

**FOR IMMEDIATE RELEASE:**

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## **Attorney General Balderas Files Federal Lawsuit against California Ring Preying on New Mexicans Facing Foreclosure**

*This action is part of AG Balderas' Operation Holiday Home Protection.*

*Santa Fe, NM* - Today, Attorney General Hector Balderas announced that he filed a federal civil action against a group of individuals and businesses, located in California, who were taking advantage of New Mexicans facing foreclosure. The complaint alleges that the group violated state and federal consumer protection laws by sending deceptive mass mailings to over 4,400 New Mexico homeowners offering foreclosure relief and loan modification. These mailers were intended to look like official governmental communication and included a logo which used the name "Keep Your Home New Mexico" to induce homeowners into believing the program was official.

"Preying on the desperation of New Mexican families who are struggling to stay in their home is unconscionable and my office will not stand for it in our state," said Attorney General Balderas. "We will hold scammers and fraudulent businesses accountable for harming New Mexicans who are simply trying to keep families in their homes this holiday season."

The actual "Keep Your Home New Mexico" program is run by the Office of the Attorney General to help distressed New Mexican homeowners avoid foreclosure. In addition to deceptively marketing their services, the California group also charged up-front fees, which is illegal in New Mexico unless charged by a New Mexico licensed attorney.

This action is part of Attorney General Balderas' Operation Holiday Home Protection. If you are having trouble making your mortgage payments please contact the Office of the Attorney General toll free at 1-844-255-9210.

See attached for a copy of the federal civil action.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.,  
HECTOR H. BALDERAS, Attorney General of New Mexico,  
Plaintiff/Petitioner,

v.

Docket No.

BENJAMIN BORAZGHI A/K/A BENJAMIN BORAZZI, a California resident;  
THOMAS A. MOORE, an attorney and California resident;  
ROOSEVELT LAW CENTER, P.C., a California corporation;  
MATTHEW RALPH CHANEY, a California resident;  
PEJAEMAN F. GHANEIAN, a California resident;  
QUANTUM STAFFING AND MARKETING, INC., a California corporation;  
PROFESSIONAL STAFFING AND MARKETING, INC., a California corporation;  
D/B/A [www.HRAHelp.org](http://www.HRAHelp.org), an unidentified business or trade name;  
D/B/A [www.homereliefadvocate.com](http://www.homereliefadvocate.com), an unidentified business or trade name;  
D/B/A [www.hracasereview.com](http://www.hracasereview.com), an unidentified business or trade name;  
D/B/A [www.Hpahelp.com](http://www.Hpahelp.com), an unidentified business or trade name;  
D/B/A [www.HomeOwnersReliefAlliance.com](http://www.HomeOwnersReliefAlliance.com), an unidentified business/trade name;  
D/B/A [PriorityProcessing.com](http://PriorityProcessing.com), an unidentified business or trade name;  
D/B/A [Priority-Processing.com](http://Priority-Processing.com), an unidentified business or trade name;  
SECURE SETTLEMENT, INC., a California corporation;  
MIRACLES FOR HOMEOWNERS MARKETING, INC., a California corporation;  
DOES 1-10,  
XYZ Companies 1-10,  
Defendants/Respondents.

**COMPLAINT FOR VIOLATIONS OF THE MORTGAGE ASSISTANCE RELIEF  
SERVICES RULE, THE NEW MEXICO MORTGAGE FORECLOSURE  
CONSULTANT FRAUD PREVENTION ACT, THE NEW MEXICO UNFAIR  
PRACTICES ACT AND PETITION FOR INJUNCTIVE RELIEF**

Comes now The State of New Mexico, by its Attorney General Hector H. Balderas  
("OAG" or "Plaintiff" hereinafter) for its Complaint against the Defendants denominated above  
hereby states and alleges:

*State of New Mexico et al v. Borazzi et al  
Complaint for Violations of the MARS Rule, NMMFCFPA, NMUPA and for Injunctive Relief*

## INTRODUCTION

The foreclosure crisis of 2008 created a new category of predators calling themselves “foreclosure consultants” and “mortgage modification” companies. Many of these companies charge homeowners large upfront fees for deceptively advertised services. States around the country, including New Mexico, have enacted laws to prohibit such companies from charging upfront fees in advance of their delivery of service. While New Mexico’s ban on upfront fees does not apply to attorneys licensed to practice law in New Mexico when the attorney is rendering services in the course of his or her legal practice, the ban does apply to out-of-state attorneys and law firms that are not licensed to practice law in New Mexico. Some of these out-of-state entities promote their attorney affiliations as a means of convincing desperate homeowners to pay thousands of dollars in unlawful advance fees for supposed foreclosure or mortgage modification assistance.

Defendants have intentionally misrepresented and deceived New Mexico homeowners by fraudulently using the name “Keep Your Home New Mexico”, a homeownership preservation program developed in response to the foreclosure crisis with funding from the National Mortgage Settlement. The New Mexico Office of the Attorney General (hereinafter “OAG”) funded and marketed “Keep Your Home New Mexico” for a comprehensive program of home preservations programs including a hotline, website, free housing counseling and free legal services. The official website for the program is [www.keepyourhomenewmexico.org](http://www.keepyourhomenewmexico.org). The OAG has expended public funds to design and promote this website in order to offer assistance to consumers in financial distress.

Defendants operate a scheme in which mass mailings are sent to consumers which create a false appearance of governmental authority and lender cooperation. Defendants commonly use the return address “Keep Your Home [state]”, a name developed and used by state governmental agencies, including the New Mexico OAG, to promote legitimate home preservation services, generally through National Mortgage Settlement<sup>1</sup> funds. Consumers who respond to the mass mailing go through an “underwriting” process and are then referred to a ‘law firm’ which was set up for the sole purpose of legitimizing the loan modification scheme. Illegal up-front fees are charged for assisting consumers in applying for loan modifications.

This scheme violates at least three consumer protection statutes: first, the N.M. Unfair Practices Act [“UPA”] in that Defendants engaged in large-scale use of deceptive and unlawful marketing and have sent mass mailings to over 4,400 New Mexico consumers (NMSA 1978 §§ 57-12-1 to 26); secondly, the Mortgage Assistance Relief Services [“MARS”] Rule, Regulation O, 12 C.F.R. §1015 (2011), in that (a) Defendants have unlawfully solicited and accepted up-front fees, which they mischaracterize as legal fees paid to an attorney; and (b) failed to provide the required notices and disclosures on their mailings; and, third, the N.M. Mortgage Foreclosure Consultant Fraud Prevention Act [“MFCFPA”], NMSA 1978 §§47-15-1 to 8, in that Defendants failed to provide required notices, including a right to rescission, and charged upfront fees.

### **JURISDICTION AND VENUE**

1. This Court has subject-matter jurisdiction over this action because it is brought under federal consumer financial law and rules promulgated under such laws, 12 U.S.C.

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<sup>1</sup> *United States of America et al v. Bank of America Corp, et al*, Case 1:12-cv-00361-RMC (D.C.D.C.).

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§5565(a)(1), and presents a federal question pursuant to 28 U.S.C. §1331. The MARS Rule is a rule enforced by the CFPB and is a “federal consumer financial law” as defined by 12 U.S.C. § 5481(14)). The state law claims arise from the same acts or conduct of Defendants such that they are part of the same case or controversy and thus this Court may exercise supplemental jurisdiction of those claims pursuant to 12 U.S.C. §1367(a).

2. Venue is proper in this District under 28 U.S.C. §§1391(b) and (c), and 12 U.S.C. §5552(a)(1). Defendants conduct business in this District and a substantial part of the events giving rise to this claim took place in this District including mailings and communications directed into New Mexico and, upon information and belief, payment for services by New Mexico residents.

3. Plaintiff OAG has consulted with the Consumer Financial Protection Bureau (“CFPB”) and provided the notice required by 12 U.S.C. §5552(b).

#### **PLAINTIFF**

4. Plaintiff/Petitioner Hector H. Balderas is the duly elected Attorney General of the State of New Mexico. The Attorney General has the statutory authority to enforce laws for the protection of the public, including the UPA. NMSA 1978 §57-12-15.

5. The Attorney General may act on behalf of the state in all actions when the interests of the State require action in his judgment, including enforcement of the UPA. NMSA 1978 §8-5-2(B).

6. The OAG is authorized to bring an action to enforce the MARS Rule to seek rescission or reformation of contracts, the refund of moneys paid, restitution, injunctive relief, disgorgement or compensation for unjust enrichment, and civil penalties. 12 C.F.R. §1015.10.

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*See also* 12 U.S.C. §5552(a)(1) (allowing a state attorney general to enforce rules and regulations issued pursuant to Title XII such as the MARS Rule).

7. The OAG is authorized to enforce the N.M. UPA and MFCFPA to seek injunctive relief, costs, exemplary damages and civil penalties of \$5,000.00 per violation. NMSA 1978 §57-12-8; §47-15-7.

### DEFENDANTS

8. At the outset, it should be noted that Defendants often use fake names or aliases in the conduct of their enterprise and so Plaintiff OAG outlines below its best understanding of the identities of Defendants. Plaintiff OAG reserves the right to add or amend Defendants as discovery progresses and thereby identifies John Doe/Jane Does 1 through 10 and XYZ Companies 1-10 to reflect that it is likely to add or amend parties as justified.

9. Defendants are engaged in trade or commerce in New Mexico within the meaning of the UPA.

10. Defendants are offering services as “foreclosure consultants” within the meaning of the MFCFPA.

11. Defendant Benjamin Borazzi a/k/a Benjamin Boraghzi a/k/a Bruce Kelly (*hereinafter* “Borazzi”) is a resident of California and, upon information and belief, is an owner, CEO, CFO and Director of Miracles for Homeowners Marketing, Inc., of Demand Customer Service, and of Secure Settlement Inc. Borazzi is a person who participates in, controls or who has the right to control the conduct of Defendants and their common enterprise.

12. Defendant Matthew Ralph Chaney (*hereinafter* “Chaney”) is a resident of California and upon information and belief is the President of Quantum Staffing and Marketing.

Chaney is a person who participates in, controls or who has the right to control the conduct of Defendants and their common enterprise.

13. Defendant Quantum Staffing and Marketing (*hereinafter* “Quantum”) is a California corporation engaged in unlawful practices directed toward residents of New Mexico.

14. Defendant Pejaeman F. Ghaneian (“Ghaneian” *hereinafter*), a resident of California, upon information and belief is the owner of Private Reserve Group, Inc. Ghaneian is a person who participates in, controls or who has the right to control the conduct of Defendants and their common enterprise.

15. Defendant Private Reserve Group, Inc. (*hereinafter* “PRG”) is a California corporation engaged in unlawful practices directed toward residents of New Mexico.

16. Defendant Professional Staffing and Marketing, Inc. (*hereinafter* “PSMI”), is a California corporation engaged in unlawful practices directed toward residents of New Mexico.

17. Defendant Secure Settlement, Inc. (*hereinafter* “SSI”), is a California corporation engaged in unlawful practices directed toward residents of New Mexico.

18. Defendant Miracles for Homeowners Marketing, Inc. (*hereinafter* “MHM”) is a California corporation engaged in unlawful practices directed toward residents of New Mexico.

19. Defendant Household Relief Alliance (*hereinafter* “HRA”) is registered as a fictitious name of Quantum.

20. Defendant Thomas A. Moore (*hereinafter* “Moore”) is a resident of California, an attorney licensed in California (Bar No. 148698), and is engaged in unlawful practices directed towards residents of New Mexico.

21. Defendant Roosevelt Law Center PC (hereinafter "Roosevelt"), a law firm of which Defendant Moore is the principal and lead attorney, engaged in unlawful practices directed towards residents of New Mexico.

22. Defendant DOES 1-10 are named and reserved for identification of additional persons discovered to be participating in the unlawful practices described herein.

23. Defendant XYZ Companies are named and reserved for identification of additional business or corporate entities discovered to be participating in the unlawful practices described herein.

**FACTS SHOWING DEFENDANTS' COMMON ENTERPRISE**

24. In the consumer protection context, corporate or business entities are jointly and severally liable when they operate as a common enterprise. A common enterprise, such as that demonstrated by Defendants, provides liability despite the formation of new companies or using different names, by using a "shell game" of companies which are inter-related.

25. Defendant Borazzi contracted with Defendant Moore to create the Roosevelt Law Center to offer legal services to consumers as a front for mortgage modification services.

26. Borazzi provides lead generation, sales and marketing to the Defendants. Lead generation includes a variety of activities including obtaining financial data of homeowners targeted for solicitation, advertising, marketing, sales and operating a call center.

27. Defendant Borazzi has been involved in loan modification schemes as a former employee of "Credence Law Group" and "State Law Group", businesses in Santa Ana, California, which were the subject of a lawsuit by the New Mexico Attorney General for



violations of the NM UPA and federal MARS Rule. *See OAG v. Byron Landau, et al*, DNM 1:14-CV-00663.

28. Defendant Ghaneian arranges for others to provide mortgage assistance services and operates a common enterprise which goes by many names, including HRA.

29. Defendant Chaney arranges for others to provide mortgage assistance services and operates a common enterprise which goes by many names, including HRA.

30. Homeowner Protection Alliance ("HPA") offers a publicly available website "[www.hpahelp.com](http://www.hpahelp.com)", which states that HPA offers foreclosure defense and mortgage relief services.

31. Defendant Quantum (a/k/a Household Relief Alliance) is the entity which responds to calls made to the toll free number offered in the unlawful mailings.

32. There is no indication that the entity Defendants have separate boards, owners or otherwise observe formalities which reflect separate control and operation and, to the contrary, Ghaneian and PRG used the phone number (714)717-8474 when it purchased a postage permit for the unlawful mailing sent into New Mexico in 2015.

33. These facts further support the conclusion that Ghaneian controls or has the right to control PRG and the content, timing and volume of mailings sent into New Mexico by Defendants' enterprise because he owns and controls the postage permit for the unlawful mailings.

34. The content of [www.hrahelp.org](http://www.hrahelp.org) clearly shows that Defendants are offering mortgage relief services under the names "Household Relief Alliance" and "HRA", as defined

and regulated by the MARS Rule, 12 CFR §2015 (2011), including offers to modify or restructure home loans, and provide foreclosure avoidance and foreclosure defense.

35. Defendants use the address of 3843 Bristol Street, a commercial mailbox store, in connection with many of their companies, businesses and trade names (or DBA names) including:

- a. As an address for “HRA,” as reported by a consumer in 2015 who dealt with HRA and its agent “Gary Wayne”;
- b. As an address identified by the U.S. Postal Inspection Service for the postal permit holder of PRG which sent the deceptive mailings into New Mexico;
- c. As the office address of Quantum when on February 5, 2015, Chaney used 3843 Bristol Street as the “principal executive office”, “principal business office”, and “mailing address
- d. Defendant Ghaneian rented Mailbox #440 at 3843 Bristol Street which is used by Defendant Chaney for Defendant Quantum.

36. The Defendants’ mailings prominently show the words "Keep Your Home New Mexico", a deceptive use designed to mislead consumers into believing that Defendants are working with or for, affiliated with or sponsored by the OAG.

37. On January 25, 2015, Chaney registered a business name “Household Relief Alliance” in California as a fictitious name of Quantum. “HRA” is one of many interchangeable names which Defendants use. The website “www.HRAHelp.org” is a website and/or business name that Defendants use in offering services to consumers, including callers from New Mexico.

38. Other business names used by Defendants, upon information and belief, include Homeowners Protection Alliance, the website [www.homeownersreliefalliance.com](http://www.homeownersreliefalliance.com), varying manipulations of the acronym “HRA” such as “Homeowner Relief Alliance” and “Home Relief Advocates” and “[www.hracasereview.com](http://www.hracasereview.com).”

39. Upon information and belief, Defendants are not licensed to provide legal advice, mortgage relief or foreclosure counseling in the State of New Mexico.

### COUNT I

#### **MARS Rule (Regulation O) Violations for Advance Payments**

40. All preceding paragraphs are hereby incorporated as though fully set forth herein.

41. The MARS Rule, 12 C.F.R. Part 1015, is also called “Regulation O.” Regulation O defines “mortgage assistance relief service” as “any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with . . . [n]egotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees . . . .” 12 C.F.R. §1015.2 (2011).

42. Regulation O defines “mortgage assistance relief service provider” as “any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service,” other than the dwelling loan holder, the servicer of a dwelling loan, or any agent or contractor of such individual or entity. 12 C.F.R. §1015.2 (2011).

43. Defendants offer mortgage relief services as defined by Regulation O by offering to assist homeowners in applying for loan modifications. This is confirmed by the content of

Defendants' various websites and mass mailings which all state or imply that Defendants can assist homeowners in obtaining a reduced payment and favorable loan modification.

44. By acting in concert and as a common enterprise, Defendants were providing, offering to provide and "arranging for others" to provide mortgage relief services to New Mexico residents.

45. Defendants are all jointly liable by virtue of not only their direct conduct, but also by operating a common enterprise using various names and shell companies which did offer or provide mortgage relief services to at least two New Mexico residents.

46. At least two New Mexico consumers paid advance fees, prohibited by the MARS Rule, 12 CFR §1015.5.

47. Defendants are "mortgage assistance relief service provider[s]" engaged in the provision of "mortgage assistance relief services" as those terms are defined in Regulation O. 12 C.F.R. §1015.2 (2011).

48. Regulation O provides an exemption for the collection of advance payments for attorneys licensed in the state in which the consumer resides or in which the consumer's dwelling is located, 12 CFR §1015.7. Defendants Moore and Roosevelt Law Center solicited and accepted advance fees from at least two New Mexico residents and are not subject to the exemption as Moore is not licensed to practice in New Mexico.

49. Each solicited advance payment which was obtained from a New Mexico resident constitutes a violation of the MARS Rule and thus Defendants are liable for civil penalties for two known violations, for any violations discovered in the litigation of this lawsuit, and injunctive relief prohibiting the collection of such advance fees in the future.

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**COUNT II**  
**UPA Violations for Unlawful Mailings**

50. All preceding paragraphs are hereby incorporated as though fully set forth herein.

51. Upon information and belief, Defendants intentionally directed mailings to New Mexico residents on or about the following dates in connection with their enterprise: February 2013 (968), March 2013 (257), May 2013 (239), October 2013 (582), January 2014 (716), March – April 2014 (682), April – May 2014 (682), for a total of 4,414 individual mailings sent to New Mexico consumers.

52. The mailings created the appearance of a governmental or official document, and contained toll free phone numbers which were answered by Defendants or their employees and, thus, Defendants benefitted directly from the calls.

53. These facts depict that the advertising campaign directed by Defendants was “in connection with” the sale of their services within the meaning of the UPA and in the regular course of Defendants’ business. In fact, it appears that these Defendants directed hundreds of thousands of similar mailings to consumers nationwide, changing the envelope from state to state, e.g., “Keep Your Home Colorado”, “Keep Your Home Washington”, “Keep Your Home Indiana” and more.

54. These ads were directed by name and address to New Mexico consumers who were either in default on their home loan or were in a foreclosure. The outer envelope of most or all of the mailings said “FINAL NOTICE” or “FISCAL CLIFF FINAL NOTICE” or “URGENT FINAL NOTICE” as well as a notation within the mailing stating “Notice: Legal”.

55. The mailings were tailored to each consumer to include a “New Payment” by taking the consumer’s actual principal loan balance, multiplying it by 3% and dividing by 12. Defendants therefore were making misrepresentations in reference to the consumer’s specific loan amount.

56. Defendants’ manipulation of homeowners’ principal loan balances to create a fictitious and unreasonable “New Payment” was unconscionable in that it sought to take advantage of the homeowner’s lack of knowledge, ability, experience or capacity to a grossly unfair degree. NMSA 1978 §57-12-2(E).

57. New Mexico consumers have received mailings which Defendants directed into New Mexico. Those mailings are unfair and deceptive because, among other things, they:

- a. Imply collaboration with the consumer’s lender and reference to a principal loan amount without the prominent disclosures required by NMSA 1978 §57-12-25;
- b. Create ambiguity or confusion regarding the identity of the business, including use of the implicitly governmental phrases such as “Notice: Legal”, “Making Homes Affordable Program (MHA)”, “Homes Affordable Modification Program (HAMP)”;
- c. Create ambiguity or confusion regarding the identity of the sender, and the sender’s purported relationship with the consumer’s financial institution, including use of the phrase “a recent review of your home loan with your lender’s servicer”;

- d. State or imply that the consumer's loan could have a reduced monthly payment of a specific amount when there was no reasonable basis to believe that the borrower would be approved for such an amount; and,
- e. State or imply an affiliation, sponsorship or connection with the State of New Mexico through use of the phrase "State of New Mexico" three times on the mailing, using a diagram shaped like the State of New Mexico, the use of the OAG program name, "Keep Your Home New Mexico" as the return address, combined with use of an official looking symbol depicting the Statue of Liberty.

58. Defendants made statements or representations to New Mexico consumers which were false or misleading, those statements were knowingly made in connection with the sale of services in the regular course of Defendants' business, and the representations were of the type that tended to or did deceive or mislead any person.

59. Defendants willfully engaged in unlawful trade practices (sending deceptive mailings) and, as such, are liable for the maximum civil penalty under law. Under the Unfair Practices Act, NMSA 1978, § 57-12-2(A), any statement or representation is unlawful if it: (a) "represents goods or services as those of another when the goods or services are not the goods or services of another"; or, (b) tends to cause confusion or misunderstanding "as to the source, sponsorship, approval or certification" of services; or, (c) tends to cause confusion or misunderstanding "as to affiliation, connection or association with or certification by another."

60. Upon information and belief, Defendants Borazzi, Moore, Ghaneian and Chaney are all individually liable because they directly participated in creating or approving the ads and knew or should have known that they were unlawful.

61. The entity Defendants, including Quantum, PSMI, SSI, MHMI (without limitation) are all jointly and severally liable for these violations because they operated as a common enterprise and the enterprise benefitted from these deceptive ads when consumers would respond to the ads by calling Defendants' toll-free phone numbers.

62. Each document that was mailed to a New Mexico resident constitutes a violation of the UPA as a misrepresentation and deception, and Defendants are liable for up to \$5,000.00 per individual solicitation. NMSA 1978 §57-12-11.

**COUNT III**  
**MFCFPA Violations for Advance Payments**

63. All preceding paragraphs are hereby incorporated as though fully set forth herein.

64. The MFCFPA, NMSA 1978 §§47-15-1 to 8, defines "foreclosure consultant" as "a person who, directly or indirectly, makes a solicitation or offer to an owner to perform services for compensation or who, for compensation performs a service that the person represents will: (a) stop or postpone a foreclosure sale; (b) obtain any forbearance from a beneficiary or mortgagee; ... (h) otherwise save an owner's residence from foreclosure[.]" NMSA §47-15-2.

65. Defendants offer foreclosure consultant services as defined by the MFCFPA by offering to assist homeowners who are suffering financial hardship to obtain a lower mortgage payment. This is confirmed by the content of Defendants' various websites and mass mailings



which state or imply that Defendants can assist homeowners in obtaining a reduced payment and favorable loan modification.

66. By acting in concert and as a common enterprise, Defendants were providing, offering to provide and “arranging for others” to act as foreclosure consultants to New Mexico residents.

67. Defendants are jointly liable by virtue of not only their direct conduct, but also by operating a common enterprise using various names and shell companies which did offer or provide foreclosure consultant services to at least two New Mexico residents.

68. At least two New Mexico consumers paid advance fees, prohibited by the MFCFPA.

69. The MFCFPA provides an exemption for the collection of advance payments for “a person licensed to practice law in this state when the person renders service in the course of the person’s practice as an attorney.” NMSA 1978 47-15-2(a). Defendants solicited and accepted advance fees from at least two New Mexico residents and are not subject to the exemption as Defendant Moore is not licensed to practice in New Mexico.

70. Each solicited advance payment which was obtained from a New Mexico resident constitutes a violation of the MFCFPA and thus Defendants are liable for civil penalties for two known violations, for any violations discovered in the litigation of this lawsuit, and exemplary relief, injunctive relief prohibiting the collection of such advance fees in the future.

**COUNT IV**  
**MARS Rule Violations for all unlawful mailings**

71. All preceding paragraphs are hereby incorporated as though fully set forth herein.

72. Regulation O prohibits any mortgage assistance relief service provider from failing to place a statement in every *general* commercial communication disclosing that: (1) the provider is not associated with the government and its service is not approved by the government or the consumer's lender; and (2) in cases where the provider has represented, expressly or by implication, that consumers will receive certain services or results, a statement disclosing that the consumer's lender may not agree to modify a loan, even if the consumer uses the provider's service. 12 C.F.R. §1015.4(a)(1)-(2) (2011).

73. Regulation O requires these disclosures to be placed in a "clear and prominent manner," and when made in textual communications, they must "be preceded by the heading 'IMPORTANT NOTICE', which must be in bold face font that is two point-type larger than the font size of the required disclosures."

74. All provisions of Regulation O became effective on January 30, 2011.

75. Defendants sent these unlawful mailings into New Mexico starting in early 2013 and thus the MARS Rule applies to all such mailings.

76. These mailings were generally commercial communications within the meaning of the MARS Rule.

77. Defendants directed at least 4,414 mailings into New Mexico in 2013 and 2014. Additional mailings may be revealed through discovery.

78. Based upon a review of the known mailings received by New Mexico consumers, and copies of form mailings utilized by the printer producing mailers for Defendants, each such mailing failed to fully and completely provide the notices described above.

79. By sending over 4,400 deceptive mailings into New Mexico, Defendants did misrepresent an affiliation with a governmental program including by use of the words “Keep Your Home New Mexico” on the mailings.

80. Further, the MARS Rule requires that in every general commercial communication (such as the solicitations Defendants sent into New Mexico) the sender issue clear and prominent warnings in the text, including: “Even if you accept this offer and use our service, your lender may not agree to change your loan” and “[Name of company] is not associated with the government, and our service is not approved by the government or your lender.” Those words must be in at least 12 point font and be easily readable in a high degree of contrast. 12 C.F.R. §1015.4(a) (2011).

81. Defendants failed to include these warnings in a clear and prominent manner in both mailings sent into New Mexico.

82. Upon information and belief at least 4,414 such mailings were sent into New Mexico. The OAG reserves the right to seek redress for additional penalties for each additional mailing as discovery proceeds.

83. Defendants are all jointly and severally liable because they functioned as a common enterprise.

84. Defendants are thus liable for restitution, disgorgement and civil penalties as provided for by the Consumer Financial Protection Act of 2010, and such other equitable relief as the court deems appropriate.

85. Each such mailing which was sent and customized to a New Mexico resident constitutes a violation of the MARS Rule and thus Defendants are liable for civil penalties for four thousand four hundred and fourteen (4,414) violations of these provisions of the MARS Rule and injunctive relief.

#### **INJUNCTIVE RELIEF**

86. Pursuant to Rule 1-066 NMRA, NMSA 1978 §36-2-28.2(A), and NMSA 1978 §57-12-8(A), the Attorney General seeks preliminary and permanent injunctions against Defendants to prevent continued violations of consumer protection laws by Defendants. The AGO may seek to enjoin violations of federal law pursuant to 12 USC §5538(b)(1)(a).

87. Pursuant to NMSA 1978 §57-12-8(A) and NMSA 1978 §36-2-28.2(A), the Attorney General shall not be required to post a bond when seeking temporary injunctive relief.

88. The AGO hereby seeks all injunctive relief that bars all Defendants from engaging in unfair and deceptive practices, violations of the MARS Rule and from continuing to violate the MARS Rule and UPA, as described above.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, the Attorney General seeks a judgment and order against Defendants:

- A. For restitution for each violation in amounts to be determined at trial.
- B. For disgorgement of any and all unlawful earnings or revenues.

- C. For restitution, public notification and civil penalties ranging from \$5,000.00 to \$1,000,000.00 per day for violations of the MARS Rule under the Consumer Financial Protection Act, 12 U.S.C. §5565(a)(2).
- D. For a civil penalty of \$5,000.00 per violation of the UPA pursuant to NMSA 1978 §57-12-11.
- E. Exemplary damages of three times the compensation charged for each violation of the MFCFPA pursuant to NMSA 1978 §47-15-7(D).
- F. For costs pursuant to 12 U.S.C. §5565(b).
- G. For such other relief as is deemed proper by the Court pursuant to 12 U.S.C. §5538(b)(1)(D).
- H. For a temporary injunction, preliminary injunction and permanent injunction barring Defendants from engaging in the unlawful acts described above.
- I. For such other relief as the Court deems just and proper.

Respectfully Submitted,

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