

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-CV-001012-RBJ-KLM

CGC HOLDING COMPANY, LLC, a Colorado limited liability company;  
CRESCENT SOUND YACHT CLUB, LLC, a Florida limited liability company;  
HARLEM ALGONQUIN LLC, an Illinois limited liability company; and  
JAMES T. MEDICK,  
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SANDY HUTCHENS, a/k/a Fred Hayes, a/k/a Moishe Alexander, a/k/a Moshe Ben Avraham,  
*et al.*

Defendants.

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**NOTICE OF PENDENCY OF CLASS ACTION AND  
HEARING ON PROPOSED SETTLEMENT WITH  
DEFENDANT ALVIN MEISELS**

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TO: All Members of the Class, as defined below.

A FEDERAL COURT AUTHORIZED THIS NOTICE. YOU HAVE RECEIVED THIS NOTICE BECAUSE YOU MAY BE ONE OF THE PEOPLE WHOSE RIGHTS WILL BE AFFECTED BY THE ACTION AND THE PROPOSED SETTLEMENT. YOU ARE URGED TO READ THIS NOTICE CAREFULLY. **THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED, YOU DO NOT NEED TO APPEAR IN COURT, AND YOU HAVE NO OBLIGATION TO RESPOND OR TAKE ANY FURTHER ACTION.**

THIS NOTICE DESCRIBES A PROPOSED SETTLEMENT, ON A CLASS-WIDE BASIS, OF CLAIMS AGAINST ONE OF MANY DEFENDANTS IN THE ABOVE-TITLED ACTION. IF YOU DECIDE NOT TO PARTICIPATE IN, OR BE BOUND BY, THE ACTION AND THE PROPOSED SETTLEMENT IN THE MANNER DESCRIBED BELOW, OR IF YOU WISH TO OBJECT TO THE PROPOSED SETTLEMENT, YOU MUST DO SO IN THE MANNER DESCRIBED BELOW ON OR BEFORE **NOVEMBER 5, 2015.**

## I. THE PURPOSE OF THIS NOTICE

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Order from the United States District Court for the District of Colorado (the “Court”) granting preliminary approval of settlement dated September 30, 2015 (“Preliminary Approval Order”), to inform you that **a hearing will be held before the Honorable R. Brooke Jackson at the United States Courthouse, 901 Nineteenth Street, Courtroom A902, Denver, Colorado 80294 on November 19, 2015 at 9:00 a.m.** (the “Fairness Hearing”). The purpose of the Fairness Hearing is to determine whether the proposed settlement (the “Settlement”) of the claims asserted in this class action against Defendant, Alvin Meisels (“Meisels”), should be approved by the Court as fair, reasonable, and adequate. The Settlement calls for Meisels to make a payment to the Class in the amount of \$750,000.00, in exchange, for dismissal, with prejudice, of all claims against Meisels relating to or arising out of Plaintiffs’ allegations.

## II. SETTLEMENT CLASS DEFINED

The Court, by previous Order, has certified the following Class:

All US residents or domiciled entities (1) who were issued loan commitments between January 1, 2005, and April 7, 2013, (2) by Canadian Funding Corporation, First Central Mortgage Funding Inc., 308 Elgin Street, Inc., Northern Capital Investments Ltd., Great Eastern Investments, LLC, or by any other entity controlled by Sandy Hutchens, (3) whose loan commitments were not funded (4) but who paid money to any defendant (5) without having been informed that Moishe Alexander, Moshe Ben Avraham, Fred Haynes, Alexander MacDonald, Mathew Kovce, Fred Merchant, or other aliases, as the case might be, were names used by Sandy Hutchens, and that that individual had a criminal history including a conviction for fraud.

If you are within the definition set forth above, then you are a Class Member.

This Notice is also being given to inform Class Members of their right to either object to, or request exclusion from, the proposed Settlement. If approved, the Settlement will affect the rights of all Class Members who do not request exclusion from the Class as described below. This Notice is not an expression of any opinion by the Court as to the merits of any claims or any defenses asserted by any party in this Action, or the fairness or adequacy of the proposed Settlement.

## III. THE NATURE OF THE ACTION

This case concerns allegations by the Plaintiffs of a purported advance fee loan fraud scheme operated out of Toronto and directed toward persons in the United States. The essence of the alleged fraud was the issuance of loan commitments to persons in search of financing or refinancing of real estate conditioned upon the immediate payment of substantial fees. Plaintiffs

allege that following the payment of up-front fees, an excuse would be found for denial of the loans and the fees paid would not be returned.

The main actor in the alleged fraud is Sandy Hutchens (“Hutchens”) (aka “Fred Hayes,” aka “Moishe Alexander,” aka “Moshe Ben Avraham,” aka “Frederick Merchant,” aka “Mathew Kovce”). Participating with him were his wife, Tanya, and daughter, Jennifer. The Hutchens family and a series of corporations which they owned and controlled (collectively referred to hereinafter as the “Hutchens Defendants”) allegedly received assistance from a number of professionals in the United States and Canada who purportedly vouched for the legitimacy of the Hutchens Defendants’ loan business.

There is no claim in this case that Hutchens Defendants breached any loan commitment or otherwise breached any promise or obligation to fund any loan. Rather, Plaintiffs allege that the Hutchens Defendants were not in the lending business at all because they did not have either the capability or intent to fund any of the loans committed.

Plaintiffs believe the Hutchens Defendants were able to create and maintain the appearance of being in the lending business by concealing or obscuring the identity of Hutchens and the public links between his name and his criminal history. Plaintiffs allege that various professionals in the United States and Canada unlawfully assisted the Hutchens Defendants to conceal Hutchens’ identify. Plaintiffs allege that had they, or members of the Settlement Class, known with whom they were actually dealing, they would not have paid the advance fees which they seek to recover in this case. Meisels was, from approximately February 10, 2005 to March 23, 2010, legal counsel to Hutchens and, subsequently for First Central Mortgage Funding Inc. (“FCMF”), Canadian Funding Corporation (“CFC”), 308 Elgin Street Inc. (“308 Elgin”), Northern Capital Investments Ltd. (“NCP”) and Great Eastern Investment Fund, LLC (“Great Eastern”), entities controlled by Hutchens, and, in that capacity, Meisels had dealings with certain of Hutchens’ loan applicants, who are Members of the Class certified in this action. Meisels denies liability.

THE COURT HAS NOT DECIDED ANY OF THE SUBSTANTIVE CONTENTIONS OF THE PARTIES AND, THEREFORE, NO INFERENCES REGARDING THE MERITS OF THE LAWSUIT SHOULD BE DRAWN FROM THE SENDING OF THIS NOTICE. THE GIVING OF THIS NOTICE IS NOT MEANT TO IMPLY THAT THERE HAVE OR HAVE NOT BEEN ANY VIOLATIONS OF LAW OR CONTRACT, OR THAT RECOVERY AFTER TRIAL COULD OR COULD NOT BE HAD IF THE LAWSUIT AGAINST MEISELS PROCEEDED THROUGH TRIAL.

#### IV. THE PARTIES TO THE ACTION

**Class Representatives:** The following plaintiffs (“Plaintiffs”) have been certified by the Court to bring this lawsuit on behalf of themselves and all others within the Class and join in the Settlement:

1. CGC Holding Company, LLC (“CGC”), a Colorado limited liability company with its principal place of business in Parker, Colorado.

2. Harlem Algonquin LLC, an Illinois limited liability company with its principal place of business in Lincolnshire, Illinois.

3. James T. Medick, an individual who resides in Las Vegas, Nevada.

**Hutchens Defendants:** The Hutchens Defendants are:

1. Sandy Hutchens, his wife, Tanya Hutchens, and daughter, Jennifer Hutchens.

2. Entities owned and controlled by the Hutchens family, including: First Central Mortgage Funding Inc. (“FCMF”); Canadian Funding Corporation (“CFC”); 308 Elgin Street Inc. (“308 Elgin”); Northern Capital Investments Ltd. (“NCI”) and Great Eastern Investment Fund, LLC (“Great Eastern”).

3. Plaintiffs believe the Hutchens Defendants had approximately 20 entities which were used to purchase Canadian real estate with the monies received as advance fees on the loan commitments that were issued.

**Other Defendants:** In addition to the Hutchens Defendants, the following individuals and entities are or were defendants:

1. Jan Luistermans and Realty 1, an Ontario real estate broker and his real estate firm (collectively, “Luistermans”).

2. Blaney McMurtry LLP, an Ontario law firm, which settled the claims against it in 2013. After a notice was sent to Class members, the Court approved the settlement.

3. Broad and Cassel, Ronald Gache and Carl Romano, a Florida law firm and two partners thereof, who settled the claims against them in June 2015. After a notice was sent to Class members, the Court approved the settlement.

## V. PLAINTIFFS’ CLAIMS

Plaintiffs filed this lawsuit as a putative class action, stating the following claims:

1. Civil remedies under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* (“RICO”);

2. Conversion;

3. Negligent misrepresentation;

4. Constructive trust; and

5. Unjust enrichment.

On December, 8, 2014, the United States Court of Appeals for the Tenth Circuit affirmed the District Court of Colorado's Order certifying a Class as to Meisels and the Hutchens Defendants.

## VI. CLAIMS AGAINST MEISELS

Plaintiffs allege that the core facts below give rise to liability against Meisels. Meisels has denied, and would continue to deny, liability, resulting in complex, expensive, and protracted litigation.

1. Meisels began representing entities controlled by Hutchens in 2005. Plaintiffs allege that over the course of his representation, which ended in 2010, Meisels became aware of Hutchens' identity and criminal history.

2. Plaintiffs believe that over the course of his representation, Meisels became aware that Hutchens had previously used, and was using, the aliases Fred Hayes, Moishe Alexander, and Moshe Ben Avraham.

3. Plaintiffs allege that, when called upon to do so by Hutchens, Meisels confirmed the legitimacy of the Hutchens Defendants' loan business. They allege as well that, by virtue of Hutchens' use of these aliases, Meisels knew, or should have known, that persons requesting assurance of Hutchens' *bona fides* were ignorant of Hutchens' criminal past.

4. According to Plaintiffs, at the time Meisels made these representations, he knew, or should have known, that "Moishe Alexander," "Moishe Ben Avraham" and "Fred Hayes" were all Hutchens, that the Hutchens' alter egos neither had the appearances of being legitimate lenders nor had closed any loans of the magnitude that were committed.

5. Plaintiffs contend Meisels, when responding to specific requests concerning the Hutchens Defendants with affirmative information, did not volunteer these adverse facts so as to make his disclosures not misleading.

6. Meisels terminated the Hutchens Defendants as clients on March 23, 2010.

7. Meisels denies these allegations. Meisels asserts that he relied on information provided from accountants, other attorneys and esteemed members of the Toronto Jewish community, confirming Hutchens was reformed, the Hutchens Defendants closed numerous loans, had \$100 million in assets and had a co-lender prepared to fund loans in the amount of \$320 million. Meisels claims that his role was limited; he acted as litigation counsel and had sporadic involvement in a handful of loans. Meisels relies on correspondence with the Hutchens Defendants in which he recommended that Hutchens provide full disclosure regarding his background from the beginning and recommended refunding advance fees to borrowers when disputes arose. Meisels also contends that when he developed concerns regarding the Hutchens Defendants' business, on March 23, 2010 he terminated his legal representation. Meisels argues that these acts were (1) "[a]ffirmative acts inconsistent with the object of the conspiracy," that

were (2) “communicated in a manner reasonably calculated to reach co-conspirators.” *United States v. United States Gypsum Co.*, 438 U.S. 422, 464-65 (1978); *Hyde v. United States*, 225 U.S. 347, 369 (1912).

## **VII. TERMS OF THE SETTLEMENT**

Conditioned on Court approval, Meisels, subject to the terms and conditions of the Settlement Agreement Between Plaintiffs and Meisels, will pay \$750,000 into the trust account of Plaintiffs’ Counsel (Shepherd, Finkelman, Miller & Shah, LLP), to be distributed as the Court directs at the conclusion of the case.

Pursuant to the Settlement, Plaintiffs and Class Members (at times, “Releasors”) on behalf of themselves, and their successors, heirs, and assigns, remise, release, acquit, satisfy and forever discharge Meisels of and from any and all claims, and will forever be enjoined from prosecuting, against Meisels, including each of his past and present predecessors, heirs, executors, successors, and assigns, parent, subsidiary, affiliates, entities, insurers, reinsurers and any and all of his, her, its and/or their respective past and present officers, directors, agents, attorneys, accountants, insurers, servants, employees, shareholders, members, and partners, and their respective heirs and personal representatives (“the Released Parties”), from all manner of claims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, stipulations, promises, damages, and demands whatsoever, in law or in equity, which Releasors had or now have, or which any successor or assign of Releasors hereafter can, shall or may have, against any of the Released Parties for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world, whether known or unknown, direct or indirect, vested or contingent, accruing at any time prior to [*the date of the Preliminary Approval Order*] (the “Settled Claims”). The Settled Claims include claims which Plaintiffs and Class Members do not know of or suspect to exist as of [*the date of the Preliminary Approval Order*], which, if known by them might affect their settlement of the Action. Plaintiffs and all Class Members shall be deemed to have expressly waived the provisions of California Civil Code § 1542 and any similar provision of the law of any other jurisdiction that might otherwise render the release and covenant not to sue unenforceable with respect to unknown claims.

If the Court approves the Settlement, all Settled Claims will be dismissed on the merits with prejudice as to all Class Members and all Class Members will be forever barred from prosecuting any other action raising any Settled Claims against any Released Parties, unless that Class Member has taken the steps described below to request exclusion from the Class.

The Settlement will become effective when the Court issues an Order and Final Judgment approving the Settlement (the “Effective Date”).

## **VIII. REASONS FOR RECOMMENDING THE PROPOSED SETTLEMENT**

In deciding to settle the claims against Meisels, Plaintiffs and their counsel took into account: the substantial expense and length of time necessary to develop arguments and prosecute, through trial, the claims against Meisels; the expense of post-trial motions and likely appeals; the difficulty of collecting on any judgment against Meisels; issues relating to insurance

coverage of claims asserted against Meisels; and the significant uncertainties in predicting the outcome of this complex litigation.

## **IX. USE OF SETTLEMENT PROCEEDS**

The payment made pursuant to the Settlement shall be held in trust by Plaintiffs' Counsel until the conclusion of this lawsuit. At that time, the Settlement proceeds, together with any other funds obtained through further settlement or judgment, if any, will be distributed to the Class pursuant to a formula to be approved by the Court hearing this matter.

Plaintiffs' counsel will make an application for attorneys' fees to be paid from the proceeds of the Settlement. Plaintiffs' counsel will ask that they be paid a fee equal to 1/3 of the \$750,000 payment to the Class, or \$250,000. Plaintiffs' counsel will not seek a separate award of costs and expenses.

## **X. CLASS MEMBER RIGHTS: OBJECTING AND REQUESTING EXCLUSION**

The Court has approved this lawsuit to proceed as a class action. As a Class Member, you will be represented by Plaintiffs' Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file an appearance on your behalf with the Court no later than fourteen (14) calendar days prior to the Fairness Hearing, and must serve copies of such appearance on the attorneys listed below. *If you wish to remain a Class Member and to share in the benefits of this litigation, you need not do anything at this time; however, if you wish to (1) object to the Settlement at the Fairness Hearing, or (2) request exclusion from the Class, you must follow the procedures below.*

### **Objecting to the Settlement and Being Heard at the Fairness Hearing**

*You are not required to attend the Fairness Hearing unless you object or otherwise wish to be heard.*

At the Fairness Hearing, the Court will determine whether to (i) approve the Settlement, and (ii) enter an Order and Final Judgment that would, among other things, effect a release by Plaintiffs and Class Members of all Settled Claims against the Released Parties. The Fairness Hearing may be adjourned from time to time by the Court without further written notice to the Class.

Class Members are entitled to appear in person or through counsel and present any evidence or argument that may be proper and relevant to the proposed Settlement. If you wish to object to or otherwise be heard regarding the Settlement, you must file with the Court and serve on the counsel identified below, no later than fourteen (14) calendar days prior to the Fairness Hearing, a notice of intent to appear and a written objection (including any documents and writings you wish the Court to consider). The notice and objection should be filed and served in the manner set forth in the subsection below entitled, "Directions for Submitting Objections and

Request for Exclusion.” *Any Class Member who does not object to the Settlement in the manner provided herein shall be deemed to have waived any such objection.*

**Requesting Exclusion from the Class**

*If you do not wish to remain a Class Member, you must affirmatively request exclusion from the Class.* Each Class Member shall be bound by all determinations and judgments in this action concerning the Settlement, whether favorable or unfavorable, unless such Class Member shall file with the Court and serve on counsel, in the manner set forth in the “Directions for Submitting Objections and Request for Exclusion” subsection below, no later than fourteen (14) calendar days prior to the Fairness Hearing, a written Request for Exclusion from the Class. In order to be valid, the request for exclusion must state:

“I [or We] hereby request to be excluded from the Class in the *CGC Holding Company, et al., v. Sandy Hutchens, et al.* lawsuit (Civil Action No. 98 11-cv-1012).”

The Request for Exclusion should be signed and dated and include the Class Member’s name, address, and telephone number. No person or entity may be excluded from the Class after **November 5, 2015**. *Any Class Member who does not affirmatively request exclusion from the Class will remain in the Class and be subject to the Settlement.*

**Directions for Submitting Objections and Requests for Exclusion**

The notice of intent to appear and written objection, or any request for exclusion, shall be deemed to have been filed with the Court on the date it is hand delivered or postmarked, first class, postage prepaid, to:

United States District Court  
Alfred A. Arraj United States Courthouse  
901 19th Street, Room A-1 05  
Denver, CO 80294-3589

It shall be deemed served on Plaintiffs’ Counsel on the date it is hand delivered or postmarked, first class, postage prepaid, to:

Scott R. Shepherd  
Shepherd, Finkelman, Miller & Shah, LLP  
35 East State Street  
Media, PA 19063

It shall be deemed served on Defendant Meisels’ Counsel on the date it is hand delivered or postmarked, first class, postage prepaid, to:

John M. Palmeri  
Gordon & Rees  
555 17<sup>th</sup> Street, Suite 3400  
Denver, CO 80202

**XI. FURTHER INFORMATION**

*All inquiries concerning this notice should be made to Plaintiffs' Counsel, Scott R. Shepherd at (610) 891-9880. No inquiries should be directed to the Court.*

For a more detailed statement of the matters involved in this Action, you may refer to the pleadings, the Stipulation, the Orders entered by the Court and the other papers filed in the lawsuit, which may be inspected at the Office of the Clerk of the United States District Court for the District of Colorado, 901 19<sup>th</sup> Street, Denver, CO 80294, during regular business hours. The Stipulation of Settlement has been filed and is available for Class Members to review.

If you change your address, or if this Notice was forwarded to you from a different address, you should advise Plaintiffs' Counsel of your new address to ensure that future communications reach you. Contact information for Plaintiffs' Counsel is provided above.

Entered this 30<sup>th</sup> day of September, 2015.

FOR THE COURT:



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R. Brooke Jackson  
United States District Court Judge