

09/06/2024

Chad Firke, Executive Officer / Clerk of the Court

By: V. Hutton Deputy

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9 Attorneys for Plaintiff/Cross-Defendant, Johnnie L. Brown

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

12 JOHNNIE L. BROWN, an individual and
TRUSTEE of the JOHNNIE LEE BROWN LIVING
13 TRUST dated December 29, 2015, by and through
her Attorney-in-Fact, KIMBERLY BOBO,

14 Plaintiff,

15 v.

16 ALI D. ABAYACHI, aka David Abayachi, an
individual; KEVIN J. HESLIN, an individual;
17 CHURCH CAPITAL CORPORATION, a
California corporation; GOLDEN WEST
18 FORECLOSURE SERVICE, INC., a California
corporation; RAMIN R. YEGANEH, aka
19 Ray Yeganeh, an individual; COVEWAY
PROPERTIES, LLC, a California limited liability
20 company (formerly Doe 1); MICHAEL D. ORTH,
an individual (formerly Doe 2); MICHAEL
21 NELSON, an individual (formerly Doe 3);
NEW LIFE PROPERTY INVESTMENTS LLC,
22 a California limited liability company (formerly
Doe 4); GEORGE JOSEPH MAHONEY, an
23 individual (formerly Doe 5); ELM HOME LLC,
a Wyoming limited liability company (formerly
24 Doe 6); TRILION CAPITAL FUND, LLC, a
California limited liability company (formerly
25 Doe 7); and DOES 8 through 10, inclusive,

26 Defendants.

Case No. RG20079500

ASSIGNED FOR ALL PURPOSES TO:
JUDGE REBEKAH EVENSON
DEPARTMENT 24

NOTICE OF ENTRY OF JUDGMENT
AFTER COURT TRIAL

Date Filed: November 5, 2020
Trial Date: January 22, 2024

27 AND RELATED CROSS-COMPLAINTS
28

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on August 21, 2024, the Court entered the Judgment after
3 Court Trial. A true and correct copy of the Judgment after Court Trial is attached hereto.

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5 DATED: September 6, 2024

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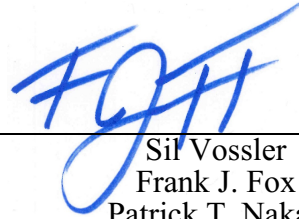
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Attorneys for Plaintiff/Cross-Defendant,
Johnnie L. Brown

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FILED
Superior Court of California
County of Alameda
08/21/2024
Clad Flake, Executive Officer / Clerk of the Court
By: A. Ampomah Deputy
A. Ampomah

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11 FOR THE COUNTY OF ALAMEDA

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18 FORECLOSURE SERVICE, INC., a California
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24 Doe 6); TRILION CAPITAL FUND, LLC, a
California limited liability company (formerly
25 Doe 7); and DOES 8 through 10, inclusive,

26 Defendants.

27 AND RELATED CROSS-COMPLAINTS
28

Case No. RG20079500

ASSIGNED FOR ALL PURPOSES TO:
JUDGE REBEKAH EVENSON
DEPARTMENT 24

~~PROPOSED~~ JUDGMENT AFTER
COURT TRIAL

Date Filed: November 5, 2020
Trial Date: January 5, 2023

1 Jury was waived, and on June 5, 2023, in Department 24 of the Superior Court for the
2 County of Alameda, the Honorable Rebekah Evenson Judge Presiding, this action came on regularly
3 for the first phase of a preferential court trial of claims made by and against plaintiff/cross-defendant
4 Johnnie L. Brown (Brown) with all other cross-claims being severed and stayed. Brown appeared
5 by attorneys Frank J. Fox, Patrick T. Nakao and Sil Vossler. Defendant/cross-complainant/cross-
6 defendant Ali D. Abayachi, aka David Abayachi (Abayachi), appeared by attorney Lawrence W.
7 Fasano, Jr. Defendant/cross-defendant Kevin J. Heslin (Heslin) appeared at times in pro per and
8 at times by attorney Donald Charles Schwartz. Defendant/cross-defendant Church Capital
9 Corporation appeared by attorney Donald Charles Schwartz; Church was dismissed from this
10 matter on June 23, 2023. Defendants/cross-complainants/cross-defendants Ramin R. Yeganeh,
11 aka Ray Yeganeh (Yeganeh), and Elm Home LLC (Elm Home) appeared by attorneys William E.
12 Gilg and Kevin R. Martin. Defendant/cross-complainant/cross-defendant Coveway Properties, LLC
13 (Coveway) and defendant/cross-complainant Trillion Capital Fund, LLC (Trillion) appeared by
14 attorney Robert B. Hunter and then by attorney Peter B. Langbord. Defendant/cross-complainant/
15 cross-defendant Michael Nelson (Nelson) appeared by attorney Glenn H. Wechsler. Defendants/
16 cross-complainants/cross-defendants Golden West Foreclosure Service, Inc. (Golden West) and
17 Michael D. Orth (Orth) appeared by attorneys Madonna A. Herman and Audrey Tam until Golden
18 West and Orth were dismissed from this matter on February 7, 2024. After hearing the evidence
19 and arguments of counsel, including the parties' written closing arguments, the first phase of trial
20 was completed and submitted to the Court April 5, 2024 and the Court issued a Tentative Statement
21 of Decision on April 25, 2024. Yeganeh and Elm Home filed objections. No party requested a
22 statement of decision pursuant to Code of Civil Procedure (CCP) §632.

23 On July 15, 2024, this action came on regularly for the treble and punitive damages phase
24 of trial as to Abayachi, Heslin, Yeganeh and Elm Home only. Brown appeared by attorneys
25 Frank J. Fox, Patrick T. Nakao and Sil Vossler; Abayachi appeared by attorney Lawrence W.
26 Fasano, Jr.; Heslin appeared by attorney Donald Charles Schwartz; and Yeganeh and Elm Home
27 appeared by attorney Kevin R. Martin.

28 ///

1 After hearing the evidence and arguments of counsel and reviewing the parties' closing
2 arguments, the treble and punitive damages phase of trial was submitted to the Court on July 24,
3 2024. On July 25, 2024, the Court issued its ORDER Final Statement of Decision as to all Claims
4 by Johnny Brown, and All Cross-Complaints against Johnny Brown (FSOD) a copy of which is
5 attached hereto as Exhibit 1 and incorporated by reference into this judgment.

6 Based upon the evidence, the Court finds the Abayachi loan at issue here is unlawful,
7 unconscionable, void, cancelled and unenforceable. The Court further finds Abayachi is liable
8 to Brown for wrongful foreclosure and Abayachi, Heslin, Yeganeh and Elm Home are liable to
9 Brown for financial abuse under Welfare and Institutions Code (WIC) §15610.30. Consequently,
10 as intentional tortfeasors, Abayachi, Heslin, Yeganeh and Elm Home are jointly and severally
11 liable to Brown under WIC §15657.5 for \$161,250.00 in economic damages and \$500,000.00
12 in emotional distress damages.

13 Pursuant to the FSOD and this Court's May 19, 2023 order granting summary adjudication
14 of Brown's quiet title claim, the Court finds the foreclosure of Brown's properties was void for
15 each of these reasons: (1) Abayachi's notice of default was premature and therefore void because
16 Brown had not caused one of the specified "Events of Default" to occur prior to Abayachi
17 recording the notice of default on April 23, 2020; (2) the Abayachi loan was void and its terms
18 unenforceable because it was an unlawful consumer loan; (3) the Abayachi loan was void and its
19 terms unenforceable because it was unconscionable. The Court further finds that the trustee's deed
20 of sale conveying to Abayachi purported title to Walnut Street and 79th Avenue, the grant deed
21 conveying to Yeganeh purported title to 79th Avenue, the grant deed conveying to Coveway
22 purported title to Walnut Street and the deed of trust conveying to Trilion a purported security
23 interest in Walnut Street are each invalid, as is any deed of trust alleged by Abayachi or any other
24 defendant, and no party is entitled to an equitable lien on either Walnut Street or 79th Avenue nor
25 is any party entitled to recover from Brown based upon any equitable indemnity, contribution or
26 other claims.

27 The Court further finds that Heslin is liable to Brown for an additional \$50,000.00 in
28 punitive damages, Abayachi is liable to Brown for an additional \$1,300,000.00 in punitive/treble

1 damages, and Yeganeh and Elm Home are liable to Brown for an additional \$1,300,000.00 in
2 punitive/treble damages.

3 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that, except as
4 expressly stated below, judgment is for Johnnie L. Brown and against Abayachi, Heslin, Yeganeh,
5 Elm Home, Coveway and Trilion as follows:

6 1. The Abayachi loan at issue here is void ab initio and cancelled and its terms are
7 unenforceable;

8 2. Title to Walnut Street and title to 79th Avenue are quieted in Brown's favor as of
9 August 17, 2020;

10 3. The trustee's deed of sale conveying purported title to Walnut Street and purported
11 titled to 79th Avenue to Abayachi, the grant deed conveying purported title to 79th Avenue to
12 Yeganeh, the grant deed conveying purported title to Walnut Street to Coveway and the deed of
13 trust conveying a purported security interest in Walnut Street to Trilion are each invalid, as is any
14 deed of trust alleged by Abayachi or any other defendant, and no party is entitled to an equitable
15 lien on either Walnut Street and 79th Avenue;

16 4. Brown shall recover from Abayachi, Heslin, Yeganeh and Elm Home, jointly and
17 severally, the sum of \$661,250.00, with interest thereon at the rate of ten percent (10%) per annum
18 from the date of the entry of this judgment until paid, together with attorneys' fees in the amount
19 of \$ [to be determined] ;

20 5. Brown shall recover from Abayachi, severally, the additional sum of \$1,300,000.00,
21 with interest thereon at the rate of ten percent (10%) per annum from the date of the entry of this
22 judgment until paid;

23 6. Brown shall recover from Heslin, severally, the additional sum of \$50,000.00, with
24 interest thereon at the rate of ten percent (10%) per annum from the date of the entry of this
25 judgment until paid; and

26 7. Brown shall recover from Yeganeh, severally, the additional sum of \$1,300,000.00,
27 with interest thereon at the rate of ten percent (10%) per annum from the date of the entry of this
28 judgment until paid.

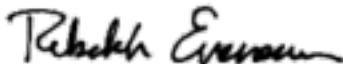
1 8. Brown takes nothing on the first cause of action for Elder Financial Abuse against
2 Coveway.

3 9. Having obtained compensatory and punitive damages awards against Abayachi,
4 Heslin, Yeganeh and Elm Home, having prevailed against all cross-claims asserted by Coveway,
5 Trilion, Yeganeh and Abayachi (Nelson did not assert a cross-claim against Brown), and having
6 obtained a judgment quieting title to the Walnut Street property and the 79th Avenue property,
7 Plaintiff has obtained a "net monetary gain" against Abayachi, Heslin, Yeganeh, Elm Home and
8 Trilion and is therefore deemed to be the prevailing party under CCP §1032 for cost award purposes
9 and Brown shall recover costs from Abayachi, Heslin, Yeganeh, Elm Home ~~and Trilion~~ in the
10 amount of \$ [to be determined].

11 10. As between Brown and Coveway, the Court determines [to be determined]
12 _____ to be the prevailing party under CCP §1032, and the Court awards/apportions costs
13 in the amount of \$ [to be determined] to [to be determined].

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment for Nelson and
15 against Brown on the first cause of action for Elder Financial Abuse and that Brown takes nothing
16 against Nelson, and Nelson is deemed to be the prevailing party under CCP §1032 for cost award
17 purposes and shall recover costs from Brown in the amount of \$ [to be determined].

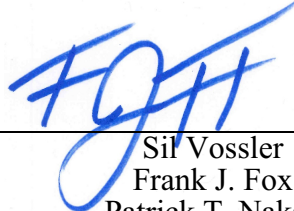
18
19 DATED: 08/21/2024



Hon. Rebekah Evenson
JUDGE OF THE SUPERIOR COURT
Rebekah Evenson / Judge

22 APPROVED AS TO FORM:

23 DATED: August 5, 2024



Sil Vossler
Frank J. Fox
Patrick T. Nakao
Attorneys for Plaintiff/Cross-Defendant,
Johnnie L. Brown

1 DATED: _____

FASANO LAW OFFICE

2

3

Lawrence W. Fasano, Jr.
Attorney for Defendant/Cross-
Complainant/Cross-Defendant Ali D. Abayachi,
aka David Abayachi

4

5

6 DATED: _____

7

8

William E. Gilg
Attorney for Defendants/Cross-
Complainants/Cross-Defendants Ramin R.
Yeganeh, aka Ray Yeganeh, and Elm Home LLC

9

10

11 DATED: _____

12

13

Kevin J. Heslin
Defendant/Cross-Defendant, in pro per

14 DATED: _____

LAW OFFICE OF DONALD C. SCHWARTZ

15

16

17

Donald Charles Schwartz
Attorney for Defendant/Cross-Defendant
Church Capital Corporation and
Defendant Kevin J. Heslin

18

19 DATED: _____

FOLEY & MANSFIELD, PLLP

20

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22

23

Peter B. Langbord
Margaret I. Johnson
Attorneys for Defendant/Cross-Complainant/
Cross-Defendant Coveway Properties, LLC
and Defendant/Cross-Complainant Trillion
Capital Fund, LLC

24

25 DATED: _____

LAW OFFICES OF GLENN H. WECHSLER

26

27

Glenn H. Wechsler
Attorney for Defendant/Cross-
Complainant/Cross-Defendant Michael Nelson

28

EXHIBIT "1"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Johnnie L. Brown et al
Plaintiff/Petitioner(s)
VS.
Ali D. Abayachi et al
Defendant/Respondent
(s)

No. RG20079500
Date: 07/25/2024
Time: 5:32 PM
Dept: 24
Judge: Rebekah Evenson

ORDER Final Statement of Decision
as to all Claims By Johnny
Brown, and All Cross
Complaints against
Johnny Brown

This statement of decision addresses all causes of action brought by Plaintiff Johnny Brown and all cross complaints against Johnny Brown. No party requested a statement of decision. Nonetheless, on April 25, 2024, after the first phase of the trial, this Court published a tentative statement of decision. Only Defendant Yeganeh filed a timely objection. The Court subsequently convened a hearing of less than one full court day to address the financial status of defendants for purposes of evaluating punitive and exemplary damages.

Having reviewed the entire record herein, including all trial testimony and exhibits, and all arguments of counsel, the Court now issues its Final Statement of Decision.

BACKGROUND

Plaintiff Johnnie Brown filed this action on November 5, 2020. On April 11, 2022, Brown filed the operative third amended complaint which alleges various causes of action arising out of the foreclosure of two properties she owned, a rental property on 79th Avenue in Oakland, and her home on Walnut Street in Oakland.

At the time of trial, the Defendants in this case were, by way of shorthand only:

1. **Ali Abayachi**, who issued the private loan secured by the properties, initiated the foreclosure proceedings, and purchased both properties with a credit bid at the foreclosure sale.
2. **Kevin Heslin and Church Capital Corporation**, who brokered the Abayachi Loan.
3. **Ramin Yeganeh and Elm Home LLC**, who purported to purchase the 79th Avenue property from Abayachi.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

4. **Michael Nelson and Coveway**, who purported to purchase the Walnut Street property from Abayachi.
5. **Trilion Capital Fund**, which funded Nelson and Coveway's purchase of the Walnut Street property.

Brown's First Cause of Action alleges that all Defendants (except Trilion) engaged in Elder Financial Abuse.

Brown's Second and Third Causes of action, for Cancellation of Instruments, is brought against Abayachi and seeks to cancel the Abayachi Loan, alleging that the terms of the loan violate governing law and are unconscionable.

Brown's Fourth Cause of Action, Against Abayachi, alleges wrongful foreclosure.

Brown's Fifth and Sixth Causes of Action seek to quiet title on the 79th Avenue property and the Walnut Street property. On May 19, 2023, the Court issued an order that provided that Abayachi's Notice of Default void, and that as part of any final judgment the Court will quiet title to the Walnut Street property and the 79th Avenue property in Brown's favor as of August 17, 2020, as against the Defendants named in the Fifth and Sixth Causes of Action. The Court made no determination as to whether or to what extent Brown's ownership of those properties is subject to any encumbrances.

Each Defendant filed an answer asserting affirmative defenses, and also filed various cross complaints against each other and against Brown. Those affirmative defenses and cross complaints are discussed in the context of each of Brown's causes of action.

Trial was originally scheduled to take place in June 2023. The first witness was called on June 5, 2023, and the trial proceeded on June 5, 6, 7 and 8. On June 13, the Court was advised that counsel for Church Capital (Donald Schwartz) had told other participants in the case that he had been hospitalized and could not appear. The Court delayed further trial proceedings based upon this representation.

Trial resumed on June 20, at which point Schwartz appeared and advised the Court that Heslin (the principal of his client Church Capital), had filed for bankruptcy in Texas. The Court severed and stayed all claims against Heslin and proceeded with hearing claims against other defendants. Trial proceeded in this fashion on June 20, 21 and 22, 2023. On June 26, at the request of counsel for Brown, the Court paused further proceedings pending resolution of Brown's motion to lift the bankruptcy stay. Eventually, the bankruptcy Court dismissed Heslin's bankruptcy case, and the stay was lifted.

The Court does not consider any of the testimony given during the Heslin bankruptcy stay in connection with its determination regarding Heslin's liability in this case. After the Heslin bankruptcy stay was lifted, Heslin had an opportunity to examine any of the witnesses who had testified (as to other defendants) during the stay. For Heslin's liability, the Court considers only evidence received before and after the bankruptcy stay.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

On September 1, 2023, when the Court was preparing to resume trial, the Court was advised that Nelson had very recently undergone emergency surgery and was unavailable for trial. The Court continued the trial.

Trial resumed in January 2024, with witnesses testifying on January 22, 23, 24, 25 and 26, 2024. Witnesses who had testified during the Heslin bankruptcy stay, including Brown, were re-called and examined by Heslin and/or his counsel, among others.

At the end of the trial day on January 26, 2024, counsel advised the Court that Abayachi had filed for bankruptcy. Again, the trial was continued. On February 20, 2024, Plaintiff's counsel advised the Court that they had obtained an order granting relief from the stay in Abayachi's bankruptcy. The parties stipulated that any cross claims against Abayachi would be severed and stayed.

Trial thereafter continued on February 20 and 21, 2024. On February 21, after the parties had rested, the Court ordered the parties to submit written closing arguments by April 5, 2024. The Court advised the parties that closing arguments should address every claim and defense at issue, and that a party that brought a claim or asserted an affirmative defense that is not addressed in closing arguments will be deemed to have waived the claim or the defense (with the exception of the stayed cross-claims against Abayachi, and the stayed cross-complaint against Annmarie Cannarozzo, the notary present during the Abayachi Loan signing). This Statement of Decision addresses only matters that were argued in a party's closing argument.

The Court also advised the parties that written closing arguments that make factual assertions must be accompanied by citations to the record, and that failure to do so may result in the Court disregarding the argument. While most parties complied with that order, Heslin and Church submitted closing arguments replete with assertions of fact that lack record citations.

Prior to and during trial, various parties filed requests for judicial notice, which were addressed by the Court during trial. Unless the Court specifically denied the request for judicial notice on the record, the Court has granted judicial notice of the materials. However, much of the material for which judicial notice was requested is not relevant to the decision herein. Yeganeh's Request for Judicial Notice, filed with his closing brief, is GRANTED, to the extent that the Court takes judicial notice that the documents attached to the Request were filed in various courts. However, the court does not take notice of the truth of any matter stated therein.

On April 24, 2024, this Court issued a tentative statement of decision. Only Defendant Yeganeh filed any objection. The Court thereafter convened a hearing to address Defendants' financial status in light of the Court's conclusion that Plaintiff had met her burden to demonstrate entitlement to exemplary and/or treble damages. This Statement of Decision includes the Court's findings and order with respect to all issues addressed in the April 24, 2024 tentative statement of decision, as well as exemplary and treble damages.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

FINDINGS OF FACT

Plaintiff Johnnie Brown is over 80 years old. Born in Arkansas to a family with very modest means, she moved to California and worked for the United States Postal Service for approximately 43 years. While working for the Postal Service, Brown purchased two properties, both of which are at issue in this case: the Walnut Street property, which was her home, and the 79th Avenue property, which is a rental property that she had built and that accommodated six tenants. As the owner of these two properties, Brown was a pillar of her family, and the properties were the source of significant pride for her.

Eventually, Brown retired from the post office, and her income dropped. She began subsisting on her pension from the post office and her rental income, a total of approximately \$6,000.00 per month. Brown's properties were still subject to their first mortgages, and her retirement income and rental income were insufficient to cover the mortgages on both properties.

Then Brown met Defendant Kevin Heslin at her church. Heslin is a loan broker and the owner of Church Capital. His business model involves attending 80 different churches, where he attempts to identify congregants to whom he can broker a loan.

In approximately April 2018, two years before the events giving rise to this case, Brown found herself behind on the monthly mortgage payments for her home. Heslin learned of the situation, and he brokered a loan to Brown. That first loan brokered by Heslin, known here as the "Fletcher-Rosenthal Loan" was a 2-year, \$130,000 loan. (Exh 179). The loan was cross collateralized by both Brown's Walnut Street home and her 79th Avenue rental property. Interest was 12%, and all interest payments were made in advance. The entire amount of the loan – a balloon payment of \$130,000 – was due and payable in two years, on May 1, 2020. (Exh. 185) Heslin charged fees amounting to more than \$5,000 for the Fletcher-Rosenthal Loan. (Exh. 189).

The Fletcher Rosenthal Loan presented a conundrum for Brown because she had no prospect of earning enough money to pay the balloon payment that would come due in 2020. At the conclusion of two years, her only options would have been to sell property or take out another loan.

The Abayachi Loan

In 2019, Brown again fell behind on her senior mortgage, this time on the 79th Avenue mortgage. Additionally, she believed she needed more money to fix the roof on her Walnut Street home. Heslin again brokered a loan to Brown. This is the loan at the heart of this case, what we will call "the Abayachi Loan."

The Abayachi Loan was \$250,000. It spanned 18 months, at a rate of 12%. (Exhs. 5, 8). The Abayachi Loan required Brown to pay all interest up-front, and also required Brown to pay significant fees and expenses to Heslin totaling just under \$20,000. Finally, the Abayachi Loan required Brown to pay a balloon payment of \$252,500 to Abayachi in 18 months. If Brown did not pay the loan by the 18-month mark – 12/1/2020 – Abayachi was entitled to foreclose on both Brown's Walnut Street home and her 79th Avenue rental property. On May 28, 2019, Brown

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Rene C. Davidson Courthouse

signed a Note Secured by Deed of Trust evidencing a \$250,000 loan from Defendant Ali Abayachi. On that same day, Brown signed a Deed of Trust encumbering both the Walnut Street property and the 79th Avenue property.

By the time of the signing in 2019, Brown was over 80 years old, and clearly in cognitive decline. Although she remained fiercely independent, she was patently unable to manage her finances, her income was insufficient to maintain her standard of living, her memory was severely impaired, and her decision-making very evidently lacked connection to reality. During trial in this matter, Brown demonstrated an exceptionally tenuous grasp of reality, and an equally exceptional stubborn streak. Brown had no memory at all that he had taken a loan in 2019. She thus testified that he had never taken the loan. She referred to the proceeds from the loan as a “gift” she thought she had received from Heslin. However, the record at trial – including numerous documents and the credible testimony of the notary – demonstrates that Brown did take a loan from Abayachi that was brokered by Heslin. Brown stated that she doesn’t remember signing the loan documents, but she does remember signing several blank documents at Heslin’s office that were notarized. The Court finds this assertion to lack credibility. The notary who was present at the signing, Annmarie Cannarozzo, testified credibly that there were no irregularities during the signing. Brown’s husband Eddie Pipkin testified that he thought his wife was not in cognitive decline, but that testimony lacks credibility. The Court finds that Brown’s testimony with respect to the signing of the Abayachi Loan was incorrect and unbelievable. The manner of her testimony, including her manner of speech, tone, demeanor, manner of answering questions, and evident confusion, demonstrated that Brown is severely cognitively impaired, deeply confused about reality, in denial about the dire financial straight she faces, and stubbornly and illogically protective of her illusion of financial prowess.

Heslin claims he explained the terms of the Abayachi Loan to Brown in advance of the signing. However, this assertion also lacks credibility. More likely than not, what occurred at the signing was this: Heslin created all the paperwork without providing full explanation to Brown; Brown signed the paperwork based on her trust in Heslin; Brown did not understand the terms of the loan, but at the time she did know she was taking a loan.

Defendants contend that Brown was a sophisticated businessperson. The Court does not find that to be true. Whatever business acumen she may have had earlier in life, at the time of the events giving rise to this case Brown was in significant cognitive decline and was not operating with any sophistication. The fact that she had previously taken 41 prior loans on her properties does not demonstrate sophistication; those are the actions of an increasingly desperate person who is unable to afford her assets and has been convinced (wrongly) that taking out loans to cover other loans is a good business decision. Each new loan cost Brown thousands of dollars in fees and further eroded her equity in her properties. Brown stubbornly attempted to put up a brave face – both in her conversations with Abayachi and her family members about her ability to pay the loans, and in her testimony at trial –but after only a few minutes in her presence it is apparent that she is not tracking the conversation.

Both Heslin and Abayachi testified about the negotiations leading up to the loan, their understanding that the loan would benefit and not harm Brown, and their motivations in offering the loan. Their testimony in this respect was utterly lacking in credibility. While Brown’s lack

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

of credibility is attributable to her cognitive decline, the Court finds Heslin and Abayachi to have exaggerated and lied, both to the Court and to others, for their own financial gain.

The Court's finding that Heslin's testimony lacked credibility is based upon Heslin's demeanor, which swung wildly during the trial – from calm and smooth and monotone, to angry outbursts, and once to sobbing wildly and shouting. It is based upon his body language and facial expressions, which were also erratic and inconsistent. It is based on his attitude and tone in both answering questions and asking questions – which was often sneering and snide and superior.

Furthermore, Heslin was engaged in gamesmanship throughout the litigation and trial of this case. This was evident in the testimony and evidence he presented, and in his behavior in court. Heslin attempted to manipulate trial proceedings to amplify his own voice in the trial. Heslin is the sole member of Church Capital, which is also party to this case. Heslin engaged attorney Donald Schwartz to represent Church Capital, but he also remained “self-represented” when it was convenient for him to do so. However, when it was convenient to Heslin, he directed Schwartz to appear “specially” on his behalf. Later, Heslin substituted Schwartz as his personal attorney for purposes of defending the Brown claim, but Heslin remained self-represented for purposes of defending the crossclaims brought by other defendants. Thus, he continued to have Schwartz make arguments and conduct witness examinations on his behalf, and also demanded extra time to make his own arguments and conduct his own examinations as a self-represented defendant on the cross claims. Throughout the trial, Heslin inserted himself in cross examining witnesses even after his own counsel had concluded cross examining the witness. Heslin's examinations of other witnesses were often improper, unhelpful, or worse (for example, on 2/21/24, when he appeared onscreen during Schwartz's examination of a friendly witness and attempted to surreptitiously show the witness a document via video-feed). And he regularly interrupted and chided Schwartz in open court. It is also true that at times, Heslin appeared contrite for how his actions had harmed Brown, at one point sobbing wildly in the Courtroom. Prior to trial, he helped Brown to reverse Abayachi's action when Abayachi had impersonated Brown and convinced Brown's insurance company to send a check to pay off the mortgage on the Walnut Street property. And Heslin put Brown in touch with one of the attorneys who ultimately filed this case. The Court finds that these latter actions were motivated by Heslin's evident sense of guilt about the predicament he had created for Brown by brokering the Abayachi Loan.

The Court finds the testimony of Ali Abayachi similarly lacked credibility. Abayachi was extremely evasive and slippery in refusing to answer many relatively straightforward questions – even from his own attorney – about whether he was the “lender” of the Abayachi Loan, whether he caused the foreclosure, and his conversations with Brown and motives in lending money to Brown. Abayachi's demeanor and body language was very uncomfortable and agitated. Further, his trial testimony was often inconsistent, including inconsistencies with his prior testimony and the other evidence in the case. Also, as explained below, Abayachi falsely impersonated Brown in correspondence with financial institutions, and he sent emails and left voicemails demonstrating that he lacked credibility and harbored ill intentions toward Brown.

Abayachi worked with Heslin to establish the terms of the loan to Brown. Heslin had previously brokered the Fletcher-Rosenthal loan for Brown, and he was aware of Brown's dire financial condition and her repeated use of loans to pay off other loans. Although Heslin argued at trial

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that he was trying to help Brown get a better loan and to prevent her from taking a loan from a competitor whom he believed was predatory, the evidence demonstrates that Heslin was in fact steering Brown into a loan that he brokered in order to earn yet another commission – which for the Abayachi Loan was four-times greater than the previous loan commission – in an amount of just under \$20,000.

Heslin testified that he believed that the Abayachi Loan was in Brown's best interest, because it would give her sufficient funds to pay off the first mortgage. The Court does not find this testimony credible. Brown had no income from which she could afford to pay off the balloon payment in the Abayachi Loan. To the extent the Abayachi Loan helped Brown to come current on a first mortgage, it merely delayed an impending default at a disproportionately large cost to Brown. Brown paid exorbitant amounts to Heslin and Abayachi in the form of prepaid interest, fees, and commission on the loan. And the only way Brown would have been able to pay the loan when the balloon payment came due was to take out yet another loan. The loan created a near-certain risk that Brown would eventually lose all equity in her rental property and her home. Moreover, Heslin obtained from Brown signatures on documents stating that the loan was for business purposes, when he knew that this was not true.

Abayachi also testified that he believed that the loan was in Brown's best interest. Again, however, the Court finds this not credible. As indicated above, the loan created significant financial peril for Brown and charged her a significant amount of money to do so. Furthermore, the loan was severely tilted in Abayachi's favor. The Abayachi Loan required Brown to prepay all interest to Abayachi. (Thus, in essence, Abayachi loaned Brown \$250,000 but immediately recouped \$45,000 (Exh. 9), and so was "out of pocket" just \$205,000). His only risk was that Brown might not pay the \$252,000 balloon payment – but to offset that risk he obtained a deed of trust on two properties that had value significantly greater than the amount of the balloon payment. With those deeds of trust, the "risk" that Brown might not pay the Abayachi Loan was actually a boon to Abayachi because it created for him the possibility that he could eventually obtain title to both properties via foreclosure (and thereby gain significantly more money), an eventuality that in fact came to pass.

The Foreclosure

In early 2020, Brown defaulted on the senior loan secured by a deed of trust on the 79th Avenue property. On March 27, 2020, the senior lender had a notice of default recorded based on that default.

If the senior lender foreclosed on the property, Abayachi's ability to obtain repayment of his loan (or to foreclose on his loan), would be severely compromised. Accordingly, on April 20, 2020, Abayachi paid the senior lender the amount in default (\$17,072.51), thereby curing the default, and demanded that Brown repay him immediately. On April 30, 2020, the senior lender caused a Notice of Rescission of Notice of Default to be recorded.

On April 21, 2020, one day after he had paid the senior lender, and without waiting for Brown to repay him for the amount he had forwarded to the senior lender, Abayachi signed a Notice of Default on his deed of trust and on April 23, 2020, Abayachi caused to be recorded a Notice of Default on his deed of trust. Abayachi's Notice of Default indicated that the basis for the

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default was Brown's "FAILURE TO MAKE PAYMENTS TO THE SENIOR DEED(S) OF TRUST AS REPORTED DELINQUENT AND IN DEFAULT, INCLUDING WITHOUT LIMITATION ADVANCES TO DATE TO THE SENIOR DEED OF TRUST IN THE AMOUNT OF \$17,072.51 . . ."

Abayachi's Notice of Default did not allege any failure by Brown to comply with the terms of the senior deed of trust on the Walnut Street property, and Defendants presented no evidence that the senior lender on the Walnut Street property declared any default on the senior loan or senior deed of trust that had not been cured at the time Abayachi recorded his Notice of Default.

On July 24, 2020, Abayachi caused a Notice of Trustee's Sale to be recorded as to both the Walnut Street property and the 79th Avenue property. Before the trustee's sale, Abayachi provided the foreclosure trustee, Orth and Golden West Foreclosures, with instructions to bid on his behalf on both properties. Abayachi left a voicemail to Orth, who was handling the foreclosure sale, protesting that he had no desire to take the property of an elderly woman and stating that if the properties reverted to Abayachi he intended to give them to Brown. (Exh. 251). The Court finds that Abayachi's statement in that voicemail was a smokescreen, and that in fact Abayachi intended to take the property of Brown, whom he knew to be elderly, and that he had no intention of giving the property back after the foreclosure. The Court finds that the most telling statement in the voicemail Abayachi left for Orth was the last, in which he stated, "I'll make it worth everybody's while for you this year. Okay?" By this, the Court understands Abayachi to be telling Orth that Abayachi will compensate Orth well if the foreclosure goes through and Abayachi obtains the properties.

The foreclosure sale proceeded on August 17, 2020. Yeganeh appeared at the foreclosure auction but did not bid. Yeganeh denied appearing at the foreclosure auction, but on this point the Court finds Abayachi more credible than Yeganeh.

Ultimately, Abayachi was the only bidder at the foreclosure auction. He purchased both the Walnut Street property and the 79th Avenue property at the trustee's sale, for a combined credit bid of \$205,000.00, subject to the existing senior deeds of trust. This was significantly below the fair value of the properties.

In October 2020, after he had obtained Brown's properties through foreclosure, Abayachi wrote to Heslin (about Brown): "please inform the bitch she lost." (Exh. 28; see also, e.g., Exh. 240 (expletive laden voicemails).) Abayachi lost his temper while testifying about his prior voicemails and emails and stood up to walk out of the Courtroom visibly upset and causing exhibit binders and microphones to fall.

Brown contends that Abayachi and others were involved in bid rigging in connection with the foreclosure sale, because Yeganeh appeared at the foreclosure sale and refrained from bidding, and because shortly after the foreclosure Orth referred potential cash buyers to Abayachi who were willing to purchase the properties for more money than Abayachi had paid at the auction. While the circumstantial evidence is concerning, the Court does not find sufficient specific evidence that Yeganeh and Abayachi had entered an agreement to rig the bids at the foreclosure auction to find that Brown has sustained her burden of proof on this point.

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Abayachi subsequently sold the 79th Avenue property to Defendant Ramin Yeganeh, and the Walnut Street property to Defendants Nelson and Coveway Properties LLC.

The 79th Avenue property

As noted, Yeganeh appeared at the foreclosure auction and did not bid. Shortly thereafter, Yeganeh went to the 79th Avenue property where he met Brown, whom he observed to be a little old lady. Brown indicated to Yeganeh that she is the owner of the 79th Avenue property and that it was not for sale, and that she knew nothing about any foreclosure sale. Accordingly, Yeganeh was on inquiry notice about potential irregularities in the foreclosure sale (which this Court ultimately found to be void), and about Brown's claim to ownership. He nonetheless proceeded to negotiate a purchase of the 79th Avenue property from Abayachi almost immediately after the foreclosure. Yeganeh also attempted, unsuccessfully, to purchase the Walnut Street property.

Just days after purchase, Yeganeh transferred ownership of the 79th Avenue property to an entity called Elm Home. Elm Home did not in fact exist as a legal entity until Yeganeh registered it as a Wyoming LLC two days later. And Yeganeh concedes that Elm Home is "Yeganeh's limited liability company. Yeganeh is the sole managing member and the agent for Elm Home LLC."

Yeganeh promptly undertook to evict or remove all of Brown's tenants from the 79th Avenue property, claiming they were squatters. Ultimately, he removed or evicted all but one tenant. (That tenant, Webb, testified at trial. However, Webb's testimony was internally inconsistent and sometimes nonsensical, and the Court does not credit it.)

Yeganeh also claims that he made significant contributions to the value of the property. He claims he made mortgage payments to the senior loan servicers and paid significant funds for repairs and improvements to the 79th Avenue property. However, Yeganeh has failed to substantiate any such expenditures. It is abundantly clear to the Court that the "receipts" that Yeganeh presented to the Court as "evidence" that he paid workers to clean up 79th Avenue were fabricated for purposes of this litigation. Other receipts that Yeganeh presented, for disposal of waste products, likely related to work Yeganeh was doing at multiple other properties, not the 79th Avenue property.

Yeganeh took the 79th Avenue property subject to a senior loan against 79th Avenue that he knew was held in Brown's name. Nonetheless, he never paid off the senior loan or made efforts to transfer the senior loan to his own name. Thus, Yeganeh continued reap economic benefit from owning 79th Avenue while leaving Brown on the hook for a mortgage on a property he now claimed to own.

The Court had the opportunity to observe Yeganeh's demeanor, body language, manner of responding to the questions, tone, and attitude, and found his testimony to be severely lacking in credibility. Yeganeh was previously convicted in federal Court for bid rigging at a mortgage foreclosure sale and was sentenced to serve prison time. Yet during his trial testimony he denied wrongdoing, downplayed and minimized the conviction, and refused to acknowledge having been sentenced to prison. (He insisted that the federal court had sent him to "camp," apparently because the federal bureau of prisons classification system resulted in his prison time being

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served in a camp-like setting.) His explanation for how he learned about the foreclosure of the 79th Avenue property was not credible and was contradicted by other testimony and evidence in the case. When he described the transactions at issue in this case he exaggerated his claims, hid evidence, and attempted to fabricate evidence favorable to his case. For example, he deleted numerous harmful emails concerning the transactions at issue here, which were only discovered when other defendants produced Yeganeh's emails during discovery. He also testified that he believed the tenants at 79th Avenue were squatters, testimony that was utterly lacking in credibility. He was a sophisticated landlord and property owner, and he knew that 79th Avenue was a rental property that Abayachi had only just obtained from Brown via foreclosure; his contention that he relied on Abayachi's statements regarding the tenants being "squatters" is unbelievable. Yeganeh asked Abayachi to make those false statements for Yeganeh's own economic advantage, and to the detriment of Brown who ultimately lost rent as a result of Yeganeh's actions to remove tenants from the building. Yeganeh's testimony during the exemplary/punitive damages hearing was also entirely lacking in credibility.

The Walnut Street property

The Walnut Street property was formerly Brown's home. However, in March 2020, a fire at the property rendered it uninhabitable.

Various defendants contended that the Walnut Street property was in fact a rental property or a commercial property because it was a business headquarters. The Court finds that the Walnut Street property was the residential home of Brown and her family. Various family members – including her husband and her disabled brother – lived with Brown in her home. From time to time, some of her family members may have contributed to household expenses. However, such contributions do not render the home commercial property. Also, at some point in the past, Brown purported to run a "sober living" home at 79th Avenue, and her headquarters was a home office. However, that business had not been in operation at the time of the Abayachi Loan.

Various defendants argued (without evidence) that Brown played a role in causing the March 2020 fire that damaged her Walnut Street home. The Court does not credit those arguments.

Brown's insurance company compensated her in the amount of \$389,119.03 for the fire damage at the Walnut Street property. (See Exh. 25). That insurance payment was the subject of significant trial testimony. It was revealed that Abayachi almost convinced Brown to apply the proceeds from the home insurance to pay down the first mortgage on the Walnut Street property, the "Shellpoint mortgage." (See Exh. 25) He got Brown to sign a letter to this effect. And he did this *after* he had already initiated proceedings to foreclose on the property. Abayachi's attempt to convince Brown to apply the insurance proceeds to the first mortgage on Walnut Street was aimed exclusively at enriching himself at Brown's expense: if Brown used the insurance proceeds to pay off the Shellpoint mortgage, and Abayachi obtained the Walnut Street property in the foreclosure sale, then the value of Abayachi's equity in Walnut Street would have been that much greater.

Abayachi also contacted the Shellpoint mortgage servicer and falsely impersonated Brown in an attempt to obtain a reconveyance of the Shellpoint deed of trust. (Exhs. 157, 255.) He also suggested another defendant do the same thing. (And when asked about whether he had

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impersonated Brown, Abayachi's response was "I don't recall," a response that is entirely lacking in credibility.) These were actions aimed at enriching Abayachi at Brown's expense. If the Shellpoint deed of trust were reconveyed, then Abayachi's ownership of the Walnut Street property would have been more valuable.

Ultimately, Abayachi's efforts to use Brown's insurance proceeds to pay the Shellpoint mortgage and to reconvey the Shellpoint deed of trust were not successful.

Thus, at the time Abayachi obtained the Walnut Street property in August 2020, the property remained fire damaged and uninhabitable, and it was encumbered by the Shellpoint mortgage and deed of trust.

Nonetheless, immediately after obtaining the property at the foreclosure sale, Abayachi attempted to sell it to a third party. Abayachi's initial attempts to sell the Walnut Street property were not successful, largely because the initial buyers were concerned about the existence of the deed of trust securing the Shellpoint mortgage. Ultimately, however, Abayachi entered an agreement to sell the property with George Mahoney and New Life Investments. (Mahoney and New Life Investments were initially named as defendants in this case, but Brown settled those claims before trial.)

New Life Investments does not buy properties outright; it acts as a middleman or matchmaker between owners of distressed properties and buyers of distressed properties.

Michael Nelson and Coveway Properties are buyers of distressed properties. They work with middlemen like New Life Investments who find distressed properties that are available for purchase. Once they buy such properties, Nelson and Coveway rehabilitate the properties and attempt to resell the properties for a profit.

Nelson and Coveway negotiated with New Life to buy the rights to purchase the Walnut Street property. Coveway borrowed funds from Trilion to purchase the Walnut Street property. Ultimately, Coveway purchased the Walnut Street property from Abayachi on November 13, 2020.

When purchasing the Walnut Street property, Nelson and Coveway were aware there may be an outstanding deed of trust on the property, the Shellpoint deed of trust, which appeared in a preliminary title report (but which apparently did not prevent them from obtaining title insurance). However, while they may have had constructive notice of the Shellpoint deed of trust, Coveway and Nelson did not have actual or constructive notice of Brown's existence or her claim to the property (much less her age). Nor did they have knowledge that purchasing the property might cause any person any harm. They chose to purchase the property understanding the risk created by a potential defect on title created by the identified deed of trust, but without any reason to believe they were obtaining property owned by an elderly woman. The Court finds the testimony of Nelson and Mahoney to have been credible on this point.

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RULINGS ON THE CLAIMS AND CROSS CLAIMS

I. **Brown's Causes of Action for Cancellation of Instruments Against Abayachi (Second and Third Causes of Action)**

California Civil Code section 3412 provides “A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.”

“To prevail on a claim to cancel an instrument, a plaintiff must allege and prove (1) the instrument is void or voidable; and (2) he or she has a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of their position. (§ 3412; *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1193-1194, 218 Cal.Rptr.3d 501.) An instrument may be void or voidable due to fraud in its enactment. (*Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1193.)” (*Lauckhart v. El Macero Homeowners Ass'n* (2023) 92 Cal.App.5th 889, 900.)

Brown has plainly met the second element of the claim – the apprehension of serious injury. Brown lost her home and her rental property, and she suffered significant financial losses as a result of the Abayachi Loan.

The Court finds that Brown has also met the first element of the claim – she has shown that the Abayachi Loan is void or voidable.

The Abayachi Loan is a consumer loan

To determine whether the Abayachi Loan is void or voidable, the Court first considers whether the loan is a consumer loan or a commercial loan. That is because statutory protections for consumer loans are significantly stronger than for commercial loans. The Court finds and concludes that the Abayachi Loan is primarily consumer in nature.

Where, as here, a loan is collateralized by both residential property and commercial property, and where the proceeds were applied to both residential property and commercial property, the Court examines whether the proceeds from the loan were used primarily for “personal, family or household” purposes, or whether they are primarily applied for a commercial purpose. (See, e.g., 12 CFR pt. 226, Supp. I, sec.226.3(a)(4) (Regulation Z Official Staff Commentary).

Brown signed various loan documents prepared by Heslin, some of which state that the Abayachi Loan was for “business purposes.” (See Exhs. 8 & 10.) Those documents are not dispositive. Heslin failed to adequately explain any of the loan documents to Brown, including the “business purpose” forms, and the documents are replete with inaccuracies. For example, Exhibit 17 is a “Declaration of Non-owner Occupancy” prepared by Heslin and signed by Brown as part of the loan package, and it contains the following clearly contradictory statements: a) the Walnut Street property is Brown’s “principal residence;” b) the Abayachi Loan is secured by a deed of trust on the Walnut Street property (among others); and c) “the Property that will secure this loan

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is not my principal residence.” Even if Brown had initially believed the loan was primarily for business purposes (which she did not), signing the “business purposes” documents did not transform a consumer loan into a business loan.

The primary use of the proceeds from the Abayachi Loan was for consumer purposes. Of the \$250,000 loan, approximately \$65,000 was paid up-front to Defendants; Abayachi was paid \$45,000 and Heslin was paid approximately \$20,000. Another approximately \$2,200 was applied to various taxes, recording charges, and escrow charges. Approximately \$183,000 of the proceeds from the Abayachi Loan were disbursed as loan proceeds for use by Brown.

From the Abayachi Loan proceeds, Brown allocated \$113,000 (more than 60%) to pay off the Fletcher Rosenthal Loan. The Fletcher Rosenthal Loan was clearly a consumer loan (for that loan, \$89,000 was disbursed for use by Brown, of which \$60,000 was used to pay Brown’s residential mortgage). Heslin knew this because he had also brokered the Fletcher Rosenthal Loan.

\$55,900 from Brown’s proceeds from the Abayachi Loan was paid directly to Brown, which she intended to use to repair the roof on her Walnut Street home. This is also a consumer use.

Approximately \$5,000 from Brown’s proceeds from the Abayachi Loan was used to pay down the mortgage on her home (a consumer use).

Only approximately \$5,000 of the proceeds from the Abayachi Loan was allocated to pay down the mortgage on Brown’s rental property (a commercial use).

In sum, the Abayachi Loan was intended to be primarily used for consumer purposes, not commercial purposes.

The Abayachi Loan violates numerous consumer protection statutes

Because the loan was a consumer loan, it is void and voidable for five independent reasons:

- 1) It is illegal to originate a residential mortgage loan without a proper license. (Fin. Code secs. 50002(d) &(c)(4).)

The Abayachi Loan is a residential mortgage loan. It was a loan primarily for personal, family or household uses, secured by Brown’s Walnut Street home. Kevin Heslin was not licensed to broker such loans.

- 2) The Abayachi Loan is a covered loan pursuant to Financial Code 49070. A covered loan may not charge points and fees to a consumer that exceeds 6% of the total loan amount. (Fin Code sec 4970(b). Points and fees include finance charges, and compensation paid to the loan broker, among others.

Here, the principal loan balance was \$250,000 and the points and feeds are well in excess of the cap; the amount paid to Heslin alone – just under \$20,000 – itself exceeds the 6% cap.

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3) “A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan.” (Fin Code sec 4973(b)(1).)

The Abayachi Loan is not fully amortized, it requires a balloon payment.

4) It is illegal for a covered loan to require that periodic payments “required under the loan are consolidated and paid in advance from the loan proceeds.” (Fin Code. Sec. 4973(d).)

The Abayachi Loan contains a term that consolidates and pre-pays the periodic payments from the loan proceeds.

5) A person who originates a covered loan must reasonably believe that the consumer can make the required payments. (Fin. Code sec. 4973(f).) A borrower’s ability to make payments must be assessed “based upon a consideration of her current and expected income, current obligations, employment status, and other financial resources” which are not to include “consumer’s equity in the dwelling that secures repayment of the plan.” (Ibid.)

Abayachi could not reasonably have believed that Brown could make the required payments without tapping into the equity in her home.

Brown explicitly stated in her loan documents that the “source of repayment” for her regular monthly payments was “payments are pre-paid” and the source repayment for her balloon payment would be “refinance.” (Exh. 14).

Abayachi had no information about Brown’s resources other than what Heslin told him, and believed Brown had income of approximately \$6,000 per month.

Abayachi was also aware that Brown was obligated to pay more than \$5,000 per month to service her existing first mortgages, and that at the time that the Abayachi Loan was finalized Brown was behind on the mortgage payments on both properties by approximately \$10,000 and was in arrears on utilities to the tune of almost \$4,000. (See Exh. 9)

Abayachi was aware Brown could not meet her current financial obligations with her then-current income. He could not reasonably have believed that she could come up with \$252,000 in 18 months.

Heslin, who acted as Abayachi’s agent in negotiating the terms of the loan, testified that he believed that Brown could use the proceeds from the Abayachi Loan to come current on her primary mortgages, which would have given her a good enough credit score to refinance the primary mortgages. Alternatively, he believed Brown could simply sell the properties to pay the Abayachi Loan. Heslin’s testimony about his belief that Brown’s best exit strategy was to improve her credit score lacked credibility – particularly since he testified he knew that she had

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taken at least 41 loans on her property and had been repeatedly paying off old loans with new loans. In any event, both of Heslin's justifications for his belief that Brown could afford the Abayachi Loan are based on the assumption that Brown would pay the loans by accessing the equity in her home and rental property – either by selling or refinancing. Those assumptions are expressly prohibited by Financial Code Section 4973(f).

For the reasons set forth above, and because the legal violations demonstrate that the loan violates public policy, the loan is void.

The Abayachi Loan is unconscionable

Even if the Abayachi Loan were a commercial loan (which it is not), it would nonetheless be voidable because it is unconscionable.

In order to invalidate an agreement on the grounds of unconscionability, a party must demonstrate that the agreement is both procedurally and substantively unconscionable. (See, e.g., *Oto LLC v. Kho* (2019) 8 Cal.5th 111, 125.) The Abayachi Loan is both.

The agreement was prepared by Heslin and Abayachi, who had significantly more bargaining power and commercial sophistication than Brown. While Brown was able to tell Heslin and Brown the amounts of money she wanted out of the loan, she had no meaningful opportunity to negotiate or modify the terms of the agreement, such as the interest rate, the fees and charges, etc. The adhesive nature of the arbitration agreement establishes at least a minimal level of procedural unconscionability. (See *Oto*, supra, 8 Cal.5th at 126-127 and *Bakersfield College v. California Community College Athletic Assn.* (2019) 41 Cal.App.5th 753, 762-763.) When an adhesive contract is oppressive, surprise need not be shown to establish procedural unconscionability. (See *Nyulassy v. Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1267, 1281.) Nonetheless, there was also an element of surprise here, because neither Heslin nor Abayachi nor any licensed broker ever explained the terms of the loan, including the fees, charges, balloon payment, or related terms to Brown.

Brown has also demonstrated that the Abayachi Loan agreement is substantively unconscionable. The terms of the agreement are one-sided and unreasonably (indeed grossly) favorable to the more powerful party. As explained above, the loan carried extraordinarily high fees and expenses. It guaranteed income for Heslin and essentially guaranteed income for Abayachi, and it all-but-guaranteed a loss by Brown. It required a balloon payment in 18 months, and Abayachi understood from the outset that Brown had no independent source of funds to make that payment. Thus, she would either default on the loan (in which case she would lose her home and rental property) or she would take yet another loan at great expense to her and possible enrichment to Heslin and Abayachi (which would further deplete her equity in her home and rental property).

II. Brown's Cause of Action against Abayachi for Wrongful Foreclosure (Fourth Cause of Action)

“The elements of a wrongful foreclosure cause of action are: ‘“(1) [T]he trustee or mortgagee

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caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.” (Turner v. Seterus, Inc. (2018) 27 Cal. App. 5th 516, 525 [citations omitted].)

Here, as explained in more detail above, the first and second elements are readily met. The foreclosure sale has already been voided as invalid, and Brown has demonstrated that she was harmed by the foreclosure.

The third element – tender – is excused under the circumstances presented by this case. The exceptions to the tender rule include, as relevant here, ““(1) where the borrower's action attacks the validity of the underlying debt, tender is not required since it would constitute affirmation of the debt; [citations] (2) when the person who seeks to set aside the trustee's sale has a counter-claim or set-off against the beneficiary, the tender and the counter-claim offset each other and if the offset is greater than or equal to the amount due, tender is not required; [citations] (3) a tender may not be required if it would be ‘inequitable’ to impose such a condition on the party challenging the sale; [citations] (4) tender is not required where the trustor's attack is based not on principles of equity but on the basis that the trustee's deed is void on its face (such as where the original trustee had been substituted out before the sale occurred)[;] [citations] [(5)] when the loan was made in violation of substantive law, or in breach of the loan agreement or an agreement to modify the loan[;] [citations] [and (6)] when the borrower is not in default and there is no basis for the foreclosure [citations].” (Turner, supra at pp. 536-537 [quoting 5 Miller & Starr, Cal. Real Estate (4th ed. 2017) § 13:256, pp. 13-1101 to 13-1102].)

Here, nearly all of these factors are present, and the tender requirement is excused. Brown successfully attacks the underlying debt (the Abayachi Loan). She has a set off claim against Abayachi greater than the amount of the loan. It would be inequitable to require her to pay Abayachi as a condition of challenging the sale. The loan was made in violation of law. And, as this court found in granting summary adjudication on the quiet title claims, there was not basis for the foreclosure at the time it was executed.

Some Courts have also required a plaintiff bringing a wrongful foreclosure action to demonstrate that ““no breach of condition or failure of performance existed on the mortgagor’s or trustor's part which would have authorized the foreclosure or exercise of the power of sale.”” (Majd v. Bank of America, N.A. (2015) 243 Cal.App.4th 1293, 1306-1307.) That element, too, is satisfied here, as explained in the order granting summary judgment on the quiet title action.

III. Brown’s Causes of Action for Elder Abuse (First Cause of Action, Against All Defendants except Trilion)

Brown is an elder for purposes of the elder abuse statute. She alleges all defendants (except Trilion) engaged in elder abuse. Welfare and Institutions Code section 15610.30 defines elder abuse as follows:

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(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.”

Heslin

Heslin admitted elder financial abuse. Requests for Admission, No. 25. Furthermore, Brown established that Heslin is liable for elder abuse through evidence adduced at trial, as described above. Specifically, Heslin brokered the illegal and unconscionable Abayachi Loan and in doing so wrongfully obtained nearly \$20,000 in fees from Brown. Heslin knew that this action was likely to harm Brown, and he accomplished the transaction using the undue influence he gained as a member of Brown’s church, and as Brown’s trusted loan broker. His actions were also undertaken with the intention to defraud (including, for example, by misleading Brown to believe this was a legal business purposes loan when in fact it was an unlawful consumer loan, in order to extract undue fees and commissions).

Heslin’s elder abuse caused Brown significant financial and emotional harm, including the harm resulting from the foreclosure and loss of her home and rental property that followed from the Abayachi Loan.

Heslin contends in his closing argument that the Abayachi Loan was “designed to place the minimum amount of financial stress on the Plaintiff” and that the Department of Real Estate found nothing wrong with the Abayachi Loan. The Court does not find either argument persuasive. As explained, the terms of the loan were designed to ensure that Brown would either take out yet another loan – with another commission to Heslin – before the balloon payment was due, or else lose her properties to foreclosure, both of which were likely to harm Brown.

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Heslin also argues that, after the foreclosure, he took steps to help Brown including by contacting Plaintiff's counsel. True, but this belated and meager attempt to help Brown after he had already caused significant harm did not undo the financial abuse already inflicted.

Heslin's remaining contentions are similarly misplaced.

Abayachi

Brown met her burden of establishing that Abayachi is liable for elder abuse. Abayachi made an illegal and unconscionable loan to Brown by which he improperly obtained prepayment of all interest, together with a deed of trust against both of her properties. Abayachi illegally obtained the properties at the foreclosure sale for significantly less than their fair market value and purported to sell both of Brown's properties for a profit. Abayachi knew or should have known that this conduct would likely harm Brown.

Abayachi further attempted to fraudulently obtain additional funds from Brown when he took steps to gain control of the fire insurance proceeds. (See Exh. 25).

Abayachi caused Brown significant financial and emotional harm, including the harms resulting from the foreclosure and loss of her home and rental property that followed from the Abayachi Loan.

Yeganeh and Elm Home

Brown met her burden of establishing that Yeganeh and Elm Home are liable for elder abuse. Yeganeh knew of Brown's ownership interest in the 79th Street property and he nonetheless purported to purchase the property from Abayachi for less than fair market value, and to transfer the deed into his own name (and subsequently, to Elm Home) in order to enrich himself at Brown's expense.

Yeganeh took steps to evict and effectuate the move-out of tenants who had been paying rent to Brown. That prevented Brown from obtaining rents due to her.

Yeganeh took the 79th Street property subject to a senior loan that was in Brown's name, and that included a "due on sale" clause. He defaulted on that senior loan.

Yeganeh knew or should have known that his conduct was likely to harm Brown.

Nelson and Coveway

Brown did not meet her burden of establishing that Nelson and Coveway are liable for elder abuse. They had no constructive or actual notice of the existence of Brown, or that their purchase of the Walnut Street property might harm her or anyone else, until after they had purchased the property, and this lawsuit was filed. Nor did Brown demonstrate that Nelson or Coveway assisted another party's elder abuse or harbored any fraudulent intent toward Brown.

The fact that before purchasing the property Nelson knew that there may have been an outstanding deed of trust did not create constructive or actual knowledge of Brown or the harms

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Brown might suffer. Similarly, any irregularities in the Coveway purchase agreement for the Walnut Street property did not create constructive or actual knowledge of Brown, or an intent to harm or defraud her.

IV. Brown's Damages

Economic damages

Brown met her burden to demonstrate the following elements of damages, which were caused by Abayachi, Heslin, Yeganeh and Elm Home: Lost Rent on the 79th Avenue property - \$3,750 per month for 43 months = \$161,250.

Brown did not meet her burden to demonstrate that Defendant's actions caused an increase in her liability for the senior loans on the properties. Brown was consistently falling behind on the senior loans before the events at issue. She did not demonstrate that Defendants' actions caused the principal on the loans to rise any more than her own actions had or would have done. Moreover, she was paying the mortgages using the rental income, which this Court awards to her herein.

Brown did not meet her burden to demonstrate that Defendants' actions caused damages in the amount that Brown paid to rent her apartment. Brown started renting her apartment before the events giving rise to this case, when the Walnut Street property became uninhabitable by reason of fire. She failed to demonstrate that she would have moved back into the Walnut Street property if not for Defendants' action.

Noneconomic damages

Brown met her burden of demonstrating, by clear and convincing evidence, emotional distress caused by Abayachi, Heslin, Yeganeh and Elm Home. Her ownership of her own home and rental property made her a pillar of her family. When she lost her properties, she suffered great stress and emotional distress. However, while Brown's testimony was believable in respect to the fact that she had suffered emotional distress, she also demonstrated a significant cognitive decline and tenuous grasp on reality. Moreover, some of the distress she suffered was caused by having to move out of the Walnut Street property after the fire – an event not related to Defendants' conduct. In light of all the facts and circumstances presented by this case, and discounting for the harm caused by factors outside Defendants' control, the Court finds that \$500,000 is a reasonable recovery for Brown's emotional distress caused by the actions of Heslin, Abayachi, Yeganeh and Elm Home.

The actions of the Defendants were intentional, and their liability is joint and several. (B.B. v. Cnty. of Los Angeles (2020) 10 Cal. 5th 1.)

Exemplary and treble damages

Brown demonstrated by clear and convincing evidence that Heslin, Abayachi and Yeganeh acted with recklessness, malice and oppression.

On July 15, 2024, the Court held a hearing to address exemplary damages under Civil Code

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Rene C. Davidson Courthouse

section 3294 and treble damages under Civil Code section 3345.

The parties stipulated that Defendant Heslin shall pay exemplary damages in the amount of \$50,000.00, without waiving his right to appeal and to challenge the award.

Defendants Yeganeh and Abayachi provided testimony and/or submitted declarations to the Court regarding their financial status. Those submissions lacked credibility. The Court finds that both Defendants substantially undercounted and attempted to hide or obscure their assets and income. Nonetheless, the evidence submitted shows that both Yeganeh and Abayachi have assets with a net value in the millions. The Court finds and concludes that Brown is entitled to damages pursuant to Civil Code 3345, and exemplary damages against Defendants as follows, which is appropriate in light of the elder abuse perpetrated, is proportionate to the degree of reprehensibility of Defendants' conduct, is appropriate to punish defendants and deter them and others from committing similar wrongs, and will not cause financial ruin:

Heslin: \$50,000

Abayachi: \$1,300,000

Yeganeh: \$1,300,000

V. Coveway and Trilion Claims for an Equitable Lien on the Walnut Street Property

Coveway and Trilion filed cross complaints asserting a claim for an equitable lien as against the Walnut Street property. The basis for this claim is the assertion that Coveway and Trilion advanced funds that enhanced the value of the Walnut Street property and benefited Brown. However, Coveway and Trilion failed to meet their burden to demonstrate that any action they took enhanced the value of the Walnut Street property or otherwise benefited Brown.

VI. Yeganeh and Elm Home Claims for an Equitable Lien on the 79th Avenue Property

Yeganeh and Elm Home filed a cross complaint asserting a claim for an equitable lien as against the 79th Avenue property. The testimony and exhibits introduced by Yeganeh purporting to show expenditures he made to enhance the value of the 79th Avenue property were entirely devoid of credibility. Moreover, Yeganeh engaged in elder abuse and has unclean hands. The Court finds that Yeganeh and Elm Home have failed to meet their burden to demonstrate that they are entitled to an equitable lien on the 79th Avenue property.

SUMMARY OF ORDERS

For the reasons set forth herein, the COURT ORDERS AS FOLLOWS:

Cancelation of Instrument

The Abayachi Loan is cancelled, and its terms are unenforceable.

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Rene C. Davidson Courthouse

Wrongful Foreclosure

Abayachi is liable to Brown for damages arising from his wrongful foreclosure. Brown's damages for the wrongful foreclosure are \$161,250 in economic damages, and \$500,000 in emotional distress damages.

Elder Abuse

Heslin, Abayachi, Yeganeh and Elm Home are jointly and severally liable for damages caused by their financial elder abuse of Brown. Brown's damages from the elder abuse are the same as her damages from the wrongful foreclosure: \$161,250 in economic damages, and \$500,000 in emotional distress damages. Defendants are jointly and severally liable for this amount of damages.

Exemplary and Treble Damages

Heslin is further ordered to pay to Brown the additional amount of \$50,000.00;
Abayachi is further ordered to pay to Brown the additional amount of \$1,300,000;
Yeganeh is further ordered to pay to Brown the additional amount of \$1,300,000.

Quiet Title

Pursuant to this Court's order of May 19, 2023, and the further orders herein, the Court orders title to the Walnut Street property and the 79th Avenue property QUIETED in Brown's favor as of August 17, 2020, as against the Defendants named in the Fifth and Sixth Causes of Action.

Any deed of trust purportedly held by Yeganeh/Elm Home, Abayachi, or any other Defendant is VOID and UNENFORCEABLE.

No Party is entitled to an equitable lien on either property.


No Party is entitled to judgment on any cross claim against Plaintiff Brown.

Proposed Judgment

No later than August 5, 2024, Plaintiff shall file and serve a proposed judgment consistent with this Statement of Decision, indicating whether defendants approve "as to form."

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 07/25/2024



Rebekah Evenson / Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Rene C. Davidson Courthouse

1 **PROOF OF SERVICE-CIVIL**

2 At the time of service I was over the age of 18 years and not a party to this action. I am
3 employed in San Diego County; my business address is 3755 Avocado Boulevard, #105, La Mesa,
4 California 91941. My electronic service address is rbarzona@majorfox.com. On August 5, 2024, I
5 electronically served the following documents:

6 **[Proposed] Judgment after Court Trial**

7 I electronically served the documents listed above on the following persons at the electronic
8 service address listed:

9 Lawrence W. Fasano, Jr., Esq.
10 Fasano Law Office
11 505 Montgomery Street, 11th Floor
12 San Francisco, California 94111-2585
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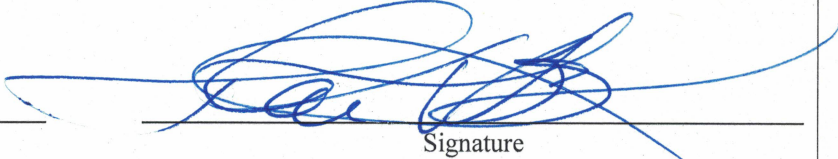
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Michael Nelson (formerly Doe 3)

5 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on August 5, 2024, at San Diego, California.

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8 _____
Type or Print Name Signature

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1 **PROOF OF SERVICE-CIVIL**

2 At the time of service I was over the age of 18 years and not a party to this action. I am
3 employed in San Diego County; my business address is 3755 Avocado Boulevard, #105, La Mesa,
4 California 91941. My electronic service address is rbarzona@majorfox.com. On September 6,
5 2024, I electronically served the following documents:

6 **Notice of Entry of Judgment after Court Trial**

7 I electronically served the documents listed above on the following persons at the electronic
8 service address listed:

9 Lawrence W. Fasano, Jr., Esq.
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Abayachi

13 William E. Gilg, Esq.
14 Attorney at Law
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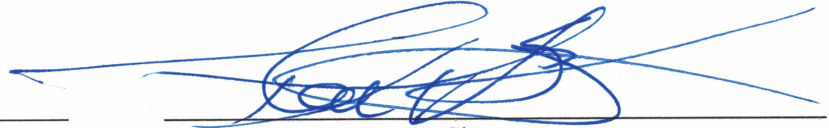
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Attorneys for Defendant/Cross-
Complainant/Cross-Defendant
Michael Nelson (formerly Doe 3)

5 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on September 6, 2024, at San Diego, California.
6

7
8 Rae T. Barzona
Type or Print Name

Signature



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