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21 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

23 FEDERAL TRADE COMMISSION,
THE PEOPLE OF THE STATE OF
24 CALIFORNIA, AND THE STATE OF
MISSOURI,


25 Plaintiffs,

26 v.

28 US FORECLOSURE RELIEF CORP.,

Case No. SACV09-768 JVS (MLGx)

FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

2010 MAR -8 PM 3:36
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA, CA
BY: 

FILED

BY FAX ORIGINAL

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

4 H.E. SERVICING, INC., a
corporation,

5 CRESIDIS LEGAL, A
6 PROFESSIONAL CORPORATION, a
corporation, also d/b/a Homeowners
7 Legal Assistance and f/k/a Citadel
Legal, A Professional Corporation,

8 GEORGE ESCALANTE, individually
9 and as an officer of US
FORECLOSURE RELIEF CORP. and
10 of H.E. SERVICING, INC.,

11 CESAR LOPEZ, individually and also
12 trading and doing business as H.E.
Service Company,

13 ADRIAN POMERY, ESQ.,
14 individually and also trading and doing
business as Pomery & Associates, and

15 BRANDON L. MORENO, ESQ.,
16 individually and as an officer of
CRESIDIS LEGAL, A
PROFESSIONAL CORPORATION,

17 Defendants.

18
19 Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”), the
20 People of the State of California, and the State of Missouri, for their complaint
21 allege:

22 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
23 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the
24 Telemarketing and Consumer Fraud Abuse Prevention Act (“Telemarketing Act”),
25 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent
26 injunctive relief, rescission or reformation of contracts, restitution, disgorgement of
27 ill-gotten monies, and other equitable relief for Defendants’ acts or practices in
28 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade

1 Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or
2 affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C.
3 §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and
4 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
5 telemarketing acts and practices.

6 8. The FTC is authorized to initiate federal district court proceedings, by
7 its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure
8 such equitable relief as may be appropriate in each case, including restitution and
9 disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

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

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

26 **DEFENDANTS**

27 11. Defendant US Foreclosure Relief Corp. ("US Foreclosure Relief" or
28 "USFR"), also doing business as U.S. Foreclosure Relief, Inc., Lighthouse

1 Services, and California Foreclosure Specialists, is a California corporation with its
2 principal place of business at 1010 West Chapman Avenue, Suite 200, Orange, CA
3 92868. USFR transacts or has transacted business in this district and throughout
4 the United States.

5 12. Defendant H.E. Servicing, Inc. (“H.E. Servicing”) is a California
6 corporation with its principal place of business at 2125 East Katella Avenue, Suite
7 330, Anaheim, CA 92806. H.E. Servicing transacts or has transacted business in
8 this district and throughout the United States.

9 13. Defendant Cresidis Legal, a Professional Corporation (“Cresidis
10 Legal”), also doing business as Homeowners Legal Assistance and formerly
11 known as Citadel Legal, A Professional Corporation, is a California corporation
12 with its principal place of business at 302 N Tustin Avenue, Suite 201, Santa Ana,
13 CA 92705. Cresidis Legal transacts or has transacted business in this district and
14 throughout the United States.

15 14. Defendant George Escalante (“Escalante”) is the owner and president
16 of US Foreclosure Relief and H.E. Servicing. At times material to this Complaint,
17 acting alone or in concert with others, he has formulated, directed, controlled, had
18 authority to control, or participated in the acts and practices set forth in this
19 Complaint. Defendant Escalante, in connection with the matters alleged herein,
20 transacts or has transacted business in this district and throughout the United
21 States.

22 15. Defendant Cesar Lopez (“Lopez”) is an individual who trades and
23 does business as H.E. Service Company. H.E. Service Company is a sole
24 proprietorship with its principal place of business at 2125 East Katella Avenue,
25 Suite 330, Anaheim, CA 92806. At times material to this Complaint, acting alone
26 or in concert with others, Lopez has formulated, directed, controlled, had authority
27 to control, or participated in the acts and practices set forth in this Complaint.
28 Defendant Lopez, in connection with the matters alleged herein, transacts or has

1 transacted business in this district and throughout the United States.

2 16. Defendant Adrian Pomery, Esq. ("Pomery") is an individual who
3 trades and does business as Pomery & Associates. Pomery & Associates is a sole
4 proprietorship with its principal place of business at 2050 West Chapman Avenue,
5 Suite 221, Orange, CA 92868. At times material to this Complaint, acting alone or
6 in concert with others, Pomery has formulated, directed, controlled, had authority
7 to control, or participated in the acts and practices set forth in this Complaint.

8 Defendant Pomery, in connection with the matters alleged herein, transacts or has
9 transacted business in this district and throughout the United States.

10 17. Defendant Brandon L. Moreno, Esq. ("Moreno") is the owner and
11 president of Cresidis Legal. At times material to this Complaint, acting alone or in
12 concert with others, Moreno has formulated, directed, controlled, had authority to
13 control, or participated in the acts and practices set forth in this Complaint.

14 Defendant Moreno, in connection with the matters alleged herein, transacts or has
15 transacted business in this district and throughout the United States.

16 18. Since at least Spring 2008 until at least November 2008, acting alone
17 or in concert with others, US Foreclosure Relief advertised, marketed, offered for
18 sale, or sold loan modification and foreclosure rescue services to consumers
19 throughout the United States.

20 19. In or around December 2008, H.E. Service Company and Pomery &
21 Associates took over the operation of US Foreclosure Relief. Since at least
22 November 2008 to at least March 2009, H.E. Service Company and Pomery &
23 Associates advertised, marketed, offered for sale, or sold loan modification and
24 foreclosure rescue services to US Foreclosure Relief clients. They, acting alone or
25 in concert with others, also advertised, marketed, offered for sale, or sold those
26 same services to other consumers throughout the United States.

27 20. In or around April 2009, H.E. Servicing and Cresidis Legal took over
28 the operation of H.E. Service Company. Since that time, H.E. Servicing, Inc., and

1 Cresidis Legal, acting alone or in concert with others, advertised, marketed, offered
2 for sale, or sold loan modification and foreclosure rescue services to consumers
3 throughout the United States.

4 **COMMERCE**

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

8 **AVAILABILITY OF FREE LOAN MODIFICATION**
9 **AND FORECLOSURE RELIEF SERVICES**

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

22 **DEFENDANTS’ BUSINESS PRACTICES**

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

27 24. At various times since Summer 2008, Defendants have made
28 outbound telemarketing calls to consumers, including to consumers on the National

1 Do Not Call Registry.

2 25. At various times since Spring 2008, Defendants have advertised their
3 loan modification services on various Internet websites, including
4 www.cafspecialists.com, www.stopforeclosuretogether.com,
5 www.pomerylaw.com, and www.homelegalassistance.com.

6 26. The www.cafspecialists.com website has contained, among other
7 things, the following statements:

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

13 b. **Proven Track Record**

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

18 (Exhibit A)

19 27. The www.pomerylaw.com website has contained, among other things,
20 the following statements:

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

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

25 (Exhibit B)

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

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

1 mortgages, and lack of equity. Our proven track record gives
2 us credibility with your lender, and our significant volume of
3 cases gives us leverage when negotiating. Homeowners Legal
4 Assistance is the right law firm to help you through this
5 difficult time.

6 (Exhibit C)

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

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

21 (Exhibit D)

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

25 31. In numerous instances, during inbound and outbound telephone calls,
26 Defendants' representatives state to consumers that Defendants will stop any
27 foreclosure or sale date on the consumer's property, substantially lower the interest
28 rate on the consumer's home loan, change the interest rate on the consumer's home

1 loan from an adjustable rate to a fixed rate, substantially reduce the principal
2 amount of the consumer's home loan, negotiate any late payments or fees, and
3 substantially lower the consumer's monthly home loan payment.

4 32. In numerous instances, during inbound and outbound telephone calls,
5 Defendants' representatives tell consumers that Defendants have a success rate of
6 85 percent or greater, and that Defendants can obtain a loan modification for
7 consumers within a specified period of time, often no more than two months.

8 33. At various times since November 2008, during inbound and outbound
9 telephone calls, Defendants' representatives tell consumers that Defendants are an
10 attorney-based loan modification company and promise that an attorney will
11 negotiate the consumer's home loan with the lender.

12 34. In numerous instances, during inbound and outbound telephone calls,
13 Defendants' representatives tell consumers that, if they are not satisfied with the
14 company's service, they are entitled to a refund of the fees paid, minus a
15 processing fee.

16 35. In numerous instances, during inbound and outbound telephone calls,
17 Defendants' representatives advise consumers not to contact their lenders or
18 answer inquiries from their lenders. Defendants' representatives also tell some
19 consumers to stop paying their home loan while Defendants allegedly negotiate
20 with the consumers' lenders.

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

23 37. In numerous instances, Defendants fail to obtain the promised home
24 loan modifications that would make the consumers' loans more affordable.

25 **VIOLATIONS OF THE FTC ACT**

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

28 39. Misrepresentations or deceptive omissions of material fact constitute

1 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

2 **COUNT I**

3 **False or Unsubstantiated Claims**

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

5 40. In numerous instances in connection with the advertising, marketing,
6 promotion, offering for sale, or sale of loan modification or foreclosure rescue
7 services, Defendants have represented, directly or indirectly, expressly or by
8 implication, that:

- 9 a. Defendants will obtain for consumers home loan modifications
10 that will make their loans substantially more affordable;
11 b. Defendants have helped at least 85 percent of their clients
12 obtain a home loan modification;
13 c. Defendants will give full or partial refunds to consumers if
14 Defendants fail to obtain home loan modifications; and
15 d. Attorneys negotiate the terms of consumers' home loans with
16 lenders.

17 41. The representations set forth in Paragraph 40 of this Complaint are
18 false or were not substantiated at the time the representations were made.

19 42. Therefore, Defendants' representations as set forth in Paragraph 40 of
20 this Complaint are false or misleading and constitute deceptive acts or practices in
21 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

22 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

23 **THE TELEMARKETING SALES RULE**

24 **AND THE NATIONAL DO NOT CALL REGISTRY**

25 43. Congress directed the FTC to prescribe rules prohibiting abusive and
26 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
27 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the
28 Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became

1 effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR
2 by issuing a Statement of Basis and Purpose (“SBP”) and the final amended
3 Telemarketing Sales Rule (the “TSR”). 68 Fed. Reg. 4580, 4669.

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

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

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

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

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

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

27 50. Since October 17, 2003, sellers and telemarketers have been
28 prohibited from calling numbers on the Registry in violation of the TSR. 16

1 C.F.R. § 310.4(b)(1)(iii)(B).

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

12 52. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. §
13 6102(c) and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of
14 the TSR constitutes an unfair or deceptive act or practice in or affecting commerce,
15 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

21 **COUNT II**

22 **Making False or Misleading Statements**

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

24 54. In numerous instances, in connection with the telemarketing of loan
25 modification or foreclosure rescue services, and to induce the purchase of loan
26 modification or foreclosure rescue services, Defendants have made false or
27 misleading representations that:

28 a. Defendants will obtain for consumers home loan modifications

1 that will make their loans substantially more affordable;

2 b. Defendants have helped at least 85 percent of their clients
3 obtain a home loan modification;

4 c. Defendants will give full or partial refunds to consumers if
5 Defendants fail to obtain home loan modifications; and

6 d. Attorneys negotiate the terms of consumers' home loans with
7 lenders.

8 55. Defendants' acts or practices, as alleged in Paragraph 54 of this
9 Complaint, violate Sections 310.3(a)(2)(iii) and (a)(4) of the TSR, 16 C.F.R. §
10 310.2(a)(2)(iii) and (a)(4).

11 **COUNT III**

12 **Violations of the National Do Not Call Registry**

13 **(By Plaintiffs Federal Trade Commission and**

14 **People of the State of California)**

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

20 **COUNT IV**

21 **Failure to Pay National Registry Fees**

22 **(By Plaintiffs Federal Trade Commission and**

23 **People of the State of California)**

24 57. In numerous instances, in connection with the telemarketing of loan
25 modification or foreclosure rescue services, Defendants have initiated or caused
26 others to initiate an outbound telephone call to a telephone number within a given
27 area code without the seller first paying, either directly or through another person,
28 the required annual fee for access to the telephone numbers within that area code

1 that are included in the National Do Not Call Registry, in violation of the TSR, 16
2 C.F.R. § 310.8.

3 **CALIFORNIA LAW REGARDING ADVANCE FEES**
4 **FOR FORECLOSURE CONSULTING**

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

9 59. California Civil Code § 2945.1, subdivision (a) defines a foreclosure
10 consultant as:

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

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

1 (8) Save the owner's residence from foreclosure."

2 60. Defendants operate as foreclosure consultants as that term is defined
3 in subdivision (a) of section 2945.1 of the California Civil Code.

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

12 **VIOLATIONS OF CALIFORNIA LAW**

13 **COUNT V**

14 **Violations of Business and Professions**

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

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

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

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

1 made their loans substantially more affordable.

2 b. In numerous instances, Defendants have represented to
3 consumers that they must make further payments to Defendants
4 even though Defendants have not obtained mortgage loan
5 modification or stopped foreclosure.

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

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

19 e. In numerous instances, Defendants have represented to
20 consumers that they will give full or partial refunds to
21 consumers if Defendants fail to obtain home loan
22 modifications. In fact, in numerous instances, Defendants did
23 not give full or partial refunds to consumers when Defendants
24 failed to obtain home loan modifications; and

25 f. In numerous instances, Defendants have represented to
26 consumers that attorneys negotiate the terms of consumers'
27 home loans with lenders. In fact, attorneys did not negotiate the
28 terms of consumers' home loans with lenders.

1 63. Defendants knew or by the exercise of reasonable care should have
2 known that the statements set forth above were untrue or misleading at the time the
3 statements were made.

4 **COUNT VI**

5 **Violations of Business and Professions**

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

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

8 64. Defendants have engaged in and continue to engage in unfair
9 competition as defined in Business and Professions Code § 17200 as set forth in
10 this paragraph:

- 11 a. In numerous instances, Defendants have represented, expressly
12 or by implication, that Defendants will obtain for consumers
13 home loan modifications that will make their loans substantially
14 more affordable. In fact, in numerous instances, Defendants
15 failed to obtain for consumers home loan modifications that
16 made their loans substantially more affordable.
- 17 b. In numerous instances, Defendants have made or disseminated
18 untrue or misleading statements, or caused untrue or misleading
19 statements to be made or disseminated in or from California,
20 with the intent to induce members of the public to pay valuable
21 consideration for Defendants' mortgage loan modification or
22 stop foreclosure services in violation of Business and
23 Professions Code § 17500 as alleged above in Count V.
- 24 c. In numerous instances, Defendants claimed, demanded,
25 charged, collected, and/or received compensation prior to
26 performing fully each service Defendants contracted to perform
27 or represented that they would perform in violation of
28 California Civil Code § 2945.4(a).

- 1 d. In numerous instances, in connection with telemarketing,
2 Defendants engaged in or caused others to engage in initiating
3 an outbound telephone call to a person's telephone number on
4 the National Do Not Call Registry in violation of the TSR, 16
5 C.F.R. § 310.4(b)(1)(iii)(B).
- 6 e. In numerous instances, in connection with telemarketing,
7 Defendants have initiated or caused others to initiate an
8 outbound telephone call to a telephone number within a given
9 area code without the seller first paying, either directly or
10 through another person, the required annual fee for access to the
11 telephone numbers within that area code that are included in the
12 National Do Not Call Registry, in violation of the TSR, 16
13 C.F.R. § 310.8.
- 14 f. In numerous instances, Defendants have not complied with the
15 requirements for mortgage foreclosure consultants set forth in
16 Civil Code § 2945 et seq. Defendants' violations include, but
17 are not limited to, the failure to include in their written contracts
18 the notice required by Civil Code § 2945.3. Such notice must
19 state that Defendants may not take any money from a consumer
20 or ask a consumer for money until they have completely
21 finished doing everything Defendants said they would do under
22 the contract.

23 **MISSOURI LAW REGARDING ADVANCE FEES**
24 **FOR FORECLOSURE CONSULTING**

25 65. Sections 407.935 to 407.943 of the Missouri Merchandising Practices
26 Act regulate the activities of foreclosure consultants in Missouri.

27 66. Section 407.935 of the Missouri Merchandising Practices Act,
28 subdivision (a) defines a foreclosure consultant as:

1 “[A]ny person who makes any solicitation, representation, or offer to any
2 owner to perform for compensation or who, for compensation, performs any
3 service which the person in any manner represents will do in any manner
4 any of the following:

- 5 a. Stop or postpone the foreclosure sale;
- 6 b. Obtain any forbearance from any beneficiary or mortgagee;
- 7 c. Assist the owner to exercise any right of redemption;
- 8 d. Obtain any extension of the period within which the owner may
9 reinstate his obligation;
- 10 e. Obtain any waiver of an acceleration clause contained in any
11 promissory note or contract secured by a deed of trust or
12 mortgage on a residence in foreclosure or contained in any such
13 deed of trust or mortgage;
- 14 f. Assist the owner in obtaining a loan or advance of funds;
- 15 g. Avoid or ameliorate the impairment of the owner’s credit
16 resulting from the recording of a notice of default or the
17 conduct of a foreclosure sale;
- 18 h. Save the owner’s residence from foreclosure.”

19 67. Defendants operate as foreclosure consultants as that term is defined
20 in subdivision (a) of section 407.935 of the Missouri Merchandising Practices Act.

21 68. Section 407.938 of the Missouri Merchandising Practices Act requires
22 foreclosure consultants, in a form required by Missouri law, to include in their
23 written contracts a notice that advises the consumer that a foreclosure consultant
24 cannot take or request any money until he or she has completely finished doing
25 everything he or she said they would do and also requires a three day notice of
26 cancellation.

27 69. Section 407.940 of the Missouri Merchandising Practices Act forbids
28 foreclosure consultants from knowingly claiming, demanding, charging, collecting

1 or receiving any compensation until after the foreclosure consultant has fully
2 performed each and every service the foreclosure consultant contracted to perform
3 or represented he would perform. Attorneys, licensed in the State of Missouri,
4 rendering service in the course of their legal practice are exempt from this rule.
5 However, this exemption does not apply if an attorney is not licensed in Missouri
6 or if the attorney is not rendering legal services, but is merely acting as a “front”
7 for non-attorney foreclosure consultants in an attempt to avoid compliance with
8 section 407.940.

9 **MISSOURI LAW RELATING TO UNLAWFUL**
10 **MERCHANDISING PRACTICES**

11 70. Section 407.020 of the Missouri Merchandising Practices Act
12 provides that the act, use or employment by any person of any deception, fraud,
13 false pretense, false promise, misrepresentation, unfair practice or the concealment,
14 suppression or omission of any material fact in connection with the sale or
15 advertisement of any merchandise in trade or commerce is declared to be an
16 unlawful practice.

17 71. Any act, use or employment declared unlawful by Section 407.020
18 violates that subsection whether committed before, during or after the sale,
19 advertisement or solicitation.

20 72. Section 407.010.4 defines “merchandise” as any objects, wares,
21 goods, commodities, intangibles, real estate or services.

22 73. Defendants have sold merchandise in the State of Missouri as that
23 term is defined in subdivision (4) of Section 407.010 of the Missouri
24 Merchandising Practices Act.

25 **VIOLATIONS OF MISSOURI LAW**

26 **COUNT VII**

27 **Violations of Missouri Merchandising Practices Act § 407.938 and § 407.940**
28 **(Foreclosure Consulting)**

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

2 74. Defendants have engaged in and continue to engage in practices
3 which violate the foreclosure consultant provisions of the Missouri Merchandising
4 Practices Act. These violations include but are not limited to the following:

- 5 a. Claiming, demanding, charging, collecting and receiving
6 compensation from Missouri consumers prior to performing
7 each and every service that Defendants contracted to perform or
8 represented they would perform in violation of § 407.940.
- 9 b. Failing to include in their written contracts with Missouri
10 consumers the written notice required by § 407.938 advising
11 consumers that foreclosure consultants are prohibited from
12 asking for or receiving payment prior to completely finishing
13 doing everything he or she said he or she would do.
- 14 c. Failing to include in their written contracts with Missouri
15 consumers the notice of cancellation in the form required by
16 § 407.938.

17 **COUNT VIII**

18 **Violations of Missouri Merchandising Practices Act § 407.020**
19 **(Misrepresentations in connection with advertisement or sale of merchandise)**

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

21 75. Defendants have violated and continue to violate Missouri
22 Merchandising Practices Act § 407.020 by making misrepresentations in the State
23 of Missouri to Missouri consumers to induce those consumers to pay valuable
24 consideration for Defendants' mortgage loan modification services or stop
25 foreclosure services. The misrepresentations include but are not limited to the
26 following:

- 27 a. Defendants have represented, expressly or by implication that
28 Defendants will obtain for consumers home loan modifications

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

5 b. Defendants have represented to consumers that they must make
6 further payments to Defendants even though Defendants have
7 not obtained mortgage loan modifications or stopped
8 foreclosure.

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

15 d. Defendants have represented to consumers that they will give
16 full or partial refunds to consumers if Defendants fail to obtain
17 home loan modifications.

18 e. Defendants have represented to consumers that attorneys
19 negotiate the terms of consumers' home loans with lenders.

20 76. Defendants knew or by the exercise of reasonable care should have
21 known that the statements set forth above were untrue or misleading at the time the
22 statements were made.

23 **CONSUMER INJURY**

24 77. Consumers have suffered and will continue to suffer substantial injury
25 as a result of Defendants' unlawful acts or practices. In some instances, consumers
26 lost their homes to foreclosure because Defendants failed to obtain the promised
27 home loan modification that would have lowered consumers' payments. Even
28 consumers who did not lose their homes ended up even further behind in their

1 payments, suffered harm to their credit reports, and suffered other harms because
2 of Defendants' failure to obtain the promised loan modifications and because
3 Defendants advised consumers not to pay their home loans while Defendants
4 allegedly negotiated their loan modifications.

5 78. In addition, Defendants have been unjustly enriched as a result of their
6 unlawful acts or practices. Absent injunctive relief from this Court, Defendants are
7 likely to continue to injure consumers, reap unjust enrichment, and harm the public
8 interest.

9 **THIS COURT'S POWER TO GRANT RELIEF**

10 79. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
11 to grant injunctive and such other relief as the Court may deem appropriate to halt
12 and redress violations of the FTC Act. The Court, in the exercise of its equitable
13 jurisdiction, may award ancillary relief, including rescission of contracts and
14 restitution, and the disgorgement of ill-gotten monies, to prevent and remedy injury
15 caused by Defendants' law violations.

16 80. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
17 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
18 the Court finds necessary to redress injury to consumers or other persons resulting
19 from Defendants' violations of the TSR, including the rescission and reformation
20 of contracts and the refund of money.

21 81. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a),
22 authorizes the Court to grant the State of California, on behalf of its residents,
23 injunctive and other equitable relief, including damages, restitution, other
24 compensation, and such further and other relief as the Court deems appropriate.

25 82. The counts based upon state law may be enforced by this Court
26 through its pendent or supplemental jurisdiction pursuant to 28 U.S.C. § 1367, and
27 this Court may award relief under California Civil Code § 2945, California
28 Business and Professions Code §§ 17200 and 17500, and the Missouri

1 Merchandising Practices Act § 407.100.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs, pursuant to Section 13(b) and 19 of the FTC Act,
4 15 U.S.C. § 53(b) and 57b; Section 6(b) of the Telemarketing Act, 15 U.S.C. §
5 6105(b); Section 49(a) of the Telemarketing Act, 15 U.S.C. § 6103(a); California
6 Business and Professions Code § 17200 et seq., and § 17500 et seq.; Missouri
7 Merchandising Practices Act § 407.100; and the Court's own equitable powers,
8 request that the Court:

9 A. Award Plaintiffs such preliminary injunctive and ancillary relief as
10 may be necessary to avert the likelihood of consumer injury during the pendency
11 of this action and to preserve the possibility of effective final relief, including but
12 not limited to temporary and preliminary injunctions, an order freezing assets, and
13 the appointment of a receiver;

14 B. Enter a permanent injunction to prevent future violations of the FTC
15 Act and the TSR by Defendants;

16 C. Enter a permanent injunction to prevent future violations of the
17 California Business and Professions Code by Defendants;

18 D. Enter a permanent injunction to prevent future violations of the
19 Missouri Merchandising Practices Act by Defendants;

20 E. Award such relief as the Court finds necessary to redress injury to
21 consumers resulting from Defendants' violations of the FTC Act, the TSR, the
22 California Business and Professions Code, and the Missouri Merchandising
23 Practices Act, including, but not limited to, civil penalties, rescission or
24 reformation of contracts, restitution, the refund of monies paid, and the
25 disgorgement of ill-gotten monies; and

26 F. Award Plaintiffs the costs of bringing this action, including costs of
27 investigation, as well as such other and additional equitable relief as the Court may
28 determine to be just and proper.

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Dated: 3/2/10

Respectfully Submitted,

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General Counsel

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About US Foreclosure Relief

A Proactive Approach to Today's Challenging Market

Homeowners represented by US Foreclosure Relief initiate our services for a variety of reasons, including time constraints, our lender relationships, their limited knowledge of the foreclosure process, language barriers, etc. Finding the right company to work with your situation can be an even more daunting task and homeowners can easily become overwhelmed. US Foreclosure Relief prides itself on upholding the highest standards of business ethics and competitive greatness. US Foreclosure Relief provides homeowners with peace of mind: knowing they have taken a proactive approach to control their destiny.



Proven Track Record

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

Take the initiative to be in control of your destiny by calling us today at (888) 773-2677 for a free, personalized consultation. You can also apply online. It is fast, secure, and easy.

Why wait? Let us go to work for you!



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Pomery & Associates

*Losing your Home to Foreclosure?
You have options, We can help!*

Contact Us!

Why Loan Modification?

Loan Modification- Means your current lender modifies your current mortgage through what is called the note. The note sets the terms of your loan. This does not require a new closing. This is not refinancing your loan. A loan modification will simply change any or all of the following terms of your loan. The terms of your loan are your interest rate, balance of loan, delinquent fees owed, and term of loan. In the past this was only used when a borrower was delinquent but now we will see it being used before someone is delinquent. This is one of the best methods to help people avoid foreclosure. The bank does not want you to lose your home. Pomery & Associates saves homes. Just call us and we can help you stay in your home at a payment you can afford.



Definition:

Loss mitigation is a process that helps stop a home from going through foreclosure. It is an effort made by the federal government and the mortgage industry to help home owners that were facing the loss of their homes find an alternative to foreclosure.

Consequences of Loss Mitigation:

A loss mitigation department can make a difference between the success and failure of your loss mitigation transaction. Although the main focus is the keep a home owner from losing their home, loss mitigation has options such as setting up a repayment plan or loan modification plan. These options need to be considered realistically in regards to the home owner's ability to repay the delinquent amount.

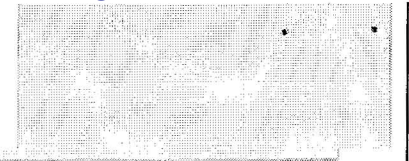
What a Lawyer can do for you:

Loss Mitigation lawyers can help you save your home. Loss mitigation lawyers can help you bring your mortgage up to date and find out what the



Complaint Exhibit B

Best options are to help you get there. As real property lawyers, they understand the mortgage industry and could help you find a solution you can work with. Lawyers can also introduce you to programs that will help you pay off the amount you owe to the bank and/or lender.



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HOMEOWNERS LEGAL ASSISTANCE - Loan Modification Services

Now is the perfect opportunity to negotiate a livable mortgage rate, have your loan modified and stop foreclosure on your dream home. Take advantage of the government bailout money given to YOUR lender to help YOU. Act now before it's too late!

Be Proactive, Save Your Home



Regardless of your current mortgage situation, Homeowners Legal Assistance will strive to negotiate a reasonable mortgage loan:

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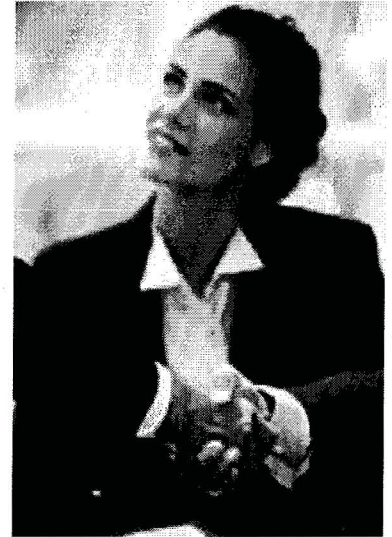
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About Homeowners Legal Assistance

Welcome to Homeowners Legal Assistance

With the current state of our economy, homeowners are faced with the daily challenge of keeping their homes, making ends meet, and just plain surviving! Finding the time and patience to deal with your mortgage company becomes a never ending ordeal. Literally, hundreds of modification companies have evolved but many lack the knowledge and have questionable reputations!



The task of choosing a reliable and trustworthy loss mitigation company to help you and your family is a daunting nightmare. Negotiating with the bank for a modification of your home loan can be an overwhelming process for many homeowners. That is why retaining the services of an experienced Loan Modification Firm is of extreme importance.

At Homeowners Legal Assistance, our mission and priority is to provide homeowners in every city across America with an ethical, affordable, and effective loss mitigation program to avoid Foreclosures. Our vision is inspired by creating the largest and most reputable loss mitigation law firm in the country by providing client resolution and superior customer service. It is our confident belief that our success ultimately depends on establishing a customer service oriented environment that instills the Integrity in each team member for the purpose of protecting "The American Dream".

You will find that the skill, professionalism, and consideration we offer each client is a truly stress relieving and a positive experience for you and your loved ones.

Our goal is to help you save your home!

Complaint Exhibit C

We pressure your bank to pay attention to your needs because they know and trust us. We negotiate a significant number of cases each month and use that leverage when negotiating cases. We have brought together a knowledgeable team from loss mitigation, collections, real estate and banking industries to offer the most complete negotiation program available. We have rescued homeowners from foreclosure, adjustable mortgages, and lack of equity. Our proven track record gives us credibility with your lender, and our significant volume of cases gives us leverage when negotiating. Homeowners Legal Assistance is the right law firm to help you through this difficult time.

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Contact Homeowners Legal Assistance

Please submit your information and a representative will contact you in a timely manner.

Thank you for your interest!

Contact Info:

Homeowners Legal Assistance

Ph: 714-627-0505

Mon-Fri: 8a.m-6p.m (PST)

Sat: 9.am-12p.m (PST)

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FEDERAL TRADE COMMISSION

Matter No.: 092-3120

Matter Name: U.S. Foreclosure Relief

Description: Homeowners Legal Assistance

Free State Reporting, Inc.
1378 Cape St. Claire Road

Complaint Exhibit D

R E C O R D I N G

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RECORDING: Are you losing your home to foreclosure? Are you behind on your mortgage and fear the worst? Homeowners Legal Assistance would like to offer you a free, no obligation consultation that will show you how to stop foreclosure, reduce your interest rates and save thousands on your mortgage. Do not let this economic slowdown take your home from you and your family. You have worked too hard. Homeowners Legal Assistance is an attorney-based loan modification firm that can negotiate the terms of your mortgage so you can afford to live in and enjoy your home.

Call for a free, no obligation consultation. There is no cost to find out how this program can help you save your home. Call 800-989-0688. That's 800-989-0688. It does not matter how far behind you are on payment or what your credit score is. Homeowners Legal Assistance is here to listen and help. Call now, 800-989-0688. 800-989-0688.

(End of recording.)

Free State Reporting, Inc.
1378 Cape St. Claire Road

C E R T I F I C A T E

I hereby certify that the foregoing has been transcribed to the best of my skill and ability from the audio recording.

Kay Maurer
Transcriber

Free State Reporting, Inc.
1378 Cape St. Claire Road

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