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Superior Court of California
County of Los Angeles

SEP 13 2024

David W. Slayton, Executive Officer/Clerk of Court

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MV REALTY PBC, LLC; MV REALTY OF CALIFORNIA INC.; MV BROKERAGE OF CALIFORNIA INC.; MV REALTY HOLDINGS, LLC; MV REALTY BROKERAGE HOLDINGS, LLC; MV REALTY RECEIVABLES 1 LLC; MV RECEIVABLES II, LLC; MV RECEIVABLES III, LLC; MV RECEIVABLES IV LLC; MV RECEIVABLES V LLC; and DOES 1 through 100, inclusive,

Defendants.

LASC Case No: 23STCV30464

COURT'S RULING AND ORDER RE:
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

Hearing Date: September 11, 2024

Complaint Filed: December 13, 2023

I.

BACKGROUND

In this action, Plaintiff, the People of the State of California, by and through the Attorney

1 General and the District Attorneys of the Counties of Santa Barbara and Napa, have sued MV
2 Realty PBC, LLC; MV Realty of California Inc.; MV Brokerage of California, Inc.; MV Realty
3 Holdings, LLC; MV Realty Brokerage Holdings, LLC; MV Realty Receivables 1, LLC; MV
4 Receivables II, LLC; MV Receivables III, LLC; MV Receivables IV, LLC; and MV Receivables
5 V, LLC (collectively, “MV Realty” or “Defendants”) for violations of the False Advertising
6 Law, Unfair Competition Law, and California’s Do Not Call Law.¹ Plaintiff alleges that MV
7 Realty became active in California in late 2021 during the COVID pandemic, when many people
8 were in dire straits, and has engaged in an abusive scheme that preys on financially vulnerable
9 California homeowners.²

11 Plaintiff alleges that “[t]hrough deceptive and unlawful online advertising and
12 telemarketing, including illegal telemarketing to hundreds of thousands of Californians on the
13 national Do Not Call Registry, MV Realty targeted homeowners looking for financial help,
14 offering to pay them cash right away if they joined its ‘Homeowner Benefit Program.’”³ MV
15 Realty allegedly deceptively promised that the money, which usually ranged from a few hundred
16 to a few thousand dollars, was “not a loan” and never needed to be paid back.⁴ Plaintiff alleges
17 that, according to MV Realty, all homeowners needed to do was give it the “chance” or
18 “opportunity” to be their real estate agent if they decided to sell their home in the future.⁵ If
19 homeowners asked pointed questions about the Homeowner Benefit Program and how it sounded
20 too good to be true, MV Realty’s telemarketers were allegedly trained to provide misleading
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24 ¹ Complaint, ¶1.

25 ² Complaint, ¶2.

26 ³ Complaint, ¶3.

27 ⁴ *Id.*

28 ⁵ *Id.*

1 responses that misrepresented the true nature of the Homeowner Benefit Program and the
2 significant burdens it imposed.⁶

3
4 However, Plaintiff alleges that in actuality, the Homeowner Benefit Program is a scheme
5 intended to guarantee that, in the vast majority of cases, homeowners will be forced to pay back
6 MV Realty's initial cash offer, typically set at around 0.27% of the value of the homeowner's
7 home, at least tenfold.⁷ Plaintiff alleges that "[b]y signing MV Realty's Homeowner Benefit
8 Agreement, a deceptive, confusing, and contradictory document, homeowners are purportedly
9 obligated to use MV Realty as their exclusive listing agent if they ever decide to sell their
10 home—likely their most valuable and personally significant asset—anytime in the next forty
11 years."⁸ Plaintiff alleges that if the homeowner dies during the 40-year period, their successors
12 will purportedly remain bound.⁹ Even if MV Realty provides poor realty services and fails to
13 diligently market the home, as homeowners across the country have reported, Plaintiff alleges
14 that Californians have essentially no way out of the Homeowner Benefit Agreement.¹⁰ That,
15 Plaintiff alleges, is because MV Realty refuses to allow homeowners to cancel the Agreement
16 without paying an illegal penalty—which MV Realty calls an "Early Termination Fee"—set at
17 3% of the home's value.¹¹ That, Plaintiff alleges, amounts to more than 1,000% of MV Realty's
18 upfront payment.¹²

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21 _____
22 ⁶ *Id.*

23 ⁷ Complaint, ¶4.

24 ⁸ *Id.*

25 ⁹ *Id.*

26 ¹⁰ *Id.*

27 ¹¹ *Id.*

28 ¹² *Id.*

1 Additionally, Plaintiff alleges that contrary to what it says in its marketing, MV Realty
2 attempts to further bind homeowners by filing an illegal lien on their homes.¹³ After a
3 homeowner signs the Homeowner Benefit Agreement, MV Realty allegedly records a document
4 called a Memorandum of MVR Homeowner Benefit Agreement (“Memorandum”) in the
5 homeowner’s title records.¹⁴ Although MV Realty tells homeowners that the Memorandum is not
6 a lien, MV Realty allegedly intended the Memorandum to act as a lien and cloud the
7 homeowner’s title, preventing the homeowner from transferring the home without MV Realty’s
8 agreement.¹⁵ The Memorandum, Plaintiff alleges, is thus a lien regardless of how MV Realty
9 styles it, and has the effect of potentially impeding or completely preventing a homeowner from
10 obtaining or refinancing home loans.¹⁶

11
12 Plaintiff alleges that in perpetrating its scheme, MV Realty has repeatedly violated
13 California’s Real Estate Law. For example, MV Realty’s designated California broker-officer
14 did not sign any of its Homeowner Benefit Agreements as required by statute.¹⁷ Instead, these
15 California real estate contracts were allegedly signed by individuals not licensed to practice real
16 estate in California.¹⁸ As a result, Plaintiff alleges, all of MV Realty’s California Homeowner
17 Benefit Agreements and Memorandums are void and unenforceable.¹⁹ In addition, Plaintiff
18 alleges that MV Realty unlawfully: (1) did not maintain a definite place of business in
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22 ¹³ Complaint, ¶5.

23 ¹⁴ *Id.*

24 ¹⁵ *Id.*

25 ¹⁶ *Id.*

26 ¹⁷ Complaint, ¶6.

27 ¹⁸ *Id.*

28 ¹⁹ *Id.*

1 California; (2) did not provide the required disclosure that real estate commissions are not fixed;
2 (3) preprinted its commission rates in its Homeowner Benefit Agreements and listing
3 agreements; (4) took undisclosed compensation from homeowners, and (5) failed to provide
4 required disclosures in its marketing materials.²⁰

5
6 Finally, Plaintiff alleges that although MV Realty markets its upfront payment as “not a
7 loan,” that payment is a disguised loan subject to the Truth in Lending Act.²¹ Because
8 homeowners that enter into the Homeowner Benefit Agreement may need to repay MV Realty
9 the amount received plus a finance charge, Plaintiff alleges that MV Realty was required to abide
10 by the Truth in Lending Act’s disclosure and rescission requirements.²² Plaintiff alleges that MV
11 Realty has not done so.²³

12
13 Based on these allegations and the other allegations set forth in the Complaint, Plaintiff
14 alleges claims for violations of the California False Advertising Law (Business & Professions
15 Code [“B&P Code”] §§17500, et seq.); violations of the California Unfair Competition Law
16 (“UCL”) (B&P Code §§17200, et seq.); and violations of the California Do Not Call Law (B&P
17 Code §§17590, et seq.). In the prayer for relief, Plaintiff seeks a permanent injunction, an order
18 restoring to persons in interest any money or other property Defendants may have acquired
19 through violations of B&P Code §17200, and civil penalties for the alleged statutory violations.
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21 Plaintiff now moves for a preliminary injunction requiring that:

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25 ²⁰ *Id.*

26 ²¹ Complaint, ¶7.

27 ²² *Id.*

28 ²³ *Id.*

1) Defendants shall record terminations of all Memorandums of Homeowner Benefit Agreements filed on the properties of California homeowners by the earlier of:

a. Thirty (30) days from the date of the Court's order, or

b. Within five (5) days of notification from any California homeowner, or any agent acting on their behalf, who requires a termination to be recorded in order to proceed with any transaction related to the homeowner's property, including but not limited to a loan, refinancing, or sale of the property.

2) Defendants shall not record any encumbrance relating to a Homeowner Benefit Agreement on the property of any California homeowner for the pendency of this litigation.

3) Defendants shall not enforce any Homeowner Benefit Agreement entered into with a California homeowner for the pendency of this litigation.

For the reasons discussed below, the motion for a preliminary injunction is granted.

II.

DEFENDANTS' REQUEST TO PRESENT LIVE TESTIMONY AT THE HEARING

Defendants request permission to present live testimony at the hearing on the motion for preliminary injunction (specifically, the testimony of Irma Cuevas, David Gaughran and Miquel Hall, Jr.). CRC 3.1306(a) provides that "[e]vidence received at a law and motion hearing must be by declaration or request for judicial notice without testimony or cross-examination, unless the court orders otherwise for good cause shown." While Defendants have requested to present live testimony, they have not shown good cause for doing so. Absent a showing (and a Court finding) of good cause, the request is denied.

III.

DEFENDANTS' EVIDENTIARY OBJECTIONS

1. Archambault Decl., ¶ 7: "7. If MV Realty had told us they would put a lien on our home or that we might not be able to refinance, we would not would have agreed to the deal. A

1 lien is never a good thing. I would have been worried that it could stop us from getting loans or
2 harm our credit. We were desperate but we never would have agreed to that.”: **Overruled.**

3 2. Archambault Decl., ¶ 8: “8. Soon after the phone call, a notary came to our house. The
4 notary came at night, around 9:00 pm, which I thought was very strange. No one from MV
5 Realty was with the notary.”: **Overruled.**

6 3. Archambault Decl., ¶ 14: “14. In late October, shortly before we were supposed to
7 close on the refinance, our loan officer called me and asked me whether a company called MV
8 Realty rang a bell. That’s when I learned MV Realty had placed a lien on our home and it needed
9 to be removed if we wanted the refinance to go through.” **Sustained** as to second sentence;
10 otherwise, **overruled.**

11 4. Archambault Decl., ¶ 15: “15. To remove the lien, MV Realty was demanding over
12 \$14,000.”: **Overruled.**

13 5. Archambault Decl., ¶ 16: “16. I was floored and very upset. MV Realty never said
14 anything about a lien, so this was a total shock to me.”: **Overruled.**

15 6. Archambault Decl., ¶ 20: “20. In the end. we went through with the refinance and paid
16 MV Realty over \$14,000 out of the money we got so that it would remove its lien. I have
17 attached Realty's "termination" of the lien as Exhibit 1.”: **Overruled.**

18 7. Contreras Decl., ¶ 6: “6. After a month of repeated phone calls, I finally gave in on a
19 phone call with Erin Taylor, a realtor from MV Realty. At that time, I really needed cash because
20 my work as a truck driver had slowed down and I needed money to pay my mortgage. So I
21 decided to go through with MV Realty’s deal. Ms. Taylor told me that all I needed to do was go
22 through MV Realty when I decided to sell my home and that there were no other obligations. She
23 did not say anything to me about a MV Realty placing a lien on my house or recording any
24 document. I would not have agreed to the deal if I knew that MV Realty would put a lien on my
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1 house.”: **Overruled.**

2 8. Cuevas Decl., ¶ 13: “13. I would never have agreed to the deal if the representative had
3 told me that MV Realty would put a lien on my house. But he didn't explain everything, and
4 based on the explanation he gave me, I told the agent that I would do it. He said that later that
5 day a notary would come to my house to sign the documents and that the notary would not need
6 to explain further.”: **Overruled.**

8 9. Cuevas Decl., ¶ 16: “16. Ms. Niehans looked up the title to my 51 house and
9 discovered that MV Realty had recorded a lien on my house. I was very surprised and upset to
10 learn this. I sent Ms. Niehans pictures of my contract. Ms. Niehans explained to me some other
11 things about the contract that I did not understand before”: **Overruled.**

12 10. Dennis Decl., ¶ 9: “9. Mr. Samuels did not tell me that MV Realty would record any
13 documents on my title or put a lien on my home. He also did not tell me that the agreement could
14 prevent me from getting a loan. If he had told me that MV Realty was going to put a lien on my
15 home or that signing the agreement could prevent me from getting a loan, I would not have
16 signed it.”: **Overruled.**

18 11. Dennis Decl., ¶ 12: “12. I had filled out all the loan paperwork when I learned that
19 MV Realty had recorded a lien on my home. Because of the lien, the VA would not lend to me.”:
20 **Overruled.**

22 12. Dennis Decl., ¶ 14: “14. I called Ms. Girley and told her that I never agreed that MV
23 Realty could place a lien on my home and I asked her how to get it removed.”: **Overruled.**

24 13. Dennis Decl., ¶ 15: “15. Ms. Girley told me that I would need to pay around \$10,000
25 to get rid of the lien. She told me that MV Realty’s legal department takes the liens off people’s
26 properties. She said that if I tried on my own to convince MV Realty to remove the lien without
27 paying it would not work, but it might if I got a lawyer to write a letter.”: **Sustained.**

1 14. Dennis Decl., ¶ 16: “16. When I heard that I would have to pay \$10,000 to remove
2 the lien I was so stressed out I felt ready to shoot myself.”: **Overruled.**

3 15. Dennis Decl., ¶ 17: “17. After I told my loan officer what happened, he helped me
4 find an inexpensive lawyer who wrote a letter to MV Realty. The lawyer asked MV Realty to
5 remove the lien from my home, but MV Realty refused.”: **Overruled.**

6 16. Dennis Decl., ¶ 21: “21. I feel like this lien is holding me hostage. It’s really stressing
7 me out and I don’t know what I can do. It feels like MV Realty is just sitting back and stealing
8 from me.”: **Sustained.**

9 17. Gaughran Decl., ¶ 11: “11. The MV Realty representative did not say whether any
10 documents would be recorded, and she did not mention a lien or a memorandum. If she had told
11 me that MV Realty would record a lien on my home, I wouldn’t have signed the agreement. My
12 home is my biggest asset. I would not knowingly do anything that could jeopardize it. It was not
13 until later, after I had signed the agreement and was trying to get my mortgage refinanced, that I
14 found out that MV Realty had put a lien on my home.”: **Sustained** as to the last sentence;
15 otherwise, **overruled.**

16 18. Gaughran Decl., ¶ 15: “15. In December of 2022, I wanted to refinance my home. My
17 fiancée, Chereen Lopez, works in the mortgage industry, and she was assisting me with the
18 process. As part of the research necessary for lenders to give me a loan, Chereen ran a
19 preliminary title search of my home. The title search revealed that MV Realty placed a lien on
20 my house. Chereen explained to me that, in her experience with the lenders she has dealt with,
21 MV Realty’s lien would need to be lifted to complete the refinance.”: **Overruled.**

22 19. Gaughran Decl., ¶ 16: “16. After I learned about the lien, I tried calling MV Realty to
23 let them know I was in a better financial position, and I wanted to give them the \$1,900 back and
24 find out how much interest I owed them. I called several times and eventually I left a message
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1 but did not get a response.”: **Overruled.**

2 20. Gaughran Decl., ¶ 19: “19. Chereen told me that someone at MV Realty told her on
3 the phone that if I wanted to refinance my home, MV Realty would lift the lien for one week
4 then put it back on.”: **Sustained**

5 21. Gaughran Decl., ¶ 20: “20. By the time I heard this, I no longer trusted MV Realty.
6 Before I signed the contract, they never said anything about a lien. Now that I knew they had
7 placed a lien on my home, I felt like they had already lied to me once and tricked me into signing
8 the contract. I did not think they were being honest about what they would do with the lien if I
9 wanted to refinance.”: **Overruled.**

10 22. Gaughran Decl., ¶ 21: “21. Because I did not trust MV Realty to remove the lien even
11 temporarily, and I did not have the money to pay them \$25,000 to remove the lien permanently, I
12 gave up on refinancing my mortgage.”: **Overruled.**

13 23. Gaughran Decl., ¶ 22: “22. Over a year has now gone by and interest rates are higher
14 than they were when I first wanted to refinance in January 2023, so it wouldn’t make sense for
15 me to refinance anymore. As far as I know, MV Realty’s lien is also still on my home, so I
16 would also have to deal with that if I try to refinance.”: **Overruled.**

17 24. Gaughran Decl., ¶ 23: “23. At this point, I feel stuck because I’ve got a lien on my
18 home and I can’t afford to pay to terminate the agreement. I wish I never signed the agreement
19 with MV Realty. I do not trust MV Realty, and I do not feel comfortable doing business with
20 them or having them sell my home. I feel like I have no way out.”: **Overruled.**

21 25. Guzman Decl., ¶ 7: “7. Mr. Sandoval did not tell me about a lien or a memorandum.
22 All Mr. Sandoval said was that MV Realty would keep copies of my documents just for MV
23 Realty’s records, but he did not tell me that any document would be recorded with the county. I
24 would not have agreed to do the deal if I had known that MV Realty would be recording a lien
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1 on my home. My home is the most valuable thing I own, and I wouldn't have wanted to do
2 anything to put it at risk.”: **Overruled.**

3 26. Hall Decl., ¶ 7: “7. If Ms. Donati had told me that MV Realty would put a lien on my
4 home or that the agreement would affect my ability to get a loan or to take equity out of my
5 home, I would never have signed the contract. My understanding is that when someone places a
6 lien on your home it has all kinds of negative effects and can prevent you from getting loans and
7 equity out of your home.”: **Overruled.**

9 27. Hall Decl., ¶ 15: “15. While I was pursuing the HELOC, a representative from Rocket
10 Mortgage told me that MV Realty had placed a lien on my home and, unless it was removed, I
11 couldn't get the HELOC.” **Sustained.**

13 28. Hall Decl., ¶ 16: “16. I was confused and very upset when I heard this, since Ms.
14 Donati had told me MV Realty was not going to place a lien on my home. I was discouraged too,
15 since I had been hoping to pay off my bills.”: **Overruled.**

16 29. Hall Decl., ¶ 17: “17. I called MV Realty to find out how I could get the lien
17 removed. Getting in touch with them was difficult. I called MV Realty about six times over the
18 course of three days before I finally reached someone in the legal department.”: **Overruled.**

20 30. Hall Decl., ¶ 18: “18. MV Realty said they would subordinate the lien, but Rocket
21 Mortgage would not agree to lend unless MV Realty permanently removed the lien from my
22 title.”: **Overruled.**

23 31. Hall Decl., ¶ 19: “19. I offered to pay MV Realty back the \$1,200 they had given me
24 if they would remove the lien, but they refused. They said that to remove it, I would need to pay
25 a “termination fee” of \$14,122.50, which was 3% of my home's value.”: **Overruled.**

27 32. Hall Decl., ¶ 20: “20. MV Realty told me that they could give me a list of companies
28 I could use instead of Rocket Mortgage to get my HELOC. But at this point, I didn't trust MV

1 Realty at all. I knew they had already lied to me once, and it seemed suspicious to me that I
2 wouldn't be able to get a HELOC from Rocket Mortgage but would from one of MV Realty's
3 companies.”: **Overruled.**

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5 33. Hall Decl., ¶ 21: “21. I needed the money from the HELOC and wasn't comfortable
6 using one of MV Realty's companies, so I was forced to pay \$14,122.50 to permanently remove
7 MV Realty's lien, since Rocket Mortgage would not allow it to remain on title. Because I don't
8 have that much money, Rocket Mortgage added it on to my mortgage that I have with them. MV
9 Realty signed a "Termination" of their lien, which is attached as Exhibit 1.”: **Overruled.**

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11 34. Hernandez Decl., ¶ 8: “8. The representative did not tell me that a lien would be
12 placed on my home. If they had told me that they were going to place a lien on my home, I
13 would not have signed the agreement.”: **Overruled.**

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15 35. Hughes Decl., ¶ 13: “13. In April 2023, before my father died, my sister tried to sell
16 my father's house using Coldwell Banker. I didn't approve of how she was handling the sale, so
17 in May 2023, after my father passed away, I got in touch with Coldwell Banker directly. That's
18 when I learned from Coldwell Banker that MV Realty had placed a lien on my father's house as a
19 part of the agreement he signed. Coldwell Banker couldn't give me any more information about
20 the lien and I still don't really understand what it means.” **Sustained** as to the sentence “That's
21 when I learned from Coldwell Banker that MV Realty had placed a lien on my father's house as a
22 part of the agreement he signed”; otherwise, **overruled.**

23
24 36. Hurtado Decl., ¶ 12: “12. None of the three MV Realty representatives told me that
25 MV Realty would put a lien on my home or said anything about a memorandum or about
26 recording a document with the county. I would not have signed up with them if they had told me
27 they would put a lien on my home.”: **Overruled.**

28 37. Hurtado Decl., ¶ 23: “23. The refinance guy I was using discovered the lien MV

1 Realty had placed on my home and told me about it. I was shocked when I heard this.”:

2 **Sustained** as to the first sentence, otherwise, **overruled**.

3 38. Hurtado Decl., ¶ 27: “27. I never would have signed the agreement if I had known
4 MV Realty would put a lien on my house. Now I feel like I’m trapped. It’s painful to admit that
5 I’m in this situation.”: **Overruled**.

6 39. Hurtado Decl., ¶ 28: “28. My family is outgrowing our home and I am concerned we
7 will not be able to buy a larger home. But we are stuck because MV Realty won’t return my calls
8 and I can’t sell with anyone else. At the same time, now that I know MV Realty was dishonest
9 with me and put a lien on my home, I don’t trust them at all, and am upset that I have no choice
10 but to sell with them.”: **Overruled**.

11 40. Hurtado Decl., ¶ 29: “29. I worked very hard to get to the point where I could buy a
12 home for my family, and having the lien on my home makes me feel like I’ve gone backward. I
13 can’t sell my home while this lien from MV Realty is on it, so I’m trapped unless it can be
14 removed.”: **Overruled**.

15 41. Jaquay Decl., ¶ 5: “5. The person from MV Realty did not talk to me about how long
16 the agreement would last or what would happen if I transferred my home to a family member. I
17 know the person I talked to did not mention that MV would be recording a lien on my property.
18 If they had told me there would be a lien, I would not have signed the agreement.”: **Overruled**.

19 42. Declaration of Jennifer Kretschmer – Paragraphs 8-9, 23 – 28: **Overruled** in part and
20 **sustained** in part, as set forth in rulings 43-50 below.

21 43. Kretschmer Decl., ¶ 8: “8. Ms. Roda did a title search on my uncle’s home. She
22 discovered that MV Realty had recorded a lien on my uncle’s home with the county. That was
23 when I realized that what my uncle had told me in June about MV Realty was a real thing.”:

24 **Sustained** as to the second sentence, otherwise, **overruled**.

1 44. Kretschmer Decl., ¶ 9: “9. At that point, I asked my uncle about the lien. He told me
2 about his agreement with MV Realty, and gave me a copy of his contract, called a “Homeowner
3 Benefit Agreement.” He was surprised when I told him that MV Realty had put a lien on his
4 house.”: **Overruled**

5 45. Kretschmer Decl., ¶ 23: “23. In March 2023, due to difficulties I encountered in my
6 relationship with my uncle related to his alcoholism, I resigned as trustee to my uncle’s living
7 trust.”: **Overruled.**

8 46. Kretschmer Decl., ¶ 24: “24. In May of 2023, I received a phone call in from
9 Veronica Benavidez, a realtor with Keller Williams who I hadn’t heard from before. At that time,
10 there was still a record with the county that I was trustee of my uncle’s trust. Ms. Benavidez said
11 that my uncle’s home was under contract to be sold but that the escrow agent, Placer Title
12 Company, wouldn’t let the sale go through without my approval. I contacted Placer Title
13 Company and explained the situation, and declined to approve the sale. Placer Title Company
14 told me that they would resign as escrow agent, after which I did not have any further
15 involvement in my uncle’s home sale.”: **Sustained** as to sentences “Ms. Benavidez said that my
16 uncle’s home was under contract to be sold but that the escrow agent, Placer Title Company,
17 wouldn’t let the sale go through without my approval” and the final sentence in the excerpt;
18 otherwise, **overruled.**

19 47. Kretschmer Decl., ¶ 25: “25. In July of 2023, my uncle’s former neighbor called me
20 to tell me that my uncle had moved from his house in Nipomo to a mobile home in Santa
21 Barbara County. I spoke to my uncle, and he confirmed that he had moved. My understanding is
22 that my uncle ended up selling his home with Ms. Benavidez from Keller Williams. The public
23 records for my uncle’s house confirm that his house sale closed on July 7, 2023 with Veronica
24 Benavidez as the listing agent.”: **Sustained.**

1 48. Kretschmer Decl., ¶ 26: “26. While going through my uncle’s documents after his
2 death, I found his closing statement from Placer Title Company. The closing statement reflects
3 that my uncle paid an “Early Closure Fee” out of the proceeds of his home sale in the amount of
4 \$21,000 to “MV Realty PBC, LLC.” The closing statement reflects that my uncle also paid sales
5 commissions to Keller Williams Realty.”: **Sustained** as to what the closing statement states (the
6 second and third sentences); otherwise, **overruled**.

8 49. Kretschmer Decl., ¶ 27: “27. At the end of his life, my uncle was in poor health and
9 had limited means. At the time I was trustee, my uncle had moments of sobriety and was in
10 agreement with me that he should sell his house. But the delays caused by MV Realty nullified
11 my efforts to act quickly on my uncle’s behalf. And because I could not sell my uncle’s house
12 while he was in a better mental state, I lost the opportunity to get him into suitable housing closer
13 to me or to my brother, which could have resulted in a better outcome for him.”: **Overruled**.

15 50. Kretschmer Decl., ¶ 28: “28. In addition, paying MV Realty \$21,000 would have had
16 a major impact on my uncle’s life. Losing \$21,000 meant less money was available for my uncle
17 to use for assisted living, rehab, or paying down debt.”: **Overruled**.

18 51. Kropf Decl., ¶ 10: “10. When I read the contract, I thought it was unfair and
19 unethical. I have a doctorate and found the contract difficult to understand, so I believe it would
20 confuse anyone. But I understood that my father had to sell his house with MV Realty for the
21 next 40 years and that MV Realty had a lien on his property, and that if he wasn’t happy with
22 them he would need to pay \$9,307.80 to get out of the agreement.” **Sustained** as to the last
23 sentence, as it calls for a legal interpretation; otherwise, **Overruled**.

25 52. Kropf Decl., ¶ 11: “11. I spoke to my father about his agreement with MV Realty, and
26 told him what I had learned. My father didn’t remember signing anything like that. He was
27 shocked and said he wouldn’t have agreed to a deal like that, that it wouldn’t be a good decision.
28

1 He was trying everything to save his house at the time he signed the contract with MV Realty,
2 but he insisted he wouldn't have agreed to give MV Realty such power over him and his house.”:

3 **Overruled.**

4 53. Kropf Decl., ¶ 19: “19. Unfortunately, I knew we couldn't sell unless we paid MV
5 Realty \$9,307.80 since MV Realty had a lien on my dad's home. Because we needed the sale to
6 go through to get money for my dad and I was concerned about MV Realty suing my father and
7 me, we paid.-MV Realty the money out of the proceeds of the home sale.”: **Overruled.**

9 54. Declaration of Chereen Lopez – Paragraphs 5-13: **Sustained** in part and **overruled** in
10 part, as set forth in rulings on Objections 55-63 below.

11 55. Lopez Decl., ¶ 5: “5. The first step I took to assist David was ordering a preliminary
12 title report for his property so I could see if there were any liens. Upon viewing that report, I
13 observed a lien from MV Realty listed as a “Memorandum of Mvr Homeowner Benefit
14 Agreement.””: **Sustained** as to the second sentence, otherwise, **Overruled.**

16 56. Lopez Decl., ¶ 6: “6. I told David that MV Realty had recorded a lien on his title. He
17 was very surprised and upset to learn this.”: **Overruled.**

18 57. Lopez Decl., ¶ 7: “7. Priority Financial Network, the lender that I was working with,
19 informed me they would not lend money on David's home unless MV Realty removed or
20 subordinated the lien.”: **Overruled.**

22 58. Lopez Decl., ¶ 8: “8. David called MV Realty to try to get the lien removed. He
23 thought he'd have to pay back the money that MV Realty had given him, with a small interest
24 payment and then MV Realty would remove its lien. He left a voicemail, but nobody ever got
25 back to him.”: **Overruled**

26 59. Lopez Decl., ¶ 9: “9. Starting around the middle of December of 2022, I began calling
27 MV Realty to get more information on how to remove or subordinate their lien. I called the MV
28

1 Realty Florida office approximately two or three times per day for three days. My assistant also
2 made calls.”: **Overruled.**

3 60. Lopez Decl., ¶ 10: “10. Each time I actually got someone on the phone, I spoke to a
4 different person. And I wasn't able to get anyone who could give me an answer. Finally, after
5 numerous calls, I spoke with an MV Realty employee named Alexa Schmidt: **Overruled.**

6 61. Lopez Decl., ¶ 11: “11. Ms. Schmidt told me that if David wanted to sell his house,
7 he'd owe a 3% commission to MV Realty. She also told me that David would have to pay the 3%
8 commission just to terminate his agreement with MV Realty. Ms. Schmidt also told me that MV
9 Realty could remove their lien for a week so that David could refinance his mortgage.”:

10 **Sustained.**

11 62. Lopez Decl., ¶ 12: “12. I told David what Ms. Schmidt told me-that he could cancel
12 his agreement with MV Realty by paying a 3% commission. I also told David that Ms. Schmidt
13 had told me that MV Realty could take their lien off for a week so that David could refinance his
14 mortgage. But David no longer trusted MV Realty and he didn't want them to do anything else
15 with his title.”: **Sustained** as to the first two sentences as hearsay; otherwise, **Overruled.**

16 63. Lopez Decl., ¶ 13: “13. Because MV Realty's lien was going to remain on title, David
17 gave up on refinancing his home.”: **Overruled.**

18 64. Ponder Decl., ¶ 13: “13. The representative never said that a lien would be recorded
19 on my home or that anything else would be recorded. If he had told me there was going to be a
20 lien I would have said forget it, since my understanding is that would give MV Realty some legal
21 right to my title.”: **Overruled.**

22 65. Ponder Decl., ¶ 25: “25. In approximately December of 2022, my daughter, who
23 works for a title company, ran a title report on my home and came across MV Realty's lien. I
24 was very surprised and upset to learn about the lien because the representative from MV Realty
25
26
27
28

1 never said anything to me about that.”: **Sustained** as to phrase “my daughter, who works for a
2 title company, ran a title report on my home and came across MV Realty’s lien” as hearsay;
3 otherwise, **overruled**.

4
5 66. Ponder Decl., ¶ 26: “26. The amount of money I received from the deal was not worth
6 a lien being placed on my home. I feel that MV Realty deceived me with what they told me
7 about the deal when we spoke on the phone and what it actually turned out to be. Because of the
8 deception at the beginning of the process, I wouldn’t trust them to be my realtor when it comes
9 time to sell my home.”: **Overruled**.

10
11 67. Scott Decl., ¶ 11: “11. The representative never told me that MV Realty would record
12 a lien on my home, and it didn’t occur to me at all that they would do that. I would not have
13 signed a contract with MV Realty if they had told me this. I already had one lien on the house,
14 and I wouldn’t have wanted to jeopardize the house in any way.”: **Overruled**.

15
16 68. Scott Decl., ¶ 21: “21. I told Mr. Gallego about my agreement with MV Realty. Mr.
17 Gallego determined that MV Realty had recorded a lien on the house. I was surprised when Mr.
18 Gallego told me that there was a lien. That was the last thing I expected to have happen because
19 the representative from MV Realty never said anything to me about a lien.”: **Sustained** as to
20 sentence “Mr. Gallego determined that MV Realty had recorded a lien on the house”, otherwise,
21 **overruled**.

22
23 69. Scott Decl., ¶ 22: “22. Mr. Gallego suggested that his lawyers could help me
24 negotiate a settlement with MV Realty, and we offered MV Realty \$1,400 plus interest to settle
25 the lien. But MV Realty refused the offer and demanded a 3% commission despite not doing
26 anything to help sell my home.”: **Overruled**.

27
28 70. Scott Decl., ¶ 23: “23. Mr. Gallego quickly found a buyer for my home.”: **Overruled**.

71. Scott Decl., ¶ 24: “24. Sure enough, before the sale could close, the title company ran

1 a search on the title and found the lien that had been recorded by MV Realty and said that needed
2 to be paid before the sale could close.”: **Sustained** as to phrase “and said that needed to be paid
3 before the sale could close”; otherwise, **overruled**
4

5 72. Scott Decl., ¶ 25: “25. In order to make sure the sale could close, I went through with
6 paying MV Realty \$15,000 to take off the lien.”: **Overruled**

7 73. Swan Decl., ¶ 9: “9. He did not tell me that MV Realty would record a lien on my
8 house. I definitely would not have agreed to the deal if I had known that MV Realty would put a
9 lien on my house. I wouldn’t have wanted to risk losing my house to MV Realty.”: **Overruled.**

10 74. Swan Decl., ¶ 12: “12. In January of 2023, I tried to refinance my home mortgage
11 with Rocket Mortgage. I was ready to do the refinance when Rocket Mortgage found MV
12 Realty’s lien on my home. I was very surprised and upset when Rocket Mortgage told me that
13 MV Realty had a lien on my home because Mr. Aragon never said anything about that to me.”:
14 **Sustained** as to phrase “when Rocket Mortgage told me that MV Realty had a lien on my
15 home”; otherwise, **overruled.**
16

17 75. Swan Decl., ¶ 13: “13. Rocket Mortgage told me to contact MV Realty to have the
18 lien lifted so the refinance could be completed. MV Realty’s lien on my home made things more
19 complicated, which was frustrating.”: **Overruled.**
20

21 76. Vergara Decl., ¶ 14: “14. A week after I applied for the refinance, a senior loan
22 officer with Carrington Mortgage called me and told me that there was a problem. He said that
23 MV Realty had put a lien on my property and that Carrington Mortgage couldn’t get my
24 refinance to go through unless the lien was removed. I was very shocked by this, and I told the
25 loan officer that couldn’t be right because the MV Realty representative had specifically told me
26 they wouldn’t put a lien on my home.”: **Sustained** as to the phrase “He said that MV Realty had
27 put a lien on my property and that Carrington Mortgage couldn’t get my refinance to go through
28

1 unless the lien was removed”; otherwise, **overruled**.

2 77. Vergara Decl., ¶ 15: “15. The loan officer sent me an email attaching a document,
3 titled “Memorandum of MVR Homeowner Benefit Agreement” that MV Realty filed with Los
4 Angeles County. The document had my signature on it, but I don’t recall reading it. It was just
5 one of the things that the notary put in front of me and told me to sign. The loan officer
6 highlighted language in the document, which stated that my agreement with MV Realty “restricts
7 transfers” of my home and “creates a lien and security interest” to “secure [my] obligations” to
8 MV Realty “in the amount of the Early Termination Fee.” The email from the loan officer is
9 attached as Exhibit 1. The “Memorandum of MVR Homeowner Benefit Agreement” is attached
10 as Exhibit 2.”: **Overruled**.

11
12 78. Vergara Decl., ¶ 16: “16. The title company that Carrington was working with sent an
13 email to MV Realty asking for the amount of money required for a full payoff/termination of its
14 lien so I could refinance my mortgage. The title company explained that their underwriter would
15 not allow a subordination or a temporary termination because MV Realty’s lien was an
16 “intervening lien” that had to be paid off in full. MV Realty responded that in order to remove
17 the lien, which it called a “memorandum,” I would need to pay \$29,485.80. The email thread
18 between the title company and MV Realty is attached as Exhibit 3.”: **Overruled**.

19
20 79. Vergara Decl., ¶ 17: “17. The loan officer explained to me that there was no title
21 company that Carrington worked with who would clear my title while MV Realty’s lien was in
22 place so, in order to move forward with the refinance, I’d have to pay off MV Realty’s lien. I was
23 very upset to hear this.”: **Overruled**.

24
25 80. Vergara Decl., ¶ 18: “18. Eventually, I decided to move forward with the refinance.
26 Carrington Mortgage wired MV Realty \$29,485.80 for MV Realty to remove its lien, and this
27 amount was added to my loan balance.”: **Overruled**.

1 81. Widner Decl., ¶ 11: “11. The representative from MV Realty never mentioned a lien
2 or that a lien would be recorded against my property. He said that there would be a
3 “memorandum” which was just like a note or a reminder that would say I was supposed to use
4 MV Realty to sell my house if I chose to sell. My home is the most valuable thing I own. If I had
5 known there would be a lien put on my home, I would never have agreed to the deal. I would
6 have been worried that MV Realty could force a foreclosure to get their lien paid and I would not
7 have wanted a cloud on my title.”: **Overruled.**

9 82. Widner Decl., ¶ 14: “14. Shortly after I signed the agreement, MV Realty contacted
10 me and offered to pay me a few hundred dollars to provide a video testimonial for them. I agreed
11 to do it because I was still in a position where I could use the money. At that time, I thought the
12 MV Realty representative had explained the whole agreement to me, and that I had understood it,
13 and I said so in the testimonial. However, I later learned that was not true. I understood the
14 length of the agreement, and that I would have to pay a commission if MV Realty sold my home.
15 I did not understand that there was a minimum commission regardless of how much my home
16 sold for and I certainly did not understand that MV Realty would be putting a lien on my home. I
17 also did not understand that even if MV Realty is unable to sell my house, the contract does not
18 end. If had known these things, I would not have agreed to give the testimonial.”: **Overruled.**

21 83. Widner Decl., ¶ 15: “15. A few months after I signed the contract with MV Realty, I
22 told my daughter that I had a contract with a real estate broker for when I decide to sell my
23 home. My daughter is an attorney, and she was not happy with me that I signed the agreement
24 without showing it to her. My daughter read the agreement, and she explained to me that there
25 was a minimum commission that MV Realty would earn no matter how much my home sold for
26 and that MV Realty had recorded a lien on my title. I wish I would have shown the contract to
27 my daughter before I signed it. I am sure I would not have signed it if I had.”: **Sustained** as to
28

1 phrase “she explained to me that there was a minimum commission that MV Realty would earn
2 no matter how much my home sold for and that MV Realty had recorded a lien on my title”;
3 otherwise, **overruled**.

4
5 84. Gomez Decl., ¶ 16: “16. Once the home was in escrow, my transaction coordinator
6 ordered a preliminary title report and discovered that MV Realty had recorded a lien on Ms.
7 Hernandez’s property. Unless MV Realty removed its lien, the sale could not go through. An
8 email chain from the escrow company requesting removal of the lien is attached as Exhibit 1. In
9 all my years in the real estate business, I’ve never seen a sale go through when there is a lien on
10 the title.”: **Overruled**.

11
12 85. Gomez Decl., ¶ 17: “17. To remove the lien, MV Realty demanded that Ms.
13 Hernandez pay 3% of the sales price or fair market value of her home, whichever was greater.”:
14 **Overruled**.

15
16 86. Gomez Decl., ¶ 18: “18. I provided Ms. Hernandez with the service of our in-house
17 attorney who communicated with MV Realty and demanded that they remove the lien. This was
18 one of the most difficult parts of Ms. Hernandez’s home sale. Although our in-house attorney
19 sent two letters, multiple emails, and repeatedly called the company on behalf of Ms. Hernandez,
20 MV Realty refused to remove the lien for weeks and it seemed like the sale would not go through
21 unless Ms. Hernandez paid MV Realty the full amount it demanded. It was difficult for our
22 inhouse attorney even to speak with someone at MV Realty who would discuss removing the
23 lien.”: **Overruled**.

24
25 87. Gomez Decl., ¶ 19: “19. Finally, after a great deal of effort, MV Realty agreed to
26 remove the lien if Ms. Hernandez would pay \$1,317, which she did. MV Realty signed a
27 Termination of Memorandum of MVR Homeowner Benefit Agreement on February 22, 2023.”:
28 **Overruled**.

1 88. Gomez Decl., ¶ 20: “20. Once MV Realty terminated its lien, we were able to close
2 escrow and the sale was finalized on February 27, 2023. An email from the escrow company
3 attaching MV Realty's recorded termination of its lien is attached as Exhibit 2.”: **Overruled.**
4

5 89. Armenta Decl., ¶ 5: “5. After I ordered the report for Mr. Dennis, we discovered that
6 MV Realty had recorded a lien on his home called a "Memorandum of MVR Homeowner
7 Benefit Agreement." The title report said that the Memorandum needed to be removed. Mr.
8 Dennis's preliminary title report is attached as Exhibit 1.”: **Overruled.**

9 90. Armenta Decl., ¶ 6: “6. Although MV Realty said it would subordinate its lien to Mr.
10 Dennis' s refinance, the VA would not lend as long as the lien remained on title because there
11 was no specific dollar amount attached to the lieu, so the lien could be for any amount. We asked
12 MV Realty to add a specific dollar amount to the lien, but it refused.”: **Overruled.**
13

14 91. Armenta Decl., ¶ 7: “7. I helped Mr. Dennis hire an attorney to write MV Realty a
15 letter asking it to remove the lien, but MV Realty refused.”: **Overruled.**

16 92. Armenta Decl., ¶ 8: “8. In order to remove the lien, MV Realty required that Mr.
17 Dennis pay it \$10,256.40 and sent a payoff demand for that amount. The demand is attached as
18 Exhibit 2.”: **Overruled.**

19 93. Armenta Decl., ¶ 9: “9. Because Mr. Dennis would not pay MV Realty the money it
20 demanded, MV Realty’s lien remained on his title and he did not refinance his mortgage.”:
21 **Overruled.**
22

23 IV.

24 PLAINTIFF’S EVIDENTIARY OBJECTIONS

25 1. Mitchell Decl., at ¶ 10, Ex. E (“Both MV Realty, myself, and MV Realty’s investors
26 acknowledged that the Memorandum is not a lien. See Deposition of Aaron Peck, taken in the
27
28

1 matter title See Exhibit “E”, MV Realty PBC, LLC v. Office of the Attorney General, State of
2 Florida Department of Legal Affairs, et al. (In re MV Realty PBC, LLC), Adv. No. 23-01211-
3 EPK (Bankr. S.D. Fla. Jan. 18, 2024). In re MV Realty PBC, LLC, at 20:6- 22; 22:4-13; 76:25-
4 77:6, (the ‘Peck Deposition’.”): **Sustained.**

5
6 2. Mitchell Decl., at ¶ 13, Ex. G (“Attached hereto as Exhibit G is a true and correct copy
7 of the California Tax Credit Allocation Committee’s Recovery and Reinvestment Act of 2009
8 Right of First Refusal Agreement.”): **Sustained.**

9 3. Mitchell Decl., at ¶ 5, Training Videos (“...see also Training Videos, (lodged with the
10 court).”): **Sustained.** The People represent that they were never served with said Training
11 Videos. In light of this, the Court has not considered these training videos in ruling on the
12 motion.

13
14 4. Manchester Decl., at ¶ 13, Ex. 4 (“Composite Exhibit 4 are true and correct copies
15 from twenty (20) various county recorders in California identifying consumers whom obtained
16 refinancing upon their respective properties without MV Realty recording a modification, lift,
17 termination, or subordination upon the Memorandum in place.”): **Sustained.**

18
19
20 V.

21 **REQUEST FOR JUDICIAL NOTICE**

22 Defendants request judicial notice of the Order on Plaintiff’s Motion for Temporary
23 Injunction issued in the matter of OFFICE OF THE ATTORNEY GENERAL, STATE OF
24 FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, Plaintiff vs. MV REALTY PBC, LLC, a
25 Florida limited liability company; ANDREW J. ZACHMAN, f/k/a AMANDA ZUCKERMAN,
26 an individual; ANTONY MITCHELL, an individual; And DAVID MANCHESTER, an
27 individual, Defendants, Case No. 22-CA-9958 (the “Florida Action”). The request is granted
28

1 pursuant to Evidence Code §452(d), as the order is a court record of the state of Florida and is
2 subject to judicial notice under this section. However, the Court’s order granting judicial notice
3 is limited to the existence of that document in the Florida court’s file. The Court does not in any
4 way rely on that order in assessing the instant motion for preliminary injunction, as that order has
5 no binding or persuasive effect on the issues in this case.
6

7
8 **VI.**

9 **MOTION FOR PRELIMINARY INJUNCTION**

10 **1. Standards governing preliminary injunctions**

11 CCP §526 provides the basis for which the Court may issue (or deny issuance of) an
12 injunction. CCP §527(a) authorizes issuance of injunctions before trial “if sufficient grounds
13 exist therefor.”
14

15 Injunctions will rarely be granted (absent specific statutory authority) where a suit for
16 damages provides a clear remedy. *Thayer Plymouth Center, Inc. v. Chrysler Motors* (1967) 255
17 Cal.App.2d 300, 307; *Pacific Designs Sciences Corp. v. Sup.Ct. (Maudlin)* (2004) 121
18 Cal.App.4th 1100, 1110. Conversely, injunctive relief is more likely to be granted where a
19 damages remedy is precluded by law. *Department of Fish & Game v. Anderson-Cottonwood*
20 *Irrig. Dist.* (1992) 8 Cal.App.4th 1554, 1564.
21

22 Further, CCP §526(a)(2) lists the traditional consideration of “irreparable injury.”
23 Irreparable harm is often related to the “inadequate legal remedy” (i.e., the damages remedy is
24 inadequate *because* some immeasurable harm is threatened). But it is also a separate
25 consideration. Relief is unlikely unless someone will be significantly hurt in a way which cannot
26 be later repaired. California Practice Guide, Civil Procedure Before Trial, ¶9:508 (The Rutter
27 Group 2024) (referencing *People ex rel. Gow v. Mitchell Brothers’ Santa Ana Theater* (1981)
28

1 118 Cal.App.3d 863, 870-871.

2 Moreover, the threat of “irreparable harm” must be imminent, as opposed to a mere
3 possibility of harm some time in the future: “An injunction cannot issue in a vacuum based on
4 the proponents’ fears about something that may happen in the future. It must be supported by
5 actual evidence that there is a realistic prospect that the party enjoined intends to engage in the
6 prohibited activity.” California Practice Guide, Civil Procedure Before Trial, ¶9:508 (The Rutter
7 Group 2024) (referencing *Korean Philadelphia Presbyterian Church v. California Presbytery*
8 (2000) 77 Cal.App.4th 1069, 1084).

9
10 While the statute makes no reference to the traditional equitable concern of “balancing
11 equities,” it is a crucial factor in the judge’s determination: i.e., the court must exercise its
12 discretion “in favor of the party most likely to be injured....If denial of an injunction would
13 result in great harm to the plaintiff, and the defendants would suffer little harm if it were granted,
14 then it is an abuse of discretion to fail to grant the preliminary injunction.” *Robbins v. Sup. Ct.*
15 (1985) 38 Cal.3d 199, 205.

16
17 While the Court has broad discretion in ruling on an application for preliminary
18 injunction, such discretion must be exercised in light of the following interrelated factors:

19
20 1) Are the plaintiffs likely to suffer greater injury from denial of the injunction than
21 defendants are likely to suffer if it is granted? *Shoemaker v. County of Los Angeles*
(1995) 37 Cal.App.4th 618, 633.

22 2) Is there a reasonable probability that plaintiffs will prevail on the merits?
Robbins, supra, 38 Cal.3d at 206.

23 The Court’s determination must be guided by a “mix” of the potential-merit and interim-
24 harm factors: the greater plaintiff’s showing on one, the less must be shown on the other to
25 support an injunction. *Butt v. State of California* (1992) 4 Cal.4th 668, 678; *Pleasant Hill*
26 *Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cla.App.4th 678, 696.

27
28 Importantly, the avowed purpose of a preliminary injunction is to preserve the status quo

1 pending a trial on the merits. *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528. See also
2 California Practice Guide, Civil Procedure Before Trial, ¶9:539 (The Rutter Group 2024)
3 (referencing *White v. Davis* (2003) 30 Cal.4th 528, 554; *Costa Mesa City Employees' Ass'n. v.*
4 *City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305). It is not an adjudication of the ultimate
5 rights in controversy; it merely represents the trial court's discretionary decision whether the
6 defendant should be restrained from exercising a claimed right pending trial. California Practice
7 Guide, Civil Procedure Before Trial, ¶9:639 (The Rutter Group 2024); *Cohen v. Board of*
8 *Supervisors* (1985) 40 Cal.3d 277, 286.

10 The burden is on the plaintiff to show all elements necessary to support issuance of a
11 preliminary injunction. California Practice Guide, Civil Procedure Before Trial, ¶9:632.1 (The
12 Rutter Group 2024); *O'Connell v. Sup.Ct. (Valenzuela)* (2006) 141 Cal.App.4th 1452, 1481.

14 Injunctions may be classified in a number of ways. One has to do with whether
15 the injunction is automatically stayed by the taking of an appeal. For this purpose, injunctions are
16 classified as either “prohibitory” or “mandatory.” California Practice Guide, Civil Procedure
17 Before Trial, ¶9:530 (The Rutter Group 2024).

18 ““(A)n injunction is prohibitory if it requires a person to refrain from a particular act
19 and mandatory if it compels performance of an affirmative act *that changes the position of the*
20 *parties.*” California Practice Guide, Civil Procedure Before Trial, ¶9:531 (The Rutter Group
21 2024) (citing *Davenport v. Blue Cross of Calif.* (1997) 52 Cal.App.4th 435, 448) (emphasis
22 supplied by Rutter Guide) (rejecting “preservation of status quo” as test for
23 prohibitory injunction); *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048; and *URS Corp. v.*
24 *Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884). Some courts look to whether the
25 order changes the “the last actual peaceable, uncontested status which preceded the pending
26 controversy” to determine whether the status quo is changed by the order, rendering
27
28

1 the injunction mandatory. California Practice Guide, Civil Procedure Before Trial, ¶9:531 (The
2 Rutter Group 2024) (citing *People v. Hill* (1977) 66 Cal.App.3d 320, 331 (internal quotes
3 omitted); *People v. iMERGENT, Inc.* (2009) 170 Cal.App.4th 333, 343).

4
5 Importantly, “[m]andatory preliminary injunctions are rarely granted (and if granted, are
6 subject to stricter scrutiny on appeal): ‘The granting of a mandatory injunction pending trial is
7 not permitted except in *extreme* cases where the right thereto is *clearly* established.’” California
8 Practice Guide, Civil Procedure Before Trial, ¶9:532 (The Rutter Group 2024) (citing *Teachers*
9 *Ins. & Annuity Ass’n. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493 (emphasis supplied by Rutter
10 Guide; internal quotes omitted); *Ryland Mews Homeowners Ass’n. v. Munoz* (2015) 234
11 Cal.App.4th 705, 712, fn.4.; *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6
12 Cal.App.5th 1178, 1184).

13
14 The grant or denial of a temporary restraining order or preliminary injunction “does not
15 amount to an adjudication of the ultimate rights in a controversy. It merely determines that the
16 court, balancing the respective equities of the parties, concludes that, pending a trial on the
17 merits,” exercise of the right claimed by the defendant should or should not be restrained.
18 California Practice Guide, Civil Procedure Before Trial, ¶9:500 (The Rutter Group 2024) (citing
19 *Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 361).

20
21 In *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, the California Supreme Court
22 enunciated the standard to be applied when a governmental entity is seeking an injunction:

23 Where a governmental entity seeking to enjoin the alleged violation of an ordinance
24 which specifically provides for injunctive relief establishes that it is reasonably
25 probable it will prevail on the merits, a rebuttable presumption arises that *the*
26 *potential harm to the public outweighs the potential harm to the defendant.* [FN] If
the defendant shows that it would suffer grave or irreparable harm from the issuance
of the preliminary injunction, the court must then examine the relative actual harms
to the parties.

27 ////

1 Once the defendant has made such a showing, an injunction should issue only if—
2 after consideration of both (1) the degree of certainty of the outcome on the merits,
3 and (2) the consequences to each of the parties of granting or denying interim
4 relief—the trial court concludes that an injunction is proper. At this stage of the
5 analysis, no hard and fast rule dictates which consideration must be accorded
6 greater weight by the trial court. For example, if it appears fairly clear that the
7 plaintiff will prevail on the merits, a trial court might legitimately decide that an
8 injunction should issue *even though the plaintiff is unable to prevail in a balancing*
9 *of the probable harms*. On the other hand, the harm which the defendant might
10 suffer if an injunction were issued *may so outweigh* that which the plaintiff might
11 suffer in the absence of an injunction that the injunction should be denied even
12 though the plaintiff appears likely to prevail on the merits.

13 The ultimate goal of any test to be used in deciding whether a preliminary
14 injunction should issue is to minimize the harm which an erroneous interim
15 decision may cause. [Citation.] [FN] This important function is well served by
16 application of the principles set forth above. *IT Corp. v. County of Imperial* (1983)
17 35 Cal.3d 63, 72–73.

18 Critically, a judge is not precluded from granting a preliminary injunction merely because
19 of conflicts in the evidence. See Order Granting Preliminary Injunction:, Cal. Judges Benchbook
20 Civ. Proc. Before Trial § 14.26 (citing *National Subscription Television v Formula Int'l.* (1984)
21 153 Cal.App.3d 308, 314).

22 With all of these standards in mind, the People seek a preliminary injunction requiring
23 that:

24 1) Defendants shall record terminations of all Memorandums of Homeowner
25 Benefit Agreements filed on the properties of California homeowners by the earlier
26 of:

27 a. Thirty (30) days from the date of the Court's order, or

28 b. Within five (5) days of notification from any California homeowner, or
any agent acting on their behalf, who requires a termination to be recorded
in order to proceed with any transaction related to the homeowner's
property, including but not limited to a loan, refinancing, or sale of the
property.

2) Defendants shall not record any encumbrance relating to a Homeowner Benefit
Agreement on the property of any California homeowner for the pendency of this
litigation.

3) Defendants shall not enforce any Homeowner Benefit Agreement entered into
with a California homeowner for the pendency of this litigation.

As discussed above, there are three causes of action alleged: violations of the California

1 False Advertising Law (Business & Professions Code ["B&P Code"] §§17500, et seq.);
2 violations of the California Unfair Competition Law ("UCL") (B&P Code §§17200, et seq.); and
3 violations of the California Do Not Call Law (B&P Code §§17590, et seq.). There are essentially
4 two species of conduct which, the People argue, violates these statutes: 1) Defendants' use of
5 contracts requiring homeowners to use only MV Realty as their listing agent if they sell their
6 homes in the next 40 years, or pay a steep penalty of 3% of their home value (while deceiving
7 homeowners into believing it would not record liens on their homes); and 2) Defendants' use of
8 contracts that were signed by individuals not licensed to practice real estate, which unlawfully
9 preprinted the real estate commission, and which failed to disclose the commission may be
10 negotiable.²⁴

11
12
13 In support of the motion, the People have introduced the following evidence. MV Realty
14 marketed a "Homeowner Benefit Program", promising a "loan alternative" of between \$300-
15 \$5000 cash without taking a loan.²⁵ The Homeowner Benefit Program ad appeared at the
16 following URL: <https://homeownerbenefit.com/>.²⁶ MV Realty, on its site, provided that no credit
17 check was required, that there was no requirement for clients to sell their homes, that the clients
18 could get cash without borrowing, that clients could build relationship with innovative local
19 experts, and that there would be a "full time real estate agent on your side".²⁷

20
21 MV, in its response to the People's Interrogatory No. 10 (requesting that Defendants
22 "DESCRIBE how YOU calculate all payments or other monetary incentives YOU provide

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24
25 ²⁴ See Motion at 6:4-14.

26 ²⁵ Friedmann Decl., Exh. 1.

27 ²⁶ Friedmann Decl., ¶3.

28 ²⁷ Friedmann Decl., Exh. 1 at 013.

1 CALIFORNIA CONSUMERS RELATING TO the HOMEOWNER BENEFIT PROGRAM,
2 including the Promotion Fee and any referral incentive, and include any changes made to the
3 calculation method during the relevant time period”), stated that the method to calculate the
4 amount of money to offer a potential customer is the property’s estimated value, which can
5 change depending on a wide range of factors, multiplied by 0.0027.²⁸

7 In paying for its online marketing and advertising relating to the Homeowner Benefit
8 Program, MV Realty utilized the keywords “grants for disabled homeowners,” “federal grants
9 for senior citizens home repair,” “home repair loans for veterans,” “home repair grants for low
10 income families,” and “I need help with bills now.”²⁹

11 The MVR Homeowner Benefit Agreement is attached as Exhibit 8 to the Schaeffer
12 Declaration. A portion of the HBA is entitled “Memorandum of MVR Homeowner Benefit
13 Agreement.”³⁰ In the Memorandum, the homeowner agreed to grant MV Realty “the exclusive
14 right to act as listing agent for any sale of the Property Owner’s property should the Property
15 Owner decide to sell such property during the term of the Agreement[.]”³¹ The term of the
16 agreement expired on the earlier of the date the Property was sold in accordance with the
17 Agreement, or the date that is forty (40) years after the Commencement Date unless otherwise
18 terminated in accordance with its terms.³² This Memorandum was recorded by MV Realty on
19 homeowners’ title and notarized (in the case of homeowner Marcy Archambault, the notary came
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24 ²⁸ Schaeffer Decl., Exh. 4 at 065.

25 ²⁹ See Parmalee Decl., ¶¶3-4.

26 ³⁰ See Schaeffer Decl., Exh. 8 at 119-120.

27 ³¹ Schaeffer Decl., Exh. 8 at 119.

28 ³² *Id.*

1 at 9 p.m., which she “thought was very strange”).³³ Homeowner Alexander Vergara declares that
2 the notary “was in a very big rush” to have him sign the Agreement, and that the notary “wanted
3 to get through the signing as quickly as possible.”³⁴ Vergara was not able to view the contract
4 before the notary put it in front of him.³⁵ Manuel Contreras attests to a similar experience with
5 the notary.³⁶
6

7 The Agreement contains a fee for early termination, providing in applicable part:

8 a. In the event either (A) the Property Owner fails to perform any of its obligations
9 under this Agreement, including, without limitation, entering into any Prohibited
10 Engagements, or (B) an Early Termination Event (as defined below) shall occur,
11 then the Property Owner shall immediately pay Company, as agreed upon
12 liquidated damages and not as a penalty, an early termination fee (the “Termination
13 Fee”) in the amount of three percent (3%) of the greater of (i) \$341,880.00, the
14 Property’s current Realtors Valuation Model home value estimate, or (ii) the fair
15 market value of the Property at the time of the Property Owner’s breach or Early
16 Termination Event, as reasonably determined by the Company.³⁷

17 Additionally, the agreement provides that “Company reserves the right to record a
18 memorandum of this Agreement, in form and substance similar to the Memorandum of MVR
19 Homeowner Benefit Agreement...to provide constructive notice of Company’s rights
20 hereunder.”³⁸ Under ¶5(c), the agreement provides:
21

22 ////

23 ////

24 ////

25 ////

26 ³³ Archambault Decl., ¶8.

27 ³⁴ Vergara Decl., ¶12.

28 ³⁵ *Id.*

³⁶ Contreras Decl., ¶¶8-9.

³⁷ Schaeffer Decl., Exh. 8 at 109, ¶3(a).

³⁸ Schaeffer Decl., Exh. 8 at 110, ¶5(b).

1 c. In the event Property Owner wishes to refinance an existing mortgage on the
2 Property or grant a new mortgage on the Property Company will consider in good
3 faith any request from Property Owner to facilitate such refinancing or new
4 mortgage by subordinating the lien of this Agreement to tile refinanced or new
5 mortgage. In the event that Property Owner sells the Property in compliance with
6 this Agreement (whether through the efforts of Company or pursuant to Section 4),
or in the event Property Owner cease to own the Property due to foreclosure,
condemnation or arms-length deed in lieu of foreclosure to an unrelated third party,
Company will, upon written request, deliver to the closing agent for the sale of the
Property or the purchaser of the Property a Notice of Termination of the
Memorandum, in recordable form.³⁹

7 The Agreement purports to bind future successors in interest to title to the Property.⁴⁰

8 There were approximately 1,443 unique property addresses in California where the owner signed
9 the Agreement with MV Realty, with an average of consideration paid to MV Realty of
10 \$1,413.98.⁴¹ Properties in the following California counties were subject to the Agreement:
11 Alameda, Amador, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Humboldt, Imperial,
12 Kern, Kings, Lake, Los Angeles, Madera, Marin, Mariposa, Merced, Monterey, Napa, Orange,
13 Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San
14 Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma,
15 Stanislaus, Sutter, Tulare, Tuolumne, Ventura, and Yolo.⁴²

17 Exhibit 11 to the Schaeffer Declaration is a document entitled "Most Common
18 Objections" which Defendants produced to the Office of the Attorney General. This document
19 lists homeowners' potential objections to entering into the Agreement, and the telemarketer's
20 suggested response. In response to the objection "I don't want a lien on my house," the proffered
21 response for the telemarketer was "Homeowner, we do not file a lien, we file a memorandum.
22

23
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25 ³⁹ Schaeffer Decl., Exh. 8 at 110, ¶5(c).

26 ⁴⁰ Schaeffer Decl., Exh. 8 at 110, ¶5(a).

27 ⁴¹ Parmalee Decl., ¶¶5-6.

28 ⁴² Parmalee Decl., ¶6.

1 The purpose of the memorandum is to serve public notice of the homeowner's obligations which
2 means duty/obligation is that you simply use MV Realty in a future sale."⁴³ Amanda Zachman,
3 who founded MV Realty in 2014, testified that MV Realty trains its agents that the
4 Memorandum is a "notice" and not a "lien."⁴⁴

5
6 However, despite these representations, there is substantial evidence showing that
7 Defendant, in fact, records liens.⁴⁵

8 Additionally, Monroe Capital Management Advisors, LLC (the investor in MV Realty)
9 produced to the Office of the Attorney General a document entitled "National Underwriting
10 Communication" from First American Title, providing that "the Agreement should be treated
11 like any other lien or mortgage and released or terminated as part of any transaction in which
12 they appear in the chain of title."⁴⁶ A monthly report was sent to notify Monroe when the
13 Memorandum was recorded on each home.⁴⁷

14
15 Homeowner Carmen Hernandez attests that MV eventually agreed to remove its lien if
16 she paid them \$1,317.⁴⁸ Julio Gomez, a real estate salesperson who listed Ms. Hernandez's
17 home, attests to the liens placed on her home by MV Realty, and the fact the home could not be
18

19
20 ⁴³ Schaeffer Decl., Exh. 11 at 169.

21 ⁴⁴ Exh. 12, Zachman Depo. at 177 (Depo. p. 145:8-18), 179 (depo. pages 150:25-151:151).

22 ⁴⁵ See Exh. 2 to Schaeffer Decl. at 030 (MV Realty's Investor Presentation, providing that "MV Realty files liens on
23 all contracts within 48hrs of origination); Exh. 15 to Schaeffer Decl. at 186 (Term Sheet, Summary of Terms,
24 providing "[t]he Forward Listing Contracts are secured liens and/or deeds of trusts, and therefore, the homeowner is
unable to transfer title without receiving a lien release from MV"); Exhs. 17 and 18 to Schaeffer Decl., Consolidated
Financial Statements and Report of Independent Certified Public Accountants at 203, 226, providing "The Company
files a lien on the underlying home").

25 ⁴⁶ Schaeffer Decl., Exh. 19.

26 ⁴⁷ Schaeffer Decl., Exh. 20 at 266-269 (identifying "liens in place"), Exh. 22 at 277 (same) Exh. 3 (Mitchell Depo. at
27 53 (depo pages 398-400, 55 (Depo. pages 442-443).

28 ⁴⁸ Hernandez Decl., ¶35.

1 sold until the lien was removed and MV Realty was paid \$1,317.⁴⁹ Another homeowner, Irma
2 Cuevas, declares that she paid \$37,000 to remove the MV Realty lien on her home.⁵⁰

3 Homeowners declare that some lenders refuse to lend unless the lien is permanently removed
4 from title.⁵¹

5
6 Further, Ms. Matson declares that, upon her review of the HBAs, each of the 1,418 she
7 reviewed call for MV Realty to receive a 3% commission with a cooperating broker other than
8 MV Realty and 6% if there is no cooperating broker; many of the HBAs did not contain the
9 notice that the amount or rate of the real estate commission is not fixed by law and may be
10 negotiable.⁵²

11
12 The People have filed the Declarations of several Homeowners who attest to having
13 experienced tangible harm from MV Realty's practice of placing a lien on the subject homes
14 (despite their representation that the Memorandum was not a lien). While the amounts vary, in
15 many instances, homeowners were forced to pay termination fees in order for the liens to be
16 removed.⁵³

17
18 Additionally, as to the homeowners who ultimately ended up selling their homes (or
19 those of relatives) and had entered into the MV Realty Agreement, a number of them attest to
20 having been unable to reach MV Realty and/or were subject to poor services when they wanted
21 to sell.⁵⁴

22
23 ⁴⁹ Gomez Dec., ¶¶16-20.

24 ⁵⁰ Cuevas Decl., ¶¶15-23.

25 ⁵¹ Archambault Decl., ¶¶12-21; Hall Decl., ¶¶18-22; Dennis Decl., ¶¶11-18.; Vergara Decl., ¶¶13-19.

26 ⁵² Matson Decl., ¶¶16-22.

27 ⁵³ See, e.g., Cuevas Decl., ¶¶15-24; Hall Decl., ¶¶2-22; Vergara Decl., ¶¶2-19; Dennis Decl., ¶¶2-21; Archambault
Decl., ¶¶2-22.

28 ⁵⁴ See, e.g., Hernandez Decl., ¶¶10-19; Guzman Decl., ¶¶14-27; Kropf Decl., ¶¶2-18; Hurtado Decl., ¶¶22-29;

1 Significantly, under the UCL, “[l]ikely to deceive’ implies *more than a mere possibility*
2 that the advertisement might conceivably be misunderstood by some few consumers viewing it
3 in an unreasonable manner. Rather, the phrase indicates that the ad is such that it is probable that
4 a significant portion of the general consuming public or of targeted consumers, acting reasonably
5 in the circumstances, could be misled.” See *Lavie v. Procter & Gamble Co.*(2003) 105 Cal. App.
6 4th 496, 498 (emphasis added). The standard under the UCL and FAL is whether members of the
7 public are likely to be deceived. See, e.g., *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 312 and
8 fn.8; *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951.

10 Here, the Court finds that based on the evidence before it, there is more than a mere
11 possibility that Defendants’ practices (including its representation of the Memorandum as a
12 “notice,” as opposed to a “lien”) might conceivably be misunderstood by a few customers
13 viewing it in an unreasonable manner. To the contrary, the Court determines that it is probable
14 that a significant portion of consumers targeted by MV Realty, acting reasonably in the
15 circumstances, could be misled by its marketing and enforcement of the HBAs with respect to
16 the imposition of liens on their properties.

18 As the People argue, there is a potential cloud on title for up to 40 years under the HBAs.
19 Based on the evidence before the Court, the memorandum operates as a lien on homes (defined
20 under Civil Code §2782 as “a charge imposed in some mode other than by a transfer in trust
21 upon specific property by which it is made security for the performance of an act”), clouding title
22 and preventing the homeowner from, *inter alia*, selling their homes, refinancing their mortgages,
23 or taking out equity in their homes. The evidence presented by the People demonstrates, for
24 purposes of the preliminary injunction, that Defendants knew the memoranda operated as liens,
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26
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28 _____
Contreras Decl., ¶¶12-15.

1 represented this to their investors, but materially misrepresented the effect of the memoranda to
2 the Homeowners. The Court finds, for purposes of the injunction, that it is reasonably probable
3 Plaintiff will prevail on the merits.

4
5 The Court determines that the harm the Homeowners have suffered, and will continue to
6 suffer, imminent irreparable harm if a preliminary injunction is not issued. Defendants have
7 effectively placed clouds on title of the homeowners through the lien recordations, with the only
8 way to remove the cloud by paying a 3% penalty (which, as is clear from the evidence before the
9 Court, can reach into the thousands of dollars). For purposes of this motion, at least 1,400
10 homeowners are affected. And, as discussed above, many of the homeowners who have lodged
11 Declarations in support of the motion have attested that they would never have entered into the
12 agreements had they known liens would be placed on their homes.⁵⁵ See *BBB Bonding v.*
13 *Caldwell* (2021) 73 Cal.App.5th 349, 378 (affirming trial court finding on order for preliminary
14 injunction that the harm plaintiff and other class members would continue to suffer was
15 significant, if they were held to contracts they would not otherwise have entered had they been
16 provided with the required notice).

17
18 Separately, with respect to the brokerage contracts themselves, B&P Code §10130
19 provides that “[i]t is unlawful for any person to engage in the business of, act in the capacity of,
20 advertise as, or assume to act as a real estate broker or a real estate salesperson within this state
21 without first obtaining a real estate license from the department, or to engage in the business of,
22 act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this
23 state without having obtained a license endorsement.” B&P Code §10137 provides in applicable
24
25

26
27 ⁵⁵ Hurtado Decl., ¶¶12-13; Archambault Decl. ¶ 7; Contreras Decl. ¶ 6; Cuevas Decl. ¶¶ 12-13; Dennis Decl. ¶ 9;
28 Gaughran Decl. ¶ 11; Guzman Decl. ¶ 7; Hall Decl. ¶¶ 5-7; Hernandez Decl. ¶ 8; Hughes Decl. ¶¶ 7, 11;
Declaration of Douglas Jaquay ¶ 5; Kretschmer Decl. ¶¶ 6-9; Kropf Decl. ¶¶ 5-11; Declaration of Wesley Ponder ¶
13; Declaration of Steven Scott ¶ 11; Declaration of Juan Swan ¶ 9; Vergara Decl. ¶ 9; Widner Decl. ¶ 11.

1 part that “[i]t is unlawful for any licensed real estate broker to retain, compensate, directly or
2 indirectly, any person for performing any of the acts within the scope of this chapter who is not a
3 licensed real estate broker, or a real estate salesperson licensed under
4 the responsible broker retaining or compensating him or her, or to retain or compensate, directly
5 or indirectly, any licensee for engaging in any activity for which a mortgage loan originator
6 license endorsement is required, if that licensee does not hold a mortgage loan originator license
7 endorsement; provided, however, that a licensed real estate broker may pay a commission to a
8 broker of another state.”

10 Additionally, B&P Code §10147.5 provides in pertinent part:

11 (a) Any printed or form agreement which initially establishes, or is intended to
12 establish, or alters the terms of any agreement which previously established a right
13 to compensation to be paid to a real estate licensee for the sale of residential real
14 property containing not more than four residential units, or for the sale of a
15 mobilehome, *shall contain the following statement* in not less than 10-point
16 boldface type immediately preceding any provision of such agreement relating to
17 compensation of the licensee:

18 *Notice: The amount or rate of real estate commissions is not fixed by law. They are*
19 *set by each broker individually and may be negotiable between the seller and*
20 *broker.*

21 (b) The amount or rate of compensation shall not be printed in any such agreement.

22 (c) Nothing in this section shall affect the validity of a transfer of title to real
23 property. (Emphasis added.)

24 Here again, the evidence shows that each of the California brokerages’ HBAs were
25 signed by non-real estate brokers, unlicensed under the brokerages. Roberta Matson, a Senior
26 Legal Analyst with the California Department of Justice, declares that she reviewed 1,419 unique
27 HBAs for Californians.⁵⁶ In total, she was able to locate and review 1,355 HBAs signed by MV
28 Realty, and 1,408 Memorandums signed by MV Realty.⁵⁷ She declares that every HBA and

⁵⁶ Matson Decl., ¶6.

⁵⁷ Matson Decl., ¶¶11-12.

1 Memorandum produced with a signature by MV Realty that she reviewed was signed by one of
2 the following people on behalf of either MV Realty of California Inc. or MV Brokerage of
3 California Inc.: Rashel Esquivel, Caryn Grossman, Alissa Hegele, Camila Minski, Dustin
4 Nelson, Brittany Ponjavic, Giselle Valentin, Amanda Zachman, and Marilyn Zuckerman.⁵⁸
5 Matson further declares that she reviewed the Declaration of Heather DeYoung, the duly
6 authorized custodian of licensing records of the California Department of Real Estate.⁵⁹ Matson
7 declares that none of the individuals who signed the HBAs and Memorandums on behalf of MV
8 Realty of California Inc. or MV Brokerage of California Inc. were or are licensed under either of
9 those companies.⁶⁰

11 Additionally, Ms. Matson declares that she reviewed the HBAs to determine whether MV
12 Realty had pre-printed its commission rates.⁶¹ She made this determination by reviewing whether
13 the commission rates looked the same as the rest of the HBA text or had been left blank and then
14 were added in.⁶² She attests that one of the HBAs was produced by MV Realty without the page
15 addressing MV Realty's commission, so she could not determine whether the commission was
16 pre-printed.⁶³ She declares the other 1,418 HBAs, including those produced without a signature
17 by MV Realty, all had pre-printed commission rates.⁶⁴ Matson additionally attests that each of
18 the 1,418 HBAs call for MV Realty to receive a 3% commission if there is a cooperating broker
19
20
21

22 ⁵⁸ Matson Decl., ¶13.

23 ⁵⁹ Matson Decl., ¶15.

24 ⁶⁰ *Id.*

25 ⁶¹ Matson Decl., ¶16.

26 ⁶² *Id.*

27 ⁶³ *Id.*

28 ⁶⁴ *Id.*

1 other than MV Realty who participates in the sale of the property, and a 6% commission if there
2 is no cooperating broker.⁶⁵ In each HBA, Matson attests, the 3% and 6% commission rates
3 looked the same as the rest of the pre-printed HBA text and the same as the 3% and 6%
4 commission rates in the other HBAs.⁶⁶ She declares that MV Realty also pre-printed its
5 calculation of 3% of the current valuation of the homeowner's property.⁶⁷
6

7 Ms. Matson also declares that she further reviewed the HBAs to determine whether they
8 contained the following notice immediately preceding the provision related to MV Realty's
9 compensation:

10 Notice: The amount or rate of real estate commission is not fixed by law. They are
11 set by each broker individually and may be negotiable between the seller and
12 broker.⁶⁸

13 Matson declares that approximately seven hundred and forty-three (743) HBAs did not
14 contain the commission notice at all.⁶⁹ She further declares that approximately six hundred and
15 seventy-five (675) HBAs had the commission notice in two locations.⁷⁰ However, in one of these
16 locations, the notice was not immediately preceding the provision related to MV Realty's
17 compensation.⁷¹ And in the other location, Matson attests, the notice was not in boldface type.⁷²
18 Matson concludes these same two issues were present in all 675 of the HBAs with the
19

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21 ⁶⁵ Matson Decl., ¶17.

22 ⁶⁶ *Id.*

23 ⁶⁷ *Id.*

24 ⁶⁸ Matson Decl., ¶19.

25 ⁶⁹ Matson Decl., ¶20.

26 ⁷⁰ Matson Decl., ¶21.

27 ⁷¹ *Id.*

28 ⁷² *Id.*

1 commission notice in two locations.⁷³

2 The Court determines that, based on the People’s evidence, there is a reasonable
3 probability Plaintiff will prevail on the merits, given the non-complaint HBAs. The evidence, for
4 purposes of the preliminary injunction, shows that the HBAs were signed by individuals not
5 licensed as real estate brokers and not licensed under the brokerages. The Court is not persuaded
6 by Defendants’ argument that real estate licensees are not required to sign the HBAs because,
7 they contend, “no sale is contemplated at the time it is entered, nor is a sale required” to fall
8 within the scope of §10131.⁷⁴ As the People argue, the Real Estate Law regulates more than just
9 real estate purchase and sale contracts, because §10131 applies whenever a person “solicits
10 prospective sellers,” solicits listings, or offers to sell real property.⁷⁵ For all intents and purposes,
11 the Court finds that Defendants’ conduct with respect to the HBAs falls within the acts covered
12 by the Real Estate Law.
13
14

15 The Court is not persuaded that Defendants have shown grave or irreparable harm to
16 warrant denial of the preliminary injunction. In making these findings, the Court has reviewed
17 the 51 Declarations of homeowners submitted by Defendants in opposition to the motion
18 (attached to the Cespedes Declaration), as well as the Manchester Declaration⁷⁶, the Mitchell
19 Declaration⁷⁷, and the Cespedes Declaration itself. However, the Court emphasizes that
20

21 ⁷³ *Id.*

22 ⁷⁴ Opposition at 17:9-10.

23 ⁷⁵ Reply at 10:27-11:1.

24 ⁷⁶ David Manchester is MV Realty PBC, LLC’s Chief Operating Officer. See Manchester Decl., ¶2.

25 ⁷⁷ Anthony Mitchell is the CEO for MV Realty PBC, LLC. Mitchell Decl., ¶2. Mr. Mithcell declares that he does not
26 believe MV Realty or any of the Defendants have engaged in any deceptive or unfair practices. *Id.* He further
27 declares that MV Realty and the Defendants “are all a part of a legitimate real estate business and MV Realty’s goal,
28 specifically, has always been to act as listing agents for homeowners looking to sell their homes.” Mitchell further
expresses his belief “that MV Realty agents informed prospective clients of the important terms of the HBA,
including the term of the agreement, the early termination fee, and the memorandum – all of which are disclosed in
the HBAs [MV Realty’s] customers executed before a notary.” *Id.*

1 notwithstanding conflicts in the evidence (there certainly are conflicts in the evidence here), it is
2 not prohibited from issuing an injunction where the proper showing is made. *National*
3 *Subscription Television v Formula Int'l., supra*, 153 Cal.App.3d at 314. Here again, the Court
4 determines that based on Plaintiff's evidence, that showing has been satisfied.
5

6 Defendants argues that if the court grants the requested relief, it would essentially force
7 MV Realty to cease business in California and require it to terminate *thousands* of Memoranda,
8 which it has already provided consumers consideration for.⁷⁸ Mr. Mitchell attests that an
9 injunction "would effectively allow the consumers to breach the HBAs with no repercussions
10 though they have already agreed to use MV Realty as their broker should they sell the property
11 within forty years from an HBA's execution."⁷⁹ Further, Mitchell declares that the sought-after
12 injunction "would effectively destroy any efforts MV Realty made to build its program
13 throughout California and leave them with little to no rights when trying to enforce an HBA. In
14 other words, it would remove any teeth from the HBA and leave Defendants in a state of
15 financial disarray."⁸⁰
16

17 But if the memoranda are themselves do not comply with the UCL, FAL, and the
18 California Real Estate Law, and have been procured through unlawful means (a finding the
19 Court makes only for purposes of issuing the preliminary injunction, and not for an ultimate
20 merits determination), this is a not a consideration for the Court in assessing the balancing of
21 harms to the parties. In any event, the Court determines that the harm to the public should the
22 injunction not issue outweighs the harm to Defendants if the injunction is issued.
23
24

25 ⁷⁸ Declaration of Anthony Mitchell, ¶ 17.

26 ⁷⁹ Mitchell Decl., ¶18.

27 ⁸⁰ Mitchell Decl., ¶19.

1 For all of these reasons, the Court, having considered the evidence before it on the
2 motion, and in balancing the equities under CCP §526, finds that Plaintiff is likely to suffer
3 greater injury from denial of the injunction than defendants are likely to suffer if it is granted,
4 and that there is a reasonable probability that plaintiffs will prevail on the merits. The motion for
5 preliminary injunction is therefore granted, as prayed.
6

7 In issuing the preliminary injunction, the Court emphasizes that it is not adjudicating this
8 case on the merits. *See Yee v. American Nat'l. Ins. Co.* (2015) 235 Cal.App.4th 453, 457-458.
9

10
11 **VII.**

12 **RULING AND ORDER**

13 For the foregoing reasons, the motion for preliminary injunction is granted, as follows:

14 1) Defendants shall record terminations of all Memorandums of Homeowner
15 Benefit Agreements filed on the properties of California homeowners by the earlier
16 of:

17 a. Thirty (30) days from the date of the Court's order, or

18 b. Within five (5) days of notification from any California homeowner, or
19 any agent acting on their behalf, who requires a termination to be recorded
20 in order to proceed with any transaction related to the homeowner's
21 property, including but not limited to a loan, refinancing, or sale of the
22 property.

23 2) Defendants shall not record any encumbrance relating to a Homeowner Benefit
24 Agreement on the property of any California homeowner for the pendency of this
25 litigation.

26 3) Defendants shall not enforce any Homeowner Benefit Agreement entered into
27 with a California homeowner for the pendency of this litigation.
28

Dated: September 13, 2024

KENNETH R. FREEMAN

Kenneth Freeman
Judge of the Superior Court