UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Melrose Credit Union.

Plaintiff,

vs.

CUMIS INSURANCE SOCIETY, INC.,

Defendant.

**COMPLAINT**

Case No.

Plaintiff, the National Credit Union Administration Board ("NCUAB"), in its capacity as the Liquidating Agent of Melrose Credit Union ("Melrose"), by and through undersigned counsel, and for the reasons set forth below, brings this Complaint against Defendant CUMIS Insurance Society, Inc. ("CUMIS") and alleges as follows:

## The Nature of the Case

This is an insurance coverage action in which the National Credit Union Board ("NCUAB") in its capacity as the Liquidating Agent of Melrose Credit Union ("Melrose"), seeks enforcement of its rights under a fidelity bond issued by Defendant CUMIS Insurance Society, Inc. ("CUMIS") to Melrose and seeks an award of damages because of CUMIS's unjustifiable denial of NCUAB's fidelity bond claim.

## I. PARTIES, JURISDICTION AND VENUE

1. This Court has jurisdiction over this dispute, pursuant to 28 U.S.C. § 1332, because CUMIS is a citizen of the state of Iowa and the NCUAB is a citizen of the

Commonwealth of Virginia, and the NCUAB has been damaged in an amount in excess of $75,000, exclusive of interest and costs.

2. This Court has personal jurisdiction over CUMIS, and venue is proper in this District, because CUMIS conducted business within the state of New York when it entered into one or more fidelity bonds with Melrose in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District. 28 U.S.C. Section 1391(b)(2).

Melrose Credit Union

3. Melrose, located in Briarwood, Queens, New York was a state-chartered, federally-insured, credit union that provided a variety of financial services to its members, with a primary focus on taxi medallion lending in New York City. As a state-chartered credit union, Melrose was regulated by the New York Department of Financial Services ("DFS") as well as the National Credit Union Administration ("NCUA"), which insured it.

4. On February 10, 2017, DFS conserved Melrose and appointed the NCUAB as Melrose's conservator. On August 31, 2018, DFS liquidated Melrose and appointed the NCUAB as the Liquidating Agent. As the Liquidating Agent of Melrose, NCUAB succeeds to all rights, powers and privileges of Melrose. 12 U.S.C. § 1787(b)(2)(A)(i).

The National Credit Union Administration

5. The NCUA is an independent federal agency of the Executive Branch of the United States Government that, among other things, charters and regulates federal credit unions, and operates and manages the National Credit Union Share Insurance Fund ("NCUSIF"). Headquartered in Alexandria, Virginia, it was created on March 10, 1970, pursuant to Pub. L. No. 91-206, 84 Stat. 49, codified at 12 U.S.C. § 1751 et seq.

6. The NCUAB manages the NCUA. The NCUA regulates credit unions whose deposits ("shares") are insured against loss by the NCUSIF, which included the shares of Melrose's members. The NCUSIF is funded by all participating credit unions and is guaranteed by the Full Faith and Credit of the United States

CUMIS Insurance Society, Inc.

7. Defendant CUMIS is an Iowa corporation that sells insurance policies to credit unions, including fidelity bond coverage, with offices at 2000 Heritage Way, Waverly, Iowa. CUMIS's principal place of business is located at 5910 Mineral Point Road, Madison, Wisconsin.

8. CUMIS is authorized by the New York Department of Insurance to transact insurance business in the state of New York.

## II. THE MATERIAL FACTS OF THE CASE

9. On or about April 30, 2016 CUMIS issued to Melrose Fidelity Bond No. 301998-0 (the "Bond") in exchange for Melrose's payment to CUMIS of the applicable premium required by CUMIS.

10. Among other things, the Bond provided coverage for losses arising from the dishonest acts of Melrose's employees and members of its Board of Directors.

11. By its terms, the CUMIS Bond provided Melrose with $9 Million in coverage (less a $100,000 deductible) for losses incurred by Melrose due to the dishonesty of Melrose's employees and/or Directors, as follows:

> We will pay you for your loss resulting directly from dishonest acts committed by an "employee" or "director", acting alone or in collusion with others.

Such dishonest acts must be committed by the "employee" or "director" with the intent to:

a. Cause you to sustain a loss; or
b. Obtain an improper financial benefit for the "employee", "director", or for any other person or entity.

12. As such, the Bond provided coverage for losses caused by the dishonest acts of former Melrose Chief Executive Officer ("CEO") and Board Treasurer Alan S. Kaufman ("Kaufman"). Based on losses directly attributable to Kaufman's dishonesty, Melrose and NCUAB submitted claims to CUMIS, which claims CUMIS has unjustifiably and repeatedly denied coverage.

## III. MELROSE'S BOND CLAIM

13. Beginning in or about May 1, 1998 and at all times relevant to this Complaint, Kaufman was the CEO of Melrose and he also served as Treasurer of the Melrose Board of Directors.

14. On or about June 28, 2016, Kaufman was removed for cause as CEO by the Melrose Board.

15. On or about October 25, 2016 Kaufman was removed as a Treasurer of the Melrose Board due to CUMIS' revocation and termination of Kaufman's bond coverage.

16. During Kaufman's tenure at Melrose, Kaufman was obligated to strictly comply with Melrose's Anti-Bribery Policy which specifically prohibited all Melrose officers from "soliciting for themselves or a third party … anything of value for anyone in return for any business, service or confidential information of the Credit Union and of accepting anything of value from anyone in connection with the business of the Credit Union, either before or after a transaction is discussed or consummated."

17. In addition, but not by way of limitation, Kaufman was obligated to strictly comply with Melrose's Employee Handbook that, in part, required all employees:

> …[to] decline or return any gift or gratuity valued in excess of One Hundred dollars ($100.00) from any member, vendor, supplier, or other person doing business with Melrose Credit Union. In doing so, please explain that Melrose Credit Union prohibits Employees from accepting gifts or gratuities to ensure that business decisions, transactions, and services are provided on an objective and professional basis.

18. In most years, Kaufman executed Melrose's forms acknowledging his duties and responsibilities to comply with all of the policies contained in the Melrose Employee Handbook.

19. On various dates throughout his employment Kaufman executed oaths, pursuant to New York Banking Law §468, that were filed with DFS, to the effect that Kaufman was and would diligently and honestly administer the affairs of Melrose.

20. In contravention of Kaufman's oaths and duties to Melrose, Kaufman engaged in a series of dishonest schemes that caused substantial losses to Melrose that are covered by the Bond.

21. Conceptually, such covered losses fall within four categories: (a) the fraudulent $2 Million Melrose Ballroom Naming Rights Agreement; (b) the fraudulent 21-year, approximately $1.2 Million consulting contracts with Kaufman's father; (c) the fraudulent reimbursements or charges made by Kaufman, and (d) unauthorized loans drawn on a Split Dollar Life Insurance policy.

22. On or about July 15, 2016, prior to Melrose's conservatorship, Melrose's General Counsel timely submitted to CUMIS an initial Notice pursuant to the Bond.

23. Thereafter, on or about March 9, 2018, Melrose timely submitted its extensive Supplemental Proof of Loss ("POL") to CUMIS, seeking reimbursement from CUMIS for

$4,799,522.04 in documented losses that were caused by the dishonest conduct of Kaufman. The POL was supported by a 21-page analysis, together with 34 supporting exhibits, that detailed the losses suffered as a result of Kaufman's dishonesty.

**The Dishonest Melrose Ballroom Naming Rights Agreement Loss**

24. Individually, and through various entities he controlled, Tony Georgiton ("Georgiton"), was a member of, borrower from, and vendor to, Melrose. One of those businesses was Queens Medallion Leasing ("QML"); another was Harama Entertainment Corporation ("Harama").

25. For most of the relevant years, QML and Georgiton were among the largest borrowers from Melrose.

Georgiton's Purchase of the Jericho Residence for Kaufman

26. In early 2010, Kaufman embarked upon a romantic relationship with a Melrose employee ("DJ"), as a result of which Kaufman became embroiled in divorce proceedings with his then-wife ("LK"), and was forced to leave the marital residence and move into a small furnished apartment, which Kaufman believed did not suit his status.

27. Therefore, Kaufman was anxious to locate a new and elaborate residence for himself and DJ.

28. During that timeframe Kaufman personally approved approximately $53.2 million in loans (June 2010) and $60.5 million in loans (June 2011) to Georgiton/QML, under terms that were extremely favorable to Georgiton/QML and that were not generally available to other members and borrowers at Melrose.

29. On November 30, 2010, Kaufman selected an expensive townhouse in a gated community in Jericho, New York ("Jericho Residence"), that he caused Georgiton to purchase for Kaufman's sole and rent-free use and possession.

30. Kaufman resided rent-free in the Jericho Residence for more than two years.

31. On November 28, 2010, Kaufman surreptitiously opened a Share Draft ("checking") Account at Melrose that was solely in Georgiton's name and on which Georgiton was the sole authorized signatory.

32. Thereafter, for approximately two years, Kaufman forged Georgiton's name on more than 40 checks drawn on the Georgiton account.

33. Throughout this time, Kaufman failed to disclose to the Melrose Board both that he was living rent-free in a home purchased by Georgiton for Kaufman's exclusive use and that Kaufman was personally approving millions of dollars in loans for Georgiton/QML on extremely favorable terms to Georgiton/QML at rates and on terms that were not generally available to other members and borrowers at Melrose.

34. In January 2013, Kaufman agreed to purchase the Jericho Residence from Georgiton for exactly the same price that Georgiton paid for the Jericho Residence some 24 months earlier.

35. However, because Kaufman lacked, in his own right, both the credit and the funds to purchase the Jericho residence, Kaufman obliged Georgiton to co-sign (together with Kaufman) on a $200,000 loan at Melrose. Georgiton pledged $200,000 of his own money, in order to obtain for Kaufman an extremely favorable interest rate from Melrose as a low-risk "share secured" loan.

36. Despite the $200,000 Georgiton "share secured" loan, Kaufman still lacked access to sufficient funds or credit to purchase the Jericho Residence.

37. As a result, Kaufman obtained from Georgiton a $240,000 undocumented, unsecured and undisclosed "personal loan;" which "loan" Georgiton has never requested any interest or principal payment and Kaufman has never offered any payment.

38. Thereafter, on February 1, 2013, using a combination of these funds, together with a loan Kaufman obtained against his Melrose Split-Dollar Life policy, Kaufman closed on his purchase of the Jericho residence.

39. Shortly after the closing, Georgiton withdrew his $200,000 pledge to secure the loan for Kaufman, effectively reconstituting the $200,000 share-secured loan into an unsecured signature loan by Kaufman.

40. This unsecured $200,000 loan constituted a violation of Melrose's bylaws (Article 12, §2), which required that all employee loans must be secured.

41. To this day, Kaufman has not repaid any of the $240,000 "personal loan" from Georgiton, nor has he repaid the loan he obtained against the Melrose Split-Dollar Life insurance policy.

42. Kaufman failed to disclose to Melrose's Board the various funds obtained by him for his purchase of the Jericho Residence, or that he obtained the monies from and through Georgiton, or that he obtained those benefits from Georgiton while Kaufman was personally approving millions of dollars in loans to Georgiton/QML at rates and/or on terms that were not generally available to other Melrose members/borrowers.

While Living Rent-free in a Home Owned By Georgiton, Kaufman Caused Melrose to Pay $2 Million to a Company Owned by Georgiton For the "Naming Rights" to a Venue That Did Not Exist and Had Virtually No Value to Melrose

43. Harama was formed by Georgiton and his business partner ("BM") with the intention of leasing a site in Long Island City, Queens, New York, demolishing the existing buildings on the site and constructing a 4-story building, where they would promote Greek music and dancing, all at the collective expense of Harama, Georgiton, and BM.

44. After embarking on the endeavor, Georgiton and BM realized they required substantial additional funds in order to meet their construction obligations for the venue.

45. Anxious to find the necessary funds, Georgiton and BM engaged in an extensive campaign to locate a potential Naming Rights sponsor for the venue, which was located on a low-traffic, side-street in Long Island City, and was not visible from the 59th Street Bridge, the Triborough Expressway, or any subway station.

46. Despite their best efforts, Georgiton and BM received no interest in selling the Naming Rights for the venue from any potential sponsor at any price.

47. In near desperation, Georgiton and BM decided to leverage Kaufman's rent-free residence in the Jericho property to obtain $2 Million from Melrose to fund the construction of the venue.

48. Upon BM's return from a meeting with Kaufman, BM and Georgiton celebrated that Kaufman had agreed to provide Harama with the necessary $2 Million through Melrose.

49. Following his commitment to Harama, Kaufman personally presented and promoted a Naming Rights Agreement before the Melrose Board.

50. Kaufman pressed the Melrose Board to approve the Agreement without having conducted any due diligence, without having sought the advice of Melrose's Director of

Marketing or any knowledgeable third-party, and by actively misleading the Melrose Board as to material aspects of the Naming Rights Agreement, its value to Melrose and his continuing conflict of interest.

51. As attested by Melrose's Director of Marketing "RN" the venue selected by Harama/Georgiton was of virtually no value to Melrose.

52. On September 27, 2011, based on Kaufman's misrepresentations and his personal promotion, the Melrose Board conditionally approved the concept of entering into a Naming Rights Agreement with Harama. However, the Melrose Board expressly conditioned its tentative approval on certain requirements, including but not limited to: (a) that no payment could be made until and unless the construction of the building was complete and a Certificate of Occupancy was obtained; (b) that the name of the venue would be "Melrose Credit Union Arena," and (c) that Harama was required to host at least 200 major events per year at the venue.

53. Ignoring the Melrose Board, on October 14, 2011, Kaufman executed a Naming Rights Agreement with Harama/Georgiton that, among other things: (a) bound Melrose to pay Harama $800,000 prior to the Certificate of Occupancy, (b) agreed that the name of the venue would be "Melrose Ballroom"—thereby eliminating any specific link to the Melrose Credit Union; and (c) only required Harama to host 80 events per year.

54. Neither before nor after Kaufman executed the Naming Rights Agreement did Kaufman ever inform the Melrose Board that he had ignored the Board's specific preconditions.

55. In support of its POL related to the Melrose Ballroom Naming Rights loss, among other things, Melrose submitted to CUMIS the affidavit of "TS," a former QML/Harama employee and a part-owner of Harama. In her affidavit, TS confirmed on personal knowledge that: prior to Kaufman's involvement, Harama had been unable to interest any individual or

company in paying for "Naming Rights" despite extensive efforts to locate an interested sponsor, having been present for the discussions related to seeking to secure the necessary monies through Kaufman and leveraging Kaufman's use of the Jericho property; and the celebration following BM having secured Kaufman's $2 Million commitment to them.

56. In its declination of Melrose's claim, CUMIS arbitrarily and capriciously ignored this evidence.

57. In support of its POL, Melrose also submitted to CUMIS the affidavit of former Melrose Marketing Manager "RM," together with contemporaneous (authenticated) email exchanges between RM and Kaufman. In his Affidavit, RM swore on personal knowledge that: (a) Kaufman never asked RM to undertake any due diligence in relation to the naming rights proposal; (b) Kaufman first apprised RM of the Naming Rights Agreement after Kaufman had already executed the Agreement; (c) when RM visited the venue site, RM was surprised to see the completed venue did not exist (it was merely a construction site); and (d) that RM informed Kaufman that the Naming Rights Agreement had no value to Melrose (but might have perhaps $50,000 in value to a vendor who was located in close proximity to the site—which Melrose was not). Further, in support of its POL, NCUAB offered to provide CUMIS, upon CUMIS's execution of a Non-Disclosure Agreement, with extensive "non-public" depositions of Kaufman, Board Members, the Supervisory Committee Chair, and Melrose's former General Counsel.

58. Inexplicably, CUMIS rejected the proffered "non-public" depositions offered to it, by refusing to execute the Non-Disclosure Agreement; which Non-Disclosure Agreement was substantially identical to Non-Disclosure Agreements executed by CUMIS on multiple other occasions.

59. On July 10, 2019, a federal grand jury in the Southern District of New York returned an indictment in Case No. 19-CR-504, *United States v. Alan S. Kaufman and Tony Georgiton*, charging Kaufman and Georgiton variously with Conspiracy to Violate the Bank Bribery Act (18 U.S.C. Section 371) and with substantive Bank Bribery Act violations (18 U.S.C. Section 215(a)(2)), including with regard to the Melrose Ballroom Naming Rights Agreement. [ECF #1]

60. On September 9, 2020, Georgiton pled guilty in the Southern District of New York to one count of Conspiracy (with Kaufman) to Commit Bank Bribery Act violation in relation to the Melrose Ballroom Naming Rights Agreement. [ECF #133]

61. On March 31, 2021, following a multi-week trial in the Southern District of New York at which TS, RN, various former Melrose Board Members, and Kaufman testified, the jury returned verdicts of "guilty" against Kaufman as to both Counts of Bank Bribery Act violations, one of which was in relation to the Melrose Ballroom Naming Rights Agreement. [ECF #219]

62. By refusing to accept the "non-public" depositions offered to it, ignoring the Affidavits of TS and RN, and other compelling evidence proffered by NCUAB, ignoring Georgiton's guilty plea for having conspired with Kaufman in relation to the Naming Rights Agreement and ignoring the jury's verdict finding Kaufman guilty of having violated the Bank Bribery Act in relation to the Naming Rights Agreement, CUMIS acted arbitrarily, capriciously and without good faith when it advanced its own interests over those of its insured to deny NCUAB's Naming Rights Agreement Loss claim.

**Loss Sustained Because of Kaufman's Dishonest Consulting Contract With His Father**

63. Prior to his 1998 retirement, Herb Kaufman—Kaufman's father—was the CEO of Melrose as well as the Treasurer of the Melrose Board of Directors.

64. On May 27, 1998, Herb Kaufman became an independent contractor "consultant" to Melrose under the terms of a unusual three-page Consulting Agreement.

65. The Consulting Agreement was signed by only one Member of the seven-Member Melrose Board, which Board Member had been a close personal friend of Herb Kaufman since kindergarten.

66. The Consulting Agreement contained a one-year renewable term and provided for Melrose to pay Herb Kaufman $5,600 per month for services to be rendered by Herb Kaufman to Melrose.

67. Despite his obvious conflict of interest, Kaufman aggregated solely to himself the oversite within Melrose of Consulting Agreement with his father.

68. Thereafter, for more than 18 years, Kaufman covertly caused the renewal of his father's Consulting Agreement without ever informing the Melrose Board or otherwise bringing its continued existence to the attention of the Board.

69. Over more than eighteen years, Herb Kaufman failed to generate any business for Melrose or provide any meaningful consulting services to Melrose.

70. Nevertheless, between 1998 and 2017, Kaufman caused Melrose to pay his father a total of approximately $1,239,795.01 pursuant to the Consulting Agreement, in addition to $26,353.15 that Kaufman caused Melrose to pay for Herb Kaufman's travel costs and other expenses—contrary to the express terms of the Consulting Agreement that such costs and expenses were to be borne by Kaufman's father.

71. By rejecting the "non-public" depositions offered to it and ignoring other compelling evidence proffered by NCUAB, CUMIS acted arbitrarily, capriciously, and without

good faith when it advanced its own interests over those of its insured, and denied NCUAB's claim for losses resulting from Kaufman's dishonest Consulting Contract with his father.

**Losses Caused by Kaufman's Dishonest and Unauthorized Corporate Credit Card Use**

72. Melrose provided Kaufman with a Melrose credit card and authorized its use solely for legitimate business-related expenses for the benefit of Melrose.

73. At all relevant times, and by design, the monthly Melrose credit card statements were sent directly to Kaufman, who was the only person at Melrose authorized to open, review, and approve the memorialized charges.

74. In turn, and by design, Melrose paid without question all of the charges approved by Kaufman.

75. Through dishonesty and by design, Kaufman caused Melrose to pay in excess of $73,000 for charges made by Kaufman on the Melrose credit card that were incurred for his personal benefit and not for the benefit of Melrose.

76. Such charges included, without limitation, $26,402 in airplane tickets for his girlfriend (DJ) to accompany Kaufman on various domestic and overseas trips; $4,770 for airplane tickets and Black Car Limousine services for Kaufman's children; $8,625 for exorbitant meals with Kaufman's close personal friend ("SB"); $14,098 for airplane tickets to Aruba for the children of Kaufman's friends; $8,575 for exorbitant meals with Kaufman's close personal friend ("DM"); $9,643 for exorbitant meals with Melrose vendor's Georgiton and BM; and $1,152 for an exorbitant dinner in Los Angeles with Kaufman's distant cousin ("CB").

77. By rejecting the "non-public" depositions offered to it and ignoring other compelling evidence proffered by NCUAB, CUMIS acted arbitrarily, capriciously, and without

good faith when it advanced its own interests over those of its insured, and denied NCUAB's claim for losses caused by Kaufman's dishonest and unauthorized use of the Melrose credit card.

**Losses Caused by Kaufman's Dishonest Withdrawal of Melrose Funds From the Melrose Split-Dollar Life Insurance Policy**

78. On April 25, 2006, at Kaufman's request, the Melrose Board approved a Split-Dollar Insurance Agreement ("SDIA") in relation to Kaufman that was issued by Massachusetts Mutual Life Insurance Company.

79. Under the terms of the SDIA, Melrose was required to pay annual premiums for eight years, and Melrose, Kaufman and Kaufman's beneficiaries were the beneficiaries of the policy.

80. Following the eighth anniversary of the policy, under certain conditions, Kaufman was permitted to take a loan against the cash value of the policy. First, Kaufman must have provided Melrose with "faithful service" through the anniversary date. Second, the loan sought by Kaufman could not deplete the accumulated cash value below the aggregate of all of Melrose's paid-in premiums.

81. In order to protect Melrose in the event of a loan taken by Kaufman, and in order to assure that Melrose could recoup the total amount of the premiums it had paid on the policy, Kaufman was required to sign a collateral assignment of the cash value of the policy to Melrose.

82. In 2013, Kaufman requested that the insurance company extend for Kaufman's benefit his SDIA by two years, thereby requiring Melrose to make an additional $300,000 in premium payments for the two additional years (years 9 and 10).

83. Kaufman agreed to the amendment to the SDIA without informing or otherwise notifying the Melrose Board of his actions.

84. As a result of Kaufman's clandestine amendment, between 2006 to 2016, Melrose paid a total of approximately $1,500,000 in premiums into the Kaufman SDIA.

85. On September 13, 2013, the insurance company instructed Kaufman that he could not borrow from the policy if his loan caused the cash-surrender value of the policy to fall below the paid-in premiums

86. Board approval was always required before Kaufman was permitted to take a loan against the SDIA; and the Board was required to independently verify that Kaufman's loan did not impair the value of the policy.

87. By design, Kaufman failed to inform the Board of its independent obligation to verify that Kaufman's loan would not impair the value of the policy.

88. On March 10, 2017—two years before the 10th anniversary of the SDIA—Kaufman dishonestly caused Melrose Board Member and longtime personal friend ("LK") to sign Kaufman's application for a $350,000 loan from the SDIA, without allowing LK to review the document, without explaining to LK the purpose and significance of the document and without advising LK that the Board was required to independently verify that Melrose's position would not be impaired by such a loan.

89. Kaufman used a portion of the resulting $350,000 loan in the purchase of the Jericho residence from Georgiton.

90. On April 16, 2014 and August 13, 2014, Kaufman submitted two additional loan applications, each in the amount of $100,000, and obtained the signatures of longtime friend and Board Member "LD's" on the applications, without informing LD of the contents or significance of the documents she was signing.

91. Kaufman used the $200,000 for personal expenses.

92. On September 20, 2015, the Melrose Board engaged Dechert LLP to conduct an internal investigation into possible malfeasance by Kaufman and Melrose's management.

93. Acutely aware of his own covert misconduct and that he would likely be terminated upon completion of the Dechert investigation, and that his continued employment was a prerequisite for obtaining any further loans against the SDIA, Kaufman prepared an application to obtain a further loan in the amount of $1,100,000 prior to the completion of the Dechert investigation.

94. On April 8, 2016, Kaufman obtained the blind signature of his longtime neighbor and Board Member ("PW") on Kaufman's application for the additional $1,100,000 loan, without advising PW of the contents of the document he was signing, or advising PW of its contents or significance, or informing PW that the Melrose Board was required to independently verify that its interests would not be impaired by the requested loan.

95. Kaufman's dishonesty in relation to the SDIA loans obtained by him caused Melrose to incur a loss of $1,459,925.46.

96. By rejecting the "non-public" depositions offered to it and ignoring the other compelling evidence proffered by NCUAB, CUMIS acted arbitrarily, capriciously, and without good faith when it advanced its own interests over those of its insured, and denied NCUAB's claim for losses resulting from Kaufman's dishonest withdrawals of Melrose's funds in relation to the SDIA loans obtained by Kaufman.

## IV. CUMIS CONSISTENTLY AND INEXCUSABLY VIOLATED ITS DUTIES OF GOOD FAITH AND DISREGARDED THE RIGHTS OF ITS INSURED

97. Throughout its claim investigation, CUMIS intentionally put its own interests above those of its insured, consistently ignoring substantial evidence of Kaufman's dishonesty, and engaging in unscrupulous conduct.

98. From the beginning, it was CUMIS's intention to locate or fashion evidence to deny NCUAB's claim and to simultaneously reject or denigrate evidence that supported the NCUAB's claim.

99. As CUMIS is well-aware, federal law prohibits the public disclosure of the regulatory records of NCUA.

100. However, in this matter, CUMIS surreptitiously obtained such regulatory records, in the form of a joint report prepared by the New York Department of Financial Services ("DFS") and NCUA.

101. On May 9, 2018, after learning that CUMIS's Claims Adjuster was improperly in possession of such a confidential document, the NCUAB wrote to CUMIS requesting that CUMIS provide a corporate resolution authorizing its Claims Adjuster's receipt of the confidential joint DFS and NCUA examination report.

102. CUMIS failed and refused to provide the NCUAB with such resolution, which, on information and belief, does not exist.

103. As set forth above, when offered copies of extensive "non-public" depositions of Kaufman, various former Melrose Board Members, the former Chair of the Supervisory Committee, and the former Melrose General Counsel, CUMIS inexplicably refused to execute a Non-Disclosure Agreement to enable the NCUAB to provide such evidence to CUMIS

104. Although CUMIS initially agreed to execute a Non-Disclosure Agreement, it subsequently and inexplicably refused to execute a Non-Disclosure Agreement that is substantially identical to Non-Disclosure Agreements CUMIS executed, and continues to execute, in other bond investigations.

105. On information and belief, because it was always CUMIS's intention to deny NCUAB's claim, CUMIS intentionally insulated itself (and its files) from evidence establishing its obligation to pay the monies that it owed on the claims in an effort to distance itself from exposure to claims of bad faith and punitive damages for its misconduct.

106. In furtherance of its pre-determined outcome, CUMIS tactically dismissed compelling evidence provided by the NCUAB.

107. Among other things, CUMIS disregarded the NCUAB's submission of over 40 checks admittedly forged by Kaufman in one of Georgiton's accounts at Melrose; CUMIS improperly conducted multiple *ex parte* interviews of Kaufman and one of Harama's owners ("BM"), despite its obligation to permit the NCUAB to be present at all interviews and the NCUAB's specific request to be present at all interviews; CUMIS's insistence on the presence of a court reporter to memorialize its interviews of all Melrose employees at which the NCUAB was present, but its tactical decision not to memorialize by court reporter its interviews of Kaufman and BM that were conducted by CUMIS without the NCUAB's knowledge or presence; CUMIS's self-serving and insupportable credibility determinations that Kaufman and BM were both credited to be honest, while the corroborated Affidavits and Sworn Statements of TS and RN, together with the Sworn Statements of other Melrose employees were all unfairly characterized by CUMIS as dishonest; CUMIS's fabrication of non-existent interviews with former Melrose Directors and Officers; CUMIS's tactical refusal to consider the extensive and detailed "non-public" depositions of Kaufman, former Melrose Board Members, the former Melrose Supervisory Committee Chair, and the former Melrose General Counsel—many of whom testified (as did Kaufman) at Kaufman's criminal trial at which the jury rejected Kaufman's porous and uncorroborated explanations and version of events and credited the

testimony of RN and others (whose deposition testimony CUMIS refused to consider) when it convicted Kaufman of multiple violations of the Bank Bribery Act.

## CLAIMS FOR RELIEF

### CLAIM ONE—BREACH OF CONTRACT

108. The NCUAB realleges and incorporates by reference the proceeding paragraphs 1 through 107 as though fully reproduced herein.

109. CUMIS entered into an insurance contract with Melrose which provides fidelity bond coverage and insures Melrose/NCUAB against losses caused by Melrose employees who failed to perform their duties honestly and faithfully.

110. As required of Melrose under the Bond, Melrose paid a premium to CUMIS to insure against covered losses.

111. NCUAB is the lawful successor in interest to all of Melrose's rights and privileges under the Bond.

112. NCUAB and Melrose have timely satisfied all of the notice requirements and prerequisites to recovery contained in the Bond.

113. CUMIS agreed in writing to accept and consider Melrose's POL, being fully aware that Melrose/NCUAB incurred significant costs in conducting an investigation and preparing its comprehensive claim submission.

114. Melrose suffered substantial losses of at least $4,799,522.04, due to Kaufman's dishonesty, for which it is entitled to payment under the Bond.

115. CUMIS has repeatedly refused to honor its contractual obligations and to pay what it owes under the Bond, thereby causing the NCUAB to sustain compensatory and

consequential losses in excess of $4,799,522.04, exclusive of interest and costs, to be determined at trial.

**CLAIM TWO—BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

116. The NCUAB realleges and incorporates by reference the proceeding paragraphs 1 through 115 as though fully reproduced herein.

117. CUMIS has an implied covenant and duty of good faith and fair dealing with its insureds, including Melrose/NCUAB.

118. CUMIS' breached its covenants and duties to NCUAB in both its claim investigation and its post-claim conduct, which were intended to, and did in fact, deprive the NCUAB of its lawful rights to receive its just benefits under the Bond.

119. As set forth in paragraphs 1 through 115, above, CUMIS violated its duties of good faith and fair dealing by, among other things: (a) disregarding for purposes of the bond claim the same evidence of Kaufman's dishonesty that CUMIS previously credited as sufficient to revoke bond coverage for Kaufman; (b) surreptitiously obtaining a confidential non-public examination report of Melrose from an affiliated company and impermissibly providing the report to its Claims Adjuster; (c) disingenuously refusing to execute a Non-Disclosure Agreement in order to avoid being forced to consider critical sworn "non-public" deposition testimony from Kaufman, former Melrose Board Members, the former Chair of Melrose's Supervisory Committee, and Melrose's former General Counsel (many of whom testified at Kaufman's criminal trial, which led to Kaufman's conviction); (d) inexplicably crediting the self-serving and unsworn statements to CUMIS by Kaufman and BM (even after the jury rejected Kaufman's testimony at Kaufman's criminal trial); (e) refusing to credit the damning,

detailed, and corroborated Affidavits of TS and RM (even after the jury credited the testimony of RM at Kaufman's criminal trial); (f) falsifying information about non-existent conversations by CUMIS with former Melrose Board Members; (g) misrepresenting the sworn testimony of credit union employees; (h) inexcusably characterizing credit union employees as "perjurers;" (i) ignoring Georgiton's guilty plea for his conspiracy with Kaufman to violate the Bank Bribery Act in relation to the Melrose Ballroom Naming Rights Agreement; and (j) ignoring the jury's conviction of Kaufman for multiple counts of Bank Bribery Act, including a Bank Bribery Act conviction based upon the Melrose Naming Rights Agreement between Kaufman and Georgiton/BM/Harama.

120. CUMIS' violation of its implied covenant and duties of good faith and fair dealing proximately caused consequential damages to the NCUAB, including but not limited to the costs and attorney's fees incurred in submitting and pursing its valid Bond claim, as well as those incurred in this action.

**CLAIM THREE—BAD FAITH**

121. The NCUAB realleges and incorporates by reference the proceeding paragraphs 1 through 120 as though fully reproduced herein.

122. As set forth in paragraph 6 above, the SIF is funded by all federally-insured credit unions and their members, and implicates the Full Faith and Credit of the United States, in order to insure (up to $250,000) the deposits of the members against loss.

123. Accordingly, the SIF serves the interests of the public by guaranteeing that an individual's deposits will not be lost in the event that a federally-insured credit union, such as Melrose, fails.

124. Because CUMIS was always committed to the denial of NCUAB's claim, despite the overwhelming, credible, and corroborated evidence in favor of NCUAB's Bond claim, the NCUAB was inexcusably forced to expend monies to protect the SIF in the public interest.

125. As a result, CUMIS's bad faith caused a harm to the public as a result of which a fair and just award of punitive damages should be assessed against CUMIS.

## PRAYER FOR RELIEF

126. For CUMIS's breach of contract, the NCUAB should be awarded damages in the amount of $4,799,522.04, together with prejudgment interest, attorney's fees, and costs;

127. For CUMIS's breach of its implied covenant and duties of good faith and fair dealing, the NCUAB should be awarded damages the amount of $4,799,522.04, together with prejudgment interest, attorney's fees, and costs;

128. For CUMIS's bad faith that caused public harm, an award of fair and just punitive damages sufficient to punish CUMIS for its misconduct and that is necessary to deter CUMIS from similar conduct in the future.

WHEREFORE, the National Credit Union Administration Board requests:

a. That Defendant CUMIS be required to answer this Complaint within the time and in the manner required by applicable law;

b. That a jury be empaneled to determine all matters within its purview;

c. That this Court enter judgment against Defendant CUMIS for compensatory damages as determined by the jury;

d. That this Court enter judgment against Defendant for consequential damages, including, but not limited to, costs and attorney's fees incurred in submitting the bond claim to Defendant CUMIS and for prosecuting this action;

e. That this Court enter judgment against Defendant CUMIS for extra-contractual damages, including, but not limited to punitive damages, as determined by the jury, for Defendant CUMIS's bad faith processing and denial of the bond claim;

f. That this Court award the National Credit Union Administration Board pre-judgment and post-judgment interest on the foregoing amounts, as provided by law; and

g. That this Court award the National Credit Union Administration Board such other and further relief, at law or in equity, to which the National Credit Union Administration Board may be justly entitled.

Dated: August 23, 2021

/s/

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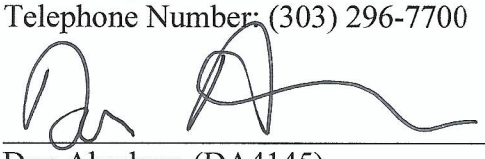

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