



(“Clooney”).

4. Nicholas Bratsafolis (“Bratsafolis”), Sharon Feldstein and Michelle Bratsafolis are the directors of Homebridge.

5. Bratsafolis is currently the Chairman of the Board of Directors and Chief Executive Officer of Homebridge.

6. Paul Levine (“Levine”) is currently the Chief Operating Officer and Executive Vice President of Homebridge and is part of Homebridge’s senior management team.

7. Levine is a part owner of Sovereign Title Partners, a title company which is a joint venture with First Security Title, LLC, which is an entity owned by Bratsafolis’ sister-in-law, Sharon Feldstein, and Levine.

8. Levine reports to Bratsafolis and Clooney.

9. Clooney is responsible for supervising and overseeing Homebridge’s sales operations.

10. Clooney is also a member of Homebridge’s senior management team.

11. Vantage Capital Corporation (“Vantage”) is a corporation formed under the laws of the State of Delaware.

12. Michael Brauser (“Brauser”) is an individual who resides in Florida. Brauser owns Vantage.

13. Scott Harris (“Harris”) is an individual who resides in Florida.

14. Harris was first introduced to Homebridge in 2002 or 2003 by Brett Rosenblatt, who introduced Harris to Bratsafolis, Clooney, and David Pankin, Homebridge’s then-President.

15. Bratsafolis and Clooney were impressed by Harris and felt he was a phenomenal recruiter, a great judge of sales personnel, and overall, a tremendous asset to Homebridge.

16. Harris began providing services for Homebridge in its New York office in 2003. He began working in Homebridge's Florida office in 2004.
17. There were less than 10 loan officers working at Homebridge's Florida office at the time Harris relocated to Florida.
18. Harris was successful in helping to develop the operations of the Florida branch office.
19. Homebridge did not provide Harris with a draft employment agreement prior to Harris' relocation to Florida.
20. During the time Harris worked for Homebridge in Florida, the revenues of the Florida branch office increased.
21. During the period August 2005 to August 2006, Homebridge's Florida office continued to grow steadily and Harris was authorized to increase the sales staff as a result of increased growth, improvement in sales performance, and significant financial success.
22. Homebridge derived significant revenues from the operations of its Florida office for the 12 months prior to Harris' resignation in August 2006.
23. The Homebridge Florida branch office continued to earn revenues for Homebridge until the day Harris resigned.
24. Between August 2005 and August 2006, the compensation structure for employees in Homebridge's Florida branch office was revised by Homebridge on several occasions.
25. Harris resigned from Homebridge on August 31, 2006.
26. At no time did Harris execute a written employment agreement with Homebridge.
27. At no time did Harris execute an agreement with Homebridge that included any provisions which prohibited competition after his employment with Homebridge ended.

28. The only agreement executed between Homebridge and Harris was a Confidentiality Agreement dated June 18, 2003. This agreement did not contain any clause related to Harris's ability to compete with Homebridge following the termination of his relationship with Homebridge.

29. Harris and Brauser were acquaintances for several years prior to Harris' resignation from Homebridge.

30. Prior to Harris' resignation from Homebridge, he had several discussions with Brauser concerning the possibility of starting a mortgage banking operation. Certain of these discussions in August 2006 included and/or were communicated to Michael Samuels ("Samuels"), the Branch Manager of Homebridge's Florida office, as well as Craig Ackerman ("Ackerman"), a Homebridge employee involved in information technology.

31. As of August 31, 2006, Harris and Brauser had discussed the possibility of entering into a business relationship related to the mortgage industry.

32. Harris, Samuels and Ackerman also discussed, amongst themselves, a possible departure from Homebridge, which discussions included an off-site lunch meeting in August 2006.

33. Prior to his resignation, Harris did not advise any employees in the Florida branch office that he was resigning on August 31, 2006.

34. Following Harris' resignation and the resignation of various other employees of the Homebridge's Florida office, Harris and Brauser met with many of Homebridge's former employees at a location away from Homebridge's office where the possibility of a new mortgage-related venture in which Harris and Brauser would be involved was discussed and Harris welcomed others to join in this new venture.

35. A majority of employees in the Homebridge Florida office resigned after Harris

resigned.

36. The employees that resigned from Homebridge after Harris resigned were at-will employees.

37. At the time Harris resigned from Homebridge, neither he nor Brauser had secured space for a new mortgage banking venture.

38. As of August 31, 2006, neither Harris, nor Vantage nor Brauser held any licenses through which to conduct a mortgage related business similar to that which Homebridge was engaged.

39. As of August 31, 2006, Harris had not formed any entity through which he intended to engage in a new mortgage related venture.

40. As of August 31, 2006, Harris did not have any platform through which to engage in a mortgage related business similar to that which Homebridge was engaged.

41. Following Harris' resignation, other employees of Homebridge's Florida office decided to resign.

42. Immediately after Harris announced his resignation, Jeffery Feinerman ("Feinerman"), then a law partner of Bratsafolis, and Levine went to the Florida branch office to meet with employees and oversee operations.

43. On or about September 1, 2006, Feinerman spoke with approximately 30 employees of the Florida branch office and advised them that Homebridge would continue to operate and support the office.

44. Levine also informed the employees that Homebridge intended to continue its Florida operations.

45. Between August 31, 2006 and mid-September, 2006, Homebridge continued to conduct business from the Florida branch office under Feinerman's supervision.

46. After Harris resigned, there were negotiations, primarily between Brauser and Bratsafolis, which included discussions concerning continuing the operations of the Florida office under the Homebridge umbrella.

47. More than a week after they resigned, former employees of the Homebridge Florida branch office learned that Vantage was going to be operating out of the Homebridge Florida office space.

48. On or about September 12, 2006, Homebridge, Vantage, Brauser, and Harris entered into a Settlement and Purchase Agreement (the "Settlement Agreement") with an effective date of September 1, 2006.

49. During the period August 31, 2006 through September 13, 2006, neither Harris nor Brauser was engaged in operating a mortgage related business.

50. In accordance with the terms of the Settlement Agreement, Vantage made a payment of \$400,000 to Homebridge on or about September 12, 2006.

51. The new Vantage office (or former Homebridge Florida office) began its operations in late September 2006 under the name of Real Estate Mortgage Network, Inc. ("REMNI"). Vantage's affiliation with REMNI was necessary because certain licenses and/or regulatory approvals were required in order for Vantage to conduct mortgage banking operations.

52. At the time Vantage took possession of the former Homebridge Florida office, the office did not have phone service.

53. At the time Vantage took possession of the former Homebridge Florida office, the office did not have internet service.

54. The relationship between Vantage and REMNI lasted approximately six to seven months.

55. As of September 1, 2006, Homebridge owed salary and/or commissions to individuals that were currently or formerly employed at its Florida office.

56. Homebridge currently has three branch offices located in New York, New York, Syosset, New York and Boca Raton, Florida.

## **II. Plaintiff's Proposed Findings of Fact**

1. Harris was Homebridge's highest compensated employee in Homebridge's Florida office until his resignation on August 31, 2006. He was paid approximately \$573,616 by Homebridge for the period January through August 2006 and was the leader of that office, despite the fact that another individual (Samuels) was the Branch Manager. (Levine Testimony; Bratsafolis Testimony; Scott Harris Compensation Report for January 6, 2006 to December 22, 2006, Joint Trial Exhibit 36). Brauser knew that Harris was the leader of Homebridge's Florida office. (Brauser Dep. Tr. at 125-26).

2. Harris initially worked to help establish the Homebridge New York City branch office. Harris ultimately was precluded, however, by New York state regulators from working in Homebridge's New York City branch office because of felony convictions for enterprise corruption and securities fraud. (March 23, 2004 letter from Marc J. Lifset to New York State Banking Department, Plaintiff's Proposed Exhibit 1; May 5, 2004 letter from New York State Banking Department to Marc J. Lifset, Esq., Plaintiff's Proposed Exhibit 2; Levine Testimony; Bratasfolis Testimony).

3. Harris relocated to Homebridge's Florida office in 2004 to support the operations of Homebridge's relatively new office in that state. To ensure that Harris could work in Homebridge's Florida office, Homebridge voluntarily surrendered its ability to originate mortgage loans in New York from its Florida office. (June 9, 2004 letter from Marc J. Lifset to New York State Banking Department, Plaintiff's Proposed Exhibit 3; October 13, 2004 letter

from David Pankin to Florida Office of Financial Regulations, Plaintiff's Proposed Exhibit 4; Levine Testimony; Bratsafolis Testimony; Clooney Testimony).

4. In reliance on Harris' skills and its belief that Harris was loyal and was committed to a long-term Homebridge relationship, Homebridge moved its Florida operations to much larger office space in July 2005 (from about 3,500 to 12,000 square feet) and invested in growing that office under Harris' leadership. (Levine Testimony; Bratsafolis Testimony; Clooney Testimony; June 16, 2005 Sublease Agreement between Lydian Private Bank and Homebridge, Joint Trial Exhibit 5).

5. Homebridge's Florida operations expanded from less than 10 loan officers in 2004 to more than 40 in August 2006. (Levine Testimony; Bratsafolis Testimony; Clooney Testimony; Loan Officer Headcount Schedule, Joint Trial Exhibit 39).

6. For an extended period prior to August 31, 2006, Harris and Bratsafolis negotiated to attempt to reach a written contractual arrangement between Homebridge and Harris. (Levine Testimony; Bratsafolis Testimony; February 17, 2006, February 22, 2006, March 24, 2006, May 9, 2006, May 17, 2006, May 22, 2006, July 18, 2006, July 24, 2006, August 8, 2006, August 16, 2006, August 22, 2006 and August 28, 2006 e-mails; Joint Trial Exhibits 7-18). In this regard, Homebridge discussed with and proposed to Harris a plan by which Harris would become the chief sales officer for all of Homebridge. *Id.* Those negotiations were continuing in August 2006, and Homebridge believed throughout such discussions that Harris was loyal to Homebridge and was committed to a long-term Homebridge affiliation. *Id.*

7. Unknown to Homebridge, Harris in and before August 2006 was planning to leave Homebridge to begin his own Florida-based mortgage banking company. (Harris Dep. Tr. at 120-28; Ackerman Dep. Tr. at 50). In connection with the planning amongst Harris, Brauser

and others for Harris to commence a competing mortgage banking business, the following activities, at a minimum, took place prior to Harris' resignation on August 31, 2006, all of which involved secret planning while still employed by Homebridge to create a competing mortgage banking business built around a nucleus of a majority of personnel who worked in Homebridge's Florida office, with the departure of such personnel from Homebridge certain to significantly damage Homebridge's Florida operations:

- a. Harris had 3-4 one-on-one calls with Brauser before any face-to-face meetings occurred. (Harris Dep. Tr. at 129-31).
- b. Harris and Samuels met with Brauser at Brauser's office for as much as 60-90 minutes. (Harris Dep. Tr. at 124; Brauser Dep. Tr. at 22-23, 30-31; Samuels Dep. Tr. at 67, 76-77).
- c. Harris, Samuels and Ackerman met an additional 3-4 times at Brauser's office, with the meetings lasting as much as 60-90 minutes. During at least one of these meetings, financial statement projections were shown to Brauser regarding the anticipated new mortgage banking business. (Harris Dep. Tr. at 123-24, 128, 138; Samuels Dep. Tr. at 67, 76-77, 89-91; Ackerman Dep. Tr. at 60; Brauser Dep. Tr. at 36).
- d. Harris, Samuels and Ackerman had at least two off-site lunch meetings to discuss their plans. One of the off-site lunches occurred on August 2, 2006, i.e., almost a month before Harris resigned. (Samuels Dep. Tr. at 98-101, 113; Harris Dep. Tr. at 140-41; Lawrence Samuels death record, Plaintiff's Proposed Exhibit 8).
- e. One such lunch meeting was with 4 managers from the Homebridge Florida office from various departments to discuss the new mortgage banking venture and to discuss whether those managers might be willing to resign from Homebridge and thus fill part of the management nucleus for the new business. Harris received a positive response from the

managers and all such managers, as well as Samuels and Ackerman, resigned from Homebridge in close proximity to Harris' resignation. (Harris Dep. Tr. at 143; Samuels Dep. Tr. at 98-100; August 31, 2006 and September 1, 2006 resignation emails of Michael Samuels and Craig Ackerman and other persons, Joint Trial Exhibit 19).

f. Harris had meetings on or before August 31, 2006 within the Homebridge office with Homebridge personnel, including Samuels, Ackerman and others, to discuss the new planned venture. Harris and Samuels further met and discussed which then-current Homebridge employees might be willing to join them in the new mortgage banking business. (Harris Dep. Tr. at 140-41; Samuels Dep. Tr. at 86; Ackerman Dep. Tr. at 50-54; Stoloff Dep. Tr. at 62-64; Silverman Dep. Tr. at 36).

g. Brauser visited Homebridge's Deerfield Beach office on one or more occasions, with at least one such visit taking place more than two weeks before Harris' resignation. (Harris Dep. Tr. at 112-13).

6. Harris resigned from Homebridge on August 31, 2006, along with a majority of personnel in the Homebridge Florida office, most of whom resigned on August 31 or September 1, 2006. (Resignation Emails from Harris and other Homebridge employees, Joint Trial Exhibit 19).

7. Harris informed a large number of Homebridge employees of his resignation on August 31. (Harris Dep. Tr. at 154-56). Indeed, Homebridge lost virtually its entire Deerfield Beach office almost overnight, reflecting Defendants' advance planning at a time when Harris held a leadership position of trust within that office. (Resignation Emails from Harris and other Homebridge employees, Joint Trial Exhibit 19; Brauser Dep. Tr. at 45; Levine Testimony; Bratsafolis Testimony; Feinerman Testimony).

8. On August 31, 2006, shortly after Harris resigned and as other Homebridge employees also were resigning, Brauser telephoned Bratsafolis and stated words to the effect that he recognized the situation was difficult but hoped that an amicable resolution could be reached. Harris was at Brauser's office with Brauser at the time of the call, having gone there after resigning. (Harris Dep. Tr. at 162-63; Brauser Dep. Tr. at 44-47; Bratsafolis Testimony).

9. Harris and Brauser met with many of the Homebridge employees who had resigned or might resign late on August 31 or on September 1, 2006 at an off-site location arranged by Harris and told them of their plan to create a new mortgage banking company that they hoped would be successful and discussed the potential for taking the new company public and issuing stock options to employees. Brauser advised such persons that he would fund the operations of the new venture. Harris stated that it would be foolish for persons to remain with Homebridge. (Harris Dep. Tr. at 157-58; Rivera Dep. Tr. at 55-56; Ackerman Dep. Tr. at 67-68, 89; Brauser Dep. Tr. at 21-22).

10. Homebridge operates on a September 30 fiscal year. For the 11 months ended August 31, 2006, Homebridge's Deerfield Beach office was profitable, recording net income of \$388,106. (HOMBRI – 002253 to 002585, Joint Trial Exhibit 38 or Plaintiff Exhibit 1; Bratsafolis Testimony; Levine Testimony; Epstein Testimony).

11. As a result of the mass resignation of Homebridge employees planned and led by Harris and supported by Brauser, Homebridge needed to relocate and rebuild its Florida office, suffering losses in the process. For the 8 months ended May 2007, Homebridge's reconstituted Florida office suffered net losses of \$1,163,066. (HOMBRI – 002586 to 002601, Joint Trial Exhibit 38 or Plaintiff Exhibit 1; Bratsafolis Testimony; Levine Testimony; Epstein Testimony).

12. As a result of the foregoing events, litigation was threatened in early September 2006. Litigation was avoided at that time through a negotiated resolution, and Homebridge

entered into the Settlement Agreement with Vantage, Brauser and Harris, effective as of September 1, 2006. The Settlement Agreement is governed by New York law. (Bratsafolis Testimony; Settlement Agreement, Joint Trial Exhibit 22).

13. Homebridge complied in all material respects with its obligations under the Settlement Agreement, including but not limited to, transferring its Deerfield Beach office lease and certain associated assets to Vantage in accordance with the Settlement Agreement. Homebridge employees inspected all assets that were transferred, including personal computers, telephones, wireless and wired headsets, and various business machines, and created a spreadsheet of these assets that was provided to a Vantage representative. (Carlos Ligua (“Ligua”) Testimony; Ravi Reddy (“Reddy”) Testimony; Feinerman Testimony).

14. Vantage took possession of Homebridge’s office and the associated assets on or about September 13, 2006. On or about September 12, 2006, Homebridge employees had a walk through of the office space with Vantage representatives. At no time during the walk through or at anytime thereafter before Homebridge filed its initial complaint in this matter in October 2006, did any of Defendants’ representatives advise Homebridge that it had failed in any material way in its compliance with its Settlement Agreement obligations. (Bratsafolis Testimony; Levine Testimony; Reddy Testimony; Feinerman Testimony; Ligua Testimony; Ackerman Dep. Tr. at 112-20).

15. In the days after the turnover, Homebridge personnel returned to the office at Vantage’s request to assist Vantage on various issues, including the operation of its computer and telephone systems. New telephone numbers were required for Vantage because Homebridge’s telephone numbers were not provided to Vantage pursuant to the Settlement Agreement. (Settlement Agreement; Reddy Testimony; Bratsafolis Testimony; Ligua Testimony; Feinerman Testimony; Ackerman Dep. Tr. at 122, 133-35, 137-38).

16. The new Vantage office initially was operated under the name of Real Estate Mortgage Network or REMN. This was necessary because the Settlement Agreement did not transfer any governmental or regulatory licenses to conduct mortgage banking business and Vantage did not have any such licenses. Accordingly, for Vantage to begin mortgage banking operations, it needed to affiliate with REMN, which had the necessary licenses required by applicable law. The office under the REMN name was up and running approximately one week after Vantage occupied the former Homebridge space and was operating in the sense of interacting with prospective borrowers one-to-two weeks after the office was turned over to Vantage by Homebridge. (Settlement Agreement; Rivera Dep. Tr. at 118; Harris Dep. Tr. at 220-221).

17. Vantage provided the major funding for REMN's operations, and was entitled to either 85% or 90% of the profit. (Harris Dep. Tr. at 223-24).

18. In September 2006, Homebridge moved what was left of its Florida operations to temporary office space that was approximately 1,500 square feet. (September 13, 2006 License Agreement between Corporate Executive Suites Mizner, Inc. and Homebridge, Joint Trial Exhibit 27; Feinerman Testimony). Subsequently, Homebridge moved its location to its current office where it occupies approximately 4,600 square feet. (December 1, 2006 Sublease between Sovereign Title Partners, LLC and Refinance.com, Joint Trial Exhibit 37; Feinerman Testimony; Bratsafolis Testimony).

19. Under the Settlement Agreement, Vantage promised to pay Homebridge \$1.2 million, payable in a \$400,000 payment upon signing the Agreement and then in \$200,000 installments payable on each of October 8, 2006, November 8, 2006, December 8, 2006 and January 8, 2007. Vantage made the initial payment in two installments on or about September

11-12, 2006 but did not make the four subsequent payments, in the aggregate amount of \$800,000. (Settlement Agreement; Levine Testimony; Bratsafolis Testimony).

19. Pursuant to the Settlement Agreement, Vantage agreed to pay an amount equal to the security deposits paid by Homebridge regarding any assumed leases, totaling \$39,000. Homebridge executed the assignment of the sublease to Vantage, but Vantage failed to make the payment. (Settlement Agreement; Levine Testimony; Bratsafolis Testimony; Assignment and Assumption of Sublease, Joint Trial Exhibit 28; October 16, 2006 letter from Levine to Brauser, Joint Trial Exhibit 33).

20. Pursuant to the Settlement Agreement, Vantage agreed to assume all “Assumed Liabilities,” which were defined as “all obligations of Seller due on or after the Effective Date under the Assumed Leases, Assumed Furniture and Equipment Leases, and Assumed Contracts.” Such obligations amounted to \$22,000 for the September 2006 lease of the office and furniture and \$24,500 for equipment leases through December, 2007, which Vantage failed to assume and pay for. Homebridge made those payments and Vantage failed to pay Homebridge for those payments, which were Vantage’s obligations under the Settlement Agreement. (Settlement Agreement; June 17, 2005 security deposit check, Joint Trial Exhibit 6; September 29, 2006 letter from Lawrence Coe Lanpher to Michael Brauser and Scott Harris, Plaintiff’s Proposed Exhibit 5; October 4, 2006 letter from Paul Levine to Michael Brauser, Plaintiff’s Proposed Exhibit 6; HOMBRI 002634, Joint Trial Exhibit 41; Bratsafolis Testimony; Levine Testimony).

21. Pursuant to the Settlement Agreement, Vantage agreed that “[a]ny amount not paid within ten (10) business days after it is due shall bear simple interest at the rate of ten percent (10%) per annum.” Interest on the unpaid amounts has not been paid. (Settlement Agreement; Levine Testimony; Bratsafolis Testimony).

22. Brauser personally guaranteed Vantage's financial obligations to Homebridge under the Settlement Agreement. Brauser failed to honor the guaranty and failed to pay the amounts that Vantage should have paid. (Settlement Agreement; Levine Testimony; Bratsafolis Testimony).

23. Pursuant to the Settlement Agreement, Vantage and Brauser agreed to indemnify Homebridge against any costs, including attorney's fees, associated with any failure by Vantage or Brauser to perform any covenant contained in the Agreement. Through December 31, 2007, 2008, Homebridge incurred approximately \$496,452.88 in attorneys' fees and associated costs due to Vantage's and Brauser's failures to comply with the Settlement Agreement. (Settlement Agreement; Levine Testimony; redacted K&L Gates legal bills, Plaintiff's Proposed Exhibit 10).

24. Beginning in June 2007, Vantage defaulted on the office lease that it assumed from Homebridge by failing to make full rental payments on the lease to the landlord. Homebridge has been sued by the landlord, Lydian Private Bank, for the amounts allegedly owed on that lease. (*Lydian Private Bank v. Homebridge Mortgage Bankers Corporation, etc., et al.*, Case No 726995 (Circuit Court for Broward County, Florida), Joint Trial Exhibit 42). Pursuant to the Vantage and Brauser indemnification obligation set forth in the Settlement Agreement, Vantage and Brauser are responsible for any amounts that Homebridge may be required to pay in that lawsuit, as well as related attorney fees and costs. (Settlement Agreement; *Lydian Private Bank v. Homebridge Mortgage Bankers Corporation, etc., et al.*, Case No 726995 (Circuit Court for Broward County, Florida; Bratsafolis Testimony; Levine Testimony).

25. The amounts set forth in paragraphs 11, 19-21 and 23 of this Section reflect some of the damages suffered by Homebridge.

### **III. Defendants' Proposed Counter-Findings of Fact**

1. Clooney acts as a consultant to Homebridge and is paid approximately \$1-\$1.5 million per year. Aside from Bratsafolis, he is the highest paid person affiliated with Homebridge. (Levine Dep. Tr. 105:8-14; 111:18-24).

2. Clooney acts as a consultant rather than holding an officer position because he has a prior felony conviction which related to his interest in a mortgage bank. (Bratsafolis Dep. Tr., 87:24-88:9; 90:4-22; Levine Dep. Tr. 34:25-35:12; 108:11-109:5).

3. At the time Harris started with Homebridge, there was a single office located in Syosset, New York. (Harris; Bratsafolis; Clooney; Levine).

4. Bratsafolis and Clooney requested that Harris open an office in New York, New York. Harris successfully developed the operations of the New York, New York office which became a profitable branch for Homebridge. (Harris; Bratsafolis; Clooney; Levine).

5. In 2003, the New York State Banking Department denied Homebridge's application for Harris to be appointed as the manager of Homebridge's New York City office. This application was denied in part because the Banking Department had recently approved Clooney's application to work as a consultant for and secure an ownership interest in Homebridge. (Harris Ex. 1; HB-614381-614383).

6. In 2003, Homebridge requested that Mike Samuels, an employee in the Homebridge New York office, move to Florida to open a Florida branch office. (Bratsafolis Dep. Tr. 156:12-157:10; Samuels).

7. Following the New York State Banking Department's denial of the request for Harris to serve as manager of the New York City office, Homebridge asked Harris to move to

Florida to assist Mike Samuels in developing Homebridge's Florida branch office. (Harris; Samuels).

8. Harris continued his attempts to negotiate an employment agreement with Homebridge after he relocated to Florida. (Bratsafolis Dep. Tr. 175:10-21, 177:5-9; Levine Dep. Tr. 158:8-19; Harris).

9. In the three months prior to Harris' departure from Homebridge, the Florida office's revenues exceeded one million dollars per month. (Bratsafolis Dep. Tr. 177:15-18; Levine Dep. Tr. 150:9-24).

10. August 2006 was one of the best months in the history of the Homebridge Florida branch office. (Harris; Samuels; Bratsafolis Dep. Tr. 128:21-129:6, 177:10-14).

11. Homebridge's Florida office generated the greatest revenues since its opening in July and August 2006. (Harris; Samuels; Bratsafolis Dep. Tr. 128:21-129:6; 177:10-18; Levine Dep. Tr. 150:9-24)

12. In the year prior to Harris' resignation, Harris also initiated spending cuts in overhead to ensure the profitability of the Florida branch office. (Levine Dep. Tr. 138:3-14).

13. Prior to relocating to Florida, Harris requested that he be provided with a formal employment agreement. (Bratsafolis Dep. Tr. 176:2-4; Harris).

14. Following his relocation to Florida, Harris continued to discuss an employment contract with Homebridge for a period of years. (Harris; Levine Tr. 171:5-10).

15. As of August 31, 2006 (the date of Harris' resignation), there were still open issues which prevented Harris from finalizing an employment agreement with Homebridge. (Levine Dep. Tr. 160:18-161:16, 166:12-18;166:21-167:6; Harris).

16. Harris was not responsible for delays in finalizing an employment contract with Homebridge. (Clooney Tr. 120:16-121:17, HB383615-616).

17. At all times that he was affiliated with Homebridge, Harris provided services to Homebridge on a full-time and exclusive basis. (Bratsafolis Dep. Tr., 175:10-21; Levine Dep. Tr. 158:8-19; Harris).

18. The employees in Homebridge's Florida branch office were unhappy with numerous revisions to their compensation structure. (Silverman Dep. Tr. 104:12-105:3; Stoloff Dep. Tr. 50:9-52:2; 112:24-114:6; Levine Tr. 202:4-18, 203:2-8, 206:15-207:6, 210:5-17, 211:20-212:3).

19. The employees in Homebridge's Florida branch office were also frustrated by Homebridge's failure to provide them with adequate or timely compensation. (Ackerman Dep. Tr. 187:19-188:16; Rivera Dep. Tr. 24:7-13, 25:21-25, 29:21-30:7, 39:21-40:6; Silverman Dep. Tr. 42:5-15, 44:20-45:13, 103:17-105:3; Stoloff Dep. Tr. 110:23-112:6; Samuels).

20. As of August 31, 2006, the relations between Homebridge and the employees in its Florida branch office had become tense as a result of various compensation-related issues. (Ackerman Dep. Tr. 189:10-190:3; Silverman Dep. Tr. 103:17-105:3; Stoloff Dep. Tr. 110:23-114:6; Levine Tr. 210:5-17, 211:20-212:3; Samuels).

21. Aside from a select number of employees, none of the employees in Homebridge's Florida branch office were aware that Harris was contemplating resigning from Homebridge prior to Harris' actual resignation. (Rivera Dep. Tr. 28:8-16, 37:4-9; Silverman Dep. Tr. 35:21-24; Stoloff Dep. Tr. 69:9-15; Harris).

22. At the time Harris resigned from Homebridge, no other employees in Homebridge's Florida office had definitive plans to resign. (Ackerman Dep. Tr., 71:23-72:9; 77:2-21, 196:17-21; Campo Dep. Tr., 75:4-15; Silverman Dep. Tr. 102:7-10; Stoloff Dep. Tr. 57:12-58:8; Harris; Samuels).

23. At the time Harris resigned from Homebridge, there were no definitive plans for any of the employees in Homebridge's Florida branch office to resign or to join Harris in any new venture. (Ackerman Dep. Tr. 80:1-6, 111:14-16, 195:5-7, 196:10-16; Stoloff Dep. Tr. 115:117:14; Silverman Dep. Tr. 37:25-38:7, 103:7-21, 110:11-23; Campo Dep. Tr. 76:7-10, 104:3-8, 108:24-109:3; Rivera Dep. Tr. 37:4-38:13; Harris; Samuels). As of August 31, 2006, Harris and Brauser did not have definitive plans to form a mortgage related entity together. (Ackerman Dep. Tr. 196:17-197:6; Campo Dep. Tr. 103:6-18; Rivera Dep. Tr. 42:20-43:1; Silverman Dep. Tr. 56:18-24, 60:22-24, 101:7-11, 102:21-103:2; Stoloff Dep. Tr. 57:12-58:8, 118:6-13; Harris; Brauser).

24. Homebridge knew of Brauser prior to August 31, 2006, since Clooney had met with Brauser on several occasions, including meeting with Brauser in January 2006 to discuss the possibility of Brauser taking Homebridge public. (Clooney Tr. 51:11-16, 267:12-21, 269:11-270:6, 272:16-273:8; HB83116).

25. At the time Harris resigned from Homebridge, he had not entered into any agreement with anyone else, as to a new mortgage banking venture. (Harris; Samuels; Brauser; Ackerman Dep. Tr. 194:15-19; 196:17-197:6; Campo Dep. Tr. 103:6-22; Rivera Dep. Tr. 42:20-43:1; Silverman Dep. Tr. 56:18-24; 60:22-24; 101:7-11; 101:13-17; 102:21-103:6; Stoloff Dep. Tr. 57:12-58:8; 118:6-13).

26. As of August 31, 2006, there was no formal or informal agreement between Harris and Brauser to engage in any mortgage related entity together. (Ackerman Dep. Tr. 195:2-4; Silverman Dep. Tr. 101:23-102:2; Stoloff Dep. Tr. 65:4-22, 117:22-25; Harris; Brauser).

27. In order to operate in the mortgage banking business, Vantage required certain licenses and/or regulatory approvals which it did not possess. Therefore, in early to mid-September it formed a relationship with Real Estate Mortgage Network, Inc. (“REMN”). (Harris; Brauser; Samuels; Silverman Dep. Tr. 89:15-19; Rivera Dep. Tr. 132-133:2).

28. The initial meetings with REMN concerning operating an office in Florida occurred in early September 2006. (Harris; Ackerman Dep. Tr. 196:1-4).

29. The decisions of Homebridge’s Florida branch office employees to resign from Homebridge were made by the employees on an individual basis. (Ackerman Dep. Tr. 80:1-6, 111:14-16, 196:10-16; Silverman Dep. Tr. 37:25-38:7, 103:7-21, 110:11-23; Campo Dep. Tr. 76:7-10, 104:3-8, 108:24-109:3; Rivera Dep. Tr. 37:4-38:13; Stoloff Dep. Tr. 74:16-20, 108:21-25, 109:21-23, 118:14-22; Samuels).

30. Harris did not actively attempt to persuade employees of Homebridge’s Florida branch office to resign. (Harris; Campo Dep. Tr. 107:23-108:23; Samuels Dep. Tr. 110:11-20; Stoloff Dep. Tr. 74:16-20, 108:21-25, 109:21-23, 118:23-25, 119:1-120:8, 120:16-121:1).

31. None of the employees that resigned after Harris resigned had employment agreements with Homebridge. (Homebridge production; Harris; Samuels).

32. None of the employees that resigned after Harris resigned had agreements with Homebridge that prohibited competition after their employment with Homebridge ended. (Homebridge production; Harris; Samuels).

33. Neither Harris nor Brauser made any statements which were critical of Homebridge at this meeting. (Ackerman Dep. Tr. 88:13-16, 95:9-12; Campo Dep. Tr. 85:24-86:5; Silverman Dep. Tr. 62:22-63:7; Brauser; Harris).

34. The Settlement Agreement provided, among other things, for Vantage to assume the operations of the Homebridge Florida office.

35. Harris did not tell any Homebridge employees that Homebridge would be closing its Florida branch office. (Harris; Ackerman Dep. Tr. 88:17-20; Campo Dep. Tr. 104:19-23; Rivera Dep. Tr. 53:6-14; Silverman Dep. Tr. 63:5-7).

36. All of the files and records related to the business operations of the Florida branch office remained in the office following Harris' resignation. (Harris; Feinerman; Levine).

37. Approximately 12-15 loan officers remained with Homebridge following Harris' resignation and Homebridge was able to continue operations from September 1, 2006 onward, including the closing of numerous loans that week. (Levine Tr. 250:18-251:11; Feinerman Tr. 159:15-161:23).

38. During the period August 31, 2006 through September 11, 2006, Brauser and Harris, on the one side, and Bratsafolis, on the other, were engaged in discussions and negotiations related to a business relationship or arrangement between Homebridge and Vantage whereby the entities would be engaged in a joint venture or whereby Homebridge would transfer possession of the Florida office to Vantage. (Harris; Brauser; Bratsafolis).

39. Any former Homebridge employees were locked out of the Homebridge Florida office until some time after the Settlement Agreement was reached. (Ackerman Dep. Tr., 111:21-112:3; Samuels; Brauser).

40. As of September 26, 2006, it was Homebridge's intent to open an office of greater than 5,000 square feet within three miles of its former office which was occupied by Vantage. (Feinerman Dep. Tr. 238:8-239:13; Bratsafolis Exs. 42 and 43).

41. As of September 26, 2006, Homebridge was seeking office space of greater than 5,000 square feet within three miles of its former office which was occupied by Vantage. (Feinerman Dep. Tr. 238:8-239:13; Bratsafolis Exs. 42 and 43).

42. On or about October 17, 2006, Homebridge was notified by Vantage that its intent to open an office of greater than 5,000 square feet within three miles of the former Homebridge office which was occupied by Vantage violated the terms of the Settlement Agreement. (HOMBRI-002311-002312).

43. Thereafter, Homebridge continued to seek office space of greater than 5,000 square feet within three miles of its former office which was occupied by Vantage. (Clooney Ex. 38).

44. Homebridge failed to pay salary and/or commissions to numerous individuals that were currently or formerly employed at its Florida office. (Ackerman Dep. Tr. 104:19-105:3, 163:22-164:10, 165:22-166:2, 185:15-186:5; Rivera Dep. Tr. 135:1-7; Stoloff Dep. Tr. 101:20-104:15, 105:15-106:10, 123:19-124:1; Levine Tr. 338:4-341:6; Samuels; Harris).

45. Homebridge still owes salary and/or commissions to numerous individuals that were currently or formerly employed at its Florida office. (Harris; Samuels; Ackerman Dep. Tr. 104:19-105:3, 163:22-164:10, 165:22-166:2, 185:15-186:5; Rivera Dep. Tr. 135:1-7; Stoloff Dep. Tr. 101:20-104:15, 105:15-106:10, 123:19-124:1).

46. On or about September 12, 2006, Vantage provided Homebridge with a list of former Homebridge employees who accepted employment with Vantage. (HB 682261).

47. After September 12, 2006, Homebridge solicited the employment of and/or employed Anthony Wong, Christian Ramirez, Joseph Chiofalo, Sean Park, Matthew Broder, George Casey, Nicholas Cioffi, Darren Gallego, Elizabeth Robb, and Mike Samuels.

(Bratsafolis Dep. Tr., 341:13-342:343:16; Feinerman Dep. Tr. 246:7-13; 247:12-248:12; 264:19-20; 264:25-265:9, 267:14-22; 270:7-11, 273:23-281:10; Clooney Dep. Tr. 296:7-9; Levine Dep. Tr. 327:4-13; Samuels).

48. Homebridge failed to transfer the Assets (as defined in the Settlement Agreement) conveyed under the Settlement Agreement “as-is” or “where-is.” (Harris; Samuels; Silverman Dep. Tr. 114:12-115:12; Ackerman Dep. Tr. 202:13-203:10; Stoloff Dep. Tr. 107:9-21).

49. Homebridge personnel informed Vantage personnel that the computer systems would be up and running the moment Vantage took over the office. (Rivera Dep. Tr. 88:20-89:10).

50. At the time Vantage took possession of the office, the computer systems were not functioning properly. (Ackerman Dep. Tr. 107:6-10; Campo Dep. Tr. 93:3-7, 105:7-8; Silverman Dep. Tr. 105:13-106:16; Samuels).

51. The computers Homebridge transferred to Vantage did not contain loan origination software. (Ackerman Dep. Tr., 114:14-20; Ackerman Ex. 16).

52. At the time Vantage took possession of the Florida office, the operating system was stripped from the main server. (Ackerman Dep. Tr. 114:14-20, 115:10-15; Ackerman Ex. 16; Rivera Dep. Tr. 112:22-113:8, 115:13-21).

53. Homebridge removed one or two cards from the Cisco router and/or deprogrammed the router rendering the computer systems transferred to Vantage inoperable. (Ackerman Dep. Tr., 119:18-120:6, 121:2-18; Ackerman Ex., 16; Rivera Dep. Tr. 110:9-111:16).

54. Homebridge failed to transfer Blackberries to Vantage. (Ackerman Dep. Tr., 126:7-14, 155:10-13; Rivera Dep. Tr. 91:10-92:3).

55. At the time Vantage took possession of the Florida office, the fax server was not functioning properly rendering it impossible to send and receive faxes. (Ackerman Dep. Tr. 120:7-15, 150:2-151:1; Ackerman Ex. 16; Campo Dep. Tr. 105:9-11; Rivera Dep. Tr. 116:11-17, 118:22-119:7).

56. The print server Homebridge transferred to Vantage had to be completely rebuilt. (Ackerman Dep. Tr. 154:16-23).

57. At the time Vantage took possession of the Florida office, numerous office supplies had been removed. (Ackerman Dep. Tr. 156:5-17; Rivera Dep. Tr. 126:5-13).

58. Lou Degati, a Homebridge employee, destroyed a fish tank belonging to Harris and killed all the fish contained in the tank. (Ackerman Dep. Tr. 157:9-158:6; Harris).

59. Prior to the time Vantage took possession of the Florida office, Homebridge's employees damaged, among other things, workstations and furniture. (Ackerman Dep. Tr. 164:21-165:5; Rivera Dep. Tr. 93:1-23, 126:5-13; Silverman Dep. Tr. 80:18-81:5, 86:2-88:8; Samuels).

60. Vantage was unable to conduct business in the office for a period of several weeks following execution of the Settlement Agreement. (Ackerman Dep. Tr. 124:14-23, 203:11-21; Campo Dep. Tr. 94:7-15; Silverman Dep. Tr. 105:4-106:16; Stoloff Dep. Tr. 121:11-122:2; Harris; Samuels).

61. Vantage lost the opportunity to generate revenues as a result of Homebridge's actions. (Harris; Brauser; Silverman Dep. Tr. 106:9-16; Samuels).

62. Neither Vantage nor Brauser made the payments due Homebridge for the period October 8, 2006 through January 8, 2007, pursuant to the Settlement Agreement, as a result of Homebridge's breach of the agreement. (Brauser).

#### **IV. Plaintiff's Proposed Reply Counter-Findings**

1. With respect to Defendants' proposed counter-finding 5, the New York State Banking Department denied Harris' application because at the time of the application Harris was still on parole for felony convictions for enterprise corruption and securities fraud, because he was to be involved in loan processing, and because the level of proposed supervision was insufficient. The final reason noted by the Department was Clooney's prior approval. (May 5, 2004 letter from New York State Banking Department to Marc J. Lifset, Plaintiff's Proposed Exhibit 2).

2. With respect to Defendants' proposed counter-finding 6, Homebridge did not request that Samuels move to Florida to open a branch office for Homebridge. Samuels decided to move to Florida based on family and weather considerations and approached Homebridge about opening an office in Florida. (Samuels Dep. Tr. at 14).

3. With respect to Defendants' proposed counter-finding 9, the Florida office's revenues were below one million dollars in June 2006. (HOMBRI-002553 to 002601, Homebridge/Refinance.com income statements; Joint Trial Exhibit 38).

4. With respect to Defendants' proposed counter-findings 14-16, there were no open issues regarding Harris' agreement with Homebridge, and Homebridge was prepared to enter into an agreement with Harris. (Bratsafolis Testimony; Levine Testimony).

5. With respect to Defendants' proposed counter-findings 18-19, Homebridge's Florida loan officers were the most highly compensated loan officers in the company both before and after the revisions to the compensation structure were enacted. (Levine Testimony; Levine Dep. Tr. at 212; Bratsafolis Testimony).

6. With respect to Defendants' proposed counter-finding 20, the relationship between the Florida office and Homebridge was not "tense" as of August 31, 2006. (Levine Testimony; Bratsafolis Testimony; Feinerman Testimony).

7. With respect to Defendants' proposed counter-finding 21, prior to his resignation Harris spoke with every manager of the Homebridge Florida office about his contemplated resignation, including the Branch Manager, Operations Manager, Underwriting Manager, Processing Manager, Sales Manager, and the employee who handled technology. (Samuels Dep. Tr. at 98-101; Harris Dep. Tr. at 140-43).

8. With respect to Defendants' proposed counter-findings 22-23 and 30, prior to his resignation Harris met with the managers to discuss the new mortgage banking venture and to discuss whether those managers might be willing to resign from Homebridge and fill the management responsibilities in the new business, and received a positive response from those managers. (Harris Dep. Tr. at 141-43; Samuels Dep. Tr. at 98-100).

9. With respect to Defendants' proposed counter-findings 23 and 26, Harris and Brauser had plans to form a mortgage related entity together as of August 31, 2006. Harris went to Brauser's office immediately after resigning on August 31, 2006, and convened a meeting on September 1, 2006 with the majority of Homebridge's Florida employees to inform them of his and Brauser's plan to create a new mortgage banking company that Brauser would fund and they hoped would be successful. (Harris Dep. Tr. at 157-58, 162-63; Brauser Dep. Tr. at 44-47, 128; Bratsafolis Testimony).

10. With respect to Defendants' proposed counter-finding 24, Clooney met with Brauser in or around the summer of 2005 as a courtesy to Harris, and it became obvious after two meetings with Brauser that Homebridge was not going to enter into any business arrangement with Brauser. (Clooney Dep. Tr. at 267-70).

11. With respect to Defendants' proposed counter-finding 33, Harris stated at the September 1, 2006 meeting with the majority of Homebridge's Florida employees that it would be foolish for persons to remain at Homebridge (Ackerman Dep. Tr. at 89).

12. With respect to Defendants' proposed counter-finding 37, Homebridge had approximately 10-12 loan officers working as of September 2, 2006, did not have any underwriters, and only had one processor. Homebridge had to send employees from its New York office to the Florida office to assist with the operations. During the first week of post-resignation operations, Homebridge closed approximately 15 loans, a departure from prior weeks. (Feinerman Dep. Tr. at 183-185; Feinerman Testimony).

13. With respect to Defendants' proposed counter-findings 40-43 regarding the claim that Homebridge intended to open an office in violation of the location and spatial restrictions of the Settlement Agreement. Homebridge had no plan at any time to violate the Settlement Agreement. (Bratsafolis Testimony; Levine Testimony; Feinerman Testimony).

12. Homebridge's current office space at 1515 South Federal Highway in Boca Raton, Florida is less than three miles from the former office. (December 1, 2006 Sublease between Sovereign Title Partners and Refinance.com, Joint Trial Exhibit 37; Feinerman Testimony).

13. The office space leased by Homebridge at that location is less than 5,000 square feet. (Levine Testimony; Feinerman Testimony). A lease and a floor plan was provided in discovery to show the physical layout of the space. (December 1, 2006 Sublease between Sovereign Title Partners and Refinance.com, Joint Trial Exhibit 37; Feinerman Testimony).

14. No defense witness testified with any personal knowledge about the size of the current space to contradict Homebridge's assertions. (Harris Dep. Tr. at 172-73; Samuels Dep. Tr. at 171-72; Brauser Dep. Tr. at 82).

15. Feinerman, the Homebridge representative responsible for finding Homebridge's current office, personally inspected the floor plan of the Homebridge office space and is personally aware that Homebridge currently occupies approximately 4,600 square feet in the office. (Feinerman Testimony).

16. With respect to the allegation of a "threatened" breach, Defendants rely on a September 26, 2006 e-mail from Bratsafolis to counsel that was erroneously sent to an employee of Brauser that sought legal advice from counsel about certain terms in the Settlement Agreement and their application to other entities. (September 26, 2006 e-mail from N. Bratsafolis to Phillip Schulman, et. al., Plaintiff's Proposed Exhibit 7 at Exhibit 9; Bratsafolis Testimony).

17. The email was neither a breach nor a threatened breach. After the mass resignation, Homebridge moved its operations from its 12,500 square feet office to a temporary office suite that was approximately 1,500 square feet. The office space was located at 225 N.E. Mizner Boulevard, Suite 300, Boca Raton, Florida. (Feinerman Testimony; Bratsafolis Testimony; September 13, 2006 License Agreement between Corporate Executive Suites Mizner, Inc. and Homebridge, Joint Trial Exhibit 27).

18. Mr. Feinerman then sought permanent office space. In connection with this effort to locate new space, Bratsafolis and Brauser discussed a possible waiver of the location and spatial restrictions in the Settlement Agreement. (Bratsafolis Dep. Tr. at 346-47; Bratsafolis Testimony; Plaintiff's Proposed Exhibit 7 at Exhibits 1-7).

19. Bratsafolis believed that Brauser orally agreed to waive the restrictions, and the parties as well as counsel exchanged multiple e-mails regarding the issue. (Plaintiff's Proposed Exhibit 7 at Exhibits 1-7; Bratsafolis Testimony).

20. Brauser ultimately did not agree to a written waiver of the restriction. After Brauser did not agree in writing to the waiver, Bratsafolis sent an e-mail to counsel (and inadvertently to Brauser) to determine whether an affiliate of Homebridge could operate within the location and spatial restrictions. (Plaintiff's Proposed Exhibit 7 at Exhibit 9; Bratsafolis Testimony).

21. Homebridge ultimately took office space in a location within three miles of Vantage's office, but the space was and currently is less than 5,000 square feet. (December 1, 2006 Sublease between Sovereign Title Partners, LLC and Refinance.com, Joint Trial Exhibit 37; Feinerman Testimony).

22. The chronology of the location and spatial restriction and the discussions regarding a potential waiver were thoroughly documented in a letter from Homebridge counsel to Vantage counsel, dated October 23, 2006, which clearly explained how the September 26, 2006 e-mail was not a breach of the Settlement Agreement. (October 23, 2006 letter from Lawrence Coe Lanpher to David L. Ferguson, Plaintiff's Proposed Exhibit 7).

23. With respect to Defendants' proposed counter-findings 44-45, Section 5(a) of the Settlement Agreement, entitled "Loan Officers," states that "Homebridge agrees to pay all commissions and other amounts due and owing to the Personnel with respect to mortgage loans closed on or before August 31, 2006, but shall have no obligation with respect to mortgage loans or applications in process that have not been closed as of August 31, 2006." (Settlement Agreement, § 5(a)).

24. Homebridge paid former loan officers all commissions they were owed pursuant to Section 5(a) of the Settlement Agreement. (Levine Testimony; Homebridge spreadsheet produced to Defendants showing payments made to former Loan Officers, Bates labeled HB-Supp-000052-61, Joint Trial Exhibit 40).

25. Levine personally oversaw the process by which all such payments were made. (Levine Testimony; Levine Dep. Tr. at 333-34).

26. With respect to the money allegedly owed to Harris, the Settlement Agreement states that Mr. Harris “waives, and completely and unconditionally releases and forever discharges Homebridge, from any and all . . . compensation of any nature whatsoever, . . . which Harris now has, may hereafter have, or claim to have against Homebridge for any unpaid compensation, whether as salary, bonus, overrides or other form of compensation.” (Settlement Agreement § 4).

27. With respect to monies that Defendants might claim are allegedly owed to Samuels, Craig Ackerman and/or Troy Stoloff, these individuals were not loan officers and their compensation and bonus arrangements were not memorialized by written agreements and were discretionary. (Bratsafolis Dep. Tr. at 161; Samuels Dep. Tr. at 49, 53, 57, 188-89; Bratsafolis Testimony; Clooney Testimony).

28. Ackerman testified that he was not owed any monies, stating that the payment was a “dead issue.” (Ackerman Dep. Tr. at 187).

29. With respect to Defendants’ proposed counter-finding 46, the list of former Homebridge employees who accepted employment with Vantage provided by the Defendants contained individuals who were not employed by Vantage, did not resign from Homebridge on August 31, 2006 or September 1, 2006, and an employee who worked for the law firm of Bratsafolis & Feinerman. Counsel for Homebridge notified counsel for Vantage that the list was not accepted by Homebridge. (September 11, 2006 e-mail from Brauser to K&L Gates (then K&LNG) counsel Eric Edwardson, HB000018-000021; Joint Trial Exhibit 43; Bratsafolis Testimony; Levine Testimony; Feinerman Testimony).

30. With respect to Defendants' proposed counter-finding 47 regarding the alleged solicitation of Vantage employees by Homebridge, any individuals that were solicited or re-hired by Homebridge were no longer Vantage employees at the time of the solicitation, and thus the solicitation and any employment offers were permissible pursuant to Section 9(b) of the Settlement Agreement. (Bratsafolis Testimony; Feinerman Testimony).

31. Two individuals then employed by Vantage/REMN came to Homebridge's offices unannounced (thus not solicited by Homebridge) after they resigned from Homebridge and sought their prior positions. (Bratsafolis Testimony; Clooney Testimony).

32. Bratsafolis refused to hire these individuals at the time since they were still then Vantage/REMN employees. These individuals subsequently resigned from Vantage and worked for other mortgage banking entities. Only after these individuals were no longer Vantage employees were they re-hired by Homebridge. (Bratsafolis Testimony; Clooney Testimony).

33. Samuels was not solicited to work for Homebridge. (Feinerman Testimony). It is unlikely that Homebridge would welcome an employee back who helped to orchestrate a mass resignation. (Bratsafolis Dep. Tr. at 345; Bratsafolis Testimony).

34. Aside from the alleged Samuels solicitation, Harris and Samuels have no personal knowledge of any other alleged solicitation by Homebridge. (Harris Dep. Tr. at 194; Samuels Dep. Tr. at 171).

35. With respect to Defendants' proposed counter-finding 48, regarding the terms "as is" and "where is," the Settlement Agreement specifically disclaimed the physical condition and location of the assets being sold, and also explicitly excluded the contracts necessary to operate certain assets. (Settlement Agreement, Exhibit A to Bill of Sale; Bratsafolis Testimony; Levine Testimony).

36. With respect to Defendants' proposed counter-findings 50-52, Reddy re-set the desktop computers with the operating system, Microsoft Office, and a loan origination system. In the day of the walk through to review the assets and in the days following the walk through, Homebridge technology employees provided significant assistance to Vantage, including configuring Vantage's virtual private network, assisting in securing internet access, assisting in bringing Vantage's network on-line, and provided a loaner operating system for one of the computer servers. (Reddy Testimony; Levine Testimony; Ackerman Dep. Tr. at 138).

37. With respect to Defendants' proposed counter-finding 53, no Homebridge employee removed cards from the Cisco router, a telecommunications device Homebridge used to facilitate internet communications between its Florida office and Homebridge's Syosset headquarters. (Reddy Testimony).

38. In connection with the Settlement Agreement, Homebridge returned the Cisco router to factory settings, i.e., the settings that existed when the router was delivered initially to the Florida office. (Reddy Testimony; Ligua Testimony).

39. This action did not damage the router -- it merely had the effect of erasing the settings that facilitated Homebridge's previous communications. Vantage personnel were informed of this action, and they expressed no objection. (Reddy Testimony).

40. The router was returned to factory settings, and the settings were ultimately reset for use. (Rivera Dep. Tr. at 110; Ackerman Dep. Tr. at 123-24).

41. With respect to Defendants' proposed counter-finding 54 regarding blackberry devices, Homebridge paid for all Blackberries. (Ackerman Dep. Tr. at 126-28; Stoloff Dep. Tr. at 89; Silverman Dep. Tr. at 49; Rivera Dep. Tr. at 82-3, 91-2; Levine Testimony). Homebridge confirmed that all blackberries were connected to the main computer server. (Reddy Testimony).

42. With respect to Defendants' proposed counter-finding 47 regarding the fax server, after the asset transfer Reddy provided assistance with the fax server, which was a problematic piece of equipment while it was in use at Homebridge. (Reddy Testimony; Ackerman Dep. Tr. at 120).

43. With respect to Defendants' proposed counter-finding 58 regarding the claim that Harris' fish tank was damaged, the fish tank is not listed in the Settlement Agreement as an asset to be transferred and was Harris' personal property. (Settlement Agreement; Harris Dep. Tr. at 209-213).

44. Personal property of Harris is not covered by the Settlement Agreement. (Settlement Agreement; Harris Dep. Tr. at 209-213).

45. Just prior to the office being transferred to Vantage, a Homebridge employee may have poisoned the tank, killing the fish and plants in the tank. The tank itself was not damaged or destroyed. Homebridge offered to pay Harris for the fish and plant life if Harris provided a certification of what the costs would be. He never did so. (Levine Testimony; Bratsafolis Testimony).

46. With respect to Defendants' proposed counter-finding 59 regarding workstations that were allegedly destroyed, the workstations in question had *de minimus* damage, have not been repaired, and did not interrupt Vantage's business operations. (Harris Dep. Tr. at 201; Samuels Dep. Tr. at 199).

47. Harris testified that a conference room table was "keyed." (Harris Dep. Tr. at 201). The only established evidence is that the table has been in use, has not needed to be repaired, and whatever damage occurred has not affected operations. (Samuels Dep. Tr. at 199).

48. With respect to Defendants' proposed counter-finding 60 that Vantage was not able to conduct business for several weeks, the REMN office was operating within one-to-two

weeks after the office was turned over to Vantage by Homebridge. (Rivera Dep. Tr. at 118; Harris Dep. Tr. at 220-21).

49. With respect to Defendants' proposed counter-finding 61 that Vantage lost the opportunity to generate revenues as a result of Homebridge's actions, and proposed counter-finding 34 that the Settlement Agreement provided for Vantage to assume the operations of the Homebridge Florida office, the terms of the Settlement Agreement show that many assets were specifically excluded in a section entitled "Excluded Assets" which Vantage had to acquire to conduct business. (Settlement Agreement, Ex. 1, Ex. A (Definitions); Bratsafolis Testimony; Levine Testimony).

50. These excluded assets included: (1) rights under any broker, correspondent, loan sale or other similar contracts with any investor or other party; (2) books, general ledgers, files and records related to the business; (3) governmental, investor or insurer licenses, permits, approvals, qualifications or registrations; (4) right in the name, logos or other indicia of origin used by Homebridge; (5) software or intangible systems or licenses in connection with the business, or any intellectual property related to that software or systems. (Settlement Agreement; Bratsafolis Testimony; Levine Testimony).

51. Additionally, in Exhibit A to the Bill of Sale, Assignment and Assumption Agreement that was executed contemporaneous with the Agreement, no telephone or data services contracts, utilities, cleaning or maintenance contracts were assumed by Vantage. (Settlement Agreement at Ex. 1, Ex. A (Definitions), Schedule 1; Bratsafolis Testimony; Levine Testimony).

52. No "telephone numbers, e-mail or website addresses" were provided to Vantage. (Settlement Agreement; Bratsafolis Testimony; Levine Testimony).

53. Neither Harris nor Brauser reviewed the Settlement Agreement before they signed it to determine whether certain provisions were in the Agreement. (Harris Dep. Tr. at 257-58; Brauser Dep. Tr. at 76).

**V. Expert Witnesses**

Neither party intends to call any expert witnesses to testify.

**VI. Trial Exhibits**

**A. Pre-marked Joint Trial Exhibits**

The parties hereby stipulate and agree that the following exhibits may be received, with the Court's approval, in evidence at trial as premarked joint exhibits.

1-4. Reserved (*see* Disputed Exhibits)

5. June 16, 2005 Sublease Agreement between Lydian Private Bank and Homebridge Mortgage Bankers Corp.

6. June 17, 2005 check for \$39,000 from Homebridge Mortgage Bankers Corp. to Lydian Private Bank.

7. February 17, 2006 e-mail from Bratsafolis to Harris<sup>1</sup>.

8. February 22, 2006 e-mail from Bratsafolis to Harris.

9. March 24, 2006 e-mail from Bratsafolis to Harris.

10. May 9, 2006 e-mail from Bratsafaolis to Harris.

11. May 17, 2006 e-mail from Bratsafolis to Harris.

12. May 22, 2006 e-mail from Harris to Bratsafolis.

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<sup>1</sup> References to e-mails are to the e-mail at the top of a "string" in the document.

13. July 18, 2006 e-mail from Bratsafolis to Harris.
14. July 24, 2006 e-mail from Bratsafolis to Harris.
15. August 8, 2006 e-mail from Bratsafolis to Clooney.
16. August 16, 2006 e-mail from Harris to Bratsafolis.
17. August 22, 2006 e-mails from Harris to Harris.
18. August 28, 2006 e-mail from Bratsafolis to Harris.
19. August 31, 2006 and September 1, 2006 resignation e-mails and correspondence.
20. August 31, 2006 e-mail from Bratsafolis to Harris.
21. August 31, 2006 e-mail from Ackerman to "Florida."
22. September 1, 2006 Settlement and Purchase Agreement.
23. September 5, 2006 letter from Levine to Samuels.
24. September 5, 2006 letter from Levine to Harris.
25. September 7, 2006 e-mail from Brauser to Bratsafolis.
26. September 12, 2006 e-mail from Bratsafolis to Clooney and Feinerman.
27. September 13, 2006 License Agreement between Corporate Executive Suites Mizner, Inc. and Homebridge.
28. Assignment and Assumption of Sublease.
29. September 19, 2006 e-mail from Devin Daly to William DeMorris.
30. September 25, 2006 e-mail from Bratsafolis to Brauser.
- 31-32. Reserved (*see* Disputed Exhibits).

33. October 16, 2006 letter from Levine to Brauser.
- 34-35. Reserved (*see* Disputed Exhibits).
36. Scott Harris Compensation Report for January 6, 2006 to December 22, 2006.
37. December 1, 2006 Sublease between Sovereign Title Partners and Refinance.com.
38. HOMBRI-002553 to 002601, Homebridge/Refinance.com income statements.
39. HOMBRI-002550-002551, Florida allocation schedule.
40. HB-Supp-000052-000061, Florida commission report.
41. HOMBRI-002634, Florida expense report.
42. Lydian Private Bank v. Homebridge Mortgage Bankers Corporation, etc., et al., Case No 726995 (Circuit Court for Broward County, Florida).
43. September 11, 2006 e-mail from Brauser to K&L Gates (then K&LNG) counsel Eric Edwardson, HB000018-000019.

The Defendants' proposed exhibits are attached hereto at Exhibit 1. Plaintiff does not object to these exhibits.

**B. Pre-marked Disputed Exhibits**

The parties have not been able to agree on the admissibility of the following pre-marked exhibits which they intend to offer at trial.

The Plaintiff will offer the following exhibits to be received into evidence, to which the defendant objects:

1. March 22, 2004 letter from Marc J. Lifset to New York State Banking Department (proposed joint exhibit 1). Defendant objects on grounds of hearsay and relevance pursuant to Federal Rules of Evidence 401 through 403 and 801.
2. May 5, 2004 letter from New York State Banking Department to Marc J. Lifset (proposed joint exhibit 2). Defendant objects on grounds of hearsay and relevance pursuant to Federal Rules of Evidence 401 through 403 and 801.
3. June 9, 2004 letter from Marc J. Lifset to New York State Banking Department (proposed joint exhibit 3). Defendant objects on grounds of hearsay and relevance pursuant to Federal Rules of Evidence 401 through 403 and 801.
4. October 13, 2004 letter from David Pankin to Florida Office of Financial Regulations (proposed joint exhibit 4). Defendant objects on grounds of hearsay and relevance pursuant to Federal Rules of Evidence 401 through 403 and 801.
5. September 29, 2006 letter from Lawrence Coe Lanpher to Brauser and Harris. (proposed joint exhibit 31). Defendant objects on grounds of hearsay pursuant to Federal Rules of Evidence 801.
6. October 4, 2006 letter from Levine to Brauser (proposed joint exhibit 32). Defendant objects on grounds of hearsay pursuant to Federal Rules of Evidence 801.
7. October 23, 2006 letter from Lawrence Coe Lanpher to David L. Ferguson (proposed joint exhibit 34). Defendant objects on grounds of hearsay pursuant to Federal Rules of Evidence 801.
8. Lawrence Samuels Death Record (proposed joint exhibit 35). Defendant objects on grounds of hearsay pursuant to Federal Rules of Evidence 801.

9. September 12, 2006 e-mail from Eric J. Edwardson to Harvey Kesner and Bratsafolis. (portion of proposed joint exhibit 43). Defendants objects on grounds of hearsay and relevance pursuant to Federal Rules of Evidence 401 through 403 and 801.

10. Redacted K&L Gates bills from October 31, 2006 to December 31, 2007. Defendants objects on grounds of hearsay and relevance pursuant to Federal Rules of Evidence 401 through 403 and 801. Additionally, the Defendants object to the extent that the documents are incomplete.

**VI. Type of Trial and Estimated Length**

Plaintiff has not made a jury demand in this matter. Plaintiff estimates that it will take three to four days to present its case. The Defendant estimates that it will take two to three days to present its case.

Dated: February 25, 2008

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