

## PARTIES

1. X, hereinafter known as “Plaintiffs.” Plaintiffs are a married couple residing in X.
2. Bank of X, N.A, hereinafter known as “Lender,” a federally regulated bank.
3. X Appraisal Services, an Appraisal company owned by Lender, hereinafter known as “Appraisal Management Company”. Appraisal Management Company was owned by Lender at the time of these events.
4. X, a appraiser with state certification X, working under X Appraisal, a X corporation. X and X Appraisal are together hereinafter known as “Appraiser.”
5. X Land Development Company, hereinafter known as “Lot Developer”, a X Corporation.
6. X and X Loans, hereinafter known as “Lender’s Origination Team.” X was an employee of X Loans, a national bank at the time these events took place.
7. Lott X, Plat X of subdivision, hereinafter known as “Property.” Commonly known as X.
8. X, Chief Financial Officer of X Homes, Inc., and X Homes, Inc., hereinafter known as “Building Seller.”
9. X Title, hereinafter known as “Title and Escrow.”

## JURISDICTIONAL ALLEGATIONS

### VENUE

### GENERAL ALLEGATIONS

10. From 2005 to current Lot Developer subdivided X subdivision in X.
11. From 2005 to current Lot Developer advertised X subdivision with common advertising including a single common “X Information” sales center located at X, and common internet sites including a homepage located at <http://www.X.com>, and a common Flickr and

common Facebook site owned by Lot Developer. See Exhibit A.

12. As of 2007, Lot Developer had developed and sold 1,000 units of X subdivision. A map of the subdivision and article celebrating this event is included as Exhibit B.
13. From January to February of 2007, Plaintiffs examined lots and plans for X subdivision and inquired about purchasing X of X subdivision from Lot Developer. Lot Developer informed Plaintiffs they were required to contract the property purchase with Building Seller and not Lot Developer.
14. On February 10, 2007 Plaintiffs deposited \$1,000.00 non-refundable with Building Seller for the option to buy X of X subdivision. See Exhibit C. Plaintiffs warrant that Building Seller made representations to Plaintiffs that multiple homes in the neighborhood were selling in excess of one million dollars with some as high as 1.2 million dollars.
15. On March X, 2007 Lender's Origination Team issued a credit approval for Plaintiffs for a \$650,000 first mortgage loan amount on a \$750,000 purchase price for a home. This approval was subject to an "acceptable appraisal," "clear title," "fully executed purchase contract," and "no material changes in the information contained in the loan application or related documents." See Exhibit D.
16. On March X, 2007 Plaintiffs made a second nonrefundable deposit of \$3,500 for the option to buy X of X subdivision. See Exhibit C.
17. On April X, 2007 Plaintiffs made the substantive decision to buy Property. Plaintiffs deposited a third nonrefundable deposit of \$3XXXXX with Building Seller to buy X of X subdivision. See Exhibit C.
18. On April X, 2007 Plaintiffs contracted with Building Seller to purchase and have Building Seller build a custom home on Property. Building Seller required Plaintiffs to use X Title

for Title and Escrow services.

19. The purchase and sales contract was for a \$589,915.00 base house model with \$2XXXXXX in “extra options” for a total sales price of \$8XXXXXX as of April X, 2007. See Exhibit C. In addition, Building Seller promised to provide Plaintiffs with a free car upon settlement.
20. On May X, 2007, Title and Escrow prepared, completed, and delivered a Title Commitment including a and Plat Map and title history about Property to Lender’s Origination Team. This Title Commitment would reveal that the Building Seller was the seller of record. This Title Commitment was destroyed by Title and Escrow, and upon request for a full copy of their title and escrow file, Plaintiffs only received verification of the date it was created. See Exhibit E.
21. On May X, 2007 Building Seller purchased Property from Lot Developer and received title rights by a special warranty deed. (SEE EXHIBIT F).
22. Simultaneously with Building Seller purchasing Property from Lot Developer, Building Seller and Lot Developer entered into a Trust Deed which “is given, among other things, for the purpose of the prompt payment and performance in full of (a) Trustor’s (Building Seller) and Beneficiary (Lot Developer) (the “PPA”) to pay the ‘Total Excess Profit Participation Payment,’ and the ‘Marketing Fee’ (all as defined in the PPA).” See Exhibit G.
23. From May 2007 through today Plaintiffs warrant they wanted to rescind the transaction but were unaware of their right to rescind.
24. Plaintiffs warrant they told Lender’s Origination Team that they wanted to rescind the transaction and were told by Lender’s Origination Team they would easily be able to refinance to a more affordable mortgage three months after closing.

25. On June X, 2007 Building Seller obtained financing from First Horizon Home Loans in the amount of \$6XXXXXX. Title and Escrow recorded First Horizon's Deed of Trust. Title and Escrow were also the Trustees of the Deed of Trust they recorded. See Exhibit H.
26. On October X, 2007, Title and Escrow prepared an Amended Title and Escrow commitment. The commitment number was "XXXXXXX **Amended.**" Schedule B, Section 2 CHAIN OF TITLE of this commitment states "According to the Official Records, there have been no documents conveying the land described herein within a period of 24 months prior to the date of this commitment, except as follows: NONE." See Exhibit I.
27. Building Seller constructed a house and detached garage on Property and finished construction on or around November 1, 2007.
28. On or around September 1, 2007 Lender's Origination Team contracted Appraisal Management Company to produce an appraisal of the constructed property.
29. Appraiser and Appraisal Management Company provided Lender an appraisal with "my (our) opinion of market value, as defined, of the real property that is the subject of this report is \$850,000, as of 9/10/2007, which is the date of inspection and the effective date of this appraisal." See, Exhibit J- Reconciliation.
30. A final agreement to purchase was negotiated September 28, 2007 and signed November 7, 2007 with Plaintiffs and Building Seller agreeing to add additional features to their home for a total "extra options" cost of \$2XXXXXX and total purchase price of \$8XXXXXX. See Exhibit K.
31. On November X, 2007 Title and Escrow prepared a HUD-1 Settlement Statement with \$2XXXXXX cash from Borrower. Borrower and Lender executed mortgage documents. See Exhibit L.

32. On November X, 2007 Plaintiffs wired \$2XXXXXX from Plaintiffs Beehive Credit Union Account to Title and Escrow. See Exhibit M.
33. On November X, 2007 Title and Escrow recorded and funded the executed mortgage documents.
34. Shortly after recording and funding on November X, 2007 Building Seller gave Plaintiffs the electric car they promised.
35. The Property that was built and purchased is summarized by Salt Lake Counties Parcel Value Summary. Specifically, Property consists of a residence and detached structure. The detached structure is a “garage-loft” with a finished upper floor. See Exhibit N.
36. In December 2007, X was registered with Housing and Urban Development Interstate Land Sales Subdivision and was given exemption from the Interstate land Sales Full Disclosure Act. See Exhibit O.
37. Two and a half months after closing and funding of the first mortgage, Plaintiffs applied to Lender’s Origination Team for a rate and term refinance of their mortgage.
38. On March X, 2008 a new appraisal was contracted for and provided to Lender by Appraisal Management Company and Appraiser. On this appraisal “my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$8XX,000, as of 3/X/2008, which is the date of inspection and the effective date of this appraisal.” See Exhibit P.
39. On March X, 2008 Lender’s Origination Team denied the refinance application.
40. Upon calling Lender’s Origination Team and, Plaintiffs demanded an explanation and insisted on documentation of their denial. Notice of this denial was sent out April 24, 2008. The notice claimed the denial for their first mortgage was a denial for a home equity line of

credit and was due to “COLLATERAL: INSUFFICIENT PROPERTY VALUE. “

Plaintiffs did not apply for a home equity line of credit. Plaintiffs warrant Lender’s Origination Team informed them that no new written loan application was needed as the application from the purchase loan was still current and sufficient. See Exhibit Q.

41. Plaintiffs were told by Lender’s Origination Team that the reason for the denial was that Property was only worth \$625,000.
42. On February 23, 2010 Plaintiffs applied for a modification from Lender and Lender acknowledged receipt of modification package. See Exhibit R.
43. On March X, 2010 and March 2, 2010 Lender denied Plaintiffs a loan modification and provided no ECOA and stated “The type of assistance you have requested is not available.” Plaintiffs were current at the time of the request for new mortgage terms.
44. In November, 2003 The American National Standard for Single-Family Residential Buildings updated Square Footage-Method for Calculating: ANSI Z765-2003. This method is recognized and a commonly accepted standard for calculation of square footage in the United States for appraisal purposes. See Exhibit S.

CAUSE OF ACTIONS AGAINST APPRAISER AND Appraisal Management Company

#1 BREACH OF DUTY / Negligence

45. All allegations above are hereby re-alleged.
46. Appraiser and Appraisal Management Company were paid a combined total of \$5XX for production of an appraisal for Lender and Plaintiffs. See HUD-1 Settlement Statement Exhibit E.
47. Appraiser and Appraisal Management Company have a statutory duty to adhere to the Uniform Standards of Professional Appraisal Practice under X Administrative code R162-

106-1 Uniform Standards which states “all appraisers must comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) currently approved by the board.” The “Uniform Standards of Professional Appraisal Practice is hereinafter known as USPAP.

48. In the Appraiser’s Certification contained within the Appraisal, Appraiser and Appraisal Management Company certified and agreed “3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.” See Exhibit J.
49. In the same Appraiser’s Certification Appraiser and Appraisal Management Company certified and agreed “23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage Insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.”
50. Appraiser signed his name below the Appraiser’s Certification.
51. Appraiser owed a professional duty to appraise Property with care, skill, and diligence normally exercised professional real estate appraisers. See *West v. Inter-Financial, Inc.*, 2006 UT App 222, ¶25, 139 P.2d 1059.
52. Appraiser breached his professional and statutory duty by failing to provide appraisal services at an appropriate level and by failing to appraise in accordance with the Appraiser’s Certification and with USPAP.
53. **First USPAP Violation:** USPAP Standards Rule 2-1 requires “each written or oral real

property appraisal report must: (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.”

54. Appraiser and Appraisal Management Company went outside of the scope of geographic competency without adequate justification addenda. Comparables 1-3 are 3-5 miles away and comparable 5 is 1.ZZ miles away. Comparable 4 is the only comparable within the neighborhood outlined by Appraiser and Appraisal Management Company and was a \$7XX,000 sales price which was the highest sale in the neighborhood and supported a value of \$800,000 as per Appraiser and Appraisal Management Company. See Exhibit J.
55. In failing to disclose and properly document the extraordinary assumption that houses outside the neighborhood as described by Appraiser and Appraisal Management Company were appropriate as comparable sales, Appraiser and Appraisal Management Company violated USPAP Standards Rule 2-1 (b-c). This resulted in an inflation of the appraised value as comparable sales were selected outside of the area based on sales price.
56. **Second USPAP Violation(s):** USPAP Standards Rule 1-1 states “In developing a real property appraisal, an appraiser must: (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.”
57. Appraiser and Appraisal Management Company failed to accurately calculate the finished square footage of the home by including finished square footage in a loft in a detached garage without sufficient addenda.

58. Addition of finished square footage of a detached loft above a garage is not a recognized practice and is further demonstrated as unique as no comparable sales were employed to justify the value added or method used. The commonly recognized method and technique for measurement of square footage is to adhere to ANSI Z765-2003, or to document justification for adding loft space above a detached garage to the finished house for purposes of comparisons to other residences. ANSI Z765-2003 is included for reference in Exhibit S.
59. ANSI Z765-2003 (3) CALCULATION OF SQUARE FOOTAGE – Detached Single-Family Finished Square Footage states “for detached single-family houses, the finished square footage of each level is the sum of finished areas on that level measured at floor level to the exterior finished surface of the outside walls.” The loft is not within the exterior finished surface of the residence. In addition ANSI Z765-2003 states “Finished Areas Connected to the House – Finished areas that are connected to the main body of the house by other finished areas such as hallways or stairways are included in the finished square footage of the floor that is at the same level. Finished areas that are not connected to the house in such a manner cannot be included in the finished square footage of any level. The garage-loft is not connected to the house in any manner. The garage-loft is detached from the house. In addition, ANSI Z765-2003 (3) Garages, Unfinished Areas, and Protrusions reiterates this same conclusion a third way in saying “Garages and unfinished areas cannot be included in the calculation of finished square footage.”
60. The failure to employ recognized methods and techniques to calculate the finished square footage of the home led to a failure of selecting non-representative oversized and more expensive comparable sales, leading to an inflation of appraised value.

61. The failure to accurately calculate the finished square footage also led to an inflation of the Cost Approach to Value in the appraisal created by Appraiser and Appraisal Management Company which valued finished square footage \$85 higher per square foot than unfinished square footage. This resulted in an inflation of the Cost Approach to Value.
62. Appraiser and Appraisal Management Company also failed to properly disclose this extraordinary assumption, in violation of USPAP 2-1, as well as created a misleading appraisal by labeling the area as “Bonus Living Area” and “Third Floor” on the appraisal Sketch. This area is not bonus rooms of the house as it is not part of the house. In addition, it is not a third floor of the house.
63. In improperly selecting comparables, improperly measuring finished square footage, and improperly calculating the Cost Approach to Value, Appraiser and Appraisal Management Company created a misleading appraisal that also lacks credibility.
64. **Third USPAP Violation:**
65. USPAP Standards Rule 1-1 states “In developing a real property appraisal, an appraiser must: (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.”
66. Appraiser and Appraisal Management Company failed to address if the value added for the “extra options” was in line with the cost added to the purchase price via addenda or comparable sales data.
67. In addition, appraiser noted that “The average sold price has been \$3XXXXXX, while the median was \$3XX,000.” Appraiser and Appraisal Management Company failed to adequately address if Property would be overbuilt and functional obsolescence of a house

that requires \$8XX,000 to build in a neighborhood of significantly lower values.

68. \$2XXXXXX in “extra options” is roughly the entire build cost of average houses in the neighborhood. In the appraisal section labeled “Additional Comments,” the Appraiser and Appraisal Management Company noted many of the improvements and made the comment “These added options are not inclusive of all additions but are representative of the major selection made by the borrower.” See Exhibit J. However, Appraiser and Appraisal Management Company were careless in failing to address the extent, effects on value, and functional obsolescence of these “extra options.”
69. In failing to address the functional obsolescence and in failing to provide sufficient addenda or sales comparable to justify market value was actually added by the “extra options,” Appraiser and Appraisal Management Company created a misleading and inflated appraisal.
70. The combination of a lack of proper comparable sales resulting from using sales from outside the neighborhood, improper selection of comparable sales resulting from failing to use a recognized method of calculating finished square footage, inadequate addenda and description of “extra options,” and improper calculation of Cost Approach to Value consistency check on the appraised value from the incorrect square footage, resulted in a combined appraisal report that in aggregate lacks credibility.
- 71. Fourth USPAP Violations:**
72. USPAP Standards Rule 2-1 requires “each written or oral real property appraisal report must: (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly.”

73. Appraiser and Appraisal Management Company examined County Records. The very first County Record for Property is a Special Warranty Deed transferring ownership of the property, followed by Trust Deeds associated with the transfer. See Exhibit T Page 1.
74. Appraiser and Appraisal Management Company made the following representation: “Is the Subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of tis appraisal: YES. The property is currently under construction. There is a purchase contract on the property a copy of which has been provided to the appraiser.”
75. Appraiser and Appraisal Management Company intentionally misled users of the appraisal to believe that the property was not being “flipped” and that it did not have other sales in the previous 12 months.
76. The information of the flip was omitted, the occurrence and circumstances of a property flip is material to evaluating the appraised value, therefore sufficient information to understand the report properly was omitted.
77. Future discovery may yield additional violations.
78. Appraiser knew, or should have known, that a couple actively seeking to purchase Property such as Plaintiffs would rely on Appraiser’s Appraisal to make their decision to purchase.
79. Plaintiffs relied on the Appraiser’s Appraisal in connection with Plaintiffs’ decision to purchase the property and the associated mortgage.
80. Plaintiffs would not have accepted financing or concluded their purchase had the Appraiser performed their appraisal within the care and duty required and certified.
81. Plaintiffs warrant they would never have purchased this property had they known that the appraisal was inflated. Plaintiffs further warrant they would never have purchased this

property if they knew the appraised value was not credible due to omitted property flipping information. Plaintiffs further warrant they would never have purchase Property if undisclosed hypothetical assumptions were properly disclosed and that the hypothetical assumptions may be rejected in their application for a subsequent refinance to a lower payment they believed they would obtain three months after closing.

CAUSE OF ACTIONS AGAINST BUILDING SELLER AND LOT DEVELOPER

#1 FRAUDULENT INDUCEMENT

82. All allegations above are hereby re-alleged.
83. Building Seller fraudulently misrepresented that they were the owner of record and that other houses within the subdivision were selling between one million and 1.2 million dollars.
84. The fact that Building Seller was not the owner of record was material to the contract. The representation was false, and Building Seller knew it was false.
85. The price of other houses within the subdivision (sales comparables to Property) was also material to the contract. This representation was also false. The appraisal for the property identified the highest sales price in the neighborhood was \$7XXXXXX. See Exhibit J Neighborhood.
86. Building Seller had knowledge from its business relationship with Lot Developer as well as Building Seller's own previous sales in the neighborhood. Building Seller either knew the representation was false or made the representation recklessly without sufficient knowledge upon which to base the representation.
87. Building Seller made these representations to induce Plaintiffs to agree to the contract.
88. Plaintiffs reasonably relied on the representations of comparable sales to Property made by

Building Seller as they were building in the subdivision. Plaintiffs further reasonably relied on representations of the ownership of the lot by Building Seller as Lot Developer required Plaintiffs to contract with Building Seller to purchase the lot and Building Seller represented and acted as selling owner of the property as early as January and February of 2007.

89. Plaintiffs entered into a purchase contract with Building Seller for Property.
90. Plaintiffs would not have contracted with and deposited payments to Building Seller if Plaintiffs knew Building Seller did not own the lot they were depositing \$3X,000 of their nonrefundable money.
91. Plaintiffs would not have contracted with Building Seller if they had known that the contract price was not bracketed by other sales in the subdivision and was overbuilt for the area.

CAUSE OF ACTIONS AGAINST BUILDING SELLER AND LOT DEVELOPER  
CONSPIRACY AND VIOLATIONS OF INTERSTATE LAND SALES FULL  
DISCLOSURE ACT

92. All allegations above are hereby re-alleged.
93. The Interstate Land Sales Full Disclosure Act, hereinafter referred to as the ILSA, requires warning disclosures, an information booklet, and a statement of record to be provided or made publicly available by sellers to non-commercial buyers of lots within a subdivision when the lots generally (a) do not have a current building or legal obligation to manufacture a building within two years and (b) when the lots are not exempted under one of the Acts exemptions. In addition, the ILSA grants specific statutory protections to lot purchasers, including the right to rescind transactions due to omissions or errors of

material facts to the transaction.

94. As per 15 U.S.C. § 1701(3), “‘subdivision’ means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan.”
95. As per 15 U.S.C. § 1701 (4) “‘common promotional plan’ means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan.”
96. Daybreak Subdivision has common sales advertisement by Lot Developer in Exhibit A, with the area contiguous, known, and designated as Daybreak, with a common promotional plan evidenced by Lot Developer for Daybreak in Exhibit B.
97. This transaction did not meet exemptions from ILSA as it is far above the 99 unit exemption and the purchase agreement does not specify a time frame of two years for completion of a residential dwelling. See Exhibit C for purchase agreement and Exhibit B for 1000 units in subdivision sold in 2007.
98. As per ILSA As per 15 U.S.C. § 1702, “unless the method of disposition is adopted for the purpose of evasion of this chapter” different exceptions are allowed.
99. Lot Developer colluded with Building Seller to adopt a method of disposition to evade ILSA. Specifically, Lot Developer and Building Seller conspired to have Building Seller act as a Straw Seller to sell the property to Plaintiffs.

100. First, Lot Developer commonly advertised and Plaintiffs inquired in response to common advertisement to Lot Developer about the purchase of Property. See Exhibit A.
101. Second, Lot Developer required Plaintiffs to negotiate their purchase with Building Seller while retaining title to Property.
102. Plaintiffs made the substantive decision to buy Property April 23, 2007. See Exhibit C.
103. One month after Plaintiffs made the substantive decision to buy, Lot Developer deeded title of the property to Building Seller via a Special Warranty Deed. See Exhibit F.
104. At the same time Lot Developer deeded title, Lot Developer retained an interest and profit share in Property by means of a “Trust Deed, Assignment of Rents and Leases, Security Agreement and Fixture Filing” that was “for the purpose of the prompt payment and performance in full of (a) Trustor’s (Building Seller) obligations under that certain Profit Participation, Marketing and Sales Procedure agreement between Trustor and Beneficiary (Lot Developer) (the “PPA”) to pay the ‘Total Excess Profit Participation Payment....’” This interest and profit sharing was recorded at the same time and was the consideration for granting the Special Warranty Deed. See Exhibit G, Page D-3.
105. Building Seller agreed to act as a straw seller in exchange for a share of the profit sharing from the lot purchase. The recruitment of Building Seller as a straw seller to sell properties on behalf and for profit sharing of Lot Developer falls under a method of disposition for evasion of the ILSA, and therefore this transaction specifically falls under the ILSA and all exemptions are void.
106. As per 15 U.S.C. §. 1703 (a) of ILSA, “**Prohibited activities** It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails—

107. **(1)** with respect to the sale or lease of any lot not exempt under section [1702](#) of this title—
108. **(A)** to sell or lease any lot unless a statement of record with respect to such lot is in effect in accordance with section [1706](#) of this title;
109. **(B)** to sell or lease any lot unless a printed property report, meeting the requirements of section [1707](#) of this title, has been furnished to the purchaser or lessee in advance of the signing of any contract or agreement by such purchaser or lessee;
110. **(C)** to sell or lease any lot where any part of the statement of record or the property report contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein pursuant to sections [1704](#) through [1707](#) of this title or any regulations thereunder; or
111. **(2)** with respect to the sale or lease, or offer to sell or lease, any lot not exempt under section [1702 \(a\)](#) of this title—
112. **(A)** to employ any device, scheme, or artifice to defraud;
113. **(B)** to obtain money or property by means of any untrue statement of a material fact, or any omission to state a material fact necessary in order to make the statements made (in light of the circumstances in which they were made and within the context of the overall offer and sale or lease) not misleading, with respect to any information pertinent to the lot or subdivision;
114. **(C)** to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser; or
115. **(D)** to represent that roads, sewers, water, gas, or electric service, or recreational amenities will be provided or completed by the developer without stipulating in the contract of sale or lease that such services or amenities will be provided or completed.

116. In failing to provide a statement of record until December 2007, Lot Developer is in violation of (1)(A) of this section of ILSA.
117. In failing to provide a written property report, Lot Developer is in violation of (1)(B) and (1)(C) of this section of ILSA.
118. In employing a scheme to defraud Plaintiffs of statutory rights under ILSA, Lot Developer is in violation of (2)(A) of this section of ILSA.
119. In making untrue statements about the lot ownership, subdivision sales, and omission of a statement of record including but not limited to omission of profit sharing agreements and options to sell with builders, Lot Developer is in violation of (2)(B) of this section of ILSA. In addition, Lot Developer conspired with Building Seller to procure nonrefundable fees without any right to cancel from Plaintiffs, in violation of their statutory rights under ILSA.
120. As per 15 U.S.C. §. 1705 of ILSA, “the statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section- (1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest; (2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads; (3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto; (4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision...(6) in the case of any subdivision or

portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;”

121. Lot Developer failed to provide this statement of record to Plaintiffs and concealed this failure by means of a method of disposition of the lots for the purposes of evasion of this Act.
122. Building Seller conspired with Lot Developer to hide information of the statement of record from Plaintiffs in order to share in the profits obtained in defrauding Plaintiffs.
123. In hiding “(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest” Plaintiffs were damaged by the inability to determine that the Building Seller they had contracted with was not the owner of record and was acting as a straw seller on behalf of Lot Developer and flipping the property.
124. In hiding “(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads,” Lot Developer hid the extent of the subdivision and range of sales comparables to deny Plaintiffs the opportunity to realize that the range of values of sales in the subdivision provided by Building Seller was false.
125. In hiding “(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision,” Lot Developer denied Plaintiffs the actual range of selling prices for the subdivision and the

actual price of the lots on which to make his decision on if the total price for the Property as contracted with Building Seller was reasonable.

126. In hiding blanket encumbrances, defined as “ a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority,” Lot Developer hid the evidence of his scheme to employ straw sellers to sell the lots on behalf of Lot Developer, who retained their interest in lots of the subdivision by means of Trust Deeds, Notices, options to sell, and Memos.
127. Building Seller and Lot Developer further conspired to deprive Plaintiffs of statutory rights by not providing a property report that, as per 15 U.S.C. §. 1707 of ILSA, “a property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record.”
128. Plaintiffs were damaged in the loss of several hundred thousand dollars they paid to purchase this home at an inflated price that was not justified by other homes in the subdivision. Plaintiffs were damaged by the lack of knowledge that they were able to rescind a transaction they wanted to rescind before consummation. Plaintiffs suffered statutory damages, emotional distress, and health problems for 18 months relating to the stress and depression resulting from the loss of all of their savings.

CAUSE OF ACTIONS AGAINST BUILDING SELLER AND LOT DEVELOPER  
FRAUDULENT CONCEALMENT OF STATUTORY RIGHTS OF INTERSTATE  
LAND SALES FULL DISCLOSURE ACT

129. All allegations above are hereby re-alleged.
130. Lot Developer and Building Seller concealed the statutory rights Plaintiffs had to rescind the transaction under ILSA due to defendants' lack of compliance with ILSA.
131. In failing to record as statement of record with the Interstate Land Sales Office at Housing and Urban Development, or provide a property report acknowledging the statement of record, defendants concealed the statutory rights Plaintiffs had under ILSA and that this transaction fell under ILSA.
132. The defendants had a statutory duty to disclose to Plaintiffs their right to rescind the contract under 1703(d) of ILSA as well as follow ILSA which would alert Plaintiffs to their other rights to rescind rights under the Act.
133. Defendants intentionally suppressed or concealed the statutory rights to rescind with the intent to defraud the Plaintiffs, collect "nonrefundable fees," and commit the Plaintiff to the transaction.
134. The Plaintiffs were unaware of their statutory rights to rescind as a result of this concealment. Plaintiffs would have rescinded the transaction had they been aware of their rights to rescind.
135. Plaintiffs were damaged by believing they had to complete the transaction or be held in breach of contract. Plaintiffs were damaged by not being aware they could rescind the transaction. Plaintiffs were damaged by the loss of all of the money they used in purchasing this property at an inflated price.

CAUSE OF ACTIONS AGAINST LENDER AND TITLE AND ESCROW

BREACH OF DUTY

136. All allegations above are hereby re-alleged.
137. On May X, 2007 Title and Escrow created a Title Commitment for Property and delivered the title commitment to Lender's Origination Team.
138. The May X, 2007 Title Commitment will show that Building Seller did not legally hold title to the property and the purchase contract for Property was not sufficient on its own to be valid.
139. Title and Escrow also knew, or should have known, that Building Seller was acting as a straw seller for Lot Developer based on recorded documents Title and Escrow were required to research in the production of the Title Commitment including the Deed of Trust in Exhibit G.
140. Instead of disclosing the known fraud, Title and Escrow and Lender disclosed to Plaintiffs that everything was proceeding appropriately.
141. Title and Escrow owes a fiduciary duty to disclose known fraud to parties to the escrow transaction. (See Mark Properties v. National Title Co. 116 Nev. Adv. Op. No. 121).
142. Title and Escrow and Lender's Origination Team had a duty to deal in good faith and fair dealing as defined in U.C.A. § 70A-1a-201-(1)(t) as "honesty in fact in the conduct or transaction concerned.."
143. Instead of honestly disclosing the known fraud, Lender's Origination Team and Title and Escrow conspired to conceal the fraud. On October 25, 2007 Title and Escrow amended their Title Commitment, and Lender accepted the amended Title Commitment without honestly disclosing why to Plaintiffs.
144. Plaintiffs were damaged by not becoming aware of the known fraud. Plaintiffs warrant

they never would have concluded the transaction had Title and Escrow or Lender's Origination Team honestly disclosed the fraud to them.

CAUSE OF ACTIONS AGAINST LENDER AND TITLE AND ESCROW AND BUILDING

SELLER AND LOT DEVELOPER AND X

CONSPIRACY AND BREACH OF DUTY

145. All allegations above are hereby re-alleged.
146. The conspiracy to hide that the Building Seller was flipping the property and did not have recorded authority to contract to sell the property could not be accomplished without Title and Escrow, Lender's Origination Team, Lot Developer, Appraiser and Appraisal Management Company, and Building Seller working together to conceal known fraud.
147. Title and Escrow concealed known fraud by first not disclosing it in accordance to their fiduciary duty, and then subsequently covering it up by preparation of an amended Title Commitment which fraudulently stated "According to the Official Records, there have been no documents conveying the land described herein within a period of 24 months prior to the date of this commitment, except as follows: NONE." See Exhibit I. Title and Escrow funded and served as trustee of a construction loan funded by First Horizon to Building Seller and used by Building Seller to pay off the property. See Exhibit H.
148. Lender's Origination Team ordered the above subsequent Title Commitment to replace the previous Title Commitment which showed the owner of record was not the seller. Lender's Origination Team then subsequently accepted the amended Title Commitment while in possession of the original Title Commitment showing the falsity of the 24 month sales history.

149. Appraiser and Appraisal Management Company knew the property had been flipped from County Records and made a precise misleading statement to cover it up. See Exhibit T.
150. The Lot Developer required Plaintiffs to contract with Building Seller and provided Plaintiffs with contact information for Building Seller.
151. Building Seller actively contracted with Plaintiffs and received \$3X,000 from Plaintiffs in non-refundable deposits prior to Building Seller's ownership of Property.
152. Lot Developer and Building Seller also conspired to violate Plaintiffs statutory rights under ILSA which would have made Plaintiffs aware of the conspiracy.
153. Every defendant to this transaction had the duty of good faith to deal honestly with Plaintiffs. Every single party that concealed known fraud did so not by passive acceptance, but by active, premeditated, and specific concerted actions to fund a mortgage loan by defrauding a nationally insured bank and defrauding the Plaintiffs of Plaintiffs' money.
154. Plaintiffs were damaged by the inability to recognize was an obviously fraudulent flip transaction and fraudulent Building Seller to all defendants. If any defendant had disclosed honestly to Plaintiffs the known and obvious fraud Plaintiffs would have immediately realized that all the other parties were fraudulently conspiring and were of poor moral character and would never have completed the transaction. Plaintiffs suffered monetary damages, emotional damages, and health problems as a result of defendants' breach of duty and conspiracy.

CAUSE OF ACTIONS AGAINST AND X AND APPRAISER AND TITLE AND  
ESCROW

## CONSPIRACY / WIRE FRAUD

155. All allegations above are hereby re-alleged.
156. Title 18 Part I Chapter 63 Section 1343 and 1343 states “ Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.
157. This statute was enacted for the protection of consumers from elaborate and orchestrated fraudulent schemes. This statute is federal in scope.
158. Plaintiffs were consumers damaged by an elaborate and orchestrated fraudulent scheme.
159. In order for the Appraiser and to know how to be fraudulent on the appraisal in terms of both value and sales history, Loan Originator had to inform the Appraiser of the need to hide the flip transaction and value needed for this transaction to complete.
160. In order for the Title and Escrow to know how to be fraudulent and that an amended Title Commitment was required to hide the flip transaction and fraudulent purchase contract, Loan Originator had to inform the Title and Escrow of the need for the amended Title Commitment.
161. Title and Escrow and Appraiser provided the requested fraudulent documents to Loan Originator via wire.

162. Plaintiffs were damaged by this elaborate scheme by the loss of all funds they contributed towards the purchase of this property.

### CAUSE OF ACTIONS AGAINST LENDER

#### FRAUDULENT INDUCEMENT

163. All allegations above are hereby re-alleged.

164. Verbally prior to closing, and within closing documents, Lender made the representation that the appraisal “was prepared by an independent professional appraiser... (who) must meet certain qualifications before their reports will be accepted by the lender.” See Exhibit U.

165. This representation was about the independence, qualifications, and acceptability of appraisals provided by Appraiser and Appraisal Management Company which was a presently existing fact that was important to Plaintiffs acceptance of the value they were receiving in exchange for the indebtedness.

166. This representation was false. Lender’s Origination Team owned Appraisal Management Company who prepared the appraisal. Therefore the appraisal was not independent. Lender’s Origination Team did not provide the proper affiliated ownership documents in accordance to RESPA 3500.15 to inform Plaintiffs that they owned Appraisal Management Company.

167. In addition, Appraiser lacked the proper qualifications as measured by education in ANSI or other method of measurement of square footage of a property. See Exhibit J- REAL ESTATE EDUCATION. This representation was also false.

168. In addition, Lender’s Origination Team represented that the appraiser met “certain

qualifications” and therefore Appraiser and Appraisal Management Companies appraisals “will be accepted by the Lender.” This representation is also false, as subsequent to closing a similar appraisal (See Exhibit P) by same Appraiser and Appraisal Management Company for a rate and term refinance resulted in Plaintiffs being rejected for financing due to “COLLATERAL: INSUFFICIENT PROPERTY VALUE. “ See Exhibit Q.

169. Lender’s Origination Team also made the representation that it would be no problem for Plaintiffs to refinance to a lower payment within three months.
170. This representation was also false. The inflation of the appraised value, miscalculation of finished square footage, inadequate sales comparables, and functional obsolescence of the property compared to the neighborhood is evident on the face of the document.
171. Lender’s Origination Team made this representation to induce Plaintiffs to agree to the mortgage contract.
172. Plaintiffs reasonably believed the Lender’s Origination Team’s representations about the quality and independence of the appraisal and Appraiser and Appraisal Management Company to justify the indebtedness.
173. Plaintiffs contracted with Lender’s Origination Team.
174. Plaintiffs would never have entered into the contract if Plaintiffs had known that these representations were not true.

#### CAUSE OF ACTIONS AGAINST LENDER

#### BREACH OF DUTY

175. All allegations above are hereby re-alleged.

176. Lender's Origination Team has a duty of care in the processing of Plaintiffs application, including the appraisal.
177. In addition Lender's Origination Team has a duty of good faith to act honestly.
178. Lender's Origination Team had underwriting standards that established the market value of the property was around \$625,000 which resulted in the denial of the mortgage refinance.
179. Lender's Origination Team failed its duty of due care to establish the market value of the property of around \$625,000 on the purchase transaction using the same methods on the purchase appraisal and failed to deny the loan.
180. In the alternative to the sentence above, Lender's Origination Team did its duty of due care on the purchase appraisal but failed its duty of honesty and good faith to disclose that value to Plaintiffs and approved the loan due to the amount of money Plaintiffs were spending out of their own funds.
181. Plaintiffs were damaged by the inability to refinance to the lower payment they believed they could obtain. Plaintiffs were further damaged by a loss of all of the down payment and funds they invested in their home.

CAUSE OF ACTIONS AGAINST LENDER

BREACH OF EQUAL CREDIT OPPURTUNITY ACT

182. All allegations above are hereby re-alleged.
183. Plaintiffs requested a loan modification from Lender and Lender acknowledged receipt of the request February 23, 2010. See Exhibit R.
184. 12 C.F.R. § 202.9 requires "(a) *Notification of action taken, ECOA notice, and statement*

*of specific reasons-- (1) When notification is required. A creditor shall notify an applicant of action taken within: (i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application."*

185. 12 C.F.R. § 202.9 also requires "*Content of notification when adverse action is taken. A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of § 701(a) of the Act; the name and address of the federal agency that administers compliance with respect to the creditor."*

186. In Lender's adverse action notice to Plaintiffs request, Lender failed to provide a "statement of specific reason, the provision of § 701(a) of the Act; and the name and address of the federal agency that administers compliance with respect to the creditor..."

See Exhibit V.

187. This duty to provide documentation as required under ECOA specifically for loan modification applications is also provided by the Board of Governors of the Federal Reserve System. See Exhibit W.

188. Plaintiffs were current on their mortgage at the time of adverse action.

189. Plaintiffs suffered statutory damages.

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