STATE OF NORTH CAROLINA			IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
WAKE COUNTY	2012 SEP 21	AM II: 0	02
	. WAKE COUN	.) Y. C.S.C	FILE NO.
·	BY		
STATE OF NORTH CAROLINA, ex rel. Roy Cooper, Attorney General,)	
Plaintiff,)	
v.)	<u>AFFIDAVITS</u>
KENNETH CARL MCCU	JRD and TANY	\mathbf{A}	
LOUISE WILSON, individually, and doing)			
business as LENDER EXC	CHANGE.)	
Defendants.		į	
)	

In support of the allegations in the State's Complaint filed on September 21, 2012, the State hereby submits the attached affidavits of consumer victims Shirley Burns, Dawne Cornelius, Cheryl Rainwater, and Kathy Stoddard.

This the 21st day of September, 2012.

STATE OF NORTH CAROLINA ex rel. ROY COOPER, ATTORNEY GENERAL

Bv:

Philip A. Lehman

N.C. Bar No. 6721

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N.C. Bar No. 19397

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STATE OF NORTH CAROLINA

COUNTY OF DURHAM

AFFIDAVIT OF SHIRLEY BURNS

- 1. My name is Shirley Burns, and I am a resident and homeowner in Durham, North Carolina.
- 2. I moved to Durham, North Carolina from Illinois in 2008 to follow my job. I retired in September of 2010. I have a mortgage with Bank of America on my house in Durham. I sought assistance with my mortgage because, given my retirement, my income had decreased. In addition, the tenants renting my home in Illinois did not consistently pay the rent on time. I became concerned about my high monthly payment on my house in Durham, which at the time I began seeking assistance with my mortgage, was \$1932.06 per month. At that time my interest rate on my mortgage was around 6.3%, and I believe that interest rates were in the 4% range at the time.
- 3. In late October 2010, I was referred to Lender Exchange by a family member, my sister-in-law, who had heard about them from a gentleman in New York. I called Lender Exchange and spoke with Ken McCurd, who told me that Lender Exchange could secure a loan modification, which he said would reduce my interest rate and lower my monthly payment, and that they could help me with other services. Mr. McCurd was very encouraging, saying he was sure Lender Exchange would be able to help me obtain a modification, which led me to be hopeful that my problem would be solved.
 - 4. In November of 2010, I submitted my paperwork by facsimile to Lender

Exchange. Lender Exchange charged me one month's payment to help me with the modification, and asked for half of the payment, \$966.03, up front. Mr. McCurd had told me that I could obtain a refund if Lender Exchange was unable to secure a modification. Mr. McCurd also told me that I could stop making my mortgage payments, but I did not stop making payments because I am someone who makes my payments. I never met Mr. McCurd or anyone from Lender Exchange in person; instead, all of my contact with them was over the phone.

- 5. The service agreement Mr. McCurd sent me reiterated that Lender Exchange believed it could assist in obtaining a loan modification, and further promised that Lender Exchange would contact me weekly to let me know of updates to the status of my mortgage. The service agreement also promised a full refund of the money I paid within five days, if Lender Exchange could not secure the loan modification.
- 6. During this time, for months Bank of America had been sending me letters telling me that it was easy to refinance, and so I responded in late 2010 to try to secure a modification.

 But when I responded, Bank of America was unhelpful, I believe, in part, because they know that my income is now lower than when I was working.
- 7. In reality, Lender Exchange never did obtain a modification on my mortgage. In addition, Lender Exchange rarely initiated contact with me. Wishing to know the status of my modification, I called them approximately five times between November 2010 and May 2011. Each time I called, I asked to speak with Ken McCurd. Mr. McCurd was usually not available, and almost every time I called, I received a response from a man who identified himself as John Cole, usually days after my initial call. These responses did not provide any definitive information about the status of my loan modification.

- 8. In May 2011, I received a letter from my lender, Bank of America, inviting me to meet with a specialist in Charlotte who could assist with my loan modification. At that point, I was confused as to why I had heard nothing from Lender Exchange and was receiving an invitation to this meeting from Bank of America.
- 9. I called Lender Exchange, left a message, and received a call back from Mr. Cole who told me that Bank of America had rejected my request for a loan modification. As a result, I did not attend the Charlotte meeting because I was disgusted with Lender Exchange's practices, and believed that if Bank of America had cancelled me then they did not really want to help me. I did not want to drive to Charlotte for nothing, and I did not want to have anything to do with Lender Exchange or Bank of America.
- 10. Shortly afterwards I called Lender Exchange back and spoke with Ken McCurd, who assured me I would receive a refund because I did not get a loan modification. Mr. McCurd transferred me to his secretary, who informed me she would send half of the refund, and that I would get half of the refund by the end of the following week.
- 11. I received either \$475 or \$500 of the refund in May 2011, but I cannot remember the exact amount. The amount I deposited in my bank account was for \$475, but I could have kept \$25 or so in cash when I deposited the check.
- 12. In May and early June of 2011, I called Mr. McCurd repeatedly for several weeks to inquire about the other half of my refund, but only was able to speak with his secretary at Lender Exchange, who informed me only that the money "was coming." I do not recall the secretary's name.
 - 13. On June 11, 2011, frustrated by my inability to secure the other half of my refund,

I filed a complaint about Lender Exchange with the Better Business Bureau ("BBB").

14. Subsequently, the BBB informed me that Lender Exchange had responded to my complaint, saying that they would refund me the rest of my money by August 6, 2011. However, I did not receive any refund from Lender Exchange on August 6.

15. On August 11, I received a phone call from Lender Exchange, saying that my refund check was going to be sent out that same day. However, despite Lender Exchange's assurances, I still have not received a refund of the remainder of the money that I paid to Lender Exchange.

16. Instead of helping me, I feel that Lender Exchange's practices have made it more difficult for me to obtain the modification I need, in that during this time, things have worsened for me financially and I have lost valuable time that I could have used to try to get a loan modification on my own.

17. I have recently learned about the assistance available through North Carolina's State Home Foreclosure Prevention Project and have contacted them to learn about the options for my mortgage.

Shirle

Sworn and subscribed before me

This the /

S day of

<u>____</u>

Notary Public)

My Commission Expires: December 27, 2015

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

AFFIDAVIT OF DAWNE CORNELIUS

- 1. I am a resident of Charlotte, North Carolina.
- 2. In 2007, I was having financial difficulties, and I started getting behind on my mortgage, which was with CitiMortgage. In late 2007, I spoke to a financial officer who had previously refinanced my home, Chris Hill. He referred me to Lender Exchange, which he knew about because Tanya Wilson, who worked at Lender Exchange, attended his church.
- 3. In late 2007, I met with Tanya Wilson at Lender Exchange's office at 3325 Washburn Avenue in Charlotte about getting either a forbearance or a modification of my mortgage loan. I met with Ms. Wilson several times, and she assured me that Lender Exchange would be able to obtain a forbearance and a loan modification for me. I also talked with a man named "Dave" there, but I never learned his last name and mostly dealt with Ms. Wilson.
- 4. I decided not to pursue my options with Lender Exchange in 2007 because I had renters in my house that were helping me pay the bills. But in March 2008, the renters moved out, and so I had less income. In April 2008, I contacted Lender Exchange again. After speaking with Ms. Wilson, I eventually filled out paperwork and Lender Exchange requested tax forms, information about my mortgage, and my other bills.
- 5. I paid Lender Exchange to help me get a forbearance and a loan modification, to have my interest rate and monthly payments permanently reduced. Lender Exchange told me they would charge me a fee of \$1050 to help me with this loan modification, and they requested

that I pay at least half of the fee, \$525, up front, before they would begin any services, which I did. Later I paid the remainder of Lender Exchange's fee, for a total of \$1050.

- 6. I never received a permanent loan modification as Lender Exchange had promised, but I did receive a temporary forbearance on my mortgage.
- 7. In early 2009, I had again fallen behind on my mortgage, and I contacted Lender Exchange to try to obtain the modification they had originally told me they could get for me. I met several times with Ms. Wilson, who again told me that Lender Exchange would be able to secure a modification for me.
- 8. I filled out and turned in all the required paperwork in April 2009 so that Lender Exchange would get a modification for me. Lender Exchange demanded that I pay them another fee, part of which I paid up front. At that point, Ms. Wilson also instructed me to stop paying my monthly mortgage payments because, she said, I might want to save the money to make a larger payment in the event that the modification did not work out. I followed her instructions and stopped making my monthly payments to CitiMortgage.
- 9. From April 2009 to September 2009, I called Lender Exchange every one to three weeks to see how the modification was going. They never called me to give me an update. Each time I called to inquire, Ms. Wilson would either answer or call me back a few days later and tell me everything was going to be fine. She also encouraged me to just hold on to my payments and not to pay CitiMortgage.
- 10. In June of 2009, I received a court summons from CitiMortgage as part of the beginning of foreclosure proceedings. When I went to court, CitiMortgage's attorneys asked me what was going on with my house, and I responded that I was working on a mortgage

modification with Lender Exchange. The attorneys advised me that CitiMortgage did not want my home and wanted to work with me, and they consented to a 30-day stay on the foreclosure proceeding.

- During this time, I was also receiving notices in the mail from CitiMortgage, saying that my house was going to be foreclosed on because of my failure to make my mortgage payments. I told Lender Exchange about these notices, but Lender Exchange told me not to worry because they were working on getting my loan modified.
- 12. During this time I also sent CitiMortgage the hardship documents necessary for the modification process, with Lender Exchange's blessing. CitiMortgage told me on several occasions that they had lost the documents I had sent. When I told Lender Exchange about this loss of the documents by CitiMortgage, Lender Exchange said that they were waiting on CitiMortgage to receive the documents so that they could proceed with the loan modification.
- 13. I went to court again in July of 2009, and CitiMortgage's attorneys again agreed to stay the foreclosure, I believe, until sometime in September of 2009. I continued to call Lender Exchange to inquire about the status of the modification, and they continued to assure me that everything would be fine.
- 14. On September 13, 2009, to my surprise, I received a message on my home phone from CitiMortgage that my house was going to be sold at a foreclosure sale that afternoon, and if I wanted to keep my house I needed to get in touch with CitiMortgage and make a large payment that day. I did not receive this message until after I came home from work, and by then the deadline had expired. When I called CitiMortgage, they told me they had already put my house up for sale.

- 15. I immediately called Lender Exchange and explained the situation, and Ms. Wilson told me that she was going to call CitiMortgage to find out what was going on. Ms. Wilson attempted to convince me that a foreclosure had not taken place. I was not sure what to believe at that time.
- 16. On September 18, papers were placed on my front door from Fannie Mae, demanding that I vacate because my home had been foreclosed on, and saying that I would be evicted if I did not move. I called Lender Exchange to ask them about these papers, and they told me that these papers were just "marketing," that everything was okay, and that they were still working on the modification for me.
- 17. I called CitiMortgage again on Monday, September 21 to try to find out how to protect my house or find out what my options were, and CitiMortgage gave me a number to call to get more information. I called this number and was told to call other numbers, then called those numbers, and eventually this process led me to call Rob Cassam of Carolina Realty Advisors. He said he was a real estate broker, and informed me that my house had been foreclosed on, sold to Fannie Mae, and that he would like to sell me back my house if I wanted to buy it but I could not afford to buy it back.
- 18. In late September and early October 2009, I called Lender Exchange to see if I could get a refund of the money I paid since I had never received a loan modification and my home had been foreclosed on, but they did not answer my calls. I also went to their office at 3325 Washburn Avenue, but they were not there.
- 19. I had to move out of my house in October of 2009 after my house was foreclosed on. I currently live with my family in a rented house. I feel like that Lender Exchange did not

help me in any way and actually made my situation worse. I feel that I could have used the money that I paid to Lender Exchange to make my mortgage payments, and that they gave me bad advice in telling me not to make my mortgage payments, which contributed to my losing my home.

Dawne Cornelius

State of NC Mecklenburg County

Sworn and subscribed before me

This, the day of August, 2012

(Notary Public) Pamela Wall

My Commission Expires: <u>April 2</u>5,2017

ABLIC SE

STATE OF GEORGIA

COUNTY OF HARALSON

AFFIDAVIT OF CHERYL RAINWATER

- My name is Cheryl Rainwater, and I am a resident and homeowner in Felton,
 Georgia.
- 2. I have a mortgage on my home with Bank of America. In late March 2011, I went on the Internet to look for help with going back to school through online classes and with my mortgage because I was falling behind on my mortgage. My monthly payment at the time was about \$454. I think I was one month behind at that time. I went on a website that said it could help with personal finance issues, and I put in my contact information.
- 3. A man who said his name was Ken McCurd called me a day or two later and told me that his company Lender Exchange could get my loan modified so that I would have an interest rate of 2% for five years, 3% the next year, 4% the following year, and then 5 % for all years after that, all of which were better rates than what I had at that time. Mr. McCurd guaranteed that Lender Exchange could get a mortgage modification for me. He also promised that they would give me an update every week on the status of my mortgage modification.
- 4. In early April 2011, Lender Exchange faxed me paperwork to sign and fill out, including a release for documents for Bank of America. I signed and returned those forms.
- 5. Lender Exchange told me that their fee for the loan modification was one monthly mortgage payment, and they demanded that half of the fee be paid in advance before they would

begin any work. In addition, Lender Exchange insisted on being paid though Paypal. On April 14, I sent Lender Exchange a payment of \$227, or half of my monthly mortgage payment. It took me a while to get my payment together because I am on disability and do not have a high income. Lender Exchange instructed me not to continue making my house payments, and they assured me they were going to contact Bank of America and take care of my loan modification for me. Because they assured me that they were experienced in handling modifications, I followed Lender Exchange's advice and stopped making my mortgage payment.

- 6. About a week later, when I called Lender Exchange and tried to speak with Mr. McCurd, I learned that he had handed my case off to a man named John Cole. After I paid their fee, Lender Exchange never contacted me; I always contacted them to find out what was going on with my modification. When I would call Lender Exchange, only a woman named Tanya Wilson would answer, if anyone answered at all. After a few weeks, Ms. Wilson said that Mr. Cole had to leave "to attend to the settling of an estate," and that she would be handling my case from then on. I never met Mr. McCurd, Mr. Cole, or Ms. Wilson in person but only talked with them on the phone. Ms. Wilson would always tell me that someone would call me back with an update, but they rarely called, even though I was waiting by the phone many times for phone appointments that Ms. Wilson had set up with me. When Ms. Wilson did actually respond to my calls from time to time, she had only vague encouragements, just saying that everything was "on track."
- 7. In June, I was contacted by a housing assistance organization called HOPE. I understand they are a reputable not-for-profit organization. Besides counseling me on my mortgage issues, they told me not to listen to anyone who told me not to pay my mortgage. As a

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result, I began to suspect that Lender Exchange was a scam. I looked up Lender Exchange on the Better Business Bureau's website and discovered that they are not accredited by the Better Business Bureau.

- 8. Because I had not received a modification, despite Lender Exchange's assurances, and because I was concerned that I had been scammed, on June 14, I submitted a complaint with the Lawyers' Committee for Civil Rights.
- 9. I then contacted Bank of America to work with them on my own on a loan modification. They told me the only time they had heard from Lender Exchange was when they received the documents giving the bank permission to release my records to Lender Exchange.
- 10. In July 2011, I called Lender Exchange and left a message about what had happened, what the bank had said, and telling them that I was not going to pay Lender Exchange any more money. Ms. Wilson called me back and claimed that everything was "on track," and that if I received a modification from Bank of America, I would still have to pay Lender Exchange the remainder of their fee. I told her I was very upset and that they would not get another dime from me.
- 11. I have continued to work with Bank of America on my own, and I am hopeful that they will allow me to pay my mortgage arrears over time or place the arrears at the end of my mortgage, and grant me a permanent loan modification. I am currently \$1,900 behind on my mortgage payments due to Lender Exchange's advice. Because I live on a fixed income it is extremely difficult to bring my payments current. When I started with Lender Exchange, I was only one month behind. After working with Lender Exchange, I am out \$227 that I could have used towards my mortgage payments; I am even further behind on my payments because I didn't

make my mortgage payments due to Lender Exchange's instructions; and I have lost valuable time I could have used in trying to work out my mortgage difficulties – all of which have placed me in a worse situation and closer to losing my home.

Cheryl Rainwater

Cheryl Rainwater

Sworn and subscribed before me

This, the 20 day of August 2011

(Notary Public)

My Commission Expires: 724/2015

ON Y 24, 2015 CHOWN COUNTY INTERNATIONAL COUNTY INT

COUNTY OF PIMA

AFFIDAVIT OF KATHY STODDARD

- 1. My name is Kathy Stoddard and I am a resident of Tucson, Arizona.
- 2. In August 2009, I was living in Philadelphia, where I had moved to follow my job when they closed operations in Arizona. My family stayed behind in our house in Arizona, and I found that it was difficult to make payments on the mortgage I had on my home in Arizona in addition to paying for rent in Philadelphia. My monthly payment on the home in Arizona at the time was \$1652, and the mortgage was with Bank of America. I was already about two months in arrears, and was looking for a reduction in the principal of my mortgage to what the house was actually worth, because the house value had declined from about \$250,000 when I bought it to about \$170,000 in August of 2009. My mortgage payments, however, had not declined.
- 3. I found Lender Exchange on a website when I had googled about saving homes from foreclosure. A survey came up, presumably from a cookie, and I filled out the survey. Within a few days, I was contacted by a Ken McCurd by phone and by email. He told me that his company Lender Exchange could secure a loan modification to reduce the interest on my mortgage, lower my monthly payments, and that they could get the principal reduced to around the value of the house. He said he worked closely with the banks, and that he had never had a customer lose their home. He predicted that I would have a modification within three months, so I was hopeful that things would be better by the end of the year.

- 4. Also in August, I submitted my paperwork, including income tax forms, by facsimile to Lender Exchange. Lender Exchange charged me one month's payment to help me with the modification, and requested half of the payment, \$826.00, up front. Mr. McCurd also told me not to make my mortgage payments to Bank of America. I followed his advice and stopped making payments on my house when I began to work with Lender Exchange. Lender Exchange also encouraged me not to contact Bank of America, saying that Lender Exchange would function as the go-between.
- 5. I never received a contract from Lender Exchange. They wanted to charge me for their services but never provided a written statement of what they would do for me.
- 6. Because I was in Pennsylvania, I never met Mr. McCurd or anyone from Lender Exchange in person. Soon after I paid Lender Exchange, Mr. McCurd told me, in response to one of my calls, that I would be working with a man named John Cole.
- 7. Lender Exchange never contacted me; I always contacted them to find out what was going on with my modification. At Thanksgiving holiday in November of 2009, I was back in Arizona with my family. When I talked to Lender Exchange during this time, they said that Bank of America had the paperwork and they were just waiting to hear back from the bank. Lender Exchange reassured me that everything would be fine.
- 8. In January 2010, my family called me from Arizona and said that there was a process server at our house looking for me. At that point, I began to call Lender Exchange every week to try to find out the status of the modification. A person named Tanya Wilson was now

always answering the phones, and she would take messages. John Cole would sometimes call me back. However, he never seemed to have any real information about my home or the modification process.

- 9. On March 17, 2010, I heard from my family that Bank of America had sent an offer to me stating that they could modify my loan to add the payments in arrears back into my mortgage, if I made a payment of \$3406.13 and continued to pay my mortgage. The rate on this offer stayed the same and the monthly payment actually increased because of the additional amount added to the loan.
- 10. My family received this offer on March 17 and immediately called me about it. However, the documents stated that in order to accept the offer, I had to return the payment of \$3406.13 and the signed, notarized documents to Bank of America by March 16, 2010. Given that the documents had to be returned to Bank of America the day before I received them, I could not send the documents or the payment back in time. I called Bank of America, and they told me that if the paperwork was not received by the deadline, it was too late and I would be foreclosed on.
- 11. I called Lender Exchange and spoke with Ms. Wilson about the offer. She told me that Mr. Cole would be in contact with Bank of America about the paperwork being late and get back to me. I never heard back from Mr. Cole. I do not believe that Lender Exchange had anything to do with Bank of America's making me the offer, because the FedEx envelope came directly from Bank of America, and Lender Exchange did not know about it.
- 12. On March 18, 2010, Bank of America foreclosed on my home. I received a call from Fannie Mae on March 22. Fannie Mae offered me \$1,500 to vacate the premises within 20

days. I had returned to Arizona to deal with the situation, and my family and I quickly scrambled to find a rental house.

- 13. I believe that Fannie Mae sold the house about six months later for about \$170,000.
- 14. On March 23, I filed a complaint with the Better Business Bureau about Lender Exchange because I was very upset about what happened. I feel that Lender Exchange did not perform any beneficial services for me, and actually made my situation worse by taking money from me that I could have used towards my mortgage or for family expenses at this time; and by instructing me not to make my mortgage payments and not to communicate with Bank of America. I demanded a refund because I did not receive the service I had paid for.
- 15. I never heard back from Lender Exchange except in its response to the Better Business Bureau, in which Lender Exchange claimed it obtained a modification for me. Again, I do not feel that Lender Exchange had anything to do with Bank of America's offer. Further, the reality is that, under the modification, my monthly payment would have been higher at \$1,719.84, not lower, and the modification came too late for me to accept it to save my house. There was no intervention to fix this problem by Lender Exchange. I have not received any further contact from Lender Exchange since my complaint to the Better Business Bureau.
- 16. My family is still in a rental home. When I think about this time in my life, it is still difficult for me. Thankfully, I have recently found a job in Arizona so that I can at least be with my family again.

Kathy Stoddard

Sworn and subscribed before me

This, the 23 day of 08

(Notary Public)

My Commission Expires: April 28,2015

Myriam Camacho
Notary Public
Pima County; Arizona
My Comm. Expires 04-28-15