

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SUPER FUTURE EQUITIES, INC.

3-06-CV-0271-B

Plaintiff,

v.

**WELLS FARGO BANK, N.A., ORIX
CAPITAL MARKETS, LLC, ORIX USA
CORPORATION, ORIX MARKETS
PARTNERSHIP, JOHN DINAN,
MICHAEL F. WURST, CLIFFORD
WEINER, and JAMES R. THOMPSON**

Defendants.

ORIX CAPITAL MARKETS, LLC'S AMENDED COUNTERCLAIM

Defendant and Counter-Plaintiff ORIX Capital Markets, LLC (“ORIX Capital”), on behalf of itself and the certificateholders of the Merrill Lynch Mortgage Investors Inc. Commercial Mortgage Pass-through Certificates Series 1999-C1 (“MLMI” or the “MLMI Trust”), brings this action, pursuant to Rules 13(a), 13(h), 19(a), and/or 20(a) of the Federal Rules of Civil Procedure, against Plaintiff and Counter-Defendants Super Future Equities, Inc., Schumann Rafizadeh, C.R., D.R.¹, Houman Thomas Arjmandi, and Keon Michael Arjmandi, for damages under the laws of the United States and the State of Texas and alleges as follows:

¹ Counter-Defendants C.R. and D.R. are minor children, and are referred to herein by their initials pursuant to this Court’s Privacy Notice, <http://www.txnd.uscourts.gov/pdf/TXNprivnot.pdf>.

I. SUBJECT MATTER JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has supplemental jurisdiction over the claims in this Amended Counterclaim that arise under the statutory and common law of the State of Texas pursuant to 28 U.S.C. § 1367(a) and any other applicable law, since the state law claims are so related to the federal claims pleaded by Super Future Equities, Inc. (“SFE”) in its Second Amended Complaint that they form part of the same case or controversy and derive from a common nucleus of operative facts.

II. VENUE

3. Venue is proper in the Northern District of Texas and this Court pursuant to 28 U.S.C. § 1391(b). Moreover, because SFE filed its Original Complaint in this Court, this Court has personal jurisdiction over SFE, and venue is proper in this judicial district under 28 U.S.C. § 1391(c).

III. PARTIES AND PERSONAL JURISDICTION

4. Counter-Plaintiff ORIX Capital is a Delaware limited liability corporation with its principal place of business in Dallas, Texas. ORIX Capital brings these claims on behalf of itself, and on behalf of the certificateholders of the MLMI Trust.

5. Counter-Defendant SFE is a Nevada corporation with its principal place of business in Texas. SFE has appeared in this action as the Plaintiff.

6. Counter-Defendant Schumann Rafizadeh is an individual who resides in Houston, Texas. Schumann Rafizadeh has filed a motion to dismiss, but does not contest this Court’s personal jurisdiction over him. Schumann Rafizadeh’s activities may be imputed to, attributed to and/or considered the activities of SFE.

7. Counter-Defendant Houman Thomas Arjmandi (“Thomas Arjmandi”) d/b/a www.predatorix.com has filed a motion to dismiss, but does not contest this Court’s personal jurisdiction over him. Thomas Arjmandi’s activities may be imputed to, attributed to and/or considered the activities of SFE.

8. Counter-Defendant Keon Michael Arjmandi (“Keon Arjmandi”) is an individual. Keon Arjmandi has filed a motion to dismiss, but does not contest this Court’s personal jurisdiction over him. Keon Arjmandi’s activities may be imputed to, attributed to and/or considered the activities of SFE.

9. Counter-Defendant C.R. is an individual. C.R. has answered in this case. C.R.’s activities may be imputed to, attributed to and/or considered the activities of SFE.

10. Counter-Defendant D.R. is an individual. D.R. has answered in this case. D.R.’s activities may be imputed to, attributed to and/or considered the activities of SFE.

IV. INTRODUCTION

11. Counter-Defendants’ long and sordid history with ORIX Capital began in early 2001 in relation to a property called the Arlington Apartments located in Harvey, Louisiana, for which Cyrus II Partnership (“Cyrus II”), an entity owned by Schumann and Mondona Rafizadeh, executed a \$6.4 million promissory note.² At that time, the loan on the Arlington Apartments was held by the MLMI Trust, and ORIX Capital served as the Master and Special Servicer for the MLMI Trust.³ Forced into litigation by Cyrus II’s neglect of its obligations under the loan documents, ORIX Capital, on behalf of the MLMI Trust, brought suit in the 24th Judicial District Court in Jefferson Parish,

² Schumann and Mondona Rafizadeh own entities that conduct business in several states. These business entities own real estate located in Louisiana, Texas, Oklahoma, and Georgia. The Rafizadehs also own affiliated management, consulting, and servicing businesses that are incorporated in Louisiana, Texas, Ohio, and Nevada.

³ ORIX Capital ceased serving as Master Servicer on December 8, 2005.

Louisiana, to foreclose upon the property. Citing numerous events of default, including fraud committed in order to obtain the loan, the court held that the note was in default and authorized ORIX Capital's foreclosure on the property. On December 23, 2004, in a scathing opinion, the court awarded the MLMI Trust a judgment (the "Louisiana Judgment") of more than \$10 million against Mondona Rafizadeh, Cyrus II, and Bahar Development, Inc. ("Bahar"). Additionally, the court dismissed with prejudice all claims that these parties asserted against ORIX Capital and the Trustee for the MLMI Trust.

12. The Arlington Apartments litigation was the start of a tortuous journey through the court systems in Texas and Louisiana, with Schumann Rafizadeh and his numerous entities hauling ORIX Capital and the MLMI Trust in and out of courts, as they have attempted to evade payment of the Louisiana Judgment and retaliate against ORIX Capital.

13. Schumann Rafizadeh has created yet another purportedly separate entity named SFE. Less than two months from the filing date of SFE's Complaint, Schumann Rafizadeh named his seventeen-year-old son, C.R., and his wife's nephews, Thomas Arjmandi and Keon Arjmandi, as directors and/or officers of SFE. Incorporated on December 1, 2004, just weeks before the Louisiana state court judgment, SFE is the entity Schumann Rafizadeh has selected to pursue his latest stratagem to avoid paying the Louisiana Judgment and to seek revenge against ORIX Capital, the MLMI Trust, Defendant Wells Fargo Bank Minnesota, N.A. ("Wells Fargo"), and now Defendant ORIX USA Corporation ("ORIX USA") and the individual Defendants.⁴

⁴ The individual Defendants include John Dinan, Michael Wurst, Clifford Weiner, and James Thompson. The individual Defendants, together with ORIX Capital and ORIX USA, are hereinafter referred to as the "ORIX Defendants."

V. FACTUAL BACKGROUND

A. The Rafizadehs' Connection to ORIX Capital: The Financing of the Arlington Apartments.

14. On July 6, 1999, Cyrus II, a partnership under Louisiana law, executed a Promissory Note ("Note") in the amount of \$6.4 million dollars through its general partner, Bahar. This Note was secured by a Mortgage, Security Agreement, and Assignment of Leases and Rents ("Mortgage"), which encumbered the Arlington Apartments in Harvey, Louisiana (the "Property").

15. Husband and wife Schumann and Mondona Rafizadeh entirely own Cyrus II and Bahar. Cyrus II's limited partners are Schumann and Mondona Rafizadeh. At the time of the Note and Mortgage, Mondona Rafizadeh owned 100% of Bahar, the general partner of Cyrus II. Mondona and Schumann Rafizadeh are also the President and Vice-President of Bahar, respectively. Additionally, Mondona Rafizadeh personally guaranteed the Note (the "Guaranty").

16. The Note, Mortgage, and related documents were subsequently assigned to the MLMI Trust. Accordingly, the MLMI Trust is the owner and holder of due course of the Note and the other loan documents, including the Mortgage and Mondona Rafizadeh's personal Guaranty.

B. The Louisiana Judgment: The History of the Foreclosure Litigation.

17. In the case of the Arlington Apartments, ORIX Capital first inspected the Property in March 2001. After the inspection, ORIX Capital, as Master Servicer, placed the Property in Special Servicing and attempted to work with Cyrus II to establish a rehabilitation plan that would address the deplorable conditions that existed at the Property. ORIX Capital's efforts were to no avail, as Cyrus II, Bahar, and Mondona

Rafizadeh failed to provide a rehabilitation plan to ORIX Capital, almost a year after the first inspection. Cyrus II also ignored ORIX Capital's (1) requests for financial data regarding the Property's occupancy rate, (2) requests to re-inspect the Property in early 2002, (3) demand to submit increased monthly escrow payments, and (4) written notification of default. Thus, Cyrus II repeatedly ignored its many opportunities to cure the default.

18. Consequently, on March 13, 2002, ORIX Capital, on behalf of the MLMI Trust and in the name of the MLMI Trustee Wells Fargo, brought suit in Louisiana state court to foreclose upon the Property. The Louisiana court heard testimony and evidence over four days. During the trial, the court heard compelling evidence that the Property was in deplorable condition with deficiencies that included: leaking roofs and ponding water, improper electrical wiring, extensive mold throughout the complex, wet and mildewed carpets with mushrooms growing, and holes in ceilings and sheetrock.⁵

19. On December 23, 2004 the Louisiana court entered its "Reasons for Judgment," finding for ORIX Capital and Wells Fargo, on behalf of the MLMI Trust, and awarding damages in the amount of \$10,893,350.96, plus interest against Mondona

⁵ Interestingly, this is not the first time that a property controlled by the Rafizadehs has deteriorated to the point of jeopardizing the life and safety of its tenants. It is well-documented in a multitude of lawsuits that the Plaza Tower in New Orleans, Louisiana, a Rafizadeh owned and controlled property, was so hazardous to its tenants that the State of Louisiana pulled its offices and employees from the building and relocated to another site. The tenants of Plaza Tower had complained that perennial leaks in the building's windows, roof and pipes were causing mold. They also complained about faulty elevators, heating and air-conditioning units that did not work, and asbestos. In fact, the injured tenants brought class action lawsuits against Schumann Rafizadeh and related entities. The Rafizadehs' insurer settled with the class action plaintiffs. The Rafizadehs also were sued by a former tenant for back rent. In that suit, Schumann Rafizadeh counterclaimed against the State of Louisiana alleging he is a target of a conspiracy to steal leases from Plaza Tower. Schumann has vowed revenge "whether he gets paid in his lifetime, or whether the damages are paid 'to [his] children's children.'" *Suit filed Friday alleging fraud is the latest legal challenge for the family behind the Plaza Tower*, TIMES-PICAYUNE, June 20, 2004 printed from <http://www.bahaindex.com/modules.php?name=News&file=print&sid=3682>.

Rafizadeh, Bahar, and Cyrus II. The court entered judgment for ORIX Capital and Wells Fargo, on behalf of the MLMI Trust, on April 11, 2005.

20. Specifically, the 24th Judicial District Court held that “[a]ny one of the following Events of Default made the Note immediately due and payable and warranted the Trustee’s seizure of the Property:

- (1) failure to maintain the Property in good condition
- (2) failure to make the increased Replacement Escrow Fund (“Escrow”) payment on March 1, 2002
- (3) failure to provide the additional financial information ORIX Capital requested
- (4) failure to permit an inspection
- (5) fraud.”

Louisiana Judgment at p. 6.

21. Judge Grant also found that “[t]he testimony and documentary evidence was replete with evidence that Cyrus [II] made false and misleading statements and representations in certified rent rolls and financial statements, among others, in order to obtain the loan.” Louisiana Judgment at p. 13.

22. The Louisiana court entered judgment for ORIX Capital and Wells Fargo, on behalf of the MLMI Trust, in the amount of \$10,893,350.96 (plus per diem interest of \$2,277.47 from July 26, 2004 through December 29, 2004), which included accelerated prepayment of the mortgage, yield maintenance fees, and interest to accrue at the rate of

13.05% per annum until the judgment is paid in full.⁶ The Louisiana court entered an additional award of \$2,130,649.00 in attorneys' fees and costs.

23. Since Judge Grant entered the Louisiana Judgment against Mondona Rafizadeh, Cyrus II, and Bahar, the Rafizadehs, who ultimately own and operate a web of more than fifty interrelated business entities, including partnerships and limited liability corporations, have used their entities in a scheme to defraud the MLMI Trust by evading payment of the Louisiana Judgment and to seek revenge against the MLMI Trust, Wells Fargo, and the ORIX Defendants.

C. ORIX Capital is a Leading Provider of Loan Servicing.

24. ORIX Capital, a leading provider of loan servicing and asset management/loan workout services, was founded in 1997. ORIX Capital's customer base includes some of the nation's largest institutional investors, portfolio owners, and loan originators.

25. ORIX Capital acts as Special Servicer on sixteen Commercial Mortgage Backed Securities ("CMBS"), totaling over \$9 billion, including the MLMI Trust.

26. ORIX Capital's obligations and duties to the MLMI Trust, and its rights to act on the Trust's behalf, arise from the MLMI Pooling and Servicing Agreement of November 1, 1999 ("MLMI PSA") and the Mortgage Loan Purchase Agreement ("MLMI MLPA"). Pursuant to the MLMI PSA, upon certain triggering events, primarily a monetary or nonmonetary default, the Master Servicer transfers the loan(s) to the Special Servicer.

⁶ The Court determined that the fraud procured in obtaining the Mortgage occurred on the closing date. Thus, default interest began accruing the day after the loan closed, the first day on which interest could accrue.

27. As Special Servicer, ORIX Capital is responsible for maximizing recoveries for the MLMI Trust Certificateholders on nonperforming loans and Real Estate Owned (“REO”) assets, and is key to maintaining the credit quality of a pool containing nonperforming loans and REO assets. ORIX Capital, as Special Servicer, considers multiple alternatives as part of its analysis including loan modification, foreclosure, deed-in-lieu, negotiated payoff, or sale of the defaulted loan. The Special Servicer’s duties include administration of a mortgage loan after a servicing transfer event occurs, such as required payments under the loan becoming past due; a default occurring that materially impairs the value of the mortgaged property and adversely affects the interests of the certificateholders; the mortgagor being declared bankrupt or insolvent or consenting to the appointment of a conservator, receiver, or liquidator; or the Master Servicer receiving notice of foreclosure or similar proceedings.

D. Counter-Defendant SFE is Created to Retaliate Against ORIX Capital and the MLMI Trust.

28. Upon information and belief, Schumann Rafizadeh created SFE for the purpose of bringing this suit and distancing Plaintiff from the Rafizadeh Enterprise and the fraud found by the Louisiana state court. The Articles of Incorporation for SFE were filed on December 1, 2004. Flash Vos, Inc. (“Flash Vos”), a Texas corporation which is 100% owned by Schumann Rafizadeh, incorporated SFE, and Schumann Rafizadeh acted as SFE’s initial president and director.

29. The Annual List of Officers, Directors, and Resident Agent of SFE was filed in Nevada on January 26, 2006 and lists the Rafizadehs’ seventeen-year-old son, C.R., as the Secretary and Treasurer of SFE. Two other individuals, Counter-Defendants

Thomas Arjmandi and Keon Arjmandi, who are nephews of the Rafizadehs, are listed as the President and Director of SFE, respectively.

30. SFE filed an application as a foreign for-profit corporation with the Texas Secretary of State on February 13, 2006. SFE listed Tomik, LLC (“Tomik”) with an address at 806 Main in Houston, Texas, as its registered agent in Texas.

31. Tomik is a Nevada limited liability corporation that filed Articles of Incorporation on June 22, 2005. In addition to serving as a Director of SFE, Counter-Defendant Keon Arjmandi is the sole manager of Tomik. The Initial List of Manager or Members and Resident Agent added Counter-Defendant and SFE President Thomas Arjmandi as a manager of Tomik.

32. Upon information and belief, SFE is owned by Flash Vos and SFE is financed by Schumann Rafizadeh and the United Rafizadeh Family, LLP.

33. Schumann Rafizadeh owns an interest in SFE. Counter-Defendant D.R. and United Rafizadeh Family, LLP also hold a financial interest in SFE and have an interest in the outcome of SFE’s lawsuit against the ORIX Defendants.

34. Upon information and belief, although SFE holds the certificates in the MLMI Trust, Schumann Rafizadeh also has an interest in these certificates.

35. Flash Vos and SFE purportedly have a business relationship, though the lack of corporate formalities is demonstrated by the inability of Schumann Rafizadeh, SFE’s incorporator and Flash Vos’s president and owner, to explain how the companies work together or what they do.⁷

⁷ Schumann Rafizadeh was deposed on March 22, 2006. When asked about the relationship between Flash Vos and SFE, Schumann Rafizadeh answered that “the relationship is two companies that work together.” He provided no further details regarding the alleged business relationship between the two entities.

E. Predatorix

36. As though being forced to respond to SFE's barrage of unsubstantiated, threadbare allegations is not egregious enough, in yet another attempt to retaliate against ORIX Capital, Counter-Defendants have created an internet website to damage and disparage ORIX Capital's business reputation and goodwill and to tortiously interfere with the contractual relationships of ORIX Capital and the MLMI Trust.

37. Counter-Defendants maintain a website, www.predatorix.com (hereinafter, "Predatorix"), which is used to publish false and defamatory statements that disparage and libel ORIX Capital.⁸ Counter-Defendants have posted copyrighted text and images from ORIX Capital's website, www.orixcm.com, on Predatorix.

38. According to www.whois.net⁹, the domain name www.predatorix.com is registered to Counter-Defendant Thomas Arjmandi, who lists an address at 806 Main Street, Houston, Texas 77702. Thomas Arjmandi is also listed as the technical, administrative, and billing contact, all citing the same address of 806 Main in Houston. Upon information and belief, the postings on this website are written by Counter-Defendant C.R.¹⁰

39. On March 15, 2006, ORIX Capital, through counsel, sent a cease and desist letter to Thomas Arjmandi d/b/a www.predatorix.com, identifying the libelous and disparaging statements on Predatorix. ORIX Capital requested that Thomas Arjmandi

⁸ Although SFE has brought suit against ORIX Capital and ORIX USA, Counter-Defendants make no distinction between the entities in their libelous and disparaging statements referring simply to "ORIX."

⁹ WHOIS is an Internet utility that returns information about a domain name or IP address. It is a tool that is used to obtain domain names in domain name databases. The WHOIS database contains the contact information of every domain owner on the Internet. The information usually includes domain name owner, phone number and mailing address of the person in charge of the Web site.

¹⁰ The postings on the web-page are signed by "Cyrus."

d/b/a www.predatorix.com remove the libelous and disparaging statements identified from its website.

40. ORIX Capital has not received a response to its March 15, 2006 letter. Instead, Counter-Defendants continue to post false, libelous and disparaging words and statements about ORIX Capital. As confirmation of their injurious intent, Counter-Defendants have blocked ORIX Capital and its counsel from accessing Predatorix. When access is attempted from the servers of ORIX Capital and its counsel, a webpage appears that states “you don’t have permission to access/ on this server (sic).”

41. Counter-Defendants continue to post additional disparaging and false statements about ORIX Capital. On or about March 30, 2006, making clear that the intent of the website is to retaliate against ORIX Capital and Wells Fargo, Counter-Defendants updated the website and added a “dedication” page, which contains false and defamatory statements and implies that “ORIX” and Wells Fargo’s lending practices have resulted in financial ruin and death.

42. Upon information and belief, Counter-Defendants SFE, Schumann Rafizadeh, C.R., D.R., Houman Thomas Arjmandi, and Keon Michael Arjmandi have conspired together to establish Predatorix and use the website as their vehicle for making libelous and disparaging statements about ORIX Capital. Moreover, the Counter-Defendants have conspired together to use Predatorix to tortiously interfere with the contracts and business relationships of ORIX Capital and the MLMI Trust. Counter-Defendants have created and used Predatorix to attempt to bolster SFE’s claims and to support its litigation. Finally, Counter-Defendants, because they have conspired together

to create the website, are each responsible for the use of ORIX Capital's copyrighted material on Predatorix.

F. Counter-Defendants' Additional Libelous and Disparaging Statements

43. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital's effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. In his affidavit, Thomas Arjmandi makes libelous and disparaging statements related to ORIX Capital that are unrelated to the subject matter of the Lee Hall litigation.

44. In addition to the libelous website, C.R. has posted links to Predatorix and commentary about ORIX Capital on various articles contained on www.wikipedia.com.¹¹ These comments and links were removed by Wikipedia.com due to C.R.'s violation of Wikipedia.com's policies and guidelines. Consequently, C.R. was blocked from editing these entries on Wikipedia.com. Nonetheless, C.R. continues to edit the entries and post the link to Predatorix, in violation of Wikipedia.com's policies and guidelines.

VI. CAUSES OF ACTION

COUNT ONE – LIBEL PER SE

45. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 44, inclusive, of this Amended Counterclaim as if fully set forth herein.

¹¹ Wikipedia.com is an online encyclopedia that allows its entries to be edited by anyone who accesses the website.

46. Counter-Defendants, doing business as Predatorix, have published defamatory statements about ORIX Capital through a website at www.predatorix.com. These statements are widely and publicly available through the internet.

47. Upon information and belief, Counter-Defendants created the website Predatorix on or about February 14, 2006. Since that time, at the top of nearly every page of Predatorix is the name of the website's domain, "Predatorix," in large type and a graphical logo depicting a wolf in sheep's clothing.

48. The domain name and logo are defamatory and constitute willful and knowing business libel.

49. The domain name and logo are libel *per se* because they are reasonably calculated to injure ORIX Capital's reputation. The domain name and logo expose ORIX Capital to public hatred, contempt, ridicule, or financial injury.

50. The domain name and logo are also libel *per se* because their use is reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

51. Upon information and belief, Counter-Defendants published a statement about ORIX Capital on March 14, 2006. On or about that date, Thomas Arjmandi and C.R. updated its "The Pic-of-the-Week" page of Predatorix. On that page, the website states: "ORIX is determined to recover. So determined in fact, that they are willing to spend more in the pursuit of recovery, than the recovery itself.... ORIX spent over \$22M to recover \$19.4M, smooth. Very smooth."

52. This statement is defamatory and constitutes willful and knowing business libel.

53. The statement constitutes libel *per se* because it was reasonably calculated to injure ORIX Capital's reputation. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

54. The statement is also libel *per se* because it is reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

55. Moreover, the statement is grossly inaccurate and false because the amount recovered by the MLMI Trust in the referenced litigation was greatly in excess of the litigation expenses paid by the Trust in that case.

56. Upon information and belief, Counter-Defendants published a statement about ORIX Capital on March 21, 2006. On or about that date, Counter-Defendants added a document to Predatorix titled "Wells Fargo and ORIX Magic Tricks." This document includes defamatory and disparaging statements, including the following:

- "This magic tricks [sic] works [sic] by taking REMIC Trusts [sic] money by cooking up the books to make it look like the Trusts [sic] owes 'P&I Advances' to Servicers and Trustee";
- "In effect, every time Orix [sic] takes money out of one pocket of Orix [sic] and puts it in the other pocket of Orix [sic], the Trust is obligated to refill the empty pocket plus interests [sic] for Orix [sic]. With this tricks [sic] Orix [sic] can indefinitely siphon all the money it wants from the Trust. Orix [sic] pays out once, collects twice, thus doubling its money. It is like smoke and mirrors trick!";
- "Now, the application of special effects can significantly improve and multiply the disappeared funds. For example, taking the litigation expenses from one lawsuit and applying it again in another lawsuit! This improvement to this trick can actually make a lot of funds disappear from Trusts and Borrower/Guarantor's equity, tax-free, compliments of REMIC regulations diversions! This is another smoke and mirror trick for complex disappearing act"; and
- "These magic tricks works [sic] by manipulating the distribution reports and 1066 Tax return form and the SEC disclosure violations.

(Disabling codes and regulations intended to prevent such illegal activities.)”.

57. These statements are defamatory and constitute willful and knowing business libel.

58. These statements constitute libel *per se* because they are reasonably calculated to injure ORIX Capital’s reputation. These statements expose ORIX Capital to public hatred, contempt, ridicule, or financial injury.

59. These statements constitute libel *per se* because they accuse ORIX Capital of engaging in criminal conduct.

60. These statements are also libel *per se* because they are reasonably calculated to impeach ORIX Capital’s honesty, integrity, virtue, or reputation.

61. Moreover, these statements are grossly inaccurate and false because ORIX Capital does not recover any advances to which it is not entitled, does not recover funds twice, does not apply litigation expenses, and does not engage in illegal tax and/or S.E.C. reporting.

62. Upon information and belief, on or about March 23, 2006, Counter-Defendants updated the “Pick-of-the-Week” and added a sixteen second clip of John Dinan’s video deposition testimony. The video clip available on Predatorix omits any context for Mr. Dinan’s statements and misleads the viewer. The source of the video clip is not identified, the video clip does not include the question posed to Mr. Dinan, and it is evident from the clip that he had not finished his answer. The video clip appears to show Mr. Dinan explaining how ORIX Capital is able to recover certain advances twice, when in reality, Mr. Dinan is explaining how ORIX Capital receives funds from the trusts when

ORIX Capital is acting as Special or Master Servicer when it also is first-loss certificateholder.

63. This statement is defamatory and disparaging because the explanatory context is intentionally withheld and the statement creates the false impression that ORIX Capital “doubles up” on advances to which it is not entitled. The statement constitutes willful and knowing business libel.

64. The statement is libel *per se* because it is reasonably calculated to injure ORIX Capital’s reputation. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

65. The statement is also libel *per se* because it is reasonably calculated to impeach ORIX Capital’s honesty, integrity, virtue, or reputation.

66. Moreover, the statement is grossly inaccurate and false. The omitted context demonstrates that ORIX Capital does not recover advances to which it is not entitled, and in fact, explains that the MLMI Trust experienced a loss for the mortgage on the Arlington Apartments.

67. Upon information and belief, Counter-Defendants published a statement about ORIX Capital on March 30, 2006. On or about that date, Counter-Defendants updated the “About” page of Predatorix. On that page, the website states:

This website is dedicated to all the victims of Wells Fargo & ORIX’s predatory lending and discriminatory practices including;

- 1) All borrowers and guarantors who lost assets, were stripped of equity, incurred physical and emotional injuries, or lost their lives upon loss of their life-time earnings.
- 2) All investors who have lost their pension funds and retirement investments in CMBS bonds (certificateholders).

3) All tenants of the seized commercial and residential properties who suffered neglect and mismanagement at the hands of Receiver/Keepers of the seized properties due to health and safety violations, fires, shootings, theft or drowning.

Especially David Pena of Empire Center Dallas, who died of a heart attack after his property was seized and Justin & Daren Ruffin, twin brothers that drowned in a seized apartment's pool.

68. This statement is defamatory and constitutes willful and knowing business libel.

69. The statement is libel *per se* because it is reasonably calculated to injure ORIX Capital's reputation because it implies that ORIX Capital caused financial ruin and death. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

70. The statement is also libel *per se* because it is reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

71. The statement is libel *per se* because it falsely imputes crimes to ORIX Capital.

72. Moreover, the statement is grossly inaccurate and false. Counter-Defendants falsely state that ORIX Capital engages in predatory lending and discriminatory practices. Moreover, Counter-Defendants falsely imply that ORIX Capital was somehow involved in the drowning deaths of two brothers. Further, one of the alleged victims, David Pena, is alive and well.

73. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital's effort, on behalf of

the MLMI Trust, to obtain payment of the Lee Hall loan. In his affidavit, Thomas Arjmandi states, “I am also aware of numerous false statements and misrepresentations by Wells Fargo, the Trustee and Orix [sic] the Servicer of the MLMI REMIC Trust to various courts in sworn testimonies and affidavits. Some of these false statements and misrepresentations are documented on the Website WWW.PREDATORIX.COM.”

74. Counter-Defendants’ libelous statement about ORIX Capital is not related to the subject matter of the Lee Hall litigation and is not subject to any privilege.

75. This statement is defamatory and constitutes willful and knowing business libel.

76. The statement is libel *per se* because it is reasonably calculated to injure ORIX Capital’s reputation. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

77. The statement is also libel *per se* because it is reasonably calculated to impeach ORIX Capital’s honesty, integrity, virtue, or reputation.

78. Moreover, the statement is grossly inaccurate and false because ORIX Capital has not made false statements and/or misrepresentations to any court in the form of testimonies and/or affidavits.

79. Upon information and belief, Counter-Defendants published a statement about ORIX Capital on May 30, 2006. On or about that date, the following commentary was added to Predatorix: “Today I have added a new Pick-of-the-Week as well as a new Lie by ORIX, both are very interesting.” The commentary is linked to another page that bears the heading, “ORIX flat out lied” and includes snippets from documents—out of context and without full sentences in some cases—and asks, “Which is the truth?” These

pages imply that ORIX Capital has lied and misled investors regarding the proceeds of certain settlements.

80. These statements are defamatory and constitute willful and knowing business libel.

81. The statements are libel *per se* because they are reasonably calculated to injure ORIX Capital's reputation. These statements expose ORIX Capital to public hatred, contempt, ridicule, or financial injury.

82. These statements are also libel *per se* because they are reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

83. Moreover, these statements are grossly inaccurate and false. Mr. Dinan's statements are not inconsistent nor are they lies. Mr. Dinan's statements refer to both the trust accounting treatment of certain settlement liquidations pursuant to the PSA and to a mortgagee's obligations under its mortgage and/or guaranty documents.

84. Upon information and belief, Counter-Defendants published a statement about ORIX Capital on June 19, 2006. On or about that date, the following commentary was added to the front page: "I have also added an [sic] scan of a USA Today article where Fannie Mae was fined \$400M for similar practices of Wells Fargo and Orix [sic]." On or about the same day, an article from USA Today was added to Predatorix.

85. These statements are defamatory and constitute willful and knowing business libel. To compare ORIX Capital to the allegations facing Fannie Mae is to accuse ORIX Capital of fraud and wrongdoing.

86. The statements are libel *per se* because they are reasonably calculated to injure ORIX Capital's reputation. These statements expose ORIX Capital to public hatred, contempt, ridicule, or financial injury.

87. These statements are also libel *per se* because they are reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

88. Moreover, these statements are grossly inaccurate and false. ORIX Capital has never been accused of any conduct similar to that alleged against Fannie Mae. ORIX Capital has never engaged in accounting misconduct or fraud.

89. Upon information and belief, Counter-Defendants published another defamatory statement about ORIX Capital on or about June 19, 2006. On that date, Counter-Defendants added a new page to Predatorix, entitled "ORIX v. LaSalle and Nomura Securities." On that page, Counter-Defendants have posted documents from lawsuits under the text, "Below are documents relating to the suit which was won by Nomura Securities." This statement is simply false and the page omits relevant procedural history and documents which show precisely the opposite; although Nomura Securities was granted summary judgment by a district court judge, that judgment was vacated and remanded by the Second Circuit Court of Appeals

90. These statements are defamatory and constitute willful and knowing business libel. The statement on Predatorix that Nomura Securities "won" is disparaging and defamatory because is made with the intent to damage ORIX Capital's business reputation and because it is clearly false.

91. The statements are libel *per se* because they are reasonably calculated to injure ORIX Capital's reputation. These statements expose ORIX Capital to public hatred, contempt, ridicule, or financial injury.

92. These statements are also libel *per se* because they are reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

93. Moreover, these statements are grossly inaccurate and false. Although Nomura Securities won a motion for summary judgment at the district court level, this decision was vacated and remanded by the Second Circuit Court of Appeals.

94. Counter-Defendants were acting with actual malice when the statements were made. Upon information and belief, Counter-Defendants published the statements with knowledge of their falsity or with reckless disregard for the truth.

95. Counter-Defendants also were acting with negligence when the statements were made. Counter-Defendants knew or should have known that the statements were false. Upon information and belief, Counter-Defendants failed to determine the truth of the statements before publishing them.

96. Each Counter-Defendant is also liable for the acts of the other Counter-Defendants through theories of participatory and vicarious liability, including piercing the corporate veil. One of the purposes of the defamatory statements is to attempt to bolster SFE's claims and to support its litigation. The individual Counter-Defendants, in their capacity as incorporator, officer, or investor in SFE, are each vicariously liable for the statements.

97. By reason of the foregoing, ORIX Capital is entitled to damages, including but not limited to exemplary damages and injunctive relief, because Counter-

Defendants have made statements that constitute libel *per se*. Moreover, ORIX Capital has incurred attorneys' fees and expenses in attempting to have Counter-Defendants remove the statements from www.predatorix.com and www.wikipedia.com.

COUNT TWO – BUSINESS DISPARAGEMENT

98. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 97, inclusive, of this Amended Counterclaim as if fully set forth herein.

99. Upon information and belief, Counter-Defendants, doing business as Predatorix, have published disparaging words about ORIX Capital's economic interests through a website at www.predatorix.com. These statements are widely and publicly available through the internet.

100. Upon information and belief, Counter-Defendants created the website Predatorix on or about February 14, 2006. Since that time, at the top of nearly every page of Predatorix is the name of the website's domain, "Predatorix," in large type and a graphical logo depicting a wolf in sheep's clothing. The use of this domain name and logo disparage ORIX Capital.

101. Upon information and belief, Counter-Defendants published disparaging words about ORIX Capital's economic interests on March 14, 2006. On or about that date, Counter-Defendants updated its "The Pic-of-the-Week" page of Predatorix. On that page, the website states: "ORIX is determined to recover. So determined in fact, that they are willing to spend more in the pursuit of recovery, than the recovery itself.... ORIX spent over \$22M to recover \$19.4M, smooth. Very smooth."

102. Upon information and belief, Counter-Defendants published disparaging statements about ORIX Capital on March 21, 2006. On or about that date, Counter-Defendants added a document to Predatorix titled "Wells Fargo and ORIX Magic

Tricks.” This document includes defamatory and disparaging statements, including the following:

- “This magic tricks [sic] works [sic] by taking REMIC Trusts [sic] money by cooking up the books to make it look like the Trusts [sic] owes ‘P&I Advances’ to Servicers and Trustee”;
- “In effect, every time Orix [sic] takes money out of one pocket of Orix [sic] and puts it in the other pocket of Orix [sic], the Trust is obligated to refill the empty pocket plus interests [sic] for Orix [sic]. With this tricks [sic] Orix [sic] can indefinitely siphon all the money it wants from the Trust. Orix [sic] pays out once, collects twice, thus doubling its money. It is like smoke and mirrors trick!”;
- “Now, the application of special effects can significantly improve and multiply the disappeared funds. For example, taking the litigation expenses from one lawsuit and applying it again in another lawsuit! This improvement to this trick can actually make a lot of funds disappear from Trusts and Borrower/Guarantor’s equity, tax-free, compliments of REMIC regulations diversions! This is another smoke and mirror trick for complex disappearing act”; and
- “These magic tricks works [sic] by manipulating the distribution reports and 1066 Tax return form and the SEC disclosure violations. (Disabling codes and regulations intended to prevent such illegal activities.)”.

103. Upon information and belief, on or about March 23, 2006, Counter-Defendants updated the “Pick-of-the-Week” and added a sixteen second clip of John Dinan’s video deposition testimony. The video clip disparages ORIX Capital because it omits any context for Mr. Dinan’s statements and misleads the viewer. This statement is disparaging because the explanatory context is intentionally withheld and the statement creates the false impression that ORIX Capital “doubles up” on advances to which it is not entitled.

104. Upon information and belief, Counter-Defendants published additional disparaging words about ORIX Capital on March 30, 2006. On or about that date,

Counter-Defendants updated the “About” page of www.predatorix.com. On that page, the website states:

This website is dedicated to all the victims of Wells Fargo & ORIX’s predatory lending and discriminatory practices including;

- 1) All borrowers and guarantors who lost assets, were stripped of equity, incurred physical and emotional injuries, or lost their lives upon loss of their life-time earnings.
- 2) All investors who have lost their pension funds and retirement investments in CMBS bonds (certificateholders).
- 3) All tenants of the seized commercial and residential properties who suffered neglect and mismanagement at the hands of Receiver/Keepers of the seized properties due to health and safety violations, fires, shootings, theft or drowning.

Especially David Pena of Empire Center Dallas, who died of a heart attack after his property was seized and Justin & Daren Ruffin, twin brothers that drowned in a seized apartment’s pool.

105. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital’s effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. In his affidavit, Thomas Arjmandi states, “I am also aware of numerous false statements and misrepresentations by Wells Fargo, the Trustee and Orix [sic] the Servicer of the MLMI REMIC Trust to various courts in sworn testimonies and affidavits. Some of these false statements and misrepresentations are documented on the Website WWW.PREDATORIX.COM.”

106. Upon information and belief, Counter-Defendants published a disparaging statement about ORIX Capital on May 30, 2006. On or about that date, the following commentary was added to Predatorix: “Today I have added a new Pick-of-the-Week as

well as a new Lie by ORIX, both are very interesting.” The commentary is linked to another page that bears the heading, “ORIX flat out lied” and includes snippets from documents—out of context and without full sentences in some cases—and asks, “Which is the truth?” These pages disparage ORIX Capital because they imply that ORIX Capital has lied and misled investors regarding the proceeds of certain settlements.

107. Upon information and belief, Counter-Defendants published a disparaging statement about ORIX Capital on June 19, 2006. On or about that date, the following commentary was added to the front page: “I have also added an [sic] scan of a USA Today article where Fannie Mae was fined \$400M for similar practices of Wells Fargo and Orix [sic].” On or about the same day, an article from USA Today was added to Predatorix. These statements are disparaging because comparing ORIX Capital to the allegations made against Fannie Mae is to accuse ORIX Capital of engaging in accounting misconduct and fraud.

108. Upon information and belief, Counter-Defendants published a disparaging statement about ORIX Capital on June 19, 2006. On or about that date, a new page was added to Predatorix entitled “ORIX and LaSalle vs. Nomura Securities.” Beneath the title is the following statement: “Below are documents relating to the suit which was won by Nomura Securities” and there are links to several documents. These statements are disparaging because Counter-Defendants intentionally omitted critical context—the fact that although the trial court granted Nomura Securities’ motion for summary judgment, the Second Circuit Court of Appeals vacated and remanded that judgment. The lack of a context is disparaging to ORIX Capital.

109. All of these statements are disparaging, false, and create a defamatory impression. Moreover, the statements are grossly inaccurate and false as described in Count One.

110. Counter-Defendants were acting with actual malice when these statements were made. Upon information and belief, Counter-Defendants published the statements with knowledge of their falsity or with reckless disregard for the truth and intended to interfere with ORIX Capital's economic interests and without privilege.

111. Each Counter-Defendant is also liable for the acts of the other Counter-Defendants through theories of participatory and vicarious liability, including piercing the corporate veil. One of the purposes of the defamatory statements is to attempt to bolster SFE's claims and to support its litigation. The individual Counter-Defendants, in their capacity as incorporator, officer, or investor in SFE, are each vicariously liable for the statements.

112. By reason of the foregoing, ORIX Capital is entitled to damages, including but not limited to exemplary damages and injunctive relief because Counter-Defendants have made statements that disparage ORIX Capital's economic interests. Moreover, ORIX Capital has incurred attorneys' fees and expenses in attempting to have Counter-Defendants remove the statements from www.predatorix.com and www.wikipedia.com.

**COUNT THREE – TORTIOUS INTERFERENCE WITH
CONTRACTUAL RELATIONSHIPS**

113. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 112, inclusive, of this Amended Counterclaim as if fully set forth herein.

114. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital's effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. The affidavit includes libelous and disparaging statements about ORIX Capital. This affidavit was filed to the detriment of ORIX Capital and the MLMI Trust. Counter-Defendant Thomas Arjmandi is interfering with the contracts and business relationships of ORIX Capital and the MLMI Trust with an improper motive or means.

115. Counter-Defendants' intentional and tortious interference with the contracts and business relationships of ORIX Capital and the MLMI Trust with third parties results in injury to ORIX Capital and the MLMI Trust, which have suffered and will continue to suffer losses and irreparable injury to their business relations with third parties.

116. Each Counter-Defendant is also liable for the statements of Thomas Arjmandi through theories of participatory and vicarious liability, including piercing the corporate veil. The individual Counter-Defendants, in their capacity as incorporator, officer, or investor in SFE, are each vicariously liable for the statements.

117. By reason of the foregoing, ORIX Capital and the MLMI Trust are entitled to damages, including but not limited to exemplary damages and injunctive relief against Counter-Defendants.

COUNT FOUR - COMMON LAW CONSPIRACY

118. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 117, inclusive, of this Amended Counterclaim as if fully set forth herein.

119. The acts and conduct of Counter-Defendants SFE, Schumann Rafizadeh, C.R., D.R., Thomas Arjmandi, and Keon Arjmandi, as set forth above in this Amended Counterclaim constitute conspiracy in Texas at common law.

120. Counter-Defendants' conduct as alleged above has damaged and will continue to damage ORIX Capital and the MLMI Trust, and has resulted in losses to ORIX Capital and the MLMI Trust and an illicit gain to Counter-Defendants in an amount unknown at the present time.

121. Further, upon information and belief, the Counter-Defendants have an agreement among themselves, as shown by the commercial connection, complex corporate structure and commonality of officers and directors, to make libelous and disparaging statements about ORIX Capital and to tortiously interfere with the contracts and business relationships of ORIX Capital and the MLMI Trust.

122. The Counter-Defendants have acted in furtherance of the alleged agreement by creating SFE as their vehicle to bring a frivolous sham lawsuit and to create a website, Predatorix, in an attempt to bolster SFE's claims, to support its litigation, to make libelous and disparaging statements about ORIX Capital, to tortiously interfere with the contracts and business relationships of ORIX Capital and the MLMI Trust, and to infringe ORIX Capital's copyright.

123. The Counter-Defendants have intentionally participated in the furtherance of the alleged conspiracy to make libelous and disparaging statements about ORIX

Capital and to tortiously interfere with the contracts and business relationships of ORIX Capital and the MLMI Trust.

124. The result of the Counter-Defendants' intentional and active agreement and participation in the alleged conspiracy injured ORIX Capital by requiring it to defend frivolous lawsuits brought against ORIX Capital and to expend legal fees to stop the libelous and disparaging statements about ORIX Capital on www.predatorix.com and www.wikipedia.com. In addition, Counter-Defendants' interference with the contracts and business relationships of ORIX Capital and the MLMI Trust have caused damage to ORIX Capital and the MLMI Trust.

125. By reason of the foregoing, ORIX Capital and the MLMI Trust are entitled to damages against Counter-Defendants.

COUNT FIVE—COPYRIGHT INFRINGEMENT

126. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 125, inclusive, of this Amended Counterclaim as if fully set forth herein.

127. Since creation, ORIX Capital has been, and still is, the sole owner of all right, title, and interest in and to the corresponding copyright. ORIX Capital has or will have complied in all respects with the Copyright Act, 17 U.S.C. §101 *et seq.*, and with all other laws governing copyrights.

128. ORIX Capital has applied for an original certificate of registration from the Register of Copyrights and filed for registration on July 11, 2006.

129. Counter-Defendants infringed ORIX Capital's copyrights by publishing and placing on the market photographs and text, which were copied largely from ORIX Capital's copyrighted Worldwide Web Site.

130. Upon information and belief, on or about March 14, 2006, Counter-Defendants updated “The Pick-of-the-Week” page on Predatorix. On that page, Counter-Defendants posted an image that is identical to an image posted on ORIX Capital’s copyrighted website that was available at <http://www.orixcm.com/justpay/justpay.asp>. The text and graphics are copied directly from ORIX Capital’s website, which indicates that the website was copyrighted in 2006 by ORIX Capital.

131. Counter-Defendants have willfully infringed the copyrights in the photographs and text of ORIX Capital, including but not limited to displaying copyrighted material and images on Predatorix.

132. As a result of the foregoing activities, Counter-Defendants are liable to ORIX Capital for willful copyright infringement under 17 U.S.C. § 501. ORIX Capital has suffered, and will continue to suffer, substantial and irreparable damage to its business reputation and goodwill.

133. Each Counter-Defendant is also liable for the acts of the other Counter-Defendants through theories of participatory and vicarious liability, including piercing the corporate veil. One of the purposes of Predatorix is to attempt to bolster SFE’s claims and to support its litigation. The individual Counter-Defendants, in their capacity as incorporator, officer, or investor in SFE, are each vicariously liable for the copyright infringement.

134. ORIX Capital has no adequate remedy at law for Counter-Defendants’ wrongful conduct in that (i) ORIX Capital’s copyrights are unique and valuable property that have no readily determinable market value; (ii) the infringement by Counter-Defendants constitutes an interference with ORIX Capital’s goodwill and customer

relationships; and (iii) Counter-Defendants' wrongful conduct, and the damages resulting to ORIX Capital therefrom, is continuing. Counter-Defendants' acts of copyright infringement have caused ORIX Capital irreparable injury, and Counter-Defendants threaten to continue to commit these acts. Accordingly, ORIX Capital is entitled to injunctive relief pursuant to 17 U.S.C. § 502.

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, ORIX Capital, on behalf of itself and the MLMI Trust, prays that the Court:

- i. award ORIX Capital and the MLMI Trust all damages to which they are entitled, including, but not limited to, exemplary damages;
- ii. render judgment against Counter-Defendants for pre-judgment and post-judgment interest, reasonable attorneys' fees and expenses, costs of suit, and all other relief that the Court deems appropriate; and
- iii. award ORIX Capital and the MLMI Trust all other relief that the Court determines to be just and equitable.

Dated: August 22, 2006.

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Katherine R. Hendler

Paul E. Coggins
State Bar No. 04504700
Beth G. Jaynes
State Bar No. 08052020
Katherine R. Hendler
State Bar No. 24036752
Kelly R. Vickers
State Bar No. 24041827
1717 Main Street
Suite 5000
Dallas, Texas 75201
(214) 747-5070
(214) 747-2091 - facsimile

Counsel for Counter-Plaintiff
ORIX CAPITAL MARKETS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 22, 2006 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system, all other counsel will be served via U.S. Mail.

Linda R. Stahl
Andrews & Kurth L.L.P.
1717 Main Street
Suite 3700
Dallas, TX 75201

Defendant
Wells Fargo Bank Minnesota

Jon P. Bohn
Bohn & Ducloux
806 Main, Suite 1411
Houston, Texas 77002

Plaintiff
Super Future Equities, Inc.

Julie Zanutto
Law Offices of Julie Zanutto
900 Jackson Street, Suite 750
Dallas, Texas 75202

Plaintiff
Super Future Equities, Inc.

Jeffrey W. Glass
Jeffrey W. Glass, P.C.
8980 Lakes at 310 Drive, Suite 250
Houston, Texas 77054

Counter-Defendants
D.R. and C.R.

James W. Karel
3838 Oak Lawn, Suite 1700
Dallas, Texas 75219

Counter-Defendants
D.R. and C.R.

/s/ Katherine R. Hendler
Katherine R. Hendler

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