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23 FEDERAL TRADE COMMISSION,
 THE PEOPLE OF THE STATE OF
 24 CALIFORNIA, AND THE STATE OF
 MISSOURI,
 25 Plaintiffs,
 26 v.
 27
 28 US FORECLOSURE RELIEF CORP.,

Case No. SACV09-768 JVS(MLGX)

COMPLAINT FOR PERMANENT
 INJUNCTION AND OTHER
 EQUITABLE RELIEF

1 a corporation, also d/b/a U.S.
2 Foreclosure Relief, Inc., Lighthouse
3 Services, and California Foreclosure
Specialists,

4 GEORGE ESCALANTE, individually
5 and as an officer of US
FORECLOSURE RELIEF CORP.,

6 CESAR LOPEZ, individually and also
7 trading and doing business as H.E.
Service Company, and

8 ADRIAN POMERY, ESQ.,
9 individually and also trading and doing
business as Pomery & Associates,

10 Defendants.

11 Plaintiffs, the Federal Trade Commission ("FTC" or "Commission"), the
12 People of the State of California, and the State of Missouri, for their complaint
13 allege:

14 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
15 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
16 Telemarketing and Consumer Fraud Abuse Prevention Act ("Telemarketing Act"),
17 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent
18 injunctive relief, rescission or reformation of contracts, restitution, disgorgement of
19 ill-gotten monies, and other equitable relief for Defendants' acts or practices in
20 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade
21 Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

22 2. The People of the State of California, by and through Edmund G.
23 Brown Jr., Attorney General of the State of California, brings this action under
24 Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and under the
25 California unfair competition law ("UCL") codified at California Business and
26 Professions Code § 17200 *et seq.*, and false advertising law ("FAL") codified at
27 California Business and Professions Code § 17500 *et seq.*, to obtain injunctive
28

1 relief, restitution, civil penalties, and other equitable relief for Defendants' illegal
2 acts or practices.

3 3. The State of Missouri brings this action, by and through its Attorney
4 General Chris Koster, pursuant to Section 407.100 of the Missouri Merchandising
5 Practices Act, Mo. Rev. Stat. to obtain permanent injunctive relief, restitution, civil
6 penalties and other equitable relief for Defendants' acts and practices in violation
7 of the anti-fraud provisions of the Missouri Merchandising Practices Act, Section
8 407.020 Mo. Rev. Stat., and for Defendants' acts and practices in violation of the
9 foreclosure consultants provisions of the Missouri Merchandising Practices Act,
10 Sections 407.935 to 407.943, Mo. Rev. Stat.

11 **JURISDICTION AND VENUE**

12 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
13 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a)
14 and 6105(b).

15 5. This Court has supplemental jurisdiction over Plaintiffs People of the
16 State of California and State of Missouri's claims pursuant to 28 U.S.C. § 1367.

17 6. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and
18 15 U.S.C. § 53(b) and 6103(a).

19 **PLAINTIFFS**

20 7. The FTC is an independent agency of the United States Government
21 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
22 Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or
23 affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C.
24 §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and
25 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
26 telemarketing acts and practices.

27 8. The FTC is authorized to initiate federal district court proceedings, by
28 its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure

1 such equitable relief as may be appropriate in each case, including restitution and
2 disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

3 9. The State of California is one of the fifty sovereign states of the
4 United States. The Attorney General is authorized to initiate federal district court
5 proceedings to enjoin telemarketing practices that violate the FTC's Telemarketing
6 Sales Rule, and in each such case, to obtain damages, restitution, and other
7 compensation on behalf of residents of the State of California, and to obtain such
8 further relief as the Court may deem appropriate. 15 U.S.C. § 6103(a). The
9 Attorney General also brings pendent or supplemental UCL and FAL claims in the
10 name of the People of the State of California to obtain injunctive relief, restitution,
11 civil penalties, and any such further relief as the Court may deem appropriate under
12 pendent or supplemental jurisdiction. 28 U.S.C. § 1367.

13 10. Plaintiff State of Missouri is one of fifty sovereign states of the United
14 States. The State of Missouri, through its Attorney General, is authorized to
15 initiate proceedings to enjoin violations of the Missouri Merchandising Practices
16 Act and to seek injunctions, restitution, civil penalties and other equitable relief as
17 the Court may deem appropriate. This Court has supplemental jurisdiction over
18 Plaintiff State of Missouri's claims under 28 U.S.C. § 1367.

19 **DEFENDANTS**

20 11. Defendant US Foreclosure Relief Corp. ("US Foreclosure Relief" or
21 "USFR"), also doing business as U.S. Foreclosure Relief, Inc., Lighthouse
22 Services, and California Foreclosure Specialists, is a California corporation with its
23 principal place of business at 1010 West Chapman Avenue, Suite 200, Orange, CA
24 92868. USFR transacts or has transacted business in this district and throughout
25 the United States.

26 12. Defendant George Escalante ("Escalante") is the owner and president
27 of US Foreclosure Relief. At times material to this Complaint, acting alone or in
28 concert with others, he has formulated, directed, controlled, had authority to

1 control, or participated in the acts and practices set forth in this Complaint.
2 Defendant Escalante, in connection with the matters alleged herein, transacts or has
3 transacted business in this district and throughout the United States.

4 13. Defendant Cesar Lopez ("Lopez") is an individual who trades and
5 does business as H.E. Service Company. H.E. Service Company is a sole
6 proprietorship with its principal place of business at 2125 East Katella Avenue,
7 Suite 330, Anaheim, CA 92806. At times material to this Complaint, acting alone
8 or in concert with others, Lopez has formulated, directed, controlled, had authority
9 to control, or participated in the acts and practices set forth in this Complaint.
10 Defendant Lopez, in connection with the matters alleged herein, transacts or has
11 transacted business in this district and throughout the United States.

12 14. Defendant Adrian Pomery, Esq. ("Pomery") is an individual who
13 trades and does business as Pomery & Associates. Pomery & Associates is a sole
14 proprietorship with its principal place of business at 2050 West Chapman Avenue,
15 Suite 221, Orange, CA 92868. At times material to this Complaint, acting alone or
16 in concert with others, Pomery has formulated, directed, controlled, had authority
17 to control, or participated in the acts and practices set forth in this Complaint.
18 Defendant Pomery, in connection with the matters alleged herein, transacts or has
19 transacted business in this district and throughout the United States.

20 15. Since at least Spring 2008 until at least November 2008, acting alone
21 or in concert with others, US Foreclosure Relief advertised, marketed, offered for
22 sale, or sold loan modification and foreclosure rescue services to consumers
23 throughout the United States. In or around December 2008, H.E. Service
24 Company and Pomery & Associates took over the operation of US Foreclosure
25 Relief and since that time have advertised, marketed, offered for sale, or sold loan
26 modification and foreclosure rescue services to US Foreclosure Relief clients.
27 Since that time, H.E. Service Company and Pomery & Associates, acting alone or
28 in concert with others, also advertised, marketed, offered for sale, or sold those

1 same services to other consumers throughout the United States.

2 COMMERCE

3 16. At all times relevant to this Complaint, Defendants have maintained a
4 substantial course of trade in or affecting commerce, as "commerce" is defined in
5 Section 4 of the FTC Act, 15 U.S.C. § 44.

6 AVAILABILITY OF FREE LOAN MODIFICATION

7 AND FORECLOSURE RELIEF SERVICES

8 17. Numerous mortgage lenders and servicers have instituted free
9 programs to assist financially distressed homeowners by offering them the
10 opportunity to modify loans that have become unaffordable. Many of these "loan
11 modification" programs have expanded dramatically as lenders have increased
12 participation in the President's "Making Home Affordable" plan. Moreover,
13 numerous major mortgage lenders and servicers, non-profit and community-based
14 organizations, the federal government, and the news media have helped publicize
15 the availability of these free mortgage loan modification programs. Lenders often
16 notify consumers of the availability of these programs, or of consumers' eligibility,
17 through their "loss mitigation" departments. Proposed defendants divert
18 consumers from these free programs and induce them to spend thousands of dollars
19 on their purported "Loss Mitigation Services."

20 DEFENDANTS' BUSINESS PRACTICES

21 18. Defendants have advertised, marketed, offered for sale, and sold
22 purported home loan modification and foreclosure rescue services. Defendants
23 market their services to homeowners who are in financial distress and searching for
24 a loan modification.

25 19. At various times since Summer 2008, Defendants have made
26 outbound telemarketing calls to consumers, including to consumers on the National
27 Do Not Call Registry.

28 20. At various times since Spring 2008, Defendants have advertised their

1 loan modification services on various Internet websites, including
2 www.cafspecialists.com, www.stopforeclosuretogether.com,
3 www.pomerylaw.com, and www.homelegalassistance.com.

4 21. The www.cafspecialists.com website has contained, among other
5 things, the following statements:

6 a. US Foreclosure Relief prides itself on upholding the highest
7 standards of business ethics and competitive greatness. US
8 Foreclosure Relief provides homeowners with peace of mind:
9 knowing that they have taken a proactive approach to control
10 their destiny.

11 **b. Proven Track Record**

12 US Foreclosure Relief has created a proven track record in
13 creating successful coalitions with homeowners and lenders.
14 We have proven time and time again our ability to get the job
15 done - and do it well.

16 (Exhibit A)

17 22. The www.pomerylaw.com website has contained, among other things,
18 the following statements:

19 a. Losing your Home to Foreclosure? You have options, We can
20 help!

21 b. Pomery & Associates saves homes. Just call us and we can
22 help you stay in your home at a payment you can afford.

23 (Exhibit B)

24 23. The www.homelegalassistance.com website has featured a seal with a
25 legal scale inside it and has contained, among other things, the following
26 statements:

27 a. HOMEOWNERS LEGAL ASSISTANCE - Loan Modification
28 Services

- 1 b. Now is the perfect opportunity to negotiate a livable mortgage
2 rate, have your loan modified and stop foreclosure on your
3 dream home. Take advantage of the government bailout money
4 given to YOUR lender to help YOU. Act now before it's too
5 late!
- 6 c. Regardless of your current mortgage situation, Homeowners
7 Legal Assistance will strive to negotiate a reasonable mortgage
8 loan.
- 9 d. **At Homeowners Legal Assistance**, our mission and priority is
10 to provide homeowners in every city across America with an
11 ethical, affordable, and effective loss mitigation program to
12 avoid Foreclosures. Our vision is inspired by creating the
13 largest and most reputable loss mitigation law firm in the
14 country by providing client resolution and superior customer
15 service.
- 16 e. You will find that the skill, professionalism, and consideration
17 we offer each client is a truly stress relieving and positive
18 experience for you and your loved ones.
- 19 f. Our goal is to help you save your home!
- 20 g. We pressure your bank to pay attention to your needs because
21 they know and trust us. We negotiate a significant number of
22 cases each month and use that leverage when negotiating cases.
23 We have brought together a knowledgeable team from loss
24 mitigation, collections, real estate and banking industries to
25 offer the most complete negotiation program available.
- 26 h. We have rescued homeowners from foreclosure, adjustable
27 mortgages, and lack of equity. Our proven track record gives
28 us credibility with your lender, and our significant volume of

1 cases gives us leverage when negotiating. Homeowners Legal
2 Assistance is the right law firm to help you through this
3 difficult time.

4 (Exhibit C)

5 24. At various times since Spring 2008, Defendants have advertised
6 through radio advertisements, including but not limited to Exhibit D. That radio
7 advertisement contains the following statements:

- 8 a. Homeowners Legal Assistance would like to offer you a free,
9 no obligation consultation that will show you how to stop
10 foreclosure, reduce your interest rates, and save thousands on
11 your mortgage. Do not let this economic slowdown take your
12 home from you and your family.
- 13 b. Homeowners Legal Assistance is an attorney-based loan
14 modification firm that can negotiate the terms of your mortgage
15 so you can afford to live in and enjoy your home.
- 16 c. It does not matter how far behind you are on payment or what
17 your credit score is. Homeowners Legal Assistance is here to
18 listen and help.

19 (Exhibit D)

20 25. Consumers have contacted Defendants by calling toll-free numbers
21 provided in the Defendants' radio advertisements and on their websites and have
22 spoken to Defendants' representatives.

23 26. In numerous instances, during inbound and outbound telephone calls,
24 Defendants' representatives state to consumers that Defendants will stop any
25 foreclosure or sale date on the consumer's property, substantially lower the interest
26 rate on the consumer's home loan, change the interest rate on the consumer's home
27 loan from an adjustable rate to a fixed rate, substantially reduce the principal
28 amount of the consumer's home loan, negotiate any late payments or fees, and

1 substantially lower the consumer's monthly home loan payment.

2 27. In numerous instances, during inbound and outbound telephone calls,
3 Defendants' representatives tell consumers that Defendants have a success rate of
4 85 percent or greater, and that Defendants can obtain a loan modification for
5 consumers within a specified period of time, often no more than two months.

6 28. In numerous instances, during inbound and outbound telephone calls,
7 Defendants' representatives tell consumers that, if they are not satisfied with the
8 company's service, they are entitled to a refund of the fees paid, minus a
9 processing fee.

10 29. In numerous instances, during inbound and outbound telephone calls,
11 Defendants' representatives advise consumers not to contact their lenders or
12 answer inquires from their lenders. Defendants' representatives also tell some
13 consumers to stop paying their home loan while Defendants allegedly negotiate
14 with the consumers' lenders.

15 30. In numerous instances, Defendants require consumers to pay an
16 advance fee, typically \$1,800 to \$2,350, before Defendants render any service.

17 31. In numerous instances, Defendants fail to obtain the promised home
18 loan modifications that would make the consumers' loans more affordable.

19 **VIOLATIONS OF THE FTC ACT**

20 32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
21 deceptive acts or practices in or affecting commerce."

22 33. Misrepresentations or deceptive omissions of material fact constitute
23 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

24 **COUNT I**

25 **False Loan Modification Claim**

26 **(By Plaintiff Federal Trade Commission)**

27 34. In numerous instances in connection with the advertising, marketing,
28 promotion, offering for sale, or sale of loan modification or foreclosure rescue

1 services, Defendants have represented, directly or indirectly, expressly or by
2 implication, that Defendants will obtain for consumers home loan modifications
3 that will make their loans substantially more affordable.

4 35. In truth and in fact, in numerous instances in which Defendants have
5 made the representation set forth in Paragraph 34 of this Complaint, Defendants
6 failed to obtain for consumers home loan modifications that made their loans
7 substantially more affordable.

8 36. Therefore, Defendants' representation as set forth in Paragraph 34 of
9 this Complaint is false or misleading and constitutes a deceptive act or practice in
10 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **COUNT II**

12 **False or Unsubstantiated Success Claims**

13 **(By Plaintiff Federal Trade Commission)**

14 37. In numerous instances in connection with the advertising, marketing,
15 promotion, offering for sale, or sale of loan modification or foreclosure rescue
16 services, Defendants have represented, directly or indirectly, expressly or by
17 implication, that Defendants have helped at least 85 percent of their clients obtain a
18 home loan modification.

19 38. The representation set forth in Paragraph 37 of this Complaint is false
20 or was not substantiated at the time the representation was made.

21 39. Therefore, Defendants' representation as set forth in Paragraph 37 of
22 this Complaint is false or misleading and constitutes a deceptive act or practice in
23 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

24 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

25 **THE TELEMARKETING SALES RULE**
26 **AND THE NATIONAL DO NOT CALL REGISTRY**

27 40. Congress directed the FTC to prescribe rules prohibiting abusive and
28 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15

1 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the
2 Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which became
3 effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR
4 by issuing a Statement of Basis and Purpose (“SBP”) and the final amended
5 Telemarketing Sales Rule (the “TSR”). 68 Fed. Reg. 4580, 4669.

6 41. Defendants are “sellers” or “telemarketers” engaged in
7 “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2, as amended.

8 42. The TSR prohibits sellers and telemarketers from misrepresenting,
9 directly or by implication, in the sale of goods or services any material aspect of
10 the performance, efficacy, nature, or central characteristics of goods or services
11 that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

12 43. The TSR prohibits sellers and telemarketers from making any false or
13 misleading statement to induce any person to pay for goods or services. 16 C.F.R.
14 § 310.3(a)(4).

15 44. Among other things, the TSR established a “do-not-call” registry,
16 maintained by the Commission (the “National Do Not Call Registry” or
17 “Registry”), of consumers who do not wish to receive certain types of
18 telemarketing calls. Consumers can register their telephone numbers on the
19 Registry without charge either through a toll-free telephone call or over the Internet
20 at donotcall.gov.

21 45. Consumers who receive telemarketing calls to their registered
22 numbers can complain of Registry violations the same way they registered, through
23 a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise
24 contacting law enforcement authorities.

25 46. Since September 2, 2003, the FTC has allowed sellers, telemarketers,
26 and other permitted organizations to access the Registry over the Internet at
27 telemarketing.donotcall.gov, pay the required fees, and download the registered
28 numbers by area code.

1 47. Since October 17, 2003, sellers and telemarketers have been
2 prohibited from calling numbers on the Registry in violation of the TSR. 16
3 C.F.R. § 310.4(b)(1)(iii)(B).

4 48. Since October 17, 2003, sellers and telemarketers generally have been
5 prohibited from calling any telephone number within a given area code unless the
6 seller first has paid the annual fee for access to the telephone numbers within that
7 area code that are included in the Registry. 16 C.F.R. § 310.8(a) and (b). There is
8 no charge for the first five area codes of data. Further, sellers or telemarketers
9 accessing the Registry may not participate in any arrangement to share the cost of
10 accessing the Registry, including an arrangement where one seller pays a fee and
11 accesses the Registry for other sellers, the other sellers do not pay fees to the
12 Registry, and the cost of accessing the Registry is thereby divided among the
13 various sellers. 16 C.F.R. § 310.8(c).

14 49. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
15 § 6102(c) and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
16 of the TSR constitutes an unfair or deceptive act or practice in or affecting
17 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

18 50. Pursuant to Section 6103(a) of the TSR, 15 U.S.C. § 6103(a), an
19 attorney general of any state is authorized to initiate a civil action in this Court to
20 enjoin a pattern or practice of violating the TSR and to obtain damages, restitution,
21 and other compensation on behalf of residents of that state, and to obtain such
22 further and other relief as the Court may deem appropriate.

23 **COUNT III**

24 **Making False or Misleading Statements**

25 **(By Plaintiff Federal Trade Commission)**

26 51. In numerous instances, in connection with the telemarketing of loan
27 modification or foreclosure rescue services, and to induce the purchase of loan
28 modification or foreclosure rescue services, Defendants have made false or

1 misleading representations that:

- 2 a. Defendants will obtain for consumers home loan modifications
- 3 that will make their loans substantially more affordable; and
- 4 b. Defendants have helped at least 85 percent of their clients
- 5 obtain a home loan modification.

6 52. Defendants' acts or practices, as alleged in Paragraph 51 of this
7 Complaint, violate Sections 310.3(a)(2)(iii) and (a)(4) of the TSR, 16 C.F.R.
8 § 310.2(a)(2)(iii) and (a)(4).

9 **COUNT IV**

10 **Violations of the National Do Not Call Registry**
11 **(By Plaintiffs Federal Trade Commission and**
12 **People of the State of California)**

13 53. In numerous instances, in connection with the telemarketing of loan
14 modification or foreclosure rescue services, Defendants have engaged in or caused
15 others to engage in initiating an outbound telephone call to a person's telephone
16 number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R.
17 § 310.4(b)(1)(iii)(B).

18 **COUNT V**

19 **Failure to Pay National Registry Fees**
20 **(By Plaintiffs Federal Trade Commission and**
21 **People of the State of California)**

22 54. In numerous instances, in connection with the telemarketing of loan
23 modification or foreclosure rescue services, Defendants have initiated or caused
24 others to initiate an outbound telephone call to a telephone number within a given
25 area code without the seller first paying, either directly or through another person,
26 the required annual fee for access to the telephone numbers within that area code
27 that are included in the National Do Not Call Registry, in violation of the TSR, 16
28 C.F.R. § 310.8.

1 **CALIFORNIA LAW REGARDING ADVANCE FEES**
2 **FOR FORECLOSURE CONSULTING**

3 55. California Civil Code § 2945, *et seq.*, regulates the activities of
4 mortgage foreclosure consultants in California. The purpose of the law is to
5 safeguard the public against deceit and to encourage fair dealing in the rendition of
6 foreclosure services.

7 56. California Civil Code § 2945.1, subdivision (a) defines a foreclosure
8 consultant as:

9 "[A]ny person who makes any solicitation, representation, or offer to
10 any [home] owner to perform for compensation or who, for compensation,
11 performs any service which the person in any manner represents will in any
12 manner do any of the following:

- 13 (1) Stop or postpone the foreclosure sale.
- 14 (2) Obtain any forbearance from any beneficiary or mortgage.
- 15 (3) Assist the owner to exercise the right of reinstatement provided in
16 [Civil Code] Section 2924c.
- 17 (4) Obtain any extension of the period within which the owner may
18 reinstate his or her obligation.
- 19 (5) Obtain any waiver of an acceleration clause contained in any
20 promissory note or contract secured by a deed of trust or mortgage on
21 a residence in foreclosure or contained in any such deed of trust or
22 mortgage.
- 23 (6) Assist the owner to obtain a loan or advance of funds.
- 24 (7) Avoid or ameliorate the impairment of the owner's credit resulting
25 from the recording of a notice of default or the conduct of a
26 foreclosure sale.
- 27 (8) Save the owner's residence from foreclosure."

28 57. Defendants operate as foreclosure consultants as that term is defined

1 in subdivision (a) of section 2945.1 of the California Civil Code.

2 58. California Civil Code Section 2945.4 forbids foreclosure consultants
3 from collecting advance fees for loan modification or other foreclosure rescue
4 services after a notice of default is recorded against the property. Attorneys
5 performing legal services in the course of representing clients may charge clients
6 up-front retainer fees. However, this exemption does not apply if an attorney is
7 not, in fact, rendering legal services but is merely acting as a "front" for non-
8 attorney foreclosure consultants in an attempt to avoid compliance with Civil Code
9 § 2945.4.

10 **VIOLATIONS OF CALIFORNIA LAW**

11 **COUNT VI**

12 **Violations of Business and Professions**

13 **Code § 17500 (Untrue or Misleading Statements)**

14 **(By Plaintiff People of the State of California)**

15 59. Defendants have violated and continue to violate Business and
16 Professions Code § 17500 by making or disseminating untrue or misleading
17 statements, or causing untrue or misleading statements to be made or disseminated
18 in or from California, with the intent to induce members of the public to pay
19 valuable consideration for Defendants' mortgage loan modification or stop
20 foreclosure services. The untrue or misleading statements include but are not
21 necessarily limited to the following:

22 a. In numerous instances, Defendants have represented, expressly
23 or by implication, that Defendants will obtain for consumers
24 home loan modifications that will make their loans substantially
25 more affordable. In fact, in numerous instances, Defendants
26 failed to obtain for consumers home loan modifications that
27 made their loans substantially more affordable.

28 b. In numerous instances, Defendants have represented to

1 consumers that they must make further payments to Defendants
2 even though Defendants have not obtained mortgage loan
3 modification or stopped foreclosure.

4 c. In numerous instances, Defendants have represented to
5 consumers they have a high success rate and that they can
6 obtain loan modification for consumers within a specified
7 period of time, typically no more than two months. In fact,
8 Defendants do not have a high success rate nor do they obtain
9 loan modifications within the specified period of time.

10 d. In numerous instances, Defendants have represented to
11 consumers that consumers should not contact their lender or
12 answer queries from their lender even though such advice could
13 and has resulted in causing some consumers to fall behind in
14 their loan payments, causing their lenders to initiate foreclosure
15 proceedings, and/or causing damage to consumers' credit
16 record.

17 60. Defendants knew or by the exercise of reasonable care should have
18 known that the statements set forth above were untrue or misleading at the time the
19 statements were made.

20 **COUNT VII**

21 **Violations of Business and Professions**

22 **Code § 17200 (Unfair Competition)**

23 **(By Plaintiff People of the State of California)**

24 61. Defendants have engaged in and continue to engage in unfair
25 competition as defined in Business and Professions Code § 17200 as set forth in
26 this paragraph:

27 a. In numerous instances, Defendants have represented, expressly
28 or by implication, that Defendants will obtain for consumers

1 home loan modifications that will make their loans substantially
2 more affordable. In fact, in numerous instances, Defendants
3 failed to obtain for consumers home loan modifications that
4 made their loans substantially more affordable.

5 b. In numerous instances, Defendants have made or disseminated
6 untrue or misleading statements, or caused untrue or misleading
7 statements to be made or disseminated in or from California,
8 with the intent to induce members of the public to pay valuable
9 consideration for Defendants' mortgage loan modification or
10 stop foreclosure services in violation of Business and
11 Professions Code § 17500 as alleged above in Count VI.

12 c. In numerous instances, Defendants claimed, demanded,
13 charged, collected, and/or received compensation prior to
14 performing fully each service Defendants contracted to perform
15 or represented that they would perform in violation of
16 California Civil Code § 2945.4(a).

17 d. In numerous instances, in connection with telemarketing,
18 Defendants engaged in or caused others to engage in initiating
19 an outbound telephone call to a person's telephone number on
20 the National Do Not Call Registry in violation of the TSR, 16
21 C.F.R. § 310.4(b)(1)(iii)(B).

22 e. In numerous instances, in connection with telemarketing,
23 Defendants have initiated or caused others to initiate an
24 outbound telephone call to a telephone number within a given
25 area code without the seller first paying, either directly or
26 through another person, the required annual fee for access to the
27 telephone numbers within that area code that are included in the
28 National Do Not Call Registry, in violation of the TSR, 16

1 C.F.R. § 310.8.

2 f. In numerous instances, Defendants' contracts have not complied
3 with the requirements for mortgage foreclosure consultants set
4 forth in Civil Code § 2945 *et seq.* Defendants' violations
5 include, but are not limited to, the failure to include in their
6 written contracts the notice required by Civil Code § 2945.3.
7 Such notice must state that Defendants may not take any money
8 from a consumer or ask a consumer for money until they have
9 completely finished doing everything Defendants said they
10 would do under the contract.

11 **MISSOURI LAW REGARDING ADVANCE FEES**
12 **FOR FORECLOSURE CONSULTING**

13 62. Sections 407.935 to 407.943 of the Missouri Merchandising Practices
14 Act regulate the activities of foreclosure consultants in Missouri.

15 63. Section 407.935 of the Missouri Merchandising Practices Act,
16 subdivision (a) defines a foreclosure consultant as:

17 “[A]ny person who makes any solicitation, representation, or offer to any
18 owner to perform for compensation or who, for compensation, performs any
19 service which the person in any manner represents will do in any manner
20 any of the following:

- 21 a. Stop or postpone the foreclosure sale;
22 b. Obtain any forbearance from any beneficiary or mortgagee;
23 c. Assist the owner to exercise any right of redemption;
24 d. Obtain any extension of the period within which the owner may
25 reinstate his obligation;
26 e. Obtain any waiver of an acceleration clause contained in any
27 promissory note or contract secured by a deed of trust or mortgage on
28 a residence in foreclosure or contained in any such deed of trust or

1 mortgage;

2 f. Assist the owner in obtaining a loan or advance of funds;

3 g. Avoid or ameliorate the impairment of the owner's credit resulting
4 from the recording of a notice of default or the conduct of a
5 foreclosure sale;

6 h. Save the owner's residence from foreclosure.”

7 64. Defendants operate as foreclosure consultants as that term is defined
8 in subdivision (a) of section 407.935 of the Missouri Merchandising Practices Act.

9 65. Section 407.938 of the Missouri Merchandising Practices Act requires
10 foreclosure consultants, in a form required by Missouri law, to include in their
11 written contracts a notice that advises the consumer that a foreclosure consultant
12 cannot take or request any money until he or she has completely finished doing
13 everything he or she said they would do and also requires a three day notice of
14 cancellation.

15 66. Section 407.940 of the Missouri Merchandising Practices Act forbids
16 foreclosure consultants from knowingly claiming, demanding, charging, collecting
17 or receiving any compensation until after the foreclosure consultant has fully
18 performed each and every service the foreclosure consultant contracted to perform
19 or represented he would perform. Attorneys, licensed in the State of Missouri,
20 rendering service in the course of their legal practice are exempt from this rule.
21 However, this exemption does not apply if an attorney is not licensed in Missouri
22 or if the attorney is not rendering legal services, but is merely acting as a “front”
23 for non-attorney foreclosure consultants in an attempt to avoid compliance with
24 section 407.940.

25 **MISSOURI LAW RELATING TO UNLAWFUL**
26 **MERCHANDISING PRACTICES**

27 67. Section 407.020 of the Missouri Merchandising Practices Act
28 provides that the act, use or employment by any person of any deception, fraud,

1 false pretense, false promise, misrepresentation, unfair practice or the concealment,
2 suppression or omission of any material fact in connection with the sale or
3 advertisement of any merchandise in trade or commerce is declared to be an
4 unlawful practice.

5 68. Any act, use or employment declared unlawful by Section 407.020
6 violates that subsection whether committed before, during or after the sale,
7 advertisement or solicitation.

8 69. Section 407.010.4 defines "merchandise" as any objects, wares,
9 goods, commodities, intangibles, real estate or services.

10 70. Defendants have sold merchandise in the State of Missouri as that
11 term is defined in subdivision (4) of Section 407.010 of the Missouri
12 Merchandising Practices Act.

13 **VIOLATIONS OF MISSOURI LAW**

14 **COUNT VIII**

15 **Violations of Missouri Merchandising Practices Act § 407.938 and § 407.940**

16 **(Foreclosure Consulting)**

17 **(By Plaintiff State of Missouri)**

18 71. Defendants have engaged in and continue to engage in practices
19 which violate the foreclosure consultant provisions of the Missouri Merchandising
20 Practices Act. These violations include but are not limited to the following:

- 21 a. Claiming, demanding, charging, collecting and receiving
22 compensation from Missouri consumers prior to performing
23 each and every service that Defendants contracted to perform or
24 represented they would perform in violation of § 407.940.
- 25 b. Failing to include in their written contracts with Missouri
26 consumers the written notice required by § 407.938 advising
27 consumers that foreclosure consultants are prohibited from
28 asking for or receiving payment prior to completely finishing

1 doing everything he or she said he or she would do.

- 2 c. Failing to include in their written contracts with Missouri
3 consumers the notice of cancellation in the form required by
4 § 407.938.

5 **COUNT IX**

6 **Violations of Missouri Merchandising Practices Act § 407.020**

7 **(Misrepresentations in connection with advertisement or sale of merchandise)**

8 **(By Plaintiff State of Missouri)**

9 72. Defendants have violated and continue to violate Missouri
10 Merchandising Practices Act § 407.020 by making misrepresentations in the State
11 of Missouri to Missouri consumers to induce those consumers to pay valuable
12 consideration for Defendants' mortgage loan modification services or stop
13 foreclosure services. The misrepresentations include but are not limited to the
14 following:

- 15 a. Defendants have represented, expressly or by implication that
16 Defendants will obtain for consumers home loan modifications
17 that will make their loans substantially more affordable. In fact,
18 in numerous instances, Defendants failed to obtain for
19 consumers home loan modifications that made their loans
20 substantially more affordable.
- 21 b. Defendants have represented to consumers that they must make
22 further payments to Defendants even though Defendants have
23 not obtained mortgage loan modifications or stopped
24 foreclosure.
- 25 c. Defendants have represented to consumers that consumers
26 should not contact their lender or answer queries from their
27 lender even though such advice could and has resulted in
28 causing some consumers to fall behind in their loan payments

