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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 23 2012

ALAN CARLSON, Clerk of the Court
Alan Carlson
BY M NAKATA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
STATEWIDE FINANCIAL GROUP, INC.,
a California corporation doing business as
US HOMEOWNERS ASSISTANCE; US
HOMEOWNERS PRESERVATION
CENTER, INC., a California corporation;
HAKIMULLAH SARPAS, an individual;
ZULMAI NAZARZAI, an individual;
SHARON FASELA, an individual; RASHA
YEHIA MELEK, an individual; and DOES
1 through 100, inclusive,
Defendants.

Case No. 30-2009-00125950

BY FAX

~~PROPOSED~~ STATEMENT OF
DECISION

Dept./Judge: C11; Hon. Andrew P. Banks
Trial Date: 01/30/2012
Action Filed: 7/13/2009

1 This matter was tried as a court trial and submitted on March 13, 2012. On March 22,
2 2012, the Court issued its Tentative Decision, ~~which~~ ^{and announces} it now ~~adopts~~ as its **Decision**. APB@

3 BACKGROUND

4 I. THE LITIGATION

5 The People filed their enforcement action on July 13, 2009 against Defendants Statewide
6 Financial Group, Inc., which did business as WeBeatAllRates.com and US Homeowners
7 Assistance (USHA), co-owners Hakimullah Sarpas (Sarpas) and Zulmai Nazarzai (Nazarzai) and
8 senior manager Fasela Sheren, who went by the name Sharon Fasela (Sheren) (collectively
9 Defendants).¹ On July 13, 2009, the Court issued its Temporary Restraining Order and Order to
10 Show Cause, pursuant to which USHA was placed into a temporary receivership; Defendants
11 were served and the receivership commenced on July 14, 2009. On October 23, 2009, the Court
12 granted the People's request for a Preliminary Injunction and continued the receivership which
13 remains in effect.

14 Although the Complaint in this action asserted five causes of action, at trial the People only
15 prosecuted the first cause of action for violation of the Unfair Competition Law (UCL), Business
16 and Professions Code section 17200 et seq. and the second cause of action for violation of the
17 False Advertising Law (FAL), Business and Professions Code section 17500 et seq.

18 II. EVIDENCE PRESENTED AT TRIAL

19 In late 2007, USHA began working with a company called The Firm marketing purported
20 loan modification services. Beginning no later than January of 2008, USHA ceased working with
21 The Firm, instead selling its so-called loan modification services and keeping the profits for itself.
22 Sarpas and Nazarzai were at all relevant times the co-owners of USHA and shared equally in its
23 profits. Sheren was at all relevant times a sales person and senior manager of USHA.

24 At trial, plaintiff People of the State of California presented numerous witnesses, including
25 five customers of USHA, the Court appointed receiver, an employee of the receiver, a former

26 _____
27 ¹ The complaint named two other defendants: US Homeowners Preservation Center, Inc.
28 and Rasha Yehia Melek. The Court granted US Homeowners Preservation Center's motion for
nonsuit on February 6, 2012 and Plaintiff dismissed Ms. Melek prior to trial.

1 employee of USHA, the custodian of records of Bank of America, where USHA, Sarpas and
2 Nazarzai had their bank accounts, and the California Department of Justice analyst who reviewed
3 USHA's bank records. The Court had an opportunity to observe the testimony of these witnesses,
4 and finds that all of them were credible and that they testified truthfully. Notably, all of the
5 customers of USHA described similar experiences in their dealings with USHA. The Court also
6 accepted into evidence excerpts from the depositions of six additional customers of USHA, lender
7 representative Jean Lute, and Sheila Laverty, an investigator for the State of Ohio who placed an
8 undercover call to USHA. Although the Court did not have an opportunity to observe these
9 witnesses, their descriptions of their experiences with USHA were consistent with the experiences
10 of the customers who testified at trial and the Court finds that these deposition excerpts are
11 accurate and truthful. Plaintiffs also offered excerpts of deposition testimony from USHA's
12 persons most knowledgeable and from the individual defendants.

13 Defendants offered the testimony of a single witness, defendant Fasela Sheren.² The Court
14 had an opportunity to observe Ms. Sheren and to listen to her testimony. Based upon her
15 demeanor, her attitude toward the action and her attitude toward the giving of testimony, the
16 inconsistencies in her testimony, the fact that she had previously testified untruthfully in this
17 action, her bias, and her refusal to answer direct questions, as well as the content of her testimony,
18 the Court finds that Ms. Sheren's denials, explanations, assertions regarding purported statements
19 made to and benefits purportedly provided to USHA's customers, and similar self-serving
20 testimony was not credible.³

21 _____
22 ² Defendants also attempted to introduce the testimony of former employee Joe Diaz;
23 however, they had failed to disclose Mr. Diaz to Plaintiff during discovery as they should have in
24 response to Plaintiff's interrogatories. Therefore, his testimony was stricken and not considered
25 by the Court. Defendants also offered excerpts from the deposition of Carel Turner, an employee
26 of the Office of the Attorney General. The Court finds that these excerpts were not germane to
27 the issues before the Court.

28 ³ The Court does credit a number of Ms. Sheren's admissions and the like, including, for
example, her statement that she suggested that USHA go into business for itself as a loan
modification company, that she came up with the misleading assertion that USHA had a 97%
success rate, the role she played and duties she had at USHA, that she paid others for providing
leads to USHA, that USHA had no attorneys working on its loan modification business, that
USHA had a single form of contract, and that USHA had no plans to change its practices prior to
the Attorney General's filing suit.

1 The Court has also considered numerous exhibits offered by the parties, including
2 marketing materials and sales-scripts used by USHA, USHA's bank records, materials prepared
3 by the receiver, and documents related to USHA customer accounts.

4 The evidence establishes that USHA ran a boiler-room telemarketing operation. USHA
5 would cold call consumers and then sell them USHA's services. The cost for the service varied,
6 but generally ran to the thousands of dollars which consumers had to pay in advance. USHA's
7 sales representatives routinely made extravagant and false promises to consumers, including:
8 USHA had a "97%" success rate; the customer was guaranteed a loan modification; USHA had a
9 money-back guarantee; USHA's fees would be repaid by the lender; USHA was an "attorney-
10 based" company; USHA would save the consumers home from foreclosure; and that the loan
11 modification process would take a relatively short amount of time. None of these statements
12 were true.

13 USHA also routinely sent consumers false and deceptive letters that were likely to deceive
14 consumers into thinking that USHA would secure for them a 20% reduction in the outstanding
15 principal of their home loans, a significant reduction in their mortgage interest rate, a
16 correspondingly large reduction in their monthly payment, and forgiveness of past arrears.

17 Although Defendants asserted that some consumers received some services, the evidence
18 shows that USHA's promises were false. Not a single satisfied customer or bank representative
19 testified on behalf of Defendants. In fact, Defendants presented no competent admissible
20 evidence establishing that any customer ever received any benefit as a result of the efforts of
21 USHA, or even that USHA ever negotiated with a bank or mortgage lender on behalf of a
22 customer of USHA, although evidence was presented that USHA submitted false information to
23 lenders.

24 As a result of their deceptive and misleading practices, USHA procured over \$2 million in
25 up-front payments from consumers.
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1 **III. RELEVANT LEGAL STANDARD**

2 The burden was on the People to prove by a preponderance of the evidence that each
3 defendant violated the UCL and the FAL. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th
4 826, 866; *People v. E.W.A.P. Inc.* (1980) 106 Cal.App.3d 315, 322; see also *U.S. v. Regan* (1914)
5 232 US. 37, 48.) The People have met their burden as to each and every defendant. In addition,
6 the People established that the challenged activities were “business acts or practices” under the
7 UCL and involved the sale of services under the FAL. (Bus. & Prof. Code, §§ 17200 and 17500;
8 see also *E.W.A.P.* at p. 319.)

9 The UCL defines “unfair competition” to include any “unlawful, unfair or fraudulent
10 business act or practice and unfair, deceptive, untrue or misleading advertising,” as well as “any
11 act prohibited by” the FAL. (See Bus. & Prof. Code, § 17200.) The UCL’s prohibition of any
12 “unlawful, unfair *or* fraudulent” (italics added) act or practice is framed in the disjunctive.
13 Accordingly, business conduct that is not “unlawful” or “fraudulent” may nonetheless be
14 prohibited as “unfair.” (*Cel-Tech Communications, Inv. v. Los Angeles Cellular Telephone Co.*
15 (1999) 20 Cal.4th 163, 180 [citations omitted] (*Cel-Tech*.) The FAL, in turn, makes it unlawful
16 for any person to make or cause to be made any “statement” which the person knows or by the
17 exercise of reasonable care should know to be untrue or misleading in the course of selling or
18 disposing of any goods, services, or property. (Bus. & Prof. Code, § 17500.)

19 The UCL and the FAL are broadly construed to protect the public. As the Supreme Court
20 has explained, the UCL “was intentionally framed in its broad, sweeping language, precisely to
21 enable judicial tribunals to deal with the innumerable new schemes which the fertility of man’s
22 invention would contrive. [Citations.]” (*Cel-Tech, supra*, 20 Cal.4th at p. 180.) For decades,
23 courts have recognized that unfair business practices may “run the gamut of human ingenuity and
24 chicanery” (*ibid.* [citation omitted]), and have construed section 17200 accordingly. The
25 overriding purpose of these laws is the “[p]rotection of unwary consumers from being duped by
26 unscrupulous sellers,” an “exigency of the utmost priority in contemporary society.” (*Vasquez v.*
27 *Super. Ct.* (1971) 4 Cal.3d 800, 808.)

1 The UCL imposes “strict liability”; no showing that the defendant intended to violate the
2 law, or to injure anyone, is required. (*E.g., Community Assisting Recovery, Inc. v. Aegis Ins. Co.*
3 (2001) 92 Cal.App.4th 886, 891.) The FAL’s “intent” requirement imposes a mere negligence
4 standard, and requires no showing that the defendant knew its statements were false or
5 misleading, or that the statements were made recklessly. (*People v. Super. Ct.* (1979) 96
6 Cal.App.3d 181, 195; *see also Feather River Trailer Sales, Inc. v. Sillas* (1979) 96 Cal.App.3d
7 234, 247 [FAL prohibits both intentional and unintentional misrepresentations].)

8 **A. Defendants Violated the FAL and UCL Prohibition on False and Deceptive**
9 **Advertising**

10 Both the UCL and FAL ban overtly false advertisements as well as “advertising which[,]”
11 although true, is either actually misleading or which has a capacity, likelihood, or tendency to
12 deceive or confuse the public.” (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951.) Unlike in an
13 action for fraud or misrepresentation, proof of actual deception, reasonable reliance, and damage
14 are unnecessary. (*E.g., Chern v. Bank of America* (1976) 15 Cal.3d 866, 876 (*Chern*.) To
15 establish a violation of the UCL or FAL, the People need not show that any consumer was
16 actually misled, only that “members of the public ‘are likely to be deceived.’” (See, e.g., *Prata v.*
17 *Super. Ct.* (2001) 91 Cal.App.4th 1128, 1136; *Saunders v. Super. Ct.* (1997) 27 Cal.App.4th
18 832,839.) Proof of actual deception, reasonable reliance, and damage are unnecessary. (See, e.g.,
19 *Com. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) (35 Cal.3d 197, 211.) The
20 People produced substantial evidence that the Defendants here each actively engaged in and aided
21 and abetted the acts of others that were likely to deceive members of the public.

22 Affirmative misrepresentations are not required to violate the UCL and FAL. A statement
23 may be rendered misleading by the omission of information. “Where, in the absence of an
24 affirmative disclosure, consumers are likely to assume something which is not in fact true, the
25 failure to disclose the true state of affairs can be misleading.” (*Ford Dealers Assn. v. Dept. of*
26 *Motor Vehicles* (1982) 32 Cal.3d 347, 363–364.) Even a “perfectly true statement couched in
27 such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose
28 other relevant information,” is actionable under the UCL and the FAL. (*Day v. AT&T Corp.*

1 (1998) 63 Cal.App.4th 325, 332–333; *McCall v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th
2 1457, 1471 [same].)

3 Further, a deceptive statement or omission cannot be mitigated by correcting it later, even if
4 the defendant discloses the true state of affairs prior to consummation of the transaction. (*Chern*,
5 *supra*, 15 Cal.3d at p. 876; *see also Cal. Assn. of Dispensing Opticians v. Pearle Vision Center*,
6 *Inc.* (1983) 143 Cal.App.3d 419, 433.) A misleading advertisement cannot be brought into
7 compliance by appending fine print disclaimers or other explanatory matter that are not likely to
8 be read or understood. (*Hobby Indus. Assn. of America v. Younger* (1980) 101 Cal.App.3d 358,
9 367-368 [deception caused by use of “slackfill” packaging may not be dispelled even by “clear
10 disclosures on labels . . . and other informative matter . . .”]; *Williams v. Gerber Products Co.*
11 (9th Cir. 2008) 552 F.3d 934, 940 [ingredient list printed on the side of Gerber’s “fruit juice
12 snacks” did not cure deception caused by pictures of various fruits on the front suggesting,
13 falsely, that the product contained juice from those fruits]; *Federation of Homemakers v. Butz*
14 (D.C. Cir. 1972) 466 F.2d 462, 466 [detailed list of “processing agents” printed on a package of
15 hot dogs did not mitigate deceptive use of the phrase “All Meat” on the label].)

16 Generally, courts judge deceptive advertising claims from the standpoint of a “reasonable”
17 consumer. (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th
18 861, 878.) The question is “[w]hat a person of ordinary intelligence would imply” from an
19 advertisement. (*Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 505.) But a
20 “reasonable consumer may be unwary or trusting,” *id.* at 506, and is not required “to investigate
21 the merits of advertising claims.” (*Id.* at 504.) “[A] reasonable consumer need not be
22 exceptionally acute and sophisticated.” (*Id.* at p. 509.) The UCL and FAL protect such
23 individuals as “unwary targets of false advertising, innocent youths corrupted by lawbreaking
24 retailers, . . . or a singularly dense group of consumers who fall prey to misleading advertising.”
25 (*Rosenbluth Int’l, Inc. v. Super. Ct.* (2002) 101 Cal.App.4th 1073, 1078.)

26 Defendants’ boiler-room sales tactics, discussed above, not only were likely to deceive
27 members of the public, but were designed and intended to deceive members of the public.
28

1 **B. Defendants Violated the UCL Prohibition on Unlawful and Unfair Acts**
2 **and Practices**

3 The violation of virtually any law – civil, criminal, federal, state or municipal, statutory,
4 regulatory or court made – is a violation of the “unlawful” prong of the UCL. (*Saunders v. Super.*
5 *Ct., supra*, 27 Cal.App.4th at pp. 838-839.) Thus, for example, where USHA employees or
6 agents assisted USHA customers in presenting false lease agreements to lenders indicating the
7 USHA customers had residential tenants paying them income and living in the customer’s home,
8 they violated the unlawful prong of the UCL. As another example, the evidence established that
9 USHA acted as a mortgage foreclosure consultant, but defendants did not comply with the
10 Mortgage Foreclosure Consultant act, Civil Code section 2945 et seq., nor register as consultants
11 as required by Civil Code section 2945.45.

12 Finally, California’s courts have applied at least three different tests for unfairness in
13 consumer cases. (See *Drum v. San Fernando Valley Bar Ass’n* (2010) 182 Cal.App.4th 247, 256-
14 257.) The Court finds that applying any of these tests, Defendants’ sales practices were “unfair”
15 under the UCL.

16 **C. Each Defendant is Liable for Restitution and Civil Penalties**

17 Generally, parties may be held jointly and severally liable for violations of the UCL and
18 FAL. (*People v. First Federal Credit Corp.* (2002), 104 Cal.App.4th 721, 734.) Further, liability
19 under the UCL and FAL may be imposed where a defendant aided and abetted one or more other
20 defendants. (See, e.g., *People v. Toomey* (1984) 157 Cal.App.3d 1, 15 [citing cases].) A
21 defendant who aids and abets is equally liable with those who directly violate the UCL and the
22 FAL, even if that defendant takes only a small profit or leaves the actual unlawful acts to others.
23 (See *People v. Bestline Products, Inc.* (1976) 61 Cal.App.3d 879, 919.)

24 Aiding and abetting occurs, *inter alia*, when the defendant “knows the other’s conduct
25 constitutes a breach of duty and gives substantial assistance or encouragement to the other to so
26 act” (*Saunders v. Super. Ct., supra*, 27 Cal.App.4th at pp. 845–846.) The knowledge
27 required is “knowledge of the object to be obtained,” that is, knowledge of the facts relative to the
28 scheme. (*Lomita Land and Water Co. v. Robinson* (1908) 154 Cal. 36, 47–48; *accord Casey v.*

1 *U.S. Bank Nat.l Assn.* (2005) 127 Cal.App.4th 1138, 1145–1146.) But, the aider and abettor need
2 not be aware of the unlawful nature of the enterprise. (*People v. Costa* (1991) 1 Cal.App.4th
3 1201, 1211 [defendant guilty of aiding and abetting even where he mistakenly believes he is not
4 breaking the law]; *People v. McLaughlin* (1952) 111 Cal.App.2d 781, 788-789 [one may be guilty
5 of aiding and abetting even if unaware of the law being violated].)

6 The assistance or encouragement provided by an abettor may be in the form of “ordinary
7 business transactions.” (*Casey v. U.S. Bank Nat.l Assn.*, *supra*, 127 Cal.App.4th at p. 1145; see
8 also *Bestline Products, Inc.*, *supra*, 61 Cal.App.3d at p. 918 [abettor supplied manuals, packets
9 and scripts used in unlawful scheme]; *In re First Alliance Mortgage Co.* (9th Cir. 2006) 471 F.3d
10 977, 986–987 [abettor provided financing].)

11 A corporate officer or director may be personally liable to a third person harmed by his or
12 her own wrongful acts, even when those acts were undertaken on the company’s behalf. (*People*
13 *v. Pacific Landmark* (2005) 129 Cal.App.4th 1203, 1214.) Defendants, because of their position,
14 may be liable based on their failure to prevent the on-going unlawful activities even if they did
15 not actively engage in the unlawful activity. (See *People v. Conway* (1974) 42 Cal.App.3d 875,
16 886 [noting that it is fair to assume that the president of a corporation is acquainted with the
17 conduct of the corporation’s business, and either permitted the company’s illegal acts or did
18 nothing to stop them]; *People v. First Federal Credit Corp.*, *supra*, 104 Cal.App.4th at p. 735 [as
19 one of two principals of defendant corporation, individual “was in a position of control, yet
20 permitted the unlawful practices to continue despite her knowledge thereof”]; *People v. Forest E.*
21 *Olsen, Inc.* (1982) 137 Cal.App.3d 137, 139–140 [liability for violation of FAL exists where
22 defendant knew or had reason to know of illegal advertising].)

23 The evidence at trial established that Sarpas and Nazarzai were each active participants in
24 the day-to-day operations of USHA, managed the business, jointly owned USHA, and split the
25 profits from USHA. They are thus directly liable for the actions of the company and liable for
26 their failure to prevent the deceptive, illegal, and unfair acts of their agents, independent
27 contractors, and employees. Substantial evidence also established that Sarpas and Nazarzai aided
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1 and abetted each other, Sheren, and other employees, independent contractors, and agents of
2 USHA in the violation of the UCL and the FAL.

3 The evidence at the trial established that Sheren was an active participant in the violations
4 of the UCL and FAL. She was the office manager and sales manager and held a number of other
5 roles at the company. She had been a key player in USHA's loan modification business from its
6 inception, and in fact suggested that USHA cease working with the Firm and offer its own loan
7 modification services. She also came up with the deceptive assertion that USHA had a "97%
8 success rate" in its loan modification business. Substantial evidence established that she aided
9 and abetted Sarpas, Nazarzai, and other employees, independent contractors, and agents of USHA
10 in the violation of the UCL and the FAL.

11 **D. Defendants Must Pay Restitution to Every Consumer Who Requests It**

12 Both the UCL and FAL empower the Court to make any orders necessary to return to
13 consumers any amounts that "may have been acquired" by means of its violations of sections
14 17200 and 17500, including but not limited to false, misleading or otherwise actionable
15 advertising, violations of the law, or other unfair business practices. (Bus. & Prof. Code §§
16 17203 and 17535.) The evidence presented at trial established that between January 1, 2008 and
17 July 14, 2009, USHA took in \$2,047,041.86 from consumers for its purported loan modification
18 service. The Court finds that consumers made these payments as a direct result of Defendants'
19 false representations and that full restitution is to be paid to each consumer who requests it.

20 Restitution under to sections 17200 and 17500 accomplishes the public goals both of
21 recompense to consumers and of deterrence of future misconduct. (Bus. & Prof. Code, §§ 17203
22 and 17535.) Further, in the context of a public prosecutor's action, "restitution may have a
23 collateral law enforcement effect, punishing the wrongdoer against whom restitution is sought."
24 (*State of California v. Altus Finance, S.A.* (2005) 36 Cal.4th 1284, 1305; see also *Fletcher v.*
25 *Security Pacific Nat'l Bank* (1979) 23 Cal.3d 442, 451 [restitution necessary to "effectuate the full
26 deterrent force" of the UCL]; *ABC Int'l Traders, Inc. v. Matsushita Electric Corp.* (1997) 14
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1 Cal.4th 1247, 1271 [“the court may also conclude that deterrence is more effectively
2 accomplished through restitution”].)

3 To achieve restitution for all of Defendants’ victims, the People are not required to prove
4 harm to any individual consumer. (See *Prata v. Super. Ct.*, *supra*, 91 Cal.App.4th at p. 1132
5 (*Prata*).) As the *Prata* court explained, it is unnecessary to prove that any member of the public
6 was actually deceived, relied upon the fraudulent practice, or sustained any damage for the People
7 to prevail on their UCL and FAL claims. The People need only show that Defendants’ practices
8 were unlawful, unfair, deceptive, untrue, or misleading. (*Id.* at p. 1144.) And, the “burden of
9 proof is modest:” the People only need to show that members of the public were likely to be
10 deceived by Defendants’ practices. (*Ibid.*)

11 Defendants have made a number of arguments seeking to limit the restitution to be paid, all
12 of which are rejected. Contrary to Defendants’ assertion, an award of restitution to consumers
13 who did not testify at trial is not an award of “liquidated damages” nor is it non-restitutionary
14 disgorgement. Rather, “the rule that restitution under the UCL may be ordered without
15 individualized proof of harm is well-settled. [Citations.]” (*People ex rel. Bill Lockyer v.*
16 *Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 532 (*Fremont Life*).)

17 The Court finds that USHA, Nazarzai, and Sarpas are jointly and severally liable for the full
18 amount of restitution, while Sheren is jointly and severally liable for \$147,869 of the restitution.⁴

19 _____
20 ⁴ The Court is aware of the decision in *Bradstreet v. Wong* (2008) 161 Cal.App.4th 1440,
21 1460-1461, finding that a corporate owner was not liable for restitution under the UCL.
22 *Bradstreet*, however, is an employment case based on a narrow employment-law doctrine since
23 abrogated by the California Supreme Court. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 61-62.)
24 Consequently, *Bradstreet* is no longer good law even for the employment law doctrine on which
25 it was decided. And, even assuming the court’s holding on restitution is still good law in
26 California, the case is factually distinguishable from this case. In *Bradstreet*, the court noted that
27 the case before it was not one in which defendants “misappropriated to themselves, as
28 individuals for their individual advantage, the unpaid wages” that the corporate defendants owed.
(*Bradstreet, supra*, 161 Cal.App.4th at p. 1460, quoting *Reynolds v. Bement* (2005) 36 Cal.4th
1075, 1090.) Rather, the individual defendants in *Bradstreet* had “put far more personal funds
into the corporations . . . than were alleged to have been improperly taken out. . . .” (*Ibid.*, quoting
factual finding of the trial court) In this case, in sharp contrast, the evidence established that
Nazarzai and Sarpas drained substantial amounts of money from the corporation. There is no
evidence that Sarpas put any funds into USHA and the evidence established that Nazarzai put no
money into the corporation. The evidence also established that Sheren took at least \$147,869 out
of the corporation.

1 **E. Defendants Must Pay Civil Penalties**

2 For each violation of sections 17200 and 17500, the court “shall” award a civil penalty,
3 which may be up to \$2,500. (Bus. & Prof. Code, § 17206, subds. (a) & (b); Bus. & Prof. Code,
4 §17536; *People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 686.) Such penalties
5 are “cumulative,” i.e., additive. (See Bus. & Prof. Code, §§ 17205, 17534.5; *People v. Toomey*,
6 *supra*, 157 Cal.App.3d at p. 22 [finding a legislative intent to allow double penalties].) Thus, for
7 each false statement that a defendant makes, the Court may impose a penalty of \$5,000. (See
8 *People v. Toomey, supra*, 157 Cal.App.3d at pp. 22–23.) Further, the evidence established that
9 significant numbers of Defendants’ victims were elderly or handicapped, meaning that the Court
10 could increase the civil penalty by up to an additional \$2,500. (Bus. & Prof. Code, § 17206.1.)

11 The purpose of awarding civil penalties is both to punish the defendant and to deter the
12 defendant and others from violating the law in the future. (See, e.g., *State v. Altus Finance, S.A.*
13 (2005) 36 Cal.4th 1284, 1291.) To determine the amount of the penalty, the court must consider
14 any one or more “relevant circumstances” presented by the parties. (Bus. & Prof. Code, §§
15 17206, subd. (b) and 17535, subd. (b).) These may include “the nature and seriousness of the
16 misconduct, the number of violations, the persistence of the misconduct, the length of time over
17 which the misconduct occurred, the willfulness of the defendant’s misconduct, and the
18 defendant’s assets, liabilities, and net worth.” (*Ibid.*)

19 That Defendants’ targeted society’s most vulnerable consumers at a particularly difficult
20 time by taking advantage of their desire to remain in their homes requires a substantial penalty.
21 As the United States Supreme Court has long recognized there are “natural sentiments and
22 affections which grow up for places on which persons have long resided; the attachments to
23 country, to home and to family, on which is based all that is dearest and most valuable in life.”
24 (*Virginia v. Tennessee* (1893) 148 U.S. 503, 524.) Defendants also violated numerous different
25 state and federal statutes, all of which embody important public policies. These facts carry
26 significant weight in determining civil penalties. (*Zhadan v. Downtown L.A. Motors* (1976) 66
27 Cal.App.3d 481, 497 [violation of public policy is an “important” factor in determining
28 penalties].) In addition, the evidence established that Defendants regularly ignored legal notices

1 from both the courts and government regulators. (See Exhs. 51-53 and 55-59.) Defendants'
2 misconduct was willful and persisted from the moment they began offering loan modification
3 services until the business was placed into a receivership.

4 In addition, the number of violations is enormous. This number is based on the number of
5 victims and the number of acts. (See *Fremont Life, supra*, 104 Cal.App.4th at p. 528.) Because
6 section 17206 does not specify what constitutes a single violation, the courts must make that
7 determination on a case-by-case basis. (*People v. Beaumont Investment, Ltd.* (2003) 111
8 Cal.App.4th 102, 127–128, citations omitted.) The law decidedly does *not* require the Court to
9 limit its penalties to one per violation of 17500 and one per violation of 17200 per person, nor is
10 the number of penalties limited to the number of victims who testify at trial. In *Beaumont*, for
11 example, the court addressed the number of violations in a scheme involving the defendant's
12 wrongful avoidance of rent control ordinances by forcing tenants into long-term leases. (*Id.* at p.
13 128.) The court held that each such lease, and each monthly collection of rent under those leases,
14 constituted a separate violation punishable under section 17206. Consequently, the court found
15 154 violations for forcing the tenant to accept long-term leases and 6,985 violations for
16 wrongfully collecting rent under those leases. (*Ibid.*)

17 Defendants made false and misleading statements to each and every consumer who entered
18 into a contract with Defendants. Further, Defendants used deceptive telemarketing scripts and
19 other false and misleading marketing materials, and therefore civil penalties are appropriate for
20 each consumer who spoke with a USHA representative and/or received USHA marketing
21 materials, even if they never became a client of USHA. (See *People v. Super. Ct. (Olson)* (1979)
22 96 Cal.App.3d 181, 198.)

23 The evidence in this case established that there were 1,259 separate "payors" checks that
24 were deposited into USHA accounts and cleared. Most were from joint checking accounts and
25 thus nearly twice that many consumers were subject to Defendants' deceptive practices and paid
26 money to Defendant USHA for the tainted services which violated B&P Sections 17200 and
27 17500. At least 585 of these customers still had open accounts with USHA at the time the
28

1 receivership was established. (See Exhibit 48.) In addition, the Court has considered the
2 thousands of additional violations arising from USHA’s deceptive marketing of its services to
3 consumers who did not become customers and its violations of California law.

4 A Court may consider a defendant’s assets, liabilities, and net worth in calculating civil
5 penalties. However, “the evidence of a defendant’s financial condition, although relevant, is not
6 essential to the imposition of statutory penalties [in a UCL/FAL case], making the issue of a
7 defendant’s financial inability a matter for the defendant to raise in mitigation.” (*People v. First*
8 *Federal Credit Corp., supra*, at p. 726.) Here, Sarpas and Nazarzai chose not to offer any
9 evidence related to their finances or inability to pay. Sheren testified as to her financial condition,
10 but failed to provide any evidence to support her testimony. Her testimony on this subject, like
11 much of her testimony, was not credible.

12 In light of the above, the Court finds that defendants USHA, Sarpas, and Nazarzai are
13 jointly and severally liable for an award of civil penalties of \$2,047,041. All four Defendants are
14 also jointly and severally liable for an additional award of \$360,540.

15 **F. A Permanent Injunction Against All Defendants is Appropriate**

16 Injunctive relief under the UCL is available to enjoin anyone “who engages, has engaged,
17 or proposes to engage” in acts of unfair competition, as expansively defined in section 17200.
18 (Bus. & Prof. Code § 17203.) Deceptive statements and misleading conduct in violation of
19 section 17500 may also be enjoined under section 17535.

20 An injunction may be as comprehensive as needed to stop deceptive and illegal conduct:
21 “while an injunction may not go against statutory law, it may go beyond statutory law. A court
22 sitting in equity has broad power to fashion relief to fit the facts before it.” (*People v. Custom*
23 *Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 684.) Moreover, a court has the specific statutory
24 authority to make any order that “may be necessary to prevent the use or employment by any
25 person” of any deceptive or unlawful conduct. (Bus. & Prof. Code §§ 17203, 17535.)

26 Numerous facts support a permanent injunction, including:

- 27 • Defendants made no change to their practices and stopped only after the entry of the
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1 Temporary Restraining Order;

- 2 • There is no significant impediment to re-establishing the business;
- 3 • Sheren testified that Defendants had no plans to change their marketing;
- 4 • Sarpas violated the preliminary injunction;
- 5 • Nazarzai violated the preliminary injunction;
- 6 • Nazarzai violated – and continues to violate – this Court’s order that he turn over
- 7 frozen funds to the Court; and
- 8 • Sheren assisted Nazarzai in his violation of the turn-over order and lied about it to
- 9 this Court.⁵

10 All Defendants are permanently enjoined as specified in the **Decision**.

11 **DECISION**

12 This matter was tried as a court trial and submitted on March 13, 2012. The Court now

13 issues its Decision (Code Civ. Proc., §632; Cal. Rules of Court, rule 3.1590 et seq.) and rulings

14 on pending Motions for Judgment (Code Civ. Proc., §631.8) made by various defendants.

15 Taking the latter Motions for Judgment first, each is denied.

16 The First Cause of Action for Violation of Business and Professions (hereinafter “B&P”)

17 Code Section 17500

18 B&P Code §17500 makes it unlawful for any person, firm, corporation or any employee

19 thereof to engage in what may be called “false advertising”. It covers false as well as misleading

20 statements and materials. As relevant to the relief sought herein, the penalty for any violation of

21 the statute is a fine not to exceed \$2,500.

22 The Court finds that Defendants Statewide Financial Group, Inc. dba US Homeowners

23 Assistance and Defendants Hakimullah Sarpas, Zulmai Nazarzai and Fasela Sheren aka Sharon

24

25 ⁵ Defendants assert that they have not engaged in the challenged behavior during the

26 pendency of this litigation. Assuming this to be true, it can be attributed to the fact that they were

27 caught violating the law, and have lived under either a Temporary Restraining Order or

28 Preliminary Injunction since the start of the litigation, and that Nazarzai has been incarcerated

since December of 2010. It in no way supports the argument that they are unlikely to reoffend,

and the UCL explicitly provides for injunctive relief predicated on past behavior. (See Bus. &

Prof. Code § 17203.)

1 Fasela engaged in activities that constituted violations of B&P §17500.

2 The evidence established numerous statements made by the Defendants regarding loan
3 modifications, guarantees of fee rebate/return and success rates, and being an attorney-backed
4 company with attorneys negotiating lease modifications for customers, that were untrue or
5 misleading and which were known or which by the exercise of reasonable care should have been
6 known to be untrue or misleading.

7 Each of the above mentioned defendants comes within the provisions of B&P Code section
8 17500, i.e. “any person, firm, corporation or association, or any employee thereof”. While the
9 evidence strongly suggests Defendant Sheren was an independent contractor of Defendant USHA
10 as opposed to its employee (e.g. her income from USHA was declared and documented by use of
11 1099’s rather than a W-2; her testimony by way of prior deposition beginning at page 248, line 4
12 through page 251, line 13 wherein she testified she was paid “as an independent contractor” and
13 by way of 1099), whether an employee or an independent contractor she along with the other
14 defendants are all subject to the provisions of B&P Code section 17500 and each faces liability
15 for its violations.

16 The Court finds all defendants liable on the First Cause of Action. The issues of remedies,
17 civil penalties, restitution and injunctive relief will be discussed later herein.

18 The Second Cause of Action for Violation of Business and Professions Code Section 17200

19 All defendants are found to have violated Section 17200. Clearly, by the terms of 17200
20 each violation found under the First Cause of Action with respect to 17500 also constitutes a
21 17200 violation. Section 17200 makes unlawful, unfair or fraudulent business acts or practices
22 and unfair, deceptive, untrue or misleading advertising acts of unfair competition. B&P Code
23 section 17206 makes any person who engages or proposes to engage in unfair competition liable
24 for a civil penalty up to \$2,500 for each violation.

25 In addition, there were violations of B&P Code section 17200 et seq. not directly tethered
26 to B&P Code section 17500 violations. One example would be those situations where USHA
27 employees or agents assisted USHA customers in presenting false lease agreements to lenders
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1 indicating the USHA customers had residential tenants paying them income and living in the
2 customer's home. (e.g. see Exhibit 352)

3 **REMEDIES**

4 **A. Restitution**

5 The Court orders that restitution be made by the following persons and in the following
6 amounts:

7 Defendants USHA, Sarpas and Nazarzai are ordered, jointly and severally, to offer and
8 make restitution to each and every customer, client or person who paid a fee for loan modification
9 services to USHA and/or WeBeatAllRates, during the period beginning January 1, 2008 through
10 and including July 14, 2009 and who requests restitution in response to the offer. To the extent
11 they have not already done so, each defendant in this action is ordered to provide to Plaintiff the
12 full name and last known business and residence and cell phone number of each customer within
13 60 days of judgment herein becoming final as to each individual defendant.

14 The Court determines the maximum total amount of restitution to be paid to be the sum of
15 two million forty seven thousand forty one dollars and eighty-six cents (\$2,047,041.86).

16 The Court will appoint the Office of the Attorney General of California to oversee the
17 process associated with this restitution order.

18 Defendant Sheren is found and declared to be jointly and severally liable with USHA,
19 Sarpas and Nazarzai to customers for restitution but only up to the amount of \$147,869.00. The
20 others owe the total amount, jointly and severally.

21 **B. Civil Penalties**

22 In awarding Civil Penalties the Court has numerous factors it can and has considered, not
23 the least of which are those set forth in B&P Code section 17206(b). The Court has spent a good
24 deal of time thinking about this issue and has arrived at an amount that is less than the maximum
25 limits established by the evidence and more than a lower end exposure.

26 The Court acknowledges that each violation of the FAL exposes the violator to a maximum
27 \$2,500 penalty and each violation of the UCL exposes the violation to a separate maximum
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1 \$2,500 penalty and that when a victim of a UCL violation is also elderly or handicapped there is
2 an additional maximum \$2,500 penalty under B&P Code section 17206.1.

3 After considering the evidence and the various factors developed by the evidence and the
4 aforementioned statutory authorities, this Court assesses civil penalties as follows:

5 \$2,047,041 jointly and severally against defendants USHA, Sarpas and Nazarzai.

6 The evidence in this case established that there were 1,259 separate “payors” checks that
7 were deposited into USHA accounts and cleared. Most were from joint checking accounts and
8 thus nearly double that number paid money to Defendant USHA for the tainted services which
9 violated B&P Code sections 17200 and 17500. Each customer was subjected to communications
10 that violated B&P Code section 17500 as well as 17200. Persons who visited the website of or
11 contacted USHA and its related company “WeBeatAllRates” but did not do business with them
12 were also subjected to communications that violated B&P Code sections 17200 and 17500.
13 Frankly, the number of violations mathematically calculable can easily stretch well into the
14 thousands and probably higher.

15 This Court’s role, sitting as a court of equity is not to get lost in the stratospheric levels of
16 mathematically probable civil penalties. Instead, I have come to the conclusion that the amount
17 of civil penalties awarded above is fair, just and equitable based upon the evidence and applicable
18 laws.

19 Using that same analysis, the court now turns its attention to the civil penalty award as
20 against defendant Fasela Sheren. The Court treats her separately from the other defendants
21 because I have concluded that the evidence supports separate and different treatment. The Civil
22 penalties awarded against Fasela Sheren are in the amount of three hundred sixty-thousand five
23 hundred forty dollars (\$360,540.00), jointly and severally with defendants USHA, Sarpas and
24 Nazarzai.

25 C. Injunctive Relief

26 Pursuant to B&P Code sections 17203 and 17535 defendants Statewide Financial Group,
27 Inc. doing business as US Homeowners Assistance, Hakimullah Sarpas, Zulmai Nazarzai and
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1 Fasela Sheren (aka Sharon Fasela) and each of their agents, employees, officers, representatives,
2 partners and any person acting in concert or in participation with them, are permanently enjoined
3 from committing or performing the following acts:

4 1. Making or causing to be made any untrue or misleading statements in connection
5 with the negotiating, arranging or modifying of any real estate loan or in connection with the
6 soliciting or performing of any services for home loan borrowers in connection with a real estate
7 loan modifications;

8 2. Violating California Civil Code sections 2945.3; and/or 2945.4 and/or 2945.45 as
9 presently enacted and any amendments thereto in the future;

10 3. Suggesting, directly or indirectly, that consumers submit false or misleading
11 financial information to lenders or submitting information to lenders on their customers behalf
12 that the above named defendants or any of them know or have reason to know is false or
13 misleading;

14 4. Negotiating, arranging or modifying loans and/or soliciting or performing services
15 for potential borrowers in connection with loans that are secured by real property without all
16 required and valid licenses; and

17 5. Employing any person to negotiate, arrange or modify real estate or real estate
18 secured loans and/or to solicit or perform services for borrowers in connection with loans that are
19 secured by real property, unless any and all such persons have all required and valid licenses.

20 The Court reserves Judgment on the issues relating to the Receiver previously appointed to
21 take control of USHA.

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1 The Plaintiff is ordered to prepare, file and serve a Proposed Judgment. In the event any
2 party timely requests a statement of decision, the plaintiff is ordered to prepare a proposed
3 statement of decision that complies with Code of Civil Procedure section 632 and California Rule
4 of Court, Rule 3.1590 et seq. Plaintiff's counsel is directed to include this tentative decision,
5 verbatim, in any proposed Statement of Decision.

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7
8 DATED: July 23, 2012

ANDREW P. BANKS

Honorable Andrew P. Banks
Judge of the Superior Court