

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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UNITED STATES OF AMERICA	)	
	)	
and	)	
	)	
STATE OF ILLINOIS, <u>ex rel.</u>	)	
Attorney General JAMES E. RYAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	
MERCANTILE MORTGAGE COMPANY, INC.	)	
an Illinois corporation,	)	
	)	
BRAN SILVEOUS, and RONALD NOBLE,	)	
	)	
individually and as officers of Mercantile	)	
Mortgage Company, Inc.,	)	
	)	
Defendants.	)	

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**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiffs, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”) and the Secretary of the Department of Housing and Urban Development (“HUD”), and the State of Illinois, by their undersigned attorneys, allege as follows:

1. This is an action under Sections 5(a)(1), 13(b), 16(a), and 19(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 53(b), 56(a), and 57b(a)(1), and Section 108(c) of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1607(c), to secure permanent injunctive

relief and other equitable relief, including restitution and disgorgement, against Defendants for engaging in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); engaging in violations of the TILA, 15 U.S.C. §§ 1601-1666j, as amended; engaging in violations of the Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639; engaging in violations of the TILA’s implementing Regulation Z (“Regulation Z”), 12 C.F.R. § 226, as amended; and engaging in violations of the Commission’s Trade Regulation Rule Concerning Credit Practices (“Credit Practices Rule” or “CPR”), 16 C.F.R. § 444.

2. This is an action under Section 8(d)(4) of the Real Estate Settlement Procedures Act of 1974 (“RESPA”), 12 U.S.C. § 2607(d)(4), to secure statutory remedies, permanent injunctive relief, and other equitable relief against Defendant Mercantile for engaging in violations of Section 8 of RESPA, 12 U.S.C. § 2607, and the Department of Housing and Urban Development’s Regulation X (“Regulation X”), 24 C.F.R. § 3500.14.

3. This is an action under the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 *et seq.*, and Section 130(e) of the TILA, 15 U.S.C. § 1640(e), to secure permanent injunctive relief and other equitable relief, including restitution and disgorgement, against Defendants for engaging in unfair or deceptive acts or practices in violation of 815 ILCS 505/2 and engaging in violations of the HOEPA, 15 U.S.C. § 1639.

#### **JURISDICTION AND VENUE**

4. This court has subject matter jurisdiction over the claims of the United States under 28 U.S.C. §§ 1331, 1337(a), and 1345, under 15 U.S.C. §§ 45(a)(1), 53(b), 57b, and 1607(c), and under 12 U.S.C. § 2614; and over the claims of the State of Illinois under 28 U.S.C. § 1367 and under

15 U.S.C. § 1640(e).

5. Venue is proper in the United States District Court for the Northern District of Illinois under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

### **THE DEFENDANTS**

6. Defendant Mercantile Mortgage Company (“Mercantile”) is an Illinois corporation, with its principal place of business at 470 Olde Worthington Road, Westerville, Ohio 43082. Mercantile’s principal business is the solicitation, offering, and extending of mortgage loans to consumers, and the sale of mortgage loans. It transacts business in twenty-three states. Mercantile transacts business in this district.

7. At all times material herein, Defendant Mercantile has been a “creditor” as that term is defined in Section 103(f) of the TILA, 15 U.S.C. § 1602(f), and Section 226.2(a)(17) of Regulation Z, 12 C.F.R. § 226.2(a)(17), and in Section 444.1(f) of the CPR, 16 C.F.R. § 444.1(f), and therefore is required to comply with applicable provisions of the TILA, HOEPA, Regulation Z, and CPR.

8. At all times material herein, Defendant Mercantile has been a “person” as that term is defined by Section 3(5) of RESPA, 12 U.S.C. § 2602(5), and is, therefore, subject to the requirements of the RESPA and Regulation X.

9. Defendant Bran Silveous is President of Mercantile, and supervises Mercantile’s corporate headquarters in Westerville, Ohio. Individually, or in concert with others, he formulates, directs, controls, or participates in the acts and practices of Mercantile’s mortgage lending business, including the acts and practices alleged in this complaint. His principal place of business is located at 470 Olde Worthington Road, Westerville, Ohio 43082.

10. Defendant Ronald Noble is Vice Chairman of Mercantile. Individually, or in concert with others, he formulates, directs, controls, or participates in the acts and practices of Mercantile's mortgage lending business, including the acts and practices alleged in this complaint. His principal place of business is located at 851 Trafalgar Court, Suite 132, Maitland, Florida 32751.

### **DEFENDANTS' BUSINESS PRACTICES**

11. From at least 1988 until the present, Defendant Mercantile has been in the business of offering, extending, and selling mortgage loans, primarily in the "subprime" market. The subprime market is comprised of persons who are considered to be greater credit risks and, thus, do not meet the strict underwriting standards required to qualify for prime, or "A," credit. Hence, the financing provided to such persons is also commonly referred to as "B/C" or "nonconforming" credit. Subprime lenders like Mercantile make loans to borrowers with greater credit risk or perceived greater credit risk, including persons from lower-income or minority neighborhoods. Within the subprime loan market, Mercantile further specializes in refinancing existing mortgage loans.

12. To compensate for the greater credit risk or perceived greater risk involved in extending financing to the subprime market, Mercantile, like other subprime lenders, charges its customers prices that are substantially higher than those available to borrowers in the "A" market. This is reflected primarily in the higher interest rates and up-front fees charged to such customers.

13. Mercantile uses both Mercantile-employed loan officers ("loan officers") and third-party mortgage brokers not employed by Mercantile ("brokers") to solicit consumers to apply for mortgage loans. Mercantile develops close relationships with its brokers, some of whom refer a significant portion of their customers to Mercantile. These brokers often charge their customers

substantial broker fees – often as high as 8 to 10% of the loan amount. Typically, these broker fees are financed by the borrower and paid from Mercantile to the brokers out of the loan proceeds at closing. After Mercantile’s loan officers and brokers complete a loan application on behalf of the consumer, Mercantile reviews the loan application. If Mercantile approves the application, the loan is extended in Mercantile’s name.

14. After Mercantile makes a loan, Mercantile sells the loan on the secondary market, often on the same day as the loan closing or shortly thereafter. Mercantile does not service any loans itself. In selling the loan to the secondary market purchaser, Mercantile receives a back-end fee – often in the amount of at least 4% of the loan amount.

15. Mark Diamond (“Diamond”) is a mortgage broker who specializes in the subprime loan market. From at least January 1, 1998 to April 9, 1999, Diamond solicited loans on behalf of Dolphin Mortgage Company (“Dolphin”) as a mortgage broker. During this time, Diamond referred virtually every Dolphin loan customer that he procured to Mercantile. Mercantile automatically approved and paid to Dolphin the broker fee, which was typically as high as 10% of the loan amount. For virtually every Mercantile loan transaction brokered by Diamond during this time period, Diamond also conducted the Mercantile loan closings as Mercantile’s agent.

16. In approximately March 1999, Diamond severed his relationship with Dolphin and set up his own mortgage brokerage company, OSI Financial Services, Inc (“OSI”). From at least March 31, 1999 until at least October 2000, Diamond continued referring the overwhelming majority of his OSI customers to Mercantile. Mercantile automatically approved and paid to OSI the broker fee, which was typically as high as 10% of the loan amount, and constituted payment of a thing of value to

Diamond. From May 30, 1998 to August 31, 1999, Diamond also conducted the loan closings on behalf of Mercantile for over 100 Mercantile loans.

17. A significant number of loans originated by Mercantile are high-rate or high-fee loans covered by the Home Ownership and Equity Protection Act (“HOEPA”). The HOEPA applies to high-cost refinancing and home equity loans that are secured by the borrower’s principal dwelling, including loans where the total points and fees payable by the borrower exceed 8% of the total loan amount. If a loan qualifies as a high-cost loan under the HOEPA, the lender is required to provide to the consumer, three business days before closing, specific disclosures, which must include certain loan terms and the statement that the consumer could lose his or her home as a result of entering into the transaction (“HOEPA Disclosures”).

18. Mercantile’s loan officers and Diamond routinely solicit low-income individuals, including elderly persons and individuals who have significant equity in their homes, and who may not otherwise be considering a home equity loan. Mercantile’s loan officers and Diamond have engaged in numerous deceptive practices and other violations of law to induce consumers to take out Mercantile loans. Within a short time after closing a Mercantile loan, Mercantile’s loan officers or Diamond often have re-contacted the customer and induced or attempted to induce the customer again to refinance their loans with Mercantile. With each refinancing, substantial points and fees have been charged and added to the loan balance, often resulting in continually higher loan amounts and/or monthly mortgage payments.

19. In many instances, Mercantile’s loan officers and Diamond have misrepresented the terms and costs of the Mercantile loans. For example, they have represented that the consumer will

obtain a loan with a specified monthly payment amount, interest rate, or term of repayment. Instead, in many instances, the consumer has obtained a loan with a significantly higher monthly payment amount or interest rate, or a completely different term of repayment, than that previously promised. In many instances, Mercantile's loan officers and Diamond have falsely represented that the monthly payment amount of the new loan would include the payment into an escrow account for property taxes and insurance, when in fact it does not. In some instances, they have falsely represented the amount of cash the consumer will receive out of the loan proceeds to pay off his or her creditors or to pay for needed home repairs. Instead, the consumer has received significantly less cash out of the loan proceeds than that previously promised.

20. A significant number of Mercantile's mortgage loans have been 15-year loans requiring a large lump-sum "balloon" payment at the end of the term ("15-year balloon loans"). The 15-year balloon loans have had payment schedules with regular monthly payments of principal and interest that are approximately equal in value and a final payment that is substantially larger than the other payments. Thus, at the end of the term, the consumer will owe a large lump sum payment that is usually greater than 80% of the loan principal.

21. In many instances, Mercantile's loan officers and Diamond have misrepresented the existence of the balloon payment, in one or more of the following ways:

- a. by representing that the loan's payment schedule consists only of a specified monthly payment schedule, without disclosing the balloon payment;
- b. by representing that the loan principal would be fully paid off at the end of the loan term, when that is not the case; and

c. by representing that the loan does not contain a balloon payment.

22. Many of Mercantile's 15-year balloon loans fall under the definition of a high-rate or high-fee loan within the coverage of the HOEPA. For such HOEPA-covered balloon loans, the HOEPA requires the creditor to disclose the existence and amount of the balloon payment on the HOEPA Disclosures. However, until about May 2000, Mercantile's HOEPA Disclosures routinely failed to disclose the existence of the balloon payment for its HOEPA-covered 15-year balloon loans.

23. Moreover, in many instances, Mercantile has failed to provide the consumer with the required HOEPA Disclosures. In other instances, Mercantile has failed to provide the HOEPA Disclosures three business days in advance of closing, in violation of the HOEPA.

24. At the loan closing, Mercantile, directly or through an agent acting on its behalf, has presented to the consumer for signature a large stack of loan closing documents that has never been shown to the consumer before. Among these documents is the mortgage note itself, which contains a "Balloon Rider" or "Balloon Note" on each 15-year balloon loan. Many consumers have not noticed the Balloon Rider or Balloon Note. In those instances when the consumer has inquired about the balloon payment, Mercantile's loan officer or agent in many instances has misrepresented the meaning of the term to assuage the consumer's concern.

25. Under the Truth in Lending Act, a creditor is required to provide the consumer, prior to consummation of a loan transaction, with written disclosures of certain loan terms, including the annual percentage rate, finance charge, and payment schedule (as defined in Section 226.18 of Regulation Z, 12 C.F.R. § 226.18) ("TILA Disclosures"). In many instances, Mercantile has failed to provide the



consumer with these TILA Disclosures prior to consummation of the loan transaction, or at any time after the closing.

26. Virtually all of Mercantile's 15-year balloon loans have contained significant prepayment penalties in the event the consumer refinances the loan within the first three years. In many instances, Mercantile's loan officers and Diamond have misrepresented that the consumer can pay off the loan early without paying a penalty.

27. Diamond, while soliciting loans on behalf of Dolphin, and, later, doing business as OSI, acted as Mercantile's agent in both brokering and closing loans on behalf of Mercantile. For example, Diamond referred virtually every customer he procured to Mercantile from January 1998 to October 1999, and referred the vast majority of his customers to Mercantile from November 1999 to August 2000. For every loan transaction, Mercantile automatically approved Diamond's broker fee, typically 10% of the loan amount.

28. For over 100 Mercantile loan transactions, Mercantile, expressly or by implication, authorized Diamond to conduct the closing on Mercantile's behalf. These Mercantile closings typically took place in either Diamond's Dolphin or OSI offices, or in the consumer's home. At these closings, Diamond engaged in misrepresentations concerning the terms and costs of the loan, as he had during the initial solicitation of the consumer.

29. At the closing, Diamond presented the consumer with a stack of closing papers that had never been shown to the consumer before and had directed the consumer to sign the final loan documents without reading them. In many instances, Diamond had presented consumers with incomplete closing documents for signature, including mortgage documents and the Truth in Lending

Disclosure statements, in which the terms of the loan – such as the annual percentage rate, monthly payment amount, and balloon payment amount – were left blank at the time the consumer was asked to sign. Diamond also had requested that the consumer sign a Loan Brokerage Agreement in which the broker fee, under the name of Dolphin or OSI, was left blank. Diamond subsequently filled in the broker fee amount after the closing.

30. At all times material herein, Defendants Mercantile, Bran Silveous, and Ronald Noble have maintained a course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, by extending credit and providing mortgage loan-related services to consumers.

### **FEDERAL TRADE COMMISSION ACT VIOLATIONS**

#### **Count One**

(By Plaintiff United States of America)

31. In the course and conduct of offering and extending credit, Defendants Mercantile, Bran Silveous, and Ronald Noble have represented, expressly or by implication, that consumers would obtain a loan on specified terms and at specified costs, including but not limited to:

- a. a loan whose payment schedule consists of the regular monthly payment amount specified;
- b. a loan whose principal would be paid off at the end of the term, with no balloon payment;
- c. a loan with a specific monthly payment amount, interest rate, and/or term of repayment;

- d. a loan with no prepayment penalties;
- e. a specified amount of cash for disbursement to the borrower, and/or a specified amount of cash for disbursement on behalf of the borrower to third-party creditors and/or home improvement companies; and
- f. a monthly payment amount that includes the payment into an escrow account for property taxes and insurance.

32. In truth and in fact, in many instances, consumers did not obtain a loan on the specified loan terms, or at the specified costs. Instead, they received loans on substantially different terms, and/or at substantially different costs, including but not limited to:

- a. a loan whose payment schedule does not consist only of the regular monthly payment amount specified, but also includes a final, large lump-sum balloon payment at the end of the term;
- b. a loan requiring a large balloon payment at the end of the loan term;
- c. a different monthly payment amount, interest rate, and/or term of repayment than that previously specified;
- d. a loan with prepayment penalties;
- e. a different amount of cash for disbursement to the borrower than promised, and/or a different amount of cash for disbursement on behalf of the borrower to third-party creditors and/or home improvement companies than promised; and
- f. a monthly payment that did not include the payment into an escrow account for property taxes and insurance.

Therefore, Defendants' representations, as alleged in paragraph 31, were, and are, false or misleading.

33. Defendants' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

### **HOME OWNERSHIP AND EQUITY PROTECTION ACT VIOLATIONS**

#### **Count Two**

(By Plaintiffs United States of America and State of Illinois)

34. In the course of offering and extending credit to consumers, Mercantile has violated the HOEPA and Regulation Z by failing to provide material information required by the HOEPA and Regulation Z. Specifically:

- A. Mercantile in many instances has failed to disclose the existence of a balloon payment, in violation of Section 129(a)(2)(A) of the TILA, 15 U.S.C. § 1639(a)(2)(A), and Section 226.32(c)(3) of Regulation Z, 12 C.F.R. § 226.32(c)(3); and
- B. Mercantile in many instances has failed to provide consumers the disclosures required by the HOEPA, or has failed to provide such disclosures not less than three business days before consummation of the transaction, in violation of Sections 129(a) and (b) of the TILA, 15 U.S.C. §§ 1639(a) and (b), and Sections 226.31(c) and 226.32(c) of Regulation Z, 12 C.F.R. §§ 226.31(c) and 226.32(c).

35. Pursuant to Section 108(c) of the TILA, 15 U.S.C. § 1607(c), every violation of the HOEPA and Regulation Z constitutes a violation of the FTC Act.

36. By engaging in the violations of the HOEPA and Regulation Z set forth in paragraph 34, above, Defendant Mercantile also has engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**TRUTH IN LENDING ACT VIOLATIONS**

**Count Three**

(By Plaintiff United States of America)

37. In the course of offering and extending credit to consumers, Mercantile has violated the TILA and Regulation Z by failing to provide disclosures required by the TILA and Regulation Z.

Specifically:

- A. Mercantile in many instances has failed to provide the disclosures required by the TILA, or has failed to provide such disclosures in a form the consumer can keep, in violation of Section 128(a) of the TILA, 15 U.S.C. § 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 C.F.R. §§ 226.17 and 226.18; and
- B. Mercantile in many instances has failed to disclose on the Truth in Lending statement that it has taken a security interest in certain personal property, in violation of Section 128(a)(9) of the TILA, 15 U.S.C. § 1638(a)(9), and Section 226.18(m) of Regulation Z, 12 C.F.R. § 226.18(m).

38. Pursuant to Section 108(c) of the TILA, 15 U.S.C. § 1607(c), every violation of the TILA and Regulation Z constitutes a violation of the FTC Act.

39. By engaging in the violations of the TILA and Regulation Z set forth in paragraph 37,

above, Defendant Mercantile also has engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**CREDIT PRACTICES RULE VIOLATIONS**

**Count Four**

(By Plaintiff United States of America)

40. The Credit Practices Rule, promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, became effective on March 1, 1985, and has since that date remained in full force and effect.

41. The CPR, *inter alia*, prohibits a lender from taking or receiving from a consumer an obligation that constitutes or contains a non-possessory security interest in household goods other than a purchase money security interest. 16 C.F.R. § 444.2(a)(4).

42. In many instances, in connection with the extension of credit to consumers in or affecting commerce, Defendant Mercantile has taken obligations from consumers that constitute or contain a non-possessory security interest in household goods, other than a purchase money security interest, in violation of the CPR, 16 C.F.R. § 444.2(a)(4).

43. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the CPR constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

**REAL ESTATE SETTLEMENT PROCEDURES ACT VIOLATIONS**

**Count Five**

(By Plaintiff United States of America)

44. By engaging in the practices set forth in paragraphs 15 and 16, above, in many instances, Defendant Mercantile gave to and/or accepted from Diamond a fee, kickback, or thing of value pursuant to an agreement or understanding that business incident to or a part of a real estate settlement service involving federally related mortgage loans would be referred to a person in violation of Section 8(a) of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2607(a).

**ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT**

**Count Six**

(By Plaintiff State of Illinois)

45. By engaging in the practices set forth in paragraphs 31 and 32, above, Defendants have engaged in deceptive acts or practices in or affecting commerce in violation of Section 505/2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2.

**CONSUMER INJURY**

46. Consumers have suffered, and will continue to suffer, substantial injury as a result of Defendants' violations of the FTC Act, the Illinois Consumer Fraud and Deceptive Practices Act, TILA, HOEPA, Regulation Z, and CPR as set forth above.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America, pursuant to Sections 5(a), 13(b), and 19(a)(1) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b(a)(1), Section 108(c) of the TILA, 15 U.S.C. § 1607(c), Section 8(d)(4) of the RESPA, 12 U.S.C. § 2607(d)(4), and the Court's own equitable powers; and Plaintiff State of Illinois pursuant to the Illinois Consumer Fraud and Deceptive Practices Act, Section 130(e) of the TILA, 15 U.S.C. § 1640(e), and the Court's own equitable

powers, request that this Court:

1. Enter judgment against Defendants and in favor of Plaintiffs for each violation alleged in this complaint;
2. Permanently enjoin and restrain Defendants from violating the FTC Act and the Illinois Consumer Fraud and Deceptive Practices Act;
3. Permanently enjoin and restrain Defendant Mercantile from violating the TILA, HOEPA, Regulation Z, CPR, and RESPA;
4. Find Defendants jointly and severally liable for redress to all borrowers who were injured as a result of their violations, as appropriate;
5. Award such relief as the Court deems necessary to prevent unjust enrichment and to redress borrower injury resulting from Defendants' violations of the FTC Act, the Illinois Consumer Fraud and Business Practices Act, the HOEPA, the TILA and Regulation Z, the CPR, and the RESPA including, but not limited to, refund of monies paid and disgorgement of ill-gotten gains; and
6. Award Plaintiffs their costs of bringing this action, as well as such other relief as may be just and proper.



Dated:

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

PATRICK J. FITZGERALD  
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