

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

GLOBAL DIRECT SALES, LLC, PENOBSCOT )  
INDIAN NATION, CHRISTOPHER RUSSELL )  
and RYAN HILL, )

Case No.: 8:08-cv-02468

Plaintiffs, )

-v- )

AARON KROWNE, individually and d/b/a THE )  
MORTGAGE LENDER IMPLD-O-METER and )  
ML-IMPLODE.COM, KROWNE CONCEPTS, )  
INC., IMplode-EXPLODE HEAVY )  
INDUSTRIES, INC., JUSTIN OWINGS, KRISTA )  
RAILEY, STREAMLINE MARKETING, INC. and )  
LORENA LEGGETT, )

Assigned:  
Hon. Deborah K. Chasanow

Defendants. )

**DECLARATION OF KRISTA RAILEY IN SUPPORT OF DEFENDANTS’  
OPPOSITION TO PLAINTIFFS’ MOTIONS FOR A TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Krista Railey, declare as follows:

1. I am over 18 years of age and competent to testify to the matters below.
2. I make the following statements based on my personal knowledge. If called to

testify under oath in a court of law as to the matters set out herein, I could and would do so truthfully.

My background

3. I am a licensed California real estate broker (California Real Estate broker license number 00978970) and mortgage professional, with 20 years in the mortgage and real

estate industry, including loan processing, underwriting, quality control, and agency representation.

4. I am an independent analyst and journalist, whose column, the “FHA Mortgage Whistle Blower,” is hosted on the Mortgage Implode-O-Meter Website. I am not an employee of Aaron Krowne, Justin Owings, or the Mortgage Implode-O-Meter and do not receive story assignments or requests for the Mortgage Implode-O-Meter either in this case or generally.

5. I have been employed by Streamline Marketing Inc. since June 2000, but the Whistle Blower Blog is not owned, operated, or sponsored by Streamline Marketing Inc. I write my articles on my own time from my home in Vista, California. To protect the privacy of my residence, however, I use the Streamline Marketing business address for correspondence.

#### Plaintiffs’ Involvement In Seller-Funded Down-Payment Assistance Programs

6. Plaintiffs Russell and Hill are part of the seller-funded “down-payment assistance program” (DAP) industry, first with The AmeriDream, Inc. company and now with Global Direct Sales, Ltd. and the Penobscot Indian Nation.

7. DAPs are programs that provide money to buyers so they can make down-payments on homes. Many DAPs are seller-funded. In their “purest” form, a seller-funded DAP means that the seller of a home either directly or indirectly “gives” the buyer the 3% down-payments that is required for a loan to be insured by the FHA.

8. HUD guidelines to mortgage lenders prohibit those lenders from counting toward the buyer’s 3% down-payment any monies that the seller gives to the buyer. According to HUD guidelines, the only down-payment grants that may count toward the 3% down-payment are those coming from either tax-exempt charities, governmental agencies, public entities, or

employers. Attached hereto as Exhibit A is the HUD manual “Mortgage Credit Analysis for Mortgage Insurance on One-to Four Family Properties,” Chapter 2, Section 2-10 (c) [4155.1 Rev 5], which shows what entities may provide gifts to buyers that can count toward the 3% down-payment requirement.

9. Many seller-funded DAPs are established as non-profit charities in order to circumvent this HUD guideline. Such “charities” act as a third-party intermediary between a seller who is funding the down-payment and his buyer. Sellers typically raise the selling price to make up for the funding they have indirectly provided to the buyers.

10. According to reports by HUD and the U.S. Government Accountability Office, seller-funded DAPs have led to a substantial risk to FHA insurance funds due to increased delinquency rates, and have resulted in an increase in the effective cost of homeownership. Attached hereto as Exhibit B is a true and correct copy of the relevant excerpts of the March 2005 HUD report entitled, “An Examination of Downpayment Gift Programs Administered By Non-Profit Organizations,” that I caused to be downloaded from <http://www.hud.gov/offices/hsg/comp/rpts/DAPssist/dpa2.pdf>. Attached hereto as Exhibit C is a true and correct copy of the relevant excerpts of the U.S. GAO report, “Mortgage Financing: Additional Action Needed to Manage Risks of FHA-Insured Loans with Down-payments Assistance,” that I caused to be downloaded from <http://www.gao.gov/new.items/d0624.pdf>.

11. While some DAP programs are operated through legitimate charities, on May 4, 2006, the IRS released a statement calling those seller-funded DAPs that masquerade as “charities” to funnel down-payment assistance indirectly from sellers to buyers, “scams,” and issued a Revenue Ruling (2006-27) that detailed the guidelines for when DAP organizations can

qualify as “charities.” Attached hereto as Exhibits D and E are true and correct copies of the IRS statement and the Revenue Ruling, respectively.

12. Based on the Revenue Ruling, organizations established for the purpose of providing seller-funded DAPs lost their tax-exempt status, and seller “donations” to such organizations could no longer be deducted as charitable giving. If such organizations were to lose their non-profit status, then any funding they provided to buyers could no longer count toward the buyer’s 3% down-payment requirement for FHA insurance purposes.

13. Shortly after the Revenue Ruling, Russell and Hill, through their company Global Direct Sales, LLC, allied themselves with the Penobscot Indian Nation (“PIN”) in order to establish a government agency-based (rather than charitable) DAP. On January 24, 2007, the PIN tribal counsel passed a resolution establishing the PIN Fair Housing Agency (the “PIN-FHA”). The PIN-FHA established the Grant America Program, a seller-funded DAP venture between PIN and Global Direct Sales.

14. Because PIN is a government and the PIN-FHA is its agency, then monies that sellers funnel to buyers through the Grant America Program could be counted toward the 3% down-payment requirement for U.S. FHA insurance.

15. After the Grant America Program was established, more Indian Nation Agency DAPs sprung up. To address this new vehicle under which sellers were indirectly funding buyers, HUD promulgated new regulations that prohibited all seller-funded down-payment assistance programs, as of October 1, 2007. PIN, on behalf of itself and the Grant America Program, sued HUD, claiming that HUD had not provided sufficient time for public comment. The court vacated the HUD final rule and remanded the matter back to HUD. This led to a

settlement agreement between PIN and HUD, and a Stipulation resolving the case was entered in March 2008. Attached hereto as Exhibit F is a true and correct copy of that Stipulation.

16. To finally address the issue of seller-funded DAPs, Congress passed, and, on July 30, 2008, the President signed into law the Housing and Economic Relief Act of 2008, H.R. 3221. Section 2113 of that Act prohibits, as of October 1, 2008, attribution of any funds a buyer received from any seller-funded DAPs—including ones established with the Indian Nations—toward the minimum buyer down-payment (raised to 3.5% by the same Act) required for FHA-insured mortgages.

17. The battle concerning seller-funded DAPs continues, however. The House of Representatives is currently considering the FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008, H.R. 6694. That Act would allow seller-funded down-payment assistance for FHA loans subject to certain requirements concerning buyer credit scores and risk-based mortgage premiums. Attached hereto as Exhibit G is a true and correct copy of the text of H.R. 6694 that I caused to be downloaded from <http://www.govtrack.us/congress/billtext.xpd?bill=h110-6694>.

The Notoriety of Plaintiffs Hill, Russell and Global Direct Sales, LLC, In The DAP Industry

18. Plaintiffs Russell and Hill, and their companies, Global Direct Sales and AmeriDream, have often been the subject of media interest. They have carried some of that interest through their own press releases.

19. One such article was a feature by Forbes Magazine on Plaintiff Russell and Global Direct Sales. The article summarizes the involvement of Russell and Hill in the seller-funded DAP industry—starting with AmeriDream (which Forbes describes as a “racket”)—and

describes the current venture amongst all the Plaintiffs. Attached hereto as Exhibit H is a true and correct copy of the Forbes article that I caused to be downloaded from

[http://www.forbes.com/forbes/2008/0901/042\\_print.html](http://www.forbes.com/forbes/2008/0901/042_print.html).

20. Hill's and Russell's companies, including AmeriDream and the Grant America Program, maintain scores of press releases and commentaries regarding DAPs on their websites.

21. Also publicly available is a letter that Russell wrote to HUD, in his capacity as the "Interim Chairman" of the Homeownership Alliance of Nonprofit Downpayment Providers, urging HUD not to shut down the DAP industry based on an Inspector General's report recommending that HUD do so. This letter can be found on AmeriDream's website at <http://www.ameridream.org/Documents/Letters/HAND-Letter.pdf>.

22. Russell also issued a press release on November 5, 2007, under his own byline, entitled "HUD Defeated by Penobscot Indian Nation over Nationwide Down Payment Program." This press release was published by MortgageMag News, and is available at <http://www.mortgagemag.com/news/2007/1101/1000008597070.htm>.

23. Other publicly available articles and press releases concerning the Plaintiffs can be found at:

- <http://www.reuters.com/article/pressRelease/idUS222720+15-Apr-2008+PRN20080415> and <http://www.mortgagedaily.com/PressReleaseDpfunding032607.asp> (publication of Grant America Program's press release, "Grant America Program Approved By HUD")
- <http://www.marketwatch.com/news/story/new-down-payment-funding-idea-draws/story.aspx?guid=%7BAA2879A8-4495-4C1D-A8CC-E679599DD3DB%7D> ("Home buyer's club: New down-payment funding idea draws regulators' attention"—article about Global Direct Sales);
- <http://www.mortgageloanplace.com/blog/2007/05/14/down-payment-assistance-may-go/> (blog entry titled "Down Payment Assistance May Go" to which Russell published a public response about Grant America Program).

- <http://www.penobscotnation.org/Tribal%20Business%20Links/PINFHA.html> Tribal Business Announcement Creation of Penobscot Indian Nation Fair Housing Administration (PIN-FHA)
- <http://209.85.173.104/search?q=cache:JHrAKRpMuTYJ:rismedia.com/wp/2007-04-14/new-grant-america-program-offers-safe-option-for-low-to-moderate-income-home-buyers/+grant+america+program&hl=en&ct=clnk&cd=5&gl=us&client=safari>

### My Article on the Penobscot Indian Nation/Global Direct DAP Program

24. In June of this year, I began developing a series of stories and information resources on DAPs. My interest arose from HUD's attempts to shut down seller-funded DAPs and the DAP providers' attempts to protect them. I have posted these stories on the Mortgage Lender Implode-O-Meter, as well as on an unrelated website called Ticker Forum.

25. I started speaking out about seller-funded DAPs in my June 17, 2008 column, when I wrote a story supporting HUD Commissioner Montgomery's decision to publish a revised rule and to reopen the comment period. I also wrote an entry on July 13, 2008 entitled: "The FHA Delinquency Crisis: 1 in 6 Borrowers in Default," which correlated the increase in seller-funded DAPs to the FHA's rising delinquency rate. On September 17, 2008, I also reported on the House mark-up hearing for H.R. 6694.

26. Normally, when I post my column, I first post the entries for internal review by the Mortgage Implode-O-Meter website. After an entry has been reviewed, and I have had the opportunity to edit the posting, I receive a notice to publish the entry on the site and then publish the entry for public viewing. When a member of the public views an entry, that person can post a comment or response to the entry. I receive these comments, and review and approve them before they are posted on the website.

27. On September 9, 2008, I posted for internal review an article I had been drafting about the Penobscot Indian Nation DAP. A copy of this draft article was attached as Exhibit E to the Russell Certification filed in support of Plaintiffs' Motions ("Russell Certification").

28. On September 10, 2008, I had not yet provided a request to publish the article as I was continuing to edit the piece. I was surprised, therefore, to receive comments on the article, because I believed that the article was not yet available to the public for viewing. The comment was from Christopher Russell, who threatened to sue me. Attached hereto as Exhibit I is a true and correct copy of that comment.

29. I immediately forwarded Russell's comment to administrators for the Mortgage Implode-O-Meter website. Within 45 minutes of receiving Mr. Russell's comment, the draft article had been permanently removed from the website.

30. Following additional verifications and revisions, I posted the final version of the article on September 15, 2008. The final version included a link to Mr. Russell's comments on the initial draft article. Attached hereto as Exhibit J is a true and correct copy of the article posted on September 15, 2008.

31. I fully researched everything that appeared in both the September 9 draft version and September 15 final version of the article, and both versions included links to supporting materials on which my article was based.

32. My research included, among other things, reading transcripts from Congressional hearings about Plaintiffs. I also read articles published in reputable papers such as the New York Times and Forbes Magazine. I also researched website registrations of various websites connected to Global Direct Sales, LLC, Russell, and Hill, and stored information and documents posted to those websites. I read numerous reports about DAPs, FHA insurance, the tax treatment

of DAPs, and other related topics, issued by such agencies as HUD, the U.S. GAO and the IRS. My research also included interviewing Plaintiff Christopher Russell. I also located and analyzed corporate formation documents, AmeriDream non-profit tax returns, public and court records, and an arbitration settlement related to the Plaintiffs.

33. I provided links to over 20 of the documents on which I relied in the article itself, so that readers could confirm for themselves what was said in my article.

34. I have reviewed the statements about which the plaintiffs complain in their defamation complaint. Without getting into the original underlying support for the following statements, I note that the following statements were present only in the September 9 draft article, and not in the final September 15 article:

- a. “The Penobscot Indian Tribe’s Grant America Program is a scam.”
- b. “Russell and Hill treated AmeriDream like their own personal piggy bank.”
- c. “The Dp funder is another type of seller-funded down-payments scam.”

35. I stand behind all of the statements I have made in my article about the Plaintiffs, and I believe each and every one of them to be based in truth and supported by my research.

36. Following is a table of statements that Plaintiffs have identified as “defamatory,” coupled with documents supporting those statements:

STATEMENT	SUPPORT
Russell had a copycat website of AmeriDream.	See Ex. K (showing an arbitration decision noting that the Russell site is confusingly similar).
Russell and Hill created a new venture known as the Dp Funder Program and the Owner’s Alliance.	See Exhibits L, M, N and O, true and correct copies of which are attached hereto (showing that the DpFunder Website is copyrighted to Global Sales LLC; that Global Direct Sales, LLC was registered by Ryan Hill; that a buyer signs up as an independent contractor with Global Direct Sales; that funds for the Owner’s Alliance Funding are remitted

STATEMENT	SUPPORT
	to Rycho; and that Rycho is also registered and affiliated with Russell and Hill).
On April 3, 2008, HUD and the Penobscot Indian Tribe executed a Stipulation to Resolve Remaining Claims and Dismiss Action which the Grant America Program website <i>erroneously</i> asserts as a "HUD approval".	See the Stipulation (Exhibit F); and <i>compare</i> Grant America Program website ("G.A.P. is HUD Approved!!!") with the HUD website ("FHA does not 'approve' down payment assistance programs in the form of gifts administered by charitable organizations."). True and correct copies of the website pages are attached as Exhibits P and Q.
Not only is the Stipulation and Dismissal <i>not</i> an approval letter, it doesn't provide specific approval of seller-funded grants as the Sovereign Grant provider claims.	See Exhibit F (PIN-HUD Stipulation) (showing only that HUD will insure the Penobscot Indian Nation's seller-funded grants under the rules then in existence because of the sovereign status of PIN, and not because HUD approves of seller-funded grants).
The Stipulation and Dismissal is merely a temporary settlement which gave HUD the opportunity to publish a revised proposed rule and re-open the comment period.	See Exhibit F (PIN-HUD Stipulation) (was based on court's finding that HUD had not allowed a sufficient public comment period before promulgating the rule concerning seller down payment programs)
The seller contributions to the Grant America Program is clearly a concession that is confirmed by IRS ruling 2006-27.	See Exhibit E at 41-45. (showing that concessions are payments made by sellers instead of buyers that need to be accounted for so as to not inflate sales value)
The PIN-FHA gift letter also confirms that it is a concession.	See Exhibit R (showing that Plaintiffs tell sellers that their contributions are not charitable contributions)
Russell and Hill are already working on an alternative scheme through the Down Payment Grant Alliance. They intend to replace one scam with another even more complicated scam. Kind of like a convoluted down payment shell game.	See Exhibit H (Forbes article discussing Russell's and Hill's new scheme)

37. At no time during the research and drafting of my article on the Penobscot Indian Nation, Global Direct Sales, Christopher Russell or Ryan Hill was I aware that any of the Plaintiffs or their related organizations had refused to advertise on the Mortgage Lender

Implode-O-Meter website, as Russell alleges. If any such discussions about advertising did in fact occur, they had no impact on my decision to write and publish my article.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: \_\_\_\_\_

\_\_\_\_\_  
Krista Railey