a real estate contract (R.E.C), which is the same as a mortgage, with the difference that a (R.E.C.) is assumable. This (R.E.C) has a 12% interest, price of _____ Minus the down payment. Approximate monthly payments of _____, plus tax and insurance.

This payment is to be paid 30 to 40 days after delivery of the key for this property.

JSS of Albuquerque, LLC

The client understands and accepts the terms of this contract. If there is a doubt or questions you should contact the agent or representative assigned.



JSS of ALBUQUERQUE, LLC
1116 Bridge Street, SW
Albuquerque, NM 87105
(505) 503-1780
(505) 212-0767 (Fax)

LETTER OF INTENT TO PURCHASE AND GOOD FAITH DEPOSIT CONTRACT

THIS CONTRACT is made and entered into this 13th day of January
2016 by and between JSS of Albuquerque, LLC (PROSPECTIVE SELLER) and
[REDACTED] (PROSPECTIVE BUYER).

PROSPECTIVE BUYER agrees and covenants to deposit with PROSPECTIVE SELLER
the sum of \$ 3000⁰⁰, which money represents a commitment to buy and a "good
faith" deposit for the purchase of certain real estate located at
[REDACTED]. In the event that PROSPECTIVE SELLER is able to buy
and obtain clear title to said real estate. With the above-mentioned deposit, PROSPECTIVE
BUYER agrees and covenants to purchase said real estate, and PROSPECTIVE SELLER agrees and
covenants to sell said real estate, in the event that the other conditions hereof are satisfied.
PROSPECTIVE SELLER and PROSPECTIVE BUYER agree that said deposit will be held in an escrow
account by PROSPECTIVE SELLER until such time as acquisition of the subject property can be
completed and the proposed sale consummated.

CONDITION 1: PROSPECTIVE BUYER agrees that PROSPECTIVE SELLER, JSS of
Albuquerque, LLC, does not on the date of execution of this instrument, own the real estate
that is the subject matter of this contract. PROSPECTIVE BUYER AGREES that PROSPECTIVE

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SELLER does not guarantee that the property will be purchased, but promises to make good faith efforts to purchase the subject property. PROSPECTIVE BUYER AGREES that PROSPECTIVE SELLER shall be allowed the time period of sixty (60) days from the date of execution of this Letter of Intent to Purchase and Good Faith Deposit Contract to complete PROSPECTIVE SELLER's acquisition of the described real estate, including all documents required for PROSPECTIVE SELLER's acquisition thereof. In the event that PROSPECTIVE SELLER is unable to complete the acquisition within the specified time period, PROSPECTIVE SELLER shall refund in full PROSPECTIVE BUYER's deposit herein described. Refund shall be effected within 7 to 15 business days from the date that PROSPECTIVE BUYER executes a written termination of this agreement.

CONDITION 2: PROSPECTIVE BUYER further agrees and covenants that PROSPECTIVE SELLER has never lived in or occupied the subject real estate, and is unaware of the full details of the condition thereof. Consequently, PROSPECTIVE BUYER agrees and covenants that full responsibility for inspection of the real estate that is the subject of this Agreement lies with the Buyer, and that said responsibility includes inspection and testing for mold, lead, or other toxic substances, as well as, but not limited to, inspection and testing of the plumbing, electrical fixtures and integrity of the structures and foundations that are present on said real estate.

CONDITION 3: PROSPECTIVE BUYER and PROSPECTIVE SELLER AGREE and covenant that, on the date of transfer of possession of the real estate that forms the subject matter of this Agreement, PROSPECTIVE BUYER and PROSPECTIVE SELLER shall enter into a Real Estate Contract that will replace this Intent to Purchase Contract, and that the sale of the real estate

shall be then subject to the terms of the Real Estate Contract, which will be for the price of \$ 95,000⁰⁰, and at an interest rate of ~~2.75~~ ^{2.75} % per annum on the unpaid balance. PROSPECTIVE BUYER agrees that the deposit made under this Intent to Purchase Contract shall be applied to the purchase price of the real estate that is the subject of this contract. PROSPECTIVE BUYER agrees to make a further initial payment of \$ 1,000⁰⁰ minus the amount of this deposit, within 40 days of receiving possession of the real estate.

CAVEAT 1: IF PROSPECTIVE SELLER is successful in completing its acquisition of the described real estate within the allotted 60-day period, and PROSPECTIVE BUYER nonetheless wishes to cancel this agreement, then PROSPECTIVE BUYER agrees that the "good faith" deposit described herein shall be forfeited, and will become the property of the SELLER to help defray the costs of acquisition of the described real estate and the costs associated with identifying and locating a new buyer. PROSPECTIVE BUYER understands and agrees that PROSPECTIVE SELLER only acquires real estate when a buyer has demonstrated an interest in and commitment to purchase said real estate.

CAVEAT 2: PROSPECTIVE BUYER agrees, acknowledges and covenants that Jesus Cano, the principle of PROSPECTIVE SELLER, JES of Albuquerque, LLC, is a licensed New Mexico Real Estate Agent, but is not acting as a Real Estate Agent in this transaction and will receive no commission for this sale.

2016 ASREED AND EXECUTED this
at Albuquerque, New Mexico.



PROSPECTIVE BUYER

this 13th day of January



Jesus M. Cano, for JES of Albuquerque, LLC, PROSPECTIVE SELLER