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SUPERIOR COURT

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Attorneys for Plaintiff,
The People of the State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HERRERA ESCOBAR SERVICE, EVELYN M.
HERRERA (aka EVELYN ESCOBAR, EVELYN
HERRERA ESCOBAR, MIRNA HERRERA AND
EVELYN MORALES), AND DOES 1 THROUGH
10,

Defendants.

CASE NO.:

CGC 03 42 1280

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, AND OTHER
RELIEF**

Date: June 10, 2003

CASE MANAGEMENT CONFERENCE SET

PLAN I NOV 07 2003 900AM

DEPARTMENT 212

1 Plaintiff, the People of the State of California, by Bill Lockyer, Attorney General of the
2 State of California, alleges the following on information and belief:

3 **PARTIES**

4 1. Defendant Evelyn Herrera (aka Evelyn Escobar, Evelyn Herrera Escobar, Mirna
5 Herrera and Evelyn Morales) is an individual. She engages in business under the name Herrera
6 Escobar Service.

7 2. Defendant Herrera Escobar Service is a business of unknown form.

8 3. Defendant Evelyn Herrera is not currently nor was she at any time referred to in
9 this Complaint licensed to practice law in the State of California or authorized by federal law to
10 represent persons before the Bureau of Citizenship and Immigration Services (formerly the
11 Immigration and Naturalization Service) or the Immigration Courts and Board of Immigration
12 Appeals.

13 4. Defendant Herrera Escobar Service is not currently nor was it at any time referred
14 to in this Complaint a nonprofit, tax-exempt corporation.

15 5. The true names of defendants sued herein under the fictitious names Does 1
16 through 10 are unknown to plaintiff. Plaintiff will seek leave of court to amend this Complaint
17 to allege such names as soon as they are ascertained.

18 6. All references in this Complaint to any of the defendants shall also include all of
19 them, unless otherwise specified. Whenever reference is made in this Complaint to any act of
20 Defendants, such allegation shall mean that each defendant acted individually and jointly with
21 the other defendants.

22 7. At all relevant times, each defendant has committed the acts, caused others to
23 commit the acts, or permitted others to commit the acts alleged in this Complaint.

24 8. Any allegation about any acts of any corporate or other business defendant shall
25 mean that the corporation or other business did the acts alleged through its officers, directors,
26 employees, agents and/or representatives while they were acting within the actual or ostensible
27 scope of their authority.

28 9. The named defendants' principal place of business is located at 3327 24th Street,

1 San Francisco, California.

2 10. The violations of law alleged in this Complaint occurred in the City and County of
3 San Francisco and may also have occurred elsewhere in California.

4
5 **FIRST CAUSE OF ACTION**

6 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

7 **(UNLAWFUL BUSINESS ACTS OR PRACTICES)**

8 **(Against all Defendants)**

9 11. The People reallege and incorporate by reference paragraphs 1 through 10 of this
10 Complaint.

11 12. Defendants have engaged and are engaging in unfair competition as defined by
12 California Business and Professions Code section 17200 by engaging in acts or practices
13 including, but not necessarily limited to, violation of Business and Professions Code sections
14 22443.3 and 17500.

15 13. Business and Professions Code section 22443.3 provides that any person making a
16 statement indicating directly or by implication that the person serves as an immigration
17 consultant must have on file with the Secretary of State a bond of \$50,000. The measure, which
18 is contained in the chapter of the Business and Professions Code relating to immigration
19 consultants (Bus. & Prof. Code § 22440 et seq.), provides:

20 It is unlawful for any person to disseminate by any means any statement
21 indicating directly or by implication that the person engages in the business or acts
22 in the capacity of an immigration consultant, unless the person has on file with the
23 Secretary of State a bond, in the amount and subject to the terms described in
24 Section 22443.1, that is maintained throughout the period covered by the
25 statement, such as, but not limited to the period of a yellow pages listing.

26 14. Section 22443.1 of the Business and Professions Code, describing the amount and
27 terms of the required bond, provides in relevant part:

28 (a) . . . [E]ach person shall file with the Secretary of State a bond of fifty thousand

1 (\$50,000) executed by a corporate surety admitted to do business in this state and
2 conditioned upon compliance with this chapter. The total aggregate liability on
3 the bond shall be limited to fifty thousand dollars (\$50,000). . . .

4 (b) The bond required by this section shall be in favor of, and payable to, the
5 people of the State of California and shall be for the benefit of any person
6 damaged by any fraud, misstatement, misrepresentation, unlawful act or omission,
7 or failure to provide the services of the immigration consultant or the agents,
8 representatives, or employees of the immigration consultant while acting within
9 the scope of that employment or agency.

10 15. Section 22441(a) of the Business and Professions Code provides:

11 A person engages in the business of or acts in the capacity of an
12 immigration consultant when that person gives nonlegal assistance or advice on
13 an immigration matter.

14 16. From a point on or after January 1, 2002, and continuing to the present,
15 Defendants have disseminated and continue to disseminate statements indicating directly or by
16 implication that they engage or propose to engage in the business, or act in the capacity or
17 propose to act in the capacity, of an immigration consultant.

18 17. Defendants do not currently have on file with the Secretary of State, nor have they
19 at any time referred to in this Complaint had on file with the Secretary of State, the requisite
20 \$50,000 bond.

21 18. Section 17500 of the Business and Professions Code provides:

22 [It is] unlawful for any person . . . with intent directly or indirectly . . .
23 to perform services . . . to make or disseminate or cause to be made or
24 disseminated . . . in any newspaper or other publication . . . , or in any other
25 manner or means whatever, any statement, concerning such . . . services . . . which
26 is untrue or misleading.

27 19. A violation of Business and Professions Code section 17500 is by definition also a
28 violation of Business and Professions Code section 17200, which provides that "unfair

1 competition shall mean and include . . . any act prohibited by . . . Section 17500"

2 20. Defendants have violated and continue to violate Business and Professions Code
3 section 17500 by making or causing to be made untrue or misleading statements, which they
4 know or by the exercise of reasonable care should know are untrue or misleading, with the intent
5 to induce members of the public to purchase defendants' services. Defendants' violations of this
6 section include, but are not limited to, the following: By disseminating or causing to be
7 disseminated statements concerning their ability to provide immigration consultant services,
8 defendants have implicitly represented that they could do so lawfully. The statements are untrue
9 and misleading because in the absence of a bond, as required by Business and Professions Code
10 section 22443.3, Defendants cannot lawfully provide immigration consultant services.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 22443.3**

13 **(FAILURE TO OBTAIN AND FILE SURETY BOND)**

14 **(Against all Defendants)**

15 21. The People reallege and incorporate by reference paragraphs 1 through 10 and 12
16 through 20 of this Complaint.

17 22. By disseminating statements indicating directly or by implication that they engage
18 in the business or act in the capacity of an immigration consultant, without having on file with
19 the Secretary of State the bond described in Business and Professions Code Section 22443.1,
20 Defendants have violated Business and Professions Code section 22443.3.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

23 **(UNTRUE OR MISLEADING ADVERTISING)**

24 **(Against all Defendants)**

25 23. The People reallege and incorporate by reference paragraphs 1 through 10, 12
26 through 20, and 22 of this Complaint.

27 24. Defendants have violated and continue to violate Business and Professions Code
28 section 17500 by making or causing to be made untrue or misleading statements, which they

1 know or by the exercise of reasonable care should know are untrue or misleading, with the intent
2 to induce members of the public to purchase defendants' services. Defendants' violations of this
3 section include, but are not limited to, the following: By disseminating or causing to be
4 disseminated statements concerning their ability to provide immigration consultant services,
5 defendants have implicitly represented that they could do so lawfully. The statements are untrue
6 and misleading because in the absence of a bond, as required by Business and Professions Code
7 section 22443.3, Defendants cannot lawfully provide immigration consultant services.

8 WHEREFORE, Plaintiff prays for judgment as follows:

9 1. Pursuant to Business and Professions Code sections 17203, 22446.5 and 17535,
10 that all Defendants, their agents, employees, officers, representatives, successors, partners,
11 assigns, and all persons acting in concert or participating with them, be permanently enjoined
12 from violating Business and Professions Code sections 17200, 22443.3 and 17500, including but
13 not limited to the violations alleged in this Complaint;

14 2. Pursuant to Business and Professions Code sections 17206, 22445, 22446.5 and
15 17536, that the Court assess a civil penalty against each Defendant for each violation of Business
16 and Professions Code section 17200, 22443.3 or 17500 alleged in the Complaint, as proved at
17 trial, in the total amount of at least \$50,000.00;

18 3. That the People recover their costs of suit; and

19 4. That the Court grant such other and further relief as it may deem just and proper.
20

21 Dated: June 10, 2003

BILL LOCKYER,
Attorney General
HERSCHEL T. ELKINS,
Senior Assistant Attorney General
MARGARET REITER,
Supervising Deputy Attorney General
SETH E. MERMIN,
Deputy Attorney General

26 By



SETH E. MERMIN
Attorneys for the Plaintiff,
the People of the State of California