

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
JON BRUNING, Attorney General, and)
JOHN MUNN, Director, Nebraska)
Department of Banking and Finance,)

Case No. CI07-_____.

Relators,)

COMPLAINT

v.)

ADVANTAGE MORTGAGE SERVICE,)
INC., a Nebraska domestic corporation,)
GARY LEVINE, Individually and in his)
corporate and representative capacity,)
MARCEE LEVINE, Individually and in her)
corporate and representative capacity,)
SCOTT LEVINE, Individually and in his)
corporate and representative capacity,)
KRISTINE LEVINE, Individually and in her)
corporate and representative capacity, and)
ROBERT M. GOLDBERG, Individually and)
in his corporate and representative capacity,)

COPY

Respondents.)

COMES NOW the State of Nebraska, *ex rel.* Jon Bruning, Nebraska Attorney General,
and John Munn, Director, Nebraska Department of Banking and Finance, by and through the
undersigned counsel, and for its causes of action against Respondents, alleges and states as
follows:

This is a COPY
Original filed by the
CLERK DISTRICT COURT
of Lancaster County, NE
on SEP 13 2007

PARTIES

1. Jon Bruning is the duly elected, qualified, and acting Attorney General of the State of Nebraska, and brings this action in his official capacity pursuant to the Uniform Deceptive Trade Practices Act, *Neb. Rev. Stat. §§ 87-301 et seq.* (Reissue 1999 & Cum. Supp. 2006), and pursuant to the Nebraska Consumer Protection Act, §§ 59-1601 *et seq.* (Reissue 2004). Attorney General Bruning has cause to believe that Respondents Advantage Mortgage Service Inc., Gary Levine, Marcee Levine, Scott Levine, Kristine Levine, and Robert Goldberg, individually, collectively, or in concert with one another, have engaged, and are currently engaging, in unfair and deceptive trade acts and business practices in the conduct of trade and commerce directly or indirectly affecting the people of the State of Nebraska as hereinafter alleged.

2. John Munn is the duly appointed Director of the Nebraska Department of Banking and Finance (hereinafter the "Department") and brings this action in his official capacity pursuant to the Nebraska Mortgage Bankers Registration and Licensing Act, *Neb. Rev. Stat. §§45-701 to 45-721* (Reissue 2004 and Cum. Supp. 2006).

3. Respondent Advantage Mortgage Service, Inc. (hereinafter "Advantage"), at all relevant times herein, is a Nebraska domestic corporation duly organized and existing under the laws of the State of Nebraska, with its last known principal place of business located at 12111 Pacific Street, Suite 500, Omaha, Douglas County, Nebraska. Advantage has branch offices located in Council Bluffs, Iowa and Lincoln, Lancaster County, Nebraska. Advantage currently holds a Nebraska mortgage banker's license.

4. Respondent Robert M. Goldberg ("Goldberg"), at all relevant times herein, is an individual residing at 1619 North 129th Street, Omaha, Nebraska. Goldberg served as a director

and officer of Advantage and possesses a joint or common interest with Respondents Advantage Mortgage Service, Inc., Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine.

5. Respondent Kristine Levine, at all relevant times herein, is an individual formerly residing at 16013 Capitol Avenue, Omaha, Nebraska. Upon information and belief, Kristine Levine currently resides at 4588 Worthing Chase Drive, Greensboro, North Carolina. Kristine Levine served as a director and officer of Advantage and possesses a joint or common interest with Respondents Advantage Mortgage Service, Inc., Gary Levine, Marcee Levine, Scott Levine, and Robert Goldberg.

6. Respondent Scott Levine, at all relevant times herein, is an individual formerly residing at 16013 Capitol Avenue, Omaha, Nebraska. Upon information and belief, Scott Levine currently resides at 4588 Worthing Chase Drive, Greensboro, North Carolina. Scott Levine served as a director and officer of Advantage and possesses a joint or common interest with Respondents Advantage Mortgage Service, Inc., Gary Levine, Marcee Levine, Kristine Levine, and Robert Goldberg.

7. Respondent Gary Levine, at all relevant times herein, is an individual residing at 9906 Harney Parkway South, Omaha, Nebraska. Gary Levine served as the Branch Manager of Advantage's branch office located in Council Bluffs, Iowa, and possesses a joint or common interest with Respondents Advantage Mortgage Service, Inc., Scott Levine, Marcee Levine, Kristine Levine, and Robert Goldberg.

8. Respondent Marcee Levine, at all relevant times herein, is an individual residing at 9906 Harney Parkway South, Omaha, Nebraska. Marcee Levine served as the Branch Manager of Advantage's branch office located in Lincoln, Nebraska, and possesses a joint or

common interest with Respondents Advantage Mortgage Service, Inc., Scott Levine, Gary Levine, Kristine Levine, and Robert Goldberg.

9. Upon information and belief, Respondents Robert Goldberg, Scott Levine, Kristine Levine, Gary Levine, and Marcee Levine are the founders, owners, operators, and majority shareholders of Advantage and exercised, and continue to exercise, complete control and dominion over the operations, management, practices and policies of Advantage; that Advantage is merely the alter ego of said Respondents; and that said Respondents exercise such control over Advantage to commit fraud, violate a legal duty, or perpetrate a dishonest or unjust act or other wrongdoing in contravention of the rights of Nebraska consumers.

JURISDICTION AND VENUE

10. Respondents Advantage Mortgage Service Inc., Robert Goldberg, Scott Levine, Kristine Levine, Gary Levine, and Marcee Levine, at all relevant times herein alleged, transacted business within the State of Nebraska and purposefully availed themselves of the laws and benefits flowing and deriving therefrom. At all relevant times herein, the violations of law hereinafter described have been carried out and perpetrated within this state against Nebraska residents. The acts and omissions of said Respondents are in violation of the laws and public policies of the State of Nebraska and are harmful to the rights and interests of the general public and welfare of Nebraska consumers.

11. The District Court of Lancaster County, Nebraska, has subject matter jurisdiction over this action, and venue is proper pursuant to *Neb. Rev. Stat.* §§ 87-303.05(1) (Reissue 1999), 59-1608.01 (Reissue 2004), and *Neb. Rev. Stat.* § 45-717.02 (Cum. Supp. 2006).

FACTUAL ALLEGATIONS

Advantage Mortgage's Background

12. Advantage holds a mortgage banker's license under the Nebraska Mortgage Bankers Registration and Licensing Act. The license was originally granted April 15, 1996, by the Department and has been renewed annually on March 1st since that time.

13. Advantage's 1996 Mortgage Banker License Application listed Kristine L. Levine as President and Scott Levine as Secretary/Treasurer. Subsequently, Kristine Levine and Scott Levine exchanged offices and Scott Levine became the President of Advantage while Kristine Levine assumed the role of Secretary/Treasurer.

14. From 1999 through 2004, Advantage had a branch located 770 North Cotner Boulevard, Suite 440, Lincoln, Nebraska ("Lincoln Branch"). Linda Law ("Law") was the branch manager of the Lincoln Branch commencing in 2002.

15. On June 2, 2004, Advantage and the Department entered into a Consent Agreement regarding inaccurate information that Advantage had submitted to the Department in various Mortgage Banker License Renewal Applications, particularly concerning the location of Advantage's branches and pertaining to issues relating to Advantage's various Renewal License Applications to the Department. As part of the Consent Agreement, Advantage agreed that it would not establish a branch or enter into written agreements with agents unless it provided the Department a minimum of ten (10) days prior notice. As part of the Consent Agreement, Advantage agreed to notify the Department thirty (30) days prior to opening any branch office located in Nebraska.

16. During the investigation that led to the Consent Agreement, the Department learned that Advantage had entered into an agency agreement with a corporation in which Law is

the sole shareholder to operate the Lincoln Branch of Advantage. Pursuant to this arrangement, Law's corporation was paid the commissions from the title companies. A percentage of such fees was then paid to Advantage. Law and the loan officer who originated the loan would split the remainder of the fee.

17. The Department determined that Advantage's arrangement with Law violated the Mortgage Bankers Registration and Licensing Act. As part of the Consent Agreement, Advantage agreed to either (a) cease doing business with all individuals working at the Lincoln Branch; (b) hire such individuals as exclusive employees of Advantage; or (c) enter into exclusive written independent contractor agreements with each individual working at the Lincoln Branch.

18. On June 21, 2004, Advantage provided the Department notice that Robert M. Goldberg ("Goldberg") had been elected President of Advantage on June 15, 2004. According to the notice, Scott Levine was elected Vice President and Kristine Levine was elected Secretary/Treasurer at the same meeting.

19. On or about July 14, 2004, Advantage filed copies of loan producer agent agreements ("LPAA") with the individuals located at the Lincoln Branch including Law, Jason Svoboda, Ed Sewell, and Dana Douglas. According to the LPAAs, these individuals were exclusive independent agents of Advantage. Advantage would collect the fees from the title company after closing and would split the fees with the loan officer. According to the LPAAs, no fees were paid to Law's corporation.

20. Advantage's business operations and internal structure remained status quo despite the execution of the LPAAs that were filed with the Department. Law's corporation continued to collect the fees from the title company. This corporation would then pay a

percentage of the fees to Advantage and then pay the loan officers their fee share. Upon information and belief, Advantage submitted the LPAAAs to the Department for the purpose of deceiving the Department into believing that Advantage had changed the structure of its relationship with the individuals at the Lincoln Branch as required by the Consent Agreement, when in fact it had not done so.

21. In the fall of 2004, a dispute arose between Law and Advantage regarding fees associated with certain closings. Ultimately, Advantage and Law executed a "Settlement Agreement and Release" which terminated the agreement between Law and Advantage on October 29, 2004. At that time the Lincoln Branch ceased its association with Advantage.

22. Advantage failed to notify the Department that it subsequently opened a branch office at Jason Svoboda's personal residence, in violation of state law and the 2004 Consent Agreement entered into between Advantage and the Department.

23. On its 2005 and 2006 Mortgage Banker License Renewal Applications, Advantage listed a branch office located at 12111 Pacific Street, Suite 500, Omaha, Nebraska ("Omaha Branch"). Marcee Levine is the Branch Manager of the Omaha Branch.

24. On its 2005 and 2006 Mortgage Bankers License Renewal Applications, Advantage also listed a branch office located at 35 North Main Place, Suite 175, Council Bluffs, Iowa ("Council Bluffs Branch"). Gary Levine is the Branch Manager of the Council Bluffs Branch.

25. On February 13, 2006, Advantage notified the Department that Scott Levine and Kristine Levine had resigned their offices on April 23, 2005.

Advantage Mortgage's Operations

26. Advantage operates as a mortgage broker by obtaining and processing financial information from customers to find entities that will loan money to purchase residential property or to refinance an existing mortgage loan. Advantage originates and arranges loans for its customers using a variety of different lenders. Advantage completes loan applications on behalf of borrowers and submits such applications to one or more lenders.

27. Advantage periodically engages in a practice called "table-funded transactions," whereby the initial mortgage or deed of trust names Advantage as the lender. However, it is another lender, such as a mortgage banker, that is actually loaning the funds to the borrower. Advantage ultimately assigns its interest in the security instrument to either the third-party lender or a party designated by such lender. Despite such assignments, Advantage presented itself as a creditor to borrowers or as the party to whom the borrower's obligation was initially payable.

28. Advantage receives compensation for its services by charging fees to its borrowers. Such fees are denominated as "origination fee", "processing fee", "application fee", and/or "mortgage broker fee".

29. Advantage also receives compensation from the lender making the loan in the form of a Yield Spread Premium ("YSP"). A YSP is also referred to as a "lender paid broker commission" or "broker premium".

30. Lenders pay a YSP to Advantage for originating or arranging a mortgage loan with a higher interest rate than the minimum rate that the lender would have been willing to accept. A YSP allows a customer to pay Advantage's broker fee over the life of a loan by paying a higher payment to the lender each month.

31. Advantage originates a substantial number of “subprime loans,” which are loans that are made to customers with less-than-perfect credit history or no credit history. Subprime loans are typically “2/28 ARMS (adjustable rate mortgages)” which provide for a fixed interest rate for two years and an adjustable rate thereafter.

32. Advantage originated and brokered loans for customers within the subprime market by extolling the benefits of consolidating personal debt by refinancing an existing mortgage. Advantage represented to its customers that, by consolidating their existing debt, said borrowers would realize a decrease in their total monthly debt payments. Advantage made representations to its customers by offering loans with the emphasis that borrowers would realize monthly savings that Advantage claimed were associated with the debt consolidation process.

33. Advantage was, and is, legally required to make certain and material disclosures to borrowers who have submitted an application for a mortgage loan. For instance, within three (3) days after the loan application is submitted by the borrower, Advantage must deliver a Good Faith Estimate Disclosure (“GFE”) and a Truth-In-Lending Disclosure (“TILD”) to the applicant for the benefit of the borrower. The GFE discloses various fees and charges associated with the loan including, but not limited to, loan origination fees, mortgage broker fees, processing fees, title insurance fees, appraisal fees and closing fees. The GFE also discloses the amount of the loan, the interest rate, and an estimated monthly payment. The TILD memorializes the lifetime costs of the loan. The TILD discloses the annual percentage rate, amount financed, total interest paid, and total amount paid. The TILD also discloses the size of each monthly payment.

Jason Svoboda's Background

34. Jason Svoboda (hereinafter "Svoboda"), at all relevant times herein, served as a former loan officer for Advantage and acted within the scope of his employment or agency with Advantage and with the actual, apparent, or ostensible authority of Advantage.

35. Prior to his employment with Advantage, Svoboda was convicted of two felonies, one of which was for felony Theft by Deception related to Svoboda's embezzlement from a former employer. Svoboda was sentenced to two-to-four years in prison for being convicted of felony Theft by Deception. Svoboda began serving his sentence in May 2003, and was released from prison on July 28, 2004.

36. Svoboda began working for Advantage's Lincoln Branch in late January or early February 2004, through a work release program offered at the Nebraska State Penitentiary. Law signed a written verification dated February 17, 2004, verifying to the Nebraska Department of Corrections that Svoboda had been hired as a loan officer for Advantage.

37. An independent contractor agreement was entered into between Svoboda and Advantage on July 8, 2004.

38. Svoboda worked at the Lincoln Branch until October 2004, when Law discovered problems with Svoboda's loan files and attempted to terminate him from his position as a loan officer with Advantage.

39. Despite Law's termination efforts, Svoboda continued to work for Advantage purportedly at its Council Bluffs Branch. On October 27, 2004, Law warned Advantage that she had discovered numerous problems with Svoboda's loans and warned Advantage that Svoboda was a convicted felon, placing Advantage on notice of Svoboda's criminal history.

40. On November 1, 2004, Svoboda submitted an employment application form required by Advantage. Svoboda disclosed his conviction for Theft by Deception on the application form.

41. On November 2, 2004, Law again warned Advantage that Svoboda was a felon and that hiring a felon constitutes grounds for revocation of Advantage's Nebraska mortgage banking license.

42. Despite Law's repeated warnings and Svoboda's admission of his criminal past, Advantage continued to allow Svoboda to work for Advantage as a loan officer. In 2005, Advantage arranged for Svoboda to work from his home residence located in Lincoln, Nebraska, rather than requiring him to work at either the Omaha or Council Bluffs Branch locations. Advantage provided Svoboda with the operating software necessary to originate loans at his home office. In addition, Svoboda had access to Advantage's e-mail system from his home office and had a separate telephone line for a fax machine. Svoboda made telephone calls to potential customers, borrowers, lenders, appraisers, and other service providers from his home office and met with customers at his home office as an authorized agent of Advantage. Svoboda ultimately hired an agent as an assistant to work with him at his home office. Svoboda's assistant had also been convicted of felony Theft by Deception. Moreover, Svoboda held out his home office as a physical branch of Advantage in his dealings with lenders and represented to lenders that his home office was the "Lincoln Branch" of Advantage.

43. During his employment with Advantage, Svoboda originated or arranged loans for many Nebraska residents and, to a smaller extent, Iowa residents. For several customers, Svoboda originated or arranged multiple loans.

44. Svoboda originated and arranged over \$11 million in mortgage loans for Advantage between February 2004 and January 2006. Advantage benefited from its relationship with Svoboda by collecting over \$550,000.00 in fees from loans generated by Svoboda. After payment of expenses, the closing fees were split between Svoboda, Advantage and Law for transactions occurring prior to and during October 2004, and Advantage and Svoboda for transactions occurring after October 2004.

45. In January 2006, Advantage was contacted by one of its lenders who informed Advantage that the lender had discovered that Svoboda had submitted fraudulent documents in borrowers' loan files. The lender threatened to terminate its relationship with Advantage if Svoboda continued to originate loans for Advantage. On January 17, 2006, Advantage terminated Svoboda's employment.

Advantage's Acts and Omissions

46. Advantage, by and through its principals, employees, agents, and/or representatives, fraudulently originated and arranged mortgage loans secured by real property located in Nebraska and Iowa.

47. Advantage, by and through its principals, employees, agents, and/or representatives, created fake closing documents in order for customers to qualify for otherwise ineligible or burdensome mortgage loans.

48. Advantage, by and through its principals, employees, agents, and/or representatives, forged borrowers' signatures without their knowledge upon various closing documents.

49. Advantage, by and through its principals, employees, agents, and/or representatives, processed borrowers' loans by deceptively creating and altering the initial

disclosures such as the Good Faith Estimate Disclosures and the Truth-In-Lending Disclosures to the financial detriment of its customers.

50. Advantage, by and through its principals, employees, agents, and/or representatives, met with potential customers and deceptively obtained their signatures upon the initial disclosure documents, but then failed to leave copies of the signed disclosures with their customers.

51. Advantage, by and through its principals, employees, agents, and/or representatives, utilized the notary services of the Council Bluffs office of Missouri River Title Co., Inc. ("MRTC"), a Nebraska corporation with offices in Omaha, Nebraska, and Council Bluffs, Iowa, to close loans. MRTC allowed Advantage to close loans at Svoboda's Lincoln residence or at the borrower's house without the presence of an employee of the title company. Svoboda would then return the signed documents to MRTC. A MRTC employee would then notarize the closing documents outside the presence of the Nebraska borrower and would alter the documents to purportedly show that borrowers' signatures were obtained in an Iowa county rather than the actual Nebraska county where the closing occurred.

52. Advantage, by and through its principals, employees, agents, and/or representatives, failed to disclose to borrowers the excessive, redundant, and unreasonable amount of broker's fees it was charging for loan transactions by removing closing documents containing the amount of the fees from the closing packet prepared for borrowers, resulting in material omissions of facts and causing borrowers to be unaware of the fees that they were charged by Advantage for such transactions.

53. Advantage, Gary Levine, Marcee Levine, Scott Levine, Kristine Levine, and Robert Goldberg, unjustly profited from the fraud perpetrated by its loan officers upon

Advantage's customers by splitting the closing fees that Advantage charged borrowers for servicing the loan transactions.

54. Advantage, by and through its principals, employees, agents, and/or representatives, prepared Truth-in-Lending Disclosures on behalf of borrowers which inaccurately understated the amount financed and the Annual Percentage Rate ("APR") and failed to disclose substantial pre-paid finance charges associated with the loans that were originated or arranged by Advantage.

55. Advantage, by and through its principals, employees, agents, and/or representatives, failed to disclose to borrowers that loans originated or arranged by Advantage had an adjustable rate.

56. Advantage, by and through its principals, employees, agents, and/or representatives, repeatedly failed to disclose, and inaccurately disclosed, to borrowers the YSP on the Good Faith Estimate ("GFE") document that it gave to the borrowers after taking the borrowers' applications.

57. Advantage, by and through its principals, employees, agents, and/or representatives, altered GFEs in order to grossly understate the amount of the mortgage broker fees Advantage charged to borrowers.

58. Advantage, without its customers' knowledge or consent, submitted supplemental GFEs disclosing higher closing costs that replaced the GFEs that the borrowers initially had signed and which understated the closing fees charged by Advantage to its customers.

59. Advantage, by and through its principals, employees, agents, and/or representatives, caused borrowers to omit the dates when borrowers signed the GFEs, TILDs and other closing documents and backdated the disclosures to make it appear that the disclosures had

been given within the time frame required by law. For instance, Advantage back-dated a GFE and TILD to make it appear that these disclosures had been given to a borrower within three days of accepting a borrower's submitted application when, in fact, the disclosures were not given within the required three-day time period.

60. Advantage obtained borrowers' signatures on the initial disclosures, including the Good Faith Estimate and Truth in Lending disclosures, and repeatedly failed to leave copies of such documents with borrowers.

61. Advantage, by and through its principals, employees, agents, and/or representatives, failed to disclose the amount of fees that borrowers were being charged and verbally misrepresented the amount of fees it charged at closings. In certain instances when customers noticed the amount of the fees at the closing and inquired about the fee amount, Advantage represented to its customers that the fee would be a credit on their income tax return and that the borrower would receive the fee in remittance as part of the borrower's tax refund, which is neither a true nor accurate statement of what actually occurred.

62. Advantage, by and through its principals, employees, agents, and/or representatives, falsely represented to borrowers that the fee on the Good Faith Estimate was a fee payable to another lender for making a loan on "out-of-state property" when, in fact, the fee was charged by and payable to Advantage and not by the other lender for the false claim that a fee was associated for an "out-of-state" loan.

63. Advantage, by and through its principals, employees, agents, and/or representatives, misrepresented material terms and conditions of the loans it arranged for borrowers including, but not limited to, key terms such as the interest rate, the duration of the loan term, the payment schedule, and presence of a prepayment penalty for early payoffs.

64. Advantage, by and through its principals, employees, agents, and/or representatives, submitted fraudulent documents to other lenders on behalf of its customers without their knowledge or permission. For instance, Advantage submitted documents for borrowers consisting of fake paystubs, fake creditor letters, fake trade lines, fake and altered payment histories, altered court documents, altered quit-claim deeds, altered bank statements, fake asset verifications, and numerous disclosure documents containing forged borrower signatures and fee terms altered by Advantage without its customers' knowledge, approval, consent, or permission.

65. Advantage, by and through its principals, employees, agents, and/or representatives, submitted loans to other lenders on behalf of its customers who were seeking loans for property that was not owner-occupied. Advantage, by and through its principals, employees, agents, and/or representatives, submitted loan applications to lenders as owner-occupied properties and falsified documents to hide from lenders the fact that the property was not owner-occupied.

66. Advantage, by and through its principals, employees, agents, and/or representatives, arranged for inflated appraisals to be performed upon the borrowers' real properties in order to qualify borrowers for higher loan amounts. In certain instances, Advantage arranged appraisals that substantially overstated the actual value of the borrower's property securing the loan, resulting in higher monthly mortgage payments for Advantage's customers and negative equity in the borrower's residential home under a practice known as "equity skimming."

67. Advantage, by and through its principals, employees, agents, and/or representatives, engaged in material omissions of fact to the detriment of its customers by

removing key documents from the closing packet that it presented to borrowers at the closings. Such material omissions occurred through the removal of closing documents that disclosed the amount of fees that Advantage was charging to borrowers to process their loans, making it extremely difficult, if not impossible, for borrowers to discover the excessiveness, duplicity, and unreasonableness of fees that Advantage charged to its customers until after the closings occurred.

68. Svoboda, as a loan officer of Advantage, embezzled funds from Advantage's customers by forging a customer's signature on a check and depositing the check into his personal account without the customer's consent.

69. Advantage failed to supervise Svoboda in connection with his loan origination activities as an employee, agent and/or representative of Advantage and fails to supervise its loan officers. For instance, by allowing Svoboda to originate and process his own loans and to handle his own loan closings and work from his home office as an Advantage loan officer, Advantage enabled and allowed Svoboda to perpetrate fraud upon its customers and profited from such activity.

70. Advantage failed to keep and maintain its records pertaining to the loan transactions of its loan officers. Upon information and belief, Advantage has purportedly lost or misplaced loan files of its customers. Upon further information and belief, Advantage possesses no records of any transaction unless that transaction actually resulted in a closed loan. Advantage purportedly has no records of customers who submitted loan applications to it through certain of its loan officers pertaining to loan applications that were subsequently denied or withdrawn.

71. Advantage charged and collected fees that were grossly excessive and unreasonable for loans originated or arranged by its loan officers on behalf of Advantage's customers.

Gem Cap Equity System

72. Advantage utilized a visual devise in the form of a deceptive spreadsheet that it presented to borrowers which advertises a program referred to as the "Gem Cap Equity System" to encourage and induce borrowers to obtain a mortgage loan through this program. Advantage led borrowers to believe that, by obtaining a loan through Advantage and enrolling in the Gem Cap Equity System, borrowers would pay a substantially lower interest rate, have a shorter loan term, and save a substantial amount of money compared to a mortgage not offered through this program. In fact, borrowers enrolling in the Gem Cap Equity System end up paying substantially higher interest rates, or the same interest rate, prior to enrolling in this plan, having longer or the same loan terms, more monthly payments, and paying as much or more money to reduce their debt.

73. Advantage failed to follow through and enroll its customers in the Gem Cap Equity System after presenting the system to borrowers and making representations concerning the purported benefits of utilizing the Gem Cap Equity System. Advantage misled certain customers to believe that they had signed up for the Gem Cap Equity System when, in fact, they did not.

74. Advantage deceived borrowers who were seeking adjustable rate mortgages by promoting the Gem Cap Equity System when, in fact, an adjustable rate mortgage cannot be "paid-off" any earlier through annual prepayments through this program. Furthermore, Advantage overstated the amount of savings borrowers with adjustable rate mortgages can realize by enrolling in the Gem Cap Equity System.

COUNT I
(Uniform Deceptive Trade Practices Act)

75. Relator hereby incorporates by this reference all the allegations contained in Paragraphs 1 through 74 above, as though fully set forth herein.

76. Relator alleges that Respondents, individually, collectively, or in concert with one another and in the course of its business, vocation, or occupation, caused, and continue to cause, a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of *Neb. Rev. Stat. § 87-302(a)(2)* (Cum. Supp. 2006).

77. Relator alleges that Respondents, individually, collectively, or in concert with one another and in the course of its business, vocation, or occupation, represented, and continue to represent, to Nebraska consumers that goods or services it offers to sell or provide have sponsorship, approval, characteristics, uses, or benefits that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have, in violation of *Neb. Rev. Stat. § 87-302(a)(5)* (Cum. Supp. 2006).

78. Relator alleges that Respondents, individually, collectively, or in concert with one another and in the course of its business, vocation, or occupation, advertised, and continue to advertise, goods or services with the intent not to sell them as advertised, in violation of *Neb. Rev. Stat. § 87-302(a)(9)* (Cum. Supp. 2006).

79. Relator alleges that Respondents, individually, collectively, or in concert with one another and in the course of its business, vocation, or occupation, have engaged, and continue to engage, in unconscionable acts or practices in connection with consumer transactions, in violation of *Neb. Rev. Stat. § 87-303.01(1)* (Reissue 1999).

COUNT II

(Nebraska Consumer Protection Act)

80. Relator hereby incorporates by this reference all the allegations contained in Paragraphs 1 through 74 above, as though fully set forth herein.

81. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage, in unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of *Neb. Rev. Stat. § 59-1602* (Reissue 2004).

82. The unfair or deceptive acts or practices of Respondents have a detrimental impact upon and affect the public interest of Nebraska citizens.

COUNT III

(Nebraska Mortgage Bankers Registration and Licensing Act)

83. Relator hereby incorporates by this reference all the allegations contained in Paragraphs 1 through 74 above, as though fully set forth herein.

84. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage in material violations of, or demonstrated a continuing pattern of violating, the Mortgage Bankers Registration and Licensing Act, rules and regulations adopted and promulgated under the Act, any order, including a cease and desist order, issued under the Act, or any other state or federal law applicable to the conduct of its business in violation of *Neb. Rev. Stat. § 45-707(1)(a)* (Cum. Supp. 2006).

85. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage in conduct which violates a voluntary consent or compliance agreement which had been entered into with the Director in violation of *Neb. Rev. Stat. § 45-707(1)(c)* (Cum. Supp. 2006).

86. Respondents, individually, collectively, or in concert with one another, made in documents filed with the Director statements which were, at the time and in light of the circumstances under which they were made, false or misleading in any material respect in violation of *Neb. Rev. Stat. § 45-707(1)(d)* (Cum. Supp. 2006).

87. Respondents, individually, collectively, or in concert with one another, knowingly employed an individual who had been convicted of a felony under state law in violation of *Neb. Rev. Stat. § 45-707(1)(g)* (Cum. Supp. 2006).

88. Respondents, individually, collectively, or in concert with one another, failed, and continue to fail to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business in violation of *Neb. Rev. Stat. § 45-707(1)(l)* (Cum. Supp. 2006).

89. Respondents, individually, collectively, or in concert with one another failed to notify the Director of a material development by failing to notify the Director of the opening and closing of a branch office located in Nebraska in violation of *Neb. Rev. Stat. § 45-711(9)(g)* (Cum. Supp. 2006).

90. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage, in the misrepresentation or concealment of material facts or the making of false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf, in violation of *Neb. Rev. Stat. § 45-714(1)(c)* (Cum. Supp. 2006).

91. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage in transactions, practices, or business conduct that is not in good faith or

that operates a fraud upon any person in connection with the making of any mortgage loan in violation of *Neb. Rev. Stat. § 45-714(1)(e)* (Cum. Supp. 2006).

92. Respondents, individually, collectively, or in concert with one another, failed to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money, funds, deposits, checks, drafts, mortgages, or other documents or things of value which the licensee was not entitled to retain in violation of *Neb. Rev. Stat. § 45-714(1)(i)* (Cum. Supp. 2006).

93. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage, in the assessment of fees against borrowers other than those fees which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, services, extending, transferring, or renewing of a loan, in violation of *Neb. Rev. Stat. § 45-714(l)* (Cum. Supp. 2006).

94. Respondents, individually, collectively, or in concert with one another, engaged, and continue to engage, in falsification of documents relating to a mortgage loan or a mortgage loan application, in violation of *Neb. Rev. Stat. § 45-714(1)(n)* (Cum. Supp. 2006).

WHEREFORE, Relators pray for judgment on Counts I through III above in favor of the State of Nebraska and against Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, jointly and severally. Relators further pray the Court to find that each said Respondent has violated state law as herein described, and for this Court to order the following relief:

- A. Temporarily and permanently enjoin Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, from continuing such deceptive practices, or

engaging therein, or doing any act in furtherance thereof, pursuant to *Neb. Rev. Stat. § 87-303.05* (Reissue 1999);

- B. Temporarily and permanently enjoin Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, from continuing such unfair or deceptive acts or practices as herein alleged, or engaging in such acts or practices, or doing any act in furtherance thereof, pursuant to *Neb. Rev. Stat. § 59-1608(1)* (Reissue 2004);
- C. Hold Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, liable to any applicant for a mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or for any fees associated with obtaining or attempting to obtain the mortgage loan, damages resulting from such violations, interest on the damage from the date of violations and court costs, including reasonable attorneys' fees, pursuant to *Neb. Rev. Stat. § 45-714(3)* (Cum. Supp. 2006).
- D. Award restitution in the amount necessary to restore to and make whole any person any and all money or personal property acquired through means of any such deceptive trade practice by Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, pursuant to *Neb. Rev. Stat. § 87-303.05* (Reissue 1999) and *Neb. Rev. Stat. § 59-1608(2)* (Reissue 2004);

- E. Find that the deceptive trade practices, acts, and omissions of Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, have induced Nebraska consumers to enter into contractual arrangements in violation of state law and making any contractual arrangements between said Respondents and Nebraska consumers unenforceable and, at the option of the consumer, allowing (i) rescission of the agreement or (ii) retention of the merchandise delivered and the benefit of any services performed without any obligation by the consumer to pay for them, pursuant to *Neb. Rev. Stat. § 87-303.07* (Reissue 1999);
- F. Award such relief as the Court deems necessary to prevent unjust enrichment and to redress consumers' injuries resulting from Respondents violations of state law as herein alleged, including, but not limited to, rescission or reformation of contracts, refund of monies paid by consumers to Respondents, and/or disgorgement of ill-gotten gains obtained by Respondents from consumers;
- G. Impose a civil penalty of Two Thousand Dollars (\$2,000.00) for each violation of state law upon each Respondent, Advantage Mortgage Services, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine, pursuant to *Neb. Rev. Stat. § 87-303.11* (Reissue 1999) and *Neb. Rev. Stat. § 59-1614* (Reissue 2004);
- H. Award the recovery of Relators' costs of bringing of this action, including costs for the investigation and prosecution of this enforcement action and

reasonable attorneys' fees, pursuant to *Neb. Rev. Stat. § 87-303(b)* (Reissue 1999), *Neb. Rev. Stat. § 59-1608(1)* (Reissue 2004), and *Neb. Rev. Stat. § 45-717.02(2)* (Cum. Supp. 2006); and

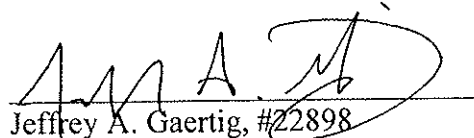
- I. Award other such relief as the Court deems just and equitable in order to obtain compliance with state law by Respondents Advantage Mortgage Service, Inc., Robert Goldberg, Gary Levine, Marcee Levine, Scott Levine, and Kristine Levine.

DATED this 13th day of September, 2007.

STATE OF NEBRASKA, ex rel.
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