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ARIZONA SUPERIOR COURT
COUNTY OF PIMA

10
11 State of Arizona, ex rel. Terry Goddard,
Attorney General,
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13 Plaintiff,
14 vs.
15 Harvest Properties Inc.; Harvest
Properties Inc. dba HomeVestors;
Harrington Sterling Holdings LLC; Colin
16 Sterling Reilly; Robert Harrington
Reilly; Jill Lynae Reilly,
17
18 Defendants.

No. C20086555
ORDER RE: CONSENT JUDGMENT

MICHAEL MILLER

20 Based on the parties' Joint Motion to Enter Consent Judgment and good
21 cause appearing,

22 THE COURT HEREBY FINDS AND ORDERS:

23 1. The State of Arizona, having filed a complaint alleging violations of
24 A.R.S. § 44-1521 et seq., the Arizona Consumer Fraud Act, and Defendants, Harvest
25 Properties Inc. and Harvest Properties Inc. dba HomeVestors, Harrington Sterling
26 Holdings LLC., Colin Sterling Reilly, Robert Harrington Reilly, Jill Lynae Reilly
27 (hereafter "Defendants" or "Harvest Properties"), having been fully advised of their
28 rights to trial in this matter and, after consulting with counsel, having waived that right,

1 admit the jurisdiction of this Court over the subject matter and the parties for the
2 purpose of entry of this Consent Judgment and acknowledge that jurisdiction is
3 retained by the Court for the purpose of enforcement of this Consent Judgment.

4 (A) Defendants have agreed to a voluntary compromise of disputed claims,
5 and the State of Arizona and Defendants have agreed on a basis for the settlement of
6 these matters in dispute.

7 (B) This Consent Judgment does not constitute an admission for any
8 purpose of a violation of any state or federal law, rule or regulation, nor does this
9 Consent Judgment constitute evidence of any liability. This Consent Judgment is
10 made without trial or adjudication of any issues of fact or law or finding of liability of
11 any kind.

12 (C) Defendants recognize and state that this Consent Judgment is entered
13 into voluntarily and that no threats or promises have been made by the Office of the
14 Attorney General or any member thereof to induce Defendants to enter into this
15 Consent Judgment.

16 **CONSENT JUDGMENT**

17 2. This Order incorporates the parties' Joint Motion to Enter Consent
18 Judgment in State v. Harvest Properties Inc. et al.

19 **DEFINITIONS**

20 3. For purposes of this Consent Judgment, the following definitions shall
21 apply:

22 "Advertise," "Advertising" and "Advertisement" means the publication,
23 dissemination, solicitation, and circulation of information promoting Harvest Properties'
24 and/or HomeVestors' products and services via computer networks, television, radio or
25 print, or through direct mailing, visual and audio displays, or through any other means.

26 "Clear and conspicuous" means that the statement, representation, or term
27 being conveyed is in close proximity to some other statement, representation or term it
28 clarifies, modifies, explains, or to which it otherwise relates; is readily noticeable; is

1 reasonably understandable by the person(s) to whom it is directed; and is not
2 contradictory to any terms it purports to clarify, modify or explain.

3 A statement, representation or term is not clear and conspicuous, unless:

4
5 (A) For printed, written, typed or graphic advertisements, it is of
6 sufficient prominence in terms of print, size and color contrast as
7 to be readily noticeable when read in the context of the
8 remainder of the advertisement. Any type size which is 10-point
type or larger is deemed readily noticeable when contained in a
written document 8 ½ inches by 14 inches or smaller.

9 (B) For radio advertisement and the audio portion of television
10 advertisements or advertisements in any other audio-visual
11 medium, it is at a decibel level equal to or louder than the typical
12 decibel level used in the advertisement; is at a speed that is
13 typical of or more audible than any other statements,
14 representations or terms contained in the advertisement; and, if
15 it is a statement of terms or conditions of sale, it is made during
16 or after the remainder of the advertisement, rather than
17 preceding the advertisement.

18 (C) For superimposed written copy in a television advertisement
19 or advertisements in any other audio-visual medium, it is legible
20 and appears on the screen for a duration sufficient to allow a
21 viewer to have a reasonable opportunity to read and understand
22 the statement, representation, or term.

23 **“Consumer” and “Consumers”** mean any person or persons (i.e., sellers
24 or prospective sellers) who interact with Defendants for the purpose of selling their
25 property to Defendants.

26 **“Eligible Consumer” and “Eligible Consumers”** mean any Consumers for
27 whom Defendants provided information to the Attorney General’s Office through the
28 date of filing, and whom the Attorney General, in his sole discretion, has determined
were the subject of the allegations of consumer fraud in the State’s Complaint.

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or save consumers from having negative items related to foreclosure on their credit history;

(b) that Defendant(s) are a debt or property management company unless true; and

(c) that consumers can repurchase their home after renting it for a certain period of time.

10. Defendants shall not misrepresent to, or conceal from, consumers, financial institutions, government agencies, and/or others:

(a) the value of consumers' property that Defendants seek to purchase;

(b) the debt and/or financial status of consumers selling property to Defendants;

(c) the need for and/or extent of repairs and/or cost of estimated repairs;

(d) the closing date of the transaction;

(e) the true owner of a property;

(f) information as to who owns or resides on property that Defendants intend to obtain or have obtained from consumers; and

(g) information on HUD1 settlement statements, including but not limited to, charges for purported real estate services to consumers when no such services were used, compensation and/or proceeds from the transaction, and the real party in interest on the HUD1 statement or any related documents.

11. Defendants shall not:

(a) enter into transactions to purchase or sell real estate unless Defendants disclose, orally and **clearly and conspicuously** in writing in English and Spanish, to consumers that Defendants are

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- not real estate agents unless true;
- (b) solicit or obtain consumers' signatures on any real estate contracts or documents which have any blank and/or partially blank spaces for any material terms;
- (c) utilize or subsequently alter documents signed by consumers which had blank or partially blank spaces for the price or any term when originally signed by consumers;
- (d) present false or misleading real estate contracts or other documents to consumers, financial institutions, government agencies, or others;
- (e) solicit, create, use or accept consumers' special, limited, or general Powers of Attorney assigned by consumers to Defendants for the Defendants to act as consumers' attorney-in-fact in transactions in which Defendants seek to, or are in the process of, purchasing consumers' property;
- (f) sign or record property documents using a power of attorney when the power of attorney was not obtained in advance and/or did not exist at the time that the purported attorney-in-fact signed the property documents;
- (g) create conflicts of interest by acting on behalf of consumers in transactions in which Defendants seek to obtain consumers' property, including but not limited to, creating false or misleading agency or other fiduciary relationships with consumers;
- (h) solicit, create, or use consumer(s)' trusts for the purpose of transferring property to Defendants unless the trust independently existed prior to Defendants' contact with the consumer(s) or the trust was created independently by consumers without involvement or assistance from Defendants in any manner; and

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(i) give financial advice or make representations to consumers in foreclosure stating or suggesting what the best financial options are for such consumers if Defendant(s) are seeking to purchase the consumers' property.

12. Defendants shall not solicit, facilitate, encourage, or assist consumers in misrepresenting to, or concealing from, any person:

- (a) information concerning the transfer of consumers' property;
- (b) information concerning who owns or resides on a property related to a consumer's loan secured by a mortgage held or serviced by any financial institution; and
- (c) information concerning the rental and/or non-owner occupied status of property that will not be owner-occupied.

13. Defendants shall not facilitate the continuation of consumers' debt by asking consumers to reaffirm their debt for any reason, including but not limited to, the following purposes:

- (a) facilitating the Defendants' purchase of consumers' property;
- (b) negotiating Defendants' discounted payoff of consumers' debt.

14. Defendants shall not purchase and/or attempt to purchase consumers' property if consumers' loan(s) contain a "due on sale" clause and/or demand provisions allowing a lender to accelerate the loan upon transfer of the property without consent, unless the following occurs:

- (a) Defendants shall, at the outset of discussing the transaction with consumers, orally explain and provide a disclosure document which **clearly and conspicuously** explains in writing, both in English and Spanish, "due on sale" clauses and the ramifications of selling property "subject to" the consumers' loan(s). This disclosure shall, at a minimum, provide the information set forth in Paragraph 15.

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(b) If Defendants and consumers agree to transfer consumers' property to Defendants or others "subject to" the consumers' loan(s), the following must occur:

- i. Such transactions shall occur via escrow;
- ii. Defendants and consumers shall direct the escrow officer to send certified letters to both the consumers' mortgage lender(s) and homeowner insurance agencies to notify these parties that the consumers have transferred their interest in the property and to provide the billing address of the new owner(s); and
- iii. The certified letters required in Paragraph 14.b.ii must be sent by the escrow officer and shall be required as part of the escrow file in order to close any such transaction.

15. Defendants shall not purchase and/or attempt to purchase a property "subject to" the consumers' mortgage loan unless Defendants, at the outset, first inform consumers, orally and **clearly and conspicuously** in writing in English and Spanish, of the following minimum information:

- (a) a consumer should get legal advice from an attorney because the loan will continue to stay under the consumer's name even though a consumer has sold the property and moved out;
- (b) in a "subject to" transaction, the Defendants are not immediately paying off the consumer's loan as part of the property sale, which means that consumers are still legally responsible for paying off the loan;
- (c) the property sale agreement does not require Defendants to pay off the loan; instead, Defendants and consumers are signing a

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separate **clearly and conspicuously** described contract (Defendants formerly called this a "Due-On-Sale Acknowledgment"), which agrees that the Defendants will make the payments until the consumers' loan is paid off;

(d) after the sale, the consumer's loan debt will continue to appear on the consumer's credit report until the loan is finally paid off;

(e) in a "subject to" transaction, the consumer may be violating the consumer's existing loan agreement in various ways, which may cause the consumer to breach the loan agreement; for example:

- i. a "due on sale" clause prohibits consumers from selling the property without their lender's consent;
- ii. residential loan agreements require consumers to live on the property for which they borrowed the loan; and
- iii. if a consumer violates the loan agreement, the lender has the right to enforce the loan agreement to "accelerate" the loan and can demand that the consumer immediately pay off the full balance of the loan;

(f) if Defendants fail to make the consumer's loan payments or are unable to pay off the consumer's loan, a lender can foreclose on the property; any default or foreclosure that occurs will be under the consumer's name and credit report;

(g) a lender can, upon request, allow Defendants to "assume" (legally take over) the consumer's loan either on the original terms or modified terms; and

(h) the consumer may have civil liability in relation to the property because the loan is in still in the consumer's name.

1 16. Defendants shall, at the outset of discussing any "short sale" transaction
2 with consumers, orally and **clearly and conspicuously** in writing, in English and
3 Spanish, explain and disclose to consumers that:

4 (a) Defendants intend to negotiate directly with mortgage and/or lien-
5 holders a discounted payoff of consumers' mortgage loans and/or
6 liens on the property; and

7 (b) any negotiated discount or forgiveness of the consumers' loan
8 debt could have significant credit history and/or income tax
9 consequences to the consumers.

10 17. Defendants shall not use "Seller's Acknowledgments," (see Exhibit C to
11 the Complaint, incorporated herein by reference), or documents of similar import
12 which include the following numbered paragraphs from Exhibit C to the Complaint:
13 Paragraphs 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, 20, 21.

14 18. Defendants shall not use "Due on Sale Acknowledgments" (see Exhibit B
15 to the Complaint, incorporated herein by reference), or any documents of similar
16 import in transactions with consumers which do not include the disclosures required
17 by Paragraphs 14 and 15, and Defendants shall not include any statements that:

18 (a) the consumer had the opportunity to seek legal counsel and/or
19 financial advice before signing unless true;

20 (b) the consumers will agree to take all reasonable steps to satisfy
21 the lender, including obtaining financing;

22 (c) the consumer agrees to defend, indemnify and hold all parties
23 involved in the transaction harmless from any liability in the event
24 that the holders of the mortgages and/or deeds of trust on the
25 aforementioned property are called due and payable.

26 19. Defendants shall not refer consumers to attorneys with whom
27 Defendants have made prior arrangements regarding prospective representation of
28 consumers conducting a transaction with Defendants.

SETTLEMENT PAYMENT/RESTITUTION

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20. Defendants shall pay a total amount of \$ 350,000.00 to the Office of the Arizona Attorney General to be deposited in an account for Consumer restitution. The amount of restitution for each Eligible Consumer will be determined by the Office of the Attorney General based on a pro-rata formula. Within 60 days of receipt of each payment made by Defendants, the Attorney General shall send restitution checks to Eligible Consumers in an amount determined by the Attorney General's office.

21. If any amount remains after all Consumer restitution is paid, the money shall revert to the Consumer Fraud Revolving fund and shall be applied to consumer fraud education, investigative and enforcement operations of the consumer protection section, and attorney's fees and costs of the investigation, pursuant to A.R.S. § 44-1531.01 (B) and (C).

22. Defendants shall pay the judgment as follows:

(a) Defendants Colin Sterling Reilly and Robert Harrington Reilly shall be jointly and severally liable for paying a total of \$75,000.00 as individuals to the Office of the Arizona Attorney General. The first payment of \$15,000 shall be due and payable before the filing of the Joint Motion to enter Consent Judgment, and the filing of such motion shall evidence Defendant's compliance in making the first payment. A second payment of \$30,000 shall be paid on or before January 30, 2009. The third payment of \$30,000 shall be paid on or before August 28, 2009.

(b) Defendants Harvest Properties Inc. and Harrington Sterling Holdings LLC., shall be jointly and severally liable for paying a sum total of \$275,000.00 to the Office of the Attorney General. The first payment of \$25,000 shall be made on or before November 27, 2009. Thereafter, payments on the remainder shall be made in equal installments, commencing on March 26, 2010,

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with another payment due on July 16, 2010, and with the final payment being made no later than November 26, 2010.

23. Notwithstanding any other provision of this Agreement, Jill Reilly shall only be responsible for a total payment of \$25,000 and shall not be responsible for the obligations of any other Defendants, notwithstanding her community with Robert Reilly. Sacha Reilly's community shall only be responsible for the \$25,000 obligation of Colin Reilly. Colin Reilly and Robert Reilly shall be responsible for the total \$75,000 obligations of Robert Reilly, Colin Reilly and Jill Reilly. Additionally the \$15,000, not \$25,000, shall be due before filing of the Joint Motion.

DATED this 22 day of September, 2008.

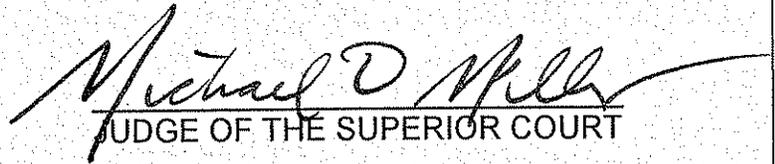

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

EXHIBIT A

FORECLOSURE PREVENTION & HOUSING COUNSELING RESOURCES

- (A) Don't Borrow Trouble Pima (non-profit resource agency)
2030 E Broadway Ste #101 (at Southwest Fair Housing Council)
Tucson, AZ 85719
Hotline: (520) 792-3087
Fax: 520-620-6796
E-mail: help@dontborrowtroubleaz.org
www.dbtaz.com
- (B) Arizona Foreclosure Prevention Task Force
c/o NHSPhoenix (HUD-approved Housing Counseling)
1405 E. McDowell Rd. Ste. 100
Phoenix, AZ 85701
Mortgage Foreclosure Helpline
1-877-448-1211
- (C) Southwest Fair Housing Council (SFHC)
2030 E. Broadway, Suite 101
(520) 798-1568
www.swfhc.com
- (D) Lawyers Helping Homeowners (by the AZ Bar Ass'n)
<http://www.azlawhelp.org/housing.cfm>
- (E) Consumer Credit Counseling Services (HUD-approved counseling)
A Division of Money Management International
4732 N. Oracle #217
5515 E. Grant, #211
(520) 795-2227
www.moneymanagement.org
- (F) Family Housing Resources ** (HUD-approved Housing Counseling)
Mortgage Delinquency Counseling
1700 E. Ft. Lowell, Suite #101
(520) 318-0993
www.familyhousingresources.com
- (G) Homeowner's Hope Foreclosure Hotline
1-888-995-4673
- (H) Chicanos por la Causa (HUD-approved housing counseling)
200 N. Stone Ave.
Tucson, AZ 86701
(520) 882-0018
www.cplc.org

FORECLOSURE PREVENTION & HOUSING COUNSELING RESOURCES

- (I) Primavera Foundation (HUD-approved Housing Counseling)
Administrative Offices
702 South Sixth Avenue
Tucson, Arizona 85701
(520) 882-5383
www.primavera.org

- J) Pio Decimo Center (HUD-approved Counseling)
848 South Seventh Ave.
Tucson, AZ 85701
(520) 624-0551
www.ccs-soaz.org

- (K) Old Pueblo Community Foundation (HUD-approved Counseling)
4501 East 5th Street
Tucson, AZ
(520) 546-0122
www.oldpueblocommunityservices.org

- (L) Tucson Urban League
Main Svc. Center
2305 S. Park Avenue
Tucson, AZ 85713
(520) 791-9522
www.tucsonurbanleague.com

- (M) ACORN (HUD-approved Housing Counseling)
1924 So. 4th Ave.
Tucson, AZ 85713
(520) 623-9389

- (N) TMM Family Services (HUD-approved Housing Counseling)
31247 East Adams Street
Tucson, AZ 85716
(520) 322-9557
www.tmmfs.org

- (O) Pima Council on Aging
8467 E Broadway, Tucson, Az, 85710
Help Line: 520-790-7262
help@pcoa.org and www.pcoa.org

- (P) Pima County (Community & Economic Development; Housing info)
www.pima.gov/CED/CS/CAA
www.pimacountyhousingsearch.org