

FILED
CIVIL BUSINESS OFFICE 8
CENTRAL DIVISION

09 MAY 12 AM 8:53

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

EDMUND G. BROWN JR.
Attorney General of California
CATHERINE Z. YSRAEL
Supervising Deputy Attorney General
JUDITH FIORENTINI
Deputy Attorney General
State Bar No. 201747
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2207
Fax: (619) 645-2062
E-mail: judith.fiorentini@doj.ca.gov
Attorneys for People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

v.

**SEAN MCCONVILLE, AN INDIVIDUAL;
NATIONAL FUNDING, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY, DOING BUSINESS AS
PROPERTY TAX REASSESSMENT;
MICHAEL MCCONVILLE, AN
INDIVIDUAL; AND MBM GROUP, LLC,
A CALIFORNIA LIMITED LIABILITY
COMPANY, DOING BUSINESS AS
PROPERTY TAX ADJUSTMENT
SERVICES; AND DOES 1-30,**

Defendants.

Case No. 37-2009-00089525-CU-MC-CTL

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

Plaintiff, People of the State of California, by and through Edmund G. Brown Jr., Attorney
General of the State of California, allege on information and belief:

DEFENDANTS

1
2 1. Defendants at all relevant times have transacted business in the City and County of
3 San Diego, and elsewhere in the State of California. The violations of law alleged herein have
4 been and are being carried out within the City and County of San Diego, and elsewhere in
5 California.

6 2. Defendant Sean McConville is an individual, who resides in Simi Valley, California,
7 and does business throughout California as National Funding, LLC, which does business as
8 Property Tax Reassessment, among other entities. Defendant Sean McConville has at all relevant
9 times managed and controlled the activities of National Funding, LLC and Property Tax
10 Reassessment as its owner and Chief Executive Officer.

11 3. Defendant Michael McConville is an individual, who resides in Simi Valley,
12 California, and does business throughout California as MBM Group, LLC, which does business
13 as Property Tax Adjustment Services. Defendant Michael McConville has at all relevant times
14 managed and controlled the activities of MBM Group, LLC, and Property Tax Adjustment
15 Services.

16 4. Defendant National Funding, LLC is a California Limited Liability Company with its
17 principal place of business at 2828 Cochran Street, Suite 498, Simi Valley, California 93065.
18 Defendant National Funding, LLC also uses the address 20075 Plenaza Lane, Porter Ranch,
19 California, 91326. Defendant Sean McConville is the owner and Chief Executive Officer of
20 Defendant National Funding, LLC. Defendant National Funding, LLC, does business as Property
21 Tax Reassessment.

22 5. Defendant MBM Group, LLC is a California Limited Liability Company with its
23 principal place of business at 2030 Main Street, Suite 1030, Irvine, California 92614. Defendant
24 MBM Group, LLC also uses the address 11856 Balboa Blvd., Suite 203, Granada Hills,
25 California 91344. Defendant Michael McConville is the owner of MBM Group, LLC. Defendant
26 MBM Group, LLC does business as Property Tax Adjustment Services.

27 6. Whenever reference is made in this complaint to any act or transaction of a Defendant
28 such allegation shall be deemed to mean that said Defendant and, if a business, its owners,

1 officers, directors, agents, employees, or representatives, did or authorized such acts while
2 engaged in the management, direction, or control of the affairs of the Defendant and while acting
3 within the scope and course of their duties.

4 7. Whenever in this complaint reference is made to any act of any individual Defendant,
5 such allegation shall be deemed to mean that said Defendant is and was acting (a) as a principal,
6 (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the
7 acts so alleged on behalf of every other Defendant herein.

8 8. Whenever in this complaint reference is made to any act of Defendants, such
9 allegation shall be deemed to mean the act of each Defendant acting individually and jointly with
10 the other Defendants named in that cause of action.

11 9. At all times mentioned herein, each Defendant knew or realized that the other
12 Defendants were engaging in or planned to engage in the violations of law alleged in this
13 Complaint. Knowing or realizing that other Defendants were engaging in such unlawful conduct,
14 each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant
15 intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and
16 thereby aided and abetted the other Defendants in the unlawful conduct.

17 10. The true names and capacities, whether individual, corporate, or otherwise, of
18 Defendants sued under the fictitious names of DOES 1 through 30, inclusive, are unknown to
19 Plaintiff. Plaintiff therefore sues those Defendants by these fictitious names. Plaintiff will amend
20 this complaint to show the true names of each when these names have been ascertained.

21 **DEFENDANTS' BUSINESS PRACTICES**

22 11. Defendants Sean McConville and National Funding, LLC operate Property Tax
23 Reassessment from California (collectively "PTR Defendants"). The PTR Defendants
24 purportedly offer assistance to property owners in applying for and appealing decisions related to
25 property tax reassessment. PTR Defendants have solicited tens of thousands of consumers in
26 California to become their customers through the use of direct mail. PTR Defendants have
27 collectively disseminated at least five variations of solicitations to California consumers since
28

1 2008. With respect to at least the 2008 solicitations, PTR Defendants have failed to provide the
2 services offered to and paid for by consumers in California.

3 12. Defendants Michael McConville and MBM Group, LLC operate Property Tax
4 Adjustment Services from California (collectively "PTAS Defendants"). The PTAS Defendants
5 purportedly offer assistance to property owners in applying for and appealing decisions related to
6 property tax reassessment. The PTAS Defendants have solicited tens of thousands of consumers
7 in California to become their customers through the use of direct mail. Defendants have
8 collectively disseminated at least three variations of solicitations to California consumers since
9 2008. With respect to at least the 2008 solicitations, PTAS Defendants have failed to provide the
10 services offered to and paid for by consumers in California.

11 13. Defendants' solicitations are misleading, deceptive and violate California law in that
12 they appear to be billing statements from a governmental entity. Recipients are told that they
13 "must respond" and are directed to pay the amounts "due" or suffer consequences including, but
14 not limited to, incurring a "late fee," and having their files marked as "non-responsive" and
15 "ineligible for future tax reassessments." Defendants' solicitations do not adequately disclose
16 that Defendants are not a governmental entity; that their solicitations are not a billing statement;
17 that they are offering a service that the consumer is not required to purchase; what services will
18 be provided for the fee; and that the consumer can perform these services on their own for free.
19 In addition, in many instances, Defendants did not perform any services on behalf of the
20 consumers who paid.

21
22 **FIRST CAUSE OF ACTION**
23 **AGAINST ALL DEFENDANTS**
24 **FOR UNTRUE OR MISLEADING STATEMENTS**
25 **(VIOLATIONS OF BUSINESS & PROFESSIONS CODE SECTION 17500)**

26 14. The People re-allege and incorporate by reference paragraphs 1 through 13 of this
27 complaint.

28 15. The named Defendants, and each of them, including Does 1-30 (hereafter collectively
"Defendants"), with the intent to induce California consumers to purchase the products and
services Defendants claim to offer, have made or caused to be made, and continue to make, in

1 violation of Business and Professions Code section 17500, numerous untrue or misleading
2 statements before the public in the City and County of San Diego, and elsewhere in the State of
3 California. Such statements include, but are not limited to, the following:

4 (a) The solicitations are deceptive and misleading in that some, if not all, of the
5 solicitations:

6 (i) Appear to be sent from a governmental entity in that they do the following
7 including, but not limited to:

8 (1) use names such as Property Tax Reassessment and Property Tax
9 Adjustment Services, which could imply that the mailing is from the County
10 Assessor's Office or has some affiliation with the County Assessor's Office;

11 (2) state on the outer envelope "Important Tax Information Enclosed";

12 (3) contain a State of California logo in the upper left-hand corner of the
13 document similar to what would appear on documents from a California
14 governmental entity;

15 (4) state that Defendants show no record of the consumer's "Reassessment
16 Application," implying that the consumer is required to file such an application for
17 reassessment;

18 (5) threaten to mark the consumer's file as "non-responsive" and "ineligible
19 for future reassessments" from Defendants if the consumer does not respond by the
20 due date;

21 (6) reference a "Notice Number" and an "Assessor's ID No.," which implies
22 that the solicitation is a billing statement and/or a mailing from the County Assessor's
23 Office and/or that Defendants are affiliated with the County Assessor's Office;

24 (7) fail to make clear that Defendants are offering a service for a fee that the
25 consumer is under no obligation to purchase;

26 (8) instruct the consumer to detach and mail the payment coupon along with
27 the "required fee" in the enclosed envelope;
28

1 (9) fail to disclose that Defendants are not a governmental entity on both the
2 statement and envelope as required by Business and Professions Code section
3 17533.6(a)(2);

4 (10) offer to assist the recipient of their unsolicited mailers in dealing with a
5 state or local governmental entity without providing the disclosures and information
6 required by Business and Professions Code section 17533.6(b); and,

7 (11) fail to make the disclosures required by Business and Professions Code
8 section 17537.9(b).

9 (ii) Appear to be a billing statement in that they do the following including, but not
10 limited to:

11 (1) reference a "due date" by which the consumer "must" submit payment;

12 (2) have a calendar which calls emphasis to the due date;

13 (3) charge a late fee if the consumer does not remit payment postmarked by
14 the due date;

15 (4) demand that the consumer "must" reply by the "due date";

16 (5) instruct the consumer to detach and mail the payment coupon along with
17 the "required fee" in the enclosed envelope;

18 (6) refer to the fee as a "processing fee," which implies that the PTR
19 Defendants would perform some service on behalf of the consumer when in fact they
20 did not perform those services;

21 (7) provide a proposed assessed value and references what the reduction in
22 annual property taxes would be;

23 (8) instruct the consumer to write the "Assessor's ID No." on the check they
24 submit for payment;

25 (9) state on the outer envelope "Important Tax Information Enclosed";

26 (iii) fail to disclose that the solicitations are not a bill as required by Civil Code
27 section 1716;
28

1 (iv) fail to provide the disclosure and information required by Business and
2 Professions Code section 17533.6(a)(2);

3 (v) fail to provide the disclosure and information required by Business and
4 Professions Code section 17533.6(b);

5 (vi) fail to provide the disclosures required by Business and Professions Code
6 section 17537.9(b);

7 (vii) fail to disclose to the consumer that the consumer can complete this
8 reassessment application on its own for free;

9 (viii) fail to adequately disclose what services will be provided to the consumer
10 in exchange for the fee; and,

11 (ix) do not disclose that Defendants must obtain written authorization prior to acting
12 as the consumer's agent and filing a Reassessment Application on behalf of the consumer,
13 as required by California State Board of Equalization Rule 305.

14 16. Defendants knew, or should have known, that the statements or omissions set forth in
15 paragraph 15, were untrue or misleading at the time these statements were made.

16
17 **SECOND CAUSE OF ACTION**
18 **AGAINST ALL DEFENDANTS FOR**
19 **DISSEMINATING SOLICITATIONS IMPLYING A**
20 **GOVERNMENT CONNECTION, APPROVAL, OR ENDORSEMENT**
21 **WITHOUT INCLUDING THE REQUISITE NOTICES**
22 **(VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17533.6)**

23 17. The People re-allege and incorporate by reference paragraphs 1 through 16 of this
24 complaint.

25 18. Business and Professions Code section 17533.6(a) prohibits any person, or
26 corporation that is a nongovernmental entity from disseminating by mail a solicitation for
27 payment for a service that contains a seal, insignia, trade or brand name, or any other term or
28 symbol that reasonably could be interpreted or construed as implying a government connection,
approval or endorsement without providing the notice required by 17533.6(a)(2) on the face of
the solicitation and on the envelope.

19. Defendants are nongovernmental entities that have mailed, or continue to mail, solicitations for payment for a service that in many, if not all instances, contain a seal, insignia, trade or brand name, or other term or symbol that reasonably could be interpreted or construed as implying a state or local government connection, approval, or endorsement without providing in both the solicitation and the envelope the notice required by Business and Professions Code section 17533.6 (a)(2), by committing the practices set forth in paragraph 16 of the First Cause of Action of this complaint, which paragraph is incorporated herein as though set forth in full.

20. Business and Professions Code section 17533.6(b) prohibits a business from sending an unsolicited mailing that offers to assist the recipient in dealing with a state or local governmental agency in exchange for a fee without providing in both the solicitation and the envelope the notice and information required by Business and Professions Code section 17533.6 (b).

21. Defendants, in violation of Business and Professions Code section 17533.6(b), have sent, and continue to send, unsolicited mailings that offer to assist the recipient in dealing with a state or local governmental agency in exchange for a fee without providing in both the solicitation and the envelope the notice and information required by Business and Professions Code section 17533.6 (b), by committing the practices paragraph 16 of the First Cause of Action of this complaint, which paragraph is incorporated herein as though set forth in full.

**THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS
FOR UNTRUE OR MISLEADING STATEMENTS
RE: ASSESSMENT APPEAL APPLICATION FILING SERVICES
(VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE 17537.9)**

22. The People re-allege and incorporate by reference paragraphs 1 through 23 of this complaint.

23. Business and Professions Code section 17537.9(a) prohibits any untrue or misleading statements from being made in connection with the offering or performance of an assessment appeal application filing service including, but not limited to, the misleading use of any governmental seal, emblem, or other similar symbol; the use of an envelope that simulates an

1 envelope containing a tax bill, or government notice or that otherwise has the capacity to be
2 confused with, or mistaken for, an envelope sent by a governmental entity; and, the use on an
3 envelope that does not contain the required notice that the solicitation is not a government
4 document.

5 24. Defendants have violated, and continue to violate, Business and Professions Code
6 section 17537.9(a) in that Defendants have made numerous untrue or misleading statements in
7 connection with the offering or performance of an assessment appeal application filing service
8 including, but not limited to, the misleading use of any governmental seal, emblem, or other
9 similar symbol; the use of an envelope that simulates an envelope containing a tax bill, or
10 government notice or that otherwise has the capacity to be confused with, or mistaken for, an
11 envelope sent by a governmental entity; and, the use on an envelope that does not contain the
12 required notice that the solicitation is not a government document.

13 25. Business and Professions Code section 17537.9(b) makes it unlawful to offer to
14 perform an assessment appeal filing service without making the disclosures required by
15 17537.9(b).

16 26. Defendants have violated and continue to violate Business and Professions Code
17 section 17537.9(b) in that Defendants have offered, and continue to offer, to perform an
18 assessment appeal filing service without making the disclosures required by 17537.9(b) in their
19 solicitations.

20 27. Business and Professions Code section 17537.9(c) prohibits the offeror of an
21 assessment appeal filing service from charging, demanding, or collecting any money until after
22 the assessment appeal application is filed with the clerk of the assessment appeals board.

23 28. Defendants have violated, and continue to violate, Business and Professions Code
24 section 17537.9 in that Defendants charge, demand, or collect money from consumers to whom
25 they have offered an assessment appeal filing service prior to the filing of an assessment appeal
26 application with the clerk of the assessment appeals board, if any assessment appeal application is
27 filed at all.
28

1 **FOURTH CAUSE OF ACTION**
2 **AGAINST ALL DEFENDANTS**
3 **FOR DISSEMINATING SOLICITATIONS THAT APPEAR**
 TO BE A BILLING STATEMENT
4 **(VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 1716)**

5 29. The People re-allege and incorporate by reference paragraphs 1 through 28 of this
6 complaint.

7 30. Civil Code section 1716 prohibits a person from soliciting a payment for money by
8 means of a written statement that could reasonably be considered a bill, invoice, or statement of
9 account due unless the solicitation provides the disclaimers or notices required by Civil Code
10 section 1716.

11 31. Defendants, in violation of Civil Code section 1716, have solicited, and continue to
12 solicit, payment of money from the consumer by means of a written statement that in many, if not
13 all instances, could reasonably be considered to be a bill, invoice, or statement of account due
14 without making the disclosures required Civil Code section 1716, by committing the practices
15 paragraph 16 of the First Cause of Action of this complaint, which paragraph is incorporated
16 herein as though set forth in full.

17 **FIFTH CAUSE OF ACTION**
18 **AGAINST ALL DEFENDANTS**
19 **FOR UNLAWFUL, UNFAIR OR DECEPTIVE BUSINESS PRACTICES**
20 **(VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE 17200)**

21 32. The People re-allege and incorporate by reference paragraphs 1 through 31 of this
22 complaint.

23 33. Defendants have engaged in the following acts, among others, of unfair competition
24 as defined in Business and Professions Code section 17200:

25 (a) Defendants have violated and continue to violate Business and Professions
26 Code section 17500 as alleged in paragraphs 15 and 16 of the above First Cause of Action,
27 which paragraphs are incorporated herein as though set forth in full.
28

1 (b) Defendants have violated and continue to violate Business and Professions
2 Code section 17533.6 as alleged in paragraphs 18 through 21 of the above Second Cause of
3 Action, which paragraphs are incorporated herein as though set forth in full.

4 (c) Defendants have violated and continue to violate Business and Professions
5 Code section 17537.9 as alleged in paragraphs 23 through 28 of the above Third Cause of
6 Action, which paragraph is incorporated herein as though set forth in full.

7 (d) Defendants have violated and continue to violate California Civil Code section
8 1716 as alleged in paragraphs 30 through 31 of the above Fourth Cause of action, which
9 paragraph is incorporation herein as though set forth in full.

10 (e) Defendants, in most instances, did not file reassessment applications on behalf
11 of the consumers who paid in response to the 2008 solicitation.

12 (f) Defendants, in many instances, did not obtain written authorization prior to
13 acting as the consumer's agent and filing a Reassessment Application on behalf of the
14 consumer as required by State Bar of Equalization Rule 305, and were therefore unable to
15 lawfully file a reassessment application on behalf of said consumer.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment as follows:

18 1. That pursuant to Business and Professions Code sections 17203 and 17535,
19 Defendants, and each of them, their successors, agents, representatives, employees, and all other
20 persons who act under, by, through, or on behalf of any of them, or any of them, be permanently
21 restrained and enjoined from doing any of the following:

22 (a) Making or disseminating any of the untrue or misleading statements alleged in
23 paragraph 15 of this complaint or any other untrue or misleading statement in violation of
24 Business and Professions Code sections 17500 et seq., in connection with any direct mail
25 business;

26 (b) Committing the practices alleged in paragraphs 18 through 21 of the Second
27 Cause of Action of this complaint, which paragraphs are incorporated herein as though set
28 forth in full, in violation of Business and Professions Code section 17533.6.

1 (c) Committing the practices alleged in paragraphs 23 through 28 of the Third
2 Cause of Action of this complaint, which paragraphs are incorporated herein as though set
3 forth in full, in violation of Business and Professions Code section 17537.9.

4 (d) Committing the practices alleged in paragraphs 30 through 31 of the Fourth
5 Cause of Action of this complaint, which paragraphs are incorporated herein as though set
6 forth in full, in violation of California Civil Code section 1716.

7 (e) Engaging in any of the acts of unfair competition set forth in paragraph 33 of
8 this complaint or any other act of unfair competition in violation of Business and
9 Professions Code sections 17200 et seq., in connection with any direct mail business.

10 2. That pursuant to Business and Professions Code section 17206, each defendant be
11 assessed a civil penalty of \$2,500.00 for each violation of Business and Professions Code section
12 17200, as proven at trial, but in an amount of not less than \$500,000.00.

13 3. That pursuant to Business and Professions Code section 17536, each defendant be
14 assessed a civil penalty of \$2,500.00 for each violation of Business and Professions Code section
15 17500, as proven at trial, but in an amount of not less than \$500,000.00.

16 4. That pursuant to Business and Professions Code section 17536, each defendant be
17 assessed a civil penalty of \$2,500.00 for each violation of Business and Professions Code section
18 17533.6, et seq. as proven at trial, but in an amount of not less than \$500,000.00.

19 5. That pursuant to Business and Professions Code section 17536, each defendant be
20 assessed a civil penalty of \$2,500.00 for each violation of Business and Professions Code section
21 17537.9, et seq. as proven at trial, but in an amount of not less than \$500,000.00.

22 6. That pursuant to California Civil Code section 1716, each defendant be assessed a
23 civil penalty of \$10,000 for each violation of California Civil Code section 1716, but in an
24 amount not less than \$500,000.00.

25 7. That Plaintiff has such other and further relief as the nature of the case may require
26 and as the court deems appropriate and necessary.

27 8. That Plaintiff recovers its costs.
28

1 Dated: May 12, 2009

Respectfully Submitted,

2 EDMUND G. BROWN JR.
3 Attorney General of California
4 CATHERINE Z. YSRAEL
5 Supervising Deputy Attorney General

6 

7 JUDITH FIORENTINI
8 Deputy Attorney General
9 *Attorneys for People of the State of*
10 *California*