IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
Conseco Finance Corp.,[1]	)	Case No. 02-49675
Debtor.	)	The Honorable Carol A. Doyle

STIPULATION AND AGREED ORDER BETWEEN THE CFC ESTATE AND BARBARA T. NIXON AND CLARENCE MICHAEL HOWELL REDUCING AND ALLOWING CLAIM NO. 49675-003824

The Plan Administrator, on behalf of the Post-Consummation Estate of the Finance Company Debtors (the "CFC Estate") and Barbara T. Nixon and Clarence Michael Howell by Guardian Ad Litem (hereinafter "Claimants"), hereby stipulate (the "Stipulation") and agree as follows:

RECITALS

WHEREAS, on or about May 22, 2003, Claimants filed a secured proof of claim against one of the Finance Company Debtors, in the amount of $25,000.00, designated on the claims register as Claim No. 49675-003824 (the "Claim"); and

WHEREAS, on or about August 24, 2004, the Finance Company Debtors filed their *Objection to Claim No. 49675-003824 Filed by Barbara Nixon and Clarence Michael Howell* (the "Objection"), opposing the relief sought by the Claimants on the basis of no liability; and

WHEREAS, notwithstanding the foregoing, the parties wish to resolve their differences with respect to the Claim; and

[1] The post consummation estate for Conseco Finance Corp. is the liquidating trust that holds in trust for distribution to creditors certain of the assets of the entities referred to as the "Finance Company Debtors" in the Finance Company Debtors' Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan").

WHEREAS, the parties have reached an amicable resolution memorialized herein; and it appearing that due and adequate notice having been given; and after due deliberation and good cause appearing for the entry of this Stipulation; and based upon the foregoing recitals and in consideration of the mutual covenants set forth below, the CFC Estate and the Claimants agree as follows:

IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN THE UNDERSIGNED PARTIES:

1. The Claim shall be deemed an allowed general unsecured claim in the amount of $5,000.00 against the CFC Estate to be paid in accordance with the terms of the Finance Company Debtors' Plan.

2. This Stipulation resolves the Claim, and any other claims related in any way to any remaining amounts owed to the Claimant by the Finance Company Debtors or the CFC Estate. To this end, upon execution of this Stipulation by the Claimant, the Claimant shall be deemed to have unconditionally released the CFC Estate, affiliates of the CFC Estate, and their professionals (collectively, the "**Released Parties**") from any and all claims (as defined in section 101(5) of the Bankruptcy Code), obligations, rights, suits, damages, remedies and liabilities, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Claimant may have against the Released Parties. Further, upon execution of this Stipulation, the CFC Estate shall have been deemed to withdraw its Objection to the Claim.

3. The parties hereby understand and agree that neither the making of this Stipulation, nor anything contained herein, shall be construed or considered in any way to be an admission of liability, guilt, wrongdoing or non-compliance with federal, state or local law, statute, order or regulation, the Bankruptcy Code, tortious act, breach of contract, or violation of

common law, or any other wrongdoing whatsoever and that all provisions provided for under this Stipulation are subject to the limitations provided for under Rule 408 of the Federal Rules of Evidence.

4. This Stipulation may be executed in counterparts and by facsimile, and all such counterparts shall constitute one Stipulation.

5. This Stipulation shall inure to the benefit of, and be binding upon, the parties hereto and their predecessors, successors and assigns.

6. This Stipulation constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous agreement may be used to alter the terms of the Stipulation.

7. This Stipulation may be modified only in a writing signed by the party to be charged with such modification.

8. The signatories to this Stipulation represent and warrant that they have been duly authorized to execute this Stipulation.

9. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Northern District of Illinois (the "**Bankruptcy Court**"). The parties agree to use reasonable efforts to obtain the approval of the Bankruptcy Court as expeditiously as possible.

10. In the event the Bankruptcy Court declines to approve this Stipulation, neither this Stipulation nor any part thereof may be used by any party for any purpose, except to enforce this provision.

Dated: January 21, 2005

GREENBERG TRAURIG, LLP

Keith J. Shapiro (ARDC No. 6184374)
Nancy A. Peterman (ARDC No. 6208120)
Andre L. Zafrani (ARDC No. 6256903)
Collin B. Williams (ARDC No. 6284263)
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Chicago, Illinois 60601
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Counsel for CFC Estate

LEGAL AID OF NORTH CAROLINA

Hazel Mack-Hilliard, Esq.
102 W. Third St., Suite 305
Winston-Salem, NC 27101
Phone: 336-725-9162

SO ORDERED:

Carol A. Doyle
Carol A. Doyle
United States Bankruptcy Judge

3/10/05

FORM B10 (Official Form 10)(4/01) Eastern Division

UNITED STATES BANKRUPTCY COURT Northern DISTRICT OF Illinois		PROOF OF CLAIM
Name of Debtor Conseco Inc	Case Number	

NOTE This form should not be used to make a claim for an administrative expense arising after commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C ' 503

Name of Creditor (The person or entity to whom the debtor owes money or property) Barbara T Nixon Clarence Michael Howell by guardian ad litem	" Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars " Check box if you have never received any notices from the bankruptcy court in this case " Check box if the address differs from the address on the envelope sent to you by the court
Name and address where notices should be sent c/o Hazel Mack-Hilliard, Attorney Legal Aid of NC Post Office Box 2688 Wilson NC 27894-2688 Telephone number (252) 291-6851	THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor	Check here " replaces if this claim " amends a previously filed claim dated _____

1 Basis for Claim

" Goods sold
" Services performed
" Money loaned
" Personal injury/wrongful death
" Taxes
X Other Fraud, unfair trade practices, and unjust environment

" Retiree benefits, as defined in 11 U S C ' 1114(a)
" Wages, salaries, and compensation (fill out below)
Your SS# _____ ____ _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2 Date debt was incurred 1998 (State action pending)

3 If court judgment, date obtained State court action pending

4 Total Amount of Claim at Time Case Filed $ Approximately $25,000

If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below
" Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 Secured Claim

" Check this box if your claim is secured by collateral (including a right of setoff)
Brief description of collateral
" Real Estate " Motor Vehicle
X- Other Mobile Home
Value of Collateral $50,000
Amount of arrearage and other charges at time case filed included in secured claim if any $ _____

6 Unsecured Priority Claim

" Check this box if you have an unsecured priority claim
Amount entitled to priority $ _____
Specify the priority of the claim
" Wages salaries or commissions (up to $4 650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier 11 U S C ' 507(a)(3)
" Contributions to an employee benefit plan - 11 U S C 507(a)(4)
" Up to $2 100* of deposits toward purchase lease or rental of property or services for personal family or household use 11 USC 507(a)(6)
" Alimony maintenance or support owed to a spouse former spouse or child 11 U S C 507(a)(7)
" Taxes or penalties owed to governmental units 11 U S C 507(a)(8)
" Other - Specify applicable paragraph of 11 U S C 507(a)(___)
** Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 Supporting Documents *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien **(See Attached)**
DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

9 Date-Stamped Copy To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and a copy of this proof of claim

THIS SPACE IS FOR COURT USE ONLY

FILED
MAY 22 2003
BMC

Conseco Finance Corp Claim
49675003824
49672008329

FORM B10 (Official Form 10)(4/01) Eastern Division

UNITED STATES BANKRUPTCY COURT Northern DISTRICT OF Illinois		PROOF OF CLAIM
Name of Debtor Conseco Inc	Case Number	
NOTE This form should not be used to make a claim for an administrative expense arising after commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C '503		
Name of Creditor (The person or entity to whom the debtor owes money or property) Barbara T Nixon Clarence Michael Howell by guardian ad litem	" Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars " Check box if you have never received any notices from the bankruptcy court in this case " Check box if the address differs from the address on the envelope sent to you by the court	
Name and address where notices should be sent c/o Hazel Mack-Hilliard, Attorney Legal Aid of NC Post Office Box 2688 Wilson NC 27894-2688 Telephone number (252) 291-6851		THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor	Check here " replaces if this claim " amends a previously filed claim, dated _____	

1 Basis for Claim

" Goods sold
" Services performed
" Money loaned
" Personal injury/wrongful death
" Taxes
X Other Fraud, unfair trade practices, and unjust environment

" Retiree benefits, as defined in 11 U S C '1114(a)
" Wages, salaries, and compensation (fill out below)
Your SS# _____ ____ _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2 Date debt was incurred 1998 (State action pending)

3 If court judgment, date obtained State court action pending

4 Total Amount of Claim at Time Case Filed $ Approximately $25,000

If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below
" Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 Secured Claim

" Check this box if your claim is secured by collateral (including a right of setoff)
Brief description of collateral
" Real Estate " Motor Vehicle
X- Other Mobile Home
Value of Collateral $50,000
Amount of arrearage and other charges at time case filed included in secured claim if any $ _____

6 Unsecured Priority Claim

" Check this box if you have an unsecured priority claim
Amount entitled to priority $ _____
Specify the priority of the claim
" Wages salaries or commissions (up to $4 650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier - 11 U S C '507(a)(3)
" Contributions to an employee benefit plan - 11 U S C 507(a)(4)
" Up to $2 100* of deposits toward purchase lease or rental of property or services for personal family or household use 11 USC 507(a)(6)
" Alimony maintenance or support owed to a spouse former spouse or child 11 U S C 507(a)(7)
" Taxes or penalties owed to governmental units 11 U S C 507(a)(8)
" Other - Specify applicable paragraph of 11 U S C 507(a)(___)
** Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 Supporting Documents *Attach copies of supporting documents* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien **(See Attached)**
DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

9 Date-Stamped Copy To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and a copy of this proof of claim

THIS SPACE IS FOR COURT USE ONLY

FILED
MAY 22 2003
BMC

Conseco Inc Claim
49672008329

Date May 21 2003	Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

Penalty for presenting fraudulent claim Fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C 152 and 3571

STATE OF NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAYNE — SUPERIOR COURT DIVISION

BY

BARBARA T NIXSON)
CLARENCE MICHAEL HOWELL)
BY GUARDIAN AD LITEM)
Plaintiff)
)
v)
)
CONSECO FINANCE)
k/f/a GREENTREE)
FINANCIAL SERVICING CORP)
SOUTHSIDE REALTY &)
INSURANCE SERVICES, INC)
LITCHFIELD FINANCIAL CORP)
and)
K&W MOBILE HOMES k/f/a)
CENTURY HOMES)
Defendants)

AMENDED
COMPLAINT
Jury Trial Demanded

The Plaintiffs, complaining of the Defendants, and in support of her prayer for relief and damages alleges and states as follows

NATURE OF ACTION

1 That Defendant K & W Mobile Homes (hereinafter "K & W") engaged in unfair and deceptive trade practices and fraud by intentionally misrepresenting Plaintiffs' financial status, by intentionally misrepresenting the factual terms of Plaintiffs' credit application made in connection with Plaintiffs' purchase of a mobile home, and by intentionally manipulating Plaintiffs' financial status to gain approval of the Installment Contract and Credit Agreement made in connection with Plaintiffs' purchase of said home

2 That Defendant K & W engaged in unfair and deceptive trade practices and fraud by purposely inducing Plaintiffs to enter into an Installment Contract and Security Agreement that did not meet with nor conform to the terms disclosed to, understood by and agreed to by Plaintiffs

3 That Defendant K & W engaged in unfair and deceptive trade practices and fraud by intentionally inducing Plaintiffs to enter into a Installment Contract and Security Agreement under terms that Defendant K & W had no intentions of fulfilling and/or

abiding by, which terms Defendant K & W did not fulfill and/or abide by to Plaintiffs' detriment

4 That Defendant K & W engaged in unfair and deceptive trade practices by failing purposely to honor expressed and/or implied warranties under the full terms of Plaintiffs' Installment Contract and Security Agreement and as required under applicable law

5 That Defendant K & W engaged in unfair and deceptive trade practices by knowingly and intentionally placing Plaintiffs in an Installment Contract and Security Agreement of which Plaintiffs did not and do not possess the capacity to honor and repay

6 That Defendant K & W engaged in unfair and deceptive trade practices by intentionally misrepresenting to Plaintiffs, the actual and true terms of her Installment Contract and Security Agreement, by failing to disclose the consequences of Plaintiffs' actual terms under said Agreement and by in fact intentionally placing Plaintiffs in an Installment contract and Security Agreement with material loan terms not disclosed to, understood, nor agreed to by Plaintiffs

7 That Defendant K & W engaged in unfair and deceptive trade practices by failing to disclose to Plaintiffs the actual terms of her Installment Contract and Security Agreement and by failing to make all material disclosures regarding said Agreement and by failing to provide Plaintiffs with all of the proper material credit documents disclosing rights and remedies which Plaintiff had and remained entitled to as "a consumer to said Agreement"

8 That Defendants K & W and Conseco Finance (hereinafter "Conseco"), engaged in unfair and deceptive trade practices by imposing fees and charges on Plaintiffs Installment Contract and Security Agreement in excess of those agreed to by Plaintiffs and permitted by law

9 That Defendant Southside Realty and Insurance Services, Inc (hereinafter "Southside Realty") engaged in unfair and deceptive trade practices and fraud by intentionally misrepresenting Plaintiffs' financial status and by intentionally misrepresenting the factual terms of Plaintiffs' credit application regarding her purchase of a certain lot from Defendant Southside Realty

10 That Defendant Southside Realty engaged in unfair and deceptive trade practices by intentionally misrepresenting to Plaintiffs, the actual and true terms of the Contract and Security Agreement underlying Plaintiffs' purchase of a lot, by failing to disclose the consequences of Plaintiffs' actual terms under said Agreement, by in fact intentionally placing Plaintiffs in an Agreement, which – taken together with Plaintiffs' Installment Contract and Credit Agreement underlying her mobile home purchase – Plaintiffs could not afford to repay and by intentionally placing Plaintiffs in a Contract and Security Agreement with material terms not disclosed to, understood, nor agreed to by Plaintiffs

11 That Defendant Southside Realty engaged in unfair and deceptive trade practices by failing to disclose to Plaintiff the actual terms of her Mortgage Loan Agreement and by failing to make all material disclosures regarding said Loan Agreement and by failing to provide Plaintiffs with all of the proper material credit documents disclosing rights and remedies which Plaintiffs had and remained entitled to as "a consumer to said Credit Agreement "

12 That Defendants became enriched unjustly through their actions in connection with the making of the Installment Contract and Security Agreements with Plaintiff

13 That Defendant Conseco, as "holder of the Installment Contract and Security Agreement," remains subject to all claims and defenses that Plaintiff could assert and does assert hereby against Defendant K & W, as the seller of the goods and services obtained through said Agreement now the subject of this Action

14 That Defendant Litchfield Financial Corp (hereinafter "Litchfield Corp "), as "holder of the Promissory Note and Deed of Trust" underlying the Installment Contract and Security Agreement entered into between Plaintiffs and Defendant Southside Realty for the purchase of real property in connection with Plaintiffs' purchase of a mobile home through Defendant K & W

PARTIES

15 Plaintiff Barbara Nixson is a citizen and resident of Wayne County, North Carolina

16 Plaintiff Clarence M Howell is a mentally retarded resident of Wayne County, North Carolina with an IQ of 61

17 Defendant K&W known formerly as "Century Homes", Inc) is, on information and belief, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with is principal place of business located in Wayne County, located at 4427 US 70 East, Goldsboro, NC 27534-0000

18 Defendant, Conseco is, on information and belief, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with a registered office in Wake County, North Carolina, located at 225 Hillsborough Street, Raleigh, NC 27603

19 Defendant, Southside Realty is, on information and belief, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with its principal place of business located in Wayne County, located at 2930 US 70 West, Goldsboro, NC 27533-1336

20 Defendant, Litchfield Corp is, on information and belief, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with a

registered office in Wake County, North Carolina, located at 327 Hillsborough Street, Raleigh, NC 27603

FACTS

21 At all times relevant to the filing of this Action, Defendant K&W Mobile Homes' employees referenced directly and/or indirectly in the facts as described below acted for and on behalf of said Defendant and within the course and scope of their employment

22 At all times relevant to the filing of this Action, Defendant Southside Realty's employees referenced directly or indirectly in the facts as described below acted for and on behalf of said Defendant and within the course and scope of their employment

23 At all times relevant to the filing of this Action, Plaintiffs have been and remain residents of Wayne County, North Carolina

24 At all times relevant to the filing of this Action, Plaintiff Barbara Nixson has been and remains a widow in her 60's

25 At all times relevant to the filing of this Action, Plaintiff Clarence M Howell remains in without capacity to contact

26 At all times relevant to the filing of this Action, Plaintiff Barbara Nixon has been and remains disabled due to her medically diagnosed and declared condition of Type II Diabetes, Coronary Artery Disease and Rheumatoid Arthritis of the Knees

27 At all times relevant to the filing of this Action, Plaintiff Barbara Nixson has been and remains disabled due to her medically diagnosed and declared condition as "legally blind"

28 At all times relevant to the filing of this Action, Plaintiff Barbara Nixson has been and remains subject to an 80% usage of wheelchair services due to her medically diagnosed and declared condition of Rheumatoid Arthritis of the Knees

29 At all times relevant to the filing of this Action, Plaintiff Barbara Nixson has taken care of and provided for one severally mentally disabled son

30 At all times relevant to the filing of this Action, Plaintiffs' household income totaled approximately $1,189 00 with Plaintiff Barbara Nixson receiving approximately $494 00 in Social Security Disability Benefits, and Plaintiff Clarence Howell received approximately $695 00 from Social Security Disability Benefits and very limited and inconsistent income from part-time employment

31 At all times relevant to the filing of this Action, Defendant K & W held itself out to the public and to Plaintiff as doing business under the name Century Mobile Homes

32 At all times relevant to the filing of this Action, Defendant Southside Realty and Defendant K & W acted together and in concert and held themselves out to Plaintiff and to the public as exercising actual and seeming joint authority for and on behalf of the other in the sale of "land/home package" deals to potential consumers, which action Plaintiffs relied reasonably upon in entering into the Installment Contract and Security Agreements, now the subject of Plaintiffs' Action

33 At all times relevant to the filing of this Action, Defendant Conseco, in the ordinary course of its business, a) regularly extended or offered to extend consumer credit payable by written agreement in more than four installments or for which a finance charge is imposed and b) acted on more than 150 consumer credit applications annually making it a creditor within the meaning of within the meaning of the Federal Truth-in-Lending Act, 15 U S C § 1602 (f) and Regulation Z § 226 2(a)(17), 12 C F R § 226 2(a)(17)

34 At all times relevant to the filing of this Action, Defendant K & W regularly engaged in the business of selling goods or services, making it a "seller" within the meaning of N C Gen Stat § 25A-6 and making Defendant Conseco, as assignee to Defendant K & W's "right of payment," a "seller" within the meaning of N C Gen Stat § 25A-6

35 At all times relevant to the filing of this Action, Defendant Litchfield Corp , in the ordinary course of its business, a) regularly extended or offered to extend consumer credit payable by written agreement in more than four installments or for which a finance charge is imposed and b) acted on more than 150 consumer credit applications annually making it a creditor within the meaning of within the meaning of the Federal Truth-in-Lending Act, 15 U S C § 1602 (f) and Regulation Z § 226 2(a)(17), 12 C F R § 226 2(a)(17)

36 At all times relevant to the filing of this Action, Defendant Southside Realty regularly engaged in the business of selling goods or services, making it a "seller" within the meaning of N C Gen Stat § 25A-6 and making Defendant Litchfield Corp , as assignee to Defendant Southside Realty's "right of payment," a "seller" within the meaning of N C Gen Stat § 25A-6

37 The Installment Contract and Security Agreements, now the subject of this Action and the parties to said Agreements remain subject to the provisions of the Federal Truth-in-Lending Act (hereinafter "the Act")

38 On or about February 25, 1998 Plaintiff Barbara Nixson met with an employee of Defendant K & W to discuss Plaintiffs' interest in purchasing a mobile home At the time Plaintiff Barbara Nixson met with said employee, Plaintiff Barbara Nixson explained to him that she needed and could purchase therefore, only a mobile home that remained equipped to meet the needs of her physical disabilities as a legally blind woman who had an 80% wheelchair usage Plaintiff Barbara Nixson told said employee that she

had to purchase a mobile home that had the following special accommodations given her noted physical disabilities

a) Stairs with rails for the front and back porch/doors,
b) Handicap rails for toilet, shower and bathtub located off of the master bedroom,
c) White walls and white borders throughout the house,
d) White closets and white countertops throughout the house, and
e) Lights in the closet located in the Master bedroom

39 On or about March 3, 1998, Plaintiff Barbara Nixson met again with an employee of Defendant K & W, during which time said employee showed Plaintiff a certain model and floor plan and told Plaintiff that (1) she could purchase an exact replica of the model mobile home for $43,000 00 and that her monthly credit payments would total $434 00, including the land as a "land/home package deal and that (2) K&W would provide her with a "turn-key" mobile home package – which would include bricking around the foundation of the mobile home, a full back porch and stairs with rails for the front door entry way – and that (3) Defendant K & W would have the model fitted specifically to accommodate Plaintiffs' noted physical disabilities Plaintiff Barbara Nixson believed, agreed to and accepted these expressed assurances made by the employee of Defendant K & W

40 On or about March 17, 1998, Plaintiff Barbara Nixson selected the model and floor plan shown to her by the employee of Defendant K & W

41 Upon information and belief, on or about March 17, 1998, Plaintiff Barbara Nixson met with an employee of Defendant K & W, at which time said employee completed and submitted a "Standard Credit Application" on Plaintiffs' behalf

42 Upon information and belief, on or about April 1, 1998, an employee of Defendant K & W informed Plaintiff Barbara Nixson that she had received credit approval based on the purchase and loan terms discussed with and agreed upon by Plaintiff Barbara Nixson

43 On or about May 15, 1998, Plaintiff Barbara Nixson entered into and signed an Installment Contract and Security Agreement – for the purchase of what Plaintiff Barbara Nixson believed to be a mobile home and accompanying lot – based upon said Defendant K & W's employee's (a) expressed assurances regarding mobile home price – including the monthly payment, expressed assurances that Plaintiff Barbara Nixson would receive a mobile home in exact replication of the model and (b) expressed assurances that Defendant K & W would have the selected model fitted specifically per Plaintiffs' request to accommodate Plaintiffs' noted physical disabilities

44 Upon information and belief, prior to and upon Plaintiff Barbara Nixson's signing of the Installment Contract and Security Agreement in connection with the purchase of the mobile home, Defendant K & W (a) never disclosed to Plaintiff the process by which

she had secured financing for the mobile home (b) never disclosed to Plaintiff the actual terms of her Credit Agreement-I with Defendant and (c) never disclosed to Plaintiff the actual consequences of entering Credit Agreement-I with Defendant

45 Due to Plaintiff Barbara Nixson status as a "legal blind," Plaintiff could not and did not know about the credit terms disclosed on her Installment Contract and Security Agreement Specifically Plaintiff did not know about the "Arbitration Clause" in the agreement

46 On or about May 15, 1998, Plaintiff Barbara Nixson gave an employee of Defendant K & W a check for $964 00 as a payment down towards Plaintiffs' purchase of the agreed upon mobile home

47 The Installment Contract and Security Agreement underlying Plaintiffs Barbara Nixson purchase of her mobile home, disclosed, among other terms, the following terms regarding Plaintiffs' said purchase

a) Monthly Payments of $411 06 beginning on June 15, 1998,
b) Mobile Home Cash Sale Price (including $600 00 in taxes) of $57,600 00,
c) Total Payment Down of $5,764 00 Made by Plaintiff,
d) Points in the amount of $4,149 68 paid to Conseco, and
e) Mobile Home Model/Make Specifications Indicated as a "1998 24' x 76' Redman Silver Lake Model

48 Although the Installment Contract and Security Agreement indicates that Plaintiffs made a payment down of $5,764 00 towards the purchase of the mobile home, Plaintiffs made an actual payment down of approximately $964 00 00 Upon information and belief, the $4,800 00 overstated purposely and intentionally by Defendant K & W (a) represented "up-front" interest added on and wrapped into Plaintiffs' said Security Agreement (b) caused in part, the mobile home sale price to differ from that agreed specifically to by and between Defendant K & W and Plaintiff, (c) became hidden and represented improperly as "part of the amount financed as opposed to a part of the finance charge" and (d) caused Defendant K & W to disclose inaccurately on Plaintiffs' disclosure statement, the "Annual Percentage Rate, the Finance Charge, the Amount Finance, the Total of Payments and the Total Sale Price

49 Upon information and belief, Defendant K & W purposely and intentionally overstated the amount of Plaintiffs' payment down on her purchase of the mobile home, in an effort to secure and benefit financially from financing that Plaintiff would have otherwise not received given her true financial status prior to and at the time said Defendant made Plaintiffs' Installment Contract and Security Agreement

50 Although the Installment Contract and Security Agreement indicates that Plaintiffs "prepaid" $4,149 68 in finance charges towards the purchase of the mobile home, Plaintiff neither paid nor knew of said charges, and upon information and belief,

nor did Defendant K & W nor did Defendant Conseco, disclose to Plaintiff said charges and/or the nature of said charges Upon information and belief Defendant K & W financed into the Installment Contract and Security Agreement the "points" charged to Plaintiff and disclosed as "pre-paid" under said Agreement

51 Defendant Conseco, knew or should have known that the disclosures made by K & W on the face of Plaintiffs' Installment Contract and Security Agreement – pertaining specifically to Plaintiff's payment down were purposely and intentionally inaccurate and would cause the APR, Finance Charge, Amount Financed, Total of Payments and Total Sale Price" to be misstated on the face of Plaintiffs' disclosure statement

52 On or about March 30, 1998, an employee of Defendant K & W instructed Plaintiff Barbara Nixson to meet with an employee of Defendant Southside Realty for the purchase of the lot on which Plaintiffs' mobile home would and did become located

53 On or about March 30, 1998, Plaintiff Barbara Nixson met with an employee of Defendant Southside Realty to discuss the purchase of a lot on which to locate her mobile home During said discussion, Plaintiff informed the employee of Defendant Southside Realty (a) about her fear of dogs (b) about her physically disability status – that she remained blind legally and had an 80% wheelchair usage and (c) about her need to move around safely on her property given her noted physical disabilities The employee of Defendant Southside Realty assured Plaintiff Barbara Nixson that the lot he had in mind for Plaintiffs' purchase – which lot Plaintiff Barbara Nixson did in fact purchase – would accommodate Plaintiffs' noted physical disabilities Further, the employee of Defendant Southside Realty indicated to Plaintiff that the lot purchase would cost Plaintiff $12,500 00

54 On or about May 1, 1998 Plaintiff Barbara Nixson, based upon assurances made by the employee of Defendant Southside Realty agreed to complete a credit application, and during this time, met with said employee at which time said employee completed a standard credit application on Plaintiffs' behalf, so that Plaintiff could receive credit approval for the purchase of the lot selected by said Defendant

55 On or about May 1, 1998, upon receiving credit approval for the purchase of said lot, Plaintiff Barbara Nixson gave the employee of Defendant Southside Realty $100 00 as a payment down on the lot purchase

56 On or about May 1, 1998 Plaintiff Barbara Nixson met with an employee of Defendant Southside Realty, at which time said employee completed and submitted a "Standard Credit Application" on Plaintiffs' behalf and in connection with Plaintiffs' purchase of the lot Said Application stated, among other disclosures, the following disclosures as described immediately below

a) $14,500 00 as Purchase Price for the Land,
b) $1,550 00 as payment down made by Plaintiff as Part of Land Purchase Agreement,

c) $12,950 00 as Amount Financed on Plaintiffs' Purchase of Land, and
d) $1,400 00 as Plaintiffs' Total Monthly Income From Social Security Benefits

57 Although the Installment Contract and Security Agreement indicates that Plaintiff made a payment down of $1,550 towards the purchase of the lot, Plaintiff made an actual payment down of approximately $100 00

58 Upon information and belief, Defendant Southside Realty purposely and intentionally overstated the amount of Plaintiffs' payment down on her purchase of the lot, in an effort to secure and benefit financially from financing that Plaintiff Barbara Nixson would have otherwise not received given her true financial status prior to and at the time said Defendant made Plaintiffs' Installment Contract and Security Agreement underlying Plaintiffs' purchase of said lot

59 On or about May 8, 1998 Plaintiff Barbara Nixson met with an employee of Defendant Southside Realty, at which time said employee completed and submitted an "Offer to Purchase and Contract Agreement" on Plaintiffs' behalf and in connection with Plaintiffs' purchase of the lot Said Agreement stated, among other things, the following disclosures as described immediately below

a) $14,500 00 as Purchase Price for the Land,
b) $100 00 as Earnest Money Paid Up Front by Plaintiff,
c) 12 5% Interest Rate, and
d) Monthly Payments of $142 00 for 240 Months

60 On or about May 12, 1998 Plaintiff met with an employee of Defendant Southside Realty, at which time said employee completed and submitted a "Promissory Note" on Plaintiffs' behalf and in connection with Plaintiffs' purchase of the lot Said Note stated, among other disclosures, the following disclosures as described immediately below

a) Monthly Payments of $147 13 for 240 Months,
b) Principal Dollar Amount Owed to Defendant Southside Realty in the Amount of$12,950 00

61 On or about May 12, 1998 Plaintiff Barbara Nixson met with an employee of Defendant Southside Realty, at which time said employee completed and submitted a "HUD-1 Statement" on Plaintiffs' behalf and in connection with Plaintiffs' purchase of the lot Said Note stated, among other disclosures, the following disclosures as described immediately below

a) Contract Sale Price on Lot for $14,500 00 – Disclosed on Line Number 101,
b) Payment Down of $100 00 Made by Plaintiff/Borrower for Lot Purchase – Disclosed on Line Number 201,

c) An Amount of $13,050 Paid at Settlement by Plaintiff/Borrower – Disclosed on Line Number 302, and
d) Cash from Plaintiff/Borrower to Seller in the Amount of $1,450 00 – Disclosed on Line Number 303

62 Due to Plaintiffs' status as a "legal blind," Plaintiff could not and did not know about the actual purchase and credit terms received in connection with her purchase of the lot from Defendant Southside Realty

63 Upon information and belief, prior to and upon Plaintiff Barbara Nixson signing of the Credit Application, Offer to Purchase and Contract Agreement, Promissory Note and the HUD-1 Statement in connection with Plaintiffs' purchase of the lot, Defendant Southside Realty (a) never informed Plaintiff about the process by which she had secured financing for the lot, (b) never disclosed to Plaintiff the actual price of the lot and (c) never disclosed to Plaintiff the actual terms of the Credit Agreement in connection with the purchase of the lot

64 On or about June 15, 1998, Plaintiff Barbara Nixson received a phone call from a delivery person inquiring as to whether or not Plaintiff remained aware of "the switch " When Plaintiff Barbara Nixson responded that she knew nothing of "the switch", said delivery person indicated that he would take up the discussion of "the switch" with Defendant K & W

65 On or about June 18, Defendant K & W had Plaintiffs' mobile home delivered to and set-up on a lot located at "Regency Place Subdivision – Lot 49, known at the time of Plaintiffs' filing of this Action as 102 Edinborough Lane in Dudley (Wayne County), North Carolina

66 Upon information and belief, Plaintiffs' mobile home (a)"bottomed-out" on a hill and (b) struck several land fixtures – including trees and a neighbor's mailbox during its delivery and set-up

67 Upon delivery and set-up of Plaintiffs' mobile home, Plaintiff remained unable to move into the home until on or about July 16, 1998, due to Defendant K & W's failure to provide the proper keys and provide for proper stairs on the front and back doors – as requested by Plaintiff Barbara Nixson and agreed to by Defendant K & W

68 On or about June 18, after delivery and set-up of Plaintiffs' mobile home, Plaintiff Barbara Nixson discovered the following regarding her purchase of the lot from Defendant Southside Realty

a) The back portion of the lot remained overgrown with grass, despite Defendant Southside Realty's agreement to make the lot habitable enough to accommodate Plaintiffs' physical disabilities,

b) The lot did not contain a driveway or gravel pave-way for Plaintiffs' ease to and from her mobile home,
c) Lot premises contained several holes near the lot entry and near the steps creating hazardous/unsafe conditions, and
d) Drinking water connected to Plaintiffs' lot contains an extremely high iron content, turns Plaintiffs' clothes, sinks, tubs and toilets brown and is not suitable for drinking, cooking or washing

69 On or about June 18, 1998, Plaintiff Barbara Nixson promptly notified Defendant K & W regarding the lot condition and Defendant's failure to make agreed upon accommodations for Plaintiff

70 On or about July 16, 1998, upon moving into the mobile home, Plaintiff Barbara Nixson discovered numerous blatant and serious discrepancies between the mobile home Defendant K & W delivered to Plaintiffs and the model home shown by Defendant K & W and agreed upon by Plaintiff Additionally, Plaintiff (a) discovered serious cosmetic and/or structural defects in the construction and/or set-up of the mobile home and (b) discovered that Defendant K & W had not provided, as promised, any of the agreed upon housing specifications necessary to accommodate Plaintiffs' physical disabilities Plaintiff listed and noted the following discrepancies and/or defects as listed below

a) Mobile home delivered to Plaintiff was a "24'x 76'" as opposed to the "28' x 76'" the she agreed upon and Defendant K & W agreed to sell her,
b) The skirting around the bottom of the home was buckled and appeared to have been smashed by something,
c) The roof of the mobile home was torn in several locations, such tears upon information and belief, thought to occurred during delivery,
d) Kitchen cabinets did not contain shelves, which Plaintiff purchased as an option,
e) Kitchen countertops were much smaller in length and in width than those displayed in the unit model,
f) Wall paper does not meet in several corners, leaving bare and exposed portions of the walls,
g) Closet doors all rooms of the mobile home are crooked and offset,
h) Wooden borders in the bathroom off of the Master bedroom have pulled away from the walls,
i) Cardboard covering in Master bedroom closet is smashed,
j) Wallpaper throughout most of the house is paisley-colored as opposed to white and therefore does not accommodate Plaintiffs' physically disabled status as a "legal blind," as requested specifically by Plaintiff and agreed upon expressly by Defendant K & W,

k) Bathroom off of the Master bedroom does not contain handrails for the toilet, shower and bathtub, as requested specifically by Plaintiff and agreed upon expressly by Defendant K & W,
l) Mobile home did not contain steps and/or rails for entry into and/or exit from the front and back doors of the Mobile Home, as requested specifically by Plaintiff and agreed upon expressly by Defendant K & W,
m) Kitchen cabinets, wall borders and closets throughout the house were not done in white, as requested specifically by Plaintiff and agreed upon expressly by Defendant K & W,
n) Closet in Master bedroom did not contain a lighting system, as requested specifically and agreed upon expressly by Defendant K & W
o) The ceiling fan for the den was left on the floor, Plaintiff paid an outside contractor to have the fan installed properly, and
p) The Master bedroom ceiling fan was never delivered, Plaintiff purchased her own ceiling fan and paid and outside contractor to have the fan installed properly

71 On or about July 16, 1998, Plaintiff Barbara Nixson promptly and continuously notified Defendant K & W regarding the discrepancies, defects, and lack of agreed upon special accommodations Up to the filing of this Action by Plaintiff, Defendant K & W has failed to acknowledge and make reasonable repairs and/or amends regarding Plaintiffs' complaints

72 On or about July 16, 1998, after delivery of the mobile home and after the due date of her credit payments on the purchase of her mobile home and lot, Plaintiff learned that (a) her loan payments on the purchase of the mobile home and lot were in excess of "that total payment" disclosed by Defendant K & W and agreed to by Plaintiff, as a condition precedent to purchasing said mobile home and lot and (b) she did not have a "land/home package" deal as disclosed by Defendant K& W and understood by and agreed to by her as a condition precedent to purchasing said mobile home and lot

73 On or about May 15, 1998, simultaneous with Plaintiff Barbara Nixson signing the Installment Contract and Security Agreement with Defendant K & W, said Defendant "sold, assigned and transferred" its rights in the Installment Contract and Security Agreement to Defendant Conseco k/f/a Green Tree Financial Servicing Corporation Upon information and belief Defendant Conseco remains the current holder of the Installment contract and Security Agreement underlying Plaintiffs' purchase of the mobile home

74 Because the Installment Contract and Security Agreement upon which Plaintiff bases this Action represents a consumer credit transaction subject to the FTC rule, federal truth-in-lending disclosure regulations and N C Gen Stat § 25A-1 1 et seq , Defendant Conseco, as holder of the Agreement, remains subject to all claims and defenses Plaintiff

could and does raise against Defendant K & W as the seller of the goods and services obtained through said Agreement

75 Defendant Conseco represents the holder of the Installment Contract and Security Agreement, and per the "holder in due course" notice in said Agreement, remains subject to all claims and defenses that Plaintiff could assert and does assert hereby against Defendant K & W who represents the maker of said Agreement and the seller of the goods and services described within said Agreement

76 On or about June 3, 1998, Defendant Southside Realty " set over, transferred and assigned" its interest in the Promissory Note and Deed of Trust, underlying Plaintiffs Barbara Nixson purchase of the lot, to Defendant Litchfield Corp Upon information and belief, Defendant Litchfield Corp , represents the current holder of the Promissory Note and Deed of Trust underlying the Credit Agreement entered into between Plaintiff and Defendant Southside Realty for the purchase of real property, which said purchase Plaintiff was informed by Defendant K & W and did believe would operate as a part of a land/home purchase agreement

77 As holder of said Promissory Note and Deed of Trust, Defendant Litchfield Corp , remains subject to all claims and defenses that Plaintiff could assert and does assert hereby against Defendant Southside Realty

FIRST CLAIM FOR RELIEF
(Fraud in the Inducement of the Contract)

78 Plaintiff realleges and reincorporates paragraphs 1 through 74 herein by reference

79 Defendant K & W with intent to defraud Plaintiffs, represented falsely to Plaintiffs (a) that they could purchase and that it would sell to her as a part of a land/home package deal, a double-wide mobile home for the purchase price of $43,000 00 (b) that Plaintiffs total monthly payments on the mobile home – including the price of the land – would total $434 00 and (c) that said mobile home would be built and equipped specifically to accommodate her physical disabilities

80 Upon information and belief, Defendant K & W knew or should have known that its representations to Plaintiffs (a) were false (b) were material to the making of the Installment Contract and Security Agreement and (c) were made with the intent to deceive Plaintiff into purchasing the mobile home and lot on which the mobile home now sits

Plaintiff Clarence M Howell had no capacity to understand the terms of the Installment Sales Contract and Security Agreement presented to him by K & W

81 Plaintiff Barbara Nixson believed and relied reasonably upon Defendant K & W's false representations, and because of Defendant K & W's false representations to

Plaintiff, Plaintiff was deceived and induced to her detriment to enter into the Installment Contract and Credit Agreement for the purchase of a mobile home and the Installment Contract and Security Agreement for the purchase of the lot on which the mobile home now sits

82 Defendant K & W's false representations to Plaintiff Barbara Nixson remained factually material and represented major inducements to Plaintiff entering into the Credit Agreement with said Defendant and the Credit Agreement with Defendant Southside Realty

83 Plaintiff has been damaged as a direct and proximate result of Defendant K & W's fraudulent misrepresentations regarding Plaintiffs' purchase of the mobile home and land and signing of the underlying Credit Agreements

84 Because of K & W's fraudulent misrepresentations, Plaintiffs remains entitled to recover compensatory damages together with interest and costs from Defendant K & W, Defendant Conseco as holder of the Credit Agreement underlying the Plaintiffs' purchase of the mobile home

85 Because of K & W's fraudulent misrepresentations, which induced Plaintiffs to enter into Credit Agreements to purchase a mobile home and accompanying land, Plaintiffs remains entitled to recover punitive damages from Defendant K & W and from Defendant Conseco as holder of the Credit Agreement underlying Plaintiffs' purchase of the mobile home, in an amount sufficient to punish Defendant K & W for its wrongdoing and to deter such wrongful actions in the future

86 Defendant Southside Realty with intent to defraud Plaintiff Barbara Nixson, (a) represented falsely to Plaintiff (1) the purchase price of the land and (2) the substantive physical conditions and layout of the land, including the physical condition of the land and (b) represented falsely certain of Plaintiffs' financial information on the credit application, which application served as the catalyst for Plaintiff receiving financing, to her detriment, for the purchase of the land

87 Upon information and belief, Defendant Southside Realty knew or should have known such representations were false and made with the intent to deceive Plaintiff Barbara Nixson into purchasing the land and entering into the Credit Agreement to support said purchase

88 Plaintiff Barbara Nixson believed and relied reasonably upon Defendant Southside Realty's false representations, and because of Defendant Southside Realty's false representations to Plaintiff, Plaintiff was deceived and induced to her detriment to enter into the Credit Agreement for the purchase of land from Defendant Southside Realty

89 Defendant Southside Realty's false representations to Plaintiff Barbara Nixson remained factually material and represented major inducements to Plaintiff entering into the Credit Agreement with said Defendant

90 Plaintiff Barbara Nixson has been damaged as a direct and proximate result of Defendant Southside Realty's fraudulent misrepresentations regarding Plaintiffs' purchase of the land and signing of the underlying Credit Agreements

91 Because of Southside Realty's fraudulent misrepresentations, Plaintiff Barbara Nixson remains entitled to recover compensatory damages together with interest and costs from Defendant Southside Realty and Defendant Litchfield Corp assignee/holder of the Promissory Note and Deed of Trust underlying the Plaintiffs' purchase of the land

92 Because of Southside Realty's fraudulent misrepresentations, which induced Plaintiff Barbara Nixson to enter into Credit Agreements to purchase the land, Plaintiff remains entitled to recover punitive damages from Defendant Southside Realty and from Defendant Litchfield Corp as assignee/holder of the Promissory Note and Deed of Trust underlying Plaintiffs' purchase of the land, in an amount sufficient to punish Defendant Southside Realty for its wrongdoing and to deter such wrongful actions in the future

SECOND CLAIM FOR RELIEF
(Violation of the Unfair Trade Practices Statute, N C Gen Stat § 75-1 et seq)

93 Plaintiff realleges and reincorporates paragraphs 75 through 89 herein by reference

94 Defendant K & W did not disclose to Plaintiffs nor did Plaintiffs agree to the interest charged to her loan account, within the meaning of N C Gen Stat § 24-1 et seq

95 Defendant K & W charged the undisclosed interest to Plaintiffs' loan account with willful and corrupt intent to extract from Plaintiffs a greater amount than that agreed upon by and between the contracting parties or permitted under N C Gen Stat § 25A-1 et seq or N C Gen Stat § 24-1 1 et seq

96 No other provisions of law allow Defendant K & W to charge the fees to Plaintiffs, without full disclosure of said fees to Plaintiff and without Plaintiffs' full understanding of and agreement to said fees

97 Defendant K & W revealed that it charged $4,149 68 in "points" against Plaintiffs' loan account to Defendant Conseco's benefit, which fees Plaintiff neither paid up front nor prior to consummation of the Installment Contract and Security Agreement, now the subject of this Action Defendant K & W did not reveal nor disclose, neither did Plaintiff agree to the $4,149 68, paid to Defendant Conseco and revealed by Defendant K & W on the "Truth-in-Lending Disclosure Statement" as "points" paid by Plaintiff

98 Upon information and belief, the "points" charged by Defendant K & W made payable to Conseco were not in actuality true "points" as such points were not disclosed to or known by Plaintiffs and therefore were not an advance payment made in order to obtain a lower interest rate or better credit terms other than what Plaintiffs could have obtained or Defendant Conseco or Defendant K & W would have charged, nor did Plaintiff pre-pay the "points" in an effort to obtain a lower interest rate than that which Defendant Conseco and/or Defendant K & W would have charged otherwise

99 Defendant K & W's charging and Defendant's collection of the "points" from Plaintiffs were done willfully and with corrupt intent to extract from Plaintiff a greater amount of fees than that allowed by law

100 The "points" described in Paragraphs 43 and 46, and charged to Plaintiffs' loan account were not permissible "discount points, commitment fees, finance charges or other similar charges" within the meaning of N C Gen Stat § 24 et seq , and as such were unauthorized fees

101 Defendant K&W's failure to disclose the $4,800 00 indicated on Plaintiffs' Installment Contract and Security Agreement as a "payment down" represented an unfair and deceptive trade practice

102 Defendants K & W and Conseco failure to disclose to Plaintiff existence and nature of any loan fees disclosed as a "pre-paid" finance charge and Defendant K&W's failure to disclose properly said charge on Plaintiffs' Installment Contract and Security Agreement, represented an unfair and deceptive trade practice

103 Defendant K&W's purposeful and willful failure to make proper disclosurs regarding its Installment Contract and Security Agreement and/or its purposeful and willful imposition of unlawful fees in connection with said Agreement and/or its purposeful and willful misrepresentation of Plaintiffs' purchase and loan terms under said agreement represent acts that violate established public policy of the State of North Carolina, are in or affecting commerce, are unethical, oppressive, unscrupulous, substantially injurious to North Carolina consumers, have the capacity to decive the average consumer, generally, and Plaintiffs specifically, constitute unfair and deceptive trade practices, did in fact proximately harm and deceive Plaintiffs to their detriment in violation of N C Gen Stat §75-1 et seq Consequently, Plaitniffs are entitled to recover actual damages in excess of $10,000 and treble damages pursuant to N C Gen Stat §75-16 Additionally Defendant K&W willful engagement in the unfair and deceptive trade practices, entitles Plaintiffs to recover reasonable counsel fees pursuant to N C Gen Stat § 75-16 1 *et seq*

104 Defendant Conseco's purposeful and willful imposition of unlawful fees in connection with the Installment Contract and Credit Agreement entered into between Defendant K&W and Plaintiffs, represents an act that violates established public policy of the State of North Carolina, is in or affecting commerce, is unethical, oppressive, unscrupulous, substantially injurious to North Carolina consumers, has the capacity to

deceive the average consumer, generally and Plaintiffs specifically, constitutes an unfair and deceptive trade practice, did in fact proximately harm and deceive Plaintiffs to their detriment in violation of N C Gen Stat § 75-1 et seq Consequently, Plaintiffs are entitled to recover actual damages in excess of $10,000 and treble damages pursuant to N C Gen Stat § 75-16 Additionally, Defendant Conseco's willful engagement in the unfair and deceptive trade practice, entitles Plaintiffs to recover reasonable counsel fees pursuant to N C Gen Stat § 75-16 1 *et seq*

105 Defendant K & W breached expressed and implied warranties by assuring falsely to Plaintiff that her mobile home remained free of substantial defects and was constructed in a workmanlike manner in accordance with the standard of care exercised for that industry and in a manner that accorded with the warranty requirements of N C Gen Stat § 143-143 8

106 Defendant K & W's failure to honor applicable expressed and implied warranties regarding noted and documented cosmetic and structural defects in Plaintiffs' mobile home in contravention, N C Gen Stat § 143-143 8

107 Defendant K & W breached its contractual obligations to Plaintiff by failing to adhere to and honor agreed upon contract specifications regarding the internal construction of Plaintiffs' mobile home and by failing to honor all applicable expressed and implied warranties pursuant to N C Gen Stat § 143-143 8

108 Plaintiff is entitled to recover actual damages in excess of $10,000 and Plaintiffs are entitled to recover treble damages pursuant to N C Gen Stat § 75-16 Conseco willfully engaged in the unfair and deceptive trade practices Plaintiffs are entitled to recover reasonable counsel fees pursuant to N C Gen Stat §75-16 1 *et seq*

109 The acts of Defendants K & W and Southside Realty in failing to honor expressed and/or implied warranties regarding Plaintiffs' mobile home and/or in failing to honor contractual obligations and/or in intentionally and purposely manipulating Plaintiffs' financial status and/or failure to provide material disclosures regarding actual terms of their respective credit agreements with Plaintiff and/or failure to honor purchase and loan terms stated to, understood by and agreed upon by Plaintiffs, represented acts that violate established public policy of the State of North Carolina, are in or affecting commerce, are unethical, oppressive, unscrupulous, substantially injurious to North Carolina consumers, have the capacity to deceive the average consumer, constitute unfair and deceptive trade practices, did in fact proximately harm and deceive Plaintiffs to their detriment in violation of N C Gen Stat § 75-1 et seq Consequently, Plaintiffs are entitled to recover actual damages in excess of $10,000 and treble damages pursuant to N C Gen Stat § 75-16 Additionally, Defendant K&W and Southside Realty's willful engagement in the unfair and deceptive trade practices, entitles Plaintiff to recover reasonable counsel fees pursuant to N C Gen Stat § 75-16 1 et seq

110 As a holder of the Installment Contract and Security Agreement entered into between Defendant K&W and Plaintiffs and per the "holder in due course" notice in said

Agreement, Defendant Conseco remains subject to all unfair trade practice claims that Plaintiff could assert and does assert hereby against Defendant K&W

111 As holder of the Installment Contract and Security Agreement entered into between Defendant Southside Realty and Plaintiff, and upon information and belief, per the "holder in due course" notice in said Agreement, Defendant Litchfield Corp remains subject to all unfair trade practice claims that Plaintiff could assert and does assert hereby against Defendant K&W

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

112 Plaintiffs reallege and reincorporate paragraphs 90 through 105 herein by reference

113 Defendants K & W and Conseco were enriched unjustly through the imposition and receipt of charges and additional fees from Plaintiffs that they were not entitled

114 As a consequence of Defendants K&W and Conseco's unjust enrichment, Plaintiffs remain entitled to recover all monies in the form of loan payments, additional fees and charges paid unjustly to said Defendants, together with interest at Eight Percent (8%) interest, from the time of delivery of any such monies paid

REQUEST FOR RELEIF

WHEREFORE, Plaintiffs requests relief from the Court as follows

1 That the Court enter a finding and Declaratory Judgment holding void the Installment Contract and Security Agreement entered into between Plaintiffs and Defendant K & W as hereinabove requested

2 That the Court enter a finding and Declaratory Judgment holding void the Installment Contract and Security Agreement entered into between Plaintiffs and Defendant Southside Realty as hereinabove requested

3 That the Court permits Plaintiffs to recover from all Defendants, jointly and severally, monetary relief in the form of actual, compensatory, consequential and incidental damages in excess of Ten Thousand Dollars ($10,000 00) as hereinabove requested

4 That the Court permit Plaintiffs to recover from all Defendants, jointly and severally treble damages and reasonable attorney fees to Plaintiffs' Counsel, Johnnie C Larrie for the work performed in connection with this Action, pursuant to N C Gen Stat § 75-1 1 et seq , as hereinabove requested

5 That the Court permits Plaintiffs to recover the amounts by which Defendants K & W and Conseco became enriched unjustly in connection with Plaintiffs' Retail Installment Credit Agreement

6 That the Court permit Plaintiffs to recover all monies in the form of loan payments, additional fees and charges paid unjustly to Defendants K & W and Conseco, together with interest at Eight Percent (8%) Interest from the time of delivery of any such monies paid

7 That the Court taxes all Defendants jointly and severally with the costs of this Action

8 That the Court award Plaintiffs such other and further relief that it may deem just and proper

9 That this Action be tried before a jury on all issues so triable

This the ~~13~~ 19 day of ~~May~~ December 2002

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CERTIFICATE OF SERVICE

I, Hazel Mack-Hilliard, hereby certify, pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, that I have this date served a copy of the foregoing AMENDED COMPLAINT herein by United States Mail, first class, postage prepaid, addressed to the following

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This the 30 day of December, 2002

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