

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----	x
AYANA RUSH, GUL MAGSOOD, ANGEL	:
OSMANZAI, RAHIM MAQSOOD, MOHAMMED	:
SHUKRAN, RITA IDAVOY, REBECCA VERNAL,	:
BRIAN VERNAL, ARIEL CROSS-EDWARDS	:
	:
Plaintiffs,	:
	:
-against-	:
	:
	: Index No.
	:
	: <u>COMPLAINT</u>
	:
SAVE MY HOME CORP., SAVE MY HOME	:
NOW, INC., SAVE MY HOME TODAY INC.,	:
SAVE MY HOME U.S.A., INC., BENJAMIN	:
ABRAHAM, AMIT SINGH, DANIELLE DOE,	:
HUMA HALIMI (a/k/a HELEN HALIMI), NAVIN	:
MENON (a/k/a NAVIN MENON, a/k/a NOVIN	:
MENON), CHRIS MARINO, THE SELIG LAW	:
GROUP, P.C., EXPRESS MODIFICATIONS INC.,	:
DAVID GOTTERUP, EXPRESS HOME	:
SOLUTIONS, INC. (a/k/a EXPRESS HOME 411,	:
a/k/a EXPRESS DEBT SOLUTIONS), KENNETH	:
SAROSI, BRIAN MANGAN, MICHAEL	:
ANDERSON, SANDRA GONZALEZ, DELSY	:
VALASQUEZ, TANNIA GRIGO, MILADYS DOE,	:
RICHARD MASINI, EDWIN GARCIA, ROBERT	:
WEINREB, EMPIRE HOME SAVER	:
INCORPORATED (a/k/a EMPIRE HOME	:
SAVINGS)	:
	:
	:
Defendants.	:
-----	x

Plaintiffs Ayana Rush, Gul Magsood, Angel Osmanzai, Rahim Maqsood, Mohammed Shukran, Rita Idavoy, Rebecca Verna, Brian Verna, and Ariel Cross-Edwards (collectively, “Plaintiffs”), by their attorneys Hyon Min Rho, on behalf of the Lawyers’ Committee for Civil Rights Under Law (the “Lawyers’ Committee”), and Davis Polk & Wardwell LLP, as and for their complaint against Save My Home Corp., Save My Home Now, Inc., Save My Home Today

Inc., Save My Home U.S.A., Inc., Benjamin Abraham, Amit Singh, Danielle Doe, Huma Halimi (a/k/a Helen Halimi), Navin Menon (a/k/a Navin Menin, a/k/a Novin Menon), Chris Marino, The Selig Law Group, P.C., Express Modifications Inc., David Gotterup, Express Home Solutions, Inc. (a/k/a Express Home 411, a/k/a Express Debt Solutions), Kenneth Sarosi, Brian Mangan, Michael Anderson, Sandra Gonzalez, Delsy Valasquez, Tannia Grigo, Miladys Doe, Richard Masini, Edwin Garcia, Robert Weinreb, and Empire Home Saver Incorporated (a/k/a Empire Home Savings) (collectively, “Defendants”), hereby allege the following based upon personal knowledge as to Plaintiffs and their own acts and documents, and information and belief as to all other matters based upon, *inter alia*, the investigation conducted by and through Plaintiffs’ attorneys, which included but was not limited to a review of the Defendants’ public documents, public filings, interviews of Plaintiffs and other homeowners who have had contact with Defendants, and information readily obtainable on the Internet.

PRELIMINARY STATEMENT

1. This case exemplifies the destructive effect that the “for-profit loan modification industry” has had on low- and middle-income homeowners in the New York metropolitan area. These schemes lure vulnerable homeowners into believing that Defendants possess specialized knowledge and skills that will enable them to lower homeowners’ monthly home loan payments. In exchange for an upfront fee, Defendants promise to re-negotiate the homeowners’ mortgages with their lenders and servicers, with an additional promise to refund the homeowners’ money if their efforts are unsuccessful. In practice, however, Defendants often fail to make contact with the lender or servicer for months, if at all, or to have substantive discussions or negotiations with the lender or servicer. In many cases, Defendants fail to

perform even the most basic promised services or achieve any beneficial results, and then refuse to refund the fee as promised.

2. The pernicious nature of such schemes has attracted the scrutiny of advocates, legislators, law enforcement officials, and regulators. A coordinated national campaign – the Loan Modification Scam Prevention Network (“LMSPN”) – was created to strengthen the fight against these scammers. Led by the Lawyers’ Committee, the Homeownership Preservation Foundation, Fannie Mae, and Freddie Mac, LMSPN includes members of the U.S. Department of Urban Housing and Development (“HUD”), the U.S. Department of the Treasury, and the Federal Trade Commission (“FTC”). In August 2008, Governor David A. Paterson signed into law a bill specifically targeting these types of scams, creating new rules for so-called “distressed property consultants” that prohibit upfront payments and require specifically-worded contracts. In November 2010, the FTC issued Final Rule 16 C.F.R. Part 322, which prohibits for-profit providers of Mortgage Assistance Relief Services from accepting upfront fees, making representations about the likelihood of results, or instructing homeowners to cease communications with their lender or servicer.

3. The scheme typically begins when a so-called loan “specialist” locates a vulnerable homeowner – someone who is struggling to make her monthly mortgage payments and fears the possibility of foreclosure. The “specialist” gains the homeowner’s trust by promising to “save” her home and lower her monthly payments. The “specialist” enters into a written or oral contract with the homeowner, demanding an upfront payment in exchange for the promise to re-negotiate her mortgage. In some cases, the “specialist” will demand additional payments at a later date, claiming that the lender or servicer will reject the loan modification

request unless the “specialist” receives another payment. At no point does the “specialist” explain to the homeowner that such loan modification services are typically offered at little to no cost by HUD-approved housing counselors.

4. In some cases, the “specialist” will encourage the homeowner to stop sending her monthly mortgage payments to the bank, claiming that non-payment will increase the likelihood of receiving a modification. The “specialist” may also discourage the homeowner from communicating with the bank. The homeowner, who trusts the “specialist” and is desperate for financial relief, often follows this advice. As a result, the homeowner falls further and further behind in her mortgage payments. The homeowner accumulates debt, lender fees, and missed-payment penalties, and her credit score is impaired. If the homeowner’s mortgage agreement includes an “acceleration clause,” as is commonplace for residential mortgages, she runs the risk of foreclosure after as little as one missed monthly payment.

5. Eventually, the homeowner seeks to end her arrangement with the for-profit loan modification “specialist,” either because she suspects that the operation is a scam, or because she has lost hope that she will ever receive a loan modification. The homeowner then asks for a refund of her upfront payments, only to find that the “specialist” no longer responds to calls or e-mails. If the homeowner persistently pushes for a refund, the “specialist” will likely give her the “runaround,” passing her from one unwilling employee to the next.

6. Employees of these loan modification companies often move between two or more closely related corporate entities, making it difficult for the homeowner and third parties to determine the precise nature of the scheme. Agents of these companies will regularly incorporate new entities in an attempt to evade authorities and remain judgment-proof.

7. On April 22, 2009, the Massachusetts Attorney General permanently enjoined one of the Defendants, Express Modifications Inc., and its owner David J. Gotterup from offering Foreclosure-Related Services¹ in Massachusetts. As part of the Final Judgment by Consent, Express Modifications Inc., and David J. Gotterup admitted that they made “misleading, unfair and deceptive statements” to Massachusetts consumers.

8. On May 13, 2010, the Maryland Commissioner of Financial Regulation issued a Cease and Desist order against one of the Defendants, Save My Home, a/k/a Selig Law Group, for engaging in “willful conduct which was intended to deceive and defraud.” The Commissioner concluded that Save My Home “demonstrated a complete lack of good faith and fair dealings.”

9. Despite these enforcement actions and orders in other states, Defendants continue their fraudulent schemes in New York.

10. The Plaintiffs in this matter are homeowners who fell victim to these schemes. Each of them, facing the financial strain of home mortgages, was looking for a way to lower his or her monthly payments, and ultimately fell prey to Defendants’ claims that they could do just that.

11. In each transaction, Defendants offered to negotiate mortgage loans for Plaintiffs, despite the fact that Defendants were not registered as “mortgage brokers” as required by New York Banking Law § 590. In most cases, Defendants also performed “distressed property consulting services” for Plaintiffs, but failed to do so in the manner required by New York Real

¹ As defined under 940 Mass. Code Regs. § 25.01.

Property Law § 265-b. In each case, Defendants breached their contract with Plaintiffs by failing to perform the services required and/or by refusing to provide the full or partial refund that had been previously promised. Moreover, Defendants engaged in a scheme to defraud Plaintiffs by misrepresenting, concealing, or omitting information regarding the services Defendants promised to perform.

12. By this action, Plaintiffs seek to permanently enjoin Defendants from the deceptive practices alleged herein. Plaintiffs also seek to recover a monetary sum totaling not less than \$80,000.00, together with pre-judgment interest at the statutory rate of 9% per annum, as well as other actual and consequential damages. These damages include, but are not limited to, the loss of equity in some Plaintiffs' homes, as well as fees paid to their mortgage lenders or servicers, the effects of impairment on their credit ratings, and the costs associated with foreclosure proceedings, where relevant. Finally, Plaintiffs seek punitive damages in an amount sufficient to prevent others from engaging in similar schemes.

THE PARTIES

Plaintiffs

13. Ayana Rush owns and resides in a home at 907 Blake Avenue, Brooklyn, New York 11207. Ms. Rush has a mortgage on the property, which was owned and serviced by CitiMortgage until it was sold to PennyMac in 2011. The mortgage contract includes an "acceleration clause," which entitles the lender to accelerate full payment of the mortgage and repossess the property upon one or more defaults by the mortgagor.

14. Gul Magsood owns and resides in a home at 16-51 Francis Lewis Boulevard, Flushing, New York 11354. Mr. Magsood has a mortgage on the property, which was initially serviced by American Mortgage Network, and later by Bank of America. The mortgage contract includes an “acceleration clause,” which entitles the lender to accelerate full payment of the mortgage and repossess the property upon one or more defaults by the mortgagor.

15. Rahim Maqsood and Angel Osmanzai are a married couple who live in Fresh Meadows, New York. Mr. Maqsood owns their primary residence, located at 71-12 Sutton Place, 3rd Floor, Fresh Meadows, New York 11365. The mortgage on this property is serviced by American Home Mortgage Servicing. Ms. Osmanzai owns two investment properties, which she rents to tenants. The properties are located at 502 115th Street, Apartment F, College Point, New York 11356 and 718 Horizon Drive, Stroudsburg, Pennsylvania 18360. The mortgage on the College Point property was serviced initially by Washington Mutual and later by Chase. The mortgage on the Stroudsburg property was serviced initially by Countrywide and later by Bank of America. The Stroudsburg property was the subject of foreclosure proceedings in February 2011.

16. Mohammed Shukran owns and resides in a home at 25-60 120th Street, Second Floor, Flushing, New York 11354. Mr. Shukran has a mortgage on his home, which at all relevant times was serviced by Chase Home Finance, LLC. The mortgage contract includes an “acceleration clause,” which entitles the lender to accelerate full payment of the mortgage and repossess the property upon one or more defaults by the mortgagor.

17. Rita Idavoy owns a three-story building at 777 Union Street, Brooklyn, New York 11215. She lives on the first floor with her husband and their young daughter, and rents the top

two floors to tenants. Ms. Idavoy has a mortgage on her home, which was serviced by Bank of America until she entered foreclosure proceedings in April 2010. The mortgage contract includes an “acceleration clause,” which entitles the lender to accelerate full payment of the mortgage and repossess the property upon one or more defaults by the mortgagor.

18. Rebecca Verna and Brian Verna are a married couple who own and reside in a home at 1501 Evans Avenue, Prospect Park, Pennsylvania 19076. During 2006, Ms. Verna obtained a \$116,000.00 mortgage with National City Bank, which was later assumed by PNC Mortgage, at an interest rate of 7.5% per annum to finance the purchase of her home in Prospect Park, Pennsylvania. Shortly after, she obtained a second mortgage with Homecoming Financial, which was later serviced by GMAC Mortgage, on the same property for \$50,000.00 at an interest rate of 10.5% per annum.

19. Ariel Cross-Edwards owns and resides at 115-26 224th Street, Flushing, New York 11354. Her husband, Jonah Edwards, is a co-owner of the home. Mr. Edwards and Ms. Cross-Edwards also own an investment property. The mortgage on their primary residence was serviced by Chase Bank. This mortgage includes an “acceleration clause,” which entitles the lender to accelerate full payment of the mortgage contract and repossess the property upon one or more defaults by the mortgagor.

Defendants

20. Defendants operate an elaborate network of for-profit loan modification companies. Although there are several companies, the location of their offices remains the same:

most, if not all, of the scheme originates from a single office complex at 591-595 Stewart Avenue and nearby facilities in Garden City, New York.

(a) Save My Home and Related Parties

21. Defendant Save My Home Corp. is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. During relevant times, Defendant Save My Home Corp. has conducted business at either 1035 Stewart Avenue, Suite 350, or 595 Stewart Avenue, Suite 720, Garden City, New York 11530. During relevant times, Defendant Save My Home Corp. was not registered as a mortgage broker with the New York State Banking Department.

22. Defendant Save My Home Now, Inc. is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. During relevant times, Defendant Save My Home Now, Inc. has conducted business at either 1035 Stewart Avenue, Suite 350, or 595 Stewart Avenue, Suite 720, Garden City, New York 11530. During relevant times, Defendant Save My Home Now, Inc. was not registered as a mortgage broker with the New York State Banking Department.

23. Defendant Save My Home Today Inc. is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. During relevant times, Defendant Save My Home Today Inc. has conducted business at either 1035 Stewart Avenue, Suite 350, or 595 Stewart Avenue, Suite 720, Garden City, New York 11530. During relevant times, Defendant Save My Home Today Inc. was not registered as a mortgage broker with the New York State Banking Department.

24. Defendant Save My Home U.S.A., Inc. is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Suffolk County. During relevant times, Defendant Save My Home U.S.A., Inc. has conducted business at either 1035 Stewart Avenue, Suite 350, or 595 Stewart Avenue, Suite 720, Garden City, New York 11530. During relevant times, Defendant Save My Home U.S.A., Inc. was not registered as a mortgage broker with the New York State Banking Department.

25. Defendants Save My Home Corp., Save My Home Now, Inc., Save My Home Today Inc., and Save My Home U.S.A., Inc. are collectively referred to as “Defendant SMH.”

26. Defendant Benjamin Abraham (“Abraham”) is an owner, director, officer, manager, and/or agent of Defendant SMH and/or affiliated business entities. During relevant times, Defendant Abraham engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Abraham was not registered as a mortgage broker with the New York State Banking Department.

27. Defendant Amit Singh (“Singh”) is an owner, director, officer, manager, and/or agent of Defendant SMH and/or affiliated business entities. During relevant times, Defendant Singh engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Singh was not registered as a mortgage broker with the New York State Banking Department.

28. Defendant Danielle Doe (“Danielle”), this last name being fictitious, is an owner, director, officer, manager, and/or agent of Defendant SMH and/or affiliated business entities. During relevant times, Defendant Danielle engaged in business activities in the State of New

York, offering loan modification services to consumers. Upon information and belief, during relevant times, Defendant Danielle was not registered as a mortgage broker with the New York State Banking Department.

29. Defendant Huma Halimi (a/k/a Helen Halimi) (“Halimi”) is an owner, director, officer, manager, and/or agent of Defendant SMH and/or affiliated business entities. During relevant times, Defendant Halimi engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Halimi was not registered as a mortgage broker with the New York State Banking Department.

30. Defendant Navin Menon (a/k/a Navin Menin, a/k/a Novin Menon) (“Menon”) is an owner, director, officer, manager, and/or agent of Defendant SMH and/or affiliated business entities. During relevant times, Defendant Menon engaged in business activities in the State of New York, offering loan modification services to consumers. Upon information and belief, Defendant Menon was also an owner, director, officer, manager, and/or agent of Defendants Express Home Solutions and Empire Home Savings. During relevant times, Defendant Menon was not registered as a mortgage broker with the New York State Banking Department.

31. Defendant Chris Marino (“Marino”) is an owner, director, officer, manager, and/or agent of Defendant SMH and/or affiliated business entities. During relevant times, Defendant Marino engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Marino was not registered as a mortgage broker with the New York State Banking Department.

(b) The Selig Law Group

32. Defendant The Selig Law Group, P.C. (“Selig”) is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal places of business in Nassau and Kings Counties. Defendant Selig is affiliated with, if not identical to, Defendant SMH. During relevant times, Defendant Selig has conducted business at either 1035 Stewart Avenue, Garden City, New York 11530 or 55 Washington Street, Suite 851, Brooklyn, New York 11201.

(c) Express Modifications and Related Parties

33. Defendant Express Modifications Inc. (“Express Modifications”) is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. Defendant Express Modifications is affiliated with, if not identical to, Defendant SMH and Selig. During relevant times, Defendant Express Modifications has conducted business at 595 Stewart Avenue, Suite 720, Garden City, New York 11530. During relevant times, Defendant Express Modifications was not registered as a mortgage broker with the New York State Banking Department.

34. As of December 22, 2009, Defendant Express Modifications or its agents maintained a bank account (Acct. No. 768327511) at TD Bank, NA in Cherry Hill, New Jersey, into which clients’ payments were deposited.

35. Defendant David Gotterup (“Gotterup”) is an owner, director, officer, manager, and/or agent of Defendant Express Modifications and/or affiliated business entities. During relevant times, Defendant Gotterup engaged in business activities in the State of New York,

offering loan modification services to consumers. During relevant times, Defendant Gotterup was not registered as a mortgage broker with the New York State Banking Department.

(d) Express Home Solutions and Related Parties

36. Defendant Express Home Solutions, Inc. (a/k/a Express Home 411, a/k/a Express Debt Solutions) (“Express Home”) is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. Defendant Express Home is affiliated with, if not identical to, Defendants SMH, Selig, and Express Modifications. During relevant times, Defendant Express Home has conducted business at 595 Stewart Avenue, Suite 720, Garden City, New York 11530 or 475 Bement Avenue, Staten Island, New York 10310. During relevant times, Defendant Express Home was not registered as a mortgage broker with the New York State Banking Department.

37. As of March 22, 2010, Defendant Express Home or its agents maintained at least two bank accounts (Acct. Nos. 0702644111, 0702644121) at TD Bank, NA in Cherry Hill, New Jersey, into which clients’ payments were deposited.

38. Defendant Kenneth Sarosi (“Sarosi”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or an affiliated business entity. During relevant times, Defendant Sarosi engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Sarosi was not registered as a mortgage broker with the New York State Banking Department.

39. Defendant Brian Mangan (“Mangan”) is an attorney registered in the State of New York (New York State Bar Registration # 4829263). During relevant times, Defendant

Mangan engaged in business activities in the State of New York, representing himself as an attorney for Defendants Empire Home Saver, or Express Home, and/or affiliated business entities, and offering loan modification services to consumers. During relevant times, Defendant Mangan was not registered as a mortgage broker with the New York State Banking Department.

40. Defendant Michael Anderson (“Anderson”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities. During relevant times, Defendant Anderson engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Anderson was not registered as a mortgage broker with the New York State Banking Department.

41. Defendant Sandra Gonzalez (“Gonzalez”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities. During relevant times, Defendant Gonzalez engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Gonzalez was not registered as a mortgage broker with the New York State Banking Department.

42. Defendant Delsy Valasquez (“Valasquez”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities. During relevant times, Defendant Valasquez engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Valasquez was not registered as a mortgage broker with the New York State Banking Department.

43. Defendant Tannia Grigo (“Grigo”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities. During relevant times,

Defendant Grigo engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Grigo was not registered as a mortgage broker with the New York State Banking Department.

44. Defendant Miladys Doe (“Miladys”), this last name being fictitious, is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities. During relevant times, Defendant Miladys engaged in business activities in the State of New York, offering loan modification services to consumers. Upon information and belief, during relevant times, Defendant Miladys was not registered as a mortgage broker with the New York State Banking Department.

45. Defendant Richard Masini (“Masini”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities, in particular, Express Home 411. During relevant times, Defendant Masini engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Masini was not registered as a mortgage broker with the New York State Banking Department.

46. Defendant Edwin Garcia (“Garcia”) is an owner, director, officer, manager, and/or agent of Defendant Express Home and/or affiliated business entities. During relevant times, Defendant Garcia engaged in business activities in the State of New York, offering loan modification services to consumers. During relevant times, Defendant Garcia was not registered as a mortgage broker with the New York State Banking Department.

47. Defendant Robert Weinreb (“Weinreb”) is an attorney registered in the State of New York (New York State Bar Registration #2653855). At relevant times, a selection of clients who wished to pay for Defendant Express Home’s services by wire transaction were instructed to make these payments to Acct. No. 483021917197 at Bank of America. These wire instructions specifically identified Defendant Weinreb as the account beneficiary.

(e) Empire Home Saver and Related Parties

48. Defendant Empire Home Saver Incorporated (a/k/a Empire Home Savings) (“Empire Home Saver”) is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. Defendant Empire Home Saver is affiliated with, if not identical to, Defendants SMH, Selig, Express Modifications, and Express Home. During relevant times, Defendant Empire Home Saver has conducted business at 595 Stewart Avenue, Suite 720, Garden City, New York 11530 or 591 Stewart Avenue, Garden City, New York 11530.

49. Defendant Gotterup is an owner, director, officer, manager, and/or agent of Empire Home Saver or an affiliated business entity. Defendant Gotterup is listed as the recipient under the Empire Home Saver DOS Process Address at 595 Stewart Avenue #720, Garden City, New York 11530.

(f) Defendants’ Failure to Observe Corporate Formalities

50. Defendants SMH, Selig, Express Modifications, Express Home, and Empire Home Savers, and their related entities, aliases, affiliates, divisions, and enterprises, are companies owned and dominated by a recurring set of individuals. All of these Defendant

companies have at times shared the same principal place of business. They have failed to observe corporate formalities, and freely substitute each others' corporate names on legal documents. These Defendant companies frequently assume each others' contractual obligations, where they have not successfully evaded such obligation.

JURISDICTION AND VENUE

51. This Court has personal jurisdiction over Defendants pursuant to CPLR § 301 because Defendants reside and/or are doing business within the State of New York. Alternatively, Defendants are subject to long-arm jurisdiction pursuant to CPLR § 302(a).

52. Venue is proper in Nassau County pursuant to CPLR § 503(a) and (c) because one or more of Defendants have their principal place of business in Nassau County.

FACTUAL BACKGROUND

Overview of the Scheme

53. Defendants' business is based on a simple scheme: a false promise to modify the homeowner's mortgage in exchange for an upfront payment. After receiving the payment, Defendants often fail to make initial contact with the lender or servicer for months – if at all – or fail to have substantive discussions or negotiations with the lender or servicer. In many cases, Defendants fail to perform even the most basic promised services or achieve any beneficial results. Finally, breaking yet another promise, Defendants refuse to refund the homeowner's money when they fail to obtain a successful modification.

54. Defendants locate victims through various means, including cold-calls, print and Internet advertisements, and referrals from friends and family. Until recently, Defendant Express Home operated a website at <http://www.expresshomesolutions.us> (**Attached hereto as**

Exhibit A). Defendant Empire Home Savers operates a website under its Empire Home Savings alias at <http://www.empiresavings.com> (**Attached hereto as Exhibit B**).

55. Defendants frequently represent that they possess specialized knowledge or expertise that virtually guarantees success.

56. When first meeting with a homeowner, Defendants ask for an advance fee, usually calculated as a percentage of the homeowner's remaining mortgage balance. The homeowner pays the advance fee by cash, check, or wire transfer, either to an individual employee or to one of the Defendants' corporate entities.

57. Defendants' first meeting with a homeowner may take place at the homeowner's home, or the homeowner may come in to Defendants' offices to meet. In some instances, Defendants and the homeowner never meet face-to-face; rather, all communications are made by phone, e-mail, or fax.

58. In the initial stages of Defendants' relationship with a homeowner, they inquire about the homeowner's financial situation, and collect documents relating to the homeowner's mortgage and tax payments. Defendants usually will have the homeowner sign a contract outlining the services to be provided. In many instances, the homeowner never receives a signed copy of the contract.

59. Defendants represent to the homeowner, either in writing or verbally, that they will file an application for a loan modification on her behalf and will receive a speedy response. Defendants also almost always guarantee, either in writing or verbally, that the homeowner will receive a refund of the advance fee she paid if the application for a loan modification is not

successful. Defendants often discourage a homeowner from contacting or sending payments to her lender or mortgage servicer during the “negotiation” period.

60. After receiving the upfront payment, Defendants draft documents resembling submissions to the homeowner’s mortgage servicer for a loan modification. In some cases, Defendants will send these materials to the lender or servicer; in some cases, they will not.

61. Regardless of whether Defendants actually submit a modification request to the lender or servicer, and regardless of whether the lender or servicer ever issues a response, a homeowner will usually have difficulty receiving any refund from Defendants. If a homeowner persistently requests a refund or expresses discontent, Defendants will become evasive and often cease to respond to homeowner communications. Defendants will also adopt new identities during the course of their relationship with homeowners, leaving homeowners with the burden of discovering the latest Defendant identity in order to further pursue a refund request.

Facts Relating to Plaintiffs

(a) Ayana Rush

62. Ms. Rush first learned about Defendant SMH when she received a circular from the company by mail near the end of 2008. The circular advertised, among other things, that Defendant SMH obtains loan modifications for its clients at the lowest interest rate possible through an expedited process at low cost. Ms. Rush did not immediately contact Defendant SMH upon receiving the circular.

63. Ms. Rush has had a mortgage on her home since 2005, when she purchased the home from her mother and the deed and mortgage were transferred to her. In 2006, Ms. Rush

refinanced the mortgage in her own name, which had a balance of approximately \$292,000 at that time.

64. Ms. Rush is an African-American resident of East New York and works two jobs – as the manager of a senior citizens’ program and as an adjunct professor at Metropolitan College. When her salary was cut during the recession, she started having difficulty making her monthly mortgage payments.

65. During 2008, Ms. Rush began to make partial or late payments on her mortgage, in part because her income from teaching at Metropolitan College was reduced as a result of the financial crisis. As a result of these partial or late payments, on December 30, 2008, Ms. Rush received a notice from CitiMortgage that her mortgage was in default. Specifically, this notice stated that “[i]f the default is not cured by 01/30/09, we may require immediate payment in full, and we or another person may acquire the property by means of foreclosure and sale.”

66. Because of the status of her mortgage and her inability to make full and timely payments, in January 2009, Ms. Rush sought help and called the number from the circular she received from Defendant SMH. Defendant Benjamin Abraham (“Abraham”) answered her call and scheduled an appointment with Ms. Rush at her home to discuss Defendant SMH’s loan modification services.

67. Shortly thereafter, Defendant Abraham visited Ms. Rush’s home and gave her an overview of the loan modification services offered by Defendant SMH. During this meeting, Defendant Abraham made several representations about Defendant SMH, including but not limited to the following: (i) a 95% success rate for negotiating loan modifications; (ii) a good

reputation with CitiMortgage; and (iii) that Defendant SMH is one of the few companies with which the federal government contracted to assist people with loan modifications. In addition, Defendant Abraham represented that Defendant SMH could reduce Ms. Rush's current mortgage payment of \$2,500.00 per month to \$1,500.00 per month, including taxes and home insurance. Defendant Abraham never advised Ms. Rush that loan modification services are typically offered for free by HUD-approved counselors.

68. At the same meeting, Defendant Abraham stated that because Defendant SMH was a law firm, Ms. Rush would have to pay an upfront fee of \$1,000.00 before any services were rendered. In addition to the upfront fee, Defendant Abraham informed Ms. Rush that she would later pay additional fees based on the total time spent by Defendant SMH on her behalf.

69. Defendant Abraham requested that Ms. Rush write a check for the \$1,000.00 upfront fee at their initial meeting. However, Ms. Rush responded that she wanted to visit Defendant SMH's office before making any payments. In addition, Ms. Rush expressed concern that she could not afford to pay the upfront fee.

70. Defendant Abraham advised her to pay the upfront fee to Defendant SMH in lieu of making her monthly mortgage payment to demonstrate that she was experiencing financial hardship and was unable to afford her current payments. Ms. Rush did not heed this advice.

71. After Defendant Abraham's visit, he e-mailed a packet of information to Ms. Rush. The packet included an "Agreement for Research and Analysis" dated January 27, 2009 (**Attached hereto as Exhibit C**). Ms. Rush's name was typed in as the "Client" and there were spaces for her signature and the signatures of Defendant Abraham, identified as a "Loan

Modification Specialist,” and Defendant Amit Singh (“Singh”), identified as “President” of Defendant SMH. The Agreement included the following provisions:

- a. That Defendant SMH is “in the business of providing an analysis of real estate-secured and general debt, income and the examining the potential for restructuring real property-secured debt and general debt which may include but not be limited to entering into negotiations with proposed real estate lender(s) and general creditors.”
- b. That “Client wishes to employ [Defendant SMH] to perform the following services, (“the Services”): (a) analyze Client’s debt situation, (b) research potential debt restructuring options that are or may be available to Client, and (c) present Client and lender(s) with the results of such research.”
- c. That “[u]pon receipt of all information from Client and payment in advance for the Services as provided herein, [Defendant SMH] shall promptly analyze Client’s financial situation”
- d. That “in consideration of the foregoing, Client agrees to pay to [Defendant SMH] upon execution of this Agreement, the sum of **One Thousand Dollars (\$1000)** as initial payment in advance for the Services. Before completion of the loan modification, Client agrees to pay [Defendant SMH] the sum of **Two Thousand Dollars (\$2000)** for a total **Three Thousand Dollars (\$3000)**.”
- e. That “in the event that a modification is not approved by lender, all fees shall be refunded to Client except for a minimal service fee.”

72. In January 2009, Ms. Rush visited Defendant SMH’s offices, then located at 1035 Stewart Avenue, Suite 350, Garden City, New York 11530. She was comforted by the official appearance of the office and believed that Defendant SMH was a legitimate business. During her visit, Defendant Abraham introduced Ms. Rush to a woman named Danielle, who never revealed her last name (“Danielle”). Defendant Danielle informed Ms. Rush that she would be the attorney handling her case.

73. Although Ms. Rush never signed the “Agreement for Research and Analysis” that she received from Defendant Abraham, she nevertheless took other requisite steps to engage the

services of Defendant SMH. On February 6, 2009, Ms. Rush paid the requested upfront fee of \$1,000.00 by credit card. When she noticed on her credit card statement that this payment was made to Defendant The Selig Law Group, P.C. (“Selig”), she inquired why this payment was not made to Defendant SMH. Defendant Danielle responded that Defendant Selig was the firm of attorneys that worked with Defendant SMH. In addition, Ms. Rush faxed Defendant SMH several documents, including a bank authorization form, a statement of her personal information, bank statements, information about her current assets, and her tax return from 2008.

74. Throughout February 2009, Ms. Rush persistently contacted Defendant Abraham to inquire about the status of her loan modification. Defendant Abraham represented that Defendant SMH was negotiating with CitiMortgage and that her documents had been submitted to the underwriting department. He also informed her that it should take approximately 30 days for her to receive a loan modification.

75. Ms. Rush subsequently inquired with Defendant Danielle about why CitiMortgage had not sent her any correspondence confirming its receipt of her application for a loan modification. Defendant Danielle responded that Ms. Rush needed to be patient. Ms. Rush had, essentially, the same conversation with Defendant Danielle several times throughout the spring of 2009. At one point, Ms. Rush asked Defendant Danielle if she would receive a refund if Defendant SMH was unsuccessful in obtaining a loan modification. Defendant Danielle said that she would not, explaining that Ms. Rush would owe Defendant SMH money because of several hours that had been billed on her behalf.

76. In March 2009, Defendant Danielle informed Ms. Rush that Defendant Abraham had left Defendant SMH and would no longer be her point of contact.

77. In April 2009, Defendant Danielle called Ms. Rush and informed her that the total bill for Defendant SMH's services was \$4,000.00. Defendant Danielle requested that Ms. Rush make this payment immediately because the bill was for services previously rendered. Ms. Rush contested the bill and requested documentation of the work performed by Defendant SMH on her behalf. Defendant Danielle never provided any such documentation to Ms. Rush.

78. Defendant Danielle then suggested, as a compromise, that Ms. Rush could pay the \$3,000.00 balance due to Defendant SMH once her loan modification was obtained. Ms. Rush responded that she would not agree to make any payments until she received a loan modification.

79. In April 2009, Ms. Rush called CitiMortgage to inquire about the status of her application for a loan modification and was informed that no such application had ever been received. In addition, CitiMortgage had never been contacted by Defendant SMH.

80. Ms. Rush then attempted to confront Defendant SMH with this new information. However, when Ms. Rush called, no one answered the phone. Eventually, Defendant SMH's number was disconnected. Ms. Rush even attempted to visit Defendant SMH's office in person at the 1035 Stewart Avenue address, but the company had relocated.

81. During the entirety of Ms. Rush's relationship with Defendant SMH, she received no legal advice.

82. In May 2009, Ms. Rush called CitiMortgage again and attempted to negotiate a lower interest rate on her own. Soon thereafter, she was granted a trial loan modification and her mortgage payments were temporarily reduced from approximately \$2,500.00 per month to \$2,219.51 per month, including taxes and home insurance.

83. Ms. Rush's trial loan modification continued to remain in effect until PennyMac bought her mortgage from CitiMortgage on January 14, 2011. PennyMac informed Ms. Rush that she would have to reapply for a loan modification with PennyMac, and that because she was not making full payments on her mortgage during her trial loan modification, she was in arrears by \$29,000.00. On February 28, 2011, Ms. Rush submitted a new application for a loan modification to PennyMac, which is still pending.

84. Ms. Rush is in a worse financial position because of her relationship with Defendant SMH. During the five months that she waited for Defendant SMH to negotiate a loan modification on her behalf, Ms. Rush continued to owe unmodified payments of \$2,500.00 every month. When she later applied for a loan modification on her own, Ms. Rush received quick results over the phone and thereafter had to pay only \$2,219.51 per month. Had Ms. Rush not (i) hired Defendant SMH and its agents in January 2009 and (ii) relied on their purported services through May 2009, she could have reaped the benefits of her own modification efforts at a much earlier date.

(b) Gul Magsood

85. Mr. Magsood first heard about Defendant SMH from a family member. On or about April 29, 2009, he met for the first time with Defendant SMH at his residence in Flushing, New York. He met with Defendant Huma (Helen) Halimi ("Halimi") and two other Defendant SMH employees.

86. Mr. Magsood has had a mortgage on his home since approximately 2007, which was initially serviced by American Mortgage Network and later Bank of America. Before his contact with Defendant SMH, Mr. Magsood was current with his mortgage payments.

87. At the initial meeting, Defendant Halimi told Mr. Magsood that she could help him obtain a lower interest rate on his mortgage and reduce his monthly payments from approximately \$2,300.00 to \$1,300.00 to \$1,500.00 (approximately \$1,700.00 with the inclusion of property tax and insurance). She told him she was giving him a discount from the normal fee charged by Defendant SMH because many members of his family were already working with her. She explained that within two months, Defendant SMH would submit a loan modification application on his behalf to Bank of America, and that it would take approximately six to nine months to obtain the modification.

88. Defendant Halimi verbally guaranteed that if Defendant SMH was unable to obtain a loan modification for Mr. Magsood, he would receive a full refund.

89. Defendant Halimi provided Mr. Magsood with a packet of information on Defendant SMH's services, which contained a generic letter addressed to homeowners whose "mortgage payments have become difficult," are "1-90 days late on payments," or "are currently in foreclosure or fear the threat of foreclosure." The letter explained that the company would now be the homeowner's "representative," would negotiate directly with her current lender to modify her existing loan, and would create an "individualized workout plan" for the homeowner.

90. On or about April 29, 2009, Mr. Magsood entered into an "Agreement for Research and Analysis," with Defendant SMH. The Agreement was signed by Defendant Navin

Menon (“Menon”), identified as a “Loan Mitigation Specialist,” and by Defendant Chris Marino (“Marino”), identified as “Branch Manager.”

91. The “Agreement for Research and Analysis” included the following provisions:

- a. That Defendant SMH is “in the business of providing an analysis of real estate-secured and general debt, income and the examining the potential for restructuring real property-secured debt and general debt which may include but not be limited to entering into negotiations with proposed real estate lender(s) and general creditors.”
- b. That “client wishes to employ [Defendant SMH] to perform the following services, (“the Services”): (a) analyze Client’s debt situation, (b) research potential debt restructuring options that are or may be available to Client, and (c) present Client and lender(s) with the results of such research.”
- c. That “[u]pon receipt of all information from Client and payment in advance for the Services as provided herein, [Defendant SMH] shall promptly analyze Client’s financial situation . . .”
- d. That “in consideration of the foregoing, Client agrees to pay to [Defendant SMH] upon execution of this Agreement, the sum of **Three Thousand Seven Hundred Eighteen Dollars** (\$3718) as initial payment in advance for the Services.”
- e. That “in the event that a modification is not approved by lender, all fees shall be refunded to Client except for a minimal service fee.”

92. Defendant SMH required Mr. Magsood to provide the company with various forms of documentation, including mortgage statements, bank statements, tax information, and documents demonstrating income and expenses. Mr. Magsood provided Defendant SMH with these and other relevant documents, operating under the assumption that they would be useful in the loan modification process.

93. On or about April 29, 2009, Mr. Magsood paid a \$3,718.00 “service fee” to Defendant SMH by personal check, in advance of their services. The payment was documented

in an invoice from Defendant SMH to Mr. Magsood, dated May 1, 2009. Defendant SMH cashed Mr. Magsood's check immediately.

94. On or about June 2009, Mr. Magsood contacted Defendant SMH regarding his application, and shortly thereafter he met with Defendant Menon at the company's office at 595 Stewart Avenue. From that point forward, Defendant Menon became Mr. Magsood's main point of contact at the company.

95. At some point during his contact with Defendant SMH, Mr. Magsood received a letter in the mail from Defendant Halimi and Anu Singh, informing him that they had switched their "third Party processing company" from "Save My Home Now" to "Express Home Solutions."

96. Over the course of the next year, from approximately July 2009 through June 2010, Defendants SMH and Menon failed to respond to Mr. Magsood's phone calls, and as a result, Mr. Magsood visited the company's office many times. On several of these occasions, he met with Defendant Menon to discuss the status of his application.

97. On or about December 2009 Defendant Menon advised Mr. Magsood not to make one of his monthly mortgage payments, representing that it would be beneficial for his loan modification application. Pursuant to Defendant Menon's advice, Mr. Magsood did not make his January 2010 mortgage payment.

98. On or about June 11, 2010, Defendant Menon told Mr. Magsood that he needed to provide additional documents to Bank of America for the application and that a decision would be reached between July 2, 2010 and July 17, 2010.

99. On September 24, 2010, Mr. Magsood received a letter from Bank of America informing him that he would receive a response to his application within 30 days.

100. On or about October or November 2010, Mr. Magsood received a phone call from Defendant David Gotterup (“Gotterup”), who claimed to be the new owner of the company, which he referred to as Defendant Express Home Solutions (“Express Home”). The call came from Defendant SMH’s phone number (516) 280-7111. Defendant Gotterup told Mr. Magsood that Defendant Halimi and another employee had stolen a large sum of money from the company. He demanded that Mr. Magsood send additional payments to Defendant Express Home if he wanted the company to submit his documents to the bank.

101. Immediately after his conversation with Defendant Gotterup, Mr. Magsood called Bank of America to confirm the status of his application. He was told that his application was complete and that he did not need to submit any additional paperwork. Mr. Magsood did not send any additional money to Defendant Gotterup.

102. Some time after his conversation with Defendant Gotterup, Mr. Magsood attempted to call Defendant Express Home at the same phone number, (516) 280-7111, but the number had been disconnected.

103. On or about February 2011, Mr. Magsood was informed by Bank of America that his application for a loan modification had been denied.

104. Shortly thereafter, Mr. Magsood began preparing another loan modification application to Bank of America on his own.

105. In the end of February or early March 2011, Mr. Magsood telephoned Defendant Menon in order to locate certain documents of his that he had given to Defendant SMH and now needed to complete his loan modification application. He met with Defendant Menon twice at Defendant Express Home's offices, approximately one week apart.

106. In the first meeting, Mr. Magsood and Defendant Menon discussed which documents Mr. Magsood needed for his application, and Defendant Menon agreed to draft a hardship letter for him.

107. In the second meeting, on or about March 2, 2011, Defendant Menon informed Mr. Magsood that his client file at Defendant SMH (now Defendant Express Home) had been destroyed, along with all associated documents that Mr. Magsood had provided to the company during the previous year-and-a-half. Defendant Menon explained that because Mr. Magsood had not paid the additional fee as requested by Defendant Gotterup, he was no longer a client of Defendant Express Home.

108. Mr. Magsood is no longer in contact with Defendant Express Home or Defendant Menon.

109. Mr. Magsood has not received a refund for the \$3,718.00 he paid to Defendant SMH and its employees for their loan modification services. At first, he did not request a refund directly from Defendant SMH (or Defendant Express Home) because he was unable to reach the company once the phone number was disconnected.

110. Though Mr. Magsood made contact with Defendant Menon once again in February or March 2011, he has not requested a refund, because according to Defendants Menon

and Gotterup, he ceased to be a client of Defendant Express Home once he refused to pay an additional fee. Mr. Magsood believes that Defendant Gotterup's demand of an additional fee for continuing services for which he already paid Defendant SMH indicates that Defendant Express Home would refuse to issue him a refund.

111. Mr. Magsood suffered financial consequences for failing to make his January 2010 monthly mortgage payment, as advised by Defendant Menon. He remains one month behind on his payments and continues to accrue late fees and penalties for the missed payment, such that his monthly mortgage payments have increased from \$2,300.00 to \$2,775.00. His credit score has decreased from approximately 730 to a lower score.

112. In February 2011, the principal balance on Mr. Magsood's mortgage was \$362,748.08.

(c) Angel Osmanzai and Rahim Maqsood

113. Angel Osmanzai first heard about Defendant SMH from a family member in April 2009. She first spoke with Defendant Halimi on the phone that month. On or about April 29, 2009, she and her husband Rahim Maqsood met with Defendant SMH employees Defendant Halimi and Ms. Singh at their residence in Fresh Meadows.

114. At the time of their initial meeting with Defendant SMH, Ms. Osmanzai and Mr. Maqsood owned a total of three properties. Mr. Maqsood owns their primary residence, located in Fresh Meadows, New York. Ms. Osmanzai owns their two investment properties, one in College Point, New York, and the other in Stroudsburg, Pennsylvania. Ms. Osmanzai manages the mortgages on all three properties for the couple, though the Fresh Meadows property and

mortgage are held in Mr. Maqsood's name. Ms. Osmanzai also managed the relationship with Defendant SMH and its agents during the course of their services.

115. Mr. Maqsood has had a mortgage on the Fresh Meadows property for twelve years, which is serviced by American Home Mortgage Servicing. Ms. Osmanzai has had a mortgage on the College Point property for eleven years, which was initially serviced by Washington Mutual and later by Chase. She has had a mortgage on the Stroudsburg property since 2001, which was initially serviced by Countrywide and later by Bank of America.

116. Before his contact with Defendant SMH, Mr. Maqsood was current with his mortgage payments on the Fresh Meadows property. Before her contact with Defendant SMH, Ms. Osmanzai was current with her mortgage payments on the College Point and Stroudsburg properties.

117. At this meeting, Defendant Halimi told Ms. Osmanzai and Mr. Maqsood that Defendant SMH could help them obtain a loan modification on each of the three properties. She said that she could help reduce their monthly mortgage payments, and that it was very possible she could obtain a 2% interest rate on the mortgages. Defendant Halimi explained that her role would be as their advocate. Ms. Osmanzai and Mr. Maqsood would cease contact with their lenders, and instead, Defendant Halimi would communicate on their behalf. Defendant Halimi assured them that any modification offer from the lender would not be final; she would continue to negotiate for more favorable terms on their behalf.

118. Defendant Halimi also described Defendant SMH as the best firm in the business and as very successful in obtaining low interest rates for clients. Defendant Halimi, who is from

Afghanistan like Ms. Osmanzai and Mr. Maqsood, said that her main goal was to help people from her country and that she would never hurt anyone in their community.

119. Defendant Halimi outlined the terms of the loan modifications she expected to obtain for each of the three properties and the associated cost of Defendant SMH's services, reflected in her notes to Ms. Osmanzai. For the Fresh Meadows property, the monthly payments would be reduced from approximately \$627.00 to approximately \$200.00 or \$300.00, at a cost of \$1000.00. For the College Point property, the monthly payments would be reduced from approximately \$960.00 to \$561.60, at a cost of \$1,500.00. For the Stroudsburg property, the monthly payments would be reduced from approximately \$2,300.00 or \$2,400.00 to \$1,083.00, at a cost of \$2,600.00 (1% of the mortgage value).

120. Defendant Halimi told Ms. Osmanzai that the loan modification process would take three months.

121. Defendant Halimi also verbally guaranteed to Ms. Osmanzai and Mr. Maqsood that if Defendant SMH were unable to obtain a loan modification for them, or if they were unhappy with the terms of a loan modification offered by the bank, they would receive a full refund.

122. Defendant Halimi provided Ms. Osmanzai with a packet of information on Defendant SMH's services, which contained a generic letter addressed to homeowners whose "mortgage payments have become difficult," are "1-90 days late on payments," or "are currently in foreclosure or fear the threat of foreclosure" (**Attached hereto as Exhibit D**). The letter explained that the company would now be the homeowner's "representative," would negotiate

directly with her current lender to modify her existing loan, and would create an “individualized workout plan” for the homeowner.

123. During the course of their contact, Defendant Halimi advised Ms. Osmanzai to take the following actions to increase her chances of obtaining a loan modification: (i) stop making mortgage payments on the three properties until she received a loan modification; (ii) minimize the amount of money she held in her bank account in order to indicate to her lenders that she would be unable to make her mortgage payments; and (iii) cease contact with her lenders.

124. On or about April 29, 2009, at the first meeting with Defendant SMH, Ms. Osmanzai and Mr. Maqsood entered into an “Agreement for Research and Analysis” with Defendant SMH (**Attached hereto as Exhibit E**). The Agreement was signed by Defendant Marino, identified as “Branch Manager.”

125. The “Agreement for Research and Analysis” included the following provisions:

- a. That Defendant is “in the business of providing an analysis of real estate-secured and general debt, income and the examining the potential for restructuring real property-secured debt and general debt which may include but not be limited to entering into negotiations with proposed real estate lender(s) and general creditors.”
- b. That “client wishes to employ [Defendant SMH] to perform the following services, “the Services”): (a) analyze Client’s debt situation, (b) research potential debt restructuring options that are or may be available to Client, and (c) present Client and lender(s) with the results of such research.”
- c. That “[u]pon receipt of all information from Client and payment in advance for the Services as provided herein, [Defendant SMH] shall promptly analyze Client’s financial situation . . . ”
- d. That “in consideration of the foregoing, Client agrees to pay to Save My Home upon execution of this Agreement, the sum of **Five Thousand One Hundred Dollars** (\$5100.00) as initial payment in advance for the Services.”

- e. That “in the event that a modification is not approved by lender, all fees shall be refunded to Client except for a minimal service fee.”

126. On or about April 29, 2009, Ms. Osmanzai and Mr. Maqsood paid an upfront fee of \$3,100.00 by personal check to Defendant SMH. This payment was documented by invoices from Defendant SMH to Angel Osmanzai, dated April 29, 2009.

127. On or about June 2, 2009, Ms. Osmanzai paid \$2,000.00 in cash to Defendant SMH for their services. This payment was documented by an invoice from Defendant SMH to Angel Osmanzai, dated June 2, 2009.

128. Defendant SMH required Ms. Osmanzai and Mr. Maqsood to provide it with various forms of documentation, including mortgage statements, bank statements, tax information, and credit card statements. Ms. Osmanzai and Mr. Maqsood provided Defendant SMH with these and other relevant documents, operating under the assumption that they would be useful in the loan modification process.

129. Pursuant to Defendant Halimi’s advice, Ms. Osmanzai ceased making mortgage payments on the Stroudsberg property in April 2009.

130. Ms. Osmanzai did not hear from Defendant SMH regarding her loan modification application for four months after she retained their services. She attempted to reach Defendant Halimi on many occasions, leaving messages with Ms. Singh, her assistant, but Defendant Halimi would not return her phone calls.

131. In or about August 2009, Ms. Osmanzai contacted Bank of America regarding the Stroudsberg property and discovered that the bank did not have a pending loan modification application for her, which should have been submitted by Defendant SMH. On or about

September 3, 2009, Ms. Osmanzai independently submitted such an application to Bank of America.

132. In or about September 2009, Ms. Osmanzai received phone calls from Chase and American Home Mortgage Servicing regarding the College Point and Fresh Meadows properties, respectively, and was informed that her applications for loan modification had been denied.

133. On September 22, 2009, Ms. Osmanzai e-mailed Defendant Halimi to request a refund for Defendant SMH's services.

134. In or about the end of September 2009, Defendant Halimi called Ms. Osmanzai and explained that Defendant SMH had closed because the company's attorneys had been indicted, and that she was now working for the company Defendant Express Home. Some time later, Ms. Osmanzai also received a letter in the mail from Defendant Halimi and Ms. Singh informing her that they had switched their "third Party processing company" from "Save My Home Now" to "Express Home Solutions" (**Attached hereto as Exhibit F**).

135. In or about November or December 2009, Defendant Halimi stopped returning Ms. Osmanzai's phone calls.

136. In or about January 2010, an unidentified attorney at Defendant Express Home directed Ms. Osmanzai to Defendant Menon, who became her main contact at Defendant Express Home.

137. On January 10, 2010, Defendant Menon advised Ms. Osmanzai to provide her lenders with bank statements reflecting low balances.

138. On April 19, 2010, Ms. Osmanzai received a letter from Bank of America regarding the Stroudsberg property, informing her that her loan modification application had been denied.

139. In the spring or summer of 2010, Ms. Osmanzai received a phone call from Kenny Sarosi (“Sarosi”) of Defendant Express Home. Defendant Sarosi informed her that Defendant Halimi had never worked with Defendant Express Home, despite Defendant Halimi’s representations. In addition, he told Ms. Osmanzai that he would continue to work on her loan modification applications, making it his top priority and overseeing the process personally. At the same time, he indicated that he believed Ms. Osmanzai had posted a complaint about Defendant Express Home on a website, and he threatened to take legal action against her or whomever had made the complaint.

140. In the spring or summer of 2010, Defendant Menon indicated to Ms. Osmanzai that she had been approved for a loan modification from Bank of America on the Stroudsberg property. She never received any information from the bank outlining the terms of the modification, and Defendant Menon claimed that the bank was responsible for misplacing the modification package.

141. Some time after, in or about the spring or summer of 2010, Ms. Osmanzai met with Defendant Menon and Defendant Brian Mangan (“Mangan”), an attorney, at the office of Express Home Solutions at 595 Stewart Avenue. She went with her brother-in-law, Gul Magsood.

142. At this meeting, Defendant Mangan informed Ms. Osmanzai that Defendant Halimi had abandoned Defendant Express Home and her open client files there. Furthermore, Defendant Mangan claimed that Defendant Express Home was continuing to work on loan modification applications for those clients without any commission. He assured Ms. Osmanzai that he would oversee the loan modification process and that Defendant Menon would keep him informed on the progress of her application.

143. At the same meeting, Defendant Menon told Ms. Osmanzai that several of her loan modification applications regarding the Stroudsberg property had been denied by Bank of America. He showed her his notes indicating that he spoke with the Bank of America departments of Home Retention, Advocacy, and HOPE in February, March, and April of 2010, respectively. He also explained the terms of Ms. Osmanzai's recent modification offer from Bank of America. Defendant Menon said that she had been approved for a trial loan modification for three months, with the possibility of obtaining a permanent modification at the end of the trial period.

144. Ms. Osmanzai made a mortgage payment, but discovered later that the payment went to the amount past due on the mortgage, not to a modified mortgage payment. She was informed by Bank of America that the offer for a trial loan modification had expired before she made the payment, and that she remained delinquent on her payments according to the original terms of her mortgage. Defendant Menon claimed that the trial loan modification offer was still valid and that Ms. Osmanzai had been misinformed by a department of Bank of America that was not responsible for the offer. Defendant Menon's statements regarding the offer have not been corroborated by information provided by Bank of America to Ms. Osmanzai.

145. In the summer or fall of 2010, Ms. Osmanzai received a phone call from an unidentified male that she understood to be an attorney at Defendant Express Home. Based on conversations with her family, Ms. Osmanzai believes that it may have been Defendant Gotterup. The individual claimed to be the new owner of Defendant Express Home, and he demanded that she sign another agreement with the company and pay an additional 2% commission on each mortgage for their services. In exchange, he guaranteed that he would obtain a loan modification for her within 45 days. He also indicated that he had a high success rate in obtaining loan modifications. He described that he had been able to obtain a modification for an individual with eight properties and claimed that he would have no problem doing the same for Ms. Osmanzai's three properties.

146. During this phone call, the new owner told Ms. Osmanzai that he would not move forward with the application and would close her file at Defendant Express Home unless she agreed to his terms. According to him, Defendant Halimi had taken all of the money associated with her clients' accounts when she left the company. He also claimed that the new agreement was required by a new initiative of Attorney General Andrew M. Cuomo to ensure proper documentation for all such agreements. Ms. Osmanzai did not make any additional payments to Defendant Express Home.

147. Ms. Osmanzai was in telephone contact with Defendant Menon on a few occasions after the phone call from the new owner, but her relationship with Defendants Express Home and Menon ended some time after that.

148. Ms. Osmanzai has not received a refund, though she and Mr. Maqsood were denied a loan modification on each of the three properties.

149. Pursuant to Defendant Halimi's advice, Ms. Osmanzai stopped making payments on the Stroudsberg property in April 2009 and has been in default on her mortgage since that time. As a result, she has accrued overdue payments, late fees, and penalties for missed payments.

150. In or about February 2011, the Stroudsberg property went into foreclosure and is presently in the process of a short sale. Ms. Osmanzai is at risk of losing the equity she held in the property.

151. On or about March 2, 2011, Ms. Osmanzai received a letter from Bank of America indicating that she could apply for another loan modification on the Stroudsberg property. Ms. Osmanzai has not yet been able to verify the accuracy or learn the details of this offer.

152. As a result of the default on her mortgage, Ms. Osmanzai has been disqualified from the \$50,000.00 line of equity she held in the College Point property, the charge limits on her credit cards have been reduced, and her credit score has decreased from over 680 to a lower number.

(d) Mohammed Shukran

153. Mr. Shukran first heard about Defendant SMH from a family member. His initial contact with Defendant SMH was in May 2009, and the initial meeting was in person at his home. He met with Defendant Halimi and an unidentified male employee of Defendant SMH.

154. At the time of his first meeting with Defendant SMH, Mr. Shukran was current with his mortgage payments and had a credit score that was approximately 710.

155. At this first meeting, Defendant Halimi told Mr. Shukran that Defendant SMH could help him lower his monthly mortgage payments. She told him that she would only charge him a 1% fee – discounted from the normal fee of 2% – because he was from Afghanistan like herself. Defendant Halimi quoted the fee for modification services as \$3,000.00, to be paid in advance.

156. Defendant Halimi verbally guaranteed that Defendant SMH would be able to obtain a loan modification for Mr. Shukran. She informed Mr. Shukran that the process would take between sixty and ninety days. Neither Defendant Halimi nor the other employee present told Mr. Shukran that he could obtain loan modification services from housing counselors at no cost. Mr. Shukran did not retain the services of Defendant SMH at this first meeting.

157. Later in May 2009, Mr. Shukran met Defendant Halimi and gave her two checks in payment of the \$3,000.00 upfront fee to Defendant SMH. The first check, dated the day of the meeting, was for \$1,500.00. The second check, post-dated two weeks after the meeting, was for \$1,500.00. These payments are documented in an invoice from Defendant SMH to Mr. Shukran, dated May 20, 2009, indicating that Mr. Shukran paid the total due.

158. Defendant SMH cashed Mr. Shukran's check almost immediately.

159. Later in May or June of 2009, Mr. Shukran entered into an "Agreement for Research and Analysis," with Defendant SMH. The Agreement was signed by Defendant Menon, identified as a "Loan Mitigation Specialist," and by Defendant Marino, identified as "Branch Manager." Mr. Shukran signed a copy of the agreement as well, but he was not given a copy of the agreement reflecting his own signature.

160. The “Agreement for Research and Analysis” included the following provisions:

- a. That Defendant SMH is “in the business of providing an analysis of real estate-secured and general debt, income and the examining the potential for restructuring real property-secured debt and general debt which may include but not be limited to entering into negotiations with proposed real estate lender(s) and general creditors.”
- b. That “client wishes to employ [Defendant SMH] to perform the following services, “the Services”): (a) analyze Client’s debt situation, (b) research potential debt restructuring options that are or may be available to Client, and (c) present Client and lender(s) with the results of such research.”
- c. That “[u]pon receipt of all information from Client and payment in advance for the Services as provided herein, [Defendant SMH] shall promptly analyze Client’s financial situation...”
- d. That “in consideration of the foregoing, Client agrees to pay to [Defendant SMH] upon execution of this Agreement, the sum of **Three Thousand Dollars** (\$3000) as initial payment in advance for the Services.”
- e. That “in the event that a modification is not approved by lender, all fees shall be refunded to Client except for a minimal service fee.”

161. When Defendant Menon first called Mr. Shukran to introduce himself as the employee working on his case at Defendant SMH, Defendant Menon required Mr. Shukran to fax in the following documentation: mortgage statements, bank statements, tax documents, and utility bills. Mr. Shukran submitted these and other relevant documents, operating under the assumption that they would be useful in the loan modification process.

162. During this conversation, Defendant Menon told Mr. Shukran that it would take sixty to ninety days for his loan to be modified.

163. Approximately one month after retaining the services of Defendant SMH, Mr. Shukran began calling the company at (516) 280-7711 to check on the status of his application. He called the company repeatedly, but no one returned his calls.

164. As a result, between approximately July 2009 and June 2010, Mr. Shukran visited Defendant SMH's office in Garden City up to fifty times to check on the status of his loan application in person. During that time, Mr. Shukran had several meetings with Defendant Menon, who became his main contact at the company. At each visit, Mr. Shukran asked Defendant Menon to contact Chase Bank. Defendant Menon would leave the room and claimed that he made the phone calls from another office at Defendant SMH. However, Mr. Shukran could never verify whether the calls were actually made.

165. Employees or agents of Defendant SMH continually advised Mr. Shukran not to make timely mortgage payments during their negotiation with Chase because it would demonstrate to the bank that he could not afford his current mortgage payments. Even at Mr. Shukran's first meeting with Defendant SMH in May 2009, Defendant Halimi advised Mr. Shukran that if he stopped making his mortgage payments on time, it would increase his chances of obtaining a loan modification. At a later meeting at the office of Defendant SMH in Garden City, Defendant Menon advised Mr. Shukran not to make his mortgage payments for the same reason.

166. Pursuant to this advice, Mr. Shukran failed to make two mortgage payments on time, in or about July and August of 2009. As a result, he received a notice for collection from his bank, which stated that he was in default on his mortgage. During a subsequent meeting at Defendant SMH's offices, Defendant Menon advised Mr. Shukran to ignore or throw away any notices like this from his bank.

167. On April 27, 2010, almost a year after Mr. Shukran paid Defendant SMH and its employees for their loan modification services, Chase denied his loan modification application.

168. In May 2010, Mr. Shukran met with Defendant Menon and requested a refund, but Defendant Menon refused. Defendant Menon explained that though he could not return his money, he would undertake additional efforts to refinance Mr. Shukran's mortgage at a lower rate, without any additional cost, and that this would take one month. One month later, in or about June 2010, Mr. Shukran called Defendant Menon, who told him that the refinancing had been unsuccessful.

169. Some time after June 2010, Mr. Shukran sent a demand letter to Defendant Express Home asking for a refund. An unidentified individual returned his call and informed him that the company was no longer in business. When Mr. Shukran asked the individual why he had opened the letter addressed to Defendant Express Home if he did not work for the company, the individual hung up the phone.

170. Mr. Shukran has not received a refund for any of the \$3,000.00 he paid to Defendant SMH and its employees for loan modification services. Mr. Shukran is no longer able to contact Defendant SMH, which, upon information and belief, assumed the identity of Defendant Express Home during Mr. Shukran's loan modification process.

171. As a result of Defendant SMH's advice that Mr. Shukran not make his mortgage payments during their negotiations with his mortgage servicer, Mr. Shukran remains two months behind in his mortgage payments. As of December 22, 2010, he was \$4,564.00 past due on his payment and owed \$55.64 in late fees for missed payments. Mr. Shukran's credit score has decreased from approximately 710 to the 500-range.

172. Mr. Shukran later applied for a loan modification from Chase Bank on his own. In late February 2011, he received a trial loan modification for a three-month period, which will turn become permanent if Mr. Shukran makes these three payments on time.

(e) Rita Idavoy

173. Ms. Idavoy was first contacted by Defendant Michael Anderson (“Anderson”), an employee of Defendant Express Home, in spring 2009. As of February 1, 2009, she had the principal sum of approximately \$501,000.00 with interest thereon due on her mortgage, and was approximately three or four months behind on her home loan payments to her servicer, Bank of America.

174. Ms. Idavoy initially declined Defendant Anderson’s offer to modify her mortgage. Defendant Anderson nevertheless continued to call her regularly over the next six months. Defendant Anderson sought to cast his persistence as an asset, claiming that he would be as dogged in pursuing a loan modification as he was in pursuing potential clients.

175. During these unsolicited calls, Defendant Anderson would encourage Ms. Idavoy to check Defendant Express Home’s website and to meet with him, either at the company’s offices or at Ms. Idavoy’s home. In addition, Defendant Anderson told Ms. Idavoy a number of success stories in which Defendant Express Home helped clients that were in worse financial condition than Ms. Idavoy. He suggested that she call some his former clients, one of whom subsequently told Ms. Idavoy that Defendant Express Home had successfully obtained a loan modification for her family.

176. In the summer of 2009, Defendant Anderson contacted Ms. Idavoy's husband, Onel Mulet, on his cell phone. He told Mr. Mulet that he could help him and his wife get a loan modification. To this day, Ms. Idavoy and Mr. Mulet do not know how Defendant Anderson learned their respective phone numbers.

177. In October 2009, in large part to Defendant Anderson's persistence and representations that he would be aggressive in pursuing a loan modification, Ms. Idavoy agreed to engage the services of Defendant Express Home. At this time, Defendant Anderson told Ms. Idavoy that she would get a refund if she did not qualify for a modification.

178. Defendant Anderson initially asked Ms. Idavoy to pay Defendant Express Home approximately \$6,000.00 upfront so that "company lawyers" could begin their work on her behalf. She declined to pay that amount in the first instance, and eventually negotiated the upfront payment down to \$3,500.00, which approximated one month's mortgage payment on her home.

179. On or about November 19, 2009, Ms. Idavoy received an e-mail from Defendant Gotterup (**Attached hereto as Exhibit G**) containing the contract for her engagement of Defendant Express Home. On the same day, Justine Delprete sent Ms. Idavoy another copy of the contract with exactly the same language, which identified the company as "Express Debt Solutions." Ms. Idavoy signed the contract with the Express Debt Solutions heading but she never received a signed copy of the agreement. The contract with Express Debt Solutions did not reference any upfront payment or any refund for an unsuccessful modification attempt. The contract included the following provisions:

- a. “I understand that The Debt Settlement Program is intended for individuals, such as myself, who have indicated a desire to become debt free in the most expeditious way possible and I have agreed to such a plan as outlined in this Agreement. I have decided upon this plan by selecting from options made available by a [sic] Express Debt Solutions representative.”
- b. “I understand that attempting to negotiate the terms of my debt with my Creditors will likely result in the permanent closing of any existing lines of credit and my Creditors may elect to report information or make statements on my credit reports while I'm working with Express Debt Solutions.”
- c. “I agree that, unless otherwise arranged, Express Debt Solutions, will make or attempt to make the required transfer of funds for fees owed Express Debt Solutions, electronically or through whatever other means available, from my personal bank account to Express Debt Solutions or my Program Account.”
- d. “I acknowledge and understand that representatives at Express Debt Solutions are not lawyers and therefore cannot render legal advice. A lawyer licensed to practice law in my state can only render legal advice.”
- e. “Debt Settlement Strategy: I understand the following: This strategy involves the accumulation of money and negotiations with my Creditors in an attempt to reduce the principle amount owed.”

180. Ms. Idavoy paid the \$3,500.00 upfront fee in three installments. Ms. Idavoy made the first two payments of \$1,500.00 and \$1,000.00 on November 4, 2009 and November 20, 2009, respectively, by withdrawing cash from her personal account and depositing it into a TD Ameritrade bank account held by Defendant Express Home. Ms. Idavoy paid the third installment of \$1,000.00 by a check made out to “Express Modification” on December 18, 2009. Ms. Idavoy was told by Defendant Anderson that her upfront payments would be placed in escrow. Her \$1,000.00 check was cashed on December 22, 2009, only four days after she sent it to the company.

181. Defendant Express Home also asked Ms. Idavoy for bank statements and mortgage statements. On January 12, 2010, at Defendant Anderson’s request, Ms. Idavoy sent a

letter to Bank of America authorizing four “agents” of Defendant Express Home to discuss her mortgage account on her behalf. These four agents included Defendants Sandra Gonzalez (“Gonzalez”), Delsy Valasquez (“Valasquez”), Tannia Grigo (“Grigo”), and Anderson. Ms. Idavoy provided these and other relevant documents to Defendant Express Home, believing that they would be helpful to the loan modification process. In addition, Ms. Idavoy was also told to fax any future correspondence she received from Bank of America to Defendant Express Home.

182. On various occasions, Ms. Idavoy called Defendant Express Home’s offices to check on the status of her modification application. On these phone calls, Ms. Idavoy spoke with several women, including Defendants Gonzalez, Valasquez, and a woman known only as “Miladys” (“Defendant Miladys”), all of whom Ms. Idavoy believed were contacting her bank about her modification application. Ms. Idavoy also thought that Defendant Anderson was negotiating with the bank on her behalf because he had told her that he would be as persistent in negotiations with the bank as he was in contacting her to get her business. During several of these calls to Defendant Express Home, Ms. Idavoy was accused of unnecessarily bothering Defendant Express Home’s employees and distracting them from their work. Despite Ms. Idavoy’s requests, Defendant Express Home would not show her any submissions it made to the bank on her behalf.

183. In addition, Defendant Anderson instructed Ms. Idavoy not to contact her bank directly, telling her that any such outreach would compromise Defendant Express Home’s efforts to negotiate a loan modification.

184. Ms. Idavoy's application for a loan modification was ultimately denied for "lack of compliance" in April 2010. Defendant Express Home then started and eventually submitted a Making Home Affordable ("MHA") application on Ms. Idavoy's behalf.

185. On or about April 28, 2010, soon after she was notified that her application for a loan modification was denied, Ms. Idavoy was served with a summons and complaint for foreclosure based on the acceleration clause in her mortgage.

186. On or about May 10, 2010, while the MHA application was pending, Ms. Idavoy decided that she wanted to cancel her contract with Defendant Express Home because no one was returning her calls and her bank had not yet received anything. She called Defendant Express Home and spoke with an unidentified manager who informed her that if she cancelled her contract, she could get a refund (with the exception of approximately \$500.00) because her loan modification had been denied.

187. In May 2010, Ms. Idavoy sent a letter to Defendant Express Home canceling her contract and requesting a refund. She also sent a letter to Bank of America withdrawing Defendant Express Home's authorization to work on her behalf. Ms. Idavoy cancelled the contract primarily because the unidentified manager at Defendant Express Home told her she could receive a refund.

188. Defendant Anderson called Ms. Idavoy to inquire why she had cancelled her contract, and told her that she would not be able to obtain a loan modification on her own. At this point, Ms. Idavoy no longer trusted Defendant Express Home.

189. Ultimately, Ms. Idavoy's bank informed her that her MHA application had been denied because her expenses were greater than her income. When Ms. Idavoy inquired further about the details of her application over the phone, she learned that Defendant Express Home told the bank that she was making large car payments on a frequent basis. Ms. Idavoy does not own a car.

190. In the summer of 2010, Ms. Idavoy was contacted by Defendant Mangan, who identified himself as a lawyer and stated that Defendant Express Home had hired him to boost its reputation. He called Ms. Idavoy to try and convince her to reinstate her contract for loan modification services with the company.

191. Ms. Idavoy and Defendant Mangan exchanged e-mails throughout July and August 2010. Defendant Mangan provided Ms. Idavoy with a list of all of the work that Defendant Express Home had completed on her behalf. In these e-mails, Defendant Mangan informed Ms. Idavoy that "the refund policy applies primarily to clients for who we can not [sic] get a modification accomplished for. It does not apply to clients who de-authorize us from working on a valid modification application." Defendant Mangan further claimed that the manager who told Ms. Idavoy she could get a refund "was mistaken." Defendant Mangan also blamed Ms. Idavoy for the company's failure to obtain a loan modification, explaining that "the bottom line, and this is very clear, is that Express Home Solutions elects not to give refunds to clients when they have done the work and the client is the one responsible for the failure of the modification application."

192. To date, Ms. Idavoy is not aware of any action taken on her foreclosure.

193. Ms. Idavoy's financial situation has deteriorated, and she can no longer make any payments on her mortgage. As a result of the foreclosure, she cannot apply for a refinancing of her loan, her credit score has decreased, and her credit cards have been cancelled.

194. Ms. Idavoy has also suffered significant stress as a result of her foreclosure status. The stress has destroyed her health and her quality of life, causing her to seek medical attention and take the anxiety pill, Ativan. This ordeal has added strain to Ms. Idavoy and Mr. Mulet's marriage.

(f) Rebecca and Brian Verna

195. During 2006, Ms. Verna obtained a \$116,000 mortgage with National City Bank, which was later assumed by PNC Mortgage, at an interest rate of 7.5% per annum to finance the purchase of her home in Prospect Park, Pennsylvania. Shortly after, she obtained a second mortgage with Homecoming Financial, which was later serviced by GMAC Mortgage, on the same property for \$50,000 at an interest rate of 10.5% per annum.

196. Between February and March 2009, Ms. Verna applied for a refinancing with PNC Mortgage to reduce the high interest rates on her mortgages. On or about June 2009, PNC Mortgage rejected Ms. Verna's refinancing application due to insufficient equity in her home.

197. On or about early March 2010, Ms. Verna received a telephone call at her home from a man who identified himself as "Navin," who, upon information and belief, is Defendant Navin Menon. Defendant Menon identified himself as an employee of Defendant Express Home 411 ("411") and informed Ms. Verna that his company assists homeowners in refinancing home mortgage loans and obtaining loan modifications.

198. During her initial March 2010 telephone conversation with Defendant Menon, Ms. Verna explained that she would be interested in lowering the interest rates on her mortgages. Defendant Menon then transferred Ms. Verna to Defendant Richard “Rich” Masini (“Masini”), whom Defendant Menon described as his supervisor.

199. Defendant Masini represented that his company, Defendant 411, was experienced in obtaining reductions on the interest rates of home mortgages and had helped many other homeowners like Ms. Verna. He also stated that Defendant 411 gathers the necessary paperwork and works with the lender on a homeowner’s behalf to obtain a modification.

200. Based on Defendant Masini’s representation that he and Defendant 411 were experienced in obtaining loan modifications, Ms. Verna was persuaded that Defendant 411 could help her ease the financial burden of high interest payments on her mortgage.

201. Before the conclusion of their telephone conversation, Defendant Masini collected Ms. Verna’s basic financial information, including her income, expenses and debts. Defendant Masini also obtained Ms. Verna’s e-mail address.

202. During the course of this telephone conversation, neither Defendant Menon nor Defendant Masini mentioned fees or charges for Defendant 411’s services.

203. Not long after the initial telephone conversation, on or about March 18, 2010, Ms. Verna received an e-mail from another Defendant 411 employee, Erika Rego. Rego e-mailed a package of documents, including a service contract, entitled “Engagement Agreement – Authorization for Negotiation Services” (“Engagement Agreement”).

204. The e-mail Ms. Verna received from Ms. Rego appeared to be from “erego@ExpressHome411.com;” however, the letterhead on all documents received listed the name of a different company, Defendant Express Home, located at 595 Stewart Avenue, Suite 720, Garden City, New York 11530.

205. Included in the documents e-mailed to Ms. Verna was a letter dated March 18, 2010, signed by Defendant Masini (**Attached hereto as Exhibit H**). The letter stated, “Our success rate is outstanding . . . Few people outside the banking world have the specialized knowledge or technical expertise to work with your current Lender to re-structure your mortgage terms. We carry the experience to work with you and your Lender to keep you in your home without struggling financially to do so.”

206. Also included in the documents was an undated letter signed by the “Legal Department” of Defendant Express Home (the “Refund Guarantee Letter”). This letter stated: “The negotiating abilities of our experts make the difference on whether your modification is approved or denied. We will fight for you until we get you the best possible deal from your lender. If we can not [sic] secure your loan modification, we will give you your money back, less a \$595.00 processing fee for the work our experts put into your file.”

207. This was the first time Ms. Verna became aware that Defendant 411 and Defendant Express Home charged a fee for services rendered.

208. Before submitting any payment, Ms. Verna called Defendant Masini on or about March 19 or 20, 2010. During this conversation, Defendant Masini explained to her that the total

fee for Defendant 411's loan modification services would be \$2,750.00: \$2,000.00 for her mortgage with PNC Mortgage and for \$750.00 for her mortgage with GMAC Financial Group.

209. Ms. Verna ultimately agreed to pay the unexpected fees but, before doing so, Ms. Verna asked Defendant Masini during their telephone call what the relationship was between Defendant 411 and Defendant Express Home. Defendant Masini stated that Defendant 411 gathered the necessary paperwork. Then Defendant 411 passed all of the files to Defendant Express Home, whose lawyers and employees work with the lender on a loan modification application. Defendant Masini stated that Defendants 411 and Express Home share the fees, with Defendant 411 receiving \$595.00 for every loan modification application. When asked why his name appeared on many of the documents e-mailed to Ms. Verna even though the documents were from Defendant Express Home in Garden City, New York, Defendant Masini was unable to provide a clear explanation.

210. Defendant Masini pressured Ms. Verna to respond as quickly as possible since he would need to submit her application right away for it to be successful. He even sent her a prepaid Federal Express envelope to expedite delivery of her documents. Defendant Masini gave Ms. Verna his cell phone number so that she could reach him quickly.

211. Within a day or two, Ms. Verna's husband Brian Verna called Defendant Masini. During this conversation, Defendant Masini informed Mr. Verna that the complete loan modification application process would take no less than ninety days. Defendant Masini reassured Mr. Verna that he would have never accepted Ms. Verna's application if he did not think her loan modification was going to succeed.

212. Mr. and Ms. Verna felt more confident about the potential transaction as a result of each of their conversations with Defendant Masini.

213. In order to submit payment to the Defendants, Ms. Verna was required to enter into the Engagement Agreement (**Attached hereto as Exhibit I**). The Engagement Agreement was signed by Defendant Masini, identified on the document as an “authorized representative of Express Home Solutions.”

214. The “Engagement Agreement” included the following provisions:

- a. That Defendant Express Home is “in the business of providing an analysis of real estate-secured debt (mortgages) and examining the potential for restructuring such debt which may include, but is not limited to, entering into negotiations with lenders and/or loan servicers.”
- b. That Defendant Express Home would “contact and begin negotiations with the Client’s Lender or Loan Servicer in an attempt to restructure Client’s mortgage debt which will address any of the following: loan modification, forbearance agreement”
- c. That “client wishes to employ Company to perform the following services: (a) submit a request along with a packaged file to Client’s Lender or Loan Servicer; (b) communicate, correspond, and/or negotiate with the Client’s Lender or Loan Servicer in attempt to restructure Client’s mortgage debt; and (c) for a flat fee, present Client with the result of such communication, correspondence, and negotiation.”
- d. That “Company will timely perform follow-up communication with such Lender or Loan Servicer approving or accepting a Lender Loss Mitigation Option, the respective documents will be forwarded to Client for review.”
- e. That “in consideration of the performance of the Services, Client hereby agrees to pay Company a flat fee of \$500 to be paid at the time of commencement of such Services by Company (“Commencement Fee”), and held in the a [sic] Trust Account.”
- f. That “in the case of a Lender or Loan Servicer’s inability or unwillingness to negotiate or modify Client’s current financial obligation structure, Company will return to Client 0% of the \$500 Commencement Fee

payment for that Lender, along with 0% of Commencement Fee collected for Services related to an additional Lender.”

215. Nobody from Defendant 411 explained to Ms. Verna the discrepancy between the Commencement Fee in the Engagement Agreement and what Ms. Verna was asked to pay.

216. As part of the loan modification application, Defendant 411 and Defendant Express Home required that Ms. Verna provide a range of documents, including, *inter alia*, an authorization to obtain credit information, a Freddie Mac Home Affordable Modification Program application form, and a third-party authorization form to contact her lender.

217. Ms. Verna signed each of the enclosed documents and sent them on or about March 22, 2010, to Defendant Express Home, 595 Stewart Avenue, Suite 720, Garden City, New York 11530, in the prepaid Federal Express envelope that Defendant Masini provided her.

218. Ms. Verna also included in the prepaid Federal Express envelope two checks from a joint bank account she held with Mr. Verna at Wachovia Bank. The checks were dated March 22, 2010, and made payable to “Express Home Solutions”: the first check was for \$2,000.00 and the second check was for \$750.00, in accordance with her earlier conversation with Defendant Menon.

219. Defendant Express Home cashed both checks into TD Bank in Cherry Hill, New Jersey, on or about March 22, 2010. The check for \$2,000.00 was deposited into an account bearing the number 0702644121, and the check for \$750.00 was deposited into an account bearing the number 0702644111.

220. From about March 22, 2010 until late April 2010, Ms. Verna contacted Defendant 411's office in an attempt to obtain information on the status of her loan modification application. She was told that the application was being processed.

221. On or about June or July 2010, after the end of the ninety-day loan modification application period, Ms. Verna called PNC Mortgage to inquire about the progress of her application. An employee of PNC Mortgage informed Ms. Verna that no such application had been submitted on her behalf.

222. After Ms. Verna's conversation with PNC Mortgage, she again contacted Defendant Masini by telephone. During this conversation, Defendant Masini told Ms. Verna there were no updates on the status of her application and that she should contact Defendant Express Home in Garden City's "processing department."

223. From approximately June 2010 until August 2010, Ms. Verna contacted Defendant Express Home on several occasions and spoke with various employees. Nobody she spoke with at Defendant Express Home was able to provide clear information on the status of her application. Each time, someone at Defendant Express Home would request various bills and other financial documentation, and each time Ms. Verna would fax the requested materials. Nevertheless, each phone call from Ms. Verna resulted in yet another request for documents.

224. In late August 2010, Ms. Verna received a letter from PNC Mortgage, dated August 20, 2010 denying her application for a "hardship assistance request."

225. Upon receipt of this letter, Ms. Verna attempted to contact Defendant Masini at Defendant 411 by telephone. After several attempts, she reached Defendant Masini, who

informed her that Defendant Express Home was in possession of both the money she paid to Defendant Express Home and her files.

226. In late August 2010, Ms. Verna called Defendant Express Home to inquire about the rejection letter from PNC Mortgage. An employee of Defendant Express Home asked Ms. Verna to send proof of the rejection. In response, Ms. Verna faxed to Defendant Express Home a copy of the August 20, 2010 letter and a copy of the Refund Guarantee Letter.

227. On or about the first week of September 2010, Ms. Verna received a call on her cell phone from Defendant Mangan. Defendant Mangan informed Ms. Verna that he was an attorney working with Defendant Express Home and told Ms. Verna that she should resubmit her loan modification application. This was Ms. Verna's first conversation with Defendant Mangan.

228. In response, Ms. Verna asked Defendant Mangan for a refund, and also told Defendant Mangan that she was no longer interested in pursuing a loan modification.

229. Defendant Mangan told Ms. Verna that Defendant Express Home does not automatically issue refunds. In addition, Defendant Mangan informed Ms. Verna that he would have to speak with PNC Mortgage to determine why her application was rejected, after which she could resubmit her application. Defendant Mangan then transferred Ms. Verna to another person in his office known to Ms. Verna only as "Miladys", who, upon information and belief, is Defendant Miladys, a person Defendant Mangan said was "in charge" of Ms. Verna's file.

230. Defendant Miladys informed Ms. Verna that based on Ms. Verna's financial information, Ms. Verna "never should have qualified" for loan modification services from Defendant Express Home.

231. Defendant Miladys informed Ms. Verna that Defendant Express Home could resubmit Ms. Verna's loan modification application, but substitute her husband's income and claim that Ms. Verna lost her job. Defendant Miladys explained that since Mr. Verna earned substantially less than Ms. Verna, her new application would have a better chance of being approved.

232. Ms. Verna declined to submit the suggested false information and reiterated her request for a refund.

233. In September and October 2010, Ms. Verna called Defendant Mangan at Defendant Express Home's offices on several occasions. Whenever Ms. Verna was able to reach Defendant Mangan, he would quickly transfer her call to Miladys, who then would attempt to pass Ms. Verna back to Defendant Mangan.

234. On or about November 1, 2010, Ms. Verna faxed a refund request letter to both Defendant 411 and Defendant Express Home. In this refund request letter, Ms. Verna stated that she was willing to forfeit the \$595.00 processing fee so long as the remainder of her original \$2,750.00 application fee was returned.

235. On three additional occasions, on or about November 15, November 26, and December 9, 2010, Ms. Verna faxed her refund request letter to both Defendants 411 and Express Home.

236. On or about November 19, 2010, Mr. Verna reached Defendant Masini, who explained that he was no longer working with Defendant Express Home. Defendant Masini

explained that Defendant 411 takes only \$595.00 of the total \$2,750.00 fee. Defendant Masini promised to refund Defendant 411's share and represented that "the check is in the mail."

237. On or about late November or early December 2010, Ms. Verna could no longer reach Defendant Express Home at either its phone number, (516) 280-7711, or its fax number, (516) 280-7722. Both numbers ceased working.

238. Increasingly frustrated over their inability to reach Defendant Express Home, on or about late November or early December 2010, Mr. and Ms. Verna each started to post queries about Defendant Express Home on an online website for consumers, www.complaints.com.

239. On or about December 9, 2010, Mr. Verna discovered through www.complaints.com that Defendant Express Home was now operating as a company called Empire Home Savings.

240. In December 2010, Mr. Verna discovered the phone number of Defendant Empire Home Savings by searching on the Internet. He called the number, and a receptionist then transferred Mr. Verna to an "attorney," who, upon information and belief, was Defendant Mangan. Mr. Verna explained to Defendant Mangan that Defendant Express Home did not issue a refund as promised. Defendant Mangan did not attempt to refute Mr. Verna's story and did not attempt to deny affiliation with Defendant Express Home. Mr. Verna also informed Defendant Mangan that Defendant Mangan was in breach of the Engagement Agreement by not issuing a refund and stated that he may have to take legal action. Defendant Mangan told Mr. Verna, "Good luck with that," and hung up.

241. Mr. Verna repeatedly tried to call Defendant Empire Home Savings at phone numbers (516) 558-4983 and (432) 233-4234, both of which he had found on the Internet. Out of curiosity, Mr. Verna tried to find employees of Defendants 411 and Express Home in the company directory for Defendant Empire Home Savings. To his surprise, Mr. Verna reached Defendant Menon's voicemail through Defendant Empire Home Savings's directory.

242. On or about December 13, 2010, Mr. Verna called Defendant Masini on what Mr. Verna believed was Defendant Masini's cell phone and the two spoke for about an hour. During this conversation, Defendant Masini apologized again for Mr. and Ms. Verna's experiences with Defendant Express Home. Defendant Masini also told Mr. Verna that he would return the \$595.00 processing fee.

243. Following this conversation, Ms. Verna faxed a Thank You letter, as well as a copy of her previous refund request letters, and a copy of the August 20, 2010 rejection letter from PNC Mortgage to Defendant Masini and his secretary Cindy at Defendant 411.

244. Ms. Verna never received a response to her fax.

245. On or about January 2011, Mr. Verna left a voicemail on Defendant Masini's cell phone. That was the last communication between Mr. or Ms. Verna and Defendant Masini.

246. Mr. and Ms. Verna never received a refund of the \$2,750.00 they paid to Defendant Express Home.

(g) Ariel Cross-Edwards

247. Ms. Cross-Edwards works as a nurse three times a week for a twelve-hour night shift. Mr. Edwards has been unemployed since August 2010.

248. The couple first learned about Defendant Express Home in early summer of 2010, when she received a cold call from Defendant Robert Garcia (“Garcia”), who represented himself as a non-legal employee of Defendant Express Home. Defendant Garcia informed Ms. Edwards that he worked for a group of lawyers that specialized in loan modification services. Ms. Edwards initially indicated to Defendant Garcia that she was not interested in paying for modification services because she was aware that such services could be obtained free of charge.

249. At the time of her initial contact with Defendant Express Home, Ms. Cross-Edwards and her husband had just under \$300,000.00 outstanding on their \$425,000.00 mortgage with Chase Bank and were current with their mortgage payments. The couple had also taken out a line of credit on their home with Chase Bank.

250. Over several weeks during the summer of 2010, Defendant Garcia continued to call Ms. Cross-Edwards. He argued that though a modification could be obtained free of charge, it was in Ms. Cross-Edwards’s interest to pay for such services because a paid loan modification specialist would have a greater incentive to get the best result for her. He made a comparison to a legal aid lawyer and a hired lawyer, suggesting that a hired lawyer would have more incentive to work hard for a client. Ms. Edwards and her husband began to feel that this was a valid argument, but remained indecisive at first.

251. During these repeated phone calls, Defendant Garcia represented to Ms. Cross-Edwards that with a loan modification, her current monthly mortgage payment of \$2,300.00 could be reduced to less than \$1,200.00. He said there was “no way” the bank could deny the application for modification, referencing an “Obama program,” the specific name of which Ms. Cross-Edwards cannot now recall. Defendant Garcia also represented by phone that the mortgage modification process would not take more than two months.

252. Defendant Garcia proposed that Ms. Cross-Edwards could pay a \$3,000.00 fee upfront to Defendant Express Home for mortgage modification services. He represented that at any time during the modification process, she could decide that she no longer wanted to pursue the application through Defendant Express Home, and then her money would subsequently be refunded. Defendant Garcia also offered Ms. Cross-Edwards and her husband other services, such as debt settlement. He explained that Defendant Express Home would collect money from Ms. Edwards and place it in an escrow account, and that she would stop making payments to the given creditor for three months. At that point, Defendant Express Home would contact the creditor, work out a settlement plan for the debt, and then begin making the monthly payments from the pre-established escrow account.

253. During one phone call, Defendant Garcia asked Ms. Cross-Edwards whether she had a good credit rating. When she responded that she did, he cautioned that he did not want to encourage her to ruin her credit. But he continued to explain that if her mortgage payments were late, the bank would have a greater incentive to give her a modification. He indicated that the same reasoning applied to Ms. Cross-Edwards’s line of credit on her house.

254. After several persistent phone calls from Defendant Garcia, Ms. Cross-Edwards and her husband finally decided to engage Defendant Express Home for mortgage modification services. They did not engage the company for any other debt settlement service.

255. When they began discussing price, Defendant Express Home first asked Ms. Cross-Edwards to pay them a full \$3,000.00 upfront, representing that they would not withdraw the money from her account until a modification. But instead, Ms. Cross-Edwards negotiated to first pay \$1,000.00 to start the process and pay the balance as the modification application progressed. Ms. Cross-Edwards made her first check payable to Defendant Express Home on August 21, 2010. Ms. Cross-Edwards was also asked to provide Defendant Express Home with a mortgage statement and a copy of her pay stub. An agent from Defendant Express Home came to her home to pick up the first check, and gave her two documents describing Defendant Express Home's services.

256. One of the two documents Ms. Cross-Edwards received was an introduction letter, dated July 8, 2010 and addressed to her (**Attached hereto as Exhibit J**). The letter was electronically signed by Defendant Gotterup of Defendant Express Home, and represented that "[o]ur success rate is outstanding" and "[f]ew people outside the banking world have the specialized knowledge or technical expertise to work with your current Lender to re-structure your mortgage terms." Under Defendant Gotterup's electronic signature, his e-mail address was provided: dgotterup@expressloanmodifications.net.

257. Ms. Cross-Edwards also was given an undated letter, electronically signed by the Legal Department at Defendant Express Home. The letter stated that "[t]he negotiating abilities of our experts make the difference on whether your modification is approved or denied." The

letter also stated that “[i]f we can not [sic] secure your loan modification, we will give you your money back, less a \$595.00 processing fee for the work our experts put in to your file. It’s as simple as that.”

258. Aside from these two communications, Ms. Cross-Edwards does not have a copy of any contract for services or of a third-party bank authorization form for Defendant Express Home. She believes it is possible that she was asked to sign certain documents when the agent from Defendant Express Home came to her home to pick up her initial check, but she does not recall. If Ms. Cross-Edwards did sign any documents, she was not provided with a copy of these documents.

259. During the summer of 2010, Ms. Cross-Edwards asked Defendant Garcia if her daughter, who had just graduated from college and was interested in law, could work as an intern at Defendant Express Home’s office. Defendant Garcia agreed and arranged for Ms. Cross-Edwards’ daughter to volunteer at the office, where she worked with Defendant Mangan. She worked for Defendant Express Home for only a short period of time and left with the impression that it was a disorganized enterprise. She described to her mother that there were piles of paper everywhere, and that she had observed employees asking receptionists to tell callers they were “not there” when they received calls.

260. During the time that Ms. Cross-Edwards and her husband engaged the services of Defendant Express Home, Mr. Cross-Edwards lost his job. Though Mr. and Ms. Cross-Edwards believed they could find a way to make ends meet so that they stayed current on their mortgage payments, they nevertheless began to fall behind on their payments beginning in August 2010. Ms. Cross-Edwards explains that their decision to stop making mortgage payments on time was

heavily influenced by Defendant Garcia's representation that being behind on their mortgage payments would help them in their modification application.

261. Once Ms. Cross-Edwards began making late payments on her mortgage, she received an influx of communications from Chase Bank, informing her that she was behind on her payments, and delineating the consequences of falling behind any further. Ms. Cross-Edwards never received a final notice indicating that her mortgage repayment status had changed as a result of her various late payments.

262. Approximately one month after Ms. Cross-Edwards made her first payment of \$1,000.00 to Defendant Express Home, she began having second thoughts about engaging the company and made plans to request a refund of her money. However, on September 9, 2010, Defendant Garcia called Ms. Cross-Edwards and told to her that she had not given the company enough money to continue with the modification process. Defendant Garcia said that if Ms. Cross-Edwards agreed to pay additional money and continue with the process, then it would take thirty days to receive a loan modification for her.

263. On or about December 7, 2010, Ms. Cross-Edwards conceded and made a second payment of \$1,000.00 to Defendant Express Home. She made the payment over the phone, providing the routing and account numbers for her bank account.

264. At some point in the months before December 2010, Ms. Cross-Edwards had received a communication from Chase, indicating that she had applied for a trial loan modification and requesting certain additional documents. Ms. Cross-Edwards did not act on the request for additional documents because she was under the assumption that Defendant Express

Home was taking care of her application process, and that they would contact her if they needed anything. Ms. Cross-Edwards was confused as to why Chase sent this document to her, given that she had employed Defendant Express Home under the impression that they would contact the bank on her behalf so that she would not have to.

265. In December 2010, at some point after Ms. Cross-Edwards made her second \$1,000.00 payment, she received a second letter from Chase. The letter indicated that because the bank had not received the documents they requested, they were closing the case for her loan modification application. Ms. Cross-Edwards called Defendant Garcia to relay the contents of this letter, but she could not reach him.

266. From that point forward, Defendant Garcia stopped responding to Ms. Cross-Edwards's inquiries. She soon discovered that Defendant Garcia's cell phone number no longer worked.

267. In or around January 2011, Ms. Cross-Edwards's daughter sent an e-mail to Defendant Mangan, indicating that Ms. Edwards was concerned about her loan modification process and wanted Defendant Garcia to please contact her. Defendant Mangan never responded to this e-mail, and Defendant Garcia never subsequently contacted Ms. Cross-Edwards.

268. Chase Bank has never confirmed whether Defendant Express Home was working on Ms. Cross-Edwards' loan modification application. In January 2011, Ms. Cross-Edwards contacted her bank, informing them that Defendant Express Home had been applying for a loan modification on her behalf. The bank indicated that Ms. Cross-Edwards could complete an

application on her own, and offered to send her an application within six or seven weeks. To date, Ms. Edwards has not received this paperwork.

269. Ms. Cross-Edwards has not received any refund of the \$2,000.00 she paid to Defendant Express Home even though her loan modification was unsuccessful.

270. As a result of Defendant Garcia's encouragement that Ms. Cross-Edwards not make her mortgage payments during Defendant Express Home's negotiations with Chase Bank, Ms. Cross-Edwards accrued late fees for missed mortgage payments. At present, Ms. Cross-Edwards has caught up and is current on her mortgage payments.

271. As a result of Ms. Cross-Edwards's failure to make timely mortgage payments between August 2010 and February 2011, her credit rating has declined considerably. Her application to Bank of America for a fixed rate on her mortgage for her investment property was denied because of her late primary-residence mortgage payments to Chase Bank.

FIRST CAUSE OF ACTION

(Violation of N.Y. Banking Law § 590 ("Registration of Mortgage Brokers"))

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menon, Gotterup, and Marino)

(By Plaintiffs Osmanzai and R. Magsood Against Defendants SMH, Express Home, Halimi, Menon, Sarosi, Mangan, and Marino)

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express Modifications, Anderson, Gotterup, Gonzalez, Valasquez, Grigo, and Miladys)

(By Plaintiffs Verna and Verna Against Defendants Express Home, Menon, Masini, Mangan, and Miladys)

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

272. Plaintiffs repeat and re-allege each and every allegation contained above.

273. Under N.Y. Banking Law § 590(2)(b), entities or individuals that “engage in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to solicit, process, place or negotiate mortgage loans for others” must register as “mortgage brokers” with the superintendent of the New York State Banking Department (“NYSBD”).

274. Defendants were in the business of “negotiating” or “offering to . . . negotiate” the “terms or conditions” of a mortgage loan on behalf of third parties, as those terms are defined in N.Y. State Banking Law § 590(1)(d).

275. In the course of soliciting Plaintiffs to hire Defendants to perform loan modification services, Defendants represented that they would negotiate the terms and conditions of Plaintiffs’ mortgages, including but not limited to those terms relating to the Plaintiffs’ interest rates and monthly loan payments. Defendants communicated these representations in various forms, including print and electronic advertisements, telephone calls, letters, fliers, and face-to-face conversations.

276. Even after Plaintiffs hired Defendants to perform loan modification and related services, Defendants made additional offers to negotiate the terms and conditions of Plaintiffs’ mortgages. Defendants extended these offers in part to convince Plaintiffs to remain as clients.

277. To the extent that Defendants actually performed the services they promised to undertake on behalf of Plaintiffs, Defendants participated in negotiations regarding the terms and conditions of Plaintiffs’ mortgages. Defendants’ efforts to negotiate with mortgage lenders on

behalf Plaintiffs included, but were not limited to, electronic and telephonic communication with mortgage lenders regarding Plaintiffs' monthly loan payments.

278. At all relevant times, Defendants were not registered with the NYSBD, even though Defendants provided or offered to provide the services of a mortgage broker.

279. Defendants are liable to Plaintiffs for a sum of money not less than the actual fee paid to Defendants, up to four times such sum, as per N. Y. State Banking Law § 598(5).

SECOND CAUSE OF ACTION
(Violation of N.Y. Real Prop. Law § 265-b ("Distressed Property Consulting"))

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, and Menon)

(By Plaintiff Shukran Against Defendants SMH, Express Home, Halimi, Menon, and Marino)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express Modifications, Anderson, Mangan, Gotterup, Gonzalez, Valasquez, Grigo, and Miladys)

(By Plaintiff Cross-Edwards Against Defendants Express Home and Garcia)

280. Plaintiffs repeat and re-allege each and every allegation contained above.

281. N.Y. Real Prop. Law § 265-b(1)(c) defines distress property "consulting services" as efforts to help a homeowner that include but is not limited to "assist[ing] the homeowner to . . . refinance a distressed home loan" and "sav[ing] the homeowner's property from foreclosure."

282. N.Y. Real Prop. Law § 265-b(2) prohibits "distressed property consultants" from engaging in certain activities, including but not limited to "performing consulting services without a written, fully executed consulting contract with a homeowner," "charging for or accepting any payment for consulting services before the full completion of all such services,"

“retaining any original loan document,” and/or “attempting to induce a homeowner to enter a consulting contract that does not fully comply” with N.Y. Real Prop. Law § 265-b.

283. N.Y. Real Prop. Law § 265-b(3) requires that “distressed property consulting contracts” contain several features, which include but are not limited to “be[ing] in at least twelve point type,” “fully disclos[ing] the exact nature of the distressed property consulting services to be provided,” and “fully disclos[ing] the total amount and terms of compensation for such consulting services.” In addition, all such contracts must include a full-length “notice” describing the homeowner’s rights.

284. Insofar as Plaintiffs own property in New York State, Plaintiffs are “homeowners” within the meaning of N.Y. Real Prop. Law § 265-b(1)(a).

285. Insofar as Plaintiffs are in danger of having their homes foreclosed upon because they have one or more defaults under their respective mortgages that entitle the lender to accelerate full payment of the mortgage and repossess the property, Plaintiffs are mortgagors with “distressed home loans” within the meaning of N.Y. Real Prop. Law § 265-b(1)(d).

286. Defendants are “distressed property consultants” within the meaning of N.Y. Real Prop. Law § 265-b(1)(e).

287. Defendants intentionally or recklessly engaged in conduct that violated N.Y. Real Prop. Law § 265-b:

288. Plaintiffs are entitled to a trebling of the actual and consequential damages arising from these violations, as well as attorneys’ fees and costs, in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Breach of Contract)

(By Plaintiff Rush Against Defendant SMH)

(By Plaintiff G. Magsood Against Defendants SMH and Express Home)

(By Plaintiffs Osmanzai and R. Magsood Against Defendants SMH and Express Home)

(By Plaintiff Shukran Against Defendants SMH and Express Home)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, and Express Modifications)

(By Plaintiff R. Verna Against Defendants Express Home)

(By Plaintiff Cross-Edwards Against Defendant Express Home)

289. Plaintiffs repeat and re-allege each and every allegation contained above.

290. Plaintiffs entered into contracts with Defendants for loan modification services.

291. Plaintiffs performed as obligated under those contracts.

292. Defendants failed to perform their obligations to Plaintiffs in that they did not provide the loan modification services required under the contract.

293. Plaintiffs suffered damages and are entitled to recover: (a) the amount paid for Defendants' services, together with pre-judgment interest in the amount of 9% per annum; (b) consequential damages arising from the breach, including but not limited to costs related to Plaintiffs' missed mortgage payments, such as late fees and penalties and decreased credit ratings, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Common Law Fraud)

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menon, and Marino)

*(By Plaintiffs Osmanzai and R. Magsood Against Defendants SMH, Express Home, Halimi,
Menon, Mangan, Sarosi, and Marino)*

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

*(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express
Modifications, Anderson, Gotterup, Gonzalez, Valasquez, Grigo, and Miladys)*

*(By Plaintiffs Verna and Verna Against Defendants Express Home, Menon, Masini, Mangan, and
Milades)*

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

294. Plaintiffs repeat and re-allege each and every allegation contained above.

295. Defendants made intentional misrepresentations and/or failed to provide material information, including but not limited to the following:

- a. Falsely representing to Plaintiffs that they were loan modification specialists;
- b. Falsely representing to Plaintiffs at the time of the subject transaction that Defendants would help Plaintiffs reduce their monthly home mortgage payments and obtain the lowest interest rate possible when in fact Defendants intended to take Plaintiffs' money while performing few if any actual services;
- c. Falsely representing that Defendants' services would be prompt;
- d. Falsely representing that Defendants had a very high success rate in obtaining loan modifications;
- e. Falsely representing that Defendants would issue refunds if the offered loan modifications did not succeed;
- f. Purposely concealing this information when contacted by Plaintiffs by intentionally concealing the progress of the loan modification application,

when in most cases Defendants had not even attempted to submit an application;

- g. Misrepresenting to Plaintiffs that they should cease either paying their mortgage payments or communicating with their lender;
- h. Falsely representing to Plaintiffs that Defendants would be in communication throughout the course of the transaction, even if in Defendants' adverse interest; and
- i. Falsely representing that Defendants were one of the few companies that have contacted with the federal government to assist with loan modifications.

296. Defendants made these representations and omissions knowing that they were false at the time they were made.

297. Defendants offered these statements as fact, not opinion, with the intent to induce Plaintiffs to purchase their loan modification services, to convince Plaintiffs to remain as clients, or to prevent Plaintiffs from learning the true nature of Defendants' scheme.

298. Plaintiffs had a reasonable right to rely and in fact relied on Defendants' representation and omission of material facts in agreeing to what Plaintiffs believed to be a legitimate loan modification service. Had Plaintiffs known the truth about the misrepresentations and omissions, Plaintiffs would not have entered into the transaction with Defendants.

299. Plaintiffs suffered damages as a direct and proximate result of their reasonable and justified reliance on Defendants' intentional misrepresentations and failures to disclose. Plaintiffs' damages include, but are not limited to, the loss of their upfront and subsequent payments to Defendants, as well as the additional fees, costs, and penalties accrued as a result of Defendants' misrepresentations.

300. Defendants' actions were willing, intentional, knowing, and malicious.

301. Defendants are liable to Plaintiffs for (a) actual damages in an amount to be determined at trial; (b) punitive damages in an amount sufficient to prevent others from engaging in similar schemes; (c) costs and disbursements; and (d) attorneys' fees.

FIFTH CAUSE OF ACTION
(Fraudulent Inducement)

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menon, and Marino)

(By Plaintiffs Osmanzai and R. Magsood Against Defendants SMH, Express Home, Halimi, Menon, Mangan, Sarosi, and Marino)

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express Modifications, Anderson, and Gotterup)

(By Plaintiffs Verna and Verna Against Defendants Express Home, Menon, Masini, Mangan, Milades, and Empire Home Savings)

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

302. Plaintiffs repeat and re-allege each and every allegation contained above.

303. Plaintiffs bring these claim for fraudulent inducement with respect to the contracts agreed to with Defendants for the performance of loan modification services.

304. Defendants made untrue statements of material fact and omissions of material fact. Defendants' misleading statements include but are not limited to the following misrepresentations and omissions:

a. That Defendants' services would be prompt;

- b. That Defendants had a very high success rate in obtaining loan modifications;
- c. That Defendants would be able to obtain the lowest interest rate possible for Plaintiffs;
- d. Falsely representing that Defendants would issue refunds if the offered loan modifications did not succeed; and
- e. That Defendants are one of the few companies that have contracted with the federal government to assist with loan modifications.

305. Defendants knew or intended that Plaintiffs would enter agreements based on the false statements.

306. Plaintiffs reasonably and justifiably relied on the false statements about the cost, speed, nature, and efficacy of Defendants' services.

307. Plaintiffs have been harmed by entering into the contracts in an amount to be determined at trial.

308. Defendants' actions were willful, intentional, knowing and malicious.

309. Defendants are liable to Plaintiffs for (a) actual damages in an amount to be determined at trial; (b) punitive damages in an amount sufficient to prevent others from engaging in similar schemes; (c) costs and disbursements; and (d) attorneys' fees.

SIXTH CAUSE OF ACTION
(Fraudulent Concealment)

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menon, and Marino)

(By Plaintiffs Osmanzai and R. Maqsood Against Defendants SMH, Express Home, Halimi, Menon, Mangan, Sarosi, and Marino)

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express Modifications, Anderson, Gotterup, Gonzalez, Valasquez, Grigo, and Miladys)

(By Plaintiffs Verna and Verna Against Defendants Express Home, Menon, and Masini)

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

310. Plaintiffs repeat and re-allege each and every allegation contained above.

311. Defendants suppressed and concealed material information from Plaintiffs including but not limited to:

- a. The likelihood of Defendants' success in obtaining a loan modification;
- b. The actual amount of time it would take to get a decision on her loan modification application;
- c. The likelihood that Defendants would issue refunds if the offered loan modifications did not succeed; and
- d. Falsely representing to Plaintiffs that Defendants would be in communication throughout the course of the transaction, even if in Defendants' adverse interest.

312. Defendants had a duty of disclosure to Plaintiffs, due to (i) their unique position of control over the information necessary for Plaintiffs to make an informed decision about engaging in the transaction, and (ii) their knowledge that Plaintiffs would rely on the information they provided.

313. Defendants were insiders to the transaction, and uttered statements that were false, giving rise to a duty to disclose.

314. By virtue of their reasonable reliance on the obligation of Defendants to provide full and accurate information, Plaintiffs were induced to enter into a transaction with them.

315. Plaintiffs suffered damages as a direct and proximate result of their reliance on the concealed statements in an amount to be determined at trial.

316. Defendants' actions were willful, intentional, knowing, and malicious.

317. Defendants are liable to Plaintiffs for (a) actual damages in an amount to be determined at trial; (b) punitive damages in an amount sufficient to prevent others from engaging in similar schemes; (c) costs and disbursements; and (d) attorneys' fees.

SEVENTH CAUSE OF ACTION
(Civil Conspiracy to Commit Fraud)

(By All Plaintiffs against All Defendants)

318. Plaintiffs repeat and re-allege each and every allegation contained above.

319. Defendants knowingly entered into an agreement to fraudulently induce Plaintiffs to enter into these loan modification service transactions.

320. Defendants willfully, intentionally, knowingly, and maliciously participated in their scheme by committing overt acts and making misrepresentations and/or failing to provide material information, in furtherance of the agreement, including but not limited to those representation set forth in the fourth, fifth, and sixth causes of action above.

321. Plaintiffs suffered injury as the proximate result of their reasonable and justified reliance on Defendants' intentional and material misrepresentations and omissions.

322. Defendants are liable to Plaintiffs for: (a) actual damages in an amount to be determined at trial; (b) punitive damages in an amount sufficient to prevent others from engaging in similar schemes; (c) costs and disbursements; and (d) attorneys' fees.

EIGHTH CAUSE OF ACTION
(Aiding and Abetting Fraud)

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menon, and Marino)

*(By Plaintiffs Osmanzai and R. Maqsood Against Defendants SMH, Express Home, Halimi,
Menon, Mangan, Sarosi, and Marino)*

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

*(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express
Modifications, Anderson, Gotterup, Gonzalez, Valasquez, Grigo, and Miladys)*

*(By Plaintiffs Verna and Verna Against Defendants Express Home, Menon, Masini, Mangan,
Miladys, and Empire Home Savings)*

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

323. Plaintiffs repeat and re-allege each and every allegation contained above.

324. During relevant times, Defendants, by and through their affiliates, divisions, enterprises, representatives, employees and agents, knowingly and willfully aided and abetted the fraudulent loan modification scheme described above.

325. Defendants' actions were taken with full knowledge and acceptance of the fraudulent loan modification services.

326. Defendants aided and abetted the scheme to defraud Plaintiffs by providing substantial assistance by:

- a. Failing to perform promised services for which they had collected upfront fees;
- b. Purposely concealing this information when contacted by Plaintiffs by intentionally concealing the progress of the loan modification application,

when in most cases Defendants had not even attempted to submit an application;

- c. Misrepresenting to Plaintiffs that they should cease either paying their mortgage payments or communicating with their lender; and
- d. Falsely representing to Plaintiffs that Defendants would be in communication throughout the course of the transaction, even if in Defendants' adverse interest.

327. Dependent actions were undertaken knowingly or as part of a highly interdependent scheme from which all defendants benefited from the fraudulent activity of the other defendants.

328. But for Defendants' substantial assistance, Plaintiffs would not have victim to the fraudulent scheme.

329. As a direct and proximate cause of Defendants' aiding and abetting activities, Plaintiffs have suffered damages, in an amount to be determined at trial.

NINTH CAUSE OF ACTION

(Violation of N.Y. Gen. Bus. Law § 349 (the "Deceptive Practices Act"))

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menon, Gotterup, and Marino)

(By Plaintiffs Osmanzai and R. Magsood Against Defendants SMH, Express Home, Halimi, Mangan, Sarosi, Gotterup, and Marino)

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express Modifications, Anderson, Gotterup, Gonzalez, Valasquez, Grigo, and Miladys)

(By Plaintiffs Verna and Verna Against Defendants Express Home, Nevin, Masini, Mangan, Miladys, and Empire Home Savings)

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

330. Plaintiffs repeat and re-allege each and every allegation contained above.

331. Defendants “conducted a business” or “furnished a service” as those terms are defined in N.Y. Gen. Bus. Law § 349 (the “Deceptive Practices Act”).

332. Defendants knowingly and willfully violated the Deceptive Practices Act by engaging in acts and practices that were misleading in a material way, unfair, deceptive, and contrary to public policy and generally recognized standards of business.

333. These practices include but are not limited to:

- a. Charging customers an upfront fee for mortgage modification services when this service is typically provided at little or no cost through HUD-approved housing counselors;
- b. Misrepresenting to Plaintiffs the nature of the transaction;
- c. Falsely promising that Defendants would engage in negotiations with the Plaintiffs’ mortgage lender or servicers;
- d. Misrepresenting that Defendants would be readily available to address the Plaintiffs’ questions and concerns;
- e. Misrepresenting the progress of the loan modification application; and
- f. Falsely advertising “loan modification” services in the course of conducting business, trade, or commerce in the State of New York; and
- g. Encouraging Plaintiffs to stop either paying their monthly mortgage payments and/or communicating with their lenders or servicers.

334. Plaintiffs suffered damages as a proximate result of Defendants’ deceptive acts because Plaintiffs accrued various costs, fees, penalties and consequential damages for Defendants’ nonperformance of loan modification services; whereas Plaintiffs would have

commenced negotiations with their lender for a loan modification with lower monthly payments at an earlier date had Defendants' deceptive practices not delayed their efforts.

335. Defendants' deceptive scheme originated in New York, involved communications and statements made in New York, and injured Plaintiffs in transactions that occurred in New York.

336. Defendants' practices have had and may continue to have a broad impact on consumers throughout New York State.

337. Defendants' statements and actions described hereinabove entitle Plaintiffs to increased damages, attorneys' fees and injunctive relief under N.Y. Gen. Bus. Law § 349(h).

TENTH CAUSE OF ACTION
(Violation of N.Y. Gen. Bus. Laws §§ 350, 350-a ("False Advertising"))

(By Plaintiff Rush Against Defendants SMH, Abraham, Singh, and Danielle)

(By Plaintiff G. Magsood Against Defendants SMH, Express Home, Halimi, Menin, and Marino)

(By Plaintiffs Osmanzai and R. Maqsood Against Defendants SMH, Express Home, Halimi, and Marino)

(By Plaintiff Shukran Against Defendants Express Home, Halimi, Menon, and Marino)

(By Plaintiff Idavoy Against Defendants Express Home, Express Debt Solutions, Express Modifications, Anderson, and Gotterup)

(By Plaintiff Cross-Edwards Against Defendants Express Home, Garcia, Gotterup, and Mangan)

338. Plaintiffs repeat and re-allege each and every allegation contained above.

339. Defendants' promotion, marketing, and advertising of its services and products is misleading in a material respect, deceptive, and is directed at the general public and consumers within the State of New York.

340. Such promotion, marketing, and advertising include statements made in person, in writing, by internet communication, and over the phone to Plaintiffs regarding the costs, timing, nature, and efficacy of Defendants' services.

341. Defendants' products and services have been, and continue to be, advertised and sold within the State of New York.

342. Defendants' false advertising, marketing and promotion described hereinabove intentionally, deliberately, willfully or knowingly deceives the public and consumers, confuses or is likely to confuse the public and consumers, and materially misleads consumers as to its nature, characteristics and/or qualities of its products and services.

343. Consumers have reasonably relied and/or are likely to reasonably rely upon these misrepresentations and in making purchase decisions and have been injured and damaged and are likely to be further injured and damaged by Defendants' statements and actions described hereinabove in violation of N.Y. Gen. Bus. Laws §§ 350, 350-a.

344. A reasonable consumer acting reasonably under the circumstances would have believed, as Plaintiffs did, that Defendants' statements made in person and over the phone regarding the costs, timing, nature, and efficacy of Defendants' services were truthful.

345. Plaintiffs were injured as a result of Defendants' deceptive acts, because Plaintiff paid a substantial advance payment for mortgage modifications services; whereas they would not

have done so absent Defendants' statements relating to the cost, timing, nature, and efficacy of their services including but not limited to the following:

- a. That Defendants' services would be prompt;
- b. That Defendants had a 95% success rate in obtaining loan modifications; and
- c. That Defendants would be able to obtain the lowest interest rate possible for Plaintiffs;
- d. That Defendants are one of the few companies that have contracted with the federal government to assist with loan modifications; and
- e. That for-profit loan modification companies are more likely to obtained the desired results for homeowners than non-profit or HUD-approved loan modification services.

346. Defendants statements and actions described hereinabove entitle Plaintiffs to increased damages, reasonable attorneys' fees and injunctive relief under N.Y. Gen. Bus. Law § 350-e.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court award judgments in its favor as follows:

- (a) enjoin Defendants from engaging in deceptive acts and practices that affect consumers in New York State under N.Y. Gen. Bus. Law § 349(h);
- (b) enjoin Defendants from advertising, marketing or promoting its services and products in a false, materially misleading or deceptive manner in New York State under N.Y. Gen. Bus. Law § 350-e;
- (c) declare that the corporate veils of all Save My Home entities, The Selig Law Group, Express Modifications, Express Home Solutions, Empire Home Savers,

and all related, affiliated, or incorporated entities are pierced and that individual Defendants are liable for the conduct and debts of all relevant corporate entities;

(d) declare that the corporate veils of all Save My Home entities, The Selig Law Group, Express Modifications, Express Home Solutions, Empire Home Savers, and all related, affiliated, or incorporated entities are pierced and that the assets of all such related corporate entities are available to satisfy all claims against any other corporate entity;

(e) on its First Cause Of Action: Damages of not less than \$80,000.00;

(f) on its Second Cause Of Action: Damages of not less than \$35,000.00, plus a trebling of other actual consequential damages in an amount to be determined at trial;

(g) on its Third Cause Of Action: Damages of not less than \$20,000.00, plus other actual and consequential damages in an amount to be determined at trial;

(h) on its Fourth Cause Of Action: Damages of not less than \$20,000.00, plus other actual and consequential damages in an amount to be determined at trial;

(i) on its Fifth Cause Of Action: Damages of not less than \$20,000.00;

(j) on its Sixth Cause Of Action: Damages of not less than \$20,000.00;

(k) on its Seventh Cause Of Action: Damages of not less than \$20,000.00 plus other actual and consequential damages in an amount to be determined at trial;

(l) on its Eighth Cause Of Action: Damages of not less than \$20,000.00;

(m) on its Ninth Cause Of Action: Damages of not less than \$20,000.00, plus other actual and consequential damages in an amount to be determined at trial;


(n) on its Tenth Cause of Action: Damages of not less than \$20,000.00, plus other actual and consequential damages in an amount to be determined at trial;

(o) punitive damages to the extent permitted by law;

- (p) interest at the legal rate on all claims for compensatory damages;
- (q) the costs and disbursements of this action;
- (r) reasonable attorneys' fees to the extent permitted by law; and
- (s) such other and further relief as the Court may deem just and proper.

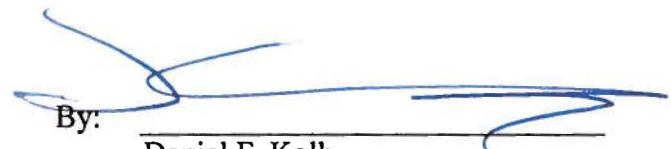
Dated: New York, New York
March 9, 2011

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW

By: 
Hyon Min Rho

1401 New York Avenue NW
Suite 400
Washington, D.C. 20005
(202) 662-8600

DAVIS POLK & WARDWELL LLP

By: 
Daniel F. Kolb

450 Lexington Avenue
New York, New York 10017
(212) 450-4000

Attorneys for Plaintiffs