

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARK J. BRECKLER
Senior Assistant Attorney General
3 JON M. ICHINAGA
Supervising Deputy Attorney General
4 SATOSHI YANAI
Deputy Attorney General
5 State Bar No. 186355
300 South Spring Street, Suite 1702
6 Los Angeles, CA 90013
Attorneys for Plaintiff
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10 NORTH COUNTY DIVISION
11

12 **THE PEOPLE OF THE STATE OF CALIFORNIA**
13 **EX REL. EDMUND G. BROWN JR. AS**
14 **ATTORNEY GENERAL OF THE STATE OF**
CALIFORNIA,
15
16 **v.**
17
18 **CONTRACTORS ASSET PROTECTION**
ASSOCIATION, INC., A CORPORATION;
19 **EUGENE J. MAGRE, AN INDIVIDUAL; AND**
DOES 1 THROUGH 50, INCLUSIVE,
20
21 Defendants.

CASE NO.
COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION, AND OTHER
EQUITABLE RELIEF
(Business & Professions Code sections
17200, et seq. and 17500, et seq.)

Date: N/A
Time: N/A
Dept: N/A
Judge: N/A
Trial Date: N/A
Action Filed:

22 **INTRODUCTION**

23 1. This action is brought by the Plaintiff, the People of the State of California ex rel.
24 Edmund G. Brown Jr., as the Attorney General of the State of California, against Contractors
25 Asset Protection Association, Inc. (“ConAPA”); its principal, Eugene J. Magre (“Magre”); and
26 Does 1 through 50, inclusive, in order to halt the proliferation and implementation of an unlawful
27 scheme marketed by ConAPA to employers in the State to evade workers’ compensation costs.
28 ConAPA and Magre advise employers in high-risk industries to create or re-organize corporations

1 and appoint their rank-and-file employees as sham corporate officers, and issue each of them
2 nominal shares of stock, in order to fit the literal terms of a narrow workers' compensation
3 exemption for officers or directors who are also the sole shareholders of a corporation.

4 ConAPA's business plan both misconstrues the statutory exemption, found in Labor Code section
5 3351, subdivision (c), and fraudulently manipulates corporate formalities in order to create the
6 appearance of statutory compliance. ConAPA currently has approximately forty clients utilizing
7 its business model, leaving workers without the no-fault protections of the workers' compensation
8 system, and making it more difficult for legitimate employers that fulfill their workers'
9 compensation obligations to compete against these companies that falsely claim the "officer-
10 shareholder" exemption.

11 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California and
12 is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is
13 empowered by the California Constitution to ensure that the laws of the State are uniformly and
14 adequately enforced. He is statutorily authorized to bring actions in the name of the People of the
15 State of California to enforce California's statutes governing unfair competition and untrue or
16 misleading sales representations. (Bus. & Prof. Code, §§ 17200, et seq. and 17500, et seq.)

17 3. Defendant ConAPA is now, and has been at various relevant times, a California
18 corporation engaged in promoting and selling an unlawful business plan for employers to avoid
19 workers' compensation insurance costs, providing insurance broker services, and offering legal
20 advice about its services. ConAPA maintains an office at 16526 Zumaque, in Rancho Santa Fe,
21 California, in the County of San Diego, and has conducted business at all times relevant to this
22 lawsuit in, among other places, the County of San Diego in the State of California. ConAPA is a
23 licensed insurance broker.

24 4. Defendant Magre is the president of ConAPA and is now, and has been at various
25 relevant times, an agent, representative, and/or employee of defendant ConAPA, and was acting
26 in such capacity as an agent, representative, and/or employee with the permission and consent of
27 ConAPA in performing the unlawful acts alleged below. Magre is sued in his individual capacity.
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1 5. Plaintiff is not aware of the true names, identities, or capacities of the defendants sued
2 herein as Does 1 through 50, inclusive, and therefore sues said defendants by such fictitious
3 names. Plaintiff is informed and believes that, at various relevant times, said Doe defendants
4 participated in, or otherwise were in some manner responsible for the harm to the general public
5 that arose from the facts and occurrences alleged in this complaint. Plaintiff will seek leave of the
6 court to amend this complaint to state the true names of the fictitiously named defendants once
7 they are discovered.

8 6. Whenever reference is made in this complaint to any act of the corporate defendant,
9 such allegation shall mean that the corporation did the acts alleged in this complaint through its
10 officers, directors, employees, agents and/or representatives while they were acting within the
11 actual or ostensible scope of their authority.

12 7. Whenever reference is made in this complaint to any act of any of the defendants,
13 including those named herein as Doe defendants, such allegation shall mean that each defendant
14 and/or Doe defendant acted individually and jointly with the other defendants, including the Doe
15 defendants, named in this complaint.

16 8. At all relevant times, each defendant, including those named herein as Doe
17 defendants, knew or realized that the other defendants and/or Doe defendants were engaging in or
18 planned to engage in the violations of law alleged in this complaint. Knowing or realizing that
19 other defendants were engaging in such unlawful conduct, each defendant nevertheless facilitated
20 the commission of those unlawful acts. Each defendant encouraged, facilitated, or assisted in the
21 commission of the unlawful acts, and thereby, aided and abetted the other defendants in the
22 unlawful conduct.

23 9. Defendants, including those named herein as Doe defendants, have engaged in a
24 conspiracy, common enterprise, and common course of conduct to utilize false and/or misleading
25 representations and engage in the unauthorized practice of law to facilitate a common scheme to
26 profit by promoting the unlawful evasion of workers' compensation obligations. The conspiracy,
27 common enterprise, and common course of conduct continues to the present.

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1 10. The violations of law alleged in this complaint occurred in San Diego County and in
2 other counties in California.

3 DEFENDANTS' BUSINESS PRACTICES

4 11. ConAPA has promoted and continues to promote a scheme to evade workers'
5 compensation insurance to a clientele of employers, including those in high risk industries.
6 ConAPA has marketed and continues to market its services to its prospective clients through
7 various means, which have included, *inter alia*, print handouts and flyers, word-of-mouth,
8 television ads, and through its internet website: www.conapa.net.

9 12. ConAPA's marketing campaign emphasizes that ConAPA can reduce or eliminate the
10 need for workers' compensation insurance and thus potentially save thousands of dollars each
11 month for "[a]ny California company that is interested in becoming more profitable and
12 protected."

13 13. In addition to the marketing efforts referred to above in paragraph 11, ConAPA and
14 Magre have conducted and continue to conduct direct sales meetings with prospective client
15 employers, during which ConAPA represents that, for an initial fee and additional annual fees,
16 ConAPA can save its clients tens of thousands of dollars annually by legally foregoing workers'
17 compensation insurance.

18 14. During these direct sales meetings with prospective client employers, ConAPA and
19 Magre advise prospective clients that they are eligible to cease paying for workers' compensation
20 insurance on behalf of their rank-and-file employees by taking advantage of a workers'
21 compensation exemption within Labor Code section 3351, subdivision (c) ("Section 3351(c)").
22 That provision allows officers or directors of a corporation who are also the sole shareholders
23 thereof to exempt themselves from workers' compensation coverage.

24 15. ConAPA has advised and continues to advise prospective clients to: (a) incorporate if
25 they haven't already done so; (b) provide their employees with a corporate title; and (c) issue the
26 employees nominal shares of stock. ConAPA asserts that by doing so, the employees fit within
27 the Section 3351(c) exemption as "officer-shareholders," and the client company is no longer
28 required to cover them with workers' compensation insurance.

1 16. In presenting its business model to prospective clients, neither ConAPA nor Magre
2 generally provide any guidance as to what types of employees are eligible or appropriate to
3 become officers or shareholders, and neither ConAPA nor Magre questions who its clients choose
4 to designate as officers or shareholders.

5 17. During ConAPA's sales presentations to prospective clients, ConAPA and Magre
6 emphasize that the new "officer-shareholders" created pursuant to the ConAPA business model
7 gain no practical control over the direction of the employer's business, since: (a) the principal
8 owner maintains a sizeable majority of the shares in the company; (b) the officer-shareholders
9 remain "at-will" employees of the company; and (c) the officer-shareholders are required to
10 execute "buy-sell" agreements whereby they agree to offer their shares for sale back to the
11 corporation if they ever leave the company. Thus, the shares held by the "officer-shareholder"
12 employees have no practical value.

13 18. ConAPA and Magre assure prospective clients during ConAPA's sales presentations
14 that ConAPA's business model is perfectly legal, and falsely imply that ConAPA's program has
15 been scrutinized and approved by state authorities, including John Garamendi, representatives of
16 Governor Schwarzenegger, and former insurance commissioners of the State of California.

17 19. ConAPA flatly represents to prospective clients during its sales presentations that the
18 officer designations and distribution of shares are made for the sole purpose of reclassifying the
19 employees for workers' compensation purposes.

20 20. ConAPA has assisted and continues to assist its clients to adopt the ConAPA business
21 model by unlawfully arranging legal incorporation services for its clients with affiliated attorneys
22 at guaranteed rates of no more than \$1,400.00 per incorporation, and no more than \$700.00 to re-
23 organize an already incorporated entity.

24 21. ConAPA has approximately forty active clients, and has had as many as two hundred
25 clients in the past that employed ConAPA's business model.

26 22. ConAPA's current clients include companies that: (a) lack any real assets and serve
27 no business purpose other than to supply labor that is exempt from workers' compensation
28 requirements to other companies that share common ownership; (b) designate hourly rank-and-

1 file workers (including housekeepers, security guards, roofers, maintenance personnel, and cooks)
2 without any managerial or administrative responsibilities as “corporate officers” and employ no
3 non-shareholding, non-officer personnel; and (c) issue shares of stock to their officer-shareholder
4 employees that have no practical value because the principal owner maintains a heavy majority of
5 shares; the stock has little monetary value and does not appreciate or yield dividends; and the
6 shares are encumbered by “buy-sell” agreements that prevent shareholders from retaining the
7 shares when they leave employment.

8 23. Some of ConAPA’s current clients also require employees to accept shares and an
9 officer title in order to maintain their employment.

10 24. ConAPA is aware that ConAPA client companies employ rank-and-file workers with
11 no managerial responsibilities and only nominal shares of stock as “officer-shareholders.”

12 25. ConAPA facilitates its client companies to maintain their corporate structures and
13 continue to avoid workers’ compensation insurance by annually supplying templates for corporate
14 minutes and agendas, safety meeting topics, and workers’ compensation waiver forms for new
15 “officer-shareholders.”

16 26. ConAPA requires its client companies to keep ConAPA informed about their
17 corporate business by providing ConAPA with copies of all quarterly shareholder meeting
18 minutes, all safety meeting sign-in sheets, and all waiver forms executed by new hires. ConAPA
19 also requires client companies to inform ConAPA about any hirings, firings, and changes in rates
20 of pay.

21 **FIRST CAUSE OF ACTION**

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

23 **(UNFAIR COMPETITION)**

24 **(Against Defendants ConAPA, Magre, and Does 1-50, Inclusive)**

25 27. The People reallege and incorporate by reference paragraphs 1 through 26 of this
26 complaint.

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1 28. Defendants have violated and continue to violate Business & Professions Code
2 section 17200, et seq., by engaging in acts of unfair competition including, but not limited to, the
3 following:

4 a. promoting a misinterpretation of the workers' compensation exemption
5 contained within Section 3351(c), and inducing employers to utilize sham corporate
6 structures to fit within the literal terms of the exemption and evade workers'
7 compensation insurance;

8 b. furnishing the means for employers to evade workers' compensation
9 insurance by providing legal expertise and other services to incorporate, maintain,
10 and manage sham corporations designed to fit within the literal terms of the
11 exemption and evade workers' compensation insurance;

12 c. engaging in unfair, deceptive, untrue, or misleading advertising, and by
13 making untrue or misleading statements, as defined in Business & Professions Code
14 section 17500, that ConAPA and Magre knew or should have known to be untrue or
15 misleading at the time they were made, in relation to their efforts to induce employers
16 to purchase ConAPA's services;

17 d. engaging in the unauthorized practice of law in violation of Business &
18 Professions Code section 6125.

19 **SECOND CAUSE OF ACTION**

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

21 **(UNTRUE OR MISLEADING REPRESENTATIONS)**

22 **(Against Defendants ConAPA, Magre, and Does 1-50, Inclusive)**

23 29. The People reallege and incorporate by reference paragraphs 1 through 26 of this
24 complaint.

25 30. ConAPA and Magre have made and continue to make untrue or misleading
26 statements, as defined in Business & Professions Code section 17500, that ConAPA and Magre
27 knew or should have known to be untrue or misleading at the time they were made, in relation to
28 their efforts to induce employers to purchase ConAPA's services.

1 5. That defendants be ordered to make restitution of any money or other property that
2 may have been acquired by their violations of Business & Professions Code sections 17200 and
3 17500.

4 6. That the People recover their costs of suit.

5 7. Such other and further relief that the court deems just and proper.
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Dated: February ____, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
MARK J. BRECKLER
Senior Assistant Attorney General
JON M. ICHINAGA
Supervising Deputy Attorney General

SATOSHI YANAI
Deputy Attorney General
Attorneys for Plaintiff