

Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYMBIDIUM RESTORATION TRUST,

Plaintiff,

v.

AMERICAN HOMEOWNER PRESERVATION
TRUST SERIES AHP SERVICING, it's Trustee,
U.S. BANK TRUST, N.A.; AHP CAPITAL
MANAGEMENT, LLC; AMERICAN
HOMEOWNER PRESERVATION SERIES
2015+; its Trustee, U.S. BANK TRUST
NATIONAL ASSOCIATION; AHP SERVICING,
LLC, and JORGE NEWBERY,

Defendants.

Case No. 2:24-cv-00025-JNW

**AMERICAN HOMEOWNER
PRESERVATION TRUST SERIES
AHP SERVICING; AHP CAPITAL
MANAGEMENT, LLC; AMERICAN
HOMEOWNER PRESERVATION
TRUST SERIES 2015A+; and AHP
SERVICING, LLC's THIRD-PARTY
COMPLAINT**

AMERICAN HOMEOWNER PRESERVATION
TRUST SERIES AHP SERVICING, AHP
CAPITAL MANAGEMENT, LLC; AMERICAN
HOMEOWNER PRESERVATION TRUST
SERIES 2015A+; and AHP SERVICING, LLC,

Counter-Plaintiffs,

v.

CYMBIDIUM RESTORATION TRUST,

Counter-Defendant.

1 AMERICAN HOMEOWNER PRESERVATION
2 TRUST SERIES AHP SERVICING; AHP
3 CAPITAL MANAGEMENT, LLC; AMERICAN
4 HOMEOWNER PRESERVATION TRUST
5 SERIES 2015A+; and AHP SERVICING, LLC,

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7 Third-Party Plaintiff,

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9 v.

10 OAK HARBOR CAPITAL, LLC; ATLANTICA,
11 LLC; LAND HOME FINANCIAL SERVICES,
12 INC.; WWR MANAGEMENT, LLC; SOUTH
13 WATUPPA, LP; MAGERICK, LLC; and
14 WEINSTEIN & RILEY, PS

15
16 Third-Party Defendants.
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18 For its Third-Party Complaint against Oak Harbor Capital, LLC (“Oak Harbor”), Land Home
19 Financial Services, Inc. (“Land Home”), Atlantica, LLC (“Atlantica”), WWR Management, LLC
20 (“WWR”), Magerick, LLC (“Magerick”), AND Weinstein & Riley, PC, American Homeowner
21 Preservation Trust Series AHP Servicing (“AHP Servicing Trust”), American Homeowner
22 Preservation Trust Series 2015A+ (“2015A+ Trust”), AHP Capital Management, LLC (“AHP
23 Capital”), and AHP Servicing, LLC (“AHP Entities” or “Third-Party Plaintiffs”) allege as follows:
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25
26 **PARTIES**

1. Third-Party Plaintiff, AHP Servicing is a Delaware LLC with its principal place of
business in Chicago, Cook County, Illinois. AHP Servicing’s sole member is Neighborhoods United
LLC, a Delaware Limited Liability Company with its principal place of business in Chicago, Illinois.

2. The members of Neighborhoods United, LLC are Echeverria Kelly and Jorge Newbery.

a. Echeverria Kelly is a resident of Barrington, Cook County, Illinois and is
domiciled in Illinois.

b. Jorge Newbery is a resident of Barrington, Cook County, Illinois and is
domiciled in Illinois.

1 3. Third-Party Plaintiff American Homeowner Preservation Series 2015A+ is a Delaware
2 Statutory Trust with its principal place of business in Chicago, IL. Its administrator is AHP Capital
3 Management, LLC.

4 4. AHP Capital Management, LLC is an Ohio LLC with its principal place of business in
5 Chicago, Cook County, Illinois.

6 5. The sole member of AHP Capital is Neighborhoods United, LLC. *See* ¶ 2.

7 6. The sole beneficiary of 2015A+ Trust is American Homeowner Preservation 2015 A+
8 LLC.

9 7. The sole member of American Homeowner Preservation 2015A+ LLC is American
10 Homeowner Preservation Management, LLC.

11 8. The sole member of American Homeowner Preservation Management, LLC is Jorge
12 Newbery, a citizen of Illinois.

13 9. Third-Party Plaintiff American Homeowner Preservation Trust Series AHP Servicing
14 (“AHP Servicing Trust”) is a Delaware Statutory Trust with its principal place of business in Chicago,
15 Cook County, Illinois.

16 10. The sole beneficiary of AHP Servicing Trust is AHP Servicing, LLC. *See* ¶¶ 1 and 2.

17 11. The administrator of AHP Servicing Trust is AHP Capital. *See* ¶¶ 4 and 5.

18 12. South Watuppa LP is a Massachusetts Limited Partnership with its principal place of
19 business at 657 Pleasant Street, Fall River, Massachusetts.

20 13. The members of South Watuppa LP are:

21 a. Clifford A. Ponte, a citizen of Massachusetts;

22 b. Daniel Jamison, a citizen of Massachusetts; and

23 c. Maria Andrade, a citizen of Massachusetts.

24 14. South Watuppa, LP entered into an agreement with Cymbidium Restoration Trust
25 (“Cymbidium”) and/or its affiliates in the State of Washington for Cymbidium to serve as a real estate
26

1 broker to assist in the sale of assets of which Third-Party Plaintiffs held title, and which were made
2 part of the Mortgage Loan and Sale Agreement (as defined below).

3 15. Oak Harbor Capital, LLC is a Delaware Limited Liability Company with its principal
4 place of business in Seattle Washington. Its sole member is Oak Harbor Holdings, LLC.

5 16. Upon information and belief, the individual members of Oak Harbor Holdings are
6 Courtney Dodd, a resident of the State of Texas and Ophrys, LLC (now known as Oak Harbor Capital,
7 LLC, *See* ¶ 15).

8 17. Oak Harbor is a member of the beneficial owner of Cymbidium.

9 18. WWR Management, LLC is a Delaware Company with its principal place of business
10 in the State of Washington.

11 19. WWR is a company that, upon information and belief, is managed by or is an affiliate
12 of Cymbidium.

13 20. Land Home Financial Services, Inc. is a California Corporation with its principal place
14 of business at 1355 Willow Way, Suite 250, Concord, California.

15 21. Land Home is a lending institution with a license in the State of Washington.

16 22. Land Home serviced and continues to service mortgage loans owned by 2015A+ Trust,
17 AHP Servicing Trust, and AHP Servicing Trust.

18 23. Magerick, LLC is a Delaware limited liability company with its principal place of
19 business in Seattle, Washington.

20 24. Magerick, LLC's sole member is Oak Harbor Capital, LLC. *See* ¶ 15.

21 25. Atlantica, LLC ("Atlantica") is a Delaware limited liability company with its principal
22 place of business in Seattle, Washington.

23 26. Upon information and belief, Oak Harbor Capital, LLC, is the sole manager and owner
24 of Atlantica. *See* ¶ 15.

25 27. Weinstein & Riley, PS, which converted to a PC, is a law firm formed under the laws
26 of the State of Texas, with its principal place of business at 1415 Western Avenue, St. 700, Seattle,

1 Washington.

2 29. Weinstein & Riley is governed by William Weinstein, a citizen of Washington.

3 **JURISDICTION AND VENUE**

4 30. This case is a civil action of which the United States District Court for the Western
5 District of Washington has original jurisdiction under the provisions of 28 U.S.C. Section 1332 and is
6 an action of a civil nature between citizens of different states, wherein the Counter-Plaintiffs have a
7 good faith belief the amount in controversy exceeds \$75,000.00.

8 31. Jurisdiction is also proper pursuant to 28 U.S.C. Section 1367 because this Court has
9 supplemental jurisdiction over the state law claims asserted against the Third-Party Defendants.

10 32. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 128(b).
11 Under Local Civil Rule 3(e)(1), this district is proper because a substantial part of the alleged events
12 or omissions that give rise to the claims occurred in King County, Washington.

13 **FACTS COMMON TO ALL CLAIMS**

14 33. On October 7, 2022, 2015A+ Trust and AHP Servicing Trust entered into a Mortgage
15 Loan Sale Agreement with Repurchase Obligation (“MLSA”) with Cymbidium Restoration Trust. *See*
16 MLSA to be filed under seal as Exhibit A.

17 34. The MLSA was executed by AHP Capital, administrator of the 2015A+ Trust and AHP
18 Servicing Trust.

19 35. The MLSA was thereafter amended on or about March 15, 2023 (“First Amendment”
20 and collectively with the MSLA, “MLSA and First Amendment”). *See* First Amendment to be filed
21 under seal as Exhibit B.

22 36. The MLSA effectuated a transfer of a sum of money (the “Loan”) to 2015A+ Trust and
23 AHP Servicing Trust (collectively, the “Trusts”) in consideration for the transfer by the Trusts to
24 Cymbidium of certain rights over a designated group of residential mortgage loans held by the Trusts.

25 37. The First Amendment extinguished a repurchase obligation on the part of the Trusts,
26 eliminating the distinction between Category A Mortgage Loans and Category B Mortgage Loans,

1 and in exchange, gave Cymbidium certain rights over Mortgage Loans in addition to those Mortgage
2 Loans in the MLSA, referred to in the aggregate as the “Mortgage Loans” to effectuate the terms of
3 the MLSA and the First Amendment, and to satisfy the Loan.

4 38. The MLSA and First Amendment provided that any revenue and proceeds from
5 disposition, assignment, and servicing of the Mortgage Loans would be credited toward the Loan
6 amount.

7 39. The MLSA and First Amendment did not authorize Cymbidium to engage in less than
8 arm’s length transactions to effectuate the terms of the MLSA and First Amendment.

9 40. The MLSA and First Amendment did not authorize Cymbidium to transfer the
10 Mortgage Loans to its affiliates, including Oak Harbor, Atlantica, and/or Magerick for no
11 consideration.

12 41. The MLSA and First Amendment did not authorize the payment of fees to unrelated
13 third-party service providers arising from the transfer and servicing of the Mortgage Loans. These
14 unauthorized fees included, but were not limited to, real estate brokers, asset managers, mortgage
15 servicers, title companies, and attorneys for services not performed.

16 42. The MLSA and First Amendment did not authorize the payment of fees to related third-
17 party service providers arising from the transfer and servicing of the Mortgage Loans. The
18 unauthorized payments included, but were not limited to, real estate brokers, asset managers, mortgage
19 servicers, title companies, and attorneys for services performed or not performed.

20 43. Despite Cymbidium and its affiliates not holding title to the Mortgage Loans, and the
21 limitations placed on Cymbidium and its affiliates’ servicing and transfer of enumerated Mortgage
22 Loans and properties, Cymbidium, Oak Harbor, Atlantica, Magerick, WWR Management, and Land
23 Home withheld vital information from Third-Party Plaintiffs, converted assets and monies belonging
24 to Third-Party Plaintiffs for their own use, and repeatedly refused to provide an accounting.

25 44. As a result of Cymbidium, Oak Harbor, Atlantica, Magerick, WWR Management, and
26 Land Home’s misrepresentations and concealment of the true amounts to be credited to the Loan, the

1 purported amount owed by Trusts for the Loan was improperly inflated.

2 45. 12 USCS § 2607 prohibits the furnishing and receipt of a portion, split, or percentage
3 of any charge made or received for the rendering of a real estate settlement service in connection with
4 a transaction involving a federally related mortgage loan other than for services performed.

5 46. Many of the Mortgage Loans were federally related loans.

6 47. To facilitate the terms of the MLSA and First Amendment, the Trusts executed limited
7 powers of attorney granting Oak Harbor limited rights to act on behalf of the Trusts. *See* Powers of
8 Attorneys to Oak Harbor as attorney-in-fact for the Trusts as Exhibits C and D, respectively.

9 48. To facilitate the terms of the MLSA and First Amendment, American Homeowner
10 Preservation, LLC executed a limited power of attorney granting Atlantica limited rights to act on
11 behalf of American Homeowner Preservation, LLC.

12 49. The limited powers of attorney granted to Oak Harbor by the Trusts limited the
13 authority to execute assignments of Mortgage Loans to “the repurchase of the mortgage loan secured
14 and evidenced hereby” as well as “upon payment and discharge of all sums secured thereby in
15 conjunction with the refinancing thereof.” Exhibits C and D.

16 50. If a mortgage loan was assigned by Atlantica as attorney-in-fact to an unrelated
17 purchaser, any proceeds of that assignment were to be applied as a credit to the balance on the Loan.

18 51. Any mortgage payments and other revenue collected by Cymbidium, Oak Harbor, Land
19 Home, or their agents or affiliates were to be credited against the Loan.

20 52. On or around August of 2023, the servicing of the Mortgage Loans was transferred to
21 Land Home at the insistence of William Weinstein, principal of Oak Harbor Capital, LLC.

22 53. The Mortgage Loans transferred to Land Home were all owned by one of the Trusts.

23 **COUNT I – BREACH OF FIDUCIARY DUTY**
24 **(Against Oak Harbor Capital, LLC)**

25 54. Third-Party Plaintiffs restate and reallege paragraphs 1 through and including 53, as
26 though fully set forth herein as paragraph 54.

55. In consideration for servicing the enumerated loans and acting on behalf of Cymbidium to execute the terms of the MLSA and First Amendment, the Trusts executed limited powers of attorneys (“LPOA”) naming Oak Harbor as attorney-in-fact.

56. As the attorney-in-fact for the Trusts, Oak Harbor owed a fiduciary duty to the Trusts to act in their best interests and adhere to the limited powers granted to Oak Harbor by the Trusts' LPOAs.

57. Despite the obligations bestowed on Oak Harbor as fiduciary, Oak Harbor breached those duties by:

- a. Assigning mortgage loans from the Trusts to its affiliates;
- b. Assigning mortgage loans from the Trusts to its affiliates for no consideration;
- c. Facilitating the transfer of assets owned by Third-Party Plaintiffs to Oak Harbor's affiliates for below market value; and
- d. Profiting from its breaches of fiduciary duty.

58. Oak Harbor's breaches of fiduciary duty divested Third-Party Plaintiffs of hundreds of mortgage loans and real properties.

59. Oak Harbor's breaches of fiduciary duty deprived Third-Party Plaintiffs of millions of dollars in consideration for, and revenue from, transferred assets and servicing fees not paid to Third-Party Plaintiffs or credited towards the Loan.

COUNT II – FOR ACCOUNTING
(Against Oak Harbor Capital, LLC)

60. Third-Party Plaintiffs restate and reallege paragraphs 1 through and including 59, as though fully set forth herein as paragraph 60.

61. A fiduciary duty existed by the execution of the LPOAs appointing Oak Harbor as attorney-in-fact.

62. On or about the time in which the Oak Harbor LPOAs were executed, at Oak Harbor's request delivered the collateral files to Western Alliance Bank for the Loans Assigned from the Trusts.

63. At Oak Harbor's request, servicing of the Mortgage Loans was transferred to Land Home, which accepted the responsibility of servicing the Mortgage Loans.

64. In violation of its fiduciary duty to the Trusts and in violation of the Oak Harbor LPOAs, Oak Harbor assigned the Loans to its own affiliates without consideration and without authority.

65. By assigning and/or transferring the Mortgage Loans to its affiliates, Oak Harbor gained an advantage over AHP and the Trusts by depriving the Trusts of consideration for, and revenue from, the Loans Assigned from the Trusts to satisfy consideration under the MLSA and the First Amendment.

66. After discovering Oak Harbor had assigned and/or transferred Mortgage Loans from the Trusts to entities owned by, managed by, or affiliated with Oak Harbor, for which the Trusts received no consideration, AHP made a demand to Oak Harbor for an accounting, which Oak Harbor refused.

67. Although requested by AHP to do so, Oak Harbor has failed, neglected, and/or refused to account to AHP for all amounts received by Oak Harbor in connection with the Loans Assigned to Oak Harbor and its affiliates.

68. Since the amount of the revenue and proceeds received by Oak Harbor is unknown, and the amounts credited against the Loan are also unknown, the account cannot be conveniently taken in an action at law.

COUNT III – VIOLATION OF 12 USCS § 2607
(Against Oak Harbor Capital, LLC)

69. Third-Party Plaintiffs re-incorporate and reallege paragraphs 1 through and including 68, as though fully set forth herein as Paragraph 69.

70. At or around the time the MLSA and First Amendment to the MLSA were executed, Cymbidium was an affiliate of Oak Harbor.

71. In violation of the terms of the MLSA and the First Amendment to the MLSA, Cymbidium contracted with or otherwise had an agreement with Oak Harbor to perform certain real estate settlement services, which includes, but is not limited to: collection or management of sales proceeds or mortgage payments, and the transfer of Mortgage Loans and real property in connection with the Mortgage Loans Cymbidium agreed to manage as part of the MLSA and its First Amendment.

72. Despite agreeing to perform such services, Oak Harbor was given a percentage of the fees enumerated in the MLSA and the First Amendment without performing any of the services for which it was being compensated.

73. By accepting proceeds from the sale and/or assignment of federally related loans for services it never performed, and by continuing to receive proceeds of federally related loans without consideration to Third-Plaintiffs in the form of a credit against the Loan, Oak Harbor received a payment that bears no reasonable relationship to the market value of the services provided, and that were actually performed or provided in violation of 12 U.S.C. § 2607 and Regulation X, 24 C.F.R. § 3500.14.

74. By receiving a payment for “multiple services,” as that term is used in Regulation X, which are not actual, necessary and distinct from the primary services provided, Oak Harbor violated 12 U.S.C. § 2607, and Regulation X, 24 C.F.R. § 3500.14.

75. Under 12 U.S.C. § 2607(d)(2), Third-Party Plaintiffs are entitled to statutory damages for Defendants' violations of 12 U.S.C. § 2607 in an amount equal to three times the amount of the fees received for services not performed.

76. Under 12 U.S.C. § 2607(d)(5), Third-Party Plaintiffs are entitled to the court costs of this action together with reasonable attorney's fees.

COUNT IV – UNJUST ENRICHMENT
(Against Atlantica, LLC)

77. Third-Party Plaintiffs re-incorporate and reallege paragraphs 1 through and including 76, as though fully set forth herein as Paragraph 77.

1 78. In consideration for servicing the Mortgage Loans and acting on behalf of Cymbidium
2 to execute the terms of the MLSA and the First Amendment, American Homeowner Preservation,
3 LLC executed a limited power of attorney to Atlantica, LLC. *See* the “Atlantica LPOA” attached as
4 Exhibit E.

5 79. The Atlantica LPOA gave Atlantica the authority to transfer assets owned by American
6 Homeowner Preservation, LLC.

7 80. Despite the limitation on the assignment of assets granted by the Atlantica LPOA,
8 Atlantica used the LPOA to assign Mortgage Loans owned by the Trusts.

9 81. A benefit was conferred on Atlantica either by consideration paid directly to it by the
10 affiliate to which it assigned the mortgage, or if no money was paid to Atlantica for the transfer of the
11 mortgage to its affiliate, the benefit bestowed upon its owner, Oak Harbor and the affiliate to which
12 the loan was transferred.

13 82. Atlantica’s failure to give consideration to Third-Party Plaintiffs for the assignment of
14 the loans it transferred was to the detriment of the Third-Party Plaintiffs.

15 83. Atlantica deprived Third-Party Plaintiffs of property without consideration, it did so to
16 unjustly enrich itself, it did in fact unjustly enrich itself, and it did this in contravention of fundamental
17 principles of justice, equity, and good conscience.

18 84. Since the loans assigned by Atlantica to its affiliates are mortgage loans, the value of
19 which fluctuates depending on market conditions, there is no adequate remedy at law.

20 **COUNT V – VIOLATION OF 12 USCS 2607**
21 **(Against WWR Management, LLC)**

22 85. Third-Party Plaintiffs re-incorporate and reallege paragraphs 1 through and including
23 84, as though fully set forth herein as Paragraph 85.

24 86. At or around the time the MLSA and the First Amendment were executed, WWR
25 Management, LLC (“WWR Management”) was an affiliate of Cymbidium.
26

1 87. In violation of the terms of the MLSA and the First Amendment to the MLSA, which
2 restricted reimbursement to costs paid to unrelated third-parties, Cymbidium contracted with or
3 otherwise had an agreement with WWR, a related party, to perform certain real estate settlement
4 services, which includes, but is not limited to: collection or management of sales proceeds or mortgage
5 payments, and the transfer of mortgage loans and real property in connection with the mortgage loans
6 Cymbidium agreed to manage as part of the MLSA and First Amendment.

7 88. Despite agreeing to perform such services, WWR Management was given a \$1,500
8 management fee for sales of real estate, without performing any of the services for which it was being
9 compensated.

10 89. WWR Management provided no back-up documentation for its performance on the
11 ATLA statements that accompanied the sale of assets owned by The Trusts. *See* ATLA form for 600
12 Clubhouse Dr. attached as Exhibit F.

13 90. By accepting proceeds from the sale and/or assignment of real estate for services it
14 never performed and by continuing to receive proceeds of federally related transactions without
15 consideration to Third-Plaintiffs in the form of a credit against the Loan, WWR Management received
16 a payment that bears no reasonable relationship to the market value of the services provided, and that
17 were not actually performed or provided in violation of 12 U.S.C. § 2607 and Regulation X, 24 C.F.R.
18 § 3500.14.

19 91. Under 12 U.S.C. § 2607(d)(2), Third-Party Plaintiffs are entitled to statutory damages
20 for Defendants' violations of 12 U.S.C. § 2607 in an amount equal to three times the amount of the
21 fees received for services not performed.

22 92. Under 12 U.S.C. § 2607(d)(5), Third-Party Plaintiffs are entitled to the court costs of
23 this action together with reasonable attorney's fees.

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COUNT VI - UNJUST ENRICHMENT
(Against WWR Management, LLC)

93. Third-Party Plaintiffs re-incorporate and reallege paragraphs 1 through and 92, as though fully set forth herein as Paragraph 93.

94. The payment of a \$1,500 management fee on numerous transactions conferred a benefit upon WWR Management.

95. The \$1,500 management fee was deducted from the proceeds realized by the sellers of the real estate, which were the Trusts.

96. Since the proceeds intended to be credited against the Loan Amount had a deduction of \$1,500 on every real estate sale for which WWR Management was paid a fee for work it did not perform, Third-Party Plaintiffs were damaged and WWR Management benefitted.

97. The payment of a \$1,500 management fee to WWR Management for work it did not perform at the expense of Third-Party Plaintiffs, was done by WWR Management to unjustly enrich itself, it did in fact unjustly enrich itself, and it did this in contravention of fundamental principles of justice, equity, and good conscience.

98. Since Third-Party Plaintiffs did not retain or contract with WWR Management to provide services and did not become aware of WWR Management's charges until the receipt of certain ATLA statements, no adequate remedy at law exists.

COUNT VII – UNJUST ENRICHMENT
(Against Magerick, LLC)

99. Third-Party Plaintiffs restate and reallege paragraphs 1 through and including Paragraph 98, as though fully set forth herein as Paragraph 99.

100. The transfer by Oak Harbor of Mortgage Loans to Magerick conferred a benefit on Magerick.

101. Magerick's failure to give consideration to Third-Party Plaintiffs for the assignment of the Mortgage Loans was to the detriment of the Trusts.

102. Magerick deprived the Trusts of property without consideration, it did so to unjustly enrich itself, it did in fact unjustly enrich itself, and it did this in contravention of fundamental principles of justice, equity, and good conscience.

103. Since the Mortgage Loans assigned to Magerick are mortgage loans, the value of which fluctuates depending on market conditions, there is no adequate remedy at law.

COUNT VIII – VIOLATION OF 12 USC § 2607
(Against Land Home Financial Services, Inc.)

104. Third-Party Plaintiffs restate and reallege Paragraphs 1 through and including 103, as though fully set forth herein as Paragraph 104.

105. In furtherance of the terms of the MLSA and the First Amendment, Cymbidium retained Oak Harbor to carry out the terms of those agreements.

106. In August 2022, the servicing of the Mortgage Loans was transferred to Land Home at Oak Harbor's direction.

107. Upon information and belief, at the time the MLSA and the First Amendment were executed, Land Home was one of Oak Harbor's investors and had a financial stake in Oak Harbor.

108. Thereafter, as the loan servicer, Land Home had a duty to manage and service the Mortgage Loans.

109. Land Home failed or otherwise refused to take any action to service the Mortgage Loans despite its duty to do so, which was to the detriment of the mortgagors and the Trusts, as mortgagees.

110. By purporting to act as the loan servicer for the Mortgage Loans, Land Home engaged in unlawful activities prohibited by 12 U.S.C. § 2607, including, but not limited to, charging and accepting fees not reasonably related to the servicing of the Mortgage Loans, to the detriment of the mortgagors and the Trusts as mortgagees, retaining the Mortgage Loans owned by the Third-Party Plaintiffs despite the Third Party Plaintiffs repeatedly demanding Land Home return or reimburse the Third-Party Plaintiffs for the value of the amounts received.

111. By accepting proceeds and revenue from the sale and/or assignment of federally related loans for services it never performed, and by continuing to receive proceeds of federally related loans without consideration to Third-Party Plaintiffs in the form of a credit against the Loan, Land Home received a payment that bears no reasonable relationship to the market value of the services provided and that were actually performed or provided in violation of 12 U.S.C. § 2607 and Regulation X, 24 C.F.R. § 3500.14.

112. By receiving a payment for services that it never performed as loan servicer for the Mortgage Loans, Land Home violated 12 U.S.C. § 2607, and Regulation X, 24 C.F.R. § 3500.14.

113. Under 12 U.S.C. § 2607(d)(2), Third-Party Plaintiffs are entitled to statutory damages for Land Home's violations of 12 U.S.C. § 2607 in an amount equal to three times the amount of the fees received for services not performed.

114. Under 12 U.S.C. § 2607(d)(5), Third-Party Plaintiffs are entitled to the court costs of this action together with reasonable attorney's fees.

COUNT IX – CONVERSION
(Against Land Home Financial Services, Inc.)

115. Third-Party Plaintiffs restate and reallege Paragraphs 1 through and including Paragraph 114, as though fully set forth herein as Paragraph 115.

116. In furtherance of the terms of the MLSA and the First Amendment, Cymbidium retained Oak Harbor to carry out the terms of those agreements.

117. In August 2022, at Oak Harbor's direction, the servicing of the Mortgage Loans was transferred from the Third-Party Plaintiffs to Land Home.

118. Upon information and belief, at the time the MLSA and the First Amendment were executed, Land Home was one of Oak Harbor's investors and had a financial stake in Oak Harbor.

119. Thereafter, as the loan servicer, Land Home had possession of the Mortgage Loans and had a duty to manage and service the Mortgage Loans.

120. Land Home failed or otherwise refused to take action to service The Mortgage Loans

1 to the benefit of the owner of the loans (the Trusts) despite its duty to do so. These failures and refusals
2 were to the detriment of the mortgagors and the Third-Party Plaintiffs, as mortgagees.

3 121. Despite failing to service the Mortgage Loans, Land Home charged and accepted fees
4 not reasonably related to servicing of the Mortgage Loans, to the detriment of the mortgagors and the
5 Trusts, as mortgagees, and retained Mortgage Loans owned by the Third-Party Plaintiffs despite Third
6 Party Plaintiffs repeatedly demanding Land Home return and/or reimburse Third-Party Plaintiffs for
7 the value of the amounts received.

8 122. Land Home has no right to retain the Mortgage Loans owned by the Third-Party
9 Plaintiffs and/or the amounts received pursuant to its failure to service the Mortgage Loans.

10 123. Third-Party Plaintiffs repeatedly demanded that Land Home return the Mortgage Loans
11 owned by the Third-Party Plaintiffs and/or amounts received pursuant to Land Home's failure to
12 service the Mortgage Loans and Land Home has effectively held Third-Party Plaintiffs Mortgage
13 Loans for ransom.

14 124. Land Home has improperly and intentionally taken and refused to return Third-Party
15 Plaintiffs' Mortgage Loans, with the intent to deprive Third-Party Plaintiffs of the possession of, and
16 revenue from, those Mortgage Loans.

17 125. Land Home's conduct has caused Third-Party Plaintiffs damage by the loss of the
18 Mortgage Loans, diminution of value, loss of revenue, along with other damages to be proven at trial,
19 including interest, attorneys' fees, and costs to prosecute this Third-Party Complaint.

20 **COUNT X – UNJUST ENRICHMENT (*In the alternative to Count IX*)**
21 **(Against Land Home Financial Services, Inc.)**

22 126. Third-Party Plaintiffs restate and reallege paragraphs 1 through and including 125, as
23 though fully set forth herein as paragraph 126.

24 127. In furtherance of the terms of the MLSA and First Amendment, Cymbidium retained
25 Oak Harbor to manage the assets which are the subject of those agreements.
26

1 128. In August 2023, at Oak Harbor's direction, servicing of the Mortgage Loans was
2 transferred from the Third-Party Plaintiffs to Land Home.

3 129. Upon information and belief, at the time the MLSA and the First Amendment were
4 executed, Land Home was one of Oak Harbor's investors and had a financial stake in Oak Harbor.

5 130. Thereafter, Land Home, as the loan servicer, had possession of the Mortgage Loans
6 and had a duty to manage and service the Mortgage Loans.

7 131. Land Home failed or otherwise refused to take action to service the Mortgage Loans
8 despite its duty to do so. These failures and refusals were to the detriment of the mortgagors and the
9 Third-Party Plaintiffs, as mortgagees.

10 132. Despite failing to service the Mortgage Loans pursuant to industry standards and
11 regulations, Land Home charged and accepted fees not reasonably related to the servicing of the
12 Mortgage Loans, to the detriment of the mortgagors and the Trusts, as mortgagees, and the Mortgage
13 Loans owned by the Third-Party Plaintiffs, despite Third Party Plaintiffs repeatedly demanding Land
14 Home return or reimburse Third-Party Plaintiffs for the value of the amounts received.

15 133. Third-Party Plaintiffs conferred a benefit upon Land Home by transferring to Land
16 Home the Mortgage Loans that Land Home never serviced despite charging and accepting fees
17 reasonably related to the servicing of the Mortgage Loans.

18 134. Third-Party Plaintiffs repeatedly demanded that Land Home return the Mortgage Loans
19 owned by the Trusts and/or amounts received pursuant to its failure to service the loans, and Land
20 Home has effectively held Third-Party Plaintiff's Mortgage Loans for ransom.

21 135. Allowing Land Home to retain the servicing of the Mortgage Loans would be
22 inequitable and offend notions of fairness.

23 136. Land Home has refused to return the Mortgage Loans to the Third-Party Plaintiffs to unjustly
24 enrich itself, it did in fact unjustly enrich itself, and it did this in contravention of fundamental
25 principles of justice, equity, and good conscience.
26

COUNT XI – UNJUST ENRICHMENT
(Against South Watuppa, LP)

137. Third-Party Plaintiffs restate and reallege Paragraphs 1 through and including 136, as though fully set forth herein as paragraph 137.

138. South Watuppa, LP (“South Watuppa”) entered into an agreement with Oak Harbor and/or its affiliates to provide Real Estate Owned (“REO”) asset management services for REO properties owned by the Trusts.

139. South Watuppa also served as a referring broker for certain REO properties owned by the Trusts, at the direction of Cymbidium and/or Oak Harbor.

140. South Watuppa had an obligation to the sellers (the Trusts), to provide services and take fees for such charges commensurate with the services being provided.

141. On numerous occasions, the Third-Party Plaintiffs demanded that Cliff Ponte, principal of South Watuppa, LP, provide an accounting and back-up documentation for the services allegedly provided.

142. Despite the requests by the Trusts, South Watuppa refused to provide such information.

143. Based on the documentation in possession of Third-Party Plaintiffs, South Watuppa took a fee, to the detriment of the Trusts that was not commensurate with the services South Watuppa L.P. rendered.

144. South Watuppa took a fee to unjustly enrich itself, it did in fact unjustly enrich itself, and it did this in contravention of fundamental principles of justice, equity, and good conscience.

COUNT XII – TORTIOUS INTERFERENCE WITH CONTRACT
(Against Weinstein & Riley)

145. Third-Party Plaintiffs re-incorporate and reallege Paragraphs 1 through and including 144, as though fully set forth herein as Paragraph 145.

146. Through its principal, William Weinstein, Weinstein & Riley is affiliated with Oak Harbor, Cymbidium, Magerick, Atlantica, and WWR Management.

1 147. The MLSA and the First Amendment constituted a valid contract from which Third-
2 Party Plaintiffs had a business expectancy that the Loan would receive credit from proceeds from sales
3 and assignments of mortgages, after subtracting associated fees to unrelated third parties.

4 148. William Weinstein was a signatory on the MLSA and the First Amendment, which
5 restricted costs to unrelated third parties.

6 149. The MLSA and the First Amendment, of which William Weinstein was a signatory,
7 prohibited assigning Mortgage Loans to related third parties.

8 150. The Third-Party Plaintiffs had an expectation that the proceeds from any assignments
9 would be credited against the Loan.

10 151. Weinstein & Riley knew the terms of the MLSA and the First Amendment and the
11 expectation that any fees incurred and assignment of assets of the Trusts to unrelated third parties
12 would result in consideration from those transfers and that the funds from those transfers would be
13 credited against the Loan.

14 152. Despite its knowledge of the terms of the MLSA and the First Amendment, and despite
15 Third-Party Plaintiff's expectation therefrom, Weinstein & Riley, which was and is related to
16 Cymbidium, intentionally interfered with that expectation by:

- 17 a. Invoicing and receiving payment from related third parties for services rendered
18 that included preparing and recording assignments of mortgages; and
19 b. Preparing assignments of mortgages from the Trusts to related third parties of
20 Cymbidium, Oak Harbor, Magerick, and Atlantica.

21 153. Weinstein & Riley performed such actions to improperly increase its and its affiliates'
22 profits and to improperly transfer assets to its affiliates for no consideration and in violation of the
23 LPOAs.

24 155. Weinstein & Riley's actions constitute a tortious interference with Third-Party Plaintiffs'
25 reasonable business expectations.
26

156. The damages sustained by Third-Party Plaintiffs include the deprivation of its assets via abuse of a limited power of attorney, and deprivation of consideration in the form of a credit against the Loan.

PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiffs, AMERICAN HOMEOWNER PRESERVATION TRUST SERIES AHP SERVICING; AHP CAPITAL MANAGEMENT, LLC; AMERICAN HOMEOWNER PRESERVATION TRUST SERIES 2015A+; and AHP SERVICING, LLC pray for the following relief:

1. As to Counts I, II, and III against Oak Harbor:

- a. For Judgment against Oak Harbor in an amount no less than the current market value of all assets transferred by Oak Harbor to its affiliated entities;
- b. For an accounting of all monies received by Oak Harbor and its affiliates arising from Oak Harbor's breach of fiduciary duty; and
- c. Treble damages for the value of fees received by Oak Harbor for services not performed or for three times the difference in value of the services performed and the fees charged pursuant to 12 USC 2607 and court costs and reasonable attorneys' fees pursuant to 12 USC 2607(d)(5).

2. As to Count IV against Atlantica, for judgment in the amount of the value of the Mortgage Loans transferred from the Trusts to related third parties in an amount no less than \$3,000,000.00.

3. As to Counts V and VI against WWR Management, LLC:

- a. (Count V): Treble damages for the value of fees received by WWR Management for services not performed or for three times the difference in value of the services performed and the fees charged pursuant to 12 USC § 2607 and court costs and reasonable attorneys' fees pursuant to 12 USC § 2607(d)(5); and
- b. (Count VI): The value of fees received by WWR Management for services it did not perform.

HARRIS SLIWOSKI
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DECLARATION OF SERVICE

I hereby certify that on January 26, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and will send a true and correct copy of notification of such filing to:

Attorneys for Plaintiff Bradley S. Keller, WSBA # 10665 Byrnes Keller Cromwell LLP 1000 Second Avenue, 38 th Floor Seattle, Washington 98104 Telephone: (206) 622-2000 Facsimile: (206) 622-2522 Email: bkeller@byrneskeller.com	Nominal Defendants U.S. Bank Trust N.A. and U.S. Bank Trust National Association U.S. Bank Trust N.A. U.S. Bank Trust National Association 800 Nicollet Mall Minneapolis, Minnesota 55402
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DATED this 26th day of January 2024, at Seattle, Washington.

/s/ Staci Black

Staci Black, Paralegal
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