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11 **SUPERIOR COURT OF ARIZONA**
 12 **IN MARICOPA COUNTY**

14 STATE OF ARIZONA, *ex rel.* KRISTIN K.
 15 MAYES, Attorney General,
 16 Plaintiff,
 17 v.
 18 DEED AND NOTE TRADERS, LLC;
 19 881HOME, LLC; DAVID KINAS and
 20 DEANNE KINAS, an individual and his
 21 spouse,
 22 Defendants.

Case No.: CV 2021-011201

STIPULATED CONSENT JUDGMENT

(Assigned to the Hon. Randall Warner)

23 The State of Arizona, *ex rel.* Kristin K. Mayes, the Attorney General (the “**State**” or
 24 “**Attorney General**”) filed a complaint and two amended complaints (collectively, a
 25 “**Complaint**”) commencing this case against Defendants Deed and Note Traders, LLC (“**DNT**”);
 26 881Home, LLC (“**881Home**”); David Kinas; and Deanne Kinas (where DNT, 881Home, and
 27 David Kinas are collectively referred to herein as the “**Deed and Note Defendants**,” all named
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1 defendants are the “**Defendants**,” and the State and Defendants are the “**Parties**”), alleging in
2 part violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534 (the “**ACFA**”).
3 Wishing to resolve all claims in this case without the need for further litigation or trial, the Parties
4 hereby mutually agree to the entry of this Stipulated Consent Judgment (the “**Consent**
5 **Judgment**”) by the Court.

6 **PRELIMINARY RECITALS**

- 7 1. Defendants have accepted service of the Complaint.
- 8 2. Defendants have been advised of their due process right to a trial in this matter and
9 have waived the same.
- 10 3. The Parties admit the jurisdiction of this Court over the subject matter and Parties
11 for the purpose of this Consent Judgment.
- 12 4. The Parties agree to the entry of this Consent Judgment by this Court without trial
13 or adjudication of any issue of fact or law and without any admission or finding of any allegations,
14 violations of any laws, guilt, liability, sanction, or wrongdoing.
- 15 5. The Parties acknowledge that this Court will retain jurisdiction for the purpose of
16 enforcing this Consent Judgment.
- 17 6. Defendants have consented and stipulated to entry of this Consent Judgment solely
18 as a compromise of disputed claims, and Defendants do not admit any allegation, liability, guilt,
19 wrongdoing, violation, or sanction.

20 **PARTIES**

- 21 7. The State is authorized to bring this action under the ACFA.
- 22 8. DNT is an Arizona limited liability company, organized on March 5, 1993, located
23 in Tucson, Arizona.
- 24 9. 881Home is an Arizona limited liability company, organized on February 12, 2009,
25 located in Tucson, Arizona.
- 26 10. David Kinas, a resident of Pima County, Arizona, is the sole manager of DNT and
27 the sole member of Olympic Holdings, which manages 881Home.
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1 11. At all times relevant to this Consent Judgment, David and Deanne Kinas were
2 married to each other, and David Kinas was acting for the benefit of himself and the Kinas marital
3 community. Deanne Kinas is named solely for any interest she may have in her marital
4 community with Defendant David Kinas.

5 12. All events, acts and practices described in, and relevant to, this Consent Judgment
6 took place in Arizona.

7 13. This Court has jurisdiction over the Complaint and the Parties necessary for the
8 Court to enter this Consent Judgment and any orders hereafter appropriate pursuant to A.R.S.
9 § 44-1528 and this Consent Judgment.

10 14. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

11 **FINDINGS OF FACT**

12 15. The State alleges that Defendants engaged in the following conduct:

13 16. The Deed and Note Defendants have provided real estate related services to
14 consumers in Arizona, including offering seller carryback financing for the purpose of purchasing
15 residential real property.

16 **The 2006 Consent Decree**

17 17. In 2006, after the State conducted a consumer fraud investigation, the State and
18 DNT entered into a Consent Decree that required DNT and all persons, corporations, and other
19 entities who act in concert or participation with the company to cease engaging in deceptive and
20 unfair practices related to real estate transactions.

21 18. In addition to restitution payments and injunctive terms, the Consent Decree
22 required DNT to pay \$200,000 in costs and attorneys' fees in three installments, with \$65,000
23 due by May 1, 2007, \$65,000 due by October 1, 2007, and \$70,000 due by February 1, 2008.

24 19. DNT paid the \$65,000 by May 1, 2007, in accordance with the Consent Decree.

25 **DNT's 2007 and 2010 Bankruptcies**

26 20. DNT filed for bankruptcy twice, first in 2007 and then in 2010.

1 21. When DNT filed its first bankruptcy, it listed as assets over 159 properties, valued
2 at over \$40 million, with approximately \$30 million in secured claims against those properties.
3 The plans ultimately approved by the Arizona Bankruptcy Court adjusted the outstanding
4 balances on those properties and allowed DNT to make interest-only payments for either five or
5 seven years depending on the lien's priority, at which time the balance would be due in full (i.e.,
6 a "balloon" payment). Under the plan, DNT's mortgages matured and the balloon payments
7 became due in full on either November 23, 2013, or November 23, 2015, depending on their
8 priority position.

9 22. The second bankruptcy plan provided that all general unsecured creditors,
10 including the State, would be paid in full with interest at the federal rate in semi-annual
11 installments.

12 23. The State filed a proof of claim for the unpaid costs and attorneys' fees from the
13 2006 Consent Decree, which claim was included in both bankruptcy plans as a general unsecured
14 claim. Under the plans, DNT was required to pay the State's claim in full with interest.

15 24. DNT has failed to timely, fully, and completely comply with its payment
16 obligation. DNT's debt to the State remains, and was not discharged in the second bankruptcy.

17 **The Deed and Note Defendants' Violations of the ACFA**

18 25. David Kinas operates DNT and 881Home as a single business unit.

19 26. At all times relevant to the Complaint, David Kinas exercised control over the
20 management and activities of DNT and 881Home.

21 27. The Deed and Note Defendants specialized in serving clients who could not obtain
22 traditional mortgage financing.

23 28. The Deed and Note Defendants advertised properties available for purchase
24 through a rent-to-own arrangement. The advertisements identified the listing company as
25 881Home without mention of DNT even when DNT in fact owned the properties.

26 29. The Deed and Note Defendants offered to assist consumers in purchasing homes
27 with seller carryback financing in which DNT acted as the seller.

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1 **ORDER**

2 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

3 **INJUNCTIVE TERMS**

4 40. The injunctive relief set forth in this Consent Judgment is binding upon any of the
5 following that receive actual notice of this Consent Judgment through personal service or
6 otherwise: (a) Defendants and their subsidiaries; (b) Defendants' officers, agents, servants,
7 employees, and attorneys; and (c) those persons in active concert or participation with Defendants
8 or any of their officers, agents, servants, employees, or attorneys.

9 41. Defendants shall comply with the ACFA, as it is currently written, and as it may
10 be amended in the future.

11 42. Pursuant to A.R.S. § 44-1528, Defendants, with regard to all future transactions,
12 are permanently enjoined, restrained and prohibited from:

- 13 a. Violating state or federal law.
14 b. Offering or providing seller carryback financing to consumers purchasing
15 properties from Defendants.
16 c. Selling any property except through a through a licensed real estate agent at a
17 licensed real estate brokerage firm unaffiliated with Defendants.
18 d. Selling any property without providing title insurance.
19 e. Selling any property without the use of an independent escrow agent.
20 f. Advertising in a manner that is not clear, conspicuous, and truthful.
21 g. Advertising properties when the advertisement does not identify the person or
22 entity who holds title to the property being advertised.
23 h. Renting properties when the rental agreement does not identify the person or entity
24 who holds title to the property being rented.

25 **PAYMENT TERMS**

26 43. Pursuant to A.R.S. § 44-1528(A)(2), Defendants are jointly and severally liable and
27 obligated to pay to the Attorney General the amount of \$350,000 in consumer restitution, to be
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1 deposited into the Consumer Restitution and Remediation Revolving Fund, pursuant to A.R.S.
2 § 44-1531.02(B). The State will have sole discretion as to how and when restitution funds are
3 distributed to consumers and the eligibility of any consumer to receive restitution. The State will
4 provide Defendants with a list of consumers to be awarded restitution and, upon request, inform
5 Defendants of the amount of restitution awarded to specific consumers. Except upon
6 demonstrated need, the State will not inform Defendants of the amount of restitution awarded to
7 a consumer more frequently than once per year.

8 44. Pursuant to A.R.S. § 44-1531(A), Defendants are jointly and severally liable and
9 obligated to pay to the Attorney General the amount of \$375,000 in civil penalties, to be deposited
10 into the Consumer Protection-Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01,
11 and used for the purposes set forth therein.

12 45. In the event that any portion of the restitution ordered herein is not distributed to
13 eligible consumers, such portion will be deposited by the Attorney General's Office into the
14 Consumer Protection-Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-1531.02(B),
15 and used for the purposes specified in A.R.S. § 44-1531.01.

16 46. Subject to the terms of Paragraphs 49 and 50 below, Defendants must pay the
17 combined monetary award of \$725,000 under this Consent Judgment in monthly increments of
18 at least \$2,000 until the total monetary award and interest accruing thereon at the statutory rate
19 of 8.5% is paid in full but in no event later than January 15, 2033. The first monthly payment will
20 be due by February 15, 2023, and each remaining monthly payment will be due by the fifteenth
21 day of each month thereafter, with a balloon payment of all outstanding amounts due on January
22 15, 2033. Failure to make a monthly payment within 14 days of its due date will be a default on
23 Defendants' payment obligations under this Consent Judgment and will eliminate Defendants'
24 right to the discount terms contained in paragraphs 49 and 50 below. But so long as Defendants
25 are in compliance with the terms of this Consent Judgment – including the monthly payment
26 terms contained in this paragraph – the State agrees to record a partial release of judgment lien
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1 for any property Defendants wish to dispose of without requiring any payment specifically from
2 the proceeds of the disposition.

3 47. Should Defendants default on any payment obligation imposed by this Consent
4 Judgment, in addition to any other penalties and remedies provided by law, all payments set forth
5 herein will be accelerated and become due and owing in their entirety as of the date of the default,
6 with interest accruing thereon at the statutory rate of 8.5% for the full amount owing as of the
7 default date.

8 48. Defendants may prepay all or any part of the balance outstanding hereunder at any
9 time without penalty but must pay at least \$2,000 per month until the combined monetary award
10 and any interest accrued is paid in full but in no event later than January 15, 2033.

11 49. If Defendants pay the total combined monetary award in this Consent Judgment
12 without committing any breach of this Consent Judgment or defaulting on any payment terms,
13 the State agrees to forgo the collection of all interest accrued under this Consent Judgment.

14 50. If Defendants pay the full \$350,000 of the restitution award and \$25,000 of the civil
15 penalties award in this Consent Judgment (a combined \$375,000) by January 15, 2033, without
16 committing any breach of this Consent Judgment or defaulting on any payment terms, the State
17 agrees to forgo the collection of \$350,000 of the civil penalties award and all interest accrued
18 thereon under this Consent Judgment.

19 51. If Defendants satisfy the requirements of Paragraphs 49 and 50 above without
20 committing any breach of this Consent Judgment or defaulting on any payment terms, the State
21 will file a satisfaction of judgment with the Court reflecting satisfaction of the payment terms of
22 this Consent Judgment within 30 days of receipt of the final payment. Under such
23 circumstances, the State will regard Defendants' satisfaction of the requirements of Paragraphs
24 49 and 50 above as full payment of Defendants' monetary obligation under this Consent
25 Judgment.

1 52. The payments required herein must be paid in the form of cashier's checks or
2 money orders made payable to "The State of Arizona," or by wire transfer according to
3 instructions supplied by the State. Payment must be delivered, or mailed and postmarked, to:

4 Consumer Protection and Advocacy Section
5 The Office of the Arizona Attorney General
6 2005 North Central Avenue
7 Phoenix, Arizona 85004-1592

8 **GENERAL TERMS**

9 53. Pursuant to A.R.S. § 44-1528, prior to the filing of this Consent Judgment,
10 Defendants shall have provided a deed of release and reconveyance to the owners of the property
11 on Forgeus Ave.

12 54. Defendants agree that the facts alleged in the Findings of Fact and Conclusions of
13 Law in this Consent Judgment will be taken as true as to the State without further proof in any
14 bankruptcy case or subsequent civil litigation arising out of such bankruptcy case pursued by the
15 State to enforce its rights to any payment or money judgment pursuant to this Consent Judgment,
16 including, but not limited to, a non-dischargeability complaint filed by the State in any
17 bankruptcy case. The purpose of this mutually-agreed-upon provision is to ensure that the rights
18 of the State will not be discharged by any bankruptcy filing of any of the Defendants. Defendants
19 furthermore expressly waive their right to any notice provisions contained in the Bankruptcy
20 Code or otherwise pertaining to the waiver of non-dischargeability.

21 55. Defendants stipulate by entering this Consent Judgment that the Findings of Fact
22 and Conclusions of Law set forth herein establish all elements necessary to sustain an action by
23 the State pursuant to Section 523(a)(2)(A) and Section 523(a)(7) of the Bankruptcy Code, 11
24 U.S.C. § 523(a), and that this Order will have res judicata and collateral estoppel effect for such
25 purposes and proceedings to enforce payment, including, but not limited to, a non-
26 dischargeability complaint filed in a bankruptcy proceeding, and Defendants waive any right to
27 contest any of the allegations in the State's Complaint in any such proceedings to enforce
28 payment.

1 56. Defendants warrant and represent that there is not any pending case, proceeding,
2 or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or
3 recomposition of Defendants or their debts under any law relating to bankruptcy, insolvency,
4 reorganization, or the relief of debtors, or seeking the appointment of a receiver, trustee,
5 custodian, or other similar official for Defendants. Defendants further warrant and represent that
6 they will not file, or cause to be filed, any such case, proceeding, or other action prior to 91 days
7 after complete payment of all amounts due under this Consent Judgment. If Defendants do file
8 or cause to be filed such a case, proceeding, or other action prior to the expiration of that time,
9 then the State will have the right, at its sole discretion, to treat that as a material breach of this
10 Consent Judgment, reopen proceedings, and proceed with this case as though this Consent
11 Judgment had not been entered, provided that Defendants will be entitled to an offset for any
12 amount Defendants already paid to the State under this Consent Judgment.

13 57. Defendants must provide the State with written notice within 15 days of Defendants
14 filing or causing to be filed any case, proceeding, or other action seeking reorganization,
15 arrangement, adjustment, liquidation, dissolution, or recomposition of Defendants or their debts
16 under any law relating to bankruptcy, insolvency, reorganization, or the relief of debtors, or
17 seeking the appointment of a receiver, trustee, custodian, or other similar official prior to
18 complete payment of all amounts due under this Consent Judgment. If Defendants fail to provide
19 the notice as required, the State may, at its sole discretion, accelerate the remaining payments
20 due under this Consent Judgment. If the State chooses to accelerate the remaining payments, all
21 amounts awarded under this Consent Judgment not previously paid to the State will become due
22 and immediately payable in full to the State, including interest accrued from the date this Consent
23 Judgment is entered by the Court.

24 58. In the event of a material breach of this Consent Judgment, in addition to all other
25 remedies available under Arizona law and the penalties specifically provided under A.R.S. § 44-
26 1532, the State may, in its sole discretion, reopen proceedings and continue with this case as
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1 though this Consent Judgment had not been entered, provided that Defendants will be entitled to
2 an offset for any amount actually paid to the State.

3 59. The Parties acknowledge by the execution hereof that this Consent Judgment
4 constitutes a complete settlement of the allegations contained in the State’s Complaint, and the
5 State agrees not to institute any civil action against Defendants or their employees or agents for
6 the violations of the ACFA described herein. Notwithstanding the foregoing, the State may
7 institute an action or proceeding to enforce the terms and provisions of this Consent Judgment,
8 take action based on future conduct by Defendants, take action based on past conduct not
9 specified in this Consent Judgment, and/or institute an action or proceeding to prevent the
10 discharge of any debt acquired through this Consent Judgment.

11 60. Nothing in this Consent Judgment will be construed as an approval by the Attorney
12 General, the Court, the State of Arizona, or any agency thereof of Defendants’ past, present, or
13 future conduct. Defendants must not represent or imply that the Attorney General, the Court, the
14 State of Arizona, or any agency thereof has approved or approves of any of Defendants’ actions
15 or any of Defendants’ past, present, or future business practices.

16 61. This Consent Judgment represents the entire agreement between the Parties, and
17 there are no representations, agreements, arrangements, or understandings, oral or written,
18 between the Parties relating to the subject matter of this Consent Judgment which are not fully
19 expressed herein or attached hereto.

20 62. If any portion of this Consent Judgment is held invalid by operation of law, the
21 remaining terms thereof will not be affected and will remain in full force and effect.

22 63. Jurisdiction is retained by this Court for the purpose of entertaining an application
23 by the State for the enforcement of this Consent Judgment.

24 64. This Consent Judgment is the result of a compromise between the Parties. Only the
25 State may seek enforcement of this Consent Judgment. Nothing herein is intended to create a
26 private right of action by other parties.

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1 65. This Consent Judgment does not limit the rights of any private party to pursue any
2 remedies allowed by law.

3 66. The effective date of this Consent Judgment is the date that it is entered by the
4 Court.

5 67. This Consent Judgment may be executed by the Parties in counterparts and be
6 delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original
7 counterpart hereof, all of which together will constitute one and the same document.

8 68. This Consent Judgment resolves all outstanding claims expressly identified in the
9 Complaint as to Defendants. As no further matters remain pending, this is a final judgment
10 entered pursuant to Ariz. R. Civ. P. 54(c).

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DATED this ____ day of _____, 2023.

JUDGE OF THE SUPERIOR COURT

CONSENT TO JUDGMENT

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2 1. Defendants acknowledge that they were served with a copy of the Summons and
3 Complaint, have read the Findings of Fact, Conclusions of Law, and Order, and are aware of their
4 right to a trial in this matter and have waived the same.

5 2. Defendants admit the jurisdiction of this Court and consent to the entry of the
6 foregoing Findings of Fact, Conclusions of Law, and Order.

7 3. Defendants state that no promise of any kind or nature whatsoever was made to
8 induce them to enter into this Consent Judgment and declare that they have entered into this
9 Consent Judgment voluntarily.

10 4. This Consent Judgment is entered as a result of a compromise between the Parties.
11 Only the State may seek enforcement of this Consent Judgment. Nothing herein is intended to
12 create a private right of action by other parties; however, this Consent Judgment does not limit
13 the rights of any private party to pursue any remedies allowed by law.

14 5. Defendants acknowledge that their acceptance of this Consent Judgment is for the
15 purpose of settling the ongoing consumer fraud lawsuit filed by the State, and further
16 acknowledge that this Consent Judgment does not preclude any agency or officer of this State or
17 subdivision thereof from instituting other civil or criminal proceedings as may be appropriate,
18 except as otherwise precluded by this Consent Judgment.

19 6. This Consent Judgment may be executed in counterparts and be delivered by
20 facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart
21 hereof, all of which together will constitute one and the same document.

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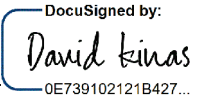
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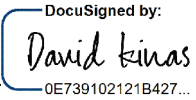
7. Defendant Deed and Note Traders, LLC and Defendant 881Home, LLC represent and warrant that the person signing below on their behalf is duly appointed and authorized to do so.

DATED this 6th day of February, 2023.

Deed and Note Traders, LLC

881Home, LLC

Signature: 
Name: David Kinas
Title: Manager
Date: 2/17/2023

Signature: 
Name: David Kinas
Title: Manager
Date: 2/17/2023

David Kinas

Deanne Kinas

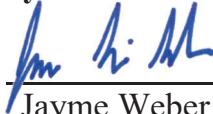
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Date: 2/17/2023

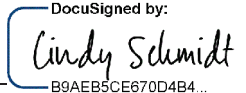
Signature: 
Date: 2/17/2023

APPROVED AS TO FORM AND CONTENT:

KRISTIN K. MAYES
Attorney General

**WATERFALL, ECONOMIDIS, CALDWELL,
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