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11 **SUPERIOR COURT OF ARIZONA**

12 **IN MARICOPA COUNTY**

13 STATE OF ARIZONA, *ex rel.* MARK
14 BRNOVICH, Attorney General,
15 Plaintiff,
16 v.
17 DEED AND NOTE TRADERS, LLC;
18 881HOME, LLC; DAVID KINAS and
19 DEANNE KINAS, an individual and his
20 spouse,
21 Defendants.

Case No. **CV2021-011201**

COMPLAINT

(Jury Trial Demanded)

20 Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
21 alleges the following for its Civil Complaint (the “Complaint”) against Defendants Deed and Note
22 Traders, LLC (“DNT”); 881Home, LLC (“881Home”); David Kinas (collectively, the “Deed and
23 Note Defendants”); and Deanne Kinas.

24 **NATURE OF CLAIMS**

25 1. Defendant David Kinas has operated Tucson-based DNT to provide real estate
26 related services to potential lessees and homebuyers, with a focus on providing financing to
27 would-be homeowners who could not qualify for traditional mortgage financing.
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1 2. Kinas induced consumers to enter into purchase and sale agreements whereby the
2 Deed and Note Defendants sold consumers a home subject to the Deed and Note Defendants'
3 underlying mortgage. However, the Deed and Note Defendants failed to make the payments on
4 their underlying notes, despite promising consumers they would do so. When the banks initiated
5 foreclosure proceedings, consumers were forced to move out of their homes and lost their down
6 payments.

7 3. DNT's wrongful conduct dates back more than fifteen years. In 2006, the State and
8 Defendant DNT entered into a Consent Decree to resolve allegations that Defendant DNT violated
9 the Arizona Consumer Fraud Act ("ACFA"). Specifically, the State alleged that Defendant DNT
10 deceptively enticed consumers to enter into foreclosure assistance and rent-to-own transactions
11 that ultimately led to the consumers losing thousands of dollars and their homes. The Consent
12 Decree mandates specific conduct by DNT with members, David A. Kinas and the David A.
13 Kinas Exempt Trust, partners, employees, representatives, assignees, successors in interest, agents
14 and all persons, corporations and other entities who act in concert or participation with DNT in
15 relation to providing non-recourse carry-back financing. The Pima County Superior Court entered
16 the Consent Decree on December 20, 2006 (hereinafter the "Consent Decree"). (Exhibit A,
17 Consent Decree).

18 4. According to David Kinas, he created 881Home because of the negative press
19 coverage DNT received as a result of the Consent Decree.

20 5. Following entry of the judgment, the Deed and Note Defendants continued to
21 engage in practices that were specifically prohibited by the Consent Decree. In doing so, the Deed
22 and Note Defendants violated the Consent Decree.

23 6. As a result of the Deed and Note Defendants' actions, Arizona consumers lost their
24 down payments and their homes, while the Deed and Note Defendants violated the Consent
25 Decree and filled their pockets with consumers' money.

JURISDICTION AND VENUE

26 7. The State brings this action pursuant to the ACFA, A.R.S. §§ 44-1521 to 1534, to
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1 obtain injunctive relief to permanently enjoin and prevent the unlawful acts and practices alleged
2 in this Complaint, and to obtain other relief, including restitution, disgorgement of profits, gains,
3 gross receipts, or other benefits, civil penalties, and costs and attorneys' fees.

4 8. This Court has subject-matter jurisdiction.

5 9. This Court may issue appropriate orders both prior to and following a determination
6 of liability pursuant to A.R.S. § 44-1528.

7 10. The Deed and Note Defendants caused events to occur in this state out of which the
8 claims which are the subject of this Complaint arose.

9 11. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

10 **PARTIES**

11 12. Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of
12 Arizona, who is authorized to bring this action under the ACFA, A.R.S. §§ 44-1521 to 1534.

13 13. DNT is an Arizona limited liability company that, at all times relevant to this
14 Complaint, has been headquartered and operating with its principal place of business in Tucson,
15 Arizona.

16 14. 881Home is an Arizona limited liability company that, at all times relevant to this
17 Complaint, has been headquartered and operating with its principal place of business at the same
18 address as DNT.

19 15. David Kinas, a resident of Pima County, Arizona, is the sole manager of DNT and
20 the sole member of Olympic Holdings, LLC, the entity that manages 881Home.

21 16. David Kinas's actions alleged herein were taken in furtherance of his and Defendant
22 Deanne Kinas's marital community. Deanne Kinas is named solely for any interest she may have
23 in her marital community with Defendant David Kinas.

24 **ALLEGATIONS**

25 17. The Deed and Note Defendants have provided real-estate related services to
26 consumers in Arizona, including offering seller-carried financing for the purpose of purchasing
27 residential real property.

1 18. In 2006, after the State conducted a consumer fraud investigation, the State and
2 DNT entered into a Consent Decree that required DNT and all persons, corporations, and other
3 entities who act in concert or participation with the company to cease engaging in deceptive and
4 unfair practices related to real estate transactions.

5 19. The Consent Decree also mandated specific conduct by DNT and all persons,
6 corporations, and other entities who act in concert or participation with the company in relation to
7 providing non-recourse seller carry-back financing:

8 a. Paragraph 11(c) ordered: “Prior to providing non-recourse, carry-back secured
9 financing ... DNT shall obtain a title report and provide title insurance to consumers.” (Exhibit A
10 at ¶ 11(c)).

11 b. Paragraph 11(d) ordered: “Prior to providing non-recourse, carry-back secured
12 financing ... DNT shall make provisions for the consumers to make payments through a title
13 company for appropriate payment of any underlying notes.” (Exhibit A at ¶ 11(d)).

14 c. Paragraph 11(f) ordered: “DNT’s non-recourse, carry-back financing shall contain
15 the following terms: a payoff date of no less than fifteen (15) years...” (Exhibit A at ¶ 11(f)).

16 20. In 2007, Defendant DNT filed for bankruptcy under Chapter 11 of the bankruptcy
17 code (case no. 4:07-bk-01734-EWH). Defendant DNT listed over 159 properties, valued at over
18 \$40 million as assets, with approximately \$30 million in secured claims against those properties.
19 The plan ultimately approved by the bankruptcy court, as relevant here, adjusted the outstanding
20 balances on those properties and allowed Defendant DNT to make interest-only payments for
21 either five or seven years depending on the lien’s priority, at which time the balance would be due
22 in full (i.e. a “balloon” payment). Under the plan, Defendant DNT’s mortgages matured and the
23 balloon payments became due in full on either November 3, 2013 or November 3, 2015,
24 depending on their priority position. That bankruptcy case was closed on February 8, 2010.

25 21. On February 12, 2010, Defendant DNT again filed for Chapter 11 bankruptcy (case
26 no. 4:10-bk-03640-BMW). In general terms, Defendant DNT requested that the payment terms
27 from the 2007 bankruptcy be kept in place, but proposed reducing certain creditors’ claims to the
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1 market value of the secured properties. The bankruptcy court confirmed that plan on
2 February 10, 2011.

3 22. Defendant Kinas formed 881Home in 2009. Defendant 881Home engages in
4 business practices that are substantially similar to those of Defendant DNT.

5 23. At all times relevant to the Complaint, Defendant Kinas exercised control over the
6 management and activities of Defendant DNT and Defendant 881Home.

7 24. The Deed and Note Defendants specialized in serving clients who could not obtain
8 traditional mortgage financing.

9 25. The Deed and Note Defendants offered to assist consumers in purchasing homes
10 through the use of purchase and sale agreements with seller-carried financing. The majority of
11 sales involved what are commonly known as “wrap” mortgages.

12 26. In a typical “wrap” mortgage transaction, the seller—here, the Deed and Note
13 Defendants—holds the property subject to a mortgage (hereinafter, the “underlying note”). That
14 seller then extends a junior mortgage to the buyer, which “wraps” around and exists in addition to
15 the underlying note. In such transactions, the Deed and Note Defendants’ deeds of trust with
16 consumers stated that the Deed and Note Defendants would ensure payments were timely made on
17 the underlying note.

18 27. The Deed and Note Defendants routinely offered consumers a five-year, interest-
19 only “wrap” loan. At the end of the five-year term, the entire wrap loan amount would be due
20 from the buyers to the Deed and Note Defendants in a balloon payment.

21 Underlying Note Payments

22 28. The Deed and Note Defendants failed to make their required monthly payments on
23 certain underlying notes, which led to banks initiating foreclosure proceedings and consumers
24 being forced to move out of their homes.

25 29. The Deed and Note Defendants did not inform the consumers—who were living in
26 those properties and continuing to make their monthly payments to the Deed and Note
27 Defendants—that they had stopped making the required payments on the underlying notes.

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1 30. The Deed and Note Defendants also failed to make the balloon payments under the
2 bankruptcy plan, thereby putting the homeowners who lived in these properties at risk of losing
3 their home in foreclosure proceedings.

4 31. The Deed and Note Defendants did not inform the consumers who lived in those
5 homes of the Deed and Note Defendants' failure to make the monthly or balloon payments under
6 the bankruptcy plan.

7 32. The Deed and Note Defendants knew or should have known that their failure to
8 make the monthly or balloon payments on the underlying notes put the homeowners at risk of
9 losing their homes through foreclosure.

10 33. The Deed and Note Defendants engaged in a practice of concealing, suppressing, or
11 omitting the fact that they had failed to make the monthly or balloon payments on the underlying
12 notes.

13 Violations of the Consent Decree

14 34. On December 20, 2006, Pima County Superior Court Judge John Kelly issued an
15 Order Re: Consent Decree that prohibited DNT with members, David A. Kinas and The David A.
16 Kinas Exempt Trust, partners, employees, representatives, assignees, successors in interest, agents
17 and all persons, corporations and other entities who act in concert or participation with DNT from
18 engaging in specific conduct.

19 35. 881Home is subject to the provisions of the Consent Decree because it is an entity
20 that acted in concert with Defendant DNT. Moreover, Defendant Kinas ran the day-to-day
21 operations of both DNT and 881Home and both operated out of the same business address.
22 Oftentimes consumers' transactions with DNT also involved 881Home. For example, some
23 consumers received a "Receipt for Partial Down Payment for House Purchase" from 881Home,
24 signed by "Manager" David Kinas, and days later entered into a purchase and sale agreement with
25 DNT.

26 36. After investigation, the State alleges that beginning in approximately 2007 and
27 continuing thereafter, the Deed and Note Defendants violated the Consent Decree in that the Deed
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1 and Note Defendants:

2 a. Included contract provisions providing for late payment fees that exceeded
3 3% of the monthly payment (Exhibit A at ¶ 11(b)(1));

4 b. Failed to obtain title reports and provide title insurance for consumers who
5 purchased homes from Defendant DNT (Exhibit A at ¶ 11(c));

6 c. Failed to make provisions for consumers to make their payments through a
7 title company in order to ensure appropriate payments were made on any underlying promissory
8 notes (Exhibit A at ¶ 11(d));

9 d. Provided five-year interest-only financing (Exhibit A at ¶ 11(f)(1);

10 e. Set consumers' interest rates at a rate higher than Defendant DNT's interest
11 rate on the underlying note (Exhibit A at ¶ 11(f)(2)); and

12 f. Included contract provisions providing for prepayment penalties (Exhibit A
13 at ¶ 11(b)(2)).

14 37. Pursuant to A.R.S. § 44-1534, DNT agreed to pay the State \$200,000, to be used for
15 consumer fraud education and for the investigative and enforcement operation of the consumer
16 protection division. (Exhibit A at ¶¶ 33-34). DNT further agreed that in the event of a default on
17 any payment obligation, the entire amount, plus interest at the statutory rate, would become
18 immediately due and owing. (Exhibit A at ¶ 35).

19 38. DNT has failed to timely, fully, and completely comply with the payment
20 obligation. DNT has defaulted on the payment obligation.

21 **FIRST CLAIM FOR RELIEF**

22 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§ 44-1521 to -1534**

23 **(Against All Defendants)**

24 39. The State realleges all prior allegations of this Complaint as though fully set forth
25 herein.

26 40. The conduct described in the preceding paragraphs of this Complaint constitutes
27 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
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1 misrepresentations, or concealment, suppression or omission of material facts with intent that
2 others rely on such concealment, suppression or omission, in connection with the sale or
3 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to 1534, including, but not
4 limited to:

5 a. The Deed and Note Defendants engaged in deceptive and unfair acts and
6 practices by falsely promising that Deed and Note Defendants would ensure that underlying loan
7 payments would be timely made on underlying notes; and

8 b. The Deed and Note Defendants concealed, suppressed, or omitted material
9 facts by failing to inform consumers that the Deed and Note Defendants had stopped making the
10 required payments on the underlying notes, and did so with intent that others rely on such
11 concealments, suppressions, or omissions.

12 41. While engaging in the acts and practices alleged in this Complaint, the Deed and
13 Note Defendants knew or should have known that that their conduct was of the nature prohibited
14 by A.R.S. § 44-1522, subjecting themselves to enforcement and penalties as provided in
15 A.R.S. § 44-1531(A).

16 42. The repeated concealments, suppressions, and omissions alleged above also
17 constituted practices under A.R.S. § 44-1522.

18 **SECOND CLAIM FOR RELIEF**

19 **VIOLATIONS OF CONSENT DECREE**

20 **(Against All Defendants)**

21 43. The State realleges the prior allegations of this Complaint as though fully set forth
22 herein.

23 44. The Deed and Note Defendants acted in violation of specific portions of the
24 Consent Decree, including, but not limited to the following:

25 a. The Deed and Note Defendants violated the Consent Decree's requirements
26 regarding non-recourse, carry-back secured financing, particularly paragraph 11's requirements to
27 obtain a title report and provide title insurance to consumers, to make provisions for consumers to
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1 make their payments through a title company, and to ensure a payoff date of no less than 15 years;
2 and

3 b. The Deed and Note Defendants violated paragraph 11's prohibitions against
4 late payment fees that exceeded 3% of the monthly payment, interest rates at a higher rate than
5 Defendant DNT's interest rate on the underlying note, and prepayment penalties.

6 **THIRD CLAIM FOR RELIEF**

7 **VIOLATION OF CONSENT DECREE**

8 **(Against Defendant Deed and Note Traders, LLC)**

9 45. The State realleges the prior allegations of this Complaint as though fully set forth
10 herein.

11 46. DNT previously agreed that in the event of a default on any payment to the State,
12 the entire amount, plus interest at the statutory rate on any unpaid balance, would become
13 immediately due and owing.

14 47. DNT has failed to timely, fully, and completely comply with the payment obligation
15 imposed by paragraphs 33 and 34 of the Consent Decree.

16 48. DNT has defaulted on the payment obligation imposed by the Consent Decree.

17 49. As of July 1, 2021, DNT owes the State \$321,750.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the State respectfully requests that the Court:

20 50. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction in accordance
21 with Ariz. R. Civ. P. 65(d)(1), enjoining and restraining (a) the Deed and Note Defendants, (b)
22 their officers, agents, servants, employees, attorneys, and (c) all persons in active concert or
23 participation with anyone described in part (a) or (b) of this paragraph, directly or indirectly, from
24 engaging in deceptive, misleading, or unfair acts or practices, or concealments, suppressions, or
25 omissions, that violate the ACFA, A.R.S. § 44-1522(A), including specific injunctive relief
26 barring the Deed and Note Defendants from engaging in the unlawful acts and practices set forth
27 above;

1 51. Pursuant to A.R.S. § 44-1528(A)(2), order the Deed and Note Defendants to restore
2 to all persons in interest any monies or property, real or personal, in the amount of at least
3 \$147,337, which may have been acquired by any means or any practice in this article declared to
4 be unlawful;

5 52. Pursuant to A.R.S. § 44-1528(A)(3), order the Deed and Note Defendants to
6 disgorge all profits, gains, gross receipts, or other benefits obtained as a result of their unlawful
7 acts alleged herein;

8 53. Pursuant to A.R.S. § 44-1528(A)(4), issue a permanent injunction enjoining and
9 restraining the Deed and Note Defendants from engaging in the business of renting, financing, or
10 sale of real property for any compensation, other than the sale of David Kinas's or Deanne
11 Kinas's primary residence, within the State of Arizona or to residents of the State of Arizona;

12 54. Pursuant to A.R.S. § 44-1531, order the Deed and Note Defendants to pay to the
13 State of Arizona a civil penalty of up to \$10,000 for each willful violation of A.R.S. § 44-1522, in
14 the amount of at least \$60,000;

15 55. Pursuant to A.R.S. § 44-1532, order the Deed and Note Defendants to pay the State
16 of Arizona a civil penalty of up to \$25,000 for each violation of the Consent Decree, in the
17 amount of at least \$175,000;

18 56. Pursuant to A.R.S. § 44-1534, order the Deed and Note Defendants to reimburse the
19 State for its costs and attorneys' fees incurred in the investigation and prosecution of Defendants'
20 activities alleged in this Complaint, currently calculated at \$192,151.4;

21 57. Pursuant to A.R.S. § 44-1534, issue an order declaring that DNT is in default on the
22 payment obligation imposed by paragraphs 33 and 34 the Consent Decree and that the entire
23 amount, plus interest at the statutory rate, is immediately due and owing;

24 58. Pursuant to A.R.S. § 44-1201, require the Deed and Note Defendants to pay pre-
25 judgment and post-judgment interest to the State and all consumers; and

26 59. Award the State such further relief the Court deems just and proper under the
27 circumstances.

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DATED this 15th day of July, 2021.

MARK BRNOVICH

Attorney General

By: Jennifer Bonham

Jennifer Bonham
Kristin Schriener
Assistant Attorneys General
Attorneys for the State of Arizona

EXHIBIT A

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3 Firm Bar No. 14000
4 NOREEN R. MATTS
5 Assistant Attorney General
6 State Bar No. #10363
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11 Pima County Computer No. 36732
12 Attorneys for Plaintiff

FILED
06 DEC 20 PM 3:52
12-20-06
PATRICIA A. HOLLAND
CLERK, SUPERIOR COURT
BY _____
DEPUTY

ARIZONA SUPERIOR COURT

COUNTY OF PIMA

11 State of Arizona, ex rel. Terry Goddard,
12 Attorney General,
13 Plaintiff,
14 vs.
15 Deed and Note Traders, L.L.C.
16 Defendant.

No. **C20066732**
ORDER RE: CONSENT DECREE

JOHN F. KELLY

18 Based on the parties' Joint Motion to Enter Consent Decree and good cause
19 appearing,

20 THE COURT HEREBY FINDS AND ORDERS:

21 The State of Arizona has filed a complaint alleging violations of A.R.S. § 44-
22 1521 *et seq.*, the Consumer Fraud Act against defendant Deed and Note Traders,
23 L.L.C., (hereinafter, "DNT"), an Arizona limited liability company. DNT, after consulting
24 with its counsel a) waives its right to trial; b) admits the jurisdiction of this Court over
25 the subject matter and the parties for the purpose of entry of this Consent Decree;
26 and, c) acknowledges that the Court retains jurisdiction for the purpose of enforcing
27 this Consent Decree.
28

State v. Deed and Note Traders, L.L.C.

1 1. This Order incorporates the parties' Joint Motion to Enter Consent Decree
2 in *State v. Deed and Note Traders, L.L.C.*

3 2. This Consent Decree does not constitute an admission for any purpose
4 by DNT of any fact or of any violation of state law, rule or regulation, nor does this
5 Decree constitute evidence of any liability, fault or wrongdoing. This Consent Decree is
6 made without a trial or adjudication of any issues of fact or law or finding of liability.
7

8 3. DNT shall not represent or imply that the Attorney General, the State of
9 Arizona or any state agency has approved any of DNT's actions or has approved any
10 of its past, present or future business practices, and DNT is enjoined from directly or
11 indirectly representing anything to the contrary.
12

13 4. DNT enters into this Consent Decree voluntarily and that neither the
14 Attorney General's Office nor any member of the Attorney General's Office has made
15 any promises or threats to induce DNT to enter into this Consent Decree.

16 5. This Order applies to DNT with members, David A. Kinas and The David
17 A. Kinas Exempt Trust, partners, employees, representatives, assignees, successors
18 in interest, agents and to all persons, corporations and other entities who act in
19 concert or participation with DNT with respect to the subject matter of this Order.
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21 6. For purposes of this Consent Decree, the following definitions apply:

- 22 a. "Clear and Conspicuous" means printed information in a contract
23 or any other document that DNT provides consumers that is in
24 such size, color, contrast and location that it is readily noticeable,
25 readable and understandable; is presented in proximity to all
26 information necessary to prevent the information from being
27 misleading or deceptive; is not obscured in any manner; and
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State v. Deed and Note Traders, L.L.C.

1 appears in a type size, contrast and location sufficient for a
2 consumer to read and comprehend the information. A statement
3 may not contradict or be inconsistent with any other information
4 with which it is presented. If a statement modifies or is necessary
5 to prevent other information from being misleading or deceptive,
6 then the statement must be presented in proximity to that
7 information and must conform to all of the requirements set out in
8 this paragraph.
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- 10 b. "DNT" means Deed and Note Traders, L.L.C., with members
11 David A. Kinas, a 50% member and The David A. Kinas Exempt
12 Trust, a 50% member.
- 13 c. "Down Payment" means the total amount required to be paid in
14 order for the consumer in a "Rent-to-Own Transaction" to
15 complete the closing of the purchase of the property, including but
16 not limited to any portion of the "Option Payment" or rent that is to
17 be applied to the Down Payment.
- 18 d. "Foreclosure Assistance" means DNT's offer, guarantee or
19 promise to save a consumer's home from foreclosure in exchange
20 for the consumer's transfer by warranty or otherwise to DNT and
21 DNT's conveyance to the consumer of a lease with an oral or
22 written option to repurchase the property.
- 23 e. "Monthly Payment" means principal, interest, taxes and insurance
24 (also known as "PITI").
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- f. "Option Payment" means the amount of money a consumer in a Rent-to-Own Transaction must pay DNT in order to obtain an option to purchase the property in the future.
- g. "Rent-to-Own Transaction" means DNT's conveyance of an interest in real property to a consumer by which the consumer rents real property from DNT based on the DNT's written or oral statement that the consumer will be able to purchase the property at a future date.
- h. "Security Deposit" means the amount, if any, required of a consumer in a Rent-to-Own Transaction to be deposited with DNT as security of payment for rent and/or for repairs following the termination of the lease, but shall not be included as a part or portion of the Option Payment or Down Payment.

A. GENERAL TERMS

- 7. DNT shall comply with the Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*, as it is currently written or as is amended in the future.
- 8. The Effective Date of this Order is the date on which the Court signs this Order.

B. FORECLOSURE ASSISTANCE AND OTHER TRANSACTIONS

- 9. DNT shall no longer engage in the provision of Foreclosure Assistance.
- 10. With regard to consumers listed in Exhibit A, attached hereto and incorporated by reference, DNT shall take the following actions:
 - a. Immediately cease filing or enforcing forcible entry and detainer actions.
 - b. Freeze the consumers' monthly rental payment at the September 30, 2006, payment amount.

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c. Within forty-five (45) days from the Effective Date, DNT shall provide its proposed non-recourse, carry-back secured financing for each of the consumers to the Attorney General for review. The Attorney General shall review the terms of the non-recourse, carry-back secured financing to ensure that the terms comply with the requirements set out in Paragraph No. 11, below.

d. The Attorney General shall have fifteen (15) business days to review the terms.

1) On or before the expiration of fifteen (15) days, the Attorney General shall inform counsel for DNT that the terms comply with the requirements of Paragraph No. 11 below, and DNT has thirty (30) days thereafter to provide the consumers listed in Exhibit A with execution copies of the Loan and Security Documents evidencing the approved non-recourse, carry-back secured financing.

2) If the Attorney General determines that the terms DNT is offering consumers do not meet the requirements of Paragraph 11 below, the Attorney General shall provide counsel for DNT with an explanation as to why the proposed terms are not in compliance with Paragraph 11 below, and DNT shall have fifteen (15) business to submit revised terms for approval by the Attorney General. Thereafter, the provisions of sub-paragraphs (d)(1) and (2), above, shall apply to the revised terms submitted by DNT.

1 11. Prior to providing non-recourse, carry-back secured financing, DNT must
2 comply with the following requirements:

3 a. DNT must possess the consumer's completed credit application
4 and other documentation that establishes the consumer's
5 creditworthiness and ability to make the Monthly Payment. DNT
6 shall use the credit application and other information to set the
7 consumer's Monthly Payment and to set the number of years that
8 the consumer has to pay DNT.

9 b. DNT shall not charge consumers the following:

- 10 1) A late payment fee that exceeds 3% of the Monthly
11 Payment;
12 2) Prepayment penalties; or,
13 3) An increase in the interest rate upon default.

14 c. DNT shall obtain a title report and provide title insurance to the
15 consumers.

16 d. DNT shall make provisions for the consumers to make payments
17 through a title company for appropriate payment of any underlying
18 notes. DNT shall obtain any modification necessary to any
19 underlying notes to ensure that the consumers' Monthly Payment
20 appropriately satisfies any underlying notes.

21 e. Prior to providing non-recourse, carry-back financing, DNT must
22 repair, at its own expense, the property to a "rent ready" condition
23 in compliance with the Arizona Residential Landlord Tenant Act.

24 f. DNT's non-recourse, carry-back financing shall contain the
25 following terms:
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1) A payoff date of no less than fifteen (15) years, provided however, the loan and security documents shall require the consumers to make a good faith attempt to obtain financing from the source of their choosing on the same or better terms within three (3) years following the date of DNT's conveyance of the property to the consumers.

i. If the consumers are approved for financing on the "same or better terms," the consumers must refinance the property and pay off any balance then due and owing to DNT. If the proposed financing is recourse financing, DNT shall send a prompt, clear and conspicuously written letter explaining to the consumers that recourse financing includes the possibility of a deficiency judgment against the consumers and an explanation of "deficiency judgment."

ii. In the event the consumers fail to be approved for financing on the same or better terms from the source of their choosing, the terms of the original financing from DNT shall remain in place for the duration of the terms thereof. The consumers shall provide proof of their

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inability to obtain financing from the source of their choosing to DNT prior to the end of such three (3) year period.

iii. In the event that consumers fail to timely provide evidence of their efforts to obtain financing, DNT shall provide the consumers with written notice of their failure to provide such evidence on three successive occasions, each such notice to be no sooner than sixty days following the previous notice. The last of such notices shall advise the consumers that should they fail to provide such evidence within sixty (60) days of date of such written notice, DNT may accelerate the maturity date of the Loan to a date that is thirty-six (36) months from the date of the expiration of the third written notice. At the time DNT sends the notices to consumers, DNT shall also send copies of the notices to the Tucson Office of the Attorney General in care of the Consumer Protection and Advocacy Section.

- 2) A fixed rate of interest no higher than DNT pays on any underlying notes; and
- 3) A fixed amount for principal and interest.

1 12. Within ninety (90) days of the Effective Date, DNT shall provide the
2 complete file for each of the consumers listed in Exhibit A, which file shall contain
3 documents to demonstrate DNT's compliance with Paragraph 11, above.

4 13. In lieu of the resale and financing of the properties to the consumers
5 identified in Exhibit A, DNT may offer the consumers the option of accepting a cash
6 settlement. Any cash settlement offer shall be subject to prior approval by the
7 Attorney General. If the cash settlement offer is rejected by the Attorney General,
8 DNT may resubmit a revised cash settlement offer to the Attorney General, following
9 the time periods set forth in paragraph 10(d), above.

10 a. The Attorney General shall communicate DNT's monetary offer to
11 the consumers.

12 b. If any consumer accepts DNT's cash offer, the Attorney General
13 shall promptly communicate the acceptance to DNT's counsel,
14 and DNT shall deliver payment to the consumer within thirty (30)
15 days following the communication from the Attorney General.

16 c. DNT shall allow consumers who accept a cash payment to remain
17 in the house six (6) months from the date of payment at the rental
18 amount the consumers were paying DNT on the date the
19 consumers accept the cash settlement.
20

21 d. The consumer shall be under no obligation to accept the cash
22 settlement offer.

23 **C. RENT-TO-OWN TRANSACTIONS**

24 14. DNT shall comply with the following:

25 a. Prior to entering into a Rent-to-Own Transaction with a consumer,
26 DNT must possess the consumer's completed credit application
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and other documentation that establishes the consumer's creditworthiness and ability to pay the rent.

- b. Prior to entering into a Rent-to-Own Transaction with a consumer, DNT shall specifically identify all structural and other material defects that DNT knows or should know exist in the real property. DNT shall make a Clear and Conspicuous written disclosure regarding such defects in a separate document, such document to contain the consumer's signed acknowledgment that he or she has read and understood the existence of the defects. DNT must keep this document in the file with each consumer's contracts and other documents.

15. DNT shall disclose all other terms of a Rent-to-Own agreement in one contract document, the terms of which are Clear and Conspicuous. These terms include, but are not limited to the following:

- a. The fixed monthly rental payment; the dollar amount that DNT will charge for late fees; and the dollar amount, if any, that shall apply to the Option Payment or the Down Payment.
- b. The number of months the lease covers.
- c. The total amount of the Security Deposit, including whether DNT will refund the Security Deposit or a portion of same and under what terms, including but not limited to terms for a consumer who vacates the property at the end of the lease term and terms for a consumer who defaults on the rental payment.
- d. The total amount of the Option Payment including whether DNT shall refund the Option Payment or a portion of same and under what terms, including but not limited to terms for a consumer who

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- vacates the property at the end of the lease term and terms for a consumer who defaults on the rental payment.
 - e. Whether the Option Payment becomes part of the Down Payment at the time the consumer exercises his or her right to purchase the property and the amount of the Option Payment that becomes part of the Down Payment.
 - f. The total amount of the Down Payment DNT requires in order for a consumer to exercise the option to purchase; when such Down Payment is due; and under what terms the Down Payment will be refunded, if any, including but not limited to terms for a consumer who vacates the property and terms for a consumer who defaults on a rental payment.
 - g. The fixed purchase price.
 - h. The earliest date a consumer can exercise the option to purchase.
 - i. All other terms that apply if a consumer defaults on a rental payment or decides not to purchase at the end of rental period.
16. DNT shall not require consumers to do the following:
- a. Contact certain lenders in order to exercise their purchase option.
 - b. Contact more than three lenders.
 - c. Obtain DNT's approval before accepting a loan.
 - d. Accept the terms of the first lender that approves the consumers' loans or of any lender that approves the consumers' loans.
 - e. Waive the right to sue DNT for repair or other work that DNT or their agents performed, which work was not completed in a workmanlike manner and/or to code, if code is applicable.

1 f. Waive the right to report any problems or otherwise to the
2 Attorney General's Office.

3 17. No later than one hundred and twenty (120) days before the expiration
4 date of the consumer's purchase option, DNT shall send a Clear and Conspicuous
5 letter by certified mail to the consumer that contains the following information:

6 a. A reiteration of the fixed purchase price;
7 b. A summary of the structural and material defects that DNT
8 disclosed prior to the Rent-to-Own Transaction and any other
9 structural and material defects that DNT discovered or should
10 have discovered from the inception of the Rent-to-Own
11 Transaction.

12 c. The expiration date of the purchase option.

13 18. In all Rent-to-Own Transactions, DNT shall comply with the Residential
14 Landlord and Tenant Act, A.R.S. § 33-3301 *et seq.*

15 19. DNT shall not engage in any retaliatory action against consumers who
16 are currently parties to Rent-to-Own agreements with DNT.
17

18 **ADDITIONAL TERMS**

19 20. DNT shall not use the services of Tara Alegria or Barbi Stewart for any
20 matter.

21 21. DNT shall not instruct an escrow agent or any person who is not a DNT
22 employee to keep confidential any term of a contract or any other document from
23 consumers, investors or otherwise.

24 22. For a period of five (5) years, beginning on the date the Court signs the
25 Consent Decree, and within fifteen (15) days of a written request by the Attorney
26 General, DNT will provide to the Attorney General such records and documents as the
27 Attorney General determines bears on compliance with the Consent Decree.
28

1 23. DNT's advertising shall be Clear, Conspicuous and truthful.¹

2 24. DNT shall immediately discontinue any advertising for Foreclosure
3 Assistance.

4 25. DNT shall immediately destroy all advertising dealing with Foreclosure
5 Assistance and transactions of similar import, including, but not limited to videotapes,
6 CDs and DVDs. With regard to DNT's home website or any related websites, DNT
7 shall immediately remove any information and links regarding Foreclosure Assistance.

8 26. If a consumer calls DNT for information regarding Foreclosure
9 Assistance or transactions of similar import, DNT shall respond that it does not deal
10 with Foreclosure Assistance and shall not refer the consumer to any other person or
11 entity.

12 27. Except for any documents that are required to be recorded in any public
13 record, in any transaction in which DNT provides a Spanish-speaking consumer or a
14 consumer whose primary language is Spanish (even if another person entering into
15 the transaction speaks English) with an interest in real property, DNT shall provide the
16 consumer with Spanish-language contracts and will provide all other documents in
17 Spanish, *provided however*, that DNT shall have no obligations under this sub-
18 paragraph, if providing such a document or agreement in a language other than
19 English shall violate any government statute, rule, regulation or ordinance.

20
21 **RESTITUTION**

22 28. DNT shall make restitution to those consumers listed in paragraph 29
23 below for the amount listed next to each consumer's name.

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¹ For example, DNT shall not advertise "no qualifying" or words or phrases of similar import in advertising Rent-to-Own Transactions or other rental or sales transactions to consumers.

1 29. DNT shall deliver checks backed by good and sufficient funds to the
2 Attorney General's Office and made out to each consumer:

3 a. At the time DNT delivers the signed Consent Decree to the
4 Attorney General, DNT shall deliver checks made out to the
5 following consumers:

- | | | | |
|----|----|---------------------|----------|
| 6 | 1) | Rosario G. | \$1,709 |
| 7 | | | |
| 8 | 2) | Jessie and Diane J. | \$4,576 |
| 9 | | | |
| 10 | 3) | Kathryn M. | \$2,015 |
| 11 | | | |
| 12 | 4) | Oscar and Nelda N. | \$13,000 |
| 13 | | | |
| 14 | 5) | Jean S. | \$10,000 |
| 15 | | | |
| 16 | 6) | Mary W. | \$10,700 |

17 b. Within one hundred and eighty days (180) of the Effective Date,
18 DNT shall deliver checks made out to the following consumers:

- | | | | |
|----|----|--------------|----------|
| 19 | 1) | Arturo A. | \$17,467 |
| 20 | | | |
| 21 | 2) | Edith B. | \$43,566 |
| 22 | | | |
| 23 | 3) | Sarah E. | \$23,700 |
| 24 | | | |
| 25 | 4) | Marianne G. | \$24,000 |
| 26 | | | |
| 27 | 5) | Christine R. | \$19,053 |
| 28 | | | |
| | 6) | Norman S. | \$30,438 |
| | | | |
| | 7) | Stephen S. | \$12,956 |
| | | | |
| | 8) | Mercy V. | \$23,388 |

29 30. Should DNT default on any restitution payment to the State, the entire
30 amount becomes immediately due and owing. Interest on any unpaid balance shall
31 accrue at the statutory rate.

1 31. Upon receipt of the restitution checks, the Attorney General's Office shall
2 promptly send the checks by certified mail to the consumers listed in paragraph 29,
3 above.

4 a. Should the restitution check be returned to the Attorney General,
5 the Attorney General shall make a diligent effort to locate the
6 consumer(s). If, after three (3) months from the date the check is
7 returned, the Attorney General has been unable to locate the
8 consumer(s), the Attorney General shall notify DNT. DNT shall
9 cancel the consumer's check and re-write the check in the name
10 of the Attorney General whose office shall place the check in an
11 interest-bearing account for a period of nine (9) months from the
12 date of the re-written check. If after nine (9) months, the Attorney
13 General has not located the consumer(s), the Attorney General
14 shall apply the amount represented by the restitution check to the
15 attorneys' fees provided for in paragraphs 33-34, below.

16 b. If the consumer does not cash the check within six (6) months of
17 the date of the check, DNT shall cancel that check and re-write a
18 check to the Attorney General. The Attorney General's Office shall
19 place the check in an interest-bearing account for a period of six
20 (6) months from the date of re-written check. If after six (6)
21 months, the Attorney General is unable to locate the consumer(s),
22 the Attorney General shall apply the amount represented by the
23 restitution check to the attorneys' fees provided for in paragraphs
24 33-34, below.

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- c. With regard to paragraphs 31(a) and (b) above, any funds consumers do not claim within the specified time periods shall no longer be deemed restitution.

RELEASE OF SECURITY LIENS

32. Within fifteen (15) days of the Effective Date, DNT shall release the security liens for the following consumers:

- a. Mario and Ana L.
- b. Ramon S. and Maria A.
- c. Helen W.

ATTORNEYS FEES AND COSTS

33. Pursuant to A.R.S. § 44-1534, DNT shall pay the Attorney General, in checks backed by good and sufficient funds, two hundred thousand dollars (\$200,000.00) in costs and attorneys' fees to be used in the sole discretion of the Attorney General for consumer fraud education and for the investigative and enforcement operation of the consumer protection division as set out in A.R.S. § 44-1531.01(C). The payment of attorneys' fees and costs and other obligations herein, shall not be considered a civil fine or penalty and is paid pursuant to A.R.S. §§ 44-1531 and 1534.

34. DNT shall pay the \$200,000.00 in the following manner:
- a. \$65,000 on or before May 1, 2007;
 - b. \$65,000 on or before October 1, 2007: and
 - c. \$70,000 on or before February 1, 2008.

State v. Deed and Note Traders, L.L.C.

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35. Should DNT default on any payment to the State, the entire amount becomes immediately due and owing. Interest on any unpaid balance shall accrue at the statutory rate.

DATED this 20 day of December, 2006.



JUDGE OF THE SUPERIOR COURT

Copy of the foregoing mailed this ___ day of December, 2006, to:

Noreen R. Matts, Esq.
Assistant Attorney General
Consumer Protection & Advocacy Section
400 West Congress, South Bldg., Suite 315
Tucson, Arizona 85701

Scott Gibson, Esq.
2941 North Swan Road, Suite 101
Tucson, Arizona 85712

Cynthia T. Kuhn, Esq.
Rusing & Lopez, P.L.L.C.
6262 North Swan Road, Suite 200
Tucson, Arizona 85718

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Exhibit A

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<u>Name</u>	<u>Purchase Price</u>
Juan and Jolene B.	\$129,036
Miguel C and Guadalupe S.	\$ 48,470
Jessie, C.	\$ 31,174
Steve G. and Rachel C.	\$182,145
Rafael H.	\$140,384
Verna May L. and Wanda Y.	\$ 55,500
Gloria L.	\$119,025
Benjamin and Yolanda M.	\$ 77,063
Mario M.	\$ 72,610
Paul and Janet P.	\$ 90,297
Fleming S.	\$ 47,087
Robert T.	\$ 68,773
Mary and Joseph V.	\$ 94,879
Steve and Clarissa W.	\$109,000