

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SUPER FUTURE EQUITIES, INC.

3-06-CV-0271-B

Plaintiff,

v.

**WELLS FARGO BANK, N.A., ORIX
CAPITAL MARKETS, LLC, ORIX USA
CORPORATION, ORIX MARKETS
PARTNERSHIP, JOHN DINAN,
MICHAEL F. WURST, CLIFFORD
WEINER, and JAMES R. THOMPSON**

Defendants.

ORIX CAPITAL MARKETS, LLC'S ORIGINAL COUNTERCLAIM

Defendant and Counter-Plaintiff ORIX Capital Markets, LLC (“ORIX Capital”), on behalf of itself and the certificateholders of the Merrill Lynch Mortgage Investors Inc. Commercial Mortgage Pass-through Certificates Series 1999-C1 (“MLMI” or the “MLMI Trust”), brings this action against Plaintiff and Counter-Defendants Super Future Equities, Inc., Schumann Rafizadeh, Cyrus Rafizadeh, Darius Rafizadeh, Houman Thomas Arjmandi, and Keon Michael Arjmandi, for damages under the laws of the United States and the State of Texas and alleges as follows:

I. SUBJECT MATTER JURISDICTION

1. This Court has supplemental jurisdiction over the claims in this Counterclaim that arise under the statutory and common law of the State of Texas pursuant to 28 U.S.C. § 1367(a) and any other applicable law, since the state law claims are so related to the federal claims pleaded by

Super Future Equities, Inc. (“SFE”) in its First Amended Complaint that they form part of the same case or controversy and derive from a common nucleus of operative facts.

II. VENUE

2. Venue is proper in the Northern District of Texas and this Court pursuant to 28 U.S.C. § 1391(b). Moreover, because SFE filed its Original Complaint in this Court, this Court has personal jurisdiction over SFE, and venue is proper in this judicial district under 28 U.S.C. § 1391(c).

III. PARTIES AND PERSONAL JURISDICTION

3. Counter-Plaintiff ORIX Capital is a Delaware limited liability corporation with its principal place of business in Dallas, Texas. ORIX Capital brings these claims on behalf of itself, and on behalf of the certificateholders of the MLMI Trust.

4. Counter-Defendant SFE is a Nevada corporation with its principal place of business in Texas. SFE has appeared in this action as the Plaintiff.

5. Counter-Defendant Schumann Rafizadeh is an individual who resides in Houston, Texas. Schumann Rafizadeh may be served at 1501 North Main Street, P.O. Box 485, Highlands, Texas 77562.

6. Counter-Defendant Houman Thomas Arjmandi (“Thomas Arjmandi”) d/b/a www.predatorix.com is an individual who may be served at his place of business, 806 Main Street, Suite 1200, Houston, Texas 77702. Thomas Arjmandi’s activities may be imputed to, attributed to and/or considered the activities of SFE.

7. Counter-Defendant Keon Michael Arjmandi (“Keon Arjmandi”) is an individual. Upon information and belief, Keon Arjmandi resides in Stillwater, Oklahoma and may be served at 1410 Fairfield Drive, Stillwater, Oklahoma, 74074. Keon Arjmandi’s activities may be imputed to, attributed to and/or considered the activities of SFE.

8. Counter-Defendant Cyrus Rafizadeh is an individual. Upon information and belief, Cyrus Rafizadeh resides in Houston, Texas and may be served at 1501 North Main Street, P.O. Box 485, Highlands, Texas 77562. Cyrus Rafizadeh's activities may be imputed to, attributed to and/or considered the activities of SFE.

9. Counter-Defendant Darius Rafizadeh is an individual. Upon information and belief, Darius Rafizadeh resides in Houston, Texas and may be served at 1501 North Main Street, P.O. Box 485, Highlands, Texas 77562. Darius Rafizadeh's activities may be imputed to, attributed to and/or considered the activities of SFE.

IV. INTRODUCTION

10. Counter-Defendants' long and sordid history with ORIX Capital began in early 2001 in relation to a property called the Arlington Apartments located in Harvey, Louisiana, for which Cyrus II Partnership ("Cyrus II"), an entity owned by Schumann and Mondona Rafizadeh, executed a \$6.4 million promissory note.¹ At that time, the loan on the Arlington Apartments was held by the MLMI Trust, and ORIX Capital served as the Master and Special Servicer for the MLMI Trust.² Forced into litigation by Cyrus II's neglect of its obligations under the loan documents, ORIX Capital, on behalf of the MLMI Trust, brought suit in the 24th Judicial District Court in Jefferson Parish, Louisiana, to foreclose upon the property. Citing numerous events of default, including fraud committed in order to obtain the loan, the court held that the note was in default and authorized ORIX Capital's foreclosure on the property. On December 23, 2004, in a scathing opinion, the court awarded the MLMI Trust a judgment (the "Louisiana Judgment") of more than \$10 million against Mondona Rafizadeh, Cyrus II, and Bahar Development, Inc.

¹ Schumann and Mondona Rafizadeh own entities that conduct business in several states. These business entities own real estate located in Louisiana, Texas, Oklahoma, and Georgia. The Rafizadehs also own affiliated management, consulting, and servicing businesses that are incorporated in Louisiana, Texas, Ohio, and Nevada.

² ORIX Capital ceased serving as Master Servicer on December 8, 2005.

(“Bahar”). Additionally, the court dismissed with prejudice all claims that these parties asserted against ORIX Capital and the Trustee for the MLMI Trust.

11. The Arlington Apartments litigation was the start of a tortuous journey through the court systems in Texas and Louisiana, with Schumann Rafizadeh and his numerous entities hauling ORIX Capital and the MLMI Trust in and out of courts, as they have attempted to evade payment of the Louisiana Judgment and retaliate against ORIX Capital.

12. Schumann Rafizadeh has created yet another purportedly legal and separate entity named SFE. Less than two months from the filing date of SFE’s Complaint, Schumann Rafizadeh named his seventeen-year-old son, Cyrus Rafizadeh, and his wife’s nephews, Thomas Arjmandi and Keon Arjmandi, as directors and/or officers of SFE. Incorporated on December 1, 2004, just weeks before the Louisiana state court judgment, SFE is the entity Schumann Rafizadeh has selected to pursue his latest stratagem to avoid paying the Louisiana Judgment and to seek revenge against ORIX Capital, the MLMI Trust, Defendant Wells Fargo Bank Minnesota, N.A. (“Wells Fargo”), and now Defendant ORIX USA Corporation (“ORIX USA”) and the individual Defendants.³

V. FACTUAL BACKGROUND

A. The Rafizadehs’ Connection to ORIX Capital: The Financing of the Arlington Apartments.

13. On July 6, 1999, Cyrus II, a partnership under Louisiana law, executed a Promissory Note (“Note”) in the amount of \$6.4 million dollars through its general partner, Bahar. This Note was secured by a Mortgage, Security Agreement, and Assignment of Leases and Rents (“Mortgage”), which encumbered the Arlington Apartments in Harvey, Louisiana (the “Property”).

³ The individual Defendants include John Dinan, Michael Wurst, Clifford Weiner, and James Thompson. The individual Defendants, together with ORIX Capital and ORIX USA, are hereinafter referred to as the “ORIX Defendants.”

14. Husband and wife Schumann and Mondona Rafizadeh entirely own Cyrus II and Bahar. Cyrus II's limited partners are Schumann and Mondona Rafizadeh. At the time of the Note and Mortgage, Mondona Rafizadeh owned 100% of Bahar, the general partner of Cyrus II. Mondona and Schumann Rafizadeh are also the President and Vice-President of Bahar, respectively. Additionally, Mondona Rafizadeh personally guaranteed the Note (the "Guaranty").

15. The Note, Mortgage, and related documents were subsequently assigned to the MLMI Trust. Accordingly, the MLMI Trust is the owner and holder of due course of the Note and the other loan documents, including the Mortgage and Mondona Rafizadeh's personal Guaranty.

B. The Louisiana Judgment: The History of the Foreclosure Litigation.

16. In the case of the Arlington Apartments, ORIX Capital first inspected the Property in March 2001. After the inspection, ORIX Capital, as Master Servicer, placed the Property in Special Servicing and attempted to work with Cyrus II to establish a rehabilitation plan that would address the deplorable conditions ORIX Capital found to exist at the Property. ORIX Capital's efforts were to no avail, as Cyrus II, Bahar, and Mondona Rafizadeh failed to provide a rehabilitation plan to ORIX Capital, almost a year after the first inspection. Cyrus II also repeatedly ignored ORIX Capital's requests for financial data regarding the Property's occupancy rate, ignored requests to re-inspect the Property in early 2002, ignored a demand to submit increased monthly escrow payments, ignored ORIX Capital's written notification of default, and ignored its opportunity to cure the default.

17. Consequently, on March 13, 2002, ORIX Capital, on behalf of the MLMI Trust and in the name of the MLMI Trustee Wells Fargo, brought suit in Louisiana state court to foreclose upon the Property. The Louisiana court heard testimony and evidence over four days.

During the trial, the court heard evidence that the Property was in deplorable condition with deficiencies that included: leaking roofs and ponding water, improper electrical wiring, extensive mold throughout the complex, wet and mildewed carpets with mushrooms growing, and holes in ceilings and sheetrock.⁴

18. On December 23, 2004 the Louisiana court entered its “Reasons for Judgment,” finding for ORIX Capital and Wells Fargo, on behalf of the MLMI Trust, and awarding damages in the amount of \$10,893,350.96, plus interest against Mondona Rafizadeh, Bahar, and Cyrus II. The court entered judgment for ORIX Capital and Wells Fargo, on behalf of the MLMI Trust, on April 11, 2005.

19. Specifically, the 24th Judicial District Court held that “[a]ny one of the following Events of Default made the Note immediately due and payable and warranted the Trustee’s seizure of the Property:

- (1) failure to maintain the Property in good condition
- (2) failure to make the increased Replacement Escrow Fund (“Escrow”) payment on March 1, 2002
- (3) failure to provide the additional financial information ORIX Capital requested

⁴ Interestingly, this is not the first time that a property controlled by the Rafizadehs has deteriorated to the point of jeopardizing the life and safety of its tenants. It is well-documented in a multitude of lawsuits that the Plaza Tower in New Orleans, Louisiana, a Rafizadeh owned and controlled property, was so hazardous to its tenants that the State of Louisiana pulled its offices and employees from the building and relocated to another site. The tenants of Plaza Tower had complained that perennial leaks in the building’s windows, roof and pipes were causing mold. They also complained about faulty elevators, heating and air-conditioning units that did not work, and asbestos. In fact, the injured tenants brought class action lawsuits against Schumann Rafizadeh and related entities. The Rafizadehs’ insurer settled with the class action plaintiffs. The Rafizadehs also were sued by a former tenant for back rent. In that suit, Schumann Rafizadeh counterclaimed against the State of Louisiana alleging he is a target of a conspiracy to steal leases from Plaza Tower. Schumann has vowed revenge “whether he gets paid in his lifetime, or whether the damages are paid ‘to [his] children’s children.’” *Suit filed Friday alleging fraud is the latest legal challenge for the family behind the Plaza Tower*, TIMES-PICAYUNE, June 20, 2004 printed from <http://www.bahaindex.com/modules.php?name=News&file=print&sid=3682>.

(4) failure to permit an inspection

(5) fraud.”

Louisiana Judgment at p. 6.

20. Judge Grant also found that “[t]he testimony and documentary evidence was replete with evidence that Cyrus [II] made false and misleading statements and representations in certified rent rolls and financial statements, among others, in order to obtain the loan.” Louisiana Judgment at p. 13.

21. The Louisiana court entered judgment for ORIX Capital and Wells Fargo, on behalf of the MLMI Trust, in the amount of \$10,893,350.96 (plus per diem interest of \$2,277.47 from July 26, 2004 through December 29, 2004), which included accelerated prepayment of the mortgage, yield maintenance fees, and interest to accrue at the rate of 13.05% per annum until the judgment is paid in full.⁵ The Louisiana court entered an additional award of \$2,130,649.00 in attorneys’ fees and costs.

22. Since Judge Grant entered the Louisiana Judgment against Mondona Rafizadeh, Cyrus II, and Bahar, the Rafizadehs, who ultimately own and operate a web of more than fifty interrelated business entities, including partnerships and limited liability corporations, have used their entities in a scheme to defraud the MLMI Trust by evading payment of the Louisiana Judgment and to seek revenge against the MLMI Trust, Wells Fargo, and the ORIX Defendants.

⁵ The Court determined that the fraud procured in obtaining the Mortgage occurred on the closing date. Thus, default interest began accruing the day after the loan closed, the first day on which interest could accrue.

C. ORIX Capital is a Leading Provider of Loan Servicing.

23. ORIX Capital, a leading provider of loan servicing and asset management/loan workout services, was founded in 1997. ORIX Capital's customer base includes some of the nation's largest institutional investors, portfolio owners, and loan originators.

24. ORIX Capital acts as Special Servicer on sixteen Commercial Mortgage Backed Securities ("CMBS"), totaling over \$9 billion, including the MLMI Trust.

25. ORIX Capital's obligations and duties to the MLMI Trust, and its rights to act on the Trust's behalf, arise from the MLMI Pooling and Service Agreement of November 1, 1999, ("MLMI PSA") and the Mortgage Loan Purchase Agreement ("MLMI MLPA"). Pursuant to the MLMI PSA, upon certain triggering events, primarily a monetary or nonmonetary default, the Master Servicer transfers the loan(s) to the Special Servicer. As Special Servicer, ORIX Capital is responsible for maximizing recoveries for the MLMI Trust Certificateholders on nonperforming loans and Real Estate Owned ("REO") assets, and is key to maintaining the credit quality of a pool containing nonperforming loans and REO assets. ORIX Capital, as Special Servicer, considers multiple alternatives as part of its analysis including loan modification, foreclosure, deed-in-lieu, negotiated payoff, or sale of the defaulted loan.

26. In connection with its position as Special Servicer, ORIX Capital has the obligation to review the mortgages owned by the CMBS and foreclose upon mortgages securing loans in which borrowers have committed uncured events of default. Over the past six years, ORIX Capital's Special Servicing group has resolved almost 1,600 loans totaling approximately \$3 billion.

D. Counter-Defendant SFE is Created to Retaliate Against ORIX Capital and the MLMI Trust.

27. Upon information and belief, Schumann Rafizadeh created SFE for the purpose of bringing this suit and distancing Plaintiff from the Rafizadeh Enterprise and the fraud found by the Louisiana state court. The Articles of Incorporation for SFE were filed on December 1, 2004. Flash Vos, Inc. (“Flash Vos”), a Texas corporation which is 100% owned by Schumann Rafizadeh, incorporated SFE, and Schumann Rafizadeh acted as SFE’s initial president and director.

28. The Annual List of Officers, Directors, and Resident Agent of SFE was filed in Nevada on January 26, 2006 and lists the Rafizadehs’ seventeen-year-old son, Cyrus Rafizadeh, as the Secretary and Treasurer of SFE. Two other individuals, Counter-Defendants Thomas Arjmandi and Keon Arjmandi, who are nephews of the Rafizadehs, are listed as the President and Director of SFE, respectively.

29. SFE filed an application as a foreign for-profit corporation with the Texas Secretary of State on February 13, 2006. SFE listed Tomik, LLC (“Tomik”) with an address at 806 Main in Houston, Texas, as its registered agent in Texas.

30. Tomik is a Nevada limited liability corporation that filed Articles of Incorporation on June 22, 2005. In addition to serving as a Director of SFE, Counter-Defendant Keon Arjmandi is the sole manager of Tomik. The Initial List of Manager or Members and Resident Agent added Counter-Defendant and SFE President Thomas Arjmandi as a manager of Tomik.

31. Upon information and belief, SFE is owned by Flash Vos and SFE is financed by Schumann Rafizadeh and the United Rafizadeh Family, LLP.

32. Schumann Rafizadeh owns an interest in SFE. Counter-Defendant Darius Rafizadeh and United Rafizadeh Family, LLP also hold a financial interest in SFE and have an interest in the outcome of SFE's lawsuit against the ORIX Defendants.

33. Upon information and belief, although SFE holds the certificates in the MLMI Trust, Schumann Rafizadeh also has an interest in these certificates.

34. Flash Vos and SFE purportedly have a business relationship, though the lack of corporate formalities is demonstrated by Schumann Rafizadeh's, SFE's incorporator and Flash Vos's president and owner, inability to explain how the companies work together or what they do.⁶

D. Predatorix.com

35. As though being forced to respond to SFE's hodgepodge of unsubstantiated, threadbare allegations is not egregious enough, in yet another attempt to retaliate against ORIX Capital, Thomas Arjmandi and Cyrus Rafizadeh, through SFE, have created an internet website to damage and disparage ORIX Capital's business reputation and goodwill and to tortiously interfere with ORIX Capital and the MLMI Trust's contractual relationships.

36. Counter-Defendants maintain a website, www.predatorix.com, which is used to publish false and defamatory statements that disparage and libel ORIX Capital.⁷ Moreover, this website currently publishes confidential and proprietary information, including documents protected by confidentiality designations and protective orders issued by various courts, despite ORIX Capital's demand to remove such information.

⁶ Schumann Rafizadeh was deposed on March 22, 2006. When asked about the relationship between Flash Vos and SFE, Schumann Rafizadeh answered that "the relationship is two companies that work together." He provided no further details regarding the alleged business relationship between the two entities.

⁷ Although SFE has brought suit against ORIX Capital and ORIX USA, Counter-Defendants make no distinction between the entities in their libelous and disparaging statements, referring simply to "ORIX."

37. According to www.whois.net⁸, the domain name www.predatorix.com is registered to Counter-Defendant Thomas Arjmandi. Upon information and belief, the postings on this website are written by Counter-Defendant Cyrus Rafizadeh.⁹

38. On March 15, 2006, ORIX Capital, through counsel, sent a cease and desist letter to Thomas Arjmandi d/b/a www.predatorix.com, identifying the libelous and disparaging statements on www.predatorix.com and identifying several confidential documents, subject to a Stipulated Protective Order, which are currently posted on the website. Predatorix.com is not an authorized recipient of these confidential documents, and the publication of the documents violates a court order. ORIX Capital requested that Thomas Arjmandi d/b/a www.predatorix.com remove ORIX Capital's confidential and proprietary information, as well as the libelous and disparaging statements identified from its website.

39. ORIX Capital has not received a response to its March 15, 2006 letter. Instead, Thomas Arjmandi, Cyrus Rafizadeh and www.predatorix.com continue to post false, libelous and disparaging words and statements about ORIX Capital, and have failed to remove the court-ordered protected documents from the website. And as confirmation of their injurious intent, Thomas Arjmandi, Cyrus Rafizadeh and www.predatorix.com have blocked ORIX Capital and its counsel from accessing www.predatorix.com. When access is attempted from the servers of ORIX Capital and its counsel, a webpage appears that states "you don't have permission to access/ on this server (sic)."

40. Thomas Arjmandi and Cyrus Rafizadeh continue to post additional disparaging and false statements about ORIX Capital. On or about March 30, 2006, making clear that the

⁸ WHOIS is an Internet utility that returns information about a domain name or IP address. It is a tool that is used to obtain domain names in domain name databases. The WHOIS database contains the contact information of every domain owner on the Internet. The information usually includes domain name owner, phone number and mailing address of the person in charge of the Web site.

⁹ The postings on the web-page are signed by "Cyrus."

intent of the website was to retaliate against ORIX Capital and Wells Fargo, Counter-Defendants updated the website and added a “dedication” page, which contains false and defamatory statements and implies that “ORIX” and Wells Fargo’s lending practices have resulted in financial ruin and death.

41. Upon information and belief, Counter-Defendants SFE, Schumann Rafizadeh, Cyrus Rafizadeh, Darius Rafizadeh, Houman Thomas Arjmandi, and Keon Michael Arjmandi have conspired together to establish www.predatorix.com and use the website as their vehicle for making libelous and disparaging statements about ORIX Capital. Moreover, the Counter-Defendants have conspired together to use www.predatorix.com to tortiously interfere with ORIX Capital and the MLMI Trust’s contractual relationships.

E. Counter-Defendants’ Additional Libelous and Disparaging Statements

42. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital’s effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. In his affidavit, Thomas Arjmandi makes libelous and disparaging statements related to ORIX Capital that are unrelated to the subject matter of the Lee Hall litigation.

43. In addition to the libelous website, Cyrus Rafizadeh has posted links to www.predatorix.com and commentary about ORIX Capital on various articles contained on www.wikipedia.com.¹⁰ These comments and links were removed by Wikipedia.com due to Cyrus Rafizadeh’s violation of Wikipedia.com’s policies and guidelines. Consequently, Cyrus Rafizadeh was blocked from editing these entries on Wikipedia.com. Nonetheless, Cyrus

¹⁰ Wikipedia.com is an online encyclopedia that allows its entries to be edited by anyone who accesses the website.

Rafizadeh continues to edit the entries and post the link to www.predatorix.com, in violation of Wikipedia.com's policies and guidelines.

VI. CAUSES OF ACTION

COUNT ONE – LIBEL PER SE

44. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 43, inclusive, of this Counterclaim as if fully set forth herein.

45. Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh, doing business as Predatorix.com, have published defamatory statements about ORIX Capital through a website at www.predatorix.com. These statements are widely and publicly available through the internet.

46. Upon information and belief, Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh published a statement about ORIX Capital on March 14, 2006. On or about that date, Thomas Arjmandi and Cyrus Rafizadeh updated its "The Pic-of-the-Week" page of www.predatorix.com. On that page, the website states: "ORIX is determined to recover. So determined in fact, that they are willing to spend more in the persuit [sic] of recovery, than the recovery itself.... ORIX spent over \$22M to recover \$19.4M, smooth. Very smooth."

47. This statement is defamatory and constitutes willful and knowing business libel.

48. The statement constitutes libel per se because it was reasonably calculated to injure ORIX Capital's reputation. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

49. The statement is also libel per se because it was reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

50. Moreover, the statement is grossly inaccurate and false because the amount recovered by the MLMI Trust in the referenced litigation was greatly in excess of the litigation expenses paid by the Trust in that case.

51. Upon information and belief, Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh published a statement about ORIX Capital on March 30, 2006. On or about that date, Thomas Arjmandi and Cyrus Rafizadeh updated the “About” page of www.predatorix.com. On that page, the website states:

This website is dedicated to all the victims of Wells Fargo & ORIX’s predatory lending and discriminatory practices including;

- 1) All borrowers and guarantors who lost assets, were stripped of equity, incurred physical and emotional injuries, or lost their lives upon loss of their life-time earnings.
- 2) All investors who have lost their pension funds and retirement investments in CMBS bonds (certificateholders).
- 3) All tenants of the seized commercial and residential properties who suffered neglect and mismanagement at the hands of Receiver/Keepers of the seized properties due to health and safety violations, fires, shootings, theft or drowning.

Especially David Pena of Empire Center Dallas, who died of a heart attack after his property was seized and Justin & Daren Ruffin, twin brothers that drowned in a seized apartment’s pool.

52. This statement is defamatory and constitutes willful and knowing business libel.

53. The statement is libel per se because it was reasonably calculated to injure ORIX Capital’s reputation because it implies that ORIX Capital caused financial ruin and death. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

54. The statement is also libel per se because it was reasonably calculated to impeach ORIX Capital’s honesty, integrity, virtue, or reputation.

55. The statement is libel per se because it falsely imputes crimes to ORIX Capital.

56. Moreover, the statement is grossly inaccurate and false. Thomas Arjmandi and Cyrus Rafizadeh falsely state that ORIX Capital engages in predatory lending and discriminatory practices. Moreover, Thomas Arjmandi and Cyrus Rafizadeh falsely imply that ORIX Capital

was somehow involved in the drowning deaths of two brothers. Further, one of the alleged victims, David Pena, is alive and well.

57. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital's effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. In his affidavit, Thomas Arjmandi states, "I am also aware of numerous false statements and misrepresentations by Wells Fargo, the Trustee and ORIX the Servicer of the MLMI REMIC Trust to various courts in sworn testimonies and affidavits. Some of these false statements and misrepresentations are documented on the Website WWW.PREDATORIX.COM."

58. Thomas Arjmandi's libelous statement about ORIX Capital is not related to the subject matter of the Lee Hall litigation and is not subject to any privilege.

59. This statement is defamatory and constitutes willful and knowing business libel.

60. The statement is libel per se because it was reasonably calculated to injure ORIX Capital's reputation. The statement exposes ORIX Capital to public hatred, contempt, ridicule, or financial injury.

61. The statement is also libel per se because it was reasonably calculated to impeach ORIX Capital's honesty, integrity, virtue, or reputation.

62. Moreover, the statement is grossly inaccurate and false because ORIX Capital has not made false statements and/or misrepresentations to any court in the form of testimonies and/or affidavits.

63. Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh were acting with actual malice when the statements were made. Upon information and belief, Thomas Arjmandi and Cyrus Rafizadeh published the statements with knowledge of their falsity or with reckless disregard for the truth.

64. Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh also were acting with negligence when the statements were made. Thomas Arjmandi and Cyrus Rafizadeh knew or should have known that the statements were false. Upon information and belief, Thomas Arjmandi and Cyrus Rafizadeh failed to determine the truth of the statements before publishing them.

65. By reason of the foregoing, ORIX Capital is entitled to damages, including but not limited to exemplary damages and injunctive relief, because Thomas Arjmandi and Cyrus Rafizadeh have made statements that constitute libel per se. Moreover, ORIX Capital has incurred attorneys' fees and expenses in attempting to have Thomas Arjmandi and Cyrus Rafizadeh remove the statements from www.predatorix.com and www.wikipedia.com. SFE is liable for libel per se because the actions of Thomas Arjmandi and Cyrus Rafizadeh are imputed to SFE.

COUNT TWO – BUSINESS DISPARAGEMENT

66. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 65, inclusive, of this Counterclaim as if fully set forth herein.

67. Upon information and belief, Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh, doing business as Predatorix.com, have published disparaging words about ORIX Capital's economic interests through a website at www.predatorix.com. These statements are widely and publicly available through the internet.

68. Upon information and belief, Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh published disparaging words about ORIX Capital's economic interests on March 14, 2006. On or about that date, Thomas Arjmandi and Cyrus Rafizadeh updated its "The Pic-of-the-Week" page of www.predatorix.com. On that page, the website states: "ORIX is determined to recover. So determined in fact, that they are willing to spend more in the persuit (sic) of recovery, than the recovery itself.... ORIX spent over \$22M to recover \$19.4M, smooth. Very smooth."

69. Upon information and belief, Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh published additional disparaging words about ORIX Capital on March 30, 2006. On or about that date, Thomas Arjmandi and Cyrus Rafizadeh updated the "About" page of www.predatorix.com. On that page, the website states:

This website is dedicated to all the victims of Wells Fargo & ORIX's predatory lending and discriminatory practices including;

1) All borrowers and guarantors who lost assets, were stripped of equity, incurred physical and emotional injuries, or lost their lives upon loss of their life-time earnings.

2) All investors who have lost their pension funds and retirement investments in CMBS bonds (certificateholders).

3) All tenants of the seized commercial and residential properties who suffered neglect and mismanagement at the hands of Receiver/Keepers of the seized properties due to health and safety violations, fires, shootings, theft or drowning.

Especially David Pena of Empire Center Dallas, who died of a heart attack after his property was seized and Justin & Daren Ruffin, twin brothers that drowned in a seized apartment's pool.

70. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That

litigation, pending in Israel, relates to ORIX Capital's effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. In his affidavit, Thomas Arjmandi states, "I am also aware of numerous false statements and misrepresentations by Wells Fargo, the Trustee and ORIX the Servicer of the MLMI REMIC Trust to various courts in sworn testimonies and affidavits. Some of these false statements and misrepresentations are documented on the Website WWW.PREDATORIX.COM."

71. All three of these statements are disparaging, substantially false, and create a defamatory impression. Moreover, the statements are grossly inaccurate and false because the amount recovered by the MLMI Trust in the referenced litigation was greatly in excess of the litigation expenses paid by the Trust in that case, because ORIX Capital's practices have not "victimized" anyone, especially David Pena, who is alive and well, and because ORIX Capital has not made any false statements or misrepresentations in connection with testimony and/or affidavits provided in any court proceeding.

72. Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh were acting with actual malice when these statements were made. Upon information and belief, Thomas Arjmandi and Cyrus Rafizadeh published the statements with knowledge of their falsity or with reckless disregard for the truth and intended to interfere with ORIX Capital's economic interests and without privilege.

73. By reason of the foregoing, ORIX Capital is entitled to damages, including but not limited to exemplary damages and injunctive relief because Thomas Arjmandi and Cyrus Rafizadeh have made statements that disparage ORIX Capital's economic interests. Moreover, ORIX Capital has incurred attorneys' fees and expenses in attempting to have Thomas Arjmandi and Cyrus Rafizadeh remove the statements from www.predatorix.com and

www.wikipedia.com. SFE is liable for business disparagement because the actions of Thomas Arjmandi and Cyrus Rafizadeh are imputed to SFE.

**COUNT THREE – TORTIOUS INTERFERENCE WITH
CONTRACTUAL RELATIONSHIPS**

74. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 73, inclusive, of this Counterclaim as if fully set forth herein.

75. On April 4, 2006, Thomas Arjmandi, acting as President of SFE, executed an affidavit that was filed in litigation between ORIX Capital, on behalf of the MLMI Trust, and the principal of the borrower on another defaulted MLMI Trust loan, the Lee Hall loan. That litigation, pending in Israel, relates to ORIX Capital's effort, on behalf of the MLMI Trust, to obtain payment of the Lee Hall loan. The affidavit includes libelous and disparaging statements about ORIX Capital. This affidavit was filed to the detriment of ORIX Capital and the MLMI Trust. Counter-Defendant Thomas Arjmandi is interfering with the contracts of ORIX Capital and the MLMI Trust with an improper motive or means.

76. The result of Defendants' intentional and tortious interference with ORIX Capital and the MLMI Trust's contracts with third parties results in injury to ORIX Capital and the MLMI Trust, which have suffered and will continue to suffer losses and irreparable injury to their business relations with third parties.

77. By reason of the foregoing, ORIX Capital and the MLMI Trust are entitled to damages, including but not limited to exemplary damages and injunctive relief against Counter-Defendants Thomas Arjmandi and Cyrus Rafizadeh. SFE is liable for tortious interference with contract because the actions of Thomas Arjmandi and Cyrus Rafizadeh are imputed to SFE.

COUNT FOUR - COMMON LAW CONSPIRACY

78. ORIX Capital re-alleges and incorporates by reference paragraphs 1 through 77, inclusive, of this Counterclaim as if fully set forth herein.

79. The acts and conduct of Counter-Defendants SFE, Schumann Rafizadeh, Cyrus Rafizadeh, Darius Rafizadeh, Thomas Arjmandi, and Keon Arjmandi, as set forth above in this Counterclaim constitute conspiracy in Texas at common law.

80. Counter-Defendants' conduct as alleged above has damaged and will continue to damage ORIX Capital and the MLMI Trust, and has resulted in losses to ORIX Capital and the MLMI Trust and an illicit gain to Counter-Defendants in an amount unknown at the present time.

81. Further, upon information and belief, the Counter-Defendants have an agreement among themselves, as shown by the commercial connection, complex corporate structure and commonality of officers and directors, to make libelous and disparaging statements about ORIX Capital and to tortiously interfere with ORIX Capital and the MLMI Trust's contracts.

82. The Counter-Defendants have acted in furtherance of the alleged agreement by creating SFE as their vehicle to bring a frivolous sham lawsuit and to create a website, www.predatorix.com, for the sole purpose of making libelous and disparaging statements about ORIX Capital and to tortiously interfere with ORIX Capital and the MLMI Trust's contracts.

83. The Counter-Defendants have intentionally participated in the furtherance of the alleged conspiracy to make libelous and disparaging statements about ORIX Capital and to tortiously interfere with ORIX Capital and the MLMI Trust's contracts.

84. The result of the Counter-Defendants' intentional and active agreement and participation in the alleged conspiracy injured ORIX Capital by requiring it to defend frivolous lawsuits brought against ORIX Capital and to expend legal fees to stop the libelous and

disparaging statements about ORIX Capital on www.predatorix.com and www.wikipedia.com. In addition, Counter-Defendants' interference with ORIX Capital and the MLMI Trust's contracts have caused damage to ORIX Capital and the MLMI Trust.

85. By reason of the foregoing, ORIX Capital and the MLMI Trust are entitled to damages against Counter-Defendants.

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, ORIX Capital, on behalf of itself and the MLMI Trust, prays that the Court:

- i. award ORIX Capital and the MLMI Trust all damages to which they are entitled, including, but not limited to, exemplary damages;
- ii. render judgment against Counter-Defendants for pre-judgment and post-judgment interest, reasonable attorneys' fees and expenses, costs of suit, and all other relief that the Court deems appropriate; and
- iii. award ORIX Capital and the MLMI Trust all other relief that the Court determines to be just and equitable.

Dated: April 24, 2006.

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Kelly R. Vickers

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served, via first class mail, upon all counsel of record, as identified below, on April 24, 2006:

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