

JUDGE FURMAN

COPIES

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13 CV 2227

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

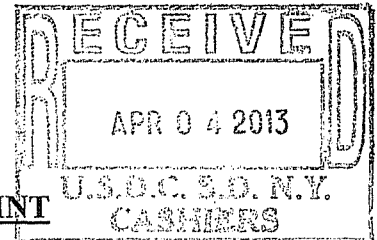
UNITED STATES OF AMERICA,

Plaintiff,

-against-

DAVID MOVTADY and GOLDEN FIRST
MORTGAGE CORP.,

Defendants.



COMPLAINT

13 Civ. ____

ECF Case

Jury Trial Demanded

The United States of America (the "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, brings this action against David Movtady ("Movtady") and Golden First Mortgage Corporation ("Golden First"), alleging upon information and belief as follows:

INTRODUCTION

1. This is a civil mortgage fraud lawsuit brought by the United States against Movtady and Golden First. Golden First, by and through its owner, president and operator Movtady, participated in a mortgage insurance program of the Federal Housing Administration ("FHA") of the Department of Housing and Urban Development ("HUD") known as the Direct Endorsement Lender program. Golden First and Movtady systematically violated their

underwriting and quality control obligations, costing the United States millions of dollars of losses on defaulted loans. The Government brings this action seeking damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a, and the common law.

2. Golden First was a Direct Endorsement Lender from 1989 until 2010. The Direct Endorsement Lender program grants participating lenders the authority to endorse mortgages that are qualified for FHA insurance. Since joining the program, Golden First has endorsed thousands of FHA loans, resulting in nearly \$707 million in principal obligations since 2002.

3. Golden First has had extraordinarily high default rates over the past decade. More than 60% of Golden First’s loans since 2002 have resulted in defaults. Its default rate climbed to over 75% in 2008. Moreover, its early payment default rate – the rate of mortgages that defaulted within six months after closing – climbed to more than 30% in 2008. In other words, borrowers defaulted shortly after closing on nearly one out of every three loans underwritten by Golden First in 2008. Indeed, of those loans that closed in 2008, approximately 60% defaulted within one year.

4. These defaults were not happenstance, but rather resulted from Movtady’s and Golden First’s intentionally fraudulent practices. Movtady signed and submitted to HUD a false annual certification in order to obtain and maintain Golden First’s Direct Endorsement Lender status. Specifically, Movtady falsely represented that Golden First “conform[ed] to all HUD-FHA regulations necessary to maintain its HUD-FHA approval,” when in fact Movtady and Golden First failed to meet the following three basic FHA requirements for Direct Endorsement Lenders: 1) implementation of a quality control program independent of the lender’s business

units; 2) notification to HUD within 60 days of the initial discovery of findings of fraud or other serious violations; and 3) review of all loans that went into default within the first six payments.

5. Further, on a loan by loan basis, Golden First and Movtady repeatedly lied to HUD to obtain approval of mortgages through the Direct Endorsement Lender program that should never have been approved. These mortgages were not eligible for FHA insurance under HUD rules. Notwithstanding the mortgages' ineligibility, underwriters at Golden First endorsed the mortgages by falsely certifying that they had conducted the due diligence required by HUD rules when, in fact, they had not. By endorsing ineligible mortgages and falsely certifying compliance with HUD rules, Golden First wrongfully obtained approval of these ineligible mortgages for FHA insurance.

6. Specifically, Golden First, and in some instances Movtady, falsely certified as to each particular loan that "this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program." The Office of the Inspector General of HUD ("HUD-OIG") reviewed a sample of 26 loans from 2007 and 2008 and found material underwriting violations in all of them. Indeed, 22 out of the 26 loans reviewed contained false documentation, such as fabricated paystubs, employment verifications, W-2s, deposit verifications and escrow letters. Each loan had multiple violations of HUD guidelines and material underwriting deficiencies such as the failure to verify gift funds, analyze the borrower's credit, and verify the authenticity of faxed verifications of deposits and employment.

7. FHA has paid more than \$12 million in insurance claims on loans underwritten by Golden First since July 2007. In addition, millions of dollars in defaulted loan obligations on loans underwritten by Golden First and Movtady have not yet been submitted as claims to HUD.

FHA will likely pay FHA insurance claims on a substantial number of these additional loans in the future.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 31 U.S.C. § 3730(a), 28 U.S.C. §§ 1331 and 1345, and the Court's general equitable jurisdiction.

9. Venue is appropriate in this judicial district pursuant to 12 U.S.C. § 1833a, 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b)(1) and (c) because Defendants transact significant business within this district.

PARTIES

10. Plaintiff is the United States of America.

11. Defendant Golden First is a mortgage lender headquartered in New York and is owned and operated by Movtady. Golden First participated in HUD's Direct Endorsement Lending program from 1989 until 2010. Although Golden First appears to have stopped underwriting mortgages in 2010, Golden First is currently listed as an active corporate entity in the New York Department of State Division of Corporations database. Since 2002, Golden First has originated thousands of loans with a total principal amount of approximately \$707 million.

12. Defendant Movtady has been the owner, president and operator of Golden First since 1979. He was responsible for certifying to HUD on an annual basis that Golden First "conform[ed] to all HUD-FHA regulations necessary to maintain its HUD-FHA approval." Movtady also underwrote individual loans and certified that those mortgages were eligible for HUD mortgage insurance.

FACTUAL BACKGROUND

I. THE FHA MORTGAGE INSURANCE PROGRAM

A. Background

13. FHA, a part of HUD, is the largest mortgage insurer in the world, insuring approximately one third of all new residential mortgages in the United States. Pursuant to the National Housing Act of 1934, FHA offers various mortgage insurance programs. Through these programs, FHA insures approved lenders (“mortgagees”) against losses on mortgage loans made to buyers of single-family housing. FHA mortgage insurance encourages lenders to make loans to creditworthy borrowers who nevertheless might not meet conventional underwriting requirements. Under HUD’s mortgage insurance programs, if a homeowner defaults on a loan and the mortgage holder forecloses on the property, HUD will pay the mortgage holder the balance of the loan and assume ownership and possession of the property. HUD also incurs expenses in managing and marketing the foreclosed-upon property until it is resold. FHA mortgage insurance makes mortgage loans valuable in the secondary markets, as FHA loans are expected to have met HUD requirements and because they are secured by the full faith and credit of the United States.

14. HUD’s Direct Endorsement Lending program is one of the FHA-insured mortgage programs. A Direct Endorsement Lender is authorized to underwrite mortgage loans, decide whether the borrower represents an acceptable credit risk for HUD, and certify loans for FHA mortgage insurance without prior HUD review or approval. To qualify for FHA mortgage insurance, a mortgage must meet all of the applicable HUD requirements (*e.g.*, income, credit history, valuation of property, etc.).

15. HUD relies on the expertise and knowledge of Direct Endorsement Lenders in

providing FHA insurance and relies on their decisions. A Direct Endorsement Lender is therefore obligated to act with the utmost good faith, honesty, fairness, undivided loyalty, and fidelity in dealings with HUD. The duty of good faith also requires a Direct Endorsement Lender to make full and fair disclosures to HUD of all material facts and to take on the affirmative duty of employing reasonable care to avoid misleading HUD in all circumstances.

16. A Direct Endorsement Lender is responsible for all aspects of the mortgage application, the property analysis, and the underwriting of the mortgage. The underwriter must “evaluate [each] mortgagor’s credit characteristics, adequacy and stability of income to meet the periodic payments under the mortgage and all other obligations, and the adequacy of the mortgagor’s available assets to close the transaction, and render an underwriting decision in accordance with applicable regulations, policies and procedures.” 24 C.F.R. § 203.5(d). In addition, the underwriter must “have [each] property appraised in accordance with [the] standards and requirements” prescribed by HUD. 24 C.F.R. § 203.5(e).

17. Mortgagees must employ underwriters who can detect warning signs that may indicate irregularities, as well as detect fraud; in addition, underwriting decisions must be performed with due diligence in a prudent manner. HUD Handbook 4000.4 REV-1, ¶ 2-4(C)(5); *see also* HUD Handbook 4155.2 ¶ 2.A.4.b. The lender must also maintain a compliant compensation system for its staff, an essential element of which is the prohibition on paying commissions to underwriters. HUD Handbook 4060.1 REV-2, ¶ 2-9(A).

B. Underwriting and Due Diligence Requirements

18. HUD relies on Direct Endorsement Lenders to conduct due diligence on Direct Endorsement loans. The purposes of due diligence include: (1) determining a borrower’s ability and willingness to repay a mortgage debt, thus limiting the probability of default and collection

difficulties, *see* 24 C.F.R. § 203.5(d), and (2) examining a property offered as security for the loan to determine if it provides sufficient collateral, *see* 24 C.F.R. § 203.5(e)(3). Due diligence thus requires an evaluation of, among other things, a borrower's credit history, capacity to pay, cash to close, and collateral. In all cases, a Direct Endorsement Lender owes HUD the duty, as prescribed by federal regulation, to "exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment." 24 C.F.R. § 203.5(c).

19. HUD has set specific rules for due diligence predicated on sound underwriting principles. In particular, HUD requires Direct Endorsement Lenders to be familiar with, and to comply with, governing HUD Handbooks and Mortgagee Letters, which provide detailed processing instructions to Direct Endorsement Lenders. These materials specify the minimum due diligence with which Direct Endorsement Lenders must comply.

20. With respect to ensuring that borrowers have sufficient credit, a Direct Endorsement Lender must comply with governing HUD Handbooks, such as HUD 4155.1, *Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Family Properties*, to evaluate a borrower's credit. The rules set forth in HUD 4155.1 exist to ensure that a Direct Endorsement Lender sufficiently evaluates whether a borrower has the ability and willingness to repay the mortgage debt.

21. To properly evaluate a borrower's credit history, a Direct Endorsement Lender must, at a minimum, obtain and review credit histories; analyze debt obligations; reject documentation transmitted by unknown or interested parties; inspect documents for proof of authenticity; obtain adequate explanations for collections, judgments, recent debts and recent credit inquiries; establish income stability and make income projections; obtain explanations for

any gaps in employment; document any gift funds; calculate debt and income ratios and compare those ratios to the fixed ratios set by HUD rules; and consider and document any compensating factors permitting deviations from those fixed ratios. *See id.*

22. With respect to appraising the mortgaged property (*i.e.*, collateral for the loan), a Direct Endorsement Lender must ensure that an appraisal and its related documentation satisfy the requirements in governing HUD Handbooks, such as HUD 4150.2, *Valuation Analysis for Home Mortgage Insurance*. The rules set forth in HUD 4150.2 exist to ensure that a Direct Endorsement Lender obtains an accurate appraisal that properly determines the value of the property for HUD's mortgage insurance purposes.

C. Quality Control Prerequisites for Direct Endorsement Lenders

23. Furthermore, to maintain HUD-FHA approval, a Direct Endorsement Lender must implement and maintain a quality control program continuously throughout its participation in the Direct Endorsement Lender program. HUD requires the quality control department to be independent of mortgage origination and servicing functions. *See* HUD Handbook 4060.1 REV-1, ¶ 6-3(B); HUD Handbook 4060.1 REV-2, ¶ 7-3(B); HUD Handbook 4700.2 REV-1, ¶ 6-1(A). To comply with HUD's quality control requirements, a lender's quality control program must (among other things): (a) review a prescribed sample of all closed loan files to ensure they were underwritten in accordance with HUD guidelines; and (b) conduct a full review of "all loans going into default within the first six payments," which HUD defines as "early payment defaults." HUD Handbook 4060.1 REV-1, ¶¶ 6-6(C), 6-6(D); HUD Handbook 4060.1 REV-2, ¶¶ 7-6(C), 7-6(D); HUD Handbook 4700.2 REV-1, ¶¶ 6-1(B), 6-1(D). HUD has warned lenders that failure to comply with HUD's quality control requirements may result in the withdrawal of Direct Endorsement Lender status.

24. Under HUD's rules, a lender must report to HUD (along with the supporting documentation) "[s]erious deficiencies, patterns of non-compliance, or fraud uncovered by mortgagees" during the "normal course of business and by quality control staff during reviews/audits of FHA loans" within 60 days of the initial discovery. HUD Handbook 4060.1 REV-1, CHG-1, ¶¶ 6-13, 6-3(J); *see also* HUD Handbook 4060.1 REV-2, ¶ 7-3(J) (requiring Direct Endorsement Lenders to "immediately" report findings of "fraud or other serious violations" affecting an FHA loan); HUD Handbook 4060.1 REV-2, ¶ 2-23 ("Mortgagees are required to report to HUD any fraud, illegal acts, irregularities or unethical practices.").¹ Upon making such findings, the lender must also expand the scope of the quality control review both by increasing the number of files reviewed and conducting a more in-depth review of the selected files.

25. Until 2005, HUD's rules instructed Direct Endorsement Lenders to make the required self-reports of loans with serious deficiencies, patterns of noncompliance, or fraud in writing to HUD through the Quality Assurance Division of the HUD Homeownership Centers ("HOCs") having jurisdiction. In May 2005, HUD issued Mortgagee Letter 2005-26, which notified lenders that going forward they would have to participate in electronic reporting through HUD's online Neighborhood Watch system. That new method became mandatory at the end of November 2005, and required mortgagees "to report serious deficiencies, patterns of noncompliance, or suspected fraud, to HUD in a uniform, automated fashion" and in lieu of written reports to the various individual HOCs.

¹ Prior to November 2003, lenders were required to self-report to HUD loans affected by "significant discrepancies," such as "any violation of law or regulation, false statements or program abuses by the mortgagee, its employees, or any other party to the transaction." HUD Handbook 4060.1 REV-1, ¶ 6-1(H).

26. In addition to reporting loans affected by fraud or other serious violations to HUD, the lender is required to take corrective action in response to its findings. In particular, quality control review findings must “be reported to the mortgagee’s senior management within one month of completion of the initial report” and “[m]anagement must take prompt action to deal appropriately with any material findings. The final report or an addendum must identify the actions being taken, the timetable for their completion, and any planned follow-up activities.” HUD Handbook 4060.1 REV-2, ¶ 7-3(I); *see also* HUD Handbook 4060.1 REV-1, ¶ 6-3(I); HUD Handbook 4700.2 REV-1, ¶ 6-1(F). Appropriate action by management includes following up with underwriters responsible for material findings to ensure that they are properly trained and diligently reviewing each file before endorsing it for FHA mortgage insurance.

D. Direct Endorsement Lender Certifications

1. Annual Certifications

27. To obtain and maintain Direct Endorsement Lender status, a Direct Endorsement Lender must submit an annual certification to HUD.

28. The Direct Endorsement Lender must make the following annual certification, in sum and substance:

I know or am in the position to know, whether the operations of the above named mortgagee conform to HUD-FHA regulations, handbooks, and policies. I certify that to the best of my knowledge, the above named mortgagee conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval, and that the above-named mortgagee is fully responsible for all actions of its employees including those of its HUD-FHA approved branch offices.

29. The annual certification requires compliance with the basic eligibility requirements for Direct Endorsement Lenders, which include compliance with the mandatory HUD rules concerning quality control described above.

30. A truthful annual certification is a condition of HUD's decision to insure loans originated by Direct Endorsement Lenders and to pay insurance claims submitted to HUD on such loans.

2. Loan Application Certifications

31. A Direct Endorsement Lender must also submit a certification to FHA for each loan for which it seeks FHA insurance ("loan-level certifications").

32. A Direct Endorsement Lender may use an FHA-approved automated underwriting system to review loan applications. The automated underwriting system processes information entered by the Direct Endorsement Lender and rates loans as either an "accept"/"approve" or a "refer"/"caution."

33. In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as an "accept" or "approve," the Direct Endorsement Lender must make the following certification, in sum and substance:

This mortgage was rated as an "accept" or "approve" by FHA's Total Mortgage Scorecard. As such, the undersigned representative of the mortgagee certifies to the integrity of the data supplied by the lender used to determine the quality of the loan, that Direct Endorsement Underwriter reviewed the appraisal (if applicable) and further certifies that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program. I hereby make all certifications required by this mortgage as set forth in HUD Handbook 4000.4.

34. In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as "refer" or "caution," or in cases where a Direct Endorsement Lender does not use an FHA-approved automated underwriting system, the underwriter must make the following certification, in sum and substance:

This mortgage was rated as a "refer" or "caution" by FHA's Total Mortgage Scorecard, and/or was manually underwritten by a Direct

Endorsement underwriter. As such, the undersigned Direct Endorsement Underwriter certifies that I have personally reviewed the appraisal report (if applicable), credit application, and all associated documents and have used due diligence in underwriting this mortgage. I find that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program and I hereby make all certifications required for this mortgage as set forth in HUD Handbook 4000.4.

35. The certifications in HUD Handbook 4000.4, incorporated by reference in the certifications above, include the certification that the mortgage complies with HUD underwriting requirements contained in all outstanding HUD Handbooks and Mortgagee Letters.

36. Absent a truthful loan application certification, a Direct Endorsement Lender is not entitled to endorse a particular loan for FHA insurance.

II. GOLDEN FIRST AND MOVTDY LIED ABOUT COMPLIANCE WITH HUD'S RULES AND REGULATIONS REGARDING QUALITY CONTROL TO MAINTAIN GOLDEN FIRST'S DIRECT ENDORSEMENT LENDER STATUS

37. Golden First and Movtady failed to comply with HUD rules and regulations regarding required quality control procedures, even though those procedures were mandatory for Golden First's maintenance of its Direct Endorsement Lender status. Instead, Golden First and Movtady maintained Golden First's Direct Endorsement Lender status by making false representations to HUD about Golden First's purported compliance with HUD rules and regulations regarding quality control. In reality, Golden First's quality control procedures egregiously violated HUD rules and regulations.

38. From 1989 through 2010, Golden First was required to file annual certifications with HUD to obtain and maintain its Direct Endorsement Lender status.

39. On September 15, 2008, for example, Movtady signed an annual certification stating: "I know, or am in the position to know, whether the operations of the above named

mortgagee conform to HUD-FHA regulations, handbooks, and policies. I certify that to the best of my knowledge, the above named mortgagee conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval.”

40. Golden First and Movtady knew that Golden First did not have a quality control plan that conformed to HUD rules when Movtady signed the annual certification in 2008. Golden First and Movtady thus: (i) intentionally lied to HUD, (ii) consciously avoided learning whether the certification was true or false, (iii) recklessly disregarded whether the certification was true or false; and/or (iv) were negligent in determining whether the certification was true or false.

41. Contrary to the representations required to be made in annual certifications necessary to maintaining Golden First’s Direct Endorsement Lender status, such as the certification signed by Movtady in 2008, Golden First and Movtady failed to implement and maintain basic quality control requirements. Golden First and Movtady’s quality control violations were not technical or innocent, but knowing, material, and substantial.

42. In order to obtain and maintain Direct Endorsement Lender status, a lender is required to continuously implement a quality control program that is independent of its business operations. Independence ensures that the quality control department brings its own judgment to bear in assessing the validity of loans previously made, without pressure to make the facts look rosier than the reality and without concern for meeting a targeted volume of business.

43. Since at least 2002, Golden First failed to maintain a quality control program independent of its operations. To the contrary, Movtady and Golden First’s business personnel systematically interfered with the quality control process by pressuring all employees of Golden First to increase production at the expense of quality control.

44. During certain periods of time from 2002 until 2010, Golden First and Movtady failed to have any employees assigned to conduct quality control. In addition, even when Golden First did assign a small number of employees to conduct quality control, those employees consistently failed to promptly review and report to HUD findings of fraud and other serious violations, despite a HUD requirement that all such findings be reported within 60 days.

45. A HUD audit conducted in 2005 examined loans dating back to 2002 and found material deficiencies in multiple loans stemming from Golden First's failure to have adequate controls to ensure that loans were processed in a manner consistent with HUD's requirements. HUD made two significant findings. First, HUD concluded that Golden First had improperly approved loans in 2002 and 2003 that did not qualify for FHA insurance. HUD found that "these deficiencies occurred because Golden First did not follow HUD regulations in the verification of the borrower's employment and/or sources of funds for the loans." Second, HUD concluded that Golden First had not implemented a quality control plan in accordance with HUD's requirements. Specifically, the HUD audit found, among other things, that Golden First did not ensure that: (1) loans defaulting within the first six months were reviewed, (2) quality control reviews were conducted in a timely manner, and (3) management responses and planned corrective action were adequately documented.

46. Movtady responded to HUD's audit in 2005 as follows: "We changed our policy of conducting Quality Control in house to outsourcing Quality Control functions and providing an 'in house' Quality Control department to act as a liaison between our firm and the Quality Control company."

47. Although Golden First did retain Magnet Portfolio Services ("Magnet") to perform a quality control review, Golden First continued to approve loans that did not meet HUD

requirements, and failed to take any corrective action in response to quality control summaries from Magnet.

48. Magnet advised Golden First in 2007 and 2008, for example, of loans that it randomly selected to audit that did “not meet guidelines. Significant deviations from the guidelines were noted, with no apparent compensating factors to offset the overall risk.”

49. But even when Magnet identified loans with material deficiencies, quality control took a back seat to closing and selling loans. Golden First did not conduct any investigation or take any corrective action to address the significant problems in the loans identified by Magnet on loans that had already been sold. Moreover, in violation of HUD regulations, Golden First failed to self-report these loans to HUD. Indeed, Golden First never reported a single loan to HUD despite the serious deviations from the guidelines identified by Magnet.

50. For example, Magnet graded at least 25 loans that closed between September 19, 2007, and August 18, 2008, as having “significant deviations from the guidelines.” Yet Golden First and Movtady nevertheless failed to report these bad loans to HUD. HUD paid more than a million dollars in claims and thousands of dollars for loss mitigation on just these 25 loans.

51. In 2008, with a continuing lack of a compliant quality control process in place at Golden First, the loan origination process emphasized speed and volume, sacrificed quality, and created an atmosphere of fraud and sloppy underwriting. Underwriters were pressured to cut corners to keep up production. Three employees of Golden First were closing about 100-200 loans per month — a rate that made it impossible to conduct adequate due diligence on each loan.

52. Moreover, it was common practice for loan officers to pay Golden First employees hundreds of dollars in kickbacks to speed up the approval of loans. At least one

underwriter at Golden First accepted money to selectively speed up the approval of certain loans. That same underwriter barely reviewed loan applications, spending approximately 20 minutes to fully “underwrite” each loan and certify it for FHA insurance.

53. From 2008 to 2009, HUD’s Quality Assurance Division conducted multiple reviews of Golden First mortgages and found numerous material violations of HUD underwriting guidelines, including falsified documents, further demonstrating that there was no compliant quality control process in place.

54. Notwithstanding these findings by HUD, Golden First did not report a single mortgage to HUD that it had underwritten under the Direct Endorsement Lender program. That Golden First’s and Movtady’s failure to report even a single mortgage to HUD was intentional is supported by its default rate of more than 75% in 2008 alone, and by HUD’s findings in an audit of loans from 2007 and 2008 of false documentation in 22 of the 26 files reviewed, including of paystubs, employment verifications, W-2s, deposit verifications, and escrow letters.

55. Golden First also continued to fail to review all early payment defaults as mandated by HUD rules, even after HUD specifically noted this failure during the 2005 audit. Nor did Golden First have a system in place to review all such defaults. Magnet did not conduct reviews of all of Golden First loans resulting in early payment defaults, nor did Golden First charge Magnet with this task. Rather, Magnet periodically provided a review of randomly selected loans. Thus, from 2002 through 2010, when it ceased operations, Golden First failed to comply with FHA’s quality control requirement that it fully review each and every early payment default.

56. In light of these material defects in Golden First’s quality control program, Golden First and Movtady could not truthfully complete the annual certifications required to be

submitted to HUD to maintain Golden First's Direct Endorsement Lender status. For example, the annual certification signed by Movtady on behalf of Golden First in 2008 attesting to compliance with HUD's requirements for the fiscal year July 30, 2007, through July 30, 2008, for FHA approval was patently false. Without submission of this annual certification, Golden First would not have been able to continue to participate in the Direct Endorsement Lender program.

III. GOLDEN FIRST AND MOVTADY ABUSED GOLDEN FIRST'S DIRECT ENDORSEMENT LENDER STATUS TO ENDORSE MORTGAGES INELIGIBLE FOR FHA INSURANCE

57. Golden First and Movtady abused the company's Direct Endorsement Lender status through the false statements of Golden First and Movtady regarding individual loans. In particular, as a Direct Endorsement Lender, Golden First regularly violated HUD rules, prudent underwriting practices, and Golden First's duties to HUD, by failing to conduct due diligence on mortgages that it reviewed and approved for FHA insurance, including mortgages underwritten by Movtady. Despite its repeated violations of HUD rules, Golden First, through its underwriters, falsely certified, on a loan-by-loan basis, that it had complied with HUD rules and that the mortgages it endorsed were eligible for FHA insurance under HUD rules. Movtady personally underwrote a number of loans on behalf of Golden First, and accordingly signed some of the false loan-level certifications. If HUD had known that Golden First's mortgage eligibility certifications were false, HUD would not have permitted Golden First to endorse those loans for FHA insurance.

58. For each mortgage, Golden First certified that it complied with all HUD rules, including HUD rules requiring due diligence. Movtady signed these certifications with regard to certain loans. For example, one of the individual loan certifications signed by Movtady

specifically stated: “the undersigned Direct Endorsement underwriter certifies that I have personally reviewed the appraisal report . . . , credit application, and all associated documents and have used due diligence in underwriting this mortgage. . . . [T]his mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program and I hereby make all certifications required for this mortgage as set forth in HUD Handbook 4000.4.”

59. Contrary to the certifications appearing on each mortgage endorsed by Golden First, Golden First and Movtady engaged in a pattern of failing to conduct due diligence in accordance with HUD rules and with sound and prudent underwriting principles.

60. Violations of HUD’s underwriting and due-diligence requirements included a failure to verify the applicant’s employment, the approval of loans with unacceptable debt-to-income ratios without compensating factors, inadequate documentation of assets and gift funds, and a failure to identify fabricated and falsified income and asset documentation. This pattern of false certifications is illustrated by the examples below. These examples were not isolated events, but rather provide a representative sample of Golden First and Movtady’s fraudulent practices.

A. Catherine Avenue Property

61. FHA case number 061-2891167 involves a mortgage for a property on Catherine Avenue in Waterbury, Connecticut (the “Catherine Avenue Property”). Movtady falsely certified that the loan complied with HUD due diligence rules. In fact, this loan violated many HUD rules within HUD 4155.1, including: 1) the file lacked verification of rent, 2) the file contained documents that were faxed from an interested third party, 3) the file lacked documentation of purported gift funds, and 4) the file lacked verification of a source of a large deposit involved in this transaction. Nevertheless, Golden First through David Movtady

underwrote this mortgage, reviewed and approved it for FHA insurance, and certified that due diligence had been conducted on the mortgage application. The mortgage closed on or about October 10, 2005.

62. One of the multiple HUD rules violated by Golden First and Movtady in approving the Catherine Avenue Property application was HUD 4155.1, Ch. 2, § 10(C). That rule provides that, in order to ensure that gift funds are not provided by a party to the sales transaction, the Direct Endorsement Lender must document gift funds with a gift letter, signed by the borrower, that specifies the amount of the gift and states that no repayment is required, and the Direct Endorsement Lender must document the transfer of the funds from the donor to the borrower. Contrary to this rule, Golden First and Movtady failed to adequately document the source and transfer of the gift funds. In violating HUD 4155.1, Ch. 2, § 10(C), Golden First and Movtady endorsed the application for the Catherine Avenue Property without proof that the borrower closed with gift funds from a proper source rather than from, for instance, the seller.

63. Golden First and Movtady likewise violated HUD 4155.1, Ch. 2, § 10(B) with regard to this loan. That rule requires that: "A verification of deposit (VOD), along with the most recent bank statement, may be used to verify savings and checking accounts. If there is a large increase in an account, or the account was opened recently, the lender must obtain a credible explanation of the source of those funds." The borrower's checking account transaction journal shows a \$10,000 deposit – but Movtady, the underwriter, did not obtain a credible explanation for the source of those funds.

64. Golden First's and Movtady's false certification on the application for the Catherine Avenue Property loan was material and bore upon the likelihood that the borrower would make mortgage payments.

65. The loan first went into default on March 1, 2007.

66. As a result, HUD paid an FHA insurance claim on or about April 5, 2009 of \$248,565.00 plus costs.

B. Mountain View Drive Property

67. FHA case number 061-2891150 involves a mortgage for a property on Mountain View Drive in East Hartford, Connecticut (the "Mountain View Drive Property"). Movtady on behalf of Golden First underwrote the mortgage, reviewed and approved it for FHA insurance, and falsely certified that the loan complied with HUD due diligence rules. The mortgage closed on or about September 2, 2005.

68. Contrary to Movtady's certification, Golden First and Movtady did not comply with HUD rules in reviewing and approving the application for the Mountain View Drive Property and FHA insurance on the property. Instead, Golden First and Movtady violated multiple HUD rules, including HUD 4155.1, Ch. 2, § 3 (B and C), HUD 4155.1, Ch. 2, § 4(C)(5), and HUD 4155.1, Ch. 2, § 12(B).

69. HUD 4155.1, Ch. 2, § 12(B) requires Direct Endorsement Lenders to determine if the total of the mortgage payment and all recurring charges exceeds 41 percent of the gross effective income. A ratio exceeding 41 percent may be acceptable only if "significant compensating factors" are documented and are recorded on the mortgage credit analysis worksheet. HUD 4155.1, Ch. 2, § 12(B). The ratios with regard to this application exceeded the ratios set by HUD guidelines. Golden First and Movtady, however, failed to indicate that any compensating factors, much less "significant compensating factors," supported approval of the loan application. In violating HUD 4155.1, Ch. 2, § 12(B), Golden First and Movtady had every reason to believe that the approved loan would default.

70. Golden First's and Movtady's false certification on the application for the Mountain View Drive Property was material and bore upon the likelihood that the borrower would make mortgage payments.

71. The loan first went into default on October 1, 2007.

72. As a result, HUD paid loss mitigation claims on October 1, 2010 and February 7, 2011 totaling \$176,766.00 plus costs.

C. Wyona Street Property

73. FHA case number 374-4637348 involves a mortgage for a property on Wyona Street in Brooklyn, New York (the "Wyona Property"). Movtady and another Golden First employee served as the underwriters on this loan that contained multiple deficiencies. Movtady on behalf of Golden First underwrote the mortgage, reviewed and approved it for FHA insurance, and falsely certified that the loan complied with HUD due diligence rules. The mortgage closed on or about September 19, 2007.

74. Deficiencies in the underwriting included, among other things, the failure to verify and document \$15,600 in cash reserves required for the purchase of the property, the failure to verify and adequately document \$16,000 in gift funds, and the failure to adequately analyze the borrower's credit. HUD 4155.1.

75. These failures were material and bore upon the likelihood that the borrower would make mortgage payments.

76. The loan first went into default on July 1, 2008.

77. As a result, HUD has paid an FHA insurance claim of \$343,993.00 plus costs.

D. North Long Beach Avenue Property

78. FHA case number 374-4648725 involves a mortgage for a property on North Long Beach Avenue in Freeport, New York (the "North Long Beach Avenue Property").

Movtady served as the underwriter on this loan that contained multiple deficiencies. Movtady on behalf of Golden First underwrote the mortgage, reviewed and approved it for FHA insurance, and falsely certified that the loan complied with HUD due diligence rules. The mortgage closed on or about October 3, 2007.

79. Deficiencies in the underwriting included an improper calculation of the borrower's monthly income, failure to adequately evaluate the borrower's previous mortgage payment history, and failure to explain adequately the borrower's previous late payments. HUD 4155.1.

80. These failures were material and bore upon the likelihood that the borrower would make mortgage payments.

81. The loan first went into default on April 1, 2008.

82. As a result, HUD has paid a loss mitigation claim of \$875.00 on this loan, and HUD faces additional exposure of over \$200,000 on the loan.

E. East 53rd Street Property

83. FHA case number 374-4685938 involves a mortgage for a property on East 53rd Street in Brooklyn, New York (the "East 53rd Street Property"). The loan contained multiple deficiencies. An underwriter employed by Golden First underwrote the mortgage, reviewed and approved it for FHA insurance, and falsely certified that the loan complied with HUD due diligence rules. The mortgage closed on or about January 9, 2008.

84. Deficiencies in the underwriting included, among others, an inadequate verification of cash reserves, an invalid gift of equity, inconsistent statements regarding the gift, and a failure to verify the authenticity of faxed employment documents. HUD 4155.1.

85. These failures were material and bore upon the likelihood that the borrower would make mortgage payments.

86. The loan first went into default on December 1, 2008.

87. As a result, HUD has paid an FHA insurance claim of \$ 226,656.00 plus costs.

F. Grace Avenue Property

88. FHA case number 374-4680585 involves a mortgage for a property on Grace Avenue in Bronx, New York (the "Grace Avenue Property"). The loan contained multiple deficiencies. An underwriter employed by Golden First underwrote the mortgage, reviewed and approved it for FHA insurance, and falsely certified that the loan complied with HUD due diligence rules. The mortgage closed on or about January 9, 2008. The mortgage closed on or about January 3, 2008.

89. Deficiencies in the underwriting included, among others, failure to verify the authenticity of faxed employment documents, failure to adequately evaluate the borrower's previous mortgage payment history, and failing to explain adequately the borrower's previous late payments. HUD 4155.1.

90. These failures were material and bore upon the likelihood that the borrower would make mortgage payments.

91. The loan first went into default on May 1, 2008.

92. As a result, HUD has paid a loss mitigation claim of \$875.00 on this loan, and HUD faces additional exposure of over \$250,000 on the loan.

IV. THE FALSE ANNUAL AND LOAN-LEVEL CERTIFICATIONS BY GOLDEN FIRST AND MOVTADY HAVE CAUSED HUD TO PAY MILLIONS OF DOLLARS IN INSURANCE CLAIMS THUS FAR

93. The false certifications and representations both on annual basis and on individual loans by Golden First and Movtady regarding purported compliance with HUD underwriting requirements permitted Golden First to close nearly 1,512 loans with FHA insurance since July 30, 2007. HUD would not have made a financial commitment to pay such mortgage insurance claims absent Golden First's and Movtady's false certifications.

94. Had Golden First and Movtady not submitted a false annual certification in 2008, Golden First would not have been able to maintain its Direct Endorsement Lender status and continue endorsing loans for FHA insurance.

95. Golden First's and Movtady's false loan-level certifications, as illustrated in the examples set forth in the previous section of this Complaint, were material and bore upon the likelihood that borrowers would make mortgage payments.

96. Golden First and Movtady knew that the certifications of compliance with HUD rules were false, and thus acted intentionally, knowingly, recklessly and/or negligently in executing and submitting the false certifications to HUD.

97. In addition, Golden First's and Movtady's false certifications, as well as their failure to conduct due diligence in accordance with HUD rules, violated their duty of care to HUD.

98. As of June 1, 2012, HUD has paid \$12,379,186 in claims and approximately \$583,000 in loss mitigation payments for loans closed since July 30, 2007.

99. Further, HUD may potentially pay millions of dollars on defaulted loans that have not yet been submitted as claims to HUD. Many of those future claims will arise out of FHA mortgage insurance provided by HUD based on Golden First and Movtady's false certifications of due diligence.

100. The costs relating to FHA insurance claims paid by HUD to date and the costs relating to FHA insurance claims expected to be paid by HUD are the direct result of Golden First's and Movtady's false annual and loan-level certifications.

FIRST CLAIM

**Violations of the False Claims Act
(31 U.S.C. § 3729(a)(1) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(A))
Causing False Claims**

101. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

102. The Government seeks relief against Golden First and Movtady under Section 3729(a)(1) of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2006), and, as amended, Section 3729(a)(1)(A) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A).

103. As set forth above, Golden First and Movtady knowingly, or acting with deliberate ignorance and/or with reckless disregard for the truth, presented and/or caused to be presented, to an officer or employee of the Government, false and fraudulent claims for payment or approval in connection with its endorsement of FHA-insured mortgages, by:

- a. Submitting a false annual certification and making false representations to HUD with respect to Golden First's qualifications for Direct Endorsement Lender status; and/or
- b. Submitting false loan-level certifications to HUD in endorsing mortgages for FHA insurance.

104. The Government paid insurance claims, and incurred losses, relating to FHA-insured mortgages wrongfully endorsed by Golden First because of Golden First's and Movtady's wrongful conduct.

105. By reason of the false claims of Golden First and Movtady, the Government has been damaged in a substantial amount, and is entitled to treble damages of at least \$38,887,470 and civil penalties in the amount of at least \$5,269,000.

SECOND CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729(a)(2) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(B)) Use of False Statements

106. The Government incorporates by reference paragraphs 1 through 100 as if fully set forth in this paragraph.

107. The Government seeks relief against Golden First and Movtady under Section 3729(a)(2) of the False Claims Act, 31 U.S.C. § 3729(a)(1) (2006), and, as amended, Section 3729(a)(1)(B) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B).

108. As set forth above, Golden First and Movtady knowingly, or acting in deliberate ignorance and/or with reckless disregard of the truth, made, used, or caused to be made or used, false records and/or statements material to false or fraudulent claims in connection with Golden

First's maintenance of its Direct Endorsement Lender status and/or Golden First's endorsement of FHA-insured mortgages.

109. The Government paid insurance claims, and incurred losses, relating to FHA-insured mortgages wrongfully endorsed by Golden First because of Golden First's and Movtady's wrongful conduct.

110. By reason of the false records and/or statements of Golden First and Movtady, the Government has been damaged in a substantial amount, and is entitled to treble damages of at least \$38,887,470 and civil penalties in the amount of at least \$5,269,000

THIRD CLAIM

Violations of FIRREA (12 U.S.C. § 1833a) False Certifications to HUD

111. The Government incorporates by reference paragraphs 1 through 100, as if fully set forth in this paragraph.

112. Golden First and Movtady submitted, and caused to be submitted, false loan-level certifications, and false statements to HUD, in violation of 18 U.S.C. §§ 1005² & 1014 (as amended),³ with the intent to defraud or deceive HUD into endorsing loans that were ineligible for FHA insurance, and to defraud or deceive FHA into paying insurance claims for loans that were not eligible for FHA insurance.

² Golden First's and Movtady's violations of the fourth paragraph of 18 U.S.C. § 1005 provide the basis for the Government's allegations of FIRREA violations based upon that predicate statute.

³ With respect to Golden First's and Movtady's violations of 18 U.S.C. § 1014, the Government only asserts claims based upon false statements and records made after July 30, 2008.

113. Golden First and Movtady submitted and caused to be submitted a false annual certification, signed on or about September 15, 2008, and false statements to HUD, in violation of 18 U.S.C. §§ 1005 & 1014 (as amended), with the intent to defraud or deceive HUD into continuing to allow Golden First to remain a Direct Endorsement Lender and to endorse loans that were ineligible for FHA insurance, and to defraud or deceive FHA into paying insurance claims for loans that were not eligible for FHA insurance.

114. Accordingly, Golden First and Movtady are liable for civil penalties to the maximum amount authorized under 12 U.S.C. § 1833a.

FOURTH CLAIM

Gross Negligence

115. The Government incorporates by reference paragraphs 1 through 100 as if fully set forth in this paragraph.

116. Golden First and Movtady owed the Government a duty of reasonable care and a duty to conduct due diligence.

117. As set forth above, Golden First and Movtady breached their duties to the Government.

118. As set forth above, Golden First and Movtady recklessly disregarded their duties to the Government.

119. As a result of the gross negligence of Golden First and Movtady, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by Golden First.

120. As a result of the gross negligence of Golden First and Movtady, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by Golden First.

121. By virtue of the above, the Government is entitled to compensatory and punitive damages, in an amount to be determined at trial.

FIFTH CLAIM

Negligence

122. The Government incorporates by reference paragraphs 1 through 100 as if fully set forth in this paragraph.

123. Golden First and Movtady owed the Government a duty of reasonable care and a duty to conduct due diligence.

124. As set forth above, Golden First and Movtady breached their duties to the Government.

125. As a result of the negligence of Golden First and Movtady, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by Golden First.

126. As a result of the negligence of Golden First and Movtady, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by Golden First.

127. By virtue of the above, the Government is entitled to compensatory damages, in an amount to be determined at trial.

SIXTH CLAIM

Breach of Fiduciary Duty

128. The Government incorporates by reference paragraphs 1 through 100 as if fully set forth in this paragraph.

129. Golden First and Movtady were fiduciaries of the Government, and owed the Government fiduciary duties.

130. As fiduciaries, Golden First and Movtady had a duty to act for, and give advice to, the Government for the benefit of the Government as to whether mortgages should be insured by FHA under the Direct Endorsement Lender program.

131. As fiduciaries, Golden First and Movtady had the obligation to act in the utmost good faith, candor, honesty, integrity, fairness, undivided loyalty, and fidelity in their dealings with the Government.

132. As fiduciaries, Golden First and Movtady had a duty to refrain from taking advantage of the Government by misrepresentations, to make full and fair disclosures to the Government of all material facts, and to take on the affirmative duty of employing reasonable care to avoid misleading the Government.

133. As fiduciaries, Golden First and Movtady had a duty to exercise sound judgment, prudence, and due diligence on behalf of the Government in endorsing mortgages for FHA insurance.

134. As set forth above, Golden First and Movtady breached their fiduciary duties to the Government.

135. As a result of the breach of the fiduciary duties of Golden First and Movtady to the Government, the Government has paid insurance claims, and incurred losses, relating to FHA-insured mortgages endorsed by Golden First.

136. As a result of the breach of the fiduciary duties of Golden First and Movtady to the Government, the Government will pay future insurance claims, and incur future losses, relating to FHA-insured mortgages endorsed by Golden First.

137. By virtue of the above, the Government is entitled to compensatory damages, in an amount to be determined at trial.

WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against Golden First and Movtady as follows:

- a. On Counts One and Two (FCA), a judgment against Golden First and Movtady for treble damages and civil penalties to the maximum amount allowed by law;
- b. On Count Three (FIRREA), a judgment against Golden First and Movtady imposing civil penalties up to the maximum amount allowed by law;
- c. On Counts Four (Gross Negligence), Five (Negligence) and Six (Breach of Fiduciary Duty), a judgment against Golden First and Movtady for compensatory damages in an amount to be determined at trial;
- d. For an award of costs pursuant to 31 U.S.C. § 3729(a); and
- e. For an award of any such further relief as is proper.

Dated: New York, New York
April 4, 2013

PREET BHARARA
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