

Refresh Funding, LLC, a Florida Limited  
Liability Company  
Plaintiff,

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2019-035778-CA-01

GENERAL JURISDICTION DIVISION

vs.

Bien- Aime's Family, LLC, a Florida Limited  
Liability Company; Philippe Ben-Aime;  
Unknown Tenant in Possession #1; Unknown  
Tenant in Possession #2,

Defendant(s)

**PLAINTIFF'S MOTION SEEKING COURT ORDER APPROVING SETTLEMENT**

The Plaintiff, Refresh Funding, LLC, a Florida Limited Liability Company, by and through the undersigned counsel, hereby seeks an Order from this Court approving the Fully Executed Settlement entered into by and between the parties, and would show the Court as follows:

1. The Parties have settled this action. That the Plaintiff and Defendant request that is Court retain jurisdiction for enforcement purposes consistent with the terms as set forth in the attached settlement agreement that is attached hereto and incorporated herein. See a true and correct copy attached hereto and incorporated herein as Exhibit "A."
2. That there are ongoing matters relative to the enclosed settlement agreement/loan modification agreement which may require Court intervention to the extent there is non-compliance.

WHEREFORE, Plaintiff respectfully requests that this Court grant this Joint Motion to Approve Settlement, enter an Order approving the Settlement, retain jurisdiction to enforce the terms of such Settlement, and for such further relief this Court deems just and proper.

Dated this 5<sup>th</sup> day of May, 2020.

/s/John L. Penson  
John Penson, Esquire  
Bar No.: 111686  
John L. Penson, P.A.  
1900 Sunset Harbour Dr., Annex-2<sup>nd</sup> Floor  
Miami Beach, FL 33139  
Primary Email: [pensonservice@gmail.com](mailto:pensonservice@gmail.com)  
Secondary Email: [john@pensonlaw.org](mailto:john@pensonlaw.org)  
Tel: (305) 532-1400  
Fax: (305) 675-6390

File No.: 19-037

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and E-Mail on this 5<sup>th</sup> day of May 2020 to:

**Philippe Bien-Aime**  
70 NE 134<sup>th</sup> Street  
North Miami, FL 33161

**The Bien-Aime's Family LLC**  
c/o Philippe Bien-Aime, as Registered Agent  
70 NE 134<sup>th</sup> Street  
North Miami, FL 33161

/s/ John L. Penson, Esq.  
John L. Penson, Esquire

# **EXHIBIT “A”**

File No.: 19-037

**JOHN L. PENSON, P.A.**  
**1900 Sunset Harbour Dr., Annex-2<sup>nd</sup> Floor, Miami Beach, FL 33139 · Tel: 305-532-1400 · Fax: 305-675-6390**  
Page -3-

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Plaintiff,

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Defendant(s)

..... /  
**FORBEARANCE AND SETTLEMENT AGREEMENT**

COMES NOW, **REFRESH FUNDING, LLC**, a Florida limited liability company, ("Plaintiff" or "Lender"), and Defendants, **THE BIEN-AIME'S FAMILY LLC**, a Florida Limited liability Company ("The Bien-Aime Family") and **PHILIPPE BIEN-AIME** ("Bien-Aime"), through their respective undersigned counsel, enter into the following Forbearance and Settlement Agreement (the "Agreement") to be effective as of April 1, 2020 and state as follows:

WHEREAS, The Bien-Aime Family LLC is the Borrower and Phillippe Bien-Aime is the Guarantor under a certain Promissory Note dated June 22, 2018 in the principal amount of \$200,000.00 and a Mortgage of the same date, in Official Records Book 31037, Page 2347 of the Public Records of Miami-Dade County, Florida (the "Loan"). The Mortgage encumbers the property legally described as follows:

**LOT 9, BLOCK 30, BREEZESWEPT ESTATES 2<sup>ND</sup> ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN**

File no.: 19-037

JOHN L. PENSON, P.A.

1900 Sunset Harbour DR., Annex-2<sup>nd</sup> Floor, Miami Beach, FL 33139 · Tel: 305-532-1400 · Fax: 305-675-6390

**PLAT BOOK 65, PAGE(S) 15, OF THE PUBLIC RECORDS OF MIAMI-  
DADE COUNTY, FLORIDA.**

**APN: 06-21-25-027-1100**

**Property Commonly Known As: 70 NE 134<sup>th</sup> Street, North Miami, FL 33161**

WHEREAS, The Bien-Aime Family and Bien-Aime were in default on the above-referenced Loan since June 1, 2019, which default led to the filing of this cause on November 22, 2019 in the Circuit Court of Broward County, Florida (the "Foreclosure Action").

WHEREAS, The Bien-Aime Family and Bien-Aime have requested that the Lender forbear from exercising its rights to foreclose its security interest and to pursue damages pursuant to the undisputed default of the Loan at issue herein, and the Lender has requested that The Bien-Aime Family and Bien-Aime release any claims or defenses against Lender.

WHEREAS, Lender is willing to forbear from exercising its rights under the Loan until February 2, 2021, provided that The Bien-Aime Family and Bien-Aime comply with the express terms and conditions of this Agreement.

WHEREAS, the parties agree that the forbearance payments should be made outside of this action, but that the Circuit Court shall retain jurisdiction for enforcement purposes.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Bien-Aime Family and Bien-Aime acknowledge that they are in default of the June 1, 2019 payment due under the Loan. Further, The Bien-Aime Family and Bien-Aime waive any and all defenses, claims, causes of action and the like, whether known or unknown, existing as of the date of this agreement directed towards the origination of the Loan, the subject Note and Mortgage, and the servicing of the Loan and further ratifies the loan documents.

2. The Bien-Aime Family and Bien-Aime further agree and stipulate that the payoff owed to the Lender, less a setoff for any interim payments received following the June 1, 2019 default, together with the monies received by the Lender is \$222,327.78, as of April 1, 2020.

3. The Bien-Aime Family and Bien-Aime shall pay any outstanding property taxes due on the Property on or before June 1, 2020. The Bien-Aime Family and Bien-Aime shall provide proof of payment directly to Lender's counsel within ten (10) days in accordance with the notice provisions of this Agreement. Failure to comply with these requirements shall be considered a default subject to the terms and obligations set forth herein.

4. The Bien-Aime Family and Bien-Aime agree to pay the sum of \$2,408.55 per month through February 2, 2021 (the "Monthly Installment Payment"). The Bien-Aime Family and Bien-Aime shall pay the first payment upon execution of this Agreement, which payment reflects the April 1, 2020 payment, and on the first day of each month thereafter through and including February 2, 2021. All payments made pursuant to this paragraph shall be paid to FCI Lender Services, PO Box 27370, Anaheim Hills, CA 92809; Loan No. \*██████. Any payment not received by the 10<sup>th</sup> day of the month that it is due shall be considered in default. Lender shall be entitled to receive all payments made in accordance with the provisions of this paragraph without waiving any other rights under the Loan documents or in the Foreclosure Action.

5. The Bien-Aime Family and Bien-Aime shall also obtain and maintain valid hazard, windstorm and flood insurance on the Property in amounts acceptable to the Lender and endorsed to Lender within ten (10) days following the execution of this Agreement. The Bien-Aime Family and Bien-Aime will provide proof of valid insurance within fifteen (15) days of the execution of this Agreement.

6. At any time prior to February 2, 2021, Lender will accept the total net payoff in the amount of \$222,327.78 (the "Payoff Amount") together with any additional attorney's fees, costs or

other protective advancements, which may come due following the execution of this Agreement. Further, the new maturity date of this loan is now February 2, 2021.

7. Upon receipt of the Payoff Funds by Plaintiff, Lender shall cause the Note to be cancelled, the Foreclosure Action to be dismissed, the *lis pendens* dissolved and shall record a Satisfaction of the Mortgage in the Public Records of Broward County, Florida.

8. Upon dismissal of the Foreclosure Action, neither party shall be deemed the prevailing party and each party shall be responsible for its own fees and costs. Upon the funding of the Payoff Amount, no further payments will be due under this Agreement. This paragraph shall no longer apply upon the failure to cure a default as provided in the paragraphs below.

9. That The Bien-Aime Family and Bien-Aime understand and agree that in the event that it fails to timely payoff this Loan on or before February 2, 2021 ("Maturity Date"), then Lender shall have the immediate right to the entry of an *ex parte* Consent Final Judgment of Foreclosure in the amount of \$222,327.78 together with any other monies that may be otherwise due (interest, costs, attorney's fees and protective advancements) and owing as if this Agreement never existed, less a setoff for any monies paid towards the collective loan balance.

10. In the event The Bien-Aime Family and Bien-Aime default under the terms of this Agreement, either by failing to make the monthly payments as provided herein, by failing to pay the property taxes as provided for herein, or by failing to maintain proper insurance on the Property, Lender will give notice to The Bien-Aime Family and Bien-Aime of the default and the steps needed to cure the default. The Bien-Aime Family and Bien-Aime shall have ten (10) days to cure the default identified in the notice. The Bien-Aime Family and Bien-Aime further agree and understand that they will be responsible for any and all reasonable costs, attorney's fees and protective advancements should a default occur.

11. In the event The Bien-Aime Family and Bien-Aime default under the terms of this Agreement and fail to cure any default, as more fully set forth above, or in the event that The Bien-Aime

Family and Bien-Aime do not satisfy the Loan by remitting the Payoff Funds to Lender as set forth above. The Bien-Aime Family and Bien-Aime waive all claims and defenses and consents to the entry of a Final Judgment of foreclosure in favor of Lender together with a setting of a foreclosure sale on an expedited basis. In addition, the Lender shall have the right to collect any default interest that would have otherwise been due and owing to the extent that no settlement was ever achieved.

12. Lender then shall be entitled to enforce its rights under the Loan documents and shall be entitled to the entry of a Final Judgment of Foreclosure on the Loan in the Foreclosure Action or, if the Foreclosure Action is no longer pending, Lender shall be entitled to the entry of a Final Judgment of foreclosure in its favor in any new action that is brought.

13. This Agreement is a forbearance of Plaintiff's rights under the Loan documents and does not constitute a modification or novation of the Loan documents. Lender does not waive any rights under the Loan documents.

14. Any Monthly Installment Payments accepted by Lender under this Agreement shall be applied to the monthly interest due under the Loan documents, and then to advances made for taxes and insurance.

15. The parties hereto agree that the Court in the Foreclosure Action shall enter an Agreed Order confirming the terms of this Agreement and ordering the parties to comply with its terms. In the event the Court shall require that the Foreclosure Action be dismissed rather than placed on inactive status, the parties agree that the dismissal shall reserve jurisdiction with the Court to have the Foreclosure Action re-opened upon the Motion of Lender to enforce this Agreement.

16. A facsimile copy of this Agreement, or a counterpart thereof, may serve as an original.

17. The Loan may be sold or assigned and this Agreement shall inure to the benefit of Lender and its successors and assigns (including, without limitation, any purchaser or assignee of the Loan).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**PLAINTIFF / LENDER:**

REFRESH FUNDING, LLC  
5731 SW 23 St  
Hollywood, FL 33023

By: *[Signature]*  
Name: Samuel Soriero  
Title: Manager

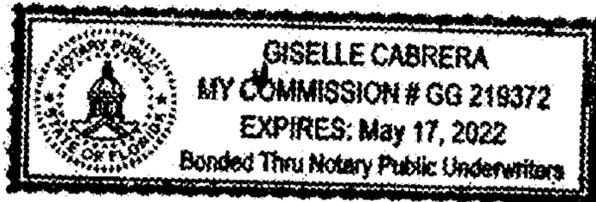
STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 25th day of March, 2020, by Samuel Soriero, as Manager of Refresh Funding, LLC, a Florida Limited Liability Company, on behalf of the company, who is personally known to me or has produced Drivers License as identification.

*[Signature]*

Notary Public

[Notary Seal]



Giselle Cabrera

Name typed, printed or stamped

My Commission Expires: May 17, 2022

