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7 California

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

11
12 **PEOPLE OF THE STATE OF**
13 **CALIFORNIA,**

14 Plaintiff,

15 v.

16 **HOUSING ASSISTANCE SERVICES,**
17 **INC., a California corporation; MARC**
SHECKLER, an individual; and DOES 1-
50, inclusive,

18 Defendants.

CASE NO.

**COMPLAINT FOR RESTITUTION,
PERMANENT INJUNCTIVE RELIEF,
AND OTHER EQUITABLE RELIEF**

19
20 Plaintiff the People of the State of California (“People” or “Plaintiff”), by and through
21 Bill Lockyer, Attorney General of the State of California, is informed and believes and
22 thereupon alleges as follows:

23 1. This action is brought against Defendants, who in the course of their foreclosure
24 consultant business regularly violate California’s Mortgage Foreclosure Consultant Act, as
25 codified at Sections 2945 et seq. of the Civil Code, while preying on consumers facing
26 foreclosure and the loss of their homes. In the course of promising to assist California
27 consumers who are in foreclosure, Defendants unlawfully collect payment prior to performing
28 services, and do not include terms in their contracts required under California law, including

1 notice to consumers of their right to cancel mortgage foreclosure consultant contracts.
2 Additionally, Defendants falsely advertise that they have been in business for longer than they in
3 fact have been and that they provide services at no charge when in fact they do not.

4 PARTIES AND VENUE

5 2. Defendant Housing Assistance Services, Inc. (“Housing Assistance Services” or
6 “H.A.S.”) is a California corporation, that at all relevant times transacted business within the
7 State of California, including in the County of Orange. Defendant H.A.S. filed its articles of
8 incorporation with the Office of the California Secretary of State in 2000.

9 3. At all relevant times defendant Marc Sheckler (“Sheckler”) was the president of
10 Housing Assistance Services. Defendant Sheckler is an attorney, but this action is not based on
11 his representation of any of the other Defendants in this matter.

12 4. Plaintiff is not aware of the true names and capacities of the defendants sued as
13 Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Does
14 46 through 50, inclusive, are attorneys, but this action is not based on their representation of any
15 of the other Defendants in this matter. Each of these fictitiously named defendants is responsible
16 in some manner for the activities alleged in this complaint. Plaintiff will amend this Complaint
17 to add the true names of the fictitiously named Defendants once they are discovered.

18 5. Whenever reference is made in this Complaint to any act of Defendants, that
19 allegation shall mean that each Defendant acted individually and jointly with the other
20 Defendants.

21 6. Any allegation about any acts of any corporate or other business Defendant means
22 that the corporation or other business did the acts alleged through its officers, directors,
23 employees, agents and/or representatives while they were acting within the actual or ostensible
24 scope of their authority.

25 7. At all relevant times, each Defendant committed the acts, caused others to commit
26 the acts, ratified the acts, or permitted others to commit the acts alleged in this Complaint.
27 Additionally, some or all of the Defendants acted as the agent of the other Defendants, and all of
28 the Defendants acted within the scope of their agency if acting as an agent of another.

1 8. At all relevant times, each Defendant knew or realized that the other Defendants
2 were engaging in or planned to engage in the violations of law alleged in this Complaint.
3 Knowing or realizing that other Defendants were engaging in or planning to engage in unlawful
4 conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each
5 Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful
6 acts, and thereby aided and abetted the other Defendants in the unlawful conduct.

7 9. Defendants have engaged in a conspiracy, common enterprise, and common
8 course of conduct, the purpose of which is and was to engage in the violations of law alleged in
9 this Complaint. The conspiracy, common enterprise, and common course of conduct continues
10 to the present.

11 10. The violations of law alleged in this Complaint occurred in Orange County and
12 elsewhere throughout California.

13 DEFENDANTS' BUSINESS PRACTICES AND GOVERNING LAW

14 11. In pertinent part, California Civil Code section 2945.1, subdivision (a) defines a
15 foreclosure consultant as:

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

19 “(1) Stop or postpone the foreclosure sale.

20 “(2) Obtain any forbearance from any beneficiary or mortgagee.

21 “(3) Assist the owner to exercise the right of reinstatement provided in [Civil
22 Code] Section 2924c.

23 “(4) Obtain any extension of the period within which the owner may reinstate his
24 or her obligation.

25 “(5) Obtain any waiver of an acceleration clause contained in any promissory
26 note or contract secured by a deed of trust or mortgage on a residence in
27 foreclosure or contained in any such deed of trust or mortgage.

28 “(6) Assist the owner to obtain a loan or advance of funds.

1 “(7) Avoid or ameliorate the impairment of the owner's credit resulting from the
2 recording of a notice of default or the conduct of a foreclosure sale.

3 “(8) Save the owner’s residence from foreclosure.”

4 (brackets added.)

5 12. Defendants operate as foreclosure consultants as that term is defined in
6 subdivision (a) of section 2945.1 of the California Civil Code.

7 13. California’s law defining and regulating foreclosure consultants includes
8 exceptions for attorneys licensed to practice law in California who are rendering foreclosure
9 consultant services in the course of providing legal services, and for persons registered as real
10 estate brokers in California who are engaging in acts that require a broker’s license, such as the
11 negotiation of new loans, provided, among other things, that the broker is not paid until the
12 completion of his or her services. While Defendant Sheckler is an attorney licensed to practice
13 law in California and is also a licensed broker, neither of these exemptions apply here, nor do
14 any of the other exceptions set forth in subdivision (b) of Section 2945.1 of the Civil Code.
15 Persons may perform the services Defendants claim to provide, such as the negotiation of loan
16 modifications or forbearance agreements, without being licensed as attorneys or brokers. Also,
17 Defendants typically do not perform (or claim to perform) mortgage foreclosure consultant
18 services for California consumers while also providing those consumers with legal services or
19 services that require a broker’s license. Further, the exception granted to brokers does not
20 apply, because Defendants collect payment from consumers prior to completing all services the
21 contract to, or represent they will, provide.

22 14. Defendants send letters marketing their services to California homeowners who
23 are in foreclosure on their mortgage loan(s). In their solicitation letters, Defendants represent
24 that Housing Assistance Services offers a “Fresh Start Program” that will enable consumers to
25 prevent the foreclosure sale of their home.

26 15. Defendants also maintain or advertise on an Internet website,
27 “<http://www.hasus.com>,” which advertises that Defendants offer “free phone counseling” and
28 have “over 25 years of combined experience helping homeowners in trouble.” The website was

1 registered by Defendant Sheckler. A true and correct copy of the “hasus.com” site as of July 14,
2 2004, is attached as Exhibit 1 and incorporated by reference. The Internet website
3 “http://www.foreclosureassistancehotline.com” also prominently displays a logo of Defendant
4 Housing Assistance Services on the top left corner of each page of the website. This website
5 advertises that Defendants offer “free” services, are “contracted by major lenders to enter
6 homeowners into affordable payment plans,” and have “over 25 years of combined experience in
7 getting homeowners out of foreclosure.” The website displays a toll free number that consumers
8 may call for assistance in handling their foreclosure. Consumers who call the phone number are
9 connected to a representative of Defendant Housing Assistance Services. A true and correct
10 copy of the “foreclosureassistancehotline.com” Internet site as of July 14, 2004, is attached as
11 Exhibit 2 and incorporated by reference. Both websites urge consumers to call the same toll free
12 number, 1-800-454-2903, and include an identical online questionnaire.

13 16. When a consumer calls or sends an e-mail to Housing Assistance Services about
14 his or her foreclosure, an agent or employee of Defendants represents to the consumer that once
15 he or she hires Housing Assistance Services, H.A.S. will contact the consumer’s lender, or the
16 lender’s agent, and arrange a modification, forbearance agreement, or payment plan that will
17 enable the consumer to bring his or her loan current and avoid foreclosure.

18 17. If the consumer agrees to contract with Housing Assistance Services, Defendants
19 then send the consumer a contract with H.A.S. for the consumer to sign and return, and ask for
20 information that Defendants will need to assist the consumer, such as mortgage statements.

21 18. The form contracts typically used by Defendants provide that “Housing
22 Assistance Services, Inc. provides homeownership counseling regarding options and alternatives
23 that may be available to help you avoid foreclosure.” A true and correct copy of a form contract
24 sometimes used by Defendants is attached as Exhibit 3 and incorporated by reference.

25 19. Defendants charge consumers a base fee, typically between \$750 and \$1,250, as
26 well as a credit report fee and a separate “reinstatement processing” fee. Defendants often
27 charge these fees regardless of whether Defendants are able to obtain a loan modification,
28 forbearance agreement, or other agreement that enables a consumer to reinstate his or her loan

1 and avoid foreclosure. Additionally, Defendants sometimes charge a “docusave fee,” and
2 separate monthly fees for providing “financial education materials” and for purportedly
3 monitoring a consumer’s compliance with any agreement negotiated with that consumer’s lender
4 or loan servicer.

5 DEFENDANTS’ VIOLATIONS OF CALIFORNIA LAWS
6 REGULATING FORECLOSURE CONSULTANTS

7 20. Subdivision (a) of Section 2945.3 of the Civil Code provides that every
8 foreclosure consultant contract “shall fully disclose the exact nature of the foreclosure
9 consultant’s services.” In violation of this provision, Defendants sometimes use vague and
10 ambiguous contracts that do not describe the exact nature of the services provided by
11 Defendants. Instead, the form contracts sometimes used by Defendants, such as Exhibit 3,
12 provide that “HAS will package and arrange . . . information and communicate with Client’s
13 lender or lender’s representative” and “[t]he actions Housing Assistance Services performs
14 involved with packaging Client’s information constitute performance,” without explaining what
15 those terms mean, how a client’s information will be “packaged and arranged,” or the means or
16 content of any communications or attempted communications with a client’s lender or loan
17 servicer.

18 21. In violation of Subdivision (b) of Section 2945.3 of the Civil Code, Defendants
19 do not always include the following notice in their foreclosure consultant contracts:

20 “NOTICE REQUIRED BY CALIFORNIA LAW

21 ----- or anyone working

22 (Name)

23 for him or her CANNOT:

24 (1) Take any money from you or ask you for money

25 until ----- has

26 (Name)

27 completely finished doing everything he or she said

28 he or she would do; and

1 (2) Ask you to sign or have you sign any lien,
2 deed of trust, or deed.”

3 22. In violation of subdivision (c) of Section 2945.3 of the Civil Code, the form
4 contracts used by Defendants, such as Exhibit 3, do not always include “in immediate proximity
5 to the space reserved for the owner's signature a conspicuous statement in a size equal to at least
6 10-point bold type,” notice to California consumers of their three day right to cancel the
7 foreclosure consultant contact.

8 23. The form contracts used by Defendants, such as Exhibit 3, also do not always
9 specify the address where a California consumer can give notice that he or she is canceling the
10 foreclosure consultant contract, in violation of subdivision (d) of Section 2945.3 of the Civil
11 Code.

12 24. Defendants do not always provide California consumers with the Notice of
13 Cancellation form required pursuant to subdivisions (e) and (f) of Section 2945.3 of the Civil
14 Code.

15 25. In violation of subdivision (a) of Section 2945.4 of the Civil Code, Defendants
16 sometimes claim, demand, charge, collect and/or receive payment from California consumers
17 prior to providing all services that Defendants contract with consumers to provide, or represent
18 to consumers that they will provide.

19 26. In violation of subdivision (g) of Section 2945.4 of the Civil Code, Defendants
20 sometimes induce or attempt to induce California consumers to enter into contracts that do not
21 comply in all respects with Sections 2945.2 and 2945.3 of the Civil Code.

22 27. In violation of sections 2945.9 and 2945.10 of the Civil Code, the form contract
23 sometimes used by Defendants purports to limit Defendants’ liability to the total amount of fees
24 paid by a consumer.

25 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**
26 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**
27 **(UNTRUE OR MISLEADING REPRESENTATIONS)**

28 28. The People reallege and incorporate by reference all paragraphs above, as though

1 fully set forth at this place.

2 29. Since an exact date unknown to Plaintiff and continuing to the present time,
3 Defendants have violated and continue to violate Business and Professions Code section 17500
4 by making or disseminating untrue or misleading statements, or causing untrue or misleading
5 statements to be made or disseminated, to California homeowners, with the intent to induce them
6 to enter into contracts with Housing Assistance Services for the providing of foreclosure
7 consultant services. These untrue or misleading statements include, but are not necessarily
8 limited to:

9 A. Representing that Housing Assistance Services will be able to save consumers'
10 homes from foreclosure by negotiating an agreement with a borrower's lender or
11 loan servicer that will enable the borrower to avoid the foreclosure sale of his or
12 her home. These statements are untrue or misleading because Defendants will not
13 necessarily be able to negotiate a plan that will allow a particular consumer to
14 avoid foreclosure;

15 B. Representing on their Internet website that Defendants have 25 years of combined
16 experience in helping consumers avoid foreclosure. These statements are untrue
17 or misleading because Defendant Housing Assistance Services has only been in
18 business since 2000;

19 C. Representing on their Internet website that Defendants provide free services.
20 These statements are untrue or misleading because Defendants charge for the
21 foreclosure consulting services they provide or purport to provide; and

22 D. Representing on Internet websites that Defendants are "contracted by major
23 lenders to enter homeowners into affordable payment plans." These statements
24 are untrue or misleading because Defendants do not have contracts with major
25 lenders for the purpose of negotiating repayment plans for consumers facing
26 foreclosure.

27 30. Defendants knew or by the exercise of reasonable care should have known that
28 the statements set forth, above, were untrue or misleading at the time the statements were made.

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2 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**
3 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
4 **(UNFAIR COMPETITION)**

5 31. The People reallege and incorporate by reference all paragraphs above, as though
6 fully set forth at this place.

7 32. Since an exact date unknown to Plaintiff, and continuing to the present,
8 Defendants have engaged in and continue to engage in unfair competition as defined in Business
9 and Professions Code section 17200 by committing acts or practices which include, but are not
10 necessarily limited to, the following:

11 A. As set forth in the First Cause of Action, Defendants have violated Business and
12 Professions Code section 17500;

13 B. Defendants have violated subdivision (a) of Section 2945.3 of the Civil Code by
14 not fully disclosing in writing the exact nature of the services they provide to consumers;

15 C. Defendants have failed to include in their contracts the notice required by
16 subdivision (b) of Section 2945.3 of the Civil Code;

17 D. Defendants have failed to include in their contracts the notice of right to cancel
18 required by subdivision (c) of Section 2945.3 of the Civil Code;

19 E. Defendants have failed to include in their contracts the address where a consumer
20 may send notice that he or she is canceling a foreclosure consultant contract with
21 Defendants, in violation of subdivision (d) of Section 2945.3 of the Civil Code;

22 F. Defendants have failed to provide consumers with the separate notice of right to
23 cancel their foreclosure consultant contract, in violation of subdivisions (e) and (f) of
24 Section 2945.3 of the Civil Code;

25 G. Defendants have claimed, demanded, charged, collected, and/or received payment
26 from consumers prior to providing all services they contracted to or represented they would
27 perform, in violation of subdivision (a) of Section 2945.4 of the Civil Code;

28 H. In violation of subdivisions (g) of Section 2945.4 of the Civil Code, Defendants

1 have induced or attempted to induce consumers to execute contracts that do not fully
2 comply with Sections 2945.2 and 2945.3 of the Civil Code;

3 I. In violation of sections 2945.9 and 2945.10 of the Civil Code, Defendants have
4 induced consumers to sign contracts that purport to limit Defendants' liability to the total
5 amount of fees paid by that consumer; and

6 J. Defendants unlawfully, unfairly and fraudulently charge a "reinstatement
7 processing" fee to consumers, regardless of whether Defendants are in fact able to negotiate
8 a plan that allows a particular consumer to reinstate his or her loan and avoid foreclosure.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

12 1. Pursuant to Business and Professions Code § 17535, that all Defendants,
13 their successors, agents, representatives, employees, and all persons who act in concert with
14 them be permanently enjoined from making any untrue or misleading statements in violation of
15 Business and Professions Code § 17500, including, but not limited to, the untrue or misleading
16 statements alleged in the First Cause of Action;

17 2. Pursuant to Business and Professions Code § 17203, that all Defendants, their
18 successors, agents, representatives, employees, and all persons who act in concert with them be
19 permanently enjoined from committing any acts of unfair competition in violation of § 17200,
20 including, but not limited to, the violations alleged in the Second Cause of Action, including
21 violating any provisions of California law regulating mortgage foreclosure consultants;

22 3. Pursuant to Business and Professions Code § 17536, that the Court assess a civil
23 penalty of two thousand five hundred dollars (\$2,500) against each Defendant for each violation
24 of Business and Professions Code § 17500, as proved at trial, but in an amount of at least
25 \$1,000,000;

26 4. Pursuant to Business and Professions Code § 17206, that the Court assess a civil
27 penalty of two thousand five hundred dollars (\$2,500) against each Defendant for each violation
28 of Business and Professions Code § 17200 alleged in the Complaint, as proved at trial, but in an

1 amount of at least \$1,000,000;

2 5. Pursuant to Business and Professions Code §§ 17203 and 17535, that Defendants
3 be ordered to give full restitution to all California consumers who contracted with Defendants;

4 6. For such other and further relief that the Court deems just and proper, including
5 (1) an order that each Defendant be permanently barred from operating as a foreclosure
6 consultant in California and from having any involvement in or with any individual, business,
7 corporation, or any other entity that operates as a foreclosure consultant; (2) an order that
8 Defendants take down and permanently cease operating any Internet website which markets
9 foreclosure consultant services, including but not limited to “www.hasus.com” and
10 “www.foreclosureassistancehotline.com;” (3) an order imposing a constructive trust on (a) all
11 money Defendants have received from consumers who responded to Defendants' unlawful
12 solicitations; (b) all bank, savings, and checking accounts in which any Defendant deposited any
13 of this money; (c) all profits derived from this money; and (d) any property purchased or
14 maintained, in whole or in part, by any of this money; and, (4) an order that Defendants be
15 enjoined from spending, transferring, disbursing, encumbering, or otherwise dissipating any
16 funds held in the constructive trust imposed under the terms of subparagraph (3) above without
17 first obtaining approval from this Court after a hearing of which Plaintiff is given at least 15
18 days' written notice; and

19 7. That the People recover their costs of suit.

20 Dated: July 28, 2004

21 Respectfully submitted,
22 BILL LOCKYER
23 Attorney General of the State of California
24 ALBERT NORMAN SHELDEN
25 Acting Senior Assistant Attorney General

26 BENJAMIN G. DIEHL
27 Deputy Attorney General
28 Attorneys for Plaintiff

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