

Julius McKenzie  
7751 Greymont Street  
Hyattsville, MD 20785

Plaintiff,

vs.

Celine Djangmah  
5103 Flintridge Dr  
Hyattsville MD 20784-1501

And

Re/Max One  
9475 Lottsford Road, #180  
Largo, MD 20774  
Serve On:  
Charles Richard Rose  
164 Cardamon Drive  
Edgewater, MD 21037--1129

And

Vincent F. Ball  
1459 3<sup>rd</sup> Street, SW  
Washington, DC 20024  
Serve On:  
Jason St. John, Attorney for the Defendant  
Saul Ewing LLP  
100 South Charles Street  
Baltimore, MD 21201

And

NRT Mid-Atlantic, Inc.  
dba Coldwell Banker Residential Brokerage  
7703 Crain Highway  
Upper Marlboro, MD 20772  
Serve On:  
Jason St. John, Attorney for the Defendant  
Saul Ewing LLP  
100 South Charles Street  
Baltimore, MD 21201

And

**IN THE CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY,  
MARYLAND**

**Civil Division**

**Case No.: CAL04-25911**

**FIRST AMENDED COMPLAINT**

Clerk of the  
Circuit Court  
205 JIM 23 PM 4: 14  
PR. GEO. CO., MD

Preferred Mortgage Group, Inc.	:
dba Preferred Service Mortgage	:
8391 Old Court House Road	:
Vienna, VA 22182	:
Serve On:	:
CSC-Lawyers Incorporating Service	:
11 E. Chase St.	:
Baltimore, MD 21202-2516	:
	:
And	:
	:
U.S. Inspect Inc. (aka U.S. Inspect LLC)	:
2711 Centerville Road, Suite 400	:
Wilmington, DE 19808	:
Serve On:	:
CSC Lawyers Incorporating Service	:
11 E. Chase St.	:
Baltimore, MD 21202	:
	:
And	:
	:
Cendant Mortgage Corporation	:
300 Leadenhall Road	:
Mt Laurel, NJ 08054	:
Serve On:	:
CSC Lawyers Incorporating Service	:
11 E. Chase St.	:
Baltimore, MD 21202	:
	:
And	:
	:
Globe Insurance Services Corporation	:
dba Globe Home Warranty	:
611 Wymore Rd., Ste. 103	:
Winter Park, FL 32789	:
	:
Defendants	:
	:
_____	:

Comes now the above-named Plaintiff, Julius McKenzie (McKenzie), on his own behalf and through his attorneys, Phillip Robinson and Denis Murphy and Civil Justice, Inc., and William

Moore, and for his complaint and causes of action against the above-named defendants alleges as follows:

### **INTRODUCTION**

1. This matter involves the purchase by McKenzie of his first home for he and his family, which sale subjected McKenzie to breach of contract, fraud, negligence, and deceptive real estate real estate practices involving McKenzie's purchase of a family home located at 7751 Greymont Street (townhouse) in the community of Hyattsville in the County of Prince George's.
2. McKenzie seeks in this matter compensatory damages, punitive damages and attorney fees based upon the breach of contract, fraud, civil conspiracy to defraud, negligent supervision, negligent misrepresentation, negligent home inspection, violation of the Maryland Consumer Protection Act, and violation of 12 USC §2607 (RESPA).
3. McKenzie employed a Buyer's Agent with Coldwell Banker Residential Brokerage and placed his trust in Vincent Ball, a Coldwell Banker real estate agent, who steered the McKenzie to a townhouse being offered for sale by a real estate agent for Re/Max One real estate brokerage.
4. Celine Djangmah, the seller and listing agent in this transaction, had acquired the subject townhouse in a Department of Housing and Urban Development (HUD) foreclosure auction for \$60,000 a year prior to her sale to McKenzie. The seller had put this townhouse on the market within ten months of her purchase not having done much in the way of repairs, but nevertheless having listed it as "newly remodeled." The seller also offered her fellow realtors a "\$500 bonus" to any agent bringing her a buyer.
5. McKenzie was not told that the townhouse was formally a HUD foreclosure property and despite having signed a Buyer Broker Agreement limiting Ball and Coldwell Banker to a fee

of 3% of the sale price, Ball and Coldwell Banker received sums greater than this amount as a result of McKenzie's purchase. Ball steered McKenzie away from using his lender, Wachovia Bank, where he had been pre-approved, and suggested rather that McKenzie use a Coldwell Banker affiliate, Preferred Service Mortgage, for his purchase.

6. Preferred Service Mortgage in turn failed to disclose the fees it would charge in accordance with the Maryland Finders Fee Act and had McKenzie in his loan application waive his right to receive a copy of the townhouse's appraisal report that he was required to pay for. The appraisal report is attached to this complaint as Exhibit 1 and is incorporated by this reference. The appraisal listed a number of items, in a report prepared for the Federal Housing Administration (FHA), which were defective and/or which required repair and/or for mechanical and electrical systems to be certified by licensed professionals.
7. McKenzie went to closing not knowing of these findings which were not made known to him by his mortgage broker (Preferred Service Mortgage) or his Buyer's Agent (Ball) or anyone at Coldwell Banker or Cendant Mortgage—all in whom McKenzie placed his trust.
8. Moreover the seller provided McKenzie with a worthless home warranty contract issued by Globe Home Warranty. Globe forfeited its registration to conduct business in Maryland and has not complied with any of the regulations of the Maryland Insurance Administration. When McKenzie made repair claims, which should have been paid under the contract, to Globe at the suggestion of Ball and Djangmah, Globe failed to honor them and refused all further contact with McKenzie.
9. Ball encouraged McKenzie to have his purchase contract include a home and pest inspection and steered McKenzie to use U.S. Inspect to carryout both inspections. However, Ball failed to disclose to McKenzie that U.S. Inspect had a referral fee (kickback) arrangement with

Coldwell Banker. Thus, U.S. Inspect performed two inspections that were flawed and tainted by its kickback dependent relationship with Coldwell Banker who stood to gain financially if the sale was completed.

10. The seller did not disclose that she had contracted with unlicensed contractors to perform work at the townhouse. After McKenzie closed on the townhouse, these deficient and deceptive repairs and non-disclosures became apparent. Examples of the problems include leaks in the bathroom plumbing, cockroach infestation of the cupboards, hazardous and deficient furnace conditions not to local building code standards, and the fraudulent concealment of defects in the central air conditioner's condensation line (which later leaked in the interior residence and damaged newly installed carpets). The seller's representation was that the townhouse was "remodeled" was unmistakably misleading.

11. This case, therefore, is about a total failure of each of the Defendant actors in the residential real estate industry conspiring to rip-off a First Time Home Buyer, and who, as a result, brings this suit against: Celine Djangmah, the seller and Listing Agent; Re/Max One, the Listing Brokerage and Employer of Celine Djangmah; Vincent Ball, the Buyer's Agent; Coldwell Banker, a Real Estate Broker; Preferred Service Mortgage, a mortgage broker; Cendant Mortgage, a mortgage lender, U.S. Inspect, a home and pest inspection firm; and Globe Home Warranty, a home warranty insurance company.

### **JURISDICTION**

12. This court has jurisdiction of matter inasmuch as the townhouse is located in Prince George's County and McKenzie and several Defendants reside in or have offices in Prince George's County and/or are residents of Maryland.

## **PARTIES**

### **Plaintiff**

13. Julius McKenzie is a resident of Prince George's County and he and his wife and two children age 5 and 3, have lived for nearly a year in the townhouse that has been at times nearly uninhabitable. McKenzie works as a bus driver for First Transit and earns approximately \$28,000 annually. Prior to his dealings with the Defendants in the purchase of the townhouse, McKenzie had never owned nor purchased real estate.

### **The Defendant Co-Conspirators**

14. Celine Djangmah is a resident of Prince George's County, has business offices in Prince Georges County, and is a real estate salesperson licensed by the Maryland Real Estate Commission to provide real estate brokerage services on behalf of a Re/Max One with whom she is affiliated.
15. Re/Max One has multiple offices in Maryland including locations in Bowie and Largo and is a Maryland corporation licensed as a Maryland Real Estate Broker and is affiliated with Re/Max International based in Denver, Colorado.
16. Vincent F. Ball is a resident of the District of Columbia, has business offices in Prince George's County, and is a real estate salesperson licensed by the Maryland Real Estate Commission to provide real estate brokerage services on behalf of Coldwell Banker Residential Brokerage with whom he is affiliated.
17. NRT Mid-Atlantic, Inc. (dba Coldwell Banker Residential Brokerage) has offices in Prince George's County including Upper Marlboro and is a Maryland corporation licensed as a Maryland Real Estate Broker. NRT Mid-Atlantic is registered with Maryland State Department of Assessments and Taxation (SDAT) as a Maryland Corporation and is a subsidiary of NRT Incorporated.

18. U.S. Inspect is known as “U.S. Inspect Inc.” and “U.S. Inspect LLC.” U.S. Inspect Inc. operated as a qualified foreign corporation, based at 3650 Concord Parkway in Chantilly, Virginia, registered with SDAT until May 30, 2003 at which time U.S. Inspect Inc. terminated its foreign corporation qualification. Prior to U.S. Inspect Inc.’s termination of its foreign corporation qualification with SDAT, U.S. Inspect, LLC registered with SDAT as a non-Maryland Limited Liability Company formed in Delaware in July 2002. U.S. Inspect is a national home inspection company with multiple offices throughout the state of Maryland including Prince George’s County. Annually, U.S. Inspect produces more than 150,000 home inspection reports for clients purchasing real estate nationwide.
19. Globe Insurance Services Corporation (dba Globe Home Warranty) (Globe), a Florida corporation, forfeited its SDAT registration on November 23, 2003 and has not renewed or cured the forfeiture in the more than 12 months since that time.
20. Montague Plumbing & Heating (Montague), a Maryland contractor based in Hyattsville, not named as a defendant but as a participant in the scheme as described below, does not appear to be registered with any state or local licensing board for construction, home improvement, and/or plumbing firms. Montague is also an agent of Globe.
21. Cendant Corporation, one of the largest retail mortgage originators in the U.S. as well as the largest residential real estate brokerage firm in the U.S., not named as a defendant but as a participant in the scheme, has significant Maryland contacts and is registered with the SDAT through several subsidiary companies. One of these subsidiary companies registered with SDAT is NRT Incorporated.
22. NRT Incorporated, the nation's largest residential real estate brokerage company, not named as a defendant but as a participant in the scheme, owns and operates companies in more than 30 of the largest metropolitan markets including many in Maryland including NRT Mid-

Atlantic Inc. In 2003, NRT posted a real estate industry record of \$167 billion in closed sales volume.

23. The Preferred Mortgage Group Inc. (dba Preferred Service Mortgage) has multiple offices in Maryland and is a licensed Maryland mortgage lender and is registered with SDAT. Preferred Mortgage Group, Inc. is also an affiliated business entity of NRT Incorporated, Cendant Corporation, Cendant Mortgage, and Coldwell Banker.

#### FACTS

24. In the fall and winter of 2003-2004, Julius McKenzie began looking for a home and property to purchase for his wife and two children.
25. McKenzie entered into an exclusive retainer agreement with Coldwell Banker Residential Brokerage on December 10, 2003 for the purpose of Coldwell Banker and its agent Vincent Ball, to serve as the real estate broker representative of McKenzie in his purchase (said contract hereinafter referred to as "Buyer Broker Agreement"). The term of the Buyer Broker Agreement was through June 10, 2004 and parties agreed that McKenzie would be obligated to compensate Coldwell Banker "3% of the purchase price, of any real property purchased by or for the Buyer during the term of the Agreement." The parties further agreed in the Buyer Broker Agreement that the "Broker is authorized to receive compensation either as a portion of commission offered by the Listing Broker to a Buyer's Broker or paid by the Seller, any such amounts to be applied toward Buyer's obligation."
26. Beginning on or about December 10, 2003 McKenzie was shown several properties for sale by Coldwell Banker and Vincent Ball. These properties included the townhouse in Hyattsville.
27. The Metropolitan Regional Information System's (MRIS) December 19, 2003 description of the townhouse shows that it was being offered for the sale price of \$117,500, as a newly "remodeled" home available for "immediate occupancy," and had been available on the



market since October 30, 2003. The MRIS property description also indicated that the assessed value of the townhouse in 2002 was just \$81,066. The MRIS description further indicated that a "\$500 bonus was available to Buyers Agent with acceptable contract."

Celine Djangmah was listed on the MRIS description as the property seller and Listing Agent and Re/Max One was listed as the Listing Company. A copy of the MRIS description is attached as Exhibit 2.

28. McKenzie alleges upon information and belief that Djangmah formulated the wording of the MRIS description of the townhouse for purposes of inducing perspective purchasers to examine and purchase the townhouse.
29. McKenzie observed the MRIS description and in reliance upon its averments he spoke to Ball about the availability of the townhouse. On December 13, 2003, McKenzie, with the assistance Coldwell Banker and Ball, evaluated whether to make an offer to purchase the townhouse located in Hyattsville in Prince George's County. As part of the evaluation process neither Coldwell Banker nor Ball informed McKenzie that Djangmah had in fact purchased the townhouse less than a year earlier at a January 3, 2003 foreclosure sale offered by the U.S. Department of Housing and Urban Development for the price of \$60,000. As part of the evaluation process neither Coldwell Banker nor Ball informed McKenzie that the townhouse had assessed value of just \$81,066 in 2002. Finally, Ball and Coldwell Banker failed to show McKenzie any comparables of other recently flipped HUD homes in the area.
30. Ball informed McKenzie that Djangmah would make all necessary repairs and improvements to the townhouse and that Djangmah was motivated to do whatever was possible to sell the townhouse.
31. Prior to McKenzie's execution of the contract, Djangmah and Re/Max One presented McKenzie with a Real Estate Transfer Disclosure Statement ("the disclosure statement")

dated October 29, 2003. The disclosure statement is attached to this complaint as Exhibit 3 and is incorporated by this reference.

32. In the disclosure statement, Djangmah and Re/Max One chose to not make any representations despite the fact that Djangmah had hired contractors and had unlicensed work performed on the townhouse during her ownership.
33. At the suggestion of Coldwell Banker and Ball, McKenzie made an offer to purchase the townhouse for the full asking price of \$117,500. McKenzie also offered, at the suggestion of Coldwell Banker and Ball, to purchase the townhouse contingent on a successful home inspection, attaining financing equaling \$113,975, the seller providing a \$349 Globe Home Warranty Plan to McKenzie, and the seller giving Ball a \$500 bonus.
34. Djangmah accepted McKenzie's offer on December 18, 2003 and a contract for sale of the townhouse was then executed.
35. On or about December 18, 2003, Ball recommended that McKenzie use the firm of U.S. Inspect to perform the home and pest inspections required under the contract. Ball explained, "Coldwell Banker has a special relations with U.S. Inspect to conduct this work." In fact, Coldwell Banker and Ball contacted U.S. Inspect inspector, Robert E. Phillips, and scheduled the home and pest inspections pursuant to the terms of the contract.
36. On December 18, 2003 Robert E. Phillips, representing "U.S. Inspect, Inc. of Chantilly, Virginia," conducted an inspection of the townhouse that purported to conform "to the standards of Practice of the American Society of Home Inspectors (ASHI)." McKenzie attended part of the inspection made by "US Inspect, Inc." although Phillips told McKenzie "that it was unnecessary for him to be present for the inspection." Phillips issued an inspection report later the same day.
37. On December 18, 2003 Robert E. Phillips, representing "U.S. Inspect of Chantilly, Virginia," performed a termite inspection and found no evidence of any wood destroying insects.

38. After the completion of the “U.S. Inspect, Inc.” inspection on December 18, 2003, Djangmah and McKenzie agreed, based on the findings of the inspection report, to a general addendum to the executed contract that required Djangmah to make certain repairs by a “licensed professional” no later than January 5, 2004.
39. McKenzie, at the strong encouragement of Ball, terminated his “pre-approved” mortgage loan application with Wachovia Bank and instead completed an application with Preferred Service Mortgage Company. As part of the application, Preferred Service Mortgage Company induced McKenzie to waive his right to receive a copy of the townhouse’s appraisal report unless that request was made in writing. The mortgage application was completed in the Coldwell Banker offices in Upper Marlboro with the assistance of Preferred Service Mortgage Company’s agent Tim Johnson.
40. Pursuant to the terms of the Contract, Djangmah and Re/Max One filed an application for a home warranty with Globe Home Warranty on January 12, 2004. The closing date for the application was January 20, 2004 and the confirmation number was 900133274. At the settlement, to further induce McKenzie to purchase her townhouse, the seller assured McKenzie that the Globe Home Warranty “would take care of any problems that might occur.”
41. On January 5, 2004 John E. McAdams, CREA, performed an appraisal of the townhouse at the request of Preferred Service Mortgage Company. The appraised value of the townhouse equaled the agreed upon sales price—although the four comparables used for the appraisal were each end units with more windows than the house and premises at the townhouse and none of the comparables were in similar condition as the townhouse.
42. As part of the January 5, 2004 appraisal, John E. McAdams, CREA, also performed a FHA inspection (Case Number 249-4903248) of the house and premises at the townhouse. The

results of this FHA inspection required the following actions in order for the transaction to be completed:

- a. An electrical system certification by a licensed electrician.
- b. A roof certification by a licensed roofer.
- c. A heating system certification by a licensed HVAC technician.
- d. A plumbing system certification and certain repairs by a licensed plumber.
- e. Other repairs including the installation of a handrail on the front steps, repair or replacement of cracked concrete steps, replacement and repair of all peeling and chipping paint and deteriorating wood.

43. On January 13, 2004 John E. McAdams, CREA, completed a compliance inspection report indicating that only some of the work requested in his January 5, 2004 FHA inspection report had been acceptably completed.

44. Prior to the closing/settlement date, January 20, 2004, McKenzie had not been given a copy of the January 5, 2004 appraisal or the January 5 & 13, 2004 FHA inspection reports.

45. On January 20, 2004, Preferred Service Mortgage Company was able to secure a financing commitment for McKenzie from Cendant Mortgage.

46. On January 20, 2004, a real estate settlement to complete the sale and transfer between Djangmah and McKenzie took place. The settlement was performed in the Camp Springs, Maryland office of Universal Title, LLC. Prior to the settlement, at the offices of Universal Title, McKenzie and Ball schedule an appointment to perform a final walk-through of the premises and townhouse. Ball arrived late for the scheduled walk-through and insisted McKenzie cut short the walk-through so they could get to the scheduled settlement at Universal Title.

47. At the January 20, 2004 settlement of the townhouse, the McKenzie's remained worried about the central air conditioning system. In order to complete the sale, Djangmah assured

McKenzie that she would have a representative check the townhouse's central air conditioning once the weather became warmer and through such a pledge, Djangmah guaranteed that the system would be in satisfactory condition. No such service was ever performed by Djangmah or any of her representatives.

48. On January 25, 2004, McKenzie and his family moved into the townhouse.
49. Soon after the McKenzie family moved into the townhouse, McKenzie began to discover serious defects, code violations, and other hazardous conditions not disclosed or patently misrepresented by Djangmah and Re/Max One. The defects involved: water damage to the carpet due to defective plumbing repairs performed by Djangmah and Re/Max One; cockroach infestation; defective and dangerous replacement windows installed by Djangmah and/or her agent; deceptive work by Djangmah and/or her agent related to the central air conditioning unit, dangerous and hazardous conditions related to the furnace. McKenzie reported these serious defects, code violations, and other hazardous conditions to Djangmah, Ball, Globe Home Warranty, and U.S. Inspect.
50. McKenzie attempted to contact Djangmah to seek resolution to the serious defects, code violations, and other hazardous conditions not disclosed or patently misrepresented in the sale of the townhouse. Djangmah told McKenzie's wife to call the warranty company and to cease any further communications to her. Even though she was a party to the contract, Djangmah stated that any other communications to her be directed through Ball since she "did business with him." Djangmah refused to take Ball's calls on the McKenzie's behalf.
51. Two claims were filed by McKenzie with Globe Home Warranty under the plan provided by Djangmah. In the first claim made on or about May 20, 2004, Globe Home Warranty's agent denied McKenzie's claim under the policy related to the deceptive work by Djangmah and/or her agent related to the central air conditioning unit.

52. In the second claim made on or about October 8, 2004, McKenzie reported to Globe Home Warranty that the furnace created a hazardous condition and could not be used without extreme undue risk to his family. On October 12, 2004, Globe Home Warranty's agent, Montague, visited the townhouse and confirmed that the furnace did in fact create a hazardous condition and required replacement. However, Montague explained that Globe Home Warranty would only pay half the necessary costs for the repair and replacement of the furnace. Montague offered to perform the necessary work if McKenzie paid the difference in price.
53. On or before October 13, 2004, McKenzie called Globe Home warranty to determine on what basis Globe denied the second claim. Globe has refused to respond to McKenzie's requests in writing or by phone.
54. Due to the drop in temperatures and his family's personal safety, McKenzie replaced the furnace at his own expense since Globe refused to reply to his valid claim.

**COUNT I – BREACH OF WRITTEN CONTRACT  
FOR SALE OF REAL PROPERTY  
Against CELINE DJANGMAH AND RE/MAX ONE**

55. McKenzie relied upon Djangmah's representations made in the MRIS advertisement, as well as her oral representations, that the townhouse was newly remodeled, licensed contractors under her control and direction performed work, and that her representative would check the air conditioning system when the weather got warmer, which representations were untrue.
56. McKenzie further relied upon Djangmah's promise to purchase a home warranty from Globe Home Warranty that would provide him with the reasonable expectation that if problems arose, those problems would be corrected at little or no expense to him.
57. McKenzie relied on the representations and promises to improve the townhouse in entering into the contract.

58. McKenzie performed all conditions, covenants, and promises on his part to be performed in accordance with the terms and conditions of the contract.
59. McKenzie is informed and believes, and on that basis alleges, that Djangmah breached the contract by failing to disclose material and important information regarding the condition of the real property that was within seller's knowledge and control, as the agency hiring contractors to perform work and also by making representations which were untrue.
60. McKenzie relied on the representations, assertions, and statements made in negotiations as to the condition of the townhouse and that reliance was reasonable.
61. McKenzie would not have entered into the contract had he know the true facts. The true facts are:
- a. The repairs required by the contract concerning plumbing and the FHA inspections, that were to be performed by Djangmah and Re/Max One were not performed;
  - b. The professional certifications and inspections requested by the FHA inspector to be completed per the terms of the contract and McKenzie's loan application were not performed by Djangmah and Re/Max One;
  - c. The Central Air Conditioner condition was deceptive and unworkmenlike and in violation of local building codes;
  - d. The furnace was is in a dangerous and hazardous condition in violation of local building codes; and
  - e. The windows are defective and dangerous and require replacement.
62. As a result of Djangmah and Re/Max One's breach of the contract, McKenzie has been damaged, in that McKenzie has been forced to incur the cost and expense of correcting the defects and problems of the real property as well as defer the required and necessary improvements until resources become available to him to make such repairs. This damage includes:

- a. Costs to repair the windows in the sum of over \$9,000;
- b. Costs to repair the furnace in the sum of over \$2,500;
- c. Costs to repair leaking plumbing pipes in the sum of over \$1,000;
- d. Costs to repair the central air conditioner's condensation line in the sum of over \$500;
- e. Costs to perform the professional certifications required for the FHA financing and any improvements or replacements required from therein in the sum of over \$5,000.

WHEREFORE McKenzie demands judgment against Defendants Djangmah and Re/Max One as set forth in Paragraph 62 and such other and further relief as this court may deem just and proper.

**COUNT II – BREACH OF CONTRACT BASED ON STATUTORY OBLIGATIONS  
Against CELINE DJANGMAH, RE/MAX ONE, BALL, COLDWELL BANKER &  
US INSPECT**

63. McKenzie incorporates by this reference Paragraphs 1 through 54 of this complaint.
64. This cause of action arises against defendants Djangmah, Re/Max One, Ball, Coldwell Banker, and US Inspect's for breach of contract based upon these defendants' statutory obligations as prescribed by the Business Occupations and Professions and Real Property Articles of the Maryland Annotated Code.
65. Specifically § 17-322(b) of the Business Occupations and Professions Article of the Maryland Annotated Code imposes upon defendants Djangmah, Re/Max One, Ball, and Coldwell Banker the contractual obligation to:
  - a. Not directly or through another person willfully make a misrepresentation, or knowingly make a false promise (Section 17-322(b)(3));
  - b. Not intentionally or negligently fail to disclose to McKenzie a material fact that these defendants knew or should know which related to the townhouse (Section 17-322(b)(4));



- c. Not advertise in a misleading or untruthful manner (section 17-322 (b)(19)); and
- d. Not engage in conduct that demonstrates bad faith, incompetent or untrustworthiness, or that constitutes dishonest, fraudulent or improper dealings.

66. Specifically, § 14-127(c) of the Real Property Article imposes upon defendants Ball, Coldwell Banker, and US Inspect a prohibition from receiving or paying a kickback or referral fee for services performed related to the real estate settlement of the townhouse.

67. As a result of defendants' Djangmah, Re/Max One, Ball, Coldwell Banker, and US Inspect's breach of these obligations, which constitutes a breach of contract, McKenzie has been damaged, in that McKenzie has been forced to incur the cost and expense of correcting the defects and problems of the real property as well as defer the required and necessary improvements until resources become available to him to make such repairs.

WHEREFORE McKenzie demands judgment against Djangmah, Re/Max One, Ball, Coldwell Banker, and US Inspect, jointly and severally, as set forth in Paragraph 62 and such other and further relief as this court may deem just and proper for an amount of damages as determined by the trier of fact.

**COUNT III – FRAUD**  
**Against CELINE DJANGMAH AND RE/MAX ONE**

68. McKenzie realleges paragraph 63.

69. Djangmah deliberately concealed the true facts regarding the townhouse from McKenzie, and Re/Max One and Djangmah either deliberately concealed the true facts known to them or failed to make any reasonable investigation to determine the true facts from which representations were made as to the condition of the real property to determine whether they were true or false, and without having any sufficient basis upon which to make any

representations, knowingly made false representations, concealing the true condition of the real property as set forth in this complaint.

70. Re/Max One and Djangmah concealed the facts when they each knew the true and correct facts regarding the real property.
71. True material facts were concealed from McKenzie with intent to induce McKenzie to enter into the contract.
72. McKenzie's reliance on statements made by Re/Max One and Djangmah was justified, in that Re/Max One and Djangmah had advertised the townhouse as "remodeled" during Djangmah's term of ownership and Re/Max One and Djangmah had access to information known to them or could have ascertained by a reasonably competent and diligent investigation and inspection.
73. As a proximate result of the fraud and deceit alleged, McKenzie was induced to purchase the townhouse.
74. McKenzie's damages include out-of-pocket costs and expenses and loss of use of the real the townhouse.
75. In doing the acts alleged in this complaint, Re/Max One and Djangmah acted with oppression, fraud, and malice, McKenzie is entitled to punitive damages in addition to actual damages.

**WHEREFORE**, McKenzie prays for judgment against Re/Max One and Djangmah for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Punitive damages in the sum of \$350,000;
- d. Reasonable attorney fees according to proof;
- e. Costs of the suit incurred in this action; and
- f. Such other and further relief as this court may deem just and proper.

#### **COUNT IV – FRAUD**

#### **Against CELINE DJANGMAH, RE/MAX ONE & GLOBE HOME WARRANTY**

76. McKenzie realleges paragraph 63.
77. Djangmah, Re/Max One, and Globe deliberately concealed the true facts regarding the worthless Globe home warranty offered to McKenzie as part of the sale of this transaction, and Re/Max One, and Djangmah either deliberately concealed the true facts known to them or failed to make any reasonable investigation to determine the true facts from which representations were made as to the validity of the home warranty offered by Globe to determine whether they were true or false, and without having any sufficient basis upon which to make any representations, knowingly made false representations, concealing the true condition of the Globe home warranty as set forth in this complaint.
78. Re/Max One and Djangmah concealed the facts when they each knew the true and correct facts regarding the real property and the warranty offered by Globe.
79. The concealment of the true facts from McKenzie concerning the Globe home warranty was done with the intent to induce McKenzie to enter into the contract.
80. McKenzie's reliance on statements made by Re/Max One and Djangmah was justified, in that Re/Max One and Djangmah were licensed real estate brokers and agents in the state of Maryland and each had access to information regarding Globe known to them or could have ascertain it by a reasonably competent and diligent investigation and inspection.
81. As a proximate result of the fraud and deceit alleged, McKenzie was induced to purchase the townhouse.
82. McKenzie's damages include out-of-pocket costs and expenses and the loss of the use of the townhouse.
83. Re/Max One, Djangmah and Globe Home Warranty acted with oppression, fraud, and malice, and McKenzie is entitled to punitive damages in addition to actual damages.

**WHEREFORE**, McKenzie prays for judgment, jointly and severally, against Re/Max One, Djangmah, and Globe Home Warranty for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Punitive damages;
- d. Reasonable attorney fees according to proof;
- e. Costs of the suit incurred in this action; and
- f. Such other and further relief as this court may deem just and proper.

**COUNT V – NEGLIGENT MISREPRESENTATION  
Against CELINE DJANGMAH AND RE/MAX ONE**

84. McKenzie realleges paragraph 63.

85. Djangmah acted as the seller and listing agent from Re/Max One in the sale of the townhouse to McKenzie.

86. Djangmah and Re/Max One allegedly made improvements to the townhouse and were asked to provide certain certified inspections by licensed contractors. The improvements that were performed were not done to code and were completed by non-licensed contractors.

87. Djangmah and Re/Max One promised on multiple occasions to make necessary repairs.

88. As direct and proximate cause of Djangmah and Re/Max One's misrepresentations, McKenzie entered into contract and purchased the townhouse.

89. Djangmah and Re/Max One knew McKenzie would rely on their representations.

**WHEREFORE**, McKenzie prays for judgment against Re/Max One and Djangmah for:

- a. Compensatory damages in an amount as determined by the trier of fact; and
- b. Such other and further relief as this court may deem just and proper.

**COUNT VI – NEGLIGENT SUPERVISION  
Against RE/MAX ONE**

90. McKenzie realleges paragraph 63.

91. Re/Max One had a duty to protect McKenzie from the actions of its agent, Djangmah, in the sale of the townhouse and receipt of funds from the transaction's commission.
92. Re/Max One failed to supervise Djangmah's deceptive sales practices as herein described.
93. As a result of McKenzie's purchase, he has had to pay out-of-pocket expenses and the value of his home is less than what had been represented.
94. McKenzie's losses were the proximate result from the Re/Max One's failure to supervise its agent, Djangmah, in this transaction.

**WHEREFORE**, McKenzie prays for judgment against Re/Max One for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Costs of the suit incurred in this action; and
- d. Such other and further relief as this court may deem just and proper.

**COUNT VII – NEGLIGENT HOME INSPECTION  
Against US INSPECT**

95. McKenzie realleges paragraph 63.
96. US Inspect had a duty as the home inspector of the townhouse to disclose all defects and conditions of the townhouse and determine if any repairs should be made of the townhouse to place it in good repair before McKenzie took possession of the property.
97. US Inspect breached this duty by failing to report certain material defects and property conditions to McKenzie.
98. US Inspect conditioned the release of its inspection report of the townhouse, upon McKenzie signing a document with an exculpatory clause that stated, "Where permissible under state law, the liability of U.S. Inspect under any theory of liability (e.g. negligence, breach of contract, consumer protection, etc.) shall be limited to the fees(s) paid by you for the inspection services you selected. In other states where "return of Fee" limitations are

expressly prohibited, our liability shall be the lessor of one-half of one percent (0.5%) of the purchase price you paid for the Property or the amount provided for under state law.”

99. Under Maryland law, McKenzie, based upon information and belief, believes that this exculpatory clause violates Maryland public policy and should render the clause void.
100. As direct and proximate cause of US Inspect’s failure of duty to disclose certain defects and conditions of the townhouse, McKenzie ultimately purchased the townhouse, which required repairs which should have been disclosed and repaired prior to purchase as a result McKenzie has been damaged.
101. US Inspect knew McKenzie would rely on its representations and evaluation of the property.

**WHEREFORE**, McKenzie prays for judgment against US Inspect for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Costs of the suit incurred in this action; and
- d. Such other and further relief as this court may deem just and proper.

**COUNT VIII – BREACH OF WRITTEN CONTRACT  
Against VINCENT F. BALL AND COLDWELL BANKER**

102. McKenzie realleges paragraph 63.
103. Prior to the McKenzie’s execution of the contract to purchase the townhouse, McKenzie and Ball completed a Coldwell Banker Buyer Broker Agreement dated December 10, 2004 that was prepared by Ball and Coldwell Banker. The Buyer Broker Agreement is attached to this complaint as Exhibit 4 and is incorporated by this reference.
104. McKenzie relied on the representations and promises made in the Buyer Broker Agreement during negotiations to purchase the townhouse, when entering into the contract to

purchase the townhouse, and throughout the settlement to conclude the purchase of the townhouse.

105. McKenzie performed all conditions, covenants, and promises on McKenzie's part to be performed in accordance with the terms and conditions of the Buyer Broker Agreement.

106. McKenzie is informed and believes, and on that basis alleges, that Ball and Coldwell Banker breached the contract by accepting compensation from agreement with them more than the "3% of the purchase price," as herein described, that Ball and Coldwell Banker were entitled to receive per the terms of the Buyer Broker Agreement.

107. As a result of the Ball and Coldwell Banker's breach of the contract, McKenzie has been damaged, in that McKenzie has been forced to incur the additional cost and expense of purchase of the townhouse for the benefit of Ball and Coldwell Banker.

**WHEREFORE**, McKenzie prays for judgment against Ball and Coldwell Banker for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Such other and further relief as this court may deem just and proper.

**COUNT IX – CIVIL CONSPIRACY TO DEFRAUD  
Against VINCENT F. BALL, COLDWELL BANKER,  
CELINE DJANGMAH, & RE/MAX ONE**

108. McKenzie realleges paragraph 63.

109. Ball, Coldwell Banker, Djangmah, and Re/Max One conspired with each other by common agreement or tacit understanding for (a) the unlawful purpose of depriving McKenzie under statutory provisions and common law as alleged herein; and (b) the purpose of unlawfully depriving McKenzie his money and property.

110. The conspiracy between Ball, Coldwell Banker, Djangmah, and Re/Max One is also demonstrated by the facts described herein that create the inference drawn from the nature of the acts complained of, their individual and collective interests, the situation and relationship

of the parties, their motives, and all the surrounding circumstances preceding and attending the culmination of a common design.

111. Ball and Coldwell Banker had reason to know about Djangmah and Re/Max One's fraudulent practices and breached their fiduciary duty to McKenzie by not sharing this material information with McKenzie and this breach of duty demonstrated acceptance of the fraudulent schemes of Djangmah and Re/Max One.
112. Djangmah and Re/Max One had reason to know about Ball and Coldwell Banker's fraudulent practices and breached their fiduciary duty to McKenzie by not sharing this material information with McKenzie and this breach of duty demonstrated acceptance of the fraudulent schemes of Ball and Coldwell Banker.
113. In furtherance of said conspiracy between Ball, Coldwell Banker, Djangmah, and Re/Max One, the Defendants individually and in concert committed the overt acts or omissions alleged herein, to the economic loss and injury of McKenzie.
114. The acts and omissions of Ball, Coldwell Banker, Djangmah, and Re/Max One caused injury and loss to McKenzie.

**WHEREFORE**, McKenzie prays for judgment against Ball, Coldwell Banker, Djangmah, and Re/Max One for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Punitive damages;
- d. Reasonable attorney fees according to proof;
- e. Costs of the suit incurred in this action; and
- f. Such other and further relief as this court may deem just and proper.

**COUNT X –VIOLATION OF MARYLAND CONSUMER PROTECTION ACT  
Against CELINE DJANGMAH & GLOBE HOME WARRANTY**

115. McKenzie realleges paragraph 63.



116. The residential sale transaction set forth above is governed by the Consumer Protection Act, Md. Com. Law. Code Section 13-101 *et. seq.* (1990 & Supp. 1997).
117. Section 13-301 of the Commercial Law Article prohibits unfair or deceptive trade practices in the same of any consumer realty.
118. The Consumer Protection Act defines unfair and deceptive trade practices to include inter alia, the following:
- a. False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;
  - b. Representation that:
    - i. Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;
    - ii. A merchant has a sponsorship, approval, status, affiliation, or connection which he does not have;
    - iii. Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not; and
    - iv. Failure to state a material fact if the failure deceives or tends to deceive.
  - c. Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with:
    - (i) The promotion or sale of any consumer goods, consumer realty, or consumer service.

119. Djangmah and Globe made false statements or misleading oral and written statements and other representations, misrepresentations, or omissions regarding the sale of consumer realty and/or regarding consumer credit as alleged herein but not limited to:
- a. That the townhouse was worth \$117,500 or more;
  - b. That the townhouse had been remodeled and was available for immediate occupancy;
  - c. The professional certifications required by the FHA inspector and contract concerning the townhouse were completed;
  - d. That repairs and improvements required by the FHA appraisal were completely performed;
  - e. That the Globe home warranty would serve as an extra insurance plan for any risk of repair related to the townhouse;
  - f. That Djangmah was offering the townhouse for “immediate” sale despite HUD’s prohibition concerning sales for “flipped” properties like the townhouse.
  - g. That Globe home warranty was licensed and approved to provide warranty services and insurance in the state.
120. Djangmah and Globe engaged in deception, fraud, misrepresentations and concealments, suppression and omission of material facts, identified herein, that had the capacity, tendency or effect of deceiving or misleading McKenzie, and that did in fact deceive or mislead McKenzie, causing him injury and loss.
121. Djangmah and Globe’s acts and omissions constitute unfair and deceptive trade practices and violate the Maryland Consumer Protection Act.

**WHEREFORE**, McKenzie prays for judgment Djangmah and Globe for:

- a. The Court to award of McKenzie damages in the amount equal to all monies paid or to be paid by or on behalf of McKenzie pursuant to and as a consequence Djangmah’s actions;

- b. The Court award McKenzie reasonable costs and attorney's fees as permitted in Section 13-408 of the Commercial Law Article;
- c. The Court awards McKenzie such other and further relief as the Court deems just and proper.

**COUNT XI –VIOLATION OF MARYLAND CONSUMER PROTECTION ACT  
Against U.S. INSPECT**

122. McKenzie realleges paragraph 63.
123. U.S. Inspect relies heavily on mortgage brokers, mortgage lenders, real estate brokers, and real estate agents to obtain business.
124. McKenzie is informed and believes, and on that basis alleges, that U.S. Inspect violated the Maryland Consumer Protection Act by concealing its arrangement with Coldwell Banker and Re/Max One to extract additional and illegal referral fees, kickbacks, or other thing of value at the expense of the purchaser in violation of RESPA.
125. Upon information and belief, McKenzie assert that U.S. Inspect along with Re/Max International and Cendant Corporation, the principle parent corporations and/or franchisors of Defendants Coldwell Banker and Re/Max One, established "Preferred Alliance Agreements," "Partnerships," "Joint Ventures" and/or other impermissible affiliated business relationships with U.S. Inspect that outlines the kickback or referral fee scam.<sup>1</sup> The scam involves U.S. Inspect paying a kickback or referral fee or other thing of value to third parties involved in real estate transaction, such as Coldwell Banker and Re/Max One, for referring clients to them and at the expense of the purchaser. U.S. Inspect states on its website that it has established more than 25 such partnerships and affiliations with hundreds of Fortune 1000 and Fortune 500 companies.

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<sup>1</sup> See also *U.S. Inspect Inc. v. McGreevy*, 2000 WL 33232337 (Va. Cir. Ct.) (The decision describes that U.S. Inspect's former parent organization, Radonics, entered into a Preferred Alliance Agreement with Cendant Corporation (Cendant) in 1997, whereby Cendant contracted to promote Radonics' inspection services from December 1997 through December 2003, by way of its subsidiaries in the relocation and time-sharing industries. In exchange, Radonics agreed to make payments to Cendant including a \$500,000 payment in 1997 and a \$904,000 payment in 1998.).

126. Further, based upon information and belief, McKenzie alleges, U.S. Inspect, Coldwell Banker, and Re/Max One either directly or indirectly conspired to violate the provisions of RESPA and Reg. X 24 CFR §§3500.01 et. seq., by sharing fees or otherwise splitting fees collected from the purchaser for home and pest inspection services by U.S. Inspect.
127. The failure to comply with the provisions of the various acts governing McKenzie were deceptive and unfair trade practices within the meaning of the Maryland Consumer Protection Act in that U.S. Inspect engaged in the suppression and omission of material facts, identified herein, that had the capacity, tendency or effect of deceiving or misleading McKenzie and that did deceive or mislead McKenzie causing McKenzie injury and loss.
128. The American Society of Home Inspectors (ASHI) is the largest national trade association of home inspectors in North America representing over 6,000 members. On June 13, 2004, ASHI adopted its first revision of its code of ethics since the 1970s.
129. ASHI explained the purpose of its revised code of ethics in a press release stating “[i]n recent decades, the business world has experienced unprecedented changes marked by the growth of the Internet, corporate scandals, and complex marketing arrangements, which have altered the way we live and work. And as these changes bring about new ethical questions affecting home inspectors... (ASHI), has developed an updated Code of Ethics designed to improve the integrity, reputation and practice of the home inspection profession.
130. The June 13, 2004 ASHI Code of Ethics states:
- a. Inspectors shall avoid conflicts of interest or activities that compromise, or appear to compromise, professional independence, objectivity, or inspection integrity.
  - b. Inspectors shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

- c. Inspectors shall not directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements.
  - d. Inspectors shall report substantive and willful violations of this Code to the Society.
131. Upon information and belief many, if not all, U.S. Inspect inspectors resigned, failed to renew, or otherwise allowed their membership with ASHI to expire after ASHI adopted its revised code of ethics.
132. Upon information and belief, the primary reason that U.S. Inspect inspectors resigned, failed to renew, or otherwise allowed their membership with ASHI to expire was that US Insect's partnership scheme to pay kickbacks or referrals fees to certain national partners, like Coldwell Banker and Re/Max, would make the inspectors in violation of the ASHI Code of Ethics.
133. Upon information and belief, ASHI has advised its members, the greater home inspector industry, and the public at large that partnership schemes, like those alleged herein, violate RESPA's kickback prohibition.
134. The National Association of Certified Home Inspectors (NACHI), a non-profit organization with members in all 50 states, all provinces of Canada and 32 other countries, NACHI has over 9,400 inspector members worldwide.
135. The National Association of Certified Home Inspectors (NACHI) promotes a high standard of professionalism, business ethics and inspection procedures. NACHI members subscribe to the following Code of Ethics, effective as of October 31, 2004, in the course of their business:

- a. The NACHI Inspector shall be fair, honest, impartial, and act in good faith in dealing with the public;
- b. The NACHI Inspector will have no undisclosed conflict of interest with the client, nor will the NACHI Inspector accept or offer any undisclosed commissions, rebates, profits, or other benefit;
- c. The NACHI Inspector will not engage in any act or practice that could be deemed damaging, seditious, or destructive to NACHI, fellow NACHI members, NACHI employees, leadership or directors. Member(s) accused of acting or deemed in violation of such rules shall be reviewed by the Ethics committee for possible sanctions and/or expulsion from NACHI.

136. Upon information and belief many, if not all, U.S. Inspect inspectors resigned, failed to renew, or otherwise allowed their membership with NACHI to expire after NACHI adopted its revised code of ethics.

137. Upon information and belief, the primary reason that U.S. Inspect inspectors resigned, failed to renew, or otherwise allowed their membership with NACHI to expire was that US Inspect's partnership scheme to pay kickbacks or referrals fees to certain national partners would make the inspectors in violation of the NACHI Code of Ethics.

138. Upon information and belief, NACHI has advised its members, the greater home inspector industry, and the public at large that partnership schemes, like those alleged herein, violate RESPA.

139. U.S. Inspect's acts and omissions constitute unfair and deceptive trade practices and violate the Maryland Consumer Protection Act. McKenzie has been damaged.

**WHEREFORE**, McKenzie prays for judgment against U.S. Inspect for:

- a. The Court to award McKenzie damages in an amount equal to all kickbacks or referral fees that were paid to, by or on their behalf as a consequence of U.S. Inspect's unfair and/or deceptive trade practices, plus reasonable interest thereon;
- b. McKenzie be granted a Judgment in an amount to be determined, after discovery, of damages in an amount equivalent to the illegal fees paid by U.S. Inspect;
- c. The Court award McKenzie reasonable costs and attorney's fees as permitted by Section 13-408 of the Commercial Law Article.
- d. The Court award McKenzie such other and further relief as the Court deems just and proper.

**COUNT XII – TORTIOUS BREACH OF STATUTORY OF STATUTORY DUTY  
(SECTION 14-127(C) OF THE MARYLAND REAL PROPERTY ARTICLE)  
Against US INSPECT & COLDWELL BANKER**

140. McKenzie realleges paragraph 63 and paragraphs 125 through 138.
141. Section 14-127 prohibits US Inspect from paying a kickback or referral fee to Coldwell Banker for services performed related to the real estate settlement of the townhouse.
142. Section 14-127 prohibits Coldwell Banker from receiving a kickback or referral fee from U.S. Inspect for services performed related to the real estate settlement of the townhouse.
143. McKenzie further alleges upon information and belief that Coldwell Banker and US Inspect violated Section 14-127 over a period of years in hundreds and if not thousands of Maryland real estate closings and settlement actions.
144. As a direct and proximate result of the tortuous breach of the statutory duty imposed by Section 14-127, McKenzie has been damaged in an amount to be determined by the trier of fact.
145. McKenzie further alleges on information and belief that Coldwell Banker and US Inspect's violation of the statutory prohibition from collecting and receiving a kickback or

referral fee was intentional and fraudulent and therefore entitles McKenzie to an award of punitive damages jointly and severally against Coldwell Banker and US Inspect.

**WHEREFORE**, McKenzie prays for judgment against US Inspect and Coldwell Banker for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Punitive damages in the amount of \$500,000;
- d. Reasonable attorney fees according to proof;
- e. Costs of the suit incurred in this action; and
- f. Such other and further relief as this court may deem just and proper.

**COUNT XIII –VIOLATION OF THE MARYLAND FINDERS FEE ACT  
Against PREFERRED MORTGAGE GROUP AND CENDANT MORTGAGE**

146. McKenzie realleges paragraph 63.

147. Preferred Mortgage Group is an affiliate of Coldwell Banker. Coldwell Banker real estate sales agents are encouraged to steer Coldwell Banker clients to their affiliate Preferred Service Mortgage to secure a loan. Preferred is a licensed Mortgage Broker under Maryland Law. It acts as a broker for Cendant Mortgage Corporation. Cendant Mortgage, Coldwell Banker and Preferred are all affiliates of Cendant Corporation.

148. Pursuant to the provisions of the Commercial Law Article, Maryland Annotated Code § 12-805(d), a mortgage broker may not charge a finder's fee “unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other document [and] [t]he terms of the proposed agreement shall be disclosed to the borrower **before** the mortgage broker undertakes to assist the borrower in obtaining a loan or advance of money and shall specify the amount of the finder's fee.” Further, § 12-805(d) also requires that a “copy of the agreement, dated and signed by the mortgage broker and the



borrower, shall be provided to the borrower within 10 business days after the date the loan application is completed.” (Emphasis added)

149. Pursuant to § 12-801 of the Commercial Law Article, "Finder's fee means any compensation or commission directly or **indirectly** imposed by a broker and paid by or on behalf of the borrower for the broker's services in procuring, arranging or otherwise assisting a borrower in obtaining a loan or advance of money.” (Emphasis added)

150. When McKenzie met with Preferred Mortgage Group's representative Tim Johnson he was given a copy of a Mortgage Broker Agreement. However, the agreement did not (a) specify the fees that were to be paid to Preferred and (b) did not disclose that Cendant Mortgage would, in turn credit to its affiliate (i.e. Preferred) \$3,759.73 in fees as a result of having served as the broker for McKenzie. Thus the total of the fees paid to Preferred which Preferred was obligated to disclose to McKenzie at the commencement of its mortgage broker relationship with McKenzie, was the \$3759.73 fee paid by Cendant Mortgage Corporation plus another \$675 in fees and charges shown on lines 801 through 812 of the HUD-1.

151. Pursuant to the provisions of the Commercial Law Article, Maryland Annotated Code § 12-807, any mortgage broker who violates any provision of the Maryland Finders Fee Act shall forfeit to the borrower "(1) Three times the amount of the finders fee collected." The Defendants, Cendant as payor and Preferred as payee, violated the provision of the Maryland Finders Fee Act in failing to disclose the fee that Preferred was to receive indirectly when Preferred was used as a mortgage broker to secure a loan through Cendant Mortgage Corporation. McKenzie is therefore entitled to a forfeiture of 3 times the mortgage brokers fees paid in violation of the Act.

**WHEREFORE**, plaintiff prays:

- a. That he be awarded a judgment individually in the amount of \$13,304.19 as three times the finders fee paid against Defendant Preferred and Defendant Cendant Mortgage jointly, as an entity that aided abetted Preferred Service Mortgage's violation of the Finders Fee Act.

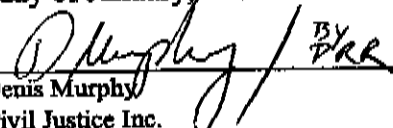
**COUNT XIV – CIVIL CONSPIRACY TO DEFRAUD**  
**Against U.S. INSPECT, COLDWELL BANKER, RE/MAX ONE, PREFERRED**  
**MORTGAGE GROUP, CENDANT MORTGAGE**

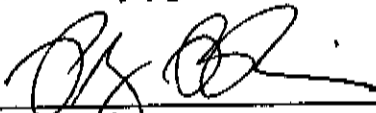
152. U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage made false representations to McKenzie. These false representations included the concealment of the fact of U.S. Inspect's kickback scheme and the false representations were intended to cover up, disguise the truth, or distract McKenzie's attention from the real facts.
153. U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage conspired with each other by common agreement or tacit understanding for (a) the unlawful purpose of depriving McKenzie under statutory provisions and common law as alleged herein; and (b) the purpose of unlawfully depriving McKenzie his money and property.
154. The conspiracy between U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage is also demonstrated by the facts described herein that create the inference drawn from the nature of the acts complained of, their individual and collective interests, the situation and relationship of the parties, their motives, and all the surrounding circumstances preceding and attending the culmination of a common design.
155. U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage knew the truth or the representation was made with reckless indifference as to its truth.

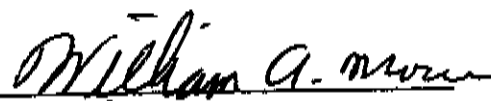
156. U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage's misrepresentation about the U.S. Inspect kickback scheme was made for the purpose of defrauding McKenzie.
157. Coldwell Banker, Re/Max One, Preferred Mortgage Group, and Cendant Mortgage had reason to know about U.S. Inspect's fraudulent practices and breeched their fiduciary duty to McKenzie by not sharing this material information with McKenzie and this breach of duty demonstrated acceptance of the fraudulent schemes of U.S. Inspect.
158. McKenzie relied on U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage's misrepresentation and had the right to rely on it.
159. In furtherance of said conspiracy between U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage, the Defendants individually and in concert committed the overt acts or omissions alleged herein, to the economic loss and injury of McKenzie who also suffered compensable injury resulting from the misrepresentation.
- WHEREFORE**, McKenzie prays for judgment against U.S. Inspect, Coldwell Banker, Re/Max One, Preferred Mortgage Group, Cendant Mortgage for:

- a. Compensatory damages in an amount as determined by the trier of fact;
- b. Reasonable interest;
- c. Punitive damages;
- d. Reasonable attorney fees according to proof;
- e. Costs of the suit incurred in this action; and
- f. Such other and further relief as this court may deem just and proper.

Dated this 19 day of January, 2005

  
\_\_\_\_\_  
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\_\_\_\_\_  
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Phone: (410) 637-8414

**DEMAND FOR TRIAL BY JURY**

**Plaintiff hereby demands trial by jury on all issues.**

**McKenzie vs. Djangmah et. al.  
Complaint  
Table of Exhibits**

Exhibit #	Description of Exhibit
1	Appraisal of the Property <sup>2</sup>
2	MRIS Description <sup>3</sup>
3	Seller's Property Disclosure <sup>4</sup>
4	Coldwell Banker Buyer Broker Agreement <sup>5</sup>
5	HUD-1 <sup>6</sup>

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<sup>2</sup> Included in the original complaint.

<sup>3</sup> Included in the original complaint.

<sup>4</sup> Included in the original complaint.

<sup>5</sup> Included in the original complaint.

<sup>6</sup> Included in the original complaint.