

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
Docket No. 09:162:MBB

IN RE:)
)
PHOENIX HOUSING GROUP, INC. d/b/a)
HOMES AMERICA; GARY GOOD; DENNIS)
PARRIS; ROGER BAILEY; DENNIS)
SETZER; GEORGE W. VARSAMIS; FIRST)
PRIORITY MORTGAGE & FINANCE, Inc.)
(NCCOB B-132649; NMLS ID No.)
98979); ROBERT C. ANDERSON (NCCOB)
I-114810; NMLS ID No. 119136); WR)
STARKEY MORTGAGE, LLC (NCCOB)
L-112550; NMLS ID No. 2146);)
WILLIAM R. STARKEY JR. (NMLS ID)
No. 13796); TODD A. BERGWALL (NMLS)
ID No. 13807); GARY E. LACEFIELD)
(NMLS ID No. 13805); ANDREW M.)
CHURCH; ISAAC VINSON a/k/a IKE)
VINSON (NCCOB I-147474; NMLS ID No.)
85047); MARINA MCCUEN (NCCOB I-)
142351; NMLS ID No. 120046);)
SUSAN REED; and K&B HOMEBUILDERS,)
Inc.)
_____)

NOTICE OF HEARING

TO: Phoenix Housing Group, Inc.
d/b/a Homes America
c/o Douglas E. Meadows

[REDACTED]

Gary Good

[REDACTED]

Dennis Parris

[REDACTED]

Roger Dean Bailey, Jr.

[REDACTED]

Dennis Setzer

[REDACTED]

George William Varsamis

[REDACTED]

First Priority Mortgage & Finance, Inc.
c/o Robert Anderson

[REDACTED]

WR Starkey Mortgage, LLP
c/o CT Corporation System (Registered Agent)
1011

[REDACTED]

William R. Starkey, Jr.

[REDACTED]

Todd A. Bergwall

[REDACTED]

Gary E. Lacefield

[REDACTED]

Andrew M. Church

[REDACTED]

Isaac Vinson

[REDACTED]

Marina R. McCuen

[REDACTED]

Susan Reed

. 102

[REDACTED]

K&B Homebuilders, Inc
c/o Travis D. Kanupp

[REDACTED]

I. NOTICE OF THE HEARING

You are hereby notified that the North Carolina Commissioner of Banks ("Commissioner") or his designated hearing officer will hold a hearing on 23 February 2010, at 9:00 AM, or as soon after that hour as the same may be heard, to determine:

- 1.) whether or not the individual loan officer licenses of Robert Anderson, Isaac Vinson, and/or Marina McCuen should be suspended or revoked;
- 2.) whether or not the mortgage lender license WR Starkey Mortgage, LLC ("WRS") should be suspended or revoked;
- 3.) whether or not the mortgage broker license of First Priority Mortgage & Finance, Inc. ("FPMF") should be suspended or revoked;
- 4.) whether or not a cease and desist order should be entered against Robert Anderson, FPMF, Isaac Vinson, Marina McCuen, Susan Reed, WRS, Phoenix Housing Group, Inc. ("PHG"), Roger Bailey, Dennis Setzer, George Varsamis, and/or K&B Homebuilders, Inc. ("K&B");
- 5.) whether disgorgements should be required of Robert Anderson, FPMF, Isaac Vinson, Marina McCuen, and WRS; and whether Robert Anderson, FPMF, Isaac Vinson, Marina McCuen, and/or WRS should be charged with the costs of investigation and examination; and
- 6.) Whether civil money penalties should be imposed against PHG, Robert Anderson, Gary Good, Dennis Parris, Roger Bailey, Dennis Setzer, George Varsamis,

WRS, William Starkey, Jr., Todd Bergwall, Gary Lacefield, Isaac Vinson, Andrew Church, Marina McCuen, Susan Reed, and/or K&B.

For the purpose of this Notice of Hearing, WRS, PHG, FPMF, K&B, Robert Anderson, Todd Bergwall, Roger Bailey, Andrew Church, Gary Good, Gary Lacefield, Marina McCuen, Dennis Parris, Dennis Setzer, William Starkey, Jr., George Varsamis, and Isaac Vinson shall hereinafter be referred to collectively as the "Respondents."

II. LOCATION AND TERM OF THE HEARING

The hearing will be held in the Office of the Commissioner of Banks, hereinafter the "OCOB," 316 West Edenton Street, 2nd Floor Hearing Room, Raleigh, North Carolina, on the date specified above and will continue from time to time thereafter until the same is fully concluded. If Respondents are not present, a decision will be reached in Respondents' absence and Respondents will be deemed to have waived their right to a hearing.

III. THE HEARING PROCESS

This is a contested case hearing before the Commissioner pursuant to Article 3A of Chapter 150B of the General Statutes of North Carolina, and G.S. §§ 53-107.1(c), 53-243.12, 53-244.113, and 53-244.114. Respondents are entitled to be represented by counsel and to present evidence and legal

argument. Respondents are referred to Article 3A of Chapter 150B, and Articles 19A and 19B of Chapter 53, of the North Carolina General Statutes, and Title 4, Subchapters 3B and 3M of the North Carolina Administrative Code for a more complete statement of rights.

IV. SUMMARY OF THE CASE

The unlicensed Respondents, Phoenix Housing Group, Inc. ("PHG") and K&B Homebuilders, Inc. ("K&B") are engaged primarily in the sale of manufactured or modular homes. In order to facilitate the sale of these homes, PHG and K&B engaged in a pattern and practice of brokering fraudulent residential mortgage loans by and through unlicensed mortgage loan originators. Thereafter, PHG and K&B laundered such fraudulent loans through Respondents, WR Starkey Mortgage, LLP ("WRS") and First Priority Mortgage & Finance, Inc. ("FPMF").

PHG and K&B, by and through their agents and employees, engaged in widespread mortgage fraud by, among other things, falsifying underwriting documents and forging borrower signatures. Moreover, PHG and K&B, by and through their agents and employees, coerced borrowers into entering into unaffordable, federally-insured loan products through threats and false promises.

WRS and FPMF knowingly and willfully concealed the true identity of the unlicensed mortgage loan originators and the fraudulent nature of the underwriting documents from underwriters, secondary market purchasers, and federal agencies.

As a result of these practices, North Carolina borrowers have been deceived or harmed, and many have lost their homes through foreclosure. The the default rates attributed to loans associated with these transactions has been approximately three to five hundred percent (300-500%) above the national average, causing financial losses to secondary market purchasers and insurers, including the federal government.

V. FACTUAL ALLEGATIONS

A. Parties

(1) Phoenix Housing Group

1. Phoenix Housing Group, Inc. ("PHG") is a North Carolina limited liability company with a corporate office in Greensboro, North Carolina. PHG also conducts business under the trade names, HomesAmerica and Southern Showcase Housing.

2. PHG is in the business of selling manufactured homes as well as "land/home packages," which include a manufactured home and a parcel of real property. PHG also sells modular homes in connection with parcels of real property. In

connection with the sales of these homes, PHG (by and through its employees) solicits and accepts residential mortgage loan applications for compensation or gain. The loans originated by PHG are and have been made or brokered through licensed lenders and brokers, including First Priority Mortgage & Finance, Inc. ("FPMF") and WR Starkey ("WRS").

3. PHG is not now nor has it ever been licensed by the OCOB to transact business as a mortgage broker, exclusive mortgage broker, mortgage lender, mortgage banker, or mortgage servicer.

(2) PHG - Owners, Officers, and Directors

4. Gary Good ("Good") is a resident of [REDACTED] and is president of PHG. Good is or was at times relevant to the present Notice of Hearing the executive vice-president and thirty percent (30%) owner of FPMF.

5. Dennis Parris ("Parris") is a resident of [REDACTED] and is the vice-president of PHG. At times relevant to this complaint, he was the area supervisor for certain PHG sales outlets, including the Granite Falls store. Parris is or was at times relevant to the present Notice of Hearing the vice-president and fifteen percent (15%) owner of FPMF.

6. Upon information and belief, Good and Parris have collectively managed and controlled the business operations of

PHG and had knowledge of, directed, and/or participated in some of the deceptive acts and practices alleged in this Notice of Hearing.

(3) PHG - Employees

7. Roger Bailey ("Bailey") is a resident of [REDACTED] and was formerly employed by PHG as its sales manager at its Granite Falls store.

8. Upon information and belief, while employed by PHG, Bailey solicited and accepted residential mortgage loan applications without a license and engaged in unlawful mortgage fraud.

9. Bailey is not now nor has he ever been licensed by the OCOB to transact business as a loan officer or mortgage loan originator.

10. Dennis Setzer ("Setzer") is a resident of [REDACTED] and was employed as a sales agent for PHG at its Granite Falls location.

11. Upon information and belief, while employed by PHG, Setzer solicited and accepted residential mortgage loan applications without a license and engaged in unlawful mortgage fraud.

12. Setzer is not now nor has he ever been licensed by the OCOB to transact business as a loan officer or mortgage loan originator.

13. George W. Varsamis ("varsamis") is a resident of [REDACTED] and was employed as a sales agent for PHG at its Granite Falls location.

14. Upon information and belief, while employed by PHG, Varsamis solicited and accepted residential mortgage loan applications without a license and engaged in unlawful mortgage fraud.

15. Varsamis is not now nor has he ever been licensed by the OCOB to transact business as a loan officer or mortgage loan originator.

16. Kelly Booker ("Booker") is a resident of [REDACTED] and was employed as a loan processor for PHG at its Granite Falls location.

17. Upon information and belief, Bailey, Setzer, Varsamis and Booker had knowledge of, directed, and/or participated in some of the deceptive acts and practices alleged in this Notice of Hearing.

(4) First Priority Mortgage & Finance, Inc.

18. First Priority Mortgage & Finance, Inc. ("FPMF") is a corporation organized and existing under the laws of the state of North Carolina.

19. On or about 03 November 2005, FPMF applied to the OCOB for a license to transact business as a mortgage banker pursuant to G.S. § 53-243.05.

20. FPMF's application was approved and it was issued OCOB License No. L-132649 under the Mortgage Lending Act ("MLA") on or about 10 January 2006.

21. Thereafter, FPMF was assigned a unique identification number in the National Mortgage Licensure System ("NMLS"): NMLS ID No. 98979.

22. On 23 December 2008, FPMF transferred their license from that of a mortgage banker to that of a mortgage broker. Thereafter, their OCOB license number was changed from L-132649 to B-132649.

23. FPMF remained licensed under the MLA until 31 July 2009, at which time its mortgage broker license was transitioned by operation of law to that of a mortgage broker license under the North Carolina Secure and Fair Enforcement Mortgage Licensing Act ("SAFE Act"), pursuant to Section 5(1)c of House

Bill 1523, Session Law 2009-374. FPMF has remained so licensed since this date.

(5) FPMF - Owners, Officers, and Directors

24. Robert C. Anderson ("Anderson") is a resident of [REDACTED] and is or has been at times relevant to the present Notice of Hearing the president, qualifying individual, and owner of FPMF.

25. On or about 30 September 2002, Anderson applied to the OCOB for a license to transact business as a mortgage loan officer under the MLA and the grandfather provisions of Section 5 of Senate Bill 904, Session Law 2001-393. Anderson's application was approved and he was issued OCOB License No. I-114810 on or about 25 February 2003.

26. Thereafter, Anderson was assigned a unique identification number in NMLS: ID No. 119136.

27. Anderson remained licensed under the MLA until 31 July 2009, at which time his mortgage loan officer license was transitioned by operation of law to that of a MLO license under the SAFE Act, pursuant to Section 5(1)a of House Bill 1523, Session Law 2009-374. Anderson has remained so licensed since this date.

28. Upon information and belief, Good and Parris are or were at times relevant to the present Notice of Hearing owners,

officers, and/or directors of FPMF. However, neither Good nor Parris have filed NMLS Form MU2s and neither are identified as direct or indirect control persons of FPMF on NMLS.

29. Upon information and belief, Anderson, Good, and/or Parris had knowledge of, directed, and/or participated in some of the deceptive acts and practices alleged in this Notice of Hearing.

(6) WR Starkey Mortgage, LLC

30. W.R. Starkey Mortgage, L.L.P. ("WRS") is a Delaware limited liability partnership with its corporate office in Plano, Texas. WRS is registered with the North Carolina Secretary of State's Office to transact business in North Carolina.

31. On or about 27 September 2002, WRS applied to the OCOB for a license to transact business as a mortgage banker pursuant to G.S. § 53-243.05 and the grandfather provisions of Section 5 of Senate Bill 904, Session Law 2001-393.

32. WRS's application was approved and it was issued OCOB License No. L-112550 under the MLA on or about 22 January 2003.

33. Thereafter, WRS was assigned a unique identification number in the NMLS: ID No. 2146.

34. WRS remained licensed under the MLA until 31 July 2009, at which time its "mortgage banker" license was

transitioned by operation of law to that of a "mortgage lender" license under the SAFE Act, pursuant to Section 5(1)b of House Bill 1523, Session Law 2009-374. WRS has remained so licensed since this date.

(7) WRS Owners, Officers, and Directors

35. William Ray Starkey, Jr., ("Starkey") is a resident of [REDACTED] and is the CEO and sixty-four percent (64%) owner of WRS. As an owner and officer of WRS, Starkey has been issued a unique identifier in NMLS: ID No. 13769.

36. Todd Arden Bergwall ("Bergwall") is a resident of [REDACTED] and is the executive vice-president, chief lending officer, and qualifying individual for WRS. As a control person for WRS, Bergwall has been issued a unique identifier in NMLS: ID No. 13807.

37. Gary Edward Lacefield ("Lacefield") is a resident of [REDACTED] and is the executive vice-president and director of compliance for WRS. As a control person for WRS, Lacefield has been issued a unique identifier in NMLS: ID No. 13805.

38. Upon information and belief, Andrew Michael Church ("Church") is a resident of [REDACTED].

39. On or about 26 May 2005, Church applied to the OCOB for licensure as a loan officer. Church's application was

approved and he was issued OCOB License No. I-129914 on or about 16 June 2005. He remained so licensed until 30 June 2007, when his license expired and was not renewed.

40. Upon information and belief, Church acted as the vice-president and district manager for WRS between 2008 and 2009. In his role, Church was responsible for a three state region including North Carolina, South Carolina, and Georgia.

41. Upon information and belief, Starkey, Bergwall, Lacefield, and/or Church had actual or constructive knowledge of, directed, and/or participated in some of the deceptive acts and practices alleged in this Notice of Hearing.

(8) WRS Branch Manager - Isaac Vinson

42. Upon information and belief, Isaac Vinson, a/k/a "Ike" Vinson ("Vinson") is a resident of [REDACTED]

[REDACTED].

43. On or about 20 August 2007, Vinson applied to the OCOB for licensure as a loan officer under the MLA. Vinson's application was approved and he was issued OCOB License No. I-141761 on or about 22 August 2007. He remained so licensed until 31 December 2008, when his license expired and was not renewed.

44. On or about 15 June 2009, Vinson reapplied to the OCOB for licensure as a mortgage loan originator ("MLO") under the

SAFE Act. His application was approved and he was issued OCOB License No. I-147474 on or about 26 June 2009. He has remained so licensed since this date.

45. As a MLO, Vinson has been issued a unique identifier in NMLS: ID No. 85047.

46. Upon information and belief, in January of 2007, approximately seven months before applying to the OCOB for licensure, Vinson began working as the branch manager for WRS's Asheville, North Carolina branch office (NMLS ID: 86366). Vinson continued to serve in this role until at least September 2008. While acting in this capacity, he resided in and worked from Myrtle Beach, South Carolina. Church was Vinson's direct supervisor.

47. Upon information and belief, Vinson knowledge of, directed, and/or participated in some of the deceptive acts and practices alleged in this Notice of Hearing.

(9) WRS Employees - Marina McCuen and Susan Reed

48. Upon information and belief, Marina Rose McCuen ("McCuen") is a resident of [REDACTED].

49. On or about 31 October 2007, McCuen applied to the OCOB for a license to transact business as a mortgage loan officer under the MLA. McCuen's application was approved and

she was issued OCOB License No. I-142351 on or about 02 November 2007.

50. Thereafter, McCuen was assigned a unique identification number in NMLS: ID No. 120046.

51. McCuen remained licensed under the MLA until 31 July 2009, at which time her mortgage loan officer license was transitioned by operation of law to that of a MLO license under the SAFE Act, pursuant to Section 5(1)a of House Bill 1523, Session Law 2009-374. McCuen has remained so licensed since this date.

52. In January of 2007, nine months before applying to the OCOB for licensure, McCuen began working as a loan officer for WRS out of WRS's Asheville branch location (NMLS ID: 86366). She continued to work from the Asheville branch until September of 2008. During her employment, Vinson was McCuen's supervising branch manager.

53. Susan Reed ("Reed") was the loan processor for WRS's Asheville office. Reed is not now, nor has she ever been, licensed by the OCOB.

54. Upon information and belief, McCuen and Reed had knowledge of, directed, and/or participated in some of the deceptive acts and practices alleged in this Notice of Hearing.

(10) K&B Homebuilders, Inc.

55. K&B Homebuilders, Inc. ("K&B") is a North Carolina corporation engaged in the marketing and sale of stick-built homes, modular homes, and real property. In connection with the sales of these homes, K&B (by and through its owners, officers, agents, and employees) solicits and accepts residential mortgage loan applications.

56. K&B is not now nor has it ever been licensed by the OCOB to transact business as a mortgage broker, exclusive mortgage broker, mortgage lender, mortgage banker, or mortgage servicer.

57. Upon information and belief, Roger Bailey (the former PHG sales manager) is now an owner and officer of K&B. Similarly, Kelly Booker and George Varsamis (former PHG employees) are presently employees of K&B.

B. Deceptive Marketing and Sales of PHG Homes

58. PHG has had at least seven offices in North Carolina conducting business under the names of Phoenix Housing Group, HomesAmerica, and/or Southern Showcase Housing. PHG offices are or have been located in Asheboro, Asheville, Burlington, Fletcher, Granite Falls, Greensboro, Hendersonville, Salisbury, Waynesville, and Winston-Salem. At each of these locations, PHG sells or has sold manufactured and modular homes. As part of

the sales transactions, these homes were usually sold with or subsequently attached to residential real property within the state of North Carolina.

59. Since at least 2005, PHG advertised its ability to find its customers financing, using various advertisements including a sales marquee at the Granite Falls location which indicated: "\$500 Down, Move in Today."

60. In fact, borrowers could not move into a home for only \$500 the day they visited the store. Upon information and belief, PHG used these types of advertisements to attract borrowers who did not have good credit.

C. PHG's Origination of Residential Mortgage Loans

61. When customers walked into PHG's Granite Falls location, they were approached by a sales agent (including Bailey, Setzer, and/or Varsamis). The sales agents would ask the borrowers how much they could pay each month to purchase a manufactured or modular home. Whatever amount the borrowers stated, the sales agents assured the borrowers that they could purchase a home, including the land, for the stated amount.

62. These agents (who were not licensed by the OCOB) would then complete a document entitled "Mortgage Loan Application," a true and accurate copy of one such application is incorporated within the sworn affidavit of Marina McCuen, attached hereto as

Exhibit A. This application contained information including the prospective borrower's name, date of birth, social security number, marital status, number of dependents, residential history (including current and previous addresses, length of residency, current rent/mortgage payments, and, if applicable, current mortgage balance or landlord's name and contact information), employment information (including the applicant's current and former occupation, income, and contact information for the applicant's employer and/or supervisor), other sources of income, and bank account information.

63. The Mortgage Loan Application contained a Fair Credit Reporting Act ("FCRA") Notice, informing prospective borrowers that the application would be forwarded to FPMF. This form was used even when the loan was made or brokered through WRS or another lender or broker.

64. PHG, by and through its employees (including Bailey, Setzer, Varsamis, and Booker) collected and/or fabricated supporting documents needed to process the borrower's mortgage loan application, including W2s, Verifications of Rent (VORs), Verifications of Deposit (VODs), and Verifications of Employment (VOEs). In the event that borrowers had questions about their mortgage loan, they would direct these questions to PHG sales associates.

65. PHG forwarded these Mortgage Loan Applications and supporting documents to companies licensed by the OCOB to act as mortgage brokers and/or lenders. These companies included Good and Parris' mortgage company, FPMF; the now-bankrupt, American Home Mortgage Corp. (NCCOB License No. L-112614 - Cancelled); and WRS.

D. WRS's Association with PHG

66. Prior to August of 2007, PHG funneled a number of its mortgage loan applications through American Home Mortgage Corp. ("AHM").

67. When AHM filed bankruptcy on 06 August 2007, PHG was required to find an alternative source for financing. At the time of AHM's bankruptcy, approximately twelve (12) loans related to PHG sales were pending in AHM's pipeline and in need of an alternate source of funds needed to be found.

68. In a memo to Parris, Good described these mortgage loans in a memo as "difficult," and Parris and Good's mortgage company (FPMF) did not elect to finance these loans.

69. On or about 18 September 2007, Good and Parris met with McCuen of WRS. Thereafter, WRS agreed to finance the AHM transactions.

70. In response, on 25 September 2007, Good issued a memorandum indicating that because WRS was able to fund PHG's

"difficult" loans, WRS "earned" the opportunity to work with PHG in the future. Thereafter, PHG's employees at the Granite Falls location forwarded many Mortgage Loan Applications and supporting documents to McCuen.

E. WRS's Role in Originating PHG Loans

71. Based upon the information received from PHG, McCuen would fill out and prepare a Fannie Mae Form 1003 - Uniform Residential Loan Application ("URLA") and Real Estate Settlement Procedures Act ("RESPA") Disclosures.

72. On the URLA, McCuen indicated that she had collected the information during one or more telephone interviews with the prospective borrowers; however, in fact, McCuen rarely, if ever, spoke with prospective borrowers.

73. Upon information and belief, McCuen relied upon information contained upon the borrowers' credit reports to ascertain the borrowers' liabilities for the URLAs. This information was not obtained or verified through borrower interviews.

74. Similarly, McCuen relied upon the borrowers' names and driver's license photos (provided by PHG) to ascertain the borrowers' gender and racial information for the URLAs. This information was not obtained or verified through borrower interviews.

75. Finally, when completing the URLA, McCuen presumed that borrowers intended to occupy PHG homes as their primary residence. This information was not obtained or verified through borrower interviews.

76. McCuen relied upon PHG (the seller in the underlying transaction) to provide her with complete and accurate information regarding mortgage loan applicants. Upon information and belief, much of the information relayed through McCuen was false, fraudulent, and/or misleading information.

77. Upon completing the URLA and RESPA disclosures, McCuen would forward these documents back to PHG and/or Bailey. McCuen relied upon PHG and/or Bailey to obtain borrower signatures and to return these documents to WRS.

78. Upon information and belief, many of the borrowers' signatures were forged or falsified. Upon information and belief, PHG and/or PHG's employees would request borrowers to sign mortgage documents in blank; thereafter, Bailey or one of PHG's employees would take the signed document, hold it up to a window or some other source of light, and trace the borrower's signature upon the completed document or disclosure.

79. Upon information and belief, all or most processing activity was also performed by PHG or PHG's employees. PHG would collect and/or fabricate the supporting documents required

to process the borrowers' mortgage loan applications. This information was then be transmitted to WRS via facsimile.

80. Upon information and belief, to prevent underwriters and secondary market purchasers from detecting the origin of the supporting documents, WRS would trim the fax header from the top of the pages. WRS employees referred to these altered documents as "short paper." At times, the WRS employees would photocopy the short paper onto full 8½" x 11" sheets of paper and then shred the short paper. At other times, the "short paper" went directly into WRS's working loan files. Upon information and belief, much of the work of removing the fax header was done by Reed, a loan processor who worked in WRS's Asheville office. Upon information and belief, Reed was instructed to perform this task by Jason Peterson, a former WRS manager.

F. PHG's Compensation for Referrals and Loan Origination Services

81. On or about 27 November 2007, PHG and WRS entered into a written agreement. Upon information and belief, the purpose of this agreement was to provide compensation to PHG for the loan referrals being made to WRS and to defray the cost of the origination services being performed by PHG's employees.

82. Pursuant to the 27 November 2007 Agreement, PHG was to be paid one hundred and fifty dollars (\$150.00) per "prospect" referred to WRS.

83. Although the 27 November 2007 Agreement indicated that PHG's compensation would not be contingent upon a borrower's decision to obtain financing through WRS, upon information and belief, PHG and WRS orally agreed that two "prospects" would be submitted for every loan made or brokered by WRS. Thus, WRS was able to pay PHG three hundred dollars (\$300.00) per loan originated by unlicensed PHG employees. Upon information and belief, PHG and WRS intentionally structured this compensation scheme to avoid arousing suspicions.

84. Upon information and belief, in the first half of 2008, PHG hired Kelly Booker to serve as a full time loan processor. Thereafter, WRS and PHG decided that PHG should be compensated on a flat fee basis, in part, to defray the cost of PHG's loan processor.

G. WRS's Compensation in PHG Transactions

85. In addition to the origination fees, broker fees, and/or yield spread premiums which WRS imposed on PHG transactions, WRS routinely imposed two "discount" points.

86. Upon information and belief, WRS instructed its loan officers to include these alleged "discount" points on all

manufactured housing transactions. These alleged "discount" points were not requested by borrowers and did not result in the borrowers receiving a reduced interest rate.

H. Bait and Switch

87. Upon information and belief, borrowers based their decisions to purchase PHG homes or land/home packages upon the monthly payment amount quoted by PHG sales agents. In most cases, borrowers did not speak with a licensed loan officer or receive a RESPA Good Faith Estimate ("GFE"). In many cases, borrowers did not discover until the closing the true cost of their monthly payments. Often the true figures were several hundred dollars more per month than PHG's employees had previously represented.

88. In order to prevent borrowers from backing out of their transactions or exercising the 3-day right of rescission associated with the sale of manufactured homes, PHG required borrowers to sign promissory notes, which provided that if the borrower failed to close on the home, the borrower would owe PHG the money set out in note, usually around \$2,000. A true and accurate copy of such a promissory note is attached hereto as Exhibit B.

89. Loan closings often occurred at PHG's offices and Bailey or another PHG employee were present at signing. If and

when borrowers balked upon seeing the true cost of the loan transaction, Bailey or another PHG employee would remind the borrowers of the promissory note, and would tell them that if they backed out of the deal, they would owe PHG the amount listed on the note. Some borrowers did not have enough money to pay the promissory note and thought their only option was to sign the closing documents.

90. Additionally, when borrowers complained at the closing that their payments were higher than they had been promised, Bailey or another PHG employees would tell borrowers that they could be able to refinance their mortgage within a year and lower the payments at that time.

91. Bailey and the other PHG employees were not licensed loan officers or MLOs, nor were they employees of a licensed mortgage banker, lender or broker. As such, they were not authorized to issue loan commitments to borrowers.

92. Moreover, upon information and belief, these assurances regarding refinancing were not true. Borrowers could not actually refinance their loans in a year, because the subject manufactured homes were initially overpriced and depreciate over time. Moreover, the borrowers' purchase money mortgages had been made with high loan-to-value ratios, resulting in little-to-no (or negative) equity after one year.

Additionally, many borrowers could not qualify for a refinance legitimately, having only obtained financing for their purchase through the false and fraudulent representations which had been included in the borrowers' loan documents.

93. Finally, some borrowers report not being allowed to see their homes until after the closing. Upon seeing them, these borrowers realized that the homes were not the same homes that PHG and its agents had indicated that they would be purchasing. At least one borrower purchased a repossessed home, when PHG and its agents had represented that the borrower was buying a new home.

I. Mortgage Fraud

94. Interviews conducted with PHG borrowers has revealed that some borrowers did not have the income or assets, identified on the URLAs and needed to qualify for financing.

95. Upon information and belief, Bailey and/or PHG's employees overstated the borrowers' income and assets and understated their liabilities on the borrowers' mortgage loan applications. Upon information and belief, PHG's employees also fabricated other documents to create the appearance that the borrowers qualified for the loans. The types of documents fraudulently created included gift letters, budget letters, letters of explanation ("LOEs"), verifications of deposit

("VODs"), verifications of employment ("VOEs"), and verifications of rent ("VORs").

96. WRS used Old Republic Credit Services to pull, analyze, and supplement credit scores. Upon information and belief, WRS's branch manager, Vinson, instructed McCuen to give Bailey WRS's login name and password so that Bailey could directly pull the applicant's credit report and use a program called "Credit Expert" to determine ways to improve the borrower's credit score.

97. Upon information and belief, PHG and/or WRS Starkey instructed employees to place positive, albeit fraudulent, rental histories on borrowers' credit reports to create the illusion that borrower had a history of paying rent on time and could afford substantial monthly payments. In at least one case, PHG employee, Setzer, was identified as the borrower's landlord when this was not in fact the case.

98. By inflating the borrowers' assets and income on the borrowers' application, by reducing or concealing liabilities, and by fabricating supporting documents, PHG was able to ensure that otherwise unqualified borrowers could obtain financing to purchase PHG's homes. As a result, the borrowers qualified for loans that they could not afford, increasing the likelihood that

they would default on the loans and face foreclosure on their homes.

99. In some cases, PHG and WRS arranged for closings before the certificates of occupancy, certificates of completion, or FHA compliance inspection certifications had been issued for the home. Upon information and belief, when required PHG provided forged certificates of occupancy, certificates of completion, and/or FHA compliance inspection certifications so that the loan could close even though the borrower could not live in the home. Upon information and belief, this practice was done with the knowledge of WRS management, who put pressure on loan officers to increase their origination numbers and to avoid rolling transactions over from one quarter to the next.

J. Down Payment Assistance Fraud

100. Despite advertisements that indicated that borrowers would only have to pay a \$500 deposit on their purchase, many borrowers were required to put substantial sums down in order to qualify for mortgage financing. However, most borrowers who purchased from PHG had no money for a down payment.

101. Upon information and belief, PHG provided these borrowers with down payment funds through a down payment assistance grant program. In fact, the down payment "grant" was actually illusory. Upon information and belief, PHG was

required to repay the grant to the grant provider, and in turn, PHG increased the price of the home to cover PHG's repayment obligation.

102. PHG identified the non-seasoned "grant" funds as an asset on the borrowers' loan applications, making it appear that the borrowers had more assets than they actually did. Upon information and belief, in some cases the borrower never obtained these illusory funds, and where such funds were transferred to a borrower's account, they were immediately withdrawn and used at the closing.

103. Upon information and belief, Bailey also worked with one or more borrowers to make it appear that they had saved money for a down payment. In this scheme, Bailey would "cash" the borrower's paycheck. Bailey would give the borrower cash to live on and would hold the borrowers paychecks until closing. Bailey would then use these checks as "savings" to be allocated to the loan. Upon information and belief, Bailey recouped the cost of this scheme through inflating the sales price of the home.

K. Appraisal Fraud

104. Upon information and belief, the prices of the homes sold by PHG (and later K&B) were grossly inflated. In order to

obtain financing for these homes, PHG arranged for appraisals of the homes to provide to the lenders, including WRS.

105. A single appraiser conducted almost all of the appraisals for PHG's Granite Falls location. A review of a WRS loan files indicates that the appraiser did not follow the Uniform Standards of Professional Appraisal Practice. For instance, stick-built homes were used as comparables to the manufactured or modular homes, distant homes as comparables instead of closer properties, and the underlying real property was assessed as being valued as much as two hundred percent (200%) over the tax value. As a result, the appraisals were inaccurate and unreliable.

106. Upon information and belief, the inflated appraisals allowed PHG to sell the homes at higher prices and thus cover seller-paid fees and down payment assistance. Moreover, upon information and belief, Bailey, Setzer, Varsamis, and PHG's other sales representatives benefitted from the inflated home prices by receiving larger commissions on the sales.

L. Default Rates - Public Harm

107. Through fraudulent inflation of borrowers' repayment abilities and fraudulent inflation of appraised collateral values, PHG and WRS qualified otherwise unqualified borrowers for expensive and unaffordable loan products. Through the use

of coercive promissory notes and illusory promises to refinance, PHG fraudulently induced borrowers to accept these unaffordable mortgage products.

108. Upon information and belief, as a result of these practices, borrowers were more likely to default on their loans and face foreclosure. Given the inflated sales prices, such foreclosures are more likely to result in sizeable deficiencies.

109. WRS sold many of the subject mortgage loans on the secondary market. Furthermore, the majority of the loans made by WRS in 2008 were federally-insured, FHA loans.

110. According to the United States Department of Housing and Urban Development ("HUD") Neighborhood Watch Early Warning System, as of 30 September 2009, WRS had originated two hundred and eleven (211) loans from its Asheville office. Of these, fifty-five (55) defaulted within the first year. These default figures represent approximately twenty-six percent (26%) of WRS's total FHA loan originations from this office. Moreover, according to HUD, this default rate is five hundred and twenty-seven percent (527%) higher than the National average for FHA lenders.

111. As a result, secondary market purchasers, the federal government, and ultimately taxpayers will bear the cost of the Respondents' fraudulent practices.

M. HUD Investigation and Respondents' Attempted Cover-Up

112. In 2007, HUD initiated an administrative action against WRS [Docket No. 07-7015-MR], alleging that WRS had:

- a. understated proposed housing payments in qualifying borrowers for new construction loans;
- b. approved two borrowers who had delinquent federal debts;
- c. closed loans in excess of the maximum allowable amounts resulting in over-insured mortgages;
- d. failed to ensure that Construction-Permanent Mortgage Program requirements were met; and
- e. allowed documentation used in the processing and/or underwriting of loans to pass through, be handled, and/ or transmitted by an interested third party to the transaction.

113. On 4 April 2008, WRS entered into a settlement agreement with HUD, whereby it agreed to pay a civil money penalty of one hundred and forty-four thousand, four hundred and thirty-one dollars (\$144,431.00) and indemnify HUD for more than two-hundred and twenty-nine thousand dollars. At no point has WRS disclosed the existence of the settlement and/or the issuance of these civil money penalties to the OCOB.

114. Upon information and belief, at some point in 2008 HUD commenced an investigation of WRS's loan origination activities in North Carolina.

115. Upon information and belief, on or about 15 September 2008, Vinson called McCuen and told her that a HUD inspector was

coming to speak with her. Vinson instructed McCuen to lie to the HUD inspector and to tell him that WRS's loan files had been destroyed. Vinson instructed McCuen to remove all of the closed loan files from WRS's Asheville office. McCuen was instructed to ensure that Reed had removed any of her working loan files and had destroyed all short paper in the files. Vinson also instructed McCuen to call Bailey and tell him to turn off his cell phone and to stay away from the office on 17 September 2008.

116. Upon information and belief, on that same day, McCuen spoke with Andrew Church ("Church") and Andrew Looker ("Looker"), respectively WRS' vice-president and regional business development manager. Church and Looker also instructed McCuen to lie to the HUD inspector and remove all of the closed files as well as the working files from the office.

117. Upon information and belief, on the evening of September 15, 2008, after all of the WRS employees except Reed had left the office, McCuen and her husband removed all of the PHG files from the office and took them to their home. During this time, Reed removed the short paper from her working files and put it in the locked shred boxes in the office to be shredded.

118. When the HUD inspector came to McCuen's house, McCuen indicated that the files related to PHG had been destroyed.

119. Thereafter, in or around September of 2008, McCuen and Reed's employment were terminated from WRS and Bailey was terminated from PHG.

N. Ongoing Harm - Bailey, Varsamis, and K&B

120. In September 2008, Bailey set up K&B Homebuilders, Inc. ("K&B"). Bailey hired Booker and Varsamis to work with him.

121. K&B engages in the marketing and sales of manufactured, modular, and stick-built homes, as well as foreclosed property. In connection with the sales of these homes, K&B (by and through its owners, officers, agents, and employees) solicits and accepts residential mortgage loan applications, despite the fact that K&B is not now, nor has it ever been licensed by the OCOB.

122. Upon information and belief, Bailey and Varsamis have continued to engage in unlicensed mortgage loan origination activity in relation to the financing of K&B homes.

123. Upon information and belief, Bailey, Varsamis, and Booker have continued to engage in deceptive behavior in the sale and financing of these homes, including preparing and

submitting false financial information to lenders on behalf of mortgage applicants.

O. Ongoing Harm - PHG & FPMF

124. PHG continues to advertise its ability to find borrowers financing and quote available mortgage rates. In a recent advertisement for a sale occurring November 13-15, 2009, attached hereto as Exhibit C, PHG promises "Rates as low as 5%... OR 3.75% (3 year ARM)." Moreover, PHG indicates that it has "Lenders on site." Upon information and belief, no OCOB licensed lender has obtained licensure to operate a branch from this location.

125. Upon information and belief, PHG has continued to originate loans through the Winston-Salem office of Good and Parris' company, FPMF. Upon information and belief, PHG borrowers continue to deal directly with PHG sales representatives and do not provide mortgage application information directly to FPMF. Although Anderson has been identified as the loan officer and/or MLO on the URLs for these PHG-related loans, upon information and belief, Anderson has not solicited or accepted these applications; instead, PHG sales representatives have obtained the application information.

126. According to the HUD Neighborhood Watch Early Warning System, as of 30 September 2009, FPMF had originated three

hundred and thirty-five (335) loans from its Winston-Salem office. Of these, fifty-one (51) defaulted within the first year. These default figures represent approximately fifteen percent (15%) of FPMF's total FHA loan originations from this office. Moreover, according to HUD, this default rate is three hundred and seven percent (307%) higher than the national average for FHA lenders.

O. Ongoing Harm - WRS

127. Upon information and belief, WRS and its qualifying individual, Bergwall, continue to lack full charge, control, and supervision over WRS branches, as evidenced in part by the fact that MU3 Branch Applications filed by prospective WRS branches indicate that the branches have sole responsibility for all decisions regarding the hiring, firing, and compensation of WRS mortgage loan originators.

V. CLAIMS FOR RELIEF

COUNT ONE

Unlicensed Loan Officer Activity under the MLA

128. Paragraphs 1 through 127 are realleged and incorporated by reference herein.

129. Pursuant to G.S. § 53-243.02(a):

Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker... or directly or indirectly to engage in the business of a mortgage broker... without first obtaining a license from the Commissioner

under the provisions of this Article. This Article shall apply to any person who seeks to avoid its application by any direct or indirect device, subterfuge, artifice, or pretense whatsoever.

130. Pursuant to G.S. § 53-243.02(b):

It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, limited loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article.

131. Pursuant to G.S. § 53-243.02(e):

No person, other than an exempt person, shall hold himself or herself out as a... a mortgage broker... a limited loan officer, or a loan officer unless such person is licensed in accordance with this Article.

132. Prior to 30 July 2009, Bailey, Setzer, Varsamis, and/or other PHG and K&B sales representatives solicited and accepted mortgage loan applications from PHG and K&B customers, despite the fact that these individuals were not licensed as loan officers under the MLA, nor were they exempted entities pursuant to G.S. § 53-243.01(12).

133. Moreover, between January of 2007 and 02 November 2007, McCuen acted as an unlicensed loan officer for WRS.

134. Between January of 2007 and 22 August 2007, Vinson

worked as a branch manager for WRS without the benefit of a loan officer or branch manager license.

135. Prior to 30 July 2009, PHG, WRS, FPMF, K&B, Starkey, Bergwall, Lacefield, Good, and Parris employed, compensated, and/or to appointed unlicensed individuals to act as their agents in soliciting and accepting mortgage loan applications.

136. Pursuant to G.S. § 53-243.12(c), officers, directors, partners, or individuals occupying a similar status or performing similar functions for a licensee may be found to be individually liable for a licensee's violations of the MLA.

137. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT TWO
Unlicensed MLO Activity under SAFE

138. Paragraphs 1 through 137 are realleged and incorporated by reference herein.

139. Pursuant to G.S. § 53-244.0040(a):

... no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt person, to act as a mortgage loan originator without a mortgage loan

originator license, which authorizes an individual who is employed by a licensee holding a license... to conduct the business of a mortgage loan originator.

140. Pursuant to G.S. § 53-244.100(a):

It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator under this Article.

141. Since 31 July 2009, Bailey, Setzer, Varsamis, and/or other PHG and K&B sales representatives have solicited and accepted mortgage loan applications from PHG and K&B customers, despite the fact that these individuals are not licensed as MLOs under SAFE, nor are they exempted entities pursuant to G.S. § 53-244.040(d).

142. Moreover, since 31 July 2009, PHG, K&B, Good, and Parris have employed, compensated, and/or to appointed unlicensed individuals to act as their agents in soliciting and accepting mortgage loan applications.

COUNT THREE
Unlicensed Broker Activity under the MLA

143. Paragraphs 1 through 142 are realleged and incorporated by reference herein.

144. Pursuant to G.S. § 53-243.02(a):

Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker, mortgage banker, or mortgage servicer, or directly or indirectly to engage in the business of a mortgage broker, mortgage banker, or mortgage servicer without first obtaining a license from the Commissioner under the provisions of this Article. This Article shall apply to any person who seeks to avoid its application by any direct or indirect device, subterfuge, artifice, or pretense whatsoever.

145. Pursuant to G.S. § 53-243.02(e):

No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, an affiliated mortgage banker, a mortgage broker, a mortgage servicer, a limited loan officer, or a loan officer unless such person is licensed in accordance with this Article.

146. Prior to 30 July 2009, by and through agents and employees, PHG, WRS, and K&B:

- a. Accepted or offered to accept applications for mortgage loans;
- b. Solicited or offered to solicit mortgage loans;
- c. Negotiated terms or conditions of mortgage loans;
or
- d. Issued mortgage loan commitments.

138. Pursuant to G.S. § 53-243.12(c), officers, directors, partners, or individuals occupying a similar status or performing similar functions for a licensee may be found to be individually liable for a licensee's violations of the MLA.

147. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or

pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT FOUR
Unlicensed Broker Activity under SAFE

151. Paragraphs 1 through 150 are realleged and incorporated by reference herein.

152. Pursuant to G.S. § 53-244.0040(a):

... no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article...

153. Pursuant to G.S. § 53-244.100(a):

It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article.

154. Since 31 July 2009, by and through agents and employees, PHG and K&B have:

- a. Directly or indirectly accepted or offered to accept applications for mortgage loans from prospective borrowers;
- b. Solicited or offered to solicit mortgage loans;
- c. Negotiated terms or conditions of mortgage loans;
or
- d. Issued mortgage loan commitments.

COUNT FIVE
Mortgage Fraud

155. Paragraphs 1 through 154 are realleged and incorporated by reference herein.

156. Pursuant to G.S. § 53-243.11(1), it was a prohibited activity:

To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

157. Pursuant to G.S. § 53-243.11(8), it was a prohibited activity:

To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.

158. Prior to 30 July 3009, PHG, WRS, FPMF, and K&B, by and through their employees (including Bailey, Setzer, Varsamis, McCuen, Reed, and Anderson) made material misrepresentations and engaged in acts and practices that were not in good faith or fair dealing and which constituted a fraud in connection with the making and brokering of mortgage loans. Such activities include, but are not limited to:

- a. Misrepresenting borrowers' incomes and/or employment;

- b. Misrepresenting borrowers' assets, including available down payments and gifts;
- c. Misrepresenting borrowers' liabilities;
- d. Misrepresenting borrowers' rental histories;
- e. Misrepresenting the nature, value, and/or status of the collateral property;
- f. Misrepresenting the identity of the individual who had solicited and/or accepted the loan application;
- g. Misrepresenting the manner in which the loan application had been taken;
- h. Misrepresenting the source of loan processing services;
- i. Misrepresenting terms of financing, including required down payments or anticipated principal and interest payments;
- j. Misrepresenting origination fees as discount points;
- k. Asking borrowers to sign documents in blank, so that false and fraudulent information could subsequently be inserted thereupon;
- l. Forging, altering, or creating VOEs, VODs, VORs, and borrower signatures;
- m. Engaging in bait-and-switch sales, as more particularly alleged in Paragraphs 83 through 89, above; and
- n. Hiding or destroying or instructing employees to hide or destroy business records related to an ongoing investigation; and
- o. Making false statements or instructing employees to make false statements to federal investigators.

159. Such misrepresentations were likely to influence,

persuade, or induce applicants for mortgage loans to take such mortgage loans in that, among other things, such applicants were lead to believe the loan terms would be more favorable than they actually were and that borrowers would be allowed to refinance to better, lower rates in the future.

160. Moreover, these misrepresentations were not in good faith or fair dealing and constituted a fraud upon secondary market purchasers, investors, and federal agencies, including but not limited to HUD, in that such loans would not have been made, sold, or federally-insured had the true circumstances regarding the borrowers' repayment abilities, the value of the collateral, and loan origination practices been known.

161. Pursuant to G.S. § 53-243.12(c), officers, directors, partners, or individuals occupying a similar status or performing similar functions for a licensee may be found to be individually liable for the violations of the MLA by the licensee and/or its agents and employees.

162. Pursuant to G.S. § 53-243.01(6), as branch manager for the Asheville branch, Vinson was responsible for monitoring operations occurring in said branch, including the unfair and deceptive activity described above.

163. Additionally, Bailey, Setzer, Varsamis, McCuen, Reed, and Anderson are jointly liable for their individual

participation in these misrepresentations and deceptive acts.

164. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT SIX

Usury - Making and/or Brokering Loans with Terms in Violation of Chapter 24 of the General Statutes

165. Paragraphs 1 through 164 are realleged and incorporated by reference herein.

166. Pursuant to G.S. § 53-243.11(5), prior to 31 July 2009, it was a prohibited activity to:

charge or collect any fee or rate of interest or to make or broker any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24 of the General Statutes.

167. WRS, FPMF, and/or PHG made and/or brokered mortgage loans with terms or conditions in violation of Chapter 24. Such violations include, but are not limited to:

a. Violation of G.S. § 24-1.1A(c)(1)b:

- (i) Discount points may only be assessed on a mortgage where they are paid by the borrower "for the purpose of reducing and in fact result in a bona fide reduction in the interest rate or time-price differential."
- (ii) The loans made and/or brokered by WRS, FPMF, and/or PHG contained discount points which were not knowingly elected or paid by the

borrowers for the purpose of reducing said borrowers' rates, and which did not in fact result in a bona fide reduction in said borrowers' interest rates.

b. Violation of G.S. §§ 24-1.1A(c)(1)e and 24-8(d):

- (i) Mortgage broker compensation must be bona fide and no mortgage broker may charge or receive any unreasonable compensation for loan-related goods, products, and services.
- (ii) Broker fees imposed for origination services performed by unlicensed loan officers is per se unreasonable and non-bona fide.
- (iii) The loans made and brokered by WRS, FPMF, and/or PHG contained unreasonable and non-bona fide fees and charges for broker services rendered in whole or in part by unlicensed loan officers.

168. Pursuant to G.S. § 53-243.12(c), officers, directors, partners, or individuals occupying a similar status or performing similar functions for a licensee may be found to be individually liable for violations of the MLA by the licensee and/or its agents and employees.

169. Pursuant to G.S. § 53-243.01(6), as branch manager for the Asheville branch, Vinson was responsible for monitoring operations occurring in said branch, including the fees and charges imposed on loans originated from his branch.

170. Additionally, McCuen and Anderson are jointly liable for their individual participation in the making and/or

brokering of these usurious loans.

171. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT SEVEN

Failure to Give Due Regard for Borrower Repayment Ability

172. Paragraphs 1 through 171 are re-alleged and incorporated herein by reference.

173. Pursuant to G.S. § 53-243.11(8), prior to 31 July 2009, it was unlawful for any person in the course of a mortgage loan transaction to:

engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making of, or purchase or sale of, any mortgage loan.

174. Prior to 31 July 2009, WRS and FPMF engaged in a practice or course of business that was not in good faith or fair dealing by failing to give due regard to its borrowers' repayment abilities. Evidence for this failure includes, but is not limited to:

- a. WRS and FPMF failure to independently verify borrowers' incomes, liabilities, and assets; and
- b. WRS and FPMF's higher-than-normal early payment

default rate for FHA-insured mortgage loans originated in this manner.

175. Pursuant to G.S. § 53-243.12(c), officers, directors, partners, or individuals occupying a similar status or performing similar functions for a licensee may be found to be individually liable for a licensee's violations of the MLA.

176. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT EIGHT
Engaging in Business Practices that Are Not
in Good Faith or Fair Dealing

177. Paragraphs 1 through 176 are re-alleged and incorporated herein by reference.

178. Pursuant to G.S. § 53-243.11(8), prior to 31 July 2009, it was unlawful for any person in the course of a mortgage loan transaction to:

engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making of, or purchase or sale of, any mortgage loan.

179. Prior to 31 July 2009, WRS and FPMF engaged in a variety of other practices and/or courses of business that were

not in good faith or fair dealing, including, but not limited to:

- a. Failing to obtain supporting documents directly from borrowers and/or other credible sources;
- b. Failing to communicate with and verify application information from borrowers;
- c. Failing to comply with uniform underwriting guidelines,
- d. Failing to comply with federal laws and regulations, including, but not limited to, RESPA and FCRA; and
- e. Failing to establish sufficient quality control and/or review mechanisms to detect and remedy unlawful activity described herein.

180. Pursuant to G.S. § 53-243.12(c), officers, directors, partners, or individuals occupying a similar status or performing similar functions for a licensee may be found to be individually liable for a licensee's violations of the MLA.

181. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT NINE
Lack of Supervision and Control

182. Paragraphs 1 through 181 are re-alleged and incorporated herein by reference.

183. Pursuant to G.S. § 53-243.01(6), prior to 31 July 2009, branch managers under the MLA were to be physically located within and were to maintain charge and supervision over their branch offices.

184. Vinson was the branch manager for the Asheville, North Carolina branch of WRS, although he was a resident of South Carolina and did not regularly and routinely work from and supervise the activities of the Asheville branch location.

185. The failure to adequately supervise the Asheville branch and the failure to establish a licensed branch manager within the Asheville branch constitute violations of the MLA for which Vinson and WRS are liable.

186. Moreover, it appears that Bergwall, as qualifying individual for WRS, does not have full charge, control, and supervision over the operations of WRS branches in violation of G.S. §§ 53-243.08, 53-244.040(e). Evidence of this lack of control includes, but is not limited to the fact that prospective WRS branches have filed MU3 Branch Applications which indicate that the branches (and not Bergwall or WRS) will be solely responsible for all decisions regarding the hiring, firing, and compensation of WRS mortgage loan originators.

187. Pursuant to G.S. § 53-243.12(c), Starkey, Bergwall, Lacefield, and Church may be found to be individually liable for

violations of the MLA committed by WRS and/or Vinson.

188. Pursuant to Section 5(6) of House Bill 1523, Session Law 2009-374, the OCOB can bring and maintain any action or pursue any remedy that could have brought under Article 19A of Chapter 53 against any person for any acts or omissions in violation of Article 19A occurring on or before 30 July 30 2009.

COUNT TEN
Lack of Character and Fitness

189. Paragraphs 1 through 188 are re-alleged and incorporated herein by reference.

190. Pursuant to G.S. § 53-244.060(4), a licensee must demonstrate such "financial responsibility, character, or general fitness" such as "to command the confidence of the community and to warrant a determination that the . . . licensee will operate honestly, fairly, and efficiently within the purposes of [Article 19B]."

191. The actions of WRS and FPMF and its officers, directors, or control persons, reflect a clear disregard for state supervision and regulation, and reflect a lack of character, general fitness and financial responsibility to engage in the mortgage lending business.

192. Similarly, the actions of McCuen, Vinson, and Anderson reflect a lack of character, general fitness and financial

responsibility to engage in the mortgage lending business.

COUNT ELEVEN
Investigative and Examination Costs

193. Paragraphs 1 through 192 are re-alleged and incorporated herein by reference.

194. Pursuant to G.S. §§ 53-243.12(g) and 53-244.115(b), OCOB has incurred and continues to incur costs resulting from the investigation and examination of the matters alleged herein, and is entitled to recover said costs from Respondents.

VI. PRAYER FOR RELIEF

Based upon the foregoing allegations:

1. Pursuant to G.S. § 53-244.114(b)(1), Respondents should be ordered to cease and desist from any harmful activities and violations of law.

2. Pursuant to G.S. §§ 53-243.12(a)(1), 53-243.12(a)(2)b and g, 53-244.114(a)(1), and 53-244.11(a)(2)b and f, the licenses heretofore issued to WRS, FPMF, McCuen, Vinson, and/or Anderson should be suspended or revoked.

3. Pursuant to G.S. §§ 53-243.12(d), 53-244.114(a), 53-244.116(a)(5), and 53-244.116(a)(5), the Commissioner should issue a cease and desist order against Respondents and/or otherwise enjoin Respondents from directly or indirectly

engaging in the mortgage, or from otherwise committing any harmful activities and violations of SAFE;

4. Pursuant to G.S. § 53-243.12(c), the Commissioner should impose upon Respondents civil money penalties not to exceed ten thousand dollars (\$10,000) for each violation of the MLA;

5. Pursuant to G.S. § 53-243.12(j), the Commissioner should require disgorgement by Anderson, FPMF, Vinson, McCuen, and WRS;

12. Pursuant to G.S. §§ 53-243.12(g) and 53-244.115(b), the Commissioner should charge OCOB's investigative and examination costs to Robert Anderson, FPMF, Vinson, McCuen, and/or WRS; and

13. Such other and further relief as the Commissioner deems appropriate.

Issued this 18th day of November, 2009.

Office of the Commissioner of Banks



Mark E. Pearce
Chief Deputy Commissioner of Banks

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CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing Notice of Hearing placing a copy of the same in the United States Post Office at Raleigh, North Carolina, certified mail, return receipt requested, postage prepaid and addressed to:

Phoenix Housing Group, Inc.
d/b/a Homes America
c/o Douglas E. Meadows (Registered Agent)

[REDACTED]

Gary Good

[REDACTED]

Dennis Parris

[REDACTED]

Roger Dean Bailey, Jr.

[REDACTED]

Dennis Setzer

[REDACTED]

George William Varsamis

[REDACTED]

First Priority Mortgage & Finance, Inc.
c/o Robert Anderson (Registered Agent)

[REDACTED]

WR Starkey Mortgage, LLP
c/o CT Corporation System (Registered Agent)

[REDACTED]

William R. Starkey, Jr.

[REDACTED]

Todd A. Bergwall

[REDACTED]

Gary E. Lacefield

[REDACTED]

Andrew M. Church

[REDACTED]

Isaac Vinson

[REDACTED]

Marina R. McCuen

[REDACTED]


Susan Reed

[REDACTED]

K&B Homebuilders, Inc
c/o Travis D. Kanupp (Registered Agent)

[REDACTED]

This the 18th day of November, 2009.


Seth P. Rosebrock
Assistant Attorney General