

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

RD LEGAL FUNDING, LLC and RD  
LEGAL FUNDING PARTNERS, LP,

Petitioners/Plaintiffs,

vs.

ERIC T. SCHNEIDERMAN, in his official  
capacity as Attorney General of the State of  
New York, and the STATE OF NEW  
YORK,

Respondents/Defendants.

Index No. \_\_\_\_\_/2017

NYSCEF Case

**VERIFIED PETITION**

Plaintiffs, RD Legal Funding, LLC and RD Legal Funding Partners, LP (collectively, “RD Legal”), by and through their attorneys, Calcagni & Kanefsky, LLP, as and for its Verified Petition and Complaint against Defendants Eric T. Schneiderman, in his official capacity as Attorney General of the State of New York (the “NYAG”), and the State of New York (collectively, “Defendants”), allege as follows:

**PRELIMINARY STATEMENT**

1. This action seeks to correct a determination of the NYAG that is certain to have a profoundly adverse and chilling effect on the purchase of legal receivables – a multi-billion dollar industry that fuels important litigation and provides immediate financial relief to individuals in exchange for what a competitive market determines to be fair value.

2. Through a proposed Assurance of Discontinuance issued in mid-October 2016 and communications thereafter, the NYAG has declared that RD Legal’s non-recourse purchase of portions of awards granted to thirteen claimants of a September 11 victims’ compensation

fund are not “true sales” but instead loans, deemed that the transactions violate New York’s usury and consumer protection laws, and demanded the return of \$1.6 million in allegedly “excessive interest,” all based solely on the critically flawed notion that payment of the purchased portions of the awards to RD Legal was always guaranteed.

3. Even setting aside that the NYAG’s determination (i) was rendered without affording RD Legal any meaningful opportunity to refute it, (ii) encompasses claimants who have no nexus to the State of New York, and (iii) is irreconcilable with NYAG’s approach to substantively similar transactions in the past, it is belied by the plain language and operation of the agreements, the relevant case law, and the salient facts.

4. Courts of this and other jurisdictions have made it unequivocally clear that non-recourse purchases in which claimants have assigned their right of recovery and have no obligation of repayment are true sales and, therefore, exempt from state usury laws.

5. As such, declaratory and injunctive relief is necessary to correct this glaring, pervasive error of law, enjoin the NYAG from taking further action that is arbitrary, capricious, and in excess of his jurisdiction, and prevent any further deprivation of RD Legal’s right to procedural and substantive due process.

### **THE PARTIES**

6. Plaintiff RD Legal Funding, LLC is a New Jersey limited liability company duly authorized to do business in the State of New York. Its principal place of business is 45 Legion Drive, Cresskill, New Jersey 07626.

7. Plaintiff RD Legal Funding Partners, LP is a Delaware limited partnership duly authorized to do business in the State of New York. Its principal place of business is 45 Legion Drive, Cresskill, New Jersey 07626.

8. Defendant Eric T. Schneiderman is the Attorney General of New York. RD Legal brings this proceeding against Mr. Schneiderman in his official capacity pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”).

9. Defendant State of New York is a sovereign State and is a necessary party to this action.

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction pursuant to Article 78 of the CPLR.

11. Venue is proper because Defendant Schneiderman’s Consumer Fraud Bureau is located in New York County, New York; the Subpoena *Duces Tecum* and the proposed Assurance of Discontinuance were issued from the Bureau’s New York County office; and two enforcement meetings between the NYAG and counsel for RD Legal took place at the Bureau’s New York County Office.

### **FACTS COMMON TO ALL COUNTS**

#### **A. RD Legal Enters True Sale Agreements with the Zadroga Claimants**

12. In 2011, President Barack Obama signed into law The James L. Zadroga 9/11 Health & Compensation Act (the “Zadroga Act”), pursuant to which the September 11<sup>th</sup> Victim Compensation Fund (“VCF” or the “Fund”) was created. As its name reflects, the VCF was established to compensate individuals suffering physical harm or killed as a result of 9/11-related events.

13. An individual who filed claims with the VCF and proved eligible losses received from the Fund a financial award commensurate with the severity of his or her injury or loss (the “VCF Award”).

14. Through December 31, 2015, there were a total of 22,078 eligibility forms filed with the VCF.

15. From January 2014 through December 2015, RD Legal entered into Assignment and Sale Agreements with thirteen VCF claimants (the “Zadroga Claimants” or “Claimants”), only seven of whom are New York residents, pursuant to which the Claimants sold to RD Legal their rights to future awards from the VCF.

16. The transactions between RD Legal and the Zadroga Claimants (the “Transactions”) were, both in form and function, true sales.

17. Each of the aforementioned Assignment and Sale Agreements contains a “Whereas” clause confirming that the Zadroga Claimants “wish to receive an immediate lump sum cash payment in return for selling and assigning a portion of the Award.”

18. The “Assignments and Consideration” section of each Assignment and Sale Agreement, which delineates the key terms of the purchase, is substantially identical and also plainly provides, in bold-faced type, that the transaction is a “true sale” and that the risks associated with payment of the purchased portions of the Awards were to be borne solely by RD Legal:

**1. Assignments and Consideration**

(a) You hereby sell and assign to RD your interest in \$33,8000 of the Award and any future payments made in satisfaction of the Award (the “Property” or “Property Amount”) free and clear of any interests in the Award held or obtained by third parties (“Adverse Interests”).

(b) In return for the Property, RD Legal will pay you the sum of \$18,590 (Eighteen Thousand Five Hundred Ninety Dollars and No Cents (the “Purchase Price”).

(c) This transaction is a true sale and assignment of the Property to RD Legal and provides RD with the full risks and benefits of ownership of the Property. However, you retain all obligations, liabilities and expenses under or in respect of the Award.

19. The bold-typed notice appearing just above the signature line reiterates that the Claimants are assigning their right to a portion of their VCF Award, and that the purchase price to be paid is “significantly less” than the assigned portion:

**By signing this Agreement, you are assigning your rights to a portion of the Award that you may receive in regard to the Case. In return for your assignment, you will receive an immediate cash payment that is significantly less than the portion of the Award that you are assigning.**

20. Most important and, in fact, dispositive as to the critical legal issue to be determined in this declaratory judgment action, the Agreements expressly and unequivocally provide that RD Legal retained no right of recourse against the Zadroga Claimants other than for a breach:

No Recourse: RD is purchasing all of your interest in the Property without recourse against you (other than for a Breach). This means that, in the event RD for any reason (other than your Breach of this Agreement) does not receive all of the Property Amount, you will have no obligation to pay RD any portion of the Purchase Price that RD paid to you.

**B. The NYAG Makes Clear His “Determination” that the Subject Transactions Are “Loans” and His Intent to Enforce Alleged Statutory Violations Arising Therefrom.**

21. On or about June 15, 2016, the NYAG, without any prior notice, communication, or warning, issued to RD Legal a Subpoena *Duces Tecum* commanding, pursuant to Executive Law § 63(12), General Business Law § 349, Penal Law §§ 190.40 and 190.42, and § 2302(a) of the CPLR, documents and information relating to RD Legal’s solicitation of, and transactions with, any and all VCF claimants (the “Subpoena”).

22. With respect to solicitation, the NYAG sought, among other things, documents sufficient to show all sources from which RD Legal obtained leads or contact information for VCF claimants, all advertising materials in which RD Legal targeted VCF claimants, and RD Legal's policies and procedures for soliciting these individuals.

23. As for the transactional materials, the NYAG sought not only copies of the Agreements, but also "[d]ocuments sufficient to show the nature of, and the amount of risk [RD Legal] took" with respect to each of the Zadroga Claimants.

24. In an effort to achieve full compliance with the Subpoena and directly address the NYAG's apparent but misguided concerns regarding the nature of the Transactions, RD Legal undertook a two-pronged approach in its response.

25. Under cover letter from its counsel dated July 29, 2016, RD Legal first provided the NYAG with more than 6,200 pages of materials responsive to the Subpoena.

26. Because the marketing efforts of RD Legal related to the VCF claimants were neither particularly targeted nor aggressive, the promotional materials contained in its production were far more generic and traditional than those sought by way of the Subpoena (*e.g.*, press releases and fliers), and consisted of slightly more than twenty pages.

27. The balance of RD Legal's production contained all non-privileged documents related to each of the Zadroga Claimants, including, but not limited to, drafts and executed versions of the Assignment and Sale Agreements, due diligence materials, and all communications between and among RD Legal, the Claimants, and the Claimants' counsel in connection with their claims against the VCF.

28. RD Legal's counsel then arranged for an in-person meeting with representatives of the NYAG on July 29, 2016, at which (i) the non-recourse nature of the Transactions, and (ii) the factual inaccuracies underlying the NYAG's position, were discussed.

29. Despite these good faith efforts, on October 18, 2016, the NYAG issued, again without any prior notice, a proposed Assurance of Discontinuance (the "AOD") reflecting a far more aggressive and definitive posture, and eliminating any doubt about his commitment to commencing an enforcement action unless RD Legal acceded to his legal position and the extraordinary financial ramifications and injunctive restraints stemming therefrom.

30. Through the AOD, the NYAG declared that he had made the "determination" that, although styled as true sales, the Transactions were, in his view, "loans" (the "Determination").

31. As confirmed by the AOD, the Determination is based solely on the NYAG's contention that there were sufficient funds available to pay the portions of the VCF Awards purchased by RD Legal at the time the Agreements were executed and, therefore, there was no risk or uncertainty associated with the Transactions.

32. Based on the Determination, the NYAG claims that RD Legal has violated numerous New York state laws, including, but not limited to: (i) Executive Law § 63(12), which permits the NYAG to apply to this Court, in the name of the people of the state of New York, for restitution and damages "[w]henver any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business"; (ii) General Business Law § 349, which generally prohibits deceptive practices and acts in the conduct of any business; (iii) New York's civil usury statutes (General

Obligations Law § 5-501.1 and Banking Law § 14-a); and (iv) New York’s criminal usury statute (Penal Law §§ 190.40 and 190.42) (collectively, the “State Laws”).

33. Based on the Determination, the NYAG also has demanded extraordinary relief. In addition to enjoining RD Legal from entering into “any agreement with a consumer that purports to have the consumer assign or sell a portion or all amounts awarded to him or her by the federal government that is in fact a Loan Agreement as defined herein where the Interest Rate exceeds 16%” and requiring payment of unspecified “penalties, fees and costs,” the AOD mandates immediate payment of more than \$1.6 million in “restitution,” which, assuming that the Transactions were “loans,” purportedly represents all “interest” charged in excess of the State Laws.

34. In communications that followed his issuance of the AOD, the NYAG advised RD Legal that he was adamant in his Determination and his commitment to enforcing the aforementioned State Laws based on his unilateral interpretation of the facts and law in this area.

**C. The NYAG’s Determination Is Plagued by a Host of Fatal Flaws.**

35. The notion that the Transactions are not true sales, but rather loans, defies the plain language and operation of the Agreements, runs directly contrary to the law, and suffers from a host of fatal factual flaws.

**(1) The NYAG Must Overcome a Strong Presumption and Prove Its Position by Clear and Convincing Evidence.**

36. As an initial matter, there is a strong presumption under New York law against finding a transaction usurious. The party seeking to void the transaction must therefore establish usury by clear and convincing evidence. See Zhavoronkin v. Koutmine, 860 N.Y.S.2d 561, 562 (N.Y. App. Div. 2009).

**(2) Because the Transactions Are Non-Recourse, They Cannot be Re-Characterized as “Loans.”**

37. When, as here, transactions are non-recourse and there is no obligation of repayment, they are true sales and cannot be re-characterized as “loans.” See, e.g., Obermayer Rebmann Maxwell & Hippel, LLP v. West, 2015 WL 9489791 (W.D. Pa. 2015) (refusing to characterize the transactions as loans under New York law because the assignment and sale agreements (i) expressly characterized the transactions as “purchases,” and (ii) conspicuously provided that the purchase was non-recourse against the defendant); Kelly, Grossman & Flanagan, LLP v. Quick Cash, Inc., 35 Misc.3d 1205(A), at \*6 (N.Y.S. Mar. 29, 2012) (holding that “usury does not apply” to non-recourse advances despite use of the terms “borrower” and “lender” in the agreement); MoneyForLawsuit V LP v. Rowe, 2012 WL 1068171 (E.D. Mich. 2012) (rejecting defendants’ attempt to interpose defense of New York’s usury laws as to agreements entered after the underlying matter had settled because the transactions constituted a “non-recourse sale of contingent proceeds”); Capela v. J.G. Wentworth, 2009 WL 3128003, at \*9 (E.D.N.Y. 2009) (a “loan” is considered to have been effected by the “[d]elivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it with or without interest”); Lynx Strategies, LLC v. Ferreira, 2010 WL 2674144 (N.Y. Sup. 2010) (rejecting the characterization of a non-recourse advance as a loan because “[h]ad respondent been unsuccessful negotiating a settlement or winning a judgment, petitioner would have no contractual right to payment”).

38. In other words, “[i]n its simplest terms, a loan is a transaction in which something, often money, is transferred to someone who is obligated to pay it back.” Capela, 2009 WL 2674144 at \*9.

39. All of the transactions at issue here were non-recourse, and for this reason alone, there is no legal or factual basis for the Determination.

40. While the non-recourse nature of the Assignment and Sale Agreements is sufficient to establish that the underlying transactions are true sales, and not loans, other less determinative factors further confirm that conclusion. See In re Dryden Advisory Grp., LLC, 534 B.R. 612, 623 (Bankr. M.D. Pa. 2015) (“Courts have held that the most important single factor when determining whether a transaction is a true sale is the buyer’s right to recourse against the seller.”).

41. Courts have held, for example, that a contract that gives the buyer the right to demand direct payment of the receivable by the third-party obligor is more likely to be considered a true sale than an agreement in which the seller retains control of the receivable. See In re Dryden, 534 B.R. at 622 (“The ability of a buyer to demand that it receive payment directly from [the third-party obligor] supports the finding that the transaction is a sale.”). Here, the Assignment and Sale Agreements include just such a right to demand direct payment from the third-party expected to receive the Award from the VCF:

At RD’s request, you will notify the accounting firm or attorney responsible for distribution of the funds to satisfy the Award (and RD may also notify that person or firm) of the terms of this Agreement, and will direct that person or firm to pay the Property Amount to RD instead of (and not to) you.

42. Another factor courts evaluate in deciding whether a transaction is a loan or a true sale is whether the buyer independently investigated the creditworthiness of the third-party obligor for the receivables being transferred. See In re Dryden, 534 B.R. at 620 (identifying “whether there was an independent investigation by the buyer of the account debtor/[third-party obligor]” as a factor in determining whether the transaction is a loan or a true sale). In other words, as a lender, RD Legal would have been concerned with the creditworthiness of the

Claimants. But the contrary is true: while part of the due diligence process for the Assignment and Sale Agreements is designed to ensure that the Claimants had not encumbered the portion of the Award being purchased, no financial information showing a Claimant's ability to repay was ever obtained or considered. Thus, RD Legal's conduct in evaluating whether to enter into the Assignment and Sale Agreements further confirms that the parties intended the Assignment and Sale Agreements to effect true sales of portions of the Awards.

43. Some courts have also reasoned that a right by the seller to repurchase the receivable it sells to the buyer supports a determination that the transaction was not a true sale. See, e.g., In re Joseph Kanner Hat Co., Inc., 482 F.2d 937, 940 (2d Cir. 1973) (finding a pledge of a security rather than the assignment of an asset when the asset was returned upon repayment of the advanced funds). Here, however, the Assignment and Sale Agreements do not give the Claimants any right to repurchase the receivables. When considered in combination with all of the other factors discussed above, this fact erases any lingering doubts as to whether the description of the Transactions as true sales was accurate.

44. Finally, courts look to the plain language of the agreements to help determine whether the transactions in question are true sales. See In re Dryden, 534 B.R. at 620 (identifying "the language of the agreement and the conduct of the parties" as factors that "[m]ost courts" consider in determining whether the transaction is a loan or a true sale). As described above, the Assignment and Sale Agreements at issue all have clear and unambiguous language confirming that these factoring Transactions were intended by the parties to be true sales rather than loans.

**(3) There Was Risk and Uncertainty with Respect to the Sufficiency of Funds to Pay the Portions of the Awards Purchased by RD Legal.**

45. Contrary to the NYAG's assertions, there were always risk and uncertainty with respect to the sufficiency of funds to pay the amounts awarded to all of the VCF claimants. In fact, skepticism and concern about the sufficiency of funds that would be available to pay the purchased portions of the Awards persisted until well after the Assignment and Sale Agreements were executed. At a minimum, at the time that RD Legal entered into the Agreements, payment of the purchased portions of the Awards was far from "absolute."

**(4) There Was Substantial Uncertainty with Respect to the Timing of the Payment of the Awards.**

46. Although the Claimants who accepted their Awards immediately received an initial payment of ten percent, there also was persistent uncertainty as to when the balance would be paid.

47. Even as late as April 8, 2015, Sheila Master Birnbaum, the Special Master appointed to administer the VCF, was unable to provide any assurances as to the timing of the distribution of the remaining balances. Instead, she limited her remarks to describing the laborious nature of the review process and the substantial work that lied ahead:

Each claim is different, and each claim receives the attention necessary to evaluate the claimant's circumstances in determining eligibility and loss. The VCF depends on claimants to file complete claims and depends on third parties, including claimants' employers and physicians, to provide required supporting information. Because of these individual factors, it would be misleading to provide any statement of average processing times. The VCF continues to work to facilitate processing and streamlining systems where possible without sacrificing quality and appropriate review. While we are making progress, we will not be satisfied until we process as many claims as possible in the shortest amount of time.

\* \* \* \* \*

Our sole responsibility is to compensate the victims of the September 11th terrorist attacks. While there is much work to be done, these milestones indicate that we are making progress in fulfilling our responsibility to the 9/11 community.

**(5) There Was Nothing Deceptive about the Transactions.**

48. The NYAG's implication, through the invocation of Executive Law 63(12), that the Transactions were fraudulent or deceptive, too, is without legal or factual merit.

49. RD Legal undertook significant measures to ensure that the Zadroga Claimants were fully aware of the nature and ramifications of the Transactions and their rights under New York's consumer protection laws.

50. As previously set forth, the Assignment and Sale Agreements conspicuously confirm that the Transactions involve the sale of a legal receivable by the Claimant:

- “You wish to receive an immediate lump sum cash payment in return for selling and assigning a portion of the Award . . . to RD.”
- “You hereby sell and assign to RD your interest . . .” in a portion of the Award.
- **“This transaction is a true sale and assignment of the Property to RD and provides RD with the full risks and benefits and ownership of the Property.”**
- “[Y]ou and we intend to that this Agreement is a true sale . . .”
- “Upon RD's payment to you of the Purchase Price, RD will own the Property free and clear of any Adverse Interests.”
- “You understand that you are giving up all of your interest in the Property.”
- “No recourse: RD is purchasing all of your interest in the Property without recourse against you (other than for Breach). This means that, in the event RD for any reason (other than your Breach of this Agreement) does not receive all of the Property Amount, you will have not obligation to pay RD any portion of the Purchase Price that RD paid to you.”

51. RD Legal also included the following notice above the signature line in each Assignment and Sale Agreement:

**IMPORTANT NOTICE**

**This is a complex financial transaction. By signing this Agreement, you are assigning your rights to a portion of the Award that you may receive in regard to the Case. In return for your assignment, you will receive an immediate cash payment that is significantly less than the portion of the Award that you are assigning. You are strongly encouraged before signing this Agreement to consult with an attorney and/or trusted financial advisor of your choice, who can assist you in determining whether this transaction will best fulfill your financial needs and objectives and protect your interest in the event you choose to proceed with this transaction.**

52. Additionally, when RD Legal first learned from outside counsel in mid-2014 of the February 17, 2005 Assurance of Discontinuance entered by the NYAG in the entirely separate matter of I/M/O Plaintiff Support Services, Inc., et al. (the “PSSI AOD”), it revamped its Assignment and Sale Agreements with New York Claimants to incorporate provisions recommended by the NYAG even though RD Legal was not a party and was therefore under no obligation to do so. Most notably:

(a) RD Legal added to the front page of the Assignment and Sale Agreements a separately titled “Disclosure Statement,” which, in bold-faced, 12-point type, itemized the four categories on information required by the PSSI AOD: (i) the total amount to be advanced to the Claimant; (ii) one-time fees associated with the transaction; (iii) the total amount to be repaid by the Claimant; and (iv) the rate of return.

(b) RD Legal added the following notice just above the Claimants’ signature line, in bold-faced, 12-point type:

**NEW YORK CONSUMER'S RIGHT TO CANCELLATION**

**YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOUR RECEIVE FUNDING FROM THE PURCHASER.**

**For the cancellation to be effective, you must either return to us the full amount of disbursed funds by delivering our uncashed check to our office in person within five business days of the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds in the form of our uncashed check, or a registered or certified check or money order, by insured, registered or certified United States mail, postmarked within five business days of receiving funds from the company, at the address specified in the contract for the cancellation. All checks intended to cancel the transaction should be mailed to RD Legal Funding Partners, LP, PO Box 12428, Newark, New Jersey 07101-3528.**

(c) RD Legal ensured that there were no blank or uncertain terms or provisions by adding the following message (also in bold-faced, 12-point type):

**DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACE. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT.**

(d) RD Legal removed any and all arbitration or alternate dispute resolution provisions.

(e) RD Legal drafted the counsel fee provision so that it was reciprocal and required that any fee award be “reasonable.”

**FIRST COUNT**  
**(Declaratory Judgment that the Subject Transactions Are Not Loans)**

53. RD Legal repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

54. The NYAG has made a Determination that the Transactions are “loans” and, therefore, violate the State Laws.

55. The NYAG also has made clear, through the Subpoena, the AOD, and other communications, that he intends to enforce the State Laws and RD Legal’s alleged violations thereof.

56. In light of the Determination and threatened enforcement action pursuant thereto, this case presents a ripe and justiciable controversy as to the proper legal characterization of the Transactions.

57. The Determination is contrary to the plain language and operation of the Assignment and Sale Agreements, the laws of New York and other jurisdictions, and the salient facts related to the Transactions.

58. Because the Determination is contrary to the plain language and operation of the Assignment and Sale Agreements, the laws of New York and other jurisdictions, and the salient facts related to the Transactions, RD Legal is entitled to a declaratory judgment that the Transactions are not loans under any provision of applicable law, including, but not limited to, the State Laws.

59. RD Legal also is entitled to a declaratory judgment that the Transactions and any and all actions of RD Legal associated therewith do not violate the State Laws and are not otherwise unlawful.

60. Declaratory and injunctive relief is necessary and appropriate to resolve the proper legal characterization of the Transactions.

**SECOND COUNT**  
**(Declaratory Judgment that the NYAG Is without Jurisdiction  
as to the Non-New York Claimants)**

61. RD Legal repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

62. The Determination and alleged violations of the State Laws resulting therefrom encompass six Claimants who are not residents of the State of New York and otherwise lack any meaningful nexus to the State of New York.

63. The NYAG does not have jurisdiction to render a determination or take action with respect to Claimants who are not residents of the State of New York and otherwise lack a sufficient nexus to the State of New York.

64. Because the NYAG does not have jurisdiction over the transactions involving non-New York Claimants, RD Legal is entitled to a judgment declaring that the Determination and any action taken with respect to non-New York Claimants is void.

**THIRD COUNT**  
**(CPLR § 7803(3))**  
**(Invalid Agency Action)**

65. RD Legal repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

66. CPLR § 7803(3) permits a party to challenge the determination of a government agency if that determination is “affected by an error of law, or was arbitrary and capricious or an abuse of discretion.”

67. The Determination is contrary to the plain language and operation of the Assignment and Sale Agreements, the laws of New York and other jurisdictions, and the salient facts related to the Transactions.

68. Because the Determination that the subject transactions between RD Legal and the Zadroga Claimants are “loans” is contrary to the plain language and operation of the Assignment and Sale Agreements, the laws of New York and other jurisdictions, and the salient facts related to the Transactions, the Determination and all actions taken and to be taken pursuant thereto, including enforcement of RD Legal’s alleged violations of the State Laws, are “affected by an error or law, or [are] arbitrary and capricious or an abuse of discretion.”

69. As such, the Determination and all actions taken and to be taken pursuant thereto should be declared invalid and enjoined.

70. Absent this declaratory and injunctive relief, RD Legal will suffer significant financial and irreparable harm.

**FOURTH COUNT**  
**(CPLR § 7803(2))**  
**(Invalid Agency Action)**

71. RD Legal repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

72. CPLR § 7803(2) permits a party to challenge an agency action when the agency “proceeded, is proceeding, or is about to proceed without or in excess of jurisdiction.”

73. The Determination and actions taken and to be taken pursuant thereto encompass Claimants who are not residents of, and otherwise lack any meaningful nexus with, the State of New York.

74. The NYAG does not have jurisdiction to render a determination or take action with respect to Claimants who are not residents of, and otherwise lack a sufficient nexus with, the State of New York.

75. Because the NYAG does not have jurisdiction over the Transactions involving non-New York Claimants, the Determination and any action taken and to be taken pursuant thereto with respect to non-New York Claimants should be deemed invalid and enjoined.

76. Absent this declaratory and injunctive relief, RD Legal will suffer significant financial and irreparable harm.

**FIFTH COUNT**  
**(Denial of Procedural Due Process – 42 U.S.C. § 1983)**

77. RD Legal repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

78. At all relevant times, the NYAG was acting in his official capacity as the Attorney General responsible for, among other things, enforcement of the laws of New York.

79. Pursuant to the Assignment and Sale Agreements, RD Legal has a property interest in the purchased portions of the VCF Awards.

80. The NYAG's Determination has deprived and will continue to deprive RD Legal of its property interest in the purchased portion of the VCF Awards.

81. The NYAG's Determination was issued without affording RD Legal a full and fair opportunity to adjudicate the proper characterization of the Transactions.

82. By failing to afford RD Legal a full and fair opportunity to adjudicate the proper characterization of the Transactions before making the Determination, the NYAG has violated RD Legal's right to procedural due process.

83. As such, Defendants are liable to RD Legal under 42 U.S.C. § 1983 for deprivation of its procedural rights under the due process clause of the Fourteenth Amendment.

84. Absent declaratory and injunctive relief, the NYAG will continue to deprive RD Legal of its procedural rights under the due process clause of the Fourteenth Amendment.

**SIXTH COUNT**  
**(Denial of Substantive Due Process – 42 U.S.C. § 1983)**

85. RD Legal repeats and re-alleges each and every allegations in the foregoing paragraphs as if fully set forth herein.

86. At all relevant times, the NYAG was acting in his official capacity as the Attorney General responsible for, among other things, enforcement of the laws of New York.

87. Pursuant to the Assignment and Sale Agreements, RD Legal has a property interest in the purchased portions of the VCF Awards.

88. By virtue of the Determination and the actions taken pursuant thereto, the NYAG has deprived, and will continue to deprive, RD Legal of its property interest in the purchased portions of the VCF Awards without a legal basis or sufficient purpose.

89. As such, Defendants are liable to RD Legal under 42 U.S.C. § 1983 for deprivation of RD Legal's substantive rights under the due process clause of the Fourteenth Amendment.

90. Absent declaratory and injunctive relief, the NYAG will continue to deprive RD Legal of its substantive rights under the due process clause of the Fourteenth Amendment.

**SEVENTH COUNT**  
**(Denial of Due Process – Article I, Section 6 of New York Constitution)**

91. RD Legal repeats and re-alleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

92. By virtue of the actions described in the Fifth and Sixth Counts above, the NYAG has deprived RD Legal of its procedural and substantive rights under the due process clause of Article I, Section 6 of the New York Constitution.

93. Absent declaratory and injunctive relief, the NYAG will continue to deprive RD Legal of its procedural and substantive rights under the due process clause of Article I, Section 6 of the New York Constitution.

### **REQUESTS FOR RELIEF**

94. RD Legal respectfully requests that the Court issue a declaration: (a) declaring that the Transactions are true sales and not loans under any provision of applicable law, including, but not limited to, the State Laws; (b) declaring that the Transactions and any and all actions of RD Legal associated therewith do not violate the State Laws and are not otherwise unlawful; and (c) declaring that the Determination and any action taken by the NYAG with respect thereto are void as to all non-New York Claimants.

95. RD Legal further requests an injunction against the NYAG taking any enforcement actions inconsistent with the aforementioned declaratory judgment.

96. RD Legal further requests the award of its counsel fees and costs incurred in connection with this action.

97. RD Legal also requests such other and further relief as the Court determines to be just and proper.

### **JURY DEMAND**

98. RD Legal demands a trial by jury as to all issues so triable.

**NOTICE OF NEW YORK CLAIMS UNDER N.Y. GML § 50**

99. This action has been commenced within one year and ninety days of the date of the occurrence of the events giving rise to this Petition and Complaint.

**NO PRIOR APPLICATION**

100. No prior application for this or any similar relief has been made in this Court.

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Dated: January 4, 2017  
New York, New York

