

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.

STATE OF NORTH CAROLINA *ex rel.*  
ROY COOPER, Attorney General,

Plaintiff,

v.

PHOENIX HOUSING GROUP, INC., D/B/A  
HOMESAMERICA, GARY LEE GOOD, DENNIS  
PARRIS, ROGER DEAN BAILEY, JR., YO XEY  
HER A/K/A JOE HERR, DENNIS SETZER,  
W.R. STARKEY MORTGAGE, L.L.P.,  
MARINA MCCUEN, IKE VINSON, K AND B  
HOME BUILDERS, INC., GEORGE WILLIAM  
VARSAMIS, TRAVIS DWAYNE KANUPP,  
AND KATHY SMITH

Defendants.

COMPLAINT

The plaintiff, complaining of defendants, alleges and says:

INTRODUCTION

1. This is an action to restrain defendants from engaging in unfair and deceptive trade practices in the sale and financing of manufactured and modular homes in combination with real property and to obtain restitution and further relief, pursuant to N.C.G.S. §§ 75-14, 75-15.1, 75-15.2, and 75-16.1.

PARTIES

2. Plaintiff is the State of North Carolina acting through its Attorney General Roy Cooper pursuant to authority granted by Chapters 75 and 114 of the General Statutes.

3. Defendant 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 names of HomesAmerica (HA) and Southern Showcase Housing (SSH). 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. Defendant PHG also sells modular homes in connection with parcels of real property. Additionally, defendant PHG assists customers in securing financing for their purchases.

4. Defendant Gary Lee Good is a resident of North Carolina and is president of defendant PHG. Along with defendant Dennis Parris, he manages and controls the business operations of defendant PHG. Upon information and belief, defendant Good has knowledge of and has directed and participated in the deceptive acts and practices alleged in this complaint.

5. Defendant Dennis Parris is a resident of North Carolina and is the vice-president of defendant PHG. At times relevant to this complaint, he was the area supervisor for certain PHG sales outlets, including the Granite Falls store. Along with defendant Good, he manages and controls the business operations of defendant PHG. Upon information and belief, defendant Parris has knowledge of and has directed and participated in the deceptive acts and practices alleged in this complaint.

6. Defendant Roger Dean Bailey, Jr. is a resident of North Carolina and was formerly employed by defendant PHG as its sales manager at its Granite Falls store. While employed at the Granite Falls store, defendant Bailey directed and participated in the deceptive acts and practices alleged in this complaint. Upon information and belief, defendant Bailey is currently an officer and owner of defendant K and B Homebuilders, Inc. and, along with defendant Travis Kanupp, manages and controls its business operations in connection with the deceptive marketing and sale of modular homes and real property, stick-built homes, and foreclosed homes, and assisting consumers in securing financing for their purchases.

7. Defendant Yo Xey Her a/k/a Joe Herr is a resident of North Carolina and was employed as a sales agent for defendant PHG at its Granite Falls location. Upon information and belief, defendant Her is currently employed by defendant K and B Homebuilders, Inc. While employed by defendant PHG at the Granite Falls store and by defendant K and B Homebuilders,

Inc., defendant Her directed and participated in the deceptive acts and practices alleged in this complaint.

8. Defendant Dennis Setzer is a resident of North Carolina and was employed as a sales agent for PHG at its Granite Falls location. While employed at the Granite Falls store, defendant Setzer directed and participated in the deceptive acts and practices alleged in this complaint.

9. Defendant W.R. Starkey Mortgage, L.L.P. (Starkey) is a Delaware limited liability partnership with its corporate office in Plano, Texas. Starkey registered to do business in North Carolina in 2002 and provided financing for consumers purchasing manufactured and modular homes from defendant PHG between January 2007 and September 2008.

10. Defendant Marina McCuen is a resident of North Carolina and was employed as a loan officer for defendant Starkey when defendant Starkey was providing financing for consumers who purchased manufactured homes, land-home packages, and modular homes from defendant PHG. Defendant McCuen worked almost exclusively with defendant Bailey in providing loans for customers of defendant PHG's Granite Falls location and participated in the deceptive acts and practices alleged in this complaint.

11. Defendant Ike Vinson is a resident of South Carolina and was an employee of defendant Starkey when defendant Starkey was providing financing for consumers who purchased manufactured homes, land-home package, and modular homes from defendant PHG. Defendant Vinson directly supervised defendant McCuen at all times relevant to this complaint and, upon information and belief, participated in the deceptive acts and practices alleged in this complaint.

12. Defendant K and B Home Builders, Inc. (K&B) is a North Carolina corporation that is currently engaged in the marketing and sale of stick-built homes, modular homes in connection with the sale of parcels of real property, and foreclosed homes. Defendant K&B

assists consumers in securing financing for the purchase of the homes and has participated in the deceptive acts and practices alleged in this complaint.

13. Defendant George William Varsamis is a resident of North Carolina and has worked as a sales agent for both defendants PHG and K&B while selling manufactured and modular homes in connection with parcels of real property. Defendant Varsamis has participated in the deceptive acts and practices alleged in this complaint.

14. Defendant Travis Dwayne Kanupp is a resident of North Carolina and is the incorporator of defendant K&B. Upon information and belief, he is an officer and owner of defendant K&B and, along with defendant Bailey, manages and controls its business operations in connection with the deceptive marketing and sale of modular homes and real property, stick-built homes, and foreclosed homes and assisting consumers in securing financing for their purchases.

15. Kathy Smith is a resident of North Carolina and is licensed as an appraiser by the North Carolina Appraisal Board. Defendant Smith conducted appraisals on land-home packages sold by the PHG Granite Falls store and by defendant K&B.

#### FACTUAL ALLEGATIONS

16. Defendant PHG or related corporate entities currently has seven offices in North Carolina conducting business under the names of PHG, HA, and SSH. These offices are located in Asheboro, Asheville, Burlington, Granite Falls, Greensboro, Hendersonville, and Winston-Salem. At each of these locations, defendant PGH, through its owners, officers (including defendants Good and Parris), employees, and agents sells manufactured homes, usually as land-home packages, and modular homes, usually in connection with parcels of real property.

##### I. DECEPTIVE ADVERTISING PRACTICES

17. Since at least 2005, defendant PHG has advertised on a sale marquee at the Granite Falls location "\$500 Down, Move in Today." Defendant PHG also advertised

opportunities for consumers to rent-to-own homes at the Granite Falls location and other locations, including an advertisement on Craigslist.

18. In fact, consumers could not move into a home for only \$500 the day they visited the Granite Falls location, and defendant PHG had few, if any, rent-to-own homes available.

19. Upon information and belief, the advertisements described in paragraph 17 above were intended primarily to entice consumers to come into the sales office for a sales presentation. Additionally, upon information and belief, defendant PHG used these types of advertisements to attract consumers who did not have good credit.

## II. MISREPRESENTATIONS ABOUT MONTHLY PAYMENTS AND SALES PRICES

20. Starting in at least 2005, when consumers walked into defendant PHG's Granite Falls location in response to the ads described in paragraph 17 above, the sales agents, including defendants Bailey, Setzer, Her, and Varsamis, asked the consumers how much they could pay each month to purchase a manufactured or modular home. Whatever amount the consumers stated, the sales agents represented to consumers that they could purchase a home, including the land, for that amount per month. Defendant PHG's sales agents told consumers that they would not have to make a down payment on the home.

21. Consumers based their decisions to purchase the homes or land/home packages on the monthly payment amount that the sales agents assured the consumers would be the total monthly payment. Consumers did not find out until the closing that their monthly payments were several hundred dollars more a month than defendant PHG's agents and employees had represented to consumers. When consumers asked at the closing about the difference in the monthly payment from what they were promised, defendant PHG's employees and agents, including defendant Bailey, told consumers that the amount they were initially told did not include taxes and insurance.

22. Upon information and belief, because the homes were overpriced, defendant PHG attempted to keep the consumers focused on the low monthly payments misrepresented to the

consumer rather than telling the consumer the total purchase price of the home and the land. In some instances, consumers did not know the total purchase price until the closing.

23. The sales contracts that the consumers signed did not always provide all of the information that defendant PHG was required by statute to provide. Some contracts did not provide the estimated terms of the financing. Some contracts did not set out a breakdown of the cost of the land and the cost of the home. In some instances, the consumer did not receive a copy of the contract until the closing.

24. Upon information and belief, defendant PHG and its agents and employees engaged in the acts alleged in paragraph 20-23 to prevent the consumers from finding out the total price of the home and the actual monthly payments prior to the closing because the consumers might have cancelled their contracts if they had known the truth.

### III. COLLECTION OF \$500 DEPOSIT

25. Defendant PHG required the consumers to pay \$500 at the time the consumers signed the initial paperwork to purchase the home. In some instances, the consumers had to borrow the \$500 from friends and relatives, and in other instances, the consumers paid in installments. Consumers generally understood this to be some kind of deposit or down payment, but consumers' closing documents do not indicate that defendant PHG appropriately credited consumers on the purchase price for the \$500 payment.

### IV. DECEPTIVE ACTIVITIES IN CONNECTION WITH LOAN APPLICATIONS, LOAN PROCESSING, AND EXTENSION OF CREDIT TO CONSUMERS

26. Once a consumer decided to purchase a PHG home, defendant PHG's agents or employees asked the consumer for certain financial information. The sales agent used this information to complete an application containing financial information sufficient to apply for a mortgage loan. In the Granite Falls office, typically, defendant Bailey received the application and determined whether the consumer could qualify for a mortgage. If defendant Bailey thought that the consumer could qualify for a mortgage, he sent the form to one of the mortgage companies defendant PHG used, including defendant Starkey.

27. From early 2007 until about September 2008, the Granite Falls office used defendant Starkey almost exclusively for funding the consumers' mortgages. Defendant McCuen was the Starkey loan officer who handled the loans for the Granite Falls office.

28. Upon information and belief, defendant McCuen or one of defendant Starkey's other employees or agents reviewed the consumer applications forwarded by defendant Bailey, prepared Real Estate Settlement Procedures Act (RESPA) disclosures, and then e-mailed these disclosures back to defendant Bailey. Defendant Bailey decided whether to process the application and then instructed the sales associate to contact the consumer and gather documents such as W-2 forms from the consumer.

29. In most cases, defendant McCuen did not speak directly with the consumers nor independently verify any of the financial information included in the application she received from defendant Bailey. However, the Uniform Residential Loan Applications completed for the consumers on these occasions indicated that defendant McCuen had personally interviewed the borrowers and obtained the financial information from them.

30. When defendant Starkey notified defendant PHG that the loan was approved, the PHG sales agent called the consumer to come back into the sales office to sign documents and pick out a house. Defendant PHG sometimes instructed consumers to sign blank documents, and, therefore, the consumers did not know what they signed. Defendant PHG created an atmosphere where the signature process seemed rushed. The sales agents would tell the consumers they did not have time to complete the forms and that the sales agents would complete them later. As a result, the consumers signed the blank documents as requested and did not know the terms of their loan.

31. Defendant PHG should have given consumers RESPA Good Faith Estimates (GFE) at the time the consumers signed the offer to purchase. However, defendant PHG did not always give these documents to the consumers. Therefore, the consumers who did not receive

the RESPA GFE did not know the cost of the house or the monthly payments until they went to their closings.

32. When consumers returned to the PHG Granite Falls sales office to sign the sales documents, defendant PHG also required them to sign a promissory note. The promissory note provided that if the consumer did not close on the home, the consumer would owe defendant PHG the money set out in note, generally between \$2,000 and \$5,000. As described more fully below, defendant PHG later used these notes as leverage to pressure consumers into closing the deals and not exercising their cancellation rights once they learned their monthly payments were more than defendant PHG's employees and agents had initially promised.

#### V. PREPARATION AND SUBMISSION OF FRAUDULENT FINANCIAL INFORMATION AND SUPPORTING DOCUMENTATION

33. Some consumers who purchased from defendant PHG and received loans from defendant Starkey and other lenders did not have the income or assets to qualify for the amount of money they borrowed on the properties. To ensure that these consumers would qualify for the loans, defendant PHG's employees overstated the consumers' income and assets and understated their liabilities on the consumers' loan applications.

34. Defendant PHG's employees also fabricated other documents to create the appearance that the consumers qualified for the loans. The types of documents defendant PHG's employees and agents falsely created included gift letters, budget letters, letters of explanation (LOE), verifications of deposit (VOD), verifications of employment (VOE), and verifications of rent (VOR).

35. One couple's loan file included a gift letter that purported to be from their grandson. The letter stated that the grandson was providing money to pay off some of the couple's debts and to pay their down payment on the home they were purchasing from defendant PHG. However, the couple had no grandson and did not receive any money for their down payment or to pay off their debts. In fact they did not make a down payment. Another consumer's loan file included a VOE from a company where the consumer did not work. This

consumer's income as stated on the loan application exceeded what the consumer made in her actual job. Upon information and belief, these consumers would not have qualified for the loans they received if defendant PHG's agents and employees had not altered their financial information submitted to the lender.

36. Upon information and belief, defendant Bailey paid local businesses to prepare false credit references for consumers who would not otherwise qualify for credit. The consumers had no business relationship with these businesses. Upon information and belief, these false credit references were submitted to lenders to assist the consumers in qualifying for loans.

37. Upon information and belief, defendant Bailey used his own telephone number or telephone numbers of other PHG employees or agents as numbers the lenders could call to verify consumers' rental history. Upon information and belief, when the lender called to verify the rental history, defendant Bailey or the other employees would falsely verify that rental history.

38. Defendant Bailey, or other employees or agents of defendant PHG at defendant Bailey's direction, forged consumers' signatures on critical loan documentation without the consumers' knowledge. In some cases, defendant Bailey or one of the agents or employees would forge the document by taking a document that the consumer had signed, holding it up to a window or some other source of light, and tracing the consumer's signature on the new document. Defendant PHG then forwarded these forged documents to the lender.

39. Defendant PHG had form LOE's on file at the Granite Falls office that defendant PHG could submit to a lender when the lender requested more information. The same format was used for the LOE's with defendant PHG's employees changing only the specifics as needed. Upon information and belief, defendant PHG's employees and agents signed these fraudulent LOE's and sent them without the knowledge of the consumer purchasing the home.

40. By inflating these figures and fabricating supporting documents, defendant PHG was able to ensure that otherwise unqualified consumers could obtain loans to purchase defendant PHG's homes. As a result, the consumers "qualified" for loans that they could not

afford, increasing the likelihood that they would default on the loans and face foreclosure on their homes.

#### VI. FAILURE TO VERIFY CONSUMERS' FINANCIAL INFORMATION

41. Defendant Starkey and its agents and employees, including defendant McCuen, did not verify the consumers' financial information provided by defendant PHG's agents and employees. Upon information and belief, because defendant Starkey and its agents and employees, including defendant McCuen, did not verify the consumers' information, defendant Starkey improperly extended credit to consumers who could not afford to pay the loans they received.

42. Defendant Starkey sometimes instructed one of its employees to place positive rental histories on consumers' credit reports because it showed the consumer had a pattern of making timely rental payments, improving the consumers' credit worthiness. In one instance, an employee of defendant Starkey submitted information to be placed on a consumer's credit report indicating that defendant Setzer was the consumer's landlord and that the consumer was timely in making rental payments. In fact, defendant Setzer was not the consumer's landlord, and the Starkey employee submitted the information without verifying it.

43. Defendant Starkey's agents or employees, including defendant McCuen, received by facsimile fabricated documents from defendant PHG and its agents and employees, including defendant Bailey, but did not independently verify the income or employment information contained in the documents. Secondary market purchasers expected Starkey to have independently obtained and verified this information. In order to disguise the source of the information, defendant Starkey instructed its agents and employees to cut off the fax header on the sheet prior to placing the sheet in the consumer's file. Defendant Starkey's employees referred to these truncated sheets as "short paper." In some cases, rather than putting the "short paper" in the file, a document was recopied, a full sheet was placed in the file, and the "short paper" was shredded.

44. One of defendant PHG's employees at the Granite Falls location was specifically hired as a loan processor to secure information about the consumer's employment, rent, and other financial information to pass along to defendant Starkey. These were duties that defendant Starkey's employees, such as its loan processors, should have been performing themselves but failed to do, relying instead on the defendant PHG's employee to perform them. To reimburse defendant PHG for providing this service, defendants Starkey and PHG entered into an agreement where defendant Starkey agreed to pay a \$300 commission to defendant PHG for every loan defendant Starkey closed for a defendant PHG borrower. However, upon information and belief, concerned that a \$300 referral fee might violate or appear to violate state or federal laws, defendants Starkey and PHG signed a contract that made it appear that defendant Starkey was paying a \$150 lead generation fee for each lead defendant PHG referred to defendant Starkey. Defendants PHG and Starkey agreed that defendant PHG would provide a list to defendant Starkey each month containing names equal to twice the number of loans defendant Starkey closed for PHG's customers, effectively resulting in the agreed \$300 per loan fee. Defendants PHG and Starkey later changed the terms of the agreement so that defendant Starkey paid a flat fee each month to defendant PHG but, upon information and belief, did not sign a written agreement to that effect.

#### VI. HIGH-PRESSURE LOAN CLOSINGS

45. Defendant Bailey or a representative of defendant PHG was usually present at the closings that took place at the Granite Falls location. Consumers learned for the first time at the closings how much they were paying for the home and the amount of their monthly payments. Since the monthly payments were more than the consumers had been told at the initial sales meeting and more than they had told the sales agent that they could afford, some consumers tried to back out of the deal. When this happened, defendant Bailey or one of the other employees or agents of defendant PHG reminded the consumers of the \$2000 to \$5000 promissory notes the consumers had signed and told them if they backed out of the deal, they would owe defendant

PHG the amount listed on the promissory note. Consumers did not have enough money to pay the promissory note and understood their only option was to complete the purchase by signing the closing documents. Consumers also feared losing the \$500 they had already paid, a significant amount of money in these consumers' household budgets, if they failed to close.

46. When consumers complained at the closing that the payments were higher than they thought they would be, defendant PHG's employees and agents told the consumers that they would be able to refinance within a year and lower the payments at that time. This representation was misleading because the homes were overpriced when consumers purchased them. As a result, the consumers' mortgages were in excess of the value of their homes, and lenders would likely not refinance under those conditions. Additionally, consumers would not qualify for a refinance since the only reason they had qualified initially was because defendant PHG's employees and agents had submitted false financial information to the lenders.

47. The deeds of trust and other documents that required notarization were not properly notarized under North Carolina law because the notary who notarized the documents was not present at the closing.

48. Some consumers were not allowed to see their homes until after the closing. Upon seeing them, they realized that the homes were not the same homes defendant PHG and its agents and employees had represented they were purchasing. At least one consumer purchased a repossessed home that defendant PHG and its agents employees represented as a new home.

49. Defendant PHG arranged for closings in some cases before the county had issued a certificate of occupancy for the home. If the lender required a certificate of occupancy before the loan could close, defendant PHG through its employees and agents provided forged certificates of occupancy so that the loan could close even though the consumer could not live in the home.

50. Due to the rushed nature of the closings, consumers were pressured into completing transactions that were different than defendant PHG initially represented to them. As

a result, consumers ended up with loans and monthly mortgage payments that were larger than they could afford.

## VII. BUY DOWNS AND COLLECTION OF BOGUS DISCOUNT POINTS

51. Defendant PHG sometimes paid money to “buy down” a consumer’s loan for a period of time, such as the first year of the loan. The “buy down” effectively reduced the consumer’s monthly payments in the first year. A “buy down” can be effective in circumstances where a consumer expects to have an increase in income in the year following the closing so that the consumer can afford higher payments in the following years. Defendant PHG used the “buy down” for consumers who could not qualify for loans at the full payment value so that they could qualify under these temporarily reduced payments. However, defendant PHG’s customers did not have a plan or realistic prospects for dramatically increasing their income stream within that year. Additionally, defendant PHG did not explain to consumers that the reduction in monthly payments was temporary. Upon information and belief, defendant PHG inflated the sales price of the home sufficiently to enable it to make the “buy down” payments without losing any of its profit on the sale.

52. Defendant Starkey and its loan officers used discount points to pad their profit. True discount points are paid at closing in exchange for a lower interest rate over the life of the loan. Upon information and belief, defendant Starkey, in violation of N.C.G.S. § 24-1.1A(c)(2)(a), imposed at least two discount points on all transactions involving defendant PHG, and these points provided no reduction in the consumers’ rates. As a result, pursuant to N.C.G.S. § 24-2, the loans were usurious. Moreover, defendant Starkey did not explain the discount points to the consumers, and, consequently, consumers did not knowingly and voluntarily elect to pay these points for the purpose of reducing their rates or any other purpose. Instead, defendant Starkey and its loan officers, including defendant McCuen, used these points to supplement their origination fees. Defendant Starkey rewarded its employees who charged these bogus origination fees with larger commissions.

## IX. ILLUSORY DOWN PAYMENTS

53. Most consumers who purchased from defendant PHG had no money for a down payment, and defendant PHG provided them with money for a down payment from a down payment assistance grant program. The down payment “grant” was illusory because the terms of the “grant” required defendant PHG to return the money and a fee for the use of the money to the grant program. Therefore, defendant PHG, in effect, paid the down payment for the consumer even though the terms of the loan required the consumer to make the down payment. Upon information and belief, defendant PHG inflated the sales price of the home to cover amount of the grant and the additional fee. Upon information and belief, this system allowed defendant PHG to front the down payment money without the closing documents disclosing this fact and without the consumers realizing that they were effectively paying for the down payment through an inflated sales price.

54. The money from the “grant” often showed up as an asset on the consumers’ loan applications, making it appear that the consumers had more assets than they did. Upon information and belief, if the “grant” money was ever deposited in the consumer’s account, it was only deposited in the account long enough for it to be “used” at the closing.

## X. INFLATION OF HOME PRICES THROUGH DECEPTIVE APPRAISALS.

55. The prices of the homes defendant PHG sold were grossly inflated. Defendant PHG arranged for appraisals of the homes to provide to the lenders, including defendant Starkey. Defendant Smith conducted almost all of the appraisals for the Granite Falls location. The appraisals frequently came back at the sales price or slightly more but did not accurately reflect the value of the homes.

56. The appraisals did not follow the Uniform Standards of Professional Appraisal Practice and were, therefore, inaccurate and unreliable. In some instances, stick-built homes were used as comparables to the manufactured or modular homes.

57. The inflated appraisals allowed defendant PHG to sell the homes at higher prices and to recover higher profits at the expense of the consumers. Upon information and belief, defendants Bailey, Herr, Setzer, and Varsamis also benefitted from the inflated home prices by receiving larger commissions on the sales.

58. The price of the land was also inflated in some cases. At one point, defendant Kanupp, who owned some of the lots sold in the Granite Falls location, offered the sale agents an additional commission if they convinced the consumer to purchase one of Kanupp's lots for the home. Upon information and belief, the land, usually less than an acre and often located in rural Caldwell or Burke counties, sold for \$20,000 to \$30,000 per lot, excessive prices for that market.

#### XI. DEFENDANTS' DECEPTIVE PRACTICES AFFECT THE SECONDARY MARKET

59. Defendant PHG and its agents and employees sold consumers overpriced homes and misled the consumers as to the actual cost of the home and the monthly payments. Upon information and belief, defendant PHG based the price of the home on how much credit a lender would give to the purchaser rather than on the actual value of the home. Defendant PHG also falsified information about the consumer's income and assets to qualify them for mortgages they could not afford. Defendant Starkey and its agents and employees, who later sold the mortgages to secondary market purchasers, furthered this fraud by failing to check on the information submitted on and in connection with the loan applications defendant PHG and its agents and employees submitted on behalf of the consumers. As a result, consumers find themselves in overpriced homes they cannot afford, and many have either been foreclosed upon or are facing foreclosure. Since the mortgages are for more than the value of the home, the consumers are unable to refinance their mortgages for more favorable terms. When these mortgages are foreclosed upon, the secondary market loses money. To the extent these loans were federally insured by the FHA or HUD, when foreclosed upon, these agencies cover deficiencies occurring upon foreclosure, thereby leaving the government, through taxpayers, to ultimately pay the bill for defendants' fraudulent practices.

XII. DEFENDANTS' VIOLATION OF REAL ESTATE LICENSING LAWS.

60. In connection with the sale of the manufactured and modular homes, agents or representatives for defendants PHG, including defendants Bailey, Setzer, Varsamis, and Herr, have sold real property owned by others, are not licensed as real estate salesmen or brokers with the North Carolina Real Estate Commission, and do not meet any of the exemptions for licensure in Chapter 93A of the North Carolina General Statutes.

XIII. CONTINUED DECEPTIVE PRACTICES THROUGH DEFENDANT K&B

61. Defendant PHG fired defendant Bailey in September 2008. Defendant Bailey and defendant Kanupp established defendant K&B to engage in the sale of parcels of real property in connection with manufactured and modular homes, stick built homes, and foreclosed property. They hired defendants Varsamis, and Herr to work with them.

62. Upon information and belief, defendants Bailey, Kanupp, Varsamis, and Herr have continued to engage in the same deceptive behavior in the sale and financing of these homes by preparing and submitting false financial information and LOE's to lenders on behalf of consumers seeking financing to purchase homes.

63. Defendant Bailey has also fronted money to consumers to use as down payments and to pay off liens and other debts so that they could qualify for loans to purchase homes from defendant K&B. In one instance, defendant Bailey instructed the consumer to bring his weekly paychecks to defendant Bailey for a period of time. Defendant Bailey gave the consumer cash in the amount of each paycheck but held the paychecks until the amount of the paychecks equaled the amount needed for the down payment. Just prior to the closing, defendant Bailey returned the paychecks to the consumer, who had already received cash for the paychecks from defendant Bailey, and instructed the consumer to deposit the paychecks in his bank and draw out a check for the down payment. The consumer's HUD-1 closing documents indicated that the consumer provided his own funds for the down payment, and upon information and belief, the lender would have had no reason to question the fact that the consumer had provided the down payment.

64. Upon information and belief, defendants Bailey, Varsamas, and Herr have continued to engage in the same deceptive practices of creating false financial information to support the consumers' loan applications and forging documents as they did when they worked for defendant PHG. Upon information and belief, defendant Kanupp has assisted in these practices to facilitate sales of his real property in connection with the sales of modular and stick-built homes.

#### CLAIMS FOR RELIEF

I. VIOLATIONS OF N.C.G.S. § 75-1.1 BY DEFENDANTS PHG, GOOD, PARRIS, BAILEY, HERR, SETZER, AND VARSAMIS.

65. The allegations in paragraphs 1 through 64 are realleged and incorporated by reference.

66. In the course of offering, selling and arranging financing for manufactured and modular homes and parcels of real property sold to consumers, defendants PHG, Good, Parris, Bailey, Herr, Setzer, and Varsamis have engaged in unfair and deceptive acts and practices in trade or commerce in violation of N.C.G.S. § 75-1.1.

67. Defendants PHG, Good, Parris, Bailey, Herr, Setzer, and Varsamis' unfair or deceptive acts and practices include, but are not limited to, the following:

- (a) Soliciting consumers to visit defendant PHG's sales offices by misrepresenting down payment amounts and a rent to own program;
- (b) Misrepresenting to consumers that payments will be within the consumers' requested range and ability to pay;
- (c) Concealing the true costs of the transaction, such as the cost of the land, the cost of the home, and the monthly payments, from consumers and failing to give proper disclosures;
- (d) Arranging for and submitting to lenders appraisals that grossly overvalue the land and homes;

- (e) Submitting or assisting in submitting false financial information, including information on income, assets, and liabilities as well as LOE's, VOR's, VOE's and budget letters, to lenders in order to obtain financing for consumers who would not otherwise qualify for a loan;
- (f) Forging consumers' names to documents submitted for the purpose of acquiring loans for the consumers;
- (g) Making the down payments for consumers through purported down payment "grants" which are nothing more than expensive short-term loans with the interest and principal initially paid by defendant PHG and ultimately paid by the consumers through the inflated sales prices;
- (h) Having consumers sign promissory notes promising to pay a sum certain if they fail to close the transaction and then using the threat of collecting on that promissory note to coerce consumers to sign closing documents on loans that are far larger than previously promised to consumers and to undermine the consumers' statutory right to cancel manufactured housing contracts;
- (i) Preparing and submitting to lenders forged certificates of occupancy in order for the closings to take place before the home is completed;
- (j) Encouraging consumers to close on loans that they cannot afford by misrepresenting that the consumers can refinance and lower their monthly payments after a year; and
- (k) Selling real property of another when not licensed as a real estate broker as required by Chapter 93A of the North Carolina General Statutes and failing to qualify for any exemption from licensure.

68. Defendants PHG, Good, Parris, Bailey, Herr, Setzer, and Varsamis' activities are in or affecting commerce in North Carolina.

69. All contracts entered into between defendant PHG and consumers and all moneys received by defendants PHG, Good, Parris, Bailey, Herr, Setzer, and Varsamis from consumers were obtained as a direct result of the defendants PHG, Good, Parris, Bailey, Herr, Setzer, and Varsamis' deceptive practices.

70. Pursuant to N.C.G.S. § 75-14, the Attorney General has the right to seek injunctive relief to restrain defendants PHG, Good, Parris, Bailey, Herr, Setzer, and Varsamis' violations of N.C.G.S. § 75-1.1.

71. Pursuant to N.C.G.S. § 75-15.1, the Attorney General has the right to seek and obtain cancellation of all contracts and the restoration of all moneys obtained by defendants PHG, Good, Parris, Bailey, Herr, Setzer, Varsamis as a result of these defendants' violations of N.C.G.S. § 75-1.1.

72. Pursuant to N.C.G.S. § 75-15.2, the Attorney General has the right to seek civil penalties for each and every knowing violation of a statute.

II. VIOLATIONS OF N.C.G.S. § 75-1.1 BY DEFENDANTS STARKEY, MCCUEN, AND VINSON.

73. The allegations in paragraphs 1 through 72 are realleged and incorporated by reference.

74. In the course of arranging and providing financing for manufactured and modular homes and parcels of real property sold to consumers, defendants Starkey, McCuen, and Vinson have engaged in unfair and deceptive acts and practices in trade or commerce in violation of N.C. G.S. § 75-1.1.

75. Defendants Starkey, McCuen, and Vinson's unfair or deceptive acts and practices include, but are not limited to, the following:

- (a) Failing to verify consumers' financial information forwarded to them by defendant PHG and its employees and agents;
- (b) Violating N.C.G.S. § 24-1.1A(c)(2)(a) by adding discount points to a mortgage without reducing the interest rate on the mortgage;

- (c) Paying employees at defendant PHG to assist in processing loans;
- (d) Attempting to conceal through “short paper” and recopying financial documents to eliminate the fax header information the fact that defendants Starkey, McCuen, and Vinson had not independently verified consumers’ financial information;
- (e) Extending credit to consumers without due regard to their ability to repay the loans; and
- (f) Extending credit or assisting in extending credit to consumers who do not qualify for loans that will be sold on the secondary market, and in some instances, insured by a government agency, causing losses to the secondary market purchasers, the government agencies, and the taxpayers.

76. Defendants Starkey, McCuen, and Vinson’s activities are in or affecting commerce in North Carolina.

77. All contracts entered into between defendant Starkey and consumers and all moneys received by defendants Starkey, McCuen, and Vinson in connection with placing loans for defendant PHG’s customers, including discount points, were obtained as a direct result of defendants Starkey, McCuen, and Vinson’s deceptive practices.

78. Pursuant to N.C.G.S. § 75-14, the Attorney General has the right to seek injunctive relief to restrain defendants Starkey, McCuen, and Vinson’s violations of N.C.G.S. § 75-1.1.

79. Pursuant to N.C.G.S. § 75-15.1, the Attorney General has the right to seek and obtain cancellation of all contracts and the restoration of all moneys obtained by defendants Starkey, McCuen, and Vinson as a result of these defendants’ violations of N.C.G.S. § 75-1.1.

80. Pursuant to N.C.G.S. § 75-15.2, the Attorney General has the right to seek civil penalties for each and every knowing violation of a statute.

### III. VIOLATIONS OF N.C.G.S. § 75-1.1 BY DEFENDANT SMITH.

81. The allegations in paragraphs 1 through 80 are realleged and incorporated by reference.

82. In the course of preparing appraisals used by lenders to set value for purposes of extending credit to consumers who were purchasing manufactured and modular homes and parcels of real property from defendants PHG, K&B, and Kanupp, defendant Smith has engaged in unfair and deceptive acts and practices in trade or commerce in violation of N.C.G.S. § 75-1.1.

83. Defendant's Smith's unfair or deceptive acts and practices include, but are not limited to, the following:

- (a) Failing to follow USPAP guidelines when preparing appraisals;
- (b) Consistently appraising property at or above the asking price; and
- (c) Assigning higher values to homes by using inappropriate comparables.

84. Defendant Smith's activities are in or affecting commerce in North Carolina.

85. Pursuant to N.C.G.S. § 75-14, the Attorney General has the right to seek injunctive relief to restrain defendant Smith's violations of N.C.G.S. § 75-1.1.

86. Pursuant to N.C.G.S. § 75-15.1, the Attorney General has the right to seek restoration of all moneys obtained by defendant Smith as a result of her violations of N.C.G.S. § 75-1.1.

87. Pursuant to N.C.G.S. § 75-15.2, the Attorney General has the right to seek civil penalties for each and every knowing violation of a statute.

IV. VIOLATIONS OF N.C.G.S. § 75-1.1 BY DEFENDANTS K&B, BAILEY, KANUPP, HERR, AND VARSAMIS.

88. The allegations in paragraphs 1 through 87 are realleged and incorporated by reference.

89. In the course of offering, selling and arranging financing for manufactured homes, modular homes, stick-built homes, and parcels of real property sold to consumers, defendants K&B, Bailey, Kanupp, Herr, and Varsamis have engaged in unfair and deceptive acts and practices in trade or commerce in violation of N.C.G.S. § 75-1.1.

90. Defendants K&B, Bailey, Kanupp, Herr, and Varsamis' unfair or deceptive acts and practices include, but are not limited to, the following:

- (a) Soliciting consumers to visit defendant K&B's sales offices by misrepresentations of \$500 down payments;
- (b) Soliciting consumers to visit defendant K&B's sales offices by misrepresenting that defendant K&B is offering homes through a rent-to-own program;
- (c) Representing to consumers that payments will be within the consumers' requested range and ability to pay when defendants know that the payments will be considerably higher;
- (d) Concealing the true costs of the transaction from consumers and failing to give proper disclosures;
- (e) Arranging for and submitting to lenders appraisals that substantially overvalue the land and homes;
- (f) Submitting or assisting in submitting false financial information, including information on income, assets, and liabilities as well as LOE's, VOR's, VOE's and budget letters, to lenders in order to obtain financing for consumers who would not otherwise qualify for a loan;
- (g) Making the down payments for consumers without disclosing this to the lender or having it reported on the HUD-1 Closing Statement; and
- (h) Selling real property of another when not licensed as a real estate broker as required by Chapter 93A of the North Carolina General Statutes and failing to qualify for any exemption from licensure.

91. Defendants K&B, Bailey, Kanupp, Herr, and Varsamis' activities are in or affecting commerce in North Carolina.

92. All contracts entered into between defendant K&B and consumers and all moneys received by defendants K&B, Bailey, Kanupp, Herr, and Varsamis from consumers were

obtained as a direct result of the defendants K&B, Bailey, Kanupp, Herr, and Varsamis' deceptive practices.

93. Pursuant to N.C.G.S. § 75-14, the Attorney General has the right to seek injunctive relief to restrain defendants K&B, Bailey, Kanupp, Herr, and Varsamis' violations of N.C.G.S. § 75-1.1.

94. Pursuant to N.C.G.S. § 75-15.1, the Attorney General has the right to seek and obtain cancellation of all contracts and the restoration of all moneys obtained by defendants K&B, Bailey, Kanupp, Herr, and Varsamis as a result of these defendants' violations of N.C.G.S. § 75-1.1.

95. Pursuant to N.C.G.S. § 75-15.2, the Attorney General has the right to seek civil penalties for each and every knowing violation of a statute.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for the following relief:

1. That defendants PHG, K&B, Good, Parris, Bailey, Kanupp, Herr, Setzer, and Varsamis, their members, officers, agents, and employees, be preliminarily and permanently enjoined from:

(a) Soliciting consumers to patronize their business based on misrepresentations of the nature of, the cost of, and financing arrangements for the manufactured and modular homes they are selling;

(b) Soliciting and entering into sales contracts with consumers who do not have the income, net worth, or credit scores needed to qualify for financing;

(c) Directly or indirectly falsifying loan applications and other financial information, including information on income, assets, and liabilities as well as LOE's, VOR's, VOE's and budget letters, to qualify consumers for financing;

(d) Directly or indirectly making down payments for consumers or assisting consumers in any way in making down payments;

- (e) Directly or indirectly assisting consumers in paying debts of any kind to qualify consumers for financing;
- (f) Directly or indirectly misrepresenting to consumers that many of the defendants' customers refinance their homes after one year without significant difficulty;
- (g) Failing to provide on contracts all information required by N.C.G.S. § 143-143.21;
- (h) Requiring consumers, as part of the purchase agreement, to sign promissory notes agreeing to pay a sum certain if they fail to close on the purchase of the home;
- (i) Directly or indirectly misrepresenting the amount or source of down payments;
- (j) Directly or indirectly preparing, soliciting, arranging or encouraging inflated appraisals on homes and land sold to consumers;
- (k) Failing to give timely and proper disclosures to consumers of the costs and terms of credit transactions as required by law;
- (l) Arranging for a buy down of a consumer's loan without full disclosure to the consumer the nature of the buy down and without the consumer's written approval of the buy down;
- (m) Closing on the sale of homes without obtaining a certificate of occupancy issued from the appropriate government agency;
- (n) Charging discount points without providing the required reduction in interest;
- (o) Violating the real estate licensing laws in Chapter 93A of the North Carolina General Statutes; and
- (p) Engaging in any other unfair or deceptive trade practices in the operation of any manufactured housing or land sales business within this State;

2. That, in addition, defendants PHG, K&B, Good, Parris, Bailey, Kanupp, Herr, Setzer, and Varsamis be permanently enjoined from engaging, directly or indirectly, in activities related to the arranging or extension of credit or financing to persons purchasing real estate and manufactured, modular, or stick-built homes;

3. That defendant Smith be enjoined from performing appraisals which are not in keeping with the requirements of USPAP;

4. That defendants Starkey, McCuen, and Vinson be enjoined from:

(a) Extending credit to consumers without receiving from unrelated third parties written and verbal verification of all the consumers' financial information;

(b) Charging discount points on loans without giving the commensurate reduction in the interest rate;

5. That contracts obtained by defendants as a result of a violation of N.C.G.S. § 75-1.1 be cancelled;

6. That defendants be ordered to restore money and property they have obtained as a result of a violation of N.C.G.S. § 75-1.1;

7. That defendants be ordered to pay appropriate civil penalties pursuant to N.C.G.S. § 75-15.2;

8. That plaintiff be awarded the costs of this action and reasonable attorneys fees;  
and

9. That the Court award such other and further relief as may be just and proper.

This the 18<sup>th</sup> day of November, 2009.

ROY COOPER  
Attorney General

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