

**CAUSE NO. 2024-33918**

**RAPHAEL YONKO**  
**Plaintiff**  
v.

§ **IN THE DISTRICT COURT**  
§  
§  
§ **133RD JUDICIAL DISTRICT**  
§  
§  
§  
§ **HARRIS COUNTY, TEXAS**

**JMB HOME TOTAL SOLUTIONS LLC**  
**AND CARRINGTON MORTGAGE**  
**SERVICES, LLC**  
**Defendants**

**DEFENDANT JMB HOME TOTAL SOLUTIONS LLC'S**  
**FIRST AMENDED ANSWER AND COUNTERCLAIMS**  
**AND**  
**REQUEST FOR TEMPORARY RESTRAINING ORDER**  
**AND FOR**  
**TEMPORARY INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW** JMB TOTAL HOME SOLUTIONS LLC, Defendant in the above entitled and numbered cause, and files this, its First Amended Answer and Counterclaims herein, complaining of and about Plaintiff Raphael Yonko.

Defendant also requests immediate and temporary injunctive relief from Plaintiff's scheme of abuse of process and wrongful injunctions to stay in possession of a home for which he has not made a single loan payment since December 2023.

In support of its claim for damages and request for injunctive relief, the lender, Defendant JMB TOTAL HOME SOLUTIONS LLC, would respectfully show the Court, as follows:

**GENERAL DENIAL**

Defendant denies each and every, all and singular, the allegations in Plaintiff's Original Petition and demands strict proof hereof, at this time asserting a

general denial, as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court and Jury require Plaintiff to prove all claims, charges, and allegations by no less than a preponderance of the evidence, as required by the Constitution and the laws of the State of Texas.

### **DESIGNATION OF ADDRESS FOR ELECTRONIC SERVICE**

Pursuant to Texas Rules of Civil Procedure 21a(a)(2) and 57, Defendant hereby designates the following email address for electronic service:

[service@hayeshunterlaw.com](mailto:service@hayeshunterlaw.com) ; [chunter@hayeshunterlaw.com](mailto:chunter@hayeshunterlaw.com).

### **NOTICE OF INTENT TO USE PRODUCED DOCUMENTS**

Please take notice, pursuant to rule 193.7 of the Texas Rules of Civil Procedure, that Defendant JMB Home Total Solutions LLC will use at any pre-trial proceeding or at trial any document produced by Plaintiff in response to written discovery.

### **COUNTERCLAIMS**

#### ***Discovery Level Plan***

1. Discovery in this case is intended to be conducted under level 2 of Rule 190 of the Texas Rules of Civil Procedure. All parties are compelled by the Texas Rules of Civil Procedure to provide Defendant JMB with all required Disclosures. See Tex. R. Civ. P. 194.2.

#### ***Parties and Service***

2. Defendant and Counter-Plaintiff JMB Total Home Solutions LLC has appeared in this action. Defendant may be served with notice of any responsive

documents to this First Amended Answer and Counterclaims by sending a copy to its attorneys of record, Charles Clinton Hunter and Lucas J. Miller, of HAYES HUNTER PC, located at 4265 San Felipe Street, Suite 1000, Houston, Harris County, Texas, 77027, via the Court's electronic file management system.

3. Plaintiff and Counter-Defendant Raphael Yonko has appeared in this action and may be served with notice of this *First Amended Answer and Counterclaims* by sending a copy to his attorney of record, Robert C. Vilt, of VILT LAW P.C., located at 5177 Richmond Avenue, Suite 1142, Houston, Harris County, Texas, 77056, via the Court's electronic file management system.

#### ***Jurisdiction and Venue***

4. The Court has jurisdiction over all parties to this action because both Plaintiff and Defendant, by appearing and answering through counsel herein, have voluntarily submitted to the jurisdiction of this Court. Further, the amount in controversy is within the jurisdictional limits of this Court.

5. Venue is proper in Harris County, Texas, because the subject matter of this lawsuit involves real property located in such county, and all or a substantial part of the events or omissions giving rise to Defendant's counterclaims occurred in Houston, Harris County, Texas. Thus, venue is proper under Section 15.002 of the Texas Civil Practice & Remedies Code, and Section 15.011 of the Texas Property Code.

## ***Facts***

6. Defendant JMB generally does not dispute the operative facts alleged in Paragraphs 8-12 of *Plaintiff's Original Petition, Application for Injunctive Relief and Request for Disclosures* (“**Petition**”, filed May 29, 2024), except for the allegation of deception in paragraph 12.

7. More specifically, Defendant JMB sold<sup>1</sup> the following real property (the “**Property**”), to Plaintiff Raphael Yonko on or about January 17, 2023 through a *General Warranty Deed with Vendor's Lien (Wraparound)* which was filed in the real property records of Harris County, Texas, under Clerk's File No. RP-2023-18506 (“**Deed**”):<sup>2</sup>

Legal Description:

Lot Twenty-Six (26), Block Two (2) of MERRYLANDS, SECTION ONE (1), an Addition in Harris County, Texas, according to the Map or Plat thereof recorded in Film Code No. 687051 of the Map Records of Harris County, Texas, and commonly known as **7431 Merrylands Drive, Humble, Texas, 77346.**

Harris Central Appraisal District (“HCAD”) Account:  
1404860020026.

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<sup>1</sup> JMB purchased the Property from Jonathan Lorenzo Jones and Brandy Jeneen Jones (jointly, the “**Joneses**”) on or about November 23, 2022. In connection with the sale, the Joneses executed a promissory note in the amount of \$280,156.00 and a Deed of Trust which was filed in the real property records of Harris County, Texas, under Clerk's File No. RP-2020-425971 (the “**Underlying Mortgage**”). See supporting unsworn declaration of Manuel Toro (“**Toro Decl.**”, filed herewith) at Ex. 1 (*Underlying Mortgage*).

<sup>2</sup> See *Toro Decl.* Ex. 2 (Deed).

8. In connection with the transaction, Mr. Yonko executed a “wraparound” promissory note (“**Note**”)<sup>3</sup> in the amount of \$360,000.00, as well as a *Deed of Trust – Wraparound*, which was filed in the real property records of Harris County, Texas, under Clerk’s File No. RP-2023-18507 (“**Deed of Trust**”).<sup>4</sup> Under this wraparound arrangement, Mr. Yonko’s home purchase loan under the Note was “subject to and subordinate to”<sup>5</sup> the Underlying Mortgage (see note 1, *infra*).

9. Per a *Revised Payment Agreement for Promissory Note – Wraparound* signed by Mr. Yonko at closing,<sup>6</sup> Mr. Yonko was obligated to make \$3,131.69 monthly payments (each, a “**Payment**” and collectively the “**Payments**”) on the *Note*. But since becoming responsible for the “wraparound” obligations imposed upon him by the *Deed*, the *Note*, and the *Deed of Trust* (collectively, the “**Sales Documents**”), Mr. Yonko immediately was late on his monthly installment payments—and, at times, missed payments entirely.

10. Indeed, in just the first year of his obligations, Yonko was late on seven (7) Payments. Yonko further missed three (3) months of Payments entirely for the

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<sup>3</sup> See *Toro Decl. Ex. 3* (Note).

<sup>4</sup> See *Toro Decl. Ex. 4* (Deed of Trust).

<sup>5</sup> Specifically, the *Deed of Trust* states that it “shall constitute a subordinate lien upon the [Property], and shall be junior and inferior to the lien of the” Joneses’ promissory note executed with the Underlying Mortgage. Moreover, the *Deed* itself states the Property is conveyed “subject to, and [Mr. Yonko] expressly does not assume liability for payment of,” the Joneses’ promissory note secured by the *Deed of Trust*.

<sup>6</sup> See *Toro Decl. Ex. 5* (revised payment agreement).

months of May, September, and November of 2023 (though Yonko “recovered” by “double-paying” the following months), and incurred multiple fees for four (4) months payable to JMB’s loan servicer, AUGUST REI, LLC (“**August REI**”).<sup>7</sup> Mr. Yonko has not paid on his loan obligations since March of 2024, and has not made a substantial payment on the loan since December of 2023.

11. Noticing Mr. Yonko’s spotty performance of his Payment obligations, August REI provided Yonko with a *Notice of Default and Intent to Accelerate*<sup>8</sup> on January 18, 2024, requesting \$6,873.58 (*i.e.*, double the Payment) in certified funds by February 10, 2024.<sup>9</sup> JMB allowed Mr. Yonko to reinstate the loan.

12. When Mr. Yonko subsequently and almost immediately defaulted again, August REI provided another *Notice of Default and Intent to Accelerate* to Mr. Yonko on April 17, 2024,<sup>10</sup> requesting \$6,873.58 in certified funds by May 10, 2024. Receiving no funds, August REI directed the *Deed of Trust*’s substitute trustee, Bret A. Schulte, to notice a foreclosure on the Property for June 4, 2024.

13. Mr. Yonko then filed his *Petition* on May 29, 2024.

### ***Procedural History***

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<sup>7</sup> See *Toro Decl. Ex. 6* (borrower’s statement of account, generated by August REI).

<sup>8</sup> See *Toro Decl. Ex. 7* (January 18, 2024 *Notice of Default and Intent to Accelerate* from August REI).

<sup>9</sup> Mr. Yonko received this *Notice* despite the *Deed of Trust*’s provision that Mr. Yonko “waive[s] all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.”

<sup>10</sup> See *Toro Decl. Ex. 8* (April 17, 2024 *Notice of Default and Intent to Accelerate* from August REI).

14. The Court entered a *Temporary Restraining Order* against JMB on June 3, 2024 (“**First TRO**”), and Mr. Yonko posted bond of \$100.00 that same day. On June 20, 2024, Mr. Yonko and JMB, as well as additional Defendant CARRINGTON SERVICES, LLC (subsequently non-suited) collectively and successfully moved the Court to extend the temporary restraining order (“**TRO**”) to July 1, 2024 so that the parties could mediate this dispute per the requirements of the TRO.

15. The mediation failed. The temporary injunction (“**TI**”) hearing notice for the following Monday was passed by Plaintiff who, in any event, failed to appear at the hearing, and the hearing did not proceed.

16. Free from the restrictions of the **TRO**, Defendant JMB again noticed the Property’s foreclosure for August 6, 2024.

17. Mr. Yonko applied again for emergency injunctive relief on July 31, 2024, frivolously alleging defective notice in that the notice of the August 6, 2024 foreclosure sale did not track statutory language (it did track statutory language). The TRO Court granted Mr. Yonko’s application on August 1, 2024 (the “**Second TRO**”) subject to a bond of \$3,200.00 (which Mr. Yonko posted August 5, 2024) and a second mediation before a TI hearing set for August 12, 2024.

18. Mediation post-*Second TRO* was again unsuccessful. Specifically, Mr. Yonko demanded a reinstatement amount, insisting the rights of the *Underlying Mortgage* on this wraparound *Note* apply to him (they do not).<sup>11</sup>

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<sup>11</sup> Specifically, Paragraph 19 of the *Underlying Mortgage* discusses the conditions in which the “Borrower’s Right to Reinstatement” applies. However, “Borrower” is defined in the *Underlying Mortgage* as the Joneses, and none of the *Sales Documents*

19. The TI hearing set for Monday, August 12, 2024, was passed due to the alleged illness of Defendant's counsel. Despite Plaintiff's request, Defendant has not reset the TI hearing to obtain the trial court's review of evidence supporting the allegations of his petition and TRO applications.

20. Noting that two TROs have been filed without any accompanying TI hearing thereon, and now anticipating Mr. Yonko's *third* TRO application based on claimed reinstatement rights or other rights of the borrower Joneses on the *Underlying Mortgage*, Defendant JMB now counterclaims for declaratory judgment that the Joneses' rights under the *Underlying Mortgage* do not benefit Mr. Yonko, and requests sanctions and an injunction on this basis.

21. No TRO is in force presently.

#### ***Cause of Action – Declaratory Judgment***

22. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

23. Defendant JMB seeks relief pursuant to the Uniform Declaratory Judgment Act, Chapter 37 of the Code. A justiciable controversy exists in that there is a real controversy between the parties and the controversy is one that will be determined by the judicial declaration sought.

24. Specifically, Defendant seeks a judicial declaration and determination that the rights of the borrowers Joneses under the *Underlying Mortgage* do not benefit Mr. Yonko under the *Sales Documents*.

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indicate that Mr. Yonko has *any* rights under the *Underlying Mortgage*.



***Cause of Action – Abuse of Process***

25. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

26. Defendant JMB was served with valid legal process.

27. Mr. Yonko made an illegal, improper, or perverted use of the process after it was issued. Specifically, Defendant JMB has been restrained from properly foreclosing on the Property—in which Mr. Yonko has lived without payment on the *Note* for nearly half a year—based on unsubstantiated allegations of a “loan modification agreement,” see *Petition* ¶¶ 13-16, and frivolous claims of inadequate foreclosure sale notice and non-existent redemption rights.

28. While JMB concedes that Mr. Yonko’s initial TRO was proper for purposes of this claim, Mr. Yonko’s subsequent cancellation (instead of rescheduling) of TI hearings and serial TRO applications to prevent foreclosure constitute illegal, improper, or perverted use of the process and bad faith pleading.

29. Mr. Yonko had an ulterior motive or purpose in using the process improperly. Specifically, Mr. Yonko wished to continue living for free in the Property despite JMB’s foreclosure attempts and to extract “go-away money” from Defendant.

30. Defendant JMB suffered injury because of Mr. Yonko’s improper use of process in the form of lost loan revenue, lost rental income, and lost resale profits.

***Cause of Action – Malicious Prosecution for Wrongful Injunction***

31. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

32. Mr. Yonko instituted or continued civil proceedings against the Defendant JMB.

33. Mr. Yonko acted with malice (*i.e.*, ill will, evil motive, or such gross indifference or reckless disregard for the rights of others as to amount to a willful and wanton act) in the commencement of the proceedings or the continuation of the lawsuit.

34. Mr. Yonko lacked probable cause for the underlying suit as a basis for the first TRO. Defendant JMB would further show that the motives, grounds, beliefs, and evidence Mr. Yonko acted on did not amount to probable cause to commence or continue the proceedings.

35. The first TRO was terminated in Defendant JMB's favor when it expired without review and extension by the trial court on temporary injunction proceedings. Plaintiff did not bring on temporary injunction proceedings because he knew his promised loan modification claims set forth in his petition were fraudulent and without factual support.

36. Defendant JMB suffered special injury (*i.e.*, physical interference with Defendant JMB's person or property, such as arrest, attachment, **injunction**, or sequestration).

### ***Damages and Request for Sanctions***

37. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

38. Defendant JMB sustained economic and actual damages because of the actions and/or omissions of Mr. Yonko described hereinabove, in an amount to be determined at trial but within the jurisdictional limits of this Court.

39. If the Court awards actual damages, Defendant JMB further requests the recovery of exemplary damages against Mr. Yonko, as JMB can prove by clear and convincing evidence that its harm results from Mr. Yonko's (1) fraud; (2) malice; or (3) gross negligence. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a).

40. Additionally, or in the alternative, Defendant JMB respectfully requests the Court issue injunctive relief, as discussed more fully below.

41. Additionally, or in the alternative, Defendant JMB requests the Court sanction Mr. Yonko under TEX. R. CIV. P. 13, TEX. CIV. PRAC. & REM. CODE Chapter 10,<sup>12</sup> or the Court's inherent power, for his bad-faith applications for temporary restraining order that after nearly *three months* have never placed the merits of Mr. Yonko's claims before the trial court.

### ***Request for Temporary Restraining Order***

42. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

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<sup>12</sup> *See* TEX. CIV. PRAC. & REM. CODE § 10.004(c)(1) (sanctions include "a directive to the violator to perform, or refrain from performing, an act.").

43. Pursuant to TEX. R. CIV. P. 680, *et seq.*, Defendant JMB seeks a TRO against Plaintiff (and his agents, servants, employees and anyone in active concert or participation) that:

- a. RESTRAINS Raphael Yonko, and/or any of his employees, agents, representatives, attorneys, trustee(s) and/or substitute trustee(s), and anyone in active concert or participation, from preventing foreclosure upon the Property prior to its September 3, 2024 foreclosure sale by filing an application for temporary restraining order based on the borrowers' rights in the *Underlying Mortgage*.

44. Defendant JMB is likely to recover from Mr. Yonko after a trial on the merits because the *Sales Documents* demonstrate that any rights given to the borrower Joneses under the *Underlying Mortgage* and corresponding promissory note do not benefit Mr. Yonko.

45. If this Court does not grant this request to restrain Mr. Yonko immediately, Defendant JMB will suffer imminent and irreparable harm in that Mr. Yonko will continue to default under his *Sales Documents* obligations and act on his threat to claim as his own the borrowers' redemption rights as the basis for a third application for TRO enjoining Defendants' foreclosure sale of the Property set for September 3, 2024.

46. Defendant JMB is not opposed to posting a reasonable bond if requested to do so by the Court.

***Request for Temporary Injunction***

47. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein

48. Defendant JMB requests that the Court set the matter for a Temporary Injunction hearing and, after hearing, grant a Temporary Injunction against Mr. Yonko (and his agents, servants, employees and anyone in active concert or participation) that:

- a. RESTRAINS Raphael Yonko, and/or any of his employees, agents, representatives, attorneys, trustee(s) and/or substitute trustee(s), and anyone in active concert or participation, from preventing foreclosure upon the Property prior to its September 3, 2024 foreclosure sale by filing an application for temporary restraining based on the borrowers' rights in the *Underlying Mortgage*.

***Request for Permanent Injunction***

49. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

50. Defendant JMB asks the Court to set its request for a permanent injunction for a full trial on the merits and, after the trial, turn the Temporary Injunction into a Permanent Injunction against Mr. Yonko.

***Attorney Fees***

51. Defendant JMB incorporates by reference each preceding and succeeding paragraph of this petition as though fully set forth herein.

52. Mr. Yonko's acts or omissions as indicated hereinabove have made it necessary for Defendant JMB to employ the undersigned attorney. Because this is a suit for the recovery of real property on a written contract (*i.e.*, the *Sales Documents*), Defendant JMB is entitled to recover its attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001 *et. seq.*

53. Alternatively, and without waiving, amending, or conceding the foregoing argument, this Court may award attorneys' fees in a declaratory judgment action insofar as it deems such an award to be equitable and just. See TEX. CIV. PRAC. & REM. CODE § 37.009. Defendant JMB therefore respectfully requests this Court award it its reasonable and necessary attorney's fees in his declaratory judgment action in accordance with the Texas Civil Practice and Remedies Code.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Defendant prays that upon trial hereof, Defendant have Judgment (*i.e.*, the Court grant its requests for declaratory, monetary, and injunctive relief and for sanctions) against Plaintiff, and that it be adjudged that Plaintiff take nothing against this Defendant by reason of his claims against Defendant, and that Defendant be discharged and go hence without delay and recover of and from Plaintiff all the costs that it has so unduly  
*(continued next page)*

expended, and for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled, and for all of which it will ever pray.

Respectfully submitted,

**HAYES HUNTER, PC**

*/s/ Charles Clinton Hunter*

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**Attorney for Defendant**

**JMB Home Solutions LLC**

Unofficial Copy Office of the District Clerk

**CERTIFICATE OF SERVICE**

I certify that on August 22, 2024 a true and correct copy of the foregoing instrument was served upon Robert C. Vilt electronically through the electronic filing manager.

*/s/ Charles Clinton Hunter*

\_\_\_\_\_  
Charles Clinton Hunter

Unofficial Copy Office of Marilyn Burgess District Clerk



### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Charles Hunter on behalf of Charles Hunter

Bar No. 24072160

chunter@hayeshunterlaw.com

Envelope ID: 91200549

Filing Code Description: Amended Filing

Filing Description: DEFENDANT JMB HOME TOTAL SOLUTIONS LLCS  
FIRST AMENDED ANSWER AND COUNTERCLAIMS AND REQUEST  
FOR TEMPORARY RESTRAINING ORDER AND FOR TEMPORARY  
INJUNCTION

Status as of 8/22/2024 11:20 AM CST

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