

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEBORAH MARTELL

Plaintiff,

-vs-

Case No. 2:07-cv-14068

Assigned to: Edmunds, Nancy G.

Referral Judge: Morgan, Virginia M.

ROBERT TURCHECK, NICOLE
TURCHECK, JS REALTY LLC, RONNIE
DUKE, SPECIALTY HOLDINGS, INC.,
DANIELLE NAPPER, ALFREDO
SANTILLI, METRO-WEST TITLE
AGENCY, INC., LAWYERS TITLE
INSURANCE CORPORATION, KASSEM
AHMAD ZREIK, ZREIK INVESTMENTS,
LLC d/b/a DESKTOP APPRAISAL
SERVICES, LLC, BRANDON GUBACZ,
PREMIER MORTGAGE FUNDING, INC.,
COUNTRYWIDE BANK, N.A.,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., and
AMANDA BIRCH, jointly and severally,

FIRST AMENDED COMPLAINT

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff states as follows:

INTRODUCTION

Defendants are participants or are vicariously liable for their employee's participation in a giant fraud scheme which resulted in hundreds of faulty mortgages, including the one at issue in this Complaint. Participants obtained the personal information of dozens of individuals, including Plaintiff, under the guise of becoming members of a certain "investment group." In this case, the sellers, appraisal company, and employees of the title company, mortgage company, and brokerage firm conspired together to provide false information and falsify documents in order to inflate the value of this \$1.2 million dollar home and close on the sale to Plaintiff. Plaintiff, meanwhile, was told to attend a closing as a representative of the investment group.

Plaintiff signed documents and left. A few months after the closing, Plaintiff discovered that, as a result of the fraud, she was the sole obligor and owner of the property. Plaintiff immediately began efforts to remediate the situation.

COMMON ALLEGATIONS

1. Plaintiff Deborah Martell (Plaintiff) is an individual residing at 33486 Rayburn, Livonia, MI 48156.
2. The residence located at 28560 Swan Island Drive, Grosse Isle, Michigan is the real estate that is the subject of this action (the “**Swan Island property**”).
3. Upon information and belief, Defendants Robert Turcheck and Nicole Turcheck are individuals residing at 20604 E. River Road, Grosse Ile, MI 48138.
4. The Turchecks ostensibly sold the Swan Island property to Plaintiff.
5. Defendant JS Realty LLC, is a Michigan limited liability company, whose registered address is 28860 Swan Island Drive, Grosse Ile, MI 48138. Nicole Turcheck is the operating member and resident agent of JS Realty LLC.
6. The Turchecks operate their fraudulent scheme in part through JS Realty.
7. Upon information and belief, Defendant Ronnie Duke is an individual residing at 110 Trealout Drive, Fenton, MI 48430.
8. Duke is the head of the fraudulent “investment group” and is the President, Director, Secretary, and Treasurer of Specialty Holdings, Inc.
9. Duke is also a licensed Mortgage Broker who has been prohibited from practicing under his broker license from the State of Michigan.
10. Defendant Specialty Holdings, Inc., is a Michigan corporation, whose resident agent is John E. Melton and whose registered address is 1263 W. Square Lake Road, Suite 102, Bloomfield Hills, MI 48320.
11. Duke used Specialty Holdings to run the investment group.

12. Defendant, Danielle Napper, is an individual residing at 15785 Goddard Road, #101, Southgate, MI 48195.

13. Napper assists and coordinates “investors” on behalf of the Turchecks, Duke, and Specialty Holdings.

14. Defendant, Alfredo Santilli, is an individual whose business address is 16030 Michigan Avenue, Dearborn, MI 48126. Santilli is the representative of the title agency who closed the loan on the Swan Island property.

15. Defendant, Metro-West Title Agency, Inc. (“Metro-West Title”) is a Michigan corporation whose resident agent is Sarah Fawaz and whose registered address is 16030 Michigan Avenue, Dearborn, MI 48126. Metro-West Title is the title company who conducted the closing on the Swan Island property.

16. Defendant Lawyers Title Insurance Corporation. (“Lawyers Title”), is a Virginia corporation, conducting business in Michigan and issuing policies for real estate located in Wayne County. Lawyers Title is the underwriter for the title on the Swan Island property.

17. Defendant, Kassem Ahmad Zreik (“Zreik”), whose business address is 26736 Cherry Hill Road, Dearborn Heights, MI 48127.

18. Zreik is a licensed appraiser who provided an inflated appraisal of the Swan Island property.

19. Defendant Zreik Investments, LLC, d/b/a Desktop Appraisal Services, LLC (“Desktop Appraisal”) is a Michigan limited liability company, whose registered address is 26736 Cherry Hill Road, Dearborn Heights, MI 48127.

20. Desktop Appraisal provided an inflated appraisal of the Swan Island property.

21. Defendant, Brandon Gubacz, is an individual whose address is 36616 Angeline Circle, Livonia, MI 48150.

22. Gubacz is an employee of Premier Mortgage Funding, Inc. and Countrywide Bank, N.A., who prepared the falsified loan application.

23. Defendant, Premier Mortgage Funding, Inc. (“Premier”), is a Florida corporation whose address is 29555 West Six Mile Road, Suite 100B, Livonia, MI 48152. Premier is the broker for the mortgage on the Swan Island property.

24. Defendant Countrywide Bank, N.A., (“Countrywide”), is a national banking association conducting business in Michigan and issuing and closing loans in Wayne County. Countrywide is the lender of the first and second mortgages on the Swan Island property.

25. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”), is a Delaware corporation and nominee for Countrywide on certain loans that Countrywide issues in Michigan.

26. MERS is a necessary party as the recorded mortgagee and Countrywide’s nominee in regards to the Countrywide loans on the Swan Island Property.

27. Upon information and belief, Defendant Amanda Birch is an individual residing in Southeast Michigan. Birch signed the purchase agreement as a witness to Plaintiff’s signature.

28. This Court has jurisdiction because the amount in controversy exceeds \$25,000.

The “Investment Group”

29. In 2006, Napper convinced Plaintiff to become a member of an “investment group.”

30. Napper represented to Plaintiff that the investment group was a group of investors who would purchase foreclosed properties as investments.

31. Napper requested Plaintiff's personal information. Napper explained that her credit would be used on behalf of the investment group to acquire investment properties, in exchange for an investor fee.

32. Napper indicated that Plaintiff would make certain payments on behalf of the investment group for approximately six months.

33. Napper made similar representations to other investors.

34. All of Napper's representations to Plaintiff and other investors were on behalf of the fraudulent scheme headed by Specialty Holdings, Duke, and the Turchecks. See Investor Group Flyers, attached herein as **EXHIBIT A**.

35. Plaintiff provided Napper with her personal information.

The Other "Investments"

36. Plaintiff and her husband received two investments in the mail, with coupons, payment money, and directions to make payments.

37. Plaintiff's family member was also an investor and had received two similar investments in the mail.

38. Plaintiff made payments as directed.

39. The first property was located at 7225 Middlepointe Street, Dearborn, Michigan 48126 ("the **Middlepointe property**"), and the second property was located at 30768 Triangle Drive, Gibraltar, Michigan 48173 (the "**Triangle Drive property**").

40. Plaintiff was led to believe that another investor had attended a closing on behalf of the group, and that it was simply Plaintiff's responsibility to make payments.

41. In fact, Specialty Holdings, Duke, the Turchecks, and Napper had arranged for primary mortgage loans to be taken out in Plaintiff's and her husband's names personally

without their authorization or knowledge and fraudulently signed Plaintiff's and her husband's names to the loan documents. See partial loan documentation regarding the Middlepointe and Triangle Drive properties, **EXHIBIT B**.

42. Plaintiff has further learned that there were several bogus sales concerning these same properties or "straw" loans, and the lenders in these transactions have no security.

The Swan Island Property

43. After making a few payments on the Middlepointe property, Napper told Plaintiff that another investment was forthcoming.

44. Similar to the other investments, Plaintiff understood that an investment package would arrive in the mail.

45. However, on October 30, 2006, Napper telephoned Plaintiff and requested that Plaintiff attend the closing on behalf of the investment group the next day because she was the closest person to the location of the closing.

46. Napper indicated to Plaintiff that she had planned on attending the closing herself, but she could not make it due to a conflict with her schedule.

The Closing—October 31, 2006

47. The next day, Plaintiff attended a closing at Metro-West Title with Santilli as the closing agent.

48. At Napper's request, Plaintiff arrived at 4:30 pm. Santilli indicated the closing needed to proceed quickly because he needed to leave by 5:00 pm.

49. Plaintiff informed Santilli that she was attending the closing strictly on behalf of the investment group that this was an investment property, and that this was not her primary residence.

50. Santilli assured Plaintiff that this was an investment transaction and that told Plaintiff that he closes on properties for this group in a similar manner all the time.

51. Santilli rushed Plaintiff through closing because of the late time and, as a result, Plaintiff did not read any of the documents that she was signing.

52. Santilli gave Plaintiff an incomplete and unsigned package to take with her from the closing.

53. Plaintiff and Santillo did not discuss possession or the transfer of possession from the Turchecks to Plaintiff.

54. Plaintiff did not receive keys to the property and had no idea of the property's location or characteristics. Plaintiff did not do an inspection or a walk-through.

55. Metro-West Title issued title insurance for the transaction and Lawyers Title acted as the underwriter.

56. After the closing and when Plaintiff had a chance to review what paperwork she had been given, she noticed that the documents did not indicate that this loan was an investment loan.

57. Plaintiff immediately contacted Napper to ask that the documents be changed to reflect that this was an investment and not a personal asset.

58. Napper assured Plaintiff that the investment was legitimate and that she would make the requested notation on the documents.

The Fraudulent Transaction—Preparation of Loan Documents

59. The Swan Island property appears to be based on an undated Purchase Agreement, attached as **EXHIBIT C**, bearing the signatures of the Turchecks as sellers, Plaintiff as buyer, and Amanda Birch as witness to the sellers' and buyer's signatures.

60. Plaintiff did not sign the Purchase Agreement and the signature is not Plaintiff's signature.

61. Based on this fraudulently executed Purchase Agreement, on behalf of Premier as broker and Countrywide as lender, Gubacz began the loan process by inputting falsified personal information regarding Plaintiff into a loan application, **EXHIBIT D**, and attesting that he spoke with Plaintiff by telephone on October 26, 2006.

62. Plaintiff has never spoke with Gubacz or anyone else from Premier or Countrywide in preparation for this loan.

63. The loan application severely inflates Plaintiff's financial net worth, including her salary and job title.

64. Many of the other loan documents are dated October 25, 2006; however, Plaintiff did not sign any documents nor speak with anyone on October 25, 2006 regarding this loan or sale of the property.

65. Many of the loan documents are dated October 31, 2006; however, Plaintiff did not date the documents that she signed on October 31, 2006.

66. A few of the documents signed on October 31, 2006 do not appear to be Plaintiff's signature.

67. Plaintiff never authorized any person to sign her name.

68. These documents were prepared by Gubacz, on behalf of Premier and Countrywide or by another representative of Premier and Countrywide.

The Fraudulent Transaction—the Settlement Statements

69. Premier and Countrywide supported this loan by obtaining an appraisal from Desktop Appraisal and Zreik as the licensed appraiser. See **EXHIBIT E**, Settlement Statements.

70. The Turchecks purchased the Swan Island property on May 22, 2006, for \$1,000,000.

71. Only five months later, despite a declining and troubled Michigan real estate market, the Turchecks ostensibly sold the Swan Island property to Plaintiff for \$1,200,000.

72. The appraisal supported this price and severely inflated the fair market value in order to process the loan.

73. The inflated purchase price allowed the following parties to walk away from closing with the following money:

- | | |
|-------------------------|--------------|
| a) The Turchecks | \$379,904.99 |
| b) Premier (broker fee) | \$ 12,000.00 |
| c) Desktop Appraisal | \$ 750.00 |

See Settlement Statements, EXHIBIT E.

Possession of the Swan Island Property and Mitigation of Damages

74. Plaintiff continued to receive communications and requests for further personal information through early 2007 from the head of the investment group, Specialty Holdings. See EXHIBIT A.

75. Plaintiff eventually learned that Duke was associated with the investment group and for the first time understood that these transactions were part of a larger mortgage fraud scheme.

76. Plaintiff immediately contacted the lenders of the Swan Island, Middlepointe, and Triangle Drive properties to inform them of the underlying fraud.

77. After further investigation, Plaintiff learned that she owned fee title to the Swan Island property as an individual purchaser, and not part of the investment group.

78. Plaintiff immediately contacted Countrywide to inform them of the fraud.

79. Plaintiff asked Countrywide for instructions about how to proceed.

80. When Countrywide did not provide direction to Plaintiff and in order to mitigate damages, Plaintiff visited the Swan Island property for the first time and took possession.

81. Upon information and belief, Duke and/or the Turchecks had been residing in and maintaining the Swan Island property after October 31, 2006, when fee interest was ostensibly transferred to Plaintiff. See utility bill addressed to Ronnie Duke, **EXHIBIT F**, dated March 15, 2007.

82. Plaintiff has engaged in ongoing communications with Countrywide regarding settlement of the two loans that are in her name, which total approximately \$1,077,000 as of July 2007, but so far has been unable to reach a settlement on the matter.

83. Plaintiff is currently marketing the Swan Island property for sale

84. As of the date of this Complaint, Plaintiff has received several inquiries on the property but has not received an offer.

85. Regarding the Swan Island property, Plaintiff has been damaged in the amount of approximately \$1,077,000 as of July 2007, which is the amount of the two outstanding loan and mortgages in her name, plus interest, costs, and attorney fees.

CAUSES OF ACTION

86. Regarding every count against every defendant, Plaintiff incorporates the allegations contained in the preceding and succeeding paragraphs as if fully restated therein.

A. ROBERT TURCHECK, NICOLE TURCHECK, and JS REALTY

COUNT I – Fraud and Rescission

87. The Turchecks caused Napper to continue to make false representations to Plaintiff in order to continue Plaintiff's involvement in their mortgage fraud scheme and cause Plaintiff to purchase their Swan Island property.

88. The Turchecks made sure that Plaintiff believed she was attending the closing as a representative of the investment group and not as an individual purchaser of the property.

89. The Turchecks made material representations to Plaintiff and Countrywide that were false when they submitted a falsified and forged purchase agreement as the basis for Plaintiff's purchase of their Swan Island property for \$1.2 million.

90. The Turchecks made other representations that were false in connection with the sale when they caused an inflated appraisal to be submitted to support the loan and sale.

91. In the Warranty Deed and other closing documents, the Turchecks represented to Plaintiff that she was receiving fee title and full control of the real estate, but the Turchecks and Duke continued to reside and control the real estate even after ostensibly conveying fee title to Plaintiff.

92. The Turchecks knew the representations were false when made.

93. Even if the Turchecks did not know the representations were false when made, they at least made them recklessly without knowledge of the truth.

94. The representations were made with the intention that Plaintiff rely on them.

95. Plaintiff reasonably relied on the representations and suffered injury as a result.

96. Upon discovering the fraud, Plaintiff immediately stopped payment on the loans.

97. Because of the fraud, the purchase of the Swan Island property is invalid and should be rescinded. Plaintiff is also entitled to damages for losses sustained.

COUNT II– Negligent Misrepresentation

98. The Turchecks owed Plaintiff a duty of care.

99. The Turchecks made certain representations without reasonable care.

100. Plaintiff detrimentally relied on those representations.

101. Plaintiff's reliance caused her damage.

COUNT III– Civil Conspiracy/Concert in Action

102. The Turchecks, JS Realty, Duke, Specialty Holdings, Napper, Santilli, Zreik, Desktop Appraisal, Gubacz, and Birch (the "conspirators") were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

103. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

104. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

105. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

COUNT IV – Michigan Consumer Protection Act (MCPA) Violations

106. The Turchecks and JS Realty are engaged in trade or commerce.

107. Plaintiff is a consumer.

108. By virtue of their involvement with the ostensible sale of the Swan Island property to Plaintiff and their ongoing involvement in the greater fraud scheme, the Turchecks and JS Realty have done the following:

- a) Caused a probability of confusion or misunderstanding as to the source or approval of goods or services;
- b) Represented that goods or services have approval, characteristics, benefits, or quantities that they do not have;
- c) Represented goods or services with the intent not to dispose of those goods or services as represented;
- d) Caused a probability of confusion or misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction;
- e) Failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not be known by the consumer;
- f) Arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true;

- g) Creating gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits;
 - h) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and
 - i) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.
109. The Turchecks and JS Realty have violated MCPA 445.903(1)(a), (c), (g), (n), (s), (v), (y), (bb), and (cc), causing Plaintiff damage.

B. RONNIE DUKE and SPECIALTY HOLDINGS, INC.

COUNT I – Fraud

110. Duke and Specialty Holdings made material representations to Plaintiff that were false when he sent “investor” notices and requests to Plaintiff. See EXHIBIT A.

111. Duke and Specialty Holdings falsely represented to Plaintiff that her participation was on behalf of a large investment group that was investing in foreclosed properties.

112. Duke and Specialty Holdings made false representations by arranging the ostensible sale of the Swan Island property to Plaintiff when Duke continued to be in possession or control of the property.

113. Duke and the remainder of the conspirators intended to take out multiple fraudulent loans in Plaintiff’s name to obtain more cash.

114. Duke and Specialty Holdings knew the representations were false when made; or, even if they did not know the representations were false, they made them recklessly without knowledge of their truth.

115. The representations were made with the intention that Plaintiff rely on them by providing her personal information to Duke and the conspirators.

116. Plaintiff reasonably relied on the representations and suffered injury as a result.

COUNT II – Negligent Misrepresentation

117. Duke and Specialty Holdings owed Plaintiff a duty of care.

118. Duke and Specialty Holdings made certain representations without reasonable care.

119. Plaintiff detrimentally relied on those representations.

120. Plaintiff's reliance caused her damage.

COUNT III – Civil Conspiracy/Concert in Action

121. The conspirators were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

122. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

123. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

124. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

COUNT IV- Breach of Occupational Code

125. On January 4, 2006, a Consent Order of Prohibition was entered by the Michigan Department of Labor and Economic Growth which prohibited Duke from being employed by, an agent of, or control person of a licensee or registration under the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA) or a licensee or registrant under a financial licensing act.

126. Upon information and belief, Duke is employed by, an agent of, or a control person for a mortgage broker or lender licensed under MBLSLA.

127. Duke has breached the Occupational Code, causing Plaintiff's damage.

COUNT V – Michigan Consumer Protection Act (MCPA) Violations

128. Duke and Specialty Holdings are engaged in trade or commerce.

129. Plaintiff is a consumer.

130. By virtue of their involvement with the ostensible sale of the Swan Island property to Plaintiff and their ongoing involvement in the greater fraud scheme, Duke and Specialty Holdings have done the following:

- a) Caused a probability of confusion or misunderstanding as to the source or approval of goods or services;
- b) Represented that goods or services have approval, characteristics, benefits, or quantities that they do not have;
- c) Represented goods or services with the intent not to dispose of those goods or services as represented;
- d) Caused a probability of confusion or misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction;
- e) Failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not be known by the consumer;

- f) Arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true;
- g) Creating gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits;
- h) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and
- i) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

131. Duke and Specialty Holdings have violated MCPA 445.903(1)(a), (c), (g), (n), (s), (v), (y), (bb), and (cc), causing Plaintiff damage.

C. DANIELLE NAPPER

COUNT I – Fraud

132. Between summer 2006 and early 2007, Napper made many material representations to Plaintiff that were false.

133. Napper assured Plaintiff on multiple occasions that Plaintiff was one of several investment group members that would be investing in a particular property, and that Plaintiff would not have control over the property and could not relinquish the group's rights in any property nor take possession of any property.

134. Napper told Plaintiff that the transactions were legal.

135. Napper requested personal and financial information from Plaintiff in order to alter the information and make misrepresentations that would support the \$1.2 million dollar loan.

136. Napper convinced Plaintiff to attend the closing on the Swan Island property by explaining that Napper herself could not make it due to a scheduling conflict.

137. Napper told Plaintiff that Plaintiff would attend the closing on behalf of the investment group.

138. Napper told Plaintiff that she would correct the closing documents on the Swan Island property to show that it was an investment property and not Plaintiff's residence.

139. Napper knew the representations were false when made or made them recklessly or negligently without knowledge of its truth.

140. The representations were made with the intention that Plaintiff rely on them.

141. Plaintiff reasonably relied on the representations and suffered injury as a result.

COUNT II – Negligent Misrepresentation

142. Napper owed Plaintiff a duty of care.

143. Napper made certain representations without reasonable care.

144. Plaintiff detrimentally relied on those representations.

145. Plaintiff's reliance caused her damage.

COUNT III – Civil Conspiracy/Concert in Action

146. The conspirators were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

147. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their

personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

148. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

149. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

D. ALFREDO SANTILLI

COUNT I – Fraud

150. Santilli made material representations to Plaintiff that were false when he did the following:

- a) Assured Plaintiff that this was an investment transaction, involving an investment mortgage, and that these transactions occur regularly and in a similar manner;
- b) Represented to Plaintiff that he closes investment properties for this group (the conspirators) on a regular basis;
- c) Told Plaintiff that closing needed to happen quickly so that Plaintiff would not have time to read the documents;
- d) Forged Plaintiff's signature on the purchase agreement or closing documents;
- e) Altered documents by adding certain dates next to Plaintiff's signature; and
- f) Accepted a down payment from someone other than Plaintiff and applied it to Plaintiff's closing.

151. Santilli knew the representations were false when made or made them recklessly without knowledge of its truth.

152. The representations were made with the intention that Plaintiff rely on them.

153. Plaintiff reasonably relied on Santilli's representations to proceed with closing and suffered injury as a result.

COUNT II – Negligent Misrepresentation

154. Plaintiff detrimentally relied on information that Santilli provided without reasonable care.

155. As closing agent, Santilli owed a duty of care to Plaintiff.

156. Santilli breached this duty.

157. Plaintiff's reliance caused her damage.

COUNT III– Silent Misrepresentation

158. As closing agent, Santilli had an affirmative duty to tell Plaintiff that:

- a) the mortgage was not an investment mortgage, but would be her personal liability, and that this transaction was part of the greater fraudulent scheme by the conspirators;
- b) Plaintiff should receive possession, keys to the house, or an agreement should be made with the Turchecks to compensate Plaintiff for not receiving possession after ostensibly gaining fee title; and
- c) The value of the Swan Island property had been severely inflated in order to provide a large sum of cash to the Turchecks at closing.

159. Santilli failed to disclose these material facts to Plaintiff in order to induce Plaintiff's reliance.

160. Santilli made certain affirmative representations as set forth above which, coupled with the non-disclosures, misled Plaintiff.

161. Santilli knew that this failure to disclose would leave Plaintiff with a false impression and it did mislead Plaintiff.

162. Plaintiff's false impression has caused her injury.

COUNT IV – Civil Conspiracy/Concert in Action

163. The conspirators were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

164. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

165. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

166. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

COUNT V – Breach of Fiduciary Duty

167. As closing agent, Santilli had fiduciary duties to communicate knowledge of material facts to Plaintiff and to operate in good faith.

168. Santilli knew Plaintiff was relying on his good faith, knowledge of the material facts, and communications to Plaintiff when she signed the closing documents.

169. Santilli failed to communicate material facts to Plaintiff and acted in bad faith.

170. Santilli's failure to communicate and bad faith caused Plaintiff damage.

COUNT VI – Violation of Insurance Code

171. Santilli violated the Insurance Code when he engaged in an unfair or deceptive act or practice in the business of insurance and when he received compensation from another conspirator in exchange for the insurance policy.

172. This violation and deceptive act has caused Plaintiff damage.

E. METRO-WEST TITLE AGENCY, INC.

COUNT I – Vicarious Liability

173. Santillo was acting within the scope of his employment and authority when he made material misrepresentations, breached his fiduciary duty, and violated the insurance code.

174. As Santillo's employer, Metro-West Title is liable for Santillo's wrongful acts.

COUNT II – Negligence

175. Metro-West Title owed a duty to Plaintiff to handle the closing in a professional and honest manner.

176. Metro-West Title knew or should have known that Santillo was engaged in the fraud scheme with the conspirators, which was not reasonable.

177. Metro-West Title breached its duty to Plaintiff, causing Plaintiff damage.

COUNT III – Breach of Fiduciary Duty

178. As the title company in charge of closing, Metro-West Title had the fiduciary duties to communicate knowledge of material facts to Plaintiff and to operate in good faith.

179. Metro-West Title breached these duties to Plaintiff, causing Plaintiff damage.

F. LAWYERS TITLE

COUNT I – Vicarious Liability

180. Santillo was acting within the scope of his employment and authority with Lawyers Title's agent, Metro-West Title, when he made material misrepresentations, breached his fiduciary duty, and violated the insurance code.

181. In the agency agreement between Lawyers Title and Metro-West Title ("Agency Agreement"), Lawyers Title is entitled to audit and examine all financial and business records relating to Metro-West Title's escrow business.

182. Lawyers Title specifically states in the Agency Agreement that it is legitimately concerned about liability created by Metro-West Title's closing services.

183. Lawyers Title further obligates Metro-West Title to follow prudent practice, requirements that Lawyers Title establishes, and applicable statutes, rules, and regulations when closing transactions in which Lawyers Title is the underwriter.

184. As the underwriter for the title company in charge of closing, Lawyers Title is liable for Santillo's wrongful acts.

**G. KASSEM AHMAD ZREIK and ZREIK INVESTMENTS, LLC,
D/B/A DESKTOP APPRAISAL SERVICES, LLC**

COUNT I – Breach of Contract

185. At the closing, Plaintiff paid Desktop Appraisal a fee to provide a truthful value of the property, and Desktop Appraisal accepted that fee in agreement to provide such an appraisal.

186. Desktop Appraisal provided an appraisal with an inflated value to support the underlying fraud scheme.

187. Desktop Appraisal breached its contract, causing Plaintiff damage.

COUNT II – Fraud

188. Zreik and Desktop Appraisal made material representations to Plaintiff that were false when it did an appraisal of the property that severely inflated the property's value.

189. Zreik and Desktop Appraisal knew the representations were false when made or made them recklessly without knowledge of their truth.

190. The representations were made with the intention that Plaintiff rely on them.

191. Plaintiff reasonably relied on the representations and suffered injury as a result.

COUNT II – Negligence

192. Zreik and Desktop Appraisal had a duty to Plaintiff to appraise the property with reasonable care.

193. Zreik and Desktop Appraisal breached that duty by providing an appraisal that significantly inflates the Swan Island property's value.

194. This breach has caused Plaintiff damage.

COUNT III – Civil Conspiracy/Concert in Action

195. The conspirators were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

196. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

197. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

198. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

COUNT IV – Breach of Occupational Code

199. Zreik violated the appraiser license requirements when he failed to do the following:

- a) provide an independent and impartially prepared appraisal;
- b) conform to the uniform standards of professional appraisal practice; and
- c) support the appraisal with relevant market information. MCL 339.2609.

200. Desktop Appraisal is liable for the actions of Zreik because he was acting within the scope of his employment when he violated these provisions.

201. Zreik's violations caused Plaintiff damage.

H. BRANDON GUBACZ

COUNT I – Fraud

202. Gubacz made material representations to Plaintiff that were false when he grossly inflated her financial net worth, including employment and salary, and indicated he spoke with Plaintiff by phone.

203. Plaintiff never spoke with Gubacz and never provided her information to him.

204. Gubacz knew the representations were false when made or made them recklessly without knowledge of its truth.

205. The representations were made with the intention that Plaintiff rely on them.

206. Plaintiff reasonably relied on the representations and suffered injury as a result.

COUNT II – Negligent Misrepresentation

207. Plaintiff detrimentally relied on information Gubacz provided to Countrywide and Premier without reasonable care.

208. Gubacz knew or should have known that the financial information that he provided on the Loan Application were not true.

209. His failure to verify the information received or the identity of the person providing it was not reasonable.

210. His failure to wait the typical amount of time for processing a loan was not reasonable.

211. Gubacz breached his duty of care to Plaintiff.

212. Plaintiff's reliance caused her damage.

COUNT III– Civil Conspiracy/Concert in Action

213. The conspirators were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

214. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

215. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

216. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

I. PREMIER MORTGAGE FUNDING, INC.

COUNT I – Real Estate Settlement Procedures Act (RESPA) Violations

217. Plaintiff never applied for a loan with Countrywide or Premier.

218. Premier violated RESPA when it:

- a) Failed to provide HUD booklets within three days of an application, and then closed on a loan to Plaintiff. 24 CFR 3500.6(a)(1).
- b) Gave or received a fee, kickback, or other thing of value pursuant to an agreement or understanding for referral of business. 12 USC 2607(a); 24 CFR 3500.14(b).

219. Premier's violations have caused Plaintiff damage.

220. Plaintiff is entitled to her actual damages, plus costs and attorney fees, and an additional \$1,000 payment because there is a pattern of noncompliance. 12 USC 2605(f).

221. Plaintiff is further entitled to joint and several liability among the guilty parties for three times the amount of any charge paid for the settlement service, plus costs and attorney fees. 12 USC 2607(d)(2),(5).

COUNT II – Violation of Mortgage Brokers, Lenders, and Services Licensing Act (MBLSLA), MCL 445.1672(b)

222. Premier violated the MBLSLA when its employee Gubacz engaged in fraud, deceit, or material misrepresentations in connection with a transaction that is governed by the act. MCL 445.1672(b).

223. Premier's violation has caused Plaintiff damage.

COUNT III – Vicarious Liability

224. Gubacz was acting within the scope of his employment and authority when he made material and negligent misrepresentations.

225. As Gubacz's employer, Premier is liable for Gubacz's wrongful acts.

J. COUNTRYWIDE BANK, N.A., and MERS

COUNT I – Declaratory Judgment

226. The loan agreements, including the Notes and Mortgages from Plaintiff to Countrywide as lender and MERS as mortgagee, are a direct result of the fraud precipitated by the conspirators.

227. Because they are a product of fraud, the loan agreements should be rescinded, discharged, and declared void.

228. Plaintiff's credit should be repaired to reflect no liability on the Countrywide loans.

COUNT II –RESPA Violations

229. Plaintiff never applied for a loan with Countrywide or Premier, and yet the loan was closed on October 31, 2006.

230. Countrywide violated RESPA when it did the following:

- a) Gave or received a fee, kickback, or other thing of value pursuant to an agreement or understanding for referral of business. 12 USC 2607(a); 24 CFR 3500.14(b).
- b) Failed to provide disclosures at the time of a loan application, 12 USC 2602(3); 24 CFR 3500.2, because Plaintiff never submitted a loan application.
- c) Dated materials October 25, 2006, to make it look like it had complied with the requirement that disclosures were made at the time of the loan application and at time of the closing. 12 USC 2602(3); 24 CFR 3500.2.
- d) Failed to provide a Good Faith Estimate within three days of “application” and verify that it was delivered. 24 CFR 3500.7(a); 24 CFR 3500.7(f).
- e) Failed to disclose at the time of application that the mortgage may be assigned, sold, or transferred. 12 USC 2605(a).

231. Countrywide’s violations have caused Plaintiff damage, which Plaintiff is entitled to recoup, plus costs and attorney fees. 12 USC 2605(f).

232. Plaintiff is further entitled to joint and several liability among the guilty parties for three times the amount of any charge paid for the settlement service, plus costs and attorney fees. 12 USC 2607(d)(2), (5).

**COUNT III – Violation of Mortgage Brokers, Lenders, and
Services Licensing Act (MBLSLA), MCL 445.1672(b)**

233. Countrywide violated the MBLSLA when its employee Gubacz engaged in fraud, deceit, or material misrepresentations in connection with a transaction that is governed by the act. MCL 445.1672(b).

234. Countrywide’s violation has caused Plaintiff damage.

COUNT IV – Vicarious Liability

235. Gubacz was acting within the scope of his employment and authority when he made material and negligent misrepresentations.

236. As Gubacz's employer, Countrywide is liable for Gubacz's wrongful acts.

K. AMANDA BIRCH

COUNT I – Fraud

237. Birch made material representations that she witnessed Plaintiff's signature on the purchase agreement.

238. Birch knew the representations were false when made or made them recklessly without knowledge of their truth.

239. The representations were made with the intention that they be relied upon and the loan closed.

240. The representations were reasonably relied upon and Plaintiff has suffered injury as a result.

COUNT II – Civil Conspiracy/Concert in Action

241. The conspirators were engaged in a concerted action to accomplish a criminal or unlawful purpose and/or a lawful purpose by criminal or unlawful means.

242. The conspirators had an agreement or preconceived plan to lure individuals into an investment group with false representations of investing in foreclosed property, obtain their personal and financial information, borrow money in their names (sometimes multiple times on one property), and keep the cash from the sale.

243. Part of the agreement or preconceived plan was to have Plaintiff ostensibly purchase the Swan Island property from the Turchecks at an inflated price.

244. Even if they did not have an agreement or preconceived plan, the conspirators acted pursuant to a common design.

WHEREFORE, Plaintiff requests that this Court:

- A. Declare the purchase of the Swan Island property and loan agreements with Countrywide invalid;
- B. Rescind Plaintiff's purchase of the Swan Island property and loan agreements with Countrywide;
- C. Order that Plaintiff's credit be cleared with all three credit reporting agencies to reflect no liability for the Countrywide loans;
- D. Award monetary damages in the approximate amount of \$1,077,000;
- E. Award other consequential damages;
- F. Award costs and attorney fees pursuant to MCPA and 12 USC 2605(f); and
- G. Award all such other relief as this Court deems appropriate.

Respectfully submitted,

COOPER & RIESTERER, PLC

Dated: November 13, 2007

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