

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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STATE OF IOWA ex rel.	)	EQUITY NO. <u>EQLE - 53090</u>
THOMAS J. MILLER,	)	
ATTORNEY GENERAL OF IOWA	)	
(99AG25112),	)	
THOMAS B. GRONSTAL,	)	
IOWA SUPERINTENDENT	)	
OF BANKING (99AG27213)	)	PETITION
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
AMERIQUEST MORTGAGE	)	
COMPANY, TOWN & COUNTRY	)	
CREDIT CORPORATION, AMC	)	
MORTGAGE SERVICES, INC.	)	
f/k/a BEDFORD HOME LOANS,	)	
ACC CAPITAL HOLDINGS	)	
CORPORATION,	)	
	)	
Defendants.	)	
	)	

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FILED  
POLK COUNTY, IOWA.  
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CLERK DISTRICT COURT

The State of Iowa, ex rel. Attorney General Thomas J. Miller and Iowa Superintendent of Banking Thomas B. Gronstal, by and through Assistant Attorneys General Patrick Madigan and Shauna Russell Shields, files this Petition pursuant to the provisions of Iowa Code § 714.16, commonly known as the Iowa Consumer Fraud Act, Iowa Code § 535.8, Iowa Code § 535B.13(2), part of the Mortgage Bankers and Brokers Act, and Iowa Code § 536.9, part of the Regulated Loans Act.

**PARTIES**

1. Thomas J. Miller is the duly elected Attorney General of the State of Iowa.
2. Thomas B. Gronstal is the duly appointed Superintendent of Banking of the State of

Iowa.

3. Defendant Ameriquest Mortgage Company (hereafter “Ameriquest”) is a Delaware corporation with its principal place of business at 1100 Town and Country Road in Orange, California. At all times mentioned herein, Ameriquest has transacted business within the State of Iowa and engaged in the origination, funding and sale of real estate secured, owner-occupied, residential mortgage loans through its retail branches.

4. Defendant Town & Country Credit Corporation (hereafter “TCCC”) is a Delaware corporation with its principal place of business located at 2010 Main Street, Suite 800, Irvine, California. At all times mentioned herein, TCCC has transacted business within the State of Iowa and engaged in the retail based origination, funding and sale of real estate secured, owner-occupied, residential mortgage loans.

5. Defendant AMC Mortgage Services, Inc. f/k/a/Bedford Home Loans (hereafter “AMC”) is a Delaware corporation with its principal place of business located at 505 City Parkway West, Suite 100, Orange, California. At all times mentioned herein, AMC has transacted business within the State of Iowa and engaged in the retail based origination, funding and sale of real estate secured, owner-occupied, residential mortgage loans.

6. Defendant ACC Capital Holdings Corporation (hereafter “ACCCH”), is a Delaware Corporation, with its principal place of business located at 1100 Town and Country Road, Orange, California. ACCCH is a holding company which includes among its holdings the wholly-owned subsidiaries Ameriquest, TCCC and AMC.

7. Whenever reference is made in this Petition to any act or practice of Defendants Ameriquest, TCCC, and AMC (collectively referred to as “the Ameriquest Parties”), such

allegation shall be deemed to mean that the principals, officers, directors, employees, agents and representatives of said Defendant did, or authorized, such act or practice on behalf of said Defendant, while actively engaged in the scope of their duties.

### **JURISDICTION**

8. The Attorney General of Iowa has the authority to initiate an action for consumer fraud in violation of Iowa Code § 714.16.

9. Iowa Code § 535.8 strictly limits the types of fees that may be charged in a residential mortgage and § 535.8(3) provides the strict circumstances in which a lender may offer a “payment reduction fee” (otherwise known as “discount points”) and requires that such fees actually reduce the interest rate and monthly payment.

10. Pursuant to Iowa Code §13.2(2), the Attorney General has the authority to prosecute any action in which the state may be interested, when, in the attorney general’s judgment, the interest of the state requires such action. The Attorney General has determined that the interest of the state requires that violations of Chapter 535 be remedied. *See State ex rel Turner v. Younker Brothers, Inc.*, 210 N.W.2d 550, 564-65 (Iowa 1973) (holding that the Attorney General has jurisdiction over violations of Chapter 535).

11. Pursuant to Iowa Code § 535B.13(2), the Attorney General also has the authority to enforce the provisions of the Mortgage Bankers and Brokers Act (Iowa Code Chapter 535B) including the authority to file suit for injunctive relief, restitution, costs and attorneys fees.

12. The authority of the Superintendent of Banking is derived from Iowa Code Chapter 535B, Mortgage Bankers and Brokers, and Iowa Code Chapter 536, Regulated Loans.

## VENUE

13. Venue is proper in Polk County, pursuant to Iowa Code § 714.16(10), because Ameriquest has a principal business location in Polk County, otherwise conducts business in Polk County, it is the county where a substantial portion of the transactions at issue occurred, and one or more of the victims reside in Polk County.

14. Venue is also proper in Polk County pursuant to Iowa Code § 535B.13(2) which explicitly provides that the Attorney General may file a civil action in equity in Polk County.

## GENERAL ALLEGATIONS

15. In the ordinary course of business, the Ameriquest Parties have originated and funded real estate secured owner-occupied, residential mortgage loans with borrowers in the State of Iowa. These real estate secured mortgage loans were made from or at the Ameriquest Parties' retail lending branches during the period January 1, 1999 through December 31, 2005 (the "Covered Transactions").

16. State attorneys general and state financial regulators in Iowa and in other states have received and investigated complaints and conducted examinations concerning the Covered Transactions. Those complaints and investigations related to the Ameriquest Parties' conduct including, but not limited to, the following practices:

A. **Discount Points**: Plaintiffs allege that the Ameriquest Parties failed to provide timely and adequate information to borrowers concerning the amount and purpose of "discount" points and fees imposed on their loans. Further, prior to the implementation of a new computerized pricing model in February 2003, the payment of discount points often failed to result in a rate reduction for the borrower or the rate reduction, if any, varied among borrowers who paid the same amount of

discount points, in violation of Iowa Code § 535.8(3).

B. **Misrepresentation of Loan Costs and Terms**: Plaintiffs allege that the Ameriquest Parties made deceptive or misleading representations or omissions regarding loan terms and charges including, but not limited to, the interest rate of the loan, misrepresenting the presence or the mechanics of the adjustable rate feature of the loan, failing to disclose the interest rate or the material costs of the proposed loan when known to the Ameriquest Parties; failing to properly disclose to potential borrowers whether the proposed loan payment included escrowed taxes and insurance payments; misrepresenting the credit status of potential borrowers; and falsely promising borrowers the ability to refinance at a later date as a inducement to enter into the loan.

C. **Prepayment Penalties**: Plaintiffs allege that the Ameriquest Parties engaged in a practice of misleading borrowers about the presence, the significance or meaning, or the duration of a prepayment penalty on their loans. The Ameriquest Parties also made false representations that the prepayment penalties could be waived.

D. **Repeat Refinancing**: Plaintiffs allege that the Ameriquest Parties, in violation of their own published Best Practices, engaged in the practice of soliciting existing Ameriquest borrowers to refinance within the first 24 months of their loans.

E. **Inflated Appraisals**: Plaintiffs allege that the Ameriquest Parties engaged in deceptive or misleading acts and practices which resulted in the Ameriquest Parties obtaining inflated appraisals that were substantially in excess of the market value of homes of prospective borrowers. An example of such acts is branch employees pressuring appraisers to obtain a certain artificial home value and if an appraiser did not produce the predetermined number, cutting off the appraiser from any future Ameriquest appraisal assignments.

F. **Inflated Income**: Plaintiffs allege that the Ameriquest Parties engaged in acts and practices which resulted in fabricated or inflated income information and/or non-existent or inflated amounts of assets for prospective borrowers on loan applications. Those borrowers would have failed to qualify for said loans without the fabricated or inflated income and/or assets.

G. **Disparaging Federal Disclosures**: Plaintiffs allege that the Ameriquest Parties engaged in acts and practices that encouraged borrowers to ignore the Truth In Lending Act (TILA) and Real Estate and Settlement Procedures Act (RESPA) disclosures (including the Good Faith Estimate), misrepresented that these disclosures are not representative of the actual loan terms the borrowers will receive, or otherwise disparaged the accuracy and relevance of the required federal disclosures.

H. **Loan Funding**: Plaintiffs allege that the Ameriquest Parties failed to timely fund borrowers' loans at the close of the applicable rescission periods. This practice resulted in costs to consumers, including but not limited to additional interest costs.

## **COUNT I**

### **IOWA CONSUMER FRAUD ACT**

17. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 to 16 of this Petition.

18. The Ameriquest Parties engage in the business of making mortgage loans to Iowa borrowers that are secured by those borrowers' homes. Defendants' business transactions in Iowa are in connection with the lease, sale, or advertisement of merchandise.

19. The Ameriquest Parties used misleading, unfair and deceptive marketing and sales techniques to induce homeowners to refinance their mortgages and consolidate their debts using the Ameriquest Parties' real-estate secured loan products.

20. In the course of their dealings with borrowers and in furtherance of their own direct pecuniary and business gains, the Ameriquest Parties committed misleading, deceptive, unfair and fraudulent acts and practices, and made material omissions in violation of Iowa Code § 714.16(2)(a).

**COUNT II**

**VIOLATION OF IOWA CODE § 535.8(3) -  
DISCLOSURE OF “PAYMENT REDUCTION FEES”**

21. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 to 20 of this Petition.

22. Iowa Code § 535.8 explicitly limits the types and sometimes the amount of fees and costs that may be charged in connection with a residential mortgage (either purchase money or refinancing).

23. Iowa Code § 535.8(3) explicitly allows lenders to charge an “interest reduction fee” or “payment reduction fee,” which are more commonly referred to today as “discount points,” so long as certain conditions are met.

24. The statute clearly states that such “interest reduction fee” or “payment reduction fee” must actually result in a lower interest rate and lower payments for the borrower.

25. Iowa Code § 535.8(3) also requires that a lender provide a specific disclosure that shows the reduction in payments which will result from the payment of a payment reduction fee by showing the specific terms of the loan both with and without the payment reduction fee, and an example showing the reduction in payments which would result from the payment of this fee.

26. Only if the lender strictly complies with these provisions is it allowed to charge a payment reduction fee. A payment reduction fee that does not strictly comply cannot be legally

charged.

27. In some Ameriquest loans, the interest rate disclosed without the payment of discount points and the interest rate disclosed with the payment of discount points were exactly the same. In other words, the payment reduction fee did not in fact reduce the interest rate or the monthly payment as required by Iowa law, and such fees were illegally charged.

### **COUNT III**

#### **VIOLATION OF IOWA CODE CHAPTERS 535B AND 536**

28. Plaintiffs reallege and incorporate by reference allegations of Paragraphs 1 through 27 of this Petition.

29. Ameriquest and TCCC are licensed mortgage bankers in the State of Iowa subject to the provisions of Iowa Code Chapter 535B, Mortgage Bankers and Brokers. Ameriquest and TCCC engage in the business of making loans to Iowa borrowers that are secured by first liens on the borrowers' residential real estate.

30. Ameriquest and TCCC used misleading, unfair, and deceptive promotions, marketing and sales techniques to induce homeowners to refinance their mortgages and consolidate their debts using Ameriquest and TCCC's real-estate secured loan products. These practices violate the provisions of Iowa Code Chapter 535B and Iowa Code § 535.8.

31. Ameriquest, TCCC, and AMC all have Iowa regulated loan company licenses issued by the Superintendent of Banking and are subject to the provisions of Iowa Code Chapter 536, Regulated Loans.

32. The allegations in this Petition provide a basis for the Superintendent of Banking to revoke or suspend the Ameriquest Parties' regulated loan licenses pursuant to Iowa Code §536.9.



## REQUEST FOR RELIEF

The State respectfully requests the Court grant relief against the Defendants as follows:

A. That the Court, pursuant to Iowa Code § 714.16(7), permanently enjoin the Defendants and (as applicable) the Defendants' successors, assigns, predecessors, and any future acquired or created corporations or other business entities engaged in the retail based origination and funding of real estate secured, owner-occupied residential mortgage loans, from engaging in the deceptive, misleading, fraudulent, unfair, and omissive acts and practices alleged in this Petition or otherwise violating the Iowa Consumer Fraud Act.

B. That the Court permanently enjoin the Defendants from violating the terms of Iowa Code § 535.8(3) and Iowa Code Chapter 535B.

C. That the Court expand the provisions of the permanent injunctions as necessary by including such "fencing in" provisions as are reasonably necessary to ensure that the Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

D. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against the Defendants for amounts necessary to restore to consumers all money acquired by acts or practices that violate the Consumer Fraud Act.

E. That the Court award the State interest as permitted by law.

F. That the Court, pursuant to Iowa Code § 714.16(11) and § 535B.13(2)(c), enter judgment against the Defendants for mandatory attorney fees, state's costs and court costs.

G. That the Court grant such additional relief as the Court deems just and equitable.

Submitted this 21st day of March, 2006.

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