

Department of Agriculture (“USDA”) Rural Development Program. The clients of Pennant include community banks, Qualified Retirement Plans, municipalities and governmental entities, and labor unions. Pennant has acquired 26 such loans originated by FFF. Although all of the loan materials provided by FFF are facially regular and complied with USDA’s Good Delivery Requirements, Pennant has now discovered that at least three of the loans it acquired from FFF are fraudulent; the borrowers do not exist, and the USDA has told Pennant that the loans are not reflected in its books and records and may not be legitimately guaranteed. The scope of the fraud may be broader, but at least 3 loans with purportedly “guaranteed” balances totaling Twenty Two Million Eight Hundred Twenty Thousand Dollars (\$22,820,000.00), purchased by Pennant from FFF, have now been revealed to be shams. This action seeks to recover for this fraud perpetrated on Pennant by FFF, its principal, Nikesh, his co-conspirator Trisha, and the Patel Entities, into which portions of the proceeds of the fraud were secreted, and to obtain a pre-judgment attachment and/or injunctive relief to preserve the fruits of that fraud which are held in accounts and property in the name of Nikesh, Trisha, or the Patel Entities, while this Court addresses the merits of Pennant’s claims.

THE PARTIES

1. Pennant is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin, but also doing business in Lisle, Illinois. It is engaged in the business of acquiring USDA and SBA guaranteed loans on behalf of community banks, Qualified Retirement Plans, and municipalities and political subdivisions. These clients purchase interests in funds consisting of such guaranteed loans. Although the instruments are held by custodians and sub-custodians, Pennant is the beneficial owner of the obligations represented by the instruments and is, therefore, the real party in interest

for the purpose of prosecuting the claims described herein. Pennant is a Registered Investment Advisor within the meaning of the Investment Advisor Act of 1940.

2. FFF is a Florida limited liability company. On information and belief, its sole member is Nikesh Patel, a citizen of the state of Florida. FFF was, at all relevant times, a USDA-approved non-traditional (non-bank) lender operating in the states of Florida and Georgia. As a USDA-approved lender, FFF originated loans, represented that those loans were secured with USDA guarantees, sold them to asset managers, including Pennant, and allegedly serviced said loans for a fee.

3. Nikesh is an individual and citizen of the State of Florida. At all relevant times, Nikesh was the sole and managing member of FFF.

4. Trisha is an individual and citizen of the State of Florida. Trisha is the wife of Nikesh, and conspired with him and FFF to accomplish the fraud alleged herein. Trisha was previously employed by Quadrant Financial, Inc., and her duties included working with the USDA-guaranteed Rural Development loan program. In the course of that employment, she had the opportunity to gain a detailed understanding of the how the program worked and where its vulnerabilities might lie.

5. Alena Hospitality, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

6. Alena Laboratories, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

7. Alena Aviation, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

8. Able Connection, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

9. NPSSS, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

10. Kuber Capital Funding, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

11. Kuber Consulting is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

12. Suri Hospitality, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

13. Suri Hospitality International, LLC is a Florida limited liability company. Upon information belief, Nikesh and/or Trisha, both citizens of the state of Florida, are the only members of the company.

14. Each of the Patel Entities identified above are undercapitalized, formalities have been disregarded, assets have been comingled among them, and they are otherwise

used principally, if not wholly, as conduits to secret assets fraudulently obtained by FFF. As alleged more fully below, the Patel Entities were used as part of the scheme to defraud. Thus, they should be pierced to satisfy the claims alleged herein.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. Pennant is a citizen of the state of Wisconsin, while each of the Defendants is a citizen of the state of Florida. The amount in controversy exceeds \$75,000 exclusive of interest and costs.

16. This Court has personal jurisdiction over these Defendants pursuant to 735 ILCS 5/2-209(a)(1), (2), (7), and (11), as the claims herein involve the transaction of business within this State, the commission of a tortious act with this State, the making or performance of contracts or promises substantially connected with this State, and the breach of fiduciary duties with this State.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2), as this is a District in which a substantial part of the events or omissions giving rise to the claim occurred. Electronic copies of the loan packages which are the vehicle of this fraud were sent to Pennant in its offices in Lisle, Illinois, and each of the wire transfers initiated by Pennant which represent the injuries which flowed from the fraud were initiated by Pennant in Lisle, Illinois.

FACTUAL BACKGROUND

A. FFF Loans Acquired by Pennant

18. Pennant is in the business of funding and acquiring, through a secondary market, USDA and SBA guaranteed loans originated by third party USDA or SBA approved lenders such as FFF. These loans are placed in funds in which Pennant's

clients invest (the “Pennant Funds”). Pennant’s clients include community banks, Qualified Retirement Plans, and municipalities and political subdivisions located largely but not exclusively in Illinois. These clients invest in the Pennant Funds because the obligations are guaranteed by the Full Faith and Credit of the United States of America, and are viewed by them as essentially risk-free.

19. Pennant is the leading purchaser of USDA-guaranteed Rural Development Business & Industry loans (“USDA Loans”), and manages loans on behalf of its clients with an aggregate guaranteed value of approximately Eight Hundred Fifty Million Dollars (\$850,000,000.00).

20. Prior to April 2, 2013, Pennant was introduced to FFF as a USDA-approved originator of USDA Loans. Pennant confirmed with the USDA FFF’s status as a USDA- approved “non-traditional” lender from which it could safely acquire loans. Pennant understood that in order to secure USDA approval, non-traditional lenders must go through an approval process by the USDA at both the State and National level. Based on applicable federal regulations relating to such approval, it understood and relied on the fact that if FFF had been approved by the USDA, it had undergone a supposedly rigorous vetting process by both the State and National USDA Offices.

21. Beginning in June 2013, Pennant funded and acquired 26 separate loans originated by FFF reflecting loans to a variety of borrowers in Florida and Georgia. Copies of the packages of documents required for “Good Delivery” of each such loan were sent by the custodian to Pennant at its Lisle Office, and the corresponding payments Pennant wired for each such loan were initiated at its Lisle Office. Each loan “package”, the assembly of which the USDA entrusted to its approved lenders without any USDA or

third party oversight, complied with the "Good Delivery Requirements" of the USDA in that the papers were in the correct form and appeared to bear all necessary signatures. Among those necessary signatures were the signatures of USDA officials in either its Gainesville, FL or Athens, GA office on the USDA Guarantee.

22. Among the loans acquired by Pennant were the following three loans:

- a. The \$5,495,000.00 USDA-guaranteed portion of a \$7,850,000.00 loan to Sri Nath Hospitality, LLC, dated September 19, 2013, bearing USDA Loan ID Number 10-041-317982406, with a guarantee purportedly executed on behalf of the USDA by Quinton Robinson, the USDA State Director for Georgia. A copy of the "Good Delivery" materials provided by FFF to Pennant's custodian for Pennant's benefit regarding the Sri Nath Hospitality, LLC loan is attached as Group Exhibit "A";
- b. The \$9,000,000.00 USDA-guaranteed portion of a \$10,000,000.00 loan to South Side Realty Investments, LLC dated November 15, 2013, bearing USDA Loan ID Number 10-034-714850216, with a guarantee purportedly executed on behalf of the USDA by Quinton Robinson, the USDA State Director for Georgia. A copy of the "Good Delivery" materials provided by FFF to Pennant's custodian for Pennant's benefit regarding the South Side Realty Investments, LLC loan is attached as Group Exhibit "B" ; and

- c. The \$8,325,000 USDA-guaranteed portion of a \$9,250,000.00 loan to Weatherbee Stone, LLC dated February 17, 2014, bearing USDA Loan ID Number 10-034-742501315, with a guarantee purportedly executed on behalf of the USDA by Quinton Robinson, the USDA State Director for Georgia. A copy of the “Good Delivery” materials provided by FFF to Pennant’s custodian for Pennant’s benefit regarding the Weatherbee Stone, LLC loan is attached as Group Exhibit “C”.

23. Pennant beneficially acquired each of the loans described in the preceding paragraph (collectively the “FFF Loans”) by funding the guaranteed portion of the loan, which was remitted to FFF to remit to its borrower. It did so for good and valuable consideration, based on the provision of the USDA Full Faith and Credit guarantee, the fulfillment of the “Good Delivery” requirements of the USDA, and without notice or knowledge there was any defect in the FFF Loans or USDA guarantee.

B. Defendants’ Wrongful Conduct

24. Until September 18, 2014, Pennant as the purchaser and beneficial owner of the FFF Loans, had no notice or knowledge that those loans were anything other than bona fide obligations of legitimate borrowers with legitimate, enforceable USDA guarantees. Nor did Pennant have any notice or knowledge that FFF was anything other than a legitimate, USDA-approved lender that was dutifully originating and then servicing the FFF Loans and remitting principal and interest payments from borrowers as they were received.

25. In the days immediately preceding September 18, 2014, during a routine review of the documentation regarding the FFF Loans, inconsistencies came to light. Those inconsistencies triggered a more thorough review.

26. Pennant's review revealed that none of the three borrowers reflected in the FFF Loans appears to exist; any identifying information, including postal addresses, either did not exist at all, or have nothing to do with the purported borrower. Nor were Pennant employees able to find any such business entities in Georgia.

27. Pennant's review also revealed that the CPA who allegedly performed the most recent audit of FFF, and whose audited financial statement was provided to Pennant, does not exist. Pennant's review also determined that the Uniform Resource Locator web address, or "URL", for the e-mail address provided for the alleged CPA is associated with one of the Patel Entities.

28. On September 18, 2014, the USDA Athens, Georgia office out of which these FFF Loans were approved, and from which the guarantee was purportedly issued, confirmed that it has no record of any of the 3 FFF Loans. A copy of the communication in which the USDA confirmed that fact is attached as Exhibit "D".

29. FFF has used its status as a USDA-approved lender to perpetrate a fraud on Pennant. It sent packages for the FFF Loans which represented that there were actual borrowers, and that the USDA had approved and guaranteed the FFF Loans. Both of those written representations were false, and were known to FFF, Nikesh, and Trisha to be false at the time those representations were made. In fact FFF, through Nikesh and Trisha, invented each of these 3 "borrowers" out of whole cloth, and forged the signatures of USDA officials on guarantees.

30. Pennant reasonably relied on these misrepresentations. It had already confirmed that FFF was a USDA-approved lender, its custodian inspected the documents provided and confirmed that Good Delivery had been made, and Pennant then funded the USDA-guaranteed portion of the 3 FFF Loans by remitting proceeds to FFF, expecting the proceeds would be remitted in turn to the borrower.

31. Thereafter, presumably using a portion of the proceeds of the fraud to do so, FFF remitted the monthly principal and interest payments to Pennant on the 3 FFF Loans as they came due, further misleading Pennant into believing the FFF Loans were legitimate and bona fide.

32. FFF has been able to maintain this fraud because it merely pocketed the loan proceeds that supposedly went to the fictitious borrower, diverted some of the proceeds to the Patel Entities, and used the balance of the proceeds to purchase real estate investment properties and other investments, purchase a lavish personal residence in Windermere, FL, is negotiating to develop fifty Bennigan's franchised restaurants in India, and has deposited the balance in accounts in the name of Nikesh or Trisha in various financial institutions, retaining enough liquidity to make principal and interest payments so the FFF Loans appear to be fully performing, good loans.

33. Nikesh is either of Indian descent or is an Indian national. As alleged above, he has made substantial investments in India, presumably with Pennant's money, and has approximately Three Million Five Hundred Thousand Dollars (\$3,500,000.00) in cash in accounts largely in his or Trisha's name (the "Patel Accounts").

34. Without a real borrower, the loans FFF sold to Pennant are worthless. The value of the assets held by Patel, which represent the proceeds of his fraud, must be

safeguarded to protect Pennant's clients, and there is a real and genuine risk that without injunctive relief or a prejudgment attachment, Nikesh and Trisha will flee the jurisdiction of this Court and those assets will disappear.

COUNT I – FRAUD

35. Pennant repeats and realleges paragraphs 1 through 34 as this paragraph 35 as though fully set forth herein.

36. The actions of Nikesh and Trisha, through FFF, in selling notes allegedly executed by non-existent borrowers and providing forged USDA guarantees, constitute material misrepresentations which they knew to be false at the time made, and which were made with the intent that Pennant rely on those misrepresentations.

37. Pennant in fact did rely on those misrepresentations to its detriment when it funded each of the 3 FFF Loans.

38. Pennant's reliance was reasonable; it received written assurance from USDA that FFF was a USDA-approved lender, the papers it received constituted Good Delivery according to industry practice and USDA requirements, and the FFF Loans thereafter performed as agreed because Nikesh and Trisha, through FFF, retained sufficient portions of the fraudulently obtained loan proceeds to make the required monthly payments.

39. Pennant has been injured by its reliance on the fraud perpetrated by Nikesh and Trisha in an amount not less than Twenty Two Million Eight Hundred Twenty Thousand Dollars (\$22,820,000.00).

40. Pennant should be awarded punitive damages as the claims herein represent a blatant fraud involving forgeries of officials of the United States Government,

will injure the community banks, qualified retirement plans, and municipalities and political subdivisions that make up Pennant's clients, and implicate the Full Faith and Credit of the United States of America.

41. Pennant has established, as detailed in the allegations above, a strong likelihood of success on its claims.

42. Pennant has no adequate remedy at law for Defendants' misconduct and will suffer irreparable harm if the assets in the Patel Accounts are allowed to be transferred or dissipated.

43. Pennant is also exposed to irreparable harm because FFF and the Patel Entities are likely and/or potentially insolvent.

44. The balance of hardships and the public interest favor granting injunctive relief in favor of Pennant and enjoining Defendants from transferring or disposing of any of the assets held in the Patel Accounts.

COUNT II – CLAIM FOR PRE-JUDGMENT ATTACHMENT

45. Pennant repeats and realleges paragraphs 1 through 44 as this paragraph 45 as if fully set forth herein.

46. Pennant has a claim against Defendants for Twenty Two Million Eight Hundred Twenty Thousand Dollars (\$22,820,000.00).

47. Defendants are not residents of the State of Illinois.

48. Defendants have substantial connections to India and have investments in India and the ability to easily transfer their assets to India.

49. Pennant believes that Defendants are about to fraudulently conceal, assign, or otherwise dispose of their assets and/or property, so as to hinder or delay Pennant's lawful efforts to enforce its claims.

50. As alleged above, the claim and debt sued for was fraudulently contracted on the part of Nikesh and Trisha, through FFF. Those defendants manufactured a fictitious loan out of whole cloth, executed notes and other documents in the name of fictitious borrowers, forged the signatures of USDA officials, and otherwise executed documents in FFF's name, including an assignment of guaranty and other papers in favor of Pennant, in furtherance of this fraud. The statements of the Defendants which constituted the fraud were, therefore, reduced to writing, and the signature of Nikesh was attached thereto and was attached both in his own capacity and as an agent for FFF and Trisha.

51. Pennant, therefore, has met the requirements for and is entitled to an Order of Prejudgment Attachment of Defendants' assets under 735 ILCS 5/4-101 and Federal Rule of Civil Procedure 64.

COUNT III – PIERCING THE CORPORATE VEIL

52. Pennant repeats and realleges paragraphs 1 through 51 as this paragraph 52 as if fully set forth herein.

53. As alleged above, the Patel Entities are each mere conduits through which the fraud of the defendants was perpetrated.

54. As alleged above, none of the Patel Entities function as genuine and independent legal entities. None observe business formalities. Their assets are co-mingled, and the proceeds of the fraud have been deposited in accounts held in each of their names.

55. As a result of the foregoing, Pennant is entitled to entry of an order and judgment finding that the claims against Nikesh Patel, Trisha Patel, and FFF may be satisfied through recourse to any assets held in the name of any of the Patel Entities, and grant such other and further relief as the Court deems just.

WHEREFORE, Plaintiff Pennant Management respectfully requests that this Court:

- (a) enter judgment in its favor and against Defendants First Farmer's Financial, LLC, Nikesh Patel, and Trisha Patel on Pennant's fraud claim, jointly and severally, in the amount of Twenty Two Million Eight Hundred Twenty Thousand Dollars (\$22,820,000.00) in compensatory damages,
- (b) enter judgment in its favor and against Defendants First Farmer's Financial, LLC, Nikesh Patel, and Trisha Patel on Pennant's fraud claim, jointly and severally, in the amount Fifty Million Dollars (\$50,000,000.00) in punitive damages,
- (c) award Pennant its attorneys' fees, statutory interest and costs of this suit;
- (d) enter an Order enjoining Defendants, or any of the financial institutions at which funds have been deposited by the Defendants, from removing, transferring or otherwise disposing of any of the assets in the Patel Accounts or permitting the removal, transfer, or other disposition of those assets until such time as this Court has held a preliminary injunction hearing; *or, in the alternative*,
- (e) enter a pre-judgment attachment against all Defendants pursuant to 735 ILCS 5/4-101(1), (8) and (9) and Fed. R. Civ. P. 64, and attach all assets in the names of those Defendants at various financial institutions, including but not limited to, BMO Harris, E*Trade, Bank of America, Sun Trust, PNC Bank, BB&T Bank and Trust, Wells Fargo Bank, and Chase Bank, together with any real or tangible assets which may be identified, including but not limited to, the real property located at 9850 Laurel Valley, in Windermere, Florida,
- (f) enter a judgment in its favor and against Nikesh Ajay Patel, Trisha N. Patel, Alena Hospitality, LLC, Alena Laboratories, LLC, Alena Aviation, LLC, Able Connection, LLC, NPSSS, LLC, Kuber Capital Funding, LLC, Kuber Consulting, Suri Hospitality, LLC, and Suri Hospitality International, LLC finding that there are good and adequate grounds for piercing the corporate veil of each of these entities, allowing Plaintiff recourse to the assets of these entities in satisfaction of any judgment which may be entered against Nikesh Patel, Tricia Patel, or First Farmers Financial, LLC

(g) Grant Pennant such further relief as this Court deems just.

Dated: September 29, 2014

Respectfully submitted,

By: /s/ Paul T. Fox

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