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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 AMERICAN MORTGAGE
18 CONSULTING GROUP, LLC, a
California Limited Liability Company,
19 also d.b.a. American Mortgage Group and
American Mortgage Consulting;

20 HOME GUARDIAN MANAGEMENT
21 SOLUTIONS, LLC, a California Limited
Liability Company, also d.b.a. Home
22 Guardian Solutions; and

23 MARK NAGY ATALLA, d.b.a. Home
Guardian Solutions, Home G Solutions
24 Firm, and Home G Solutions Group,

25 Defendants.

Case No.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

[FILED UNDER SEAL]

1 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

2 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
3 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the 2009
4 Omnibus Appropriations Act, Pub. L. No. 111-8, § 626, 123 Stat. 524, 678 (Mar. 11,
5 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability Responsibility
6 and Disclosure Act of 2009, Pub. L. No. 111-24, § 511, 123 Stat. 1734, 1763-64 (May
7 22, 2009) (“Credit Card Act”), and amended by the Dodd-Frank Wall Street Reform and
8 Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, § 1097, 124 Stat.
9 1376, 2102-03 (July 21, 2010) (“Dodd-Frank Act”), 12 U.S.C. § 5538, to obtain
10 temporary, preliminary, and permanent injunctive relief, rescission or reformation of
11 contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and
12 other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the
13 FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule,
14 16 C.F.R. Part 322 (“MARS Rule”), recodified as Mortgage Assistance Relief Services,
15 12 C.F.R. Part 1015 (“Regulation O”), in connection with the marketing and sale of
16 mortgage assistance relief services (“MARS”).

17 **JURISDICTION AND VENUE**

18 2. This Court has subject matter jurisdiction over this matter pursuant to
19 28 U.S.C. §§ 1331, 1337(a), and 1345; 15 U.S.C. §§ 45(a), 53(b), and 57b; and
20 Section 626 of the Omnibus Act, as clarified by Section 511 of the Credit Card Act, and
21 amended by Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538.

22 3. Venue in the Central District of California is proper under 28 U.S.C.
23 §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

24 **PLAINTIFF**

25 4. The FTC is an independent agency of the United States Government created
26 by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15
27 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
28 commerce. Pursuant to Section 626 of the Omnibus Act, as clarified by Section 511 of

1 the Credit Card Act, the FTC has the authority to enforce Regulation O, originally
2 promulgated as the Mortgage Assistance Relief Services Rule, 16 C.F.R. Part 322,
3 which, among other things, requires MARS providers to make certain disclosures, and
4 prohibits MARS providers from making certain representations and from collecting a fee
5 in advance of the consumer's acceptance of mortgage assistance relief obtained by the
6 MARS provider. Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538, transferred
7 rulemaking authority over the MARS Rule to the Consumer Financial Protection
8 Bureau, which recodified the Rule from 16 C.F.R. Part 322 to 12 C.F.R. Part 1015,
9 effective December 30, 2011, and designated it "Regulation O." Pursuant to Section
10 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538, the FTC retains authority to enforce the
11 MARS Rule and Regulation O.

12 5. The FTC is authorized to initiate federal district court proceedings, by its
13 own attorneys, to enjoin violations of the FTC Act; the Omnibus Act, as clarified by the
14 Credit Card Act and amended by the Dodd-Frank Act; the MARS Rule; and
15 Regulation O, and to secure such equitable relief as may be appropriate in each case,
16 including rescission or reformation of contracts, restitution, the refund of monies paid,
17 and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), and
18 57b; and Omnibus Act § 626, 123 Stat. at 678, as clarified by Credit Card Act § 511,
19 123 Stat. at 1763-64, and amended by Dodd-Frank Act § 1097, 124 Stat. at 2102-03,
20 12 U.S.C. § 5538.

21 **DEFENDANTS**

22 6. Defendant American Mortgage Consulting Group, LLC ("American
23 Mortgage"), is a California limited liability company. Its registered address is 1000
24 Bristol Street North, Suite 17-135, Newport Beach, California 92660. It also uses the
25 addresses 1280 Bison Avenue Suite B-930, Newport Beach, California 92660, 3857
26 Birch Street, Suite 313, Newport Beach, California 92660, and 2967 Michelson Drive
27 # G620, Irvine, California 92612. Defendant American Mortgage does business as
28

1 American Mortgage Consulting and American Mortgage Group and transacts or has
2 transacted business in this district and throughout the United States.

3 7. Defendant Home Guardian Management Solutions, LLC (“Home
4 Guardian”), is a California limited liability company. Its registered address is 1280
5 Bison Avenue, Suite B-9, Newport Beach, California, 92660. It also uses Suite B-930 at
6 the same street address, as well as the address 1000 Bristol Street North, Suite 17-135,
7 Newport Beach, California 92660. Defendant Home Guardian does business as Home
8 Guardian Solutions and transacts or has transacted business in this district and
9 throughout the United States.

10 8. Defendant Mark Nagy Atalla (“Atalla”), acting alone or in concert with
11 others, has formulated, directed, controlled, had the authority to control, or participated
12 in the acts or practices set forth in this Complaint. Defendant Atalla is an officer, owner,
13 and/or principal of Defendants American Mortgage and Home Guardian. He is or has
14 been the signatory on bank accounts in the names of the corporate Defendants, into
15 which consumer funds are deposited. He also does business as Home Guardian
16 Solutions, Home G Solutions Firm, and Home G Solutions Group, and has been the
17 signatory on a bank account under the name Mark N. Atalla d.b.a. Home G Solutions
18 Firm. Defendant Atalla pays for telephone service to numbers used by Defendants
19 American Mortgage and Home Guardian to market and sell mortgage assistance relief
20 services to consumers. Defendant Atalla resides in and transacts or has transacted
21 business in this District and throughout the United States.

22 9. From at least March 2011 until approximately January 2012, Defendants
23 Home Guardian and Atalla have marketed and sold mortgage assistance relief services to
24 consumers nationwide. Since approximately January 2012, Defendants American
25 Mortgage and Atalla have marketed and sold mortgage assistance relief services to
26 consumers nationwide.

27 10. Defendants American Mortgage and Home Guardian have operated as a
28 common enterprise while engaging in the unlawful acts and practices alleged below.

1 Defendants American Mortgage and Home Guardian have had common ownership,
2 business functions, and employees, and have commingled corporate funds. Defendant
3 Atalla is a signatory on all bank accounts in either corporate name. When accounts in
4 the name of Defendant Home Guardian were closed, Defendant American Mortgage
5 continued making monthly payments to many of the same payees who had received
6 monthly payments from Defendant Home Guardian. Both companies have used the
7 same address on Bristol Street North in Newport Beach, California. Both companies
8 received telephone service under the same account. Because Home Guardian and
9 American Mortgage have operated as a common enterprise, each of them is jointly and
10 severally liable for the acts and practices alleged below. Defendant Atalla has
11 formulated, directed, controlled, had authority to control, or participated in the acts and
12 practices of American Mortgage and Home Guardian.

13 **SUMMARY OF COMPLAINT**

14 11. Since at least early 2011, Atalla and his companies, American Mortgage
15 and Home Guardian, have engaged in an ongoing, unlawful mortgage relief scheme that
16 preys on financially distressed homeowners nationwide by falsely promising loan
17 modification in exchange for an advance fee. Defendants attract distressed homeowners
18 via phone calls, deceptively promising substantial relief from unaffordable mortgages
19 and foreclosures. Defendants promise a substantial reduction in the homeowners'
20 mortgage payments in exchange for an advance fee ranging from \$1,495 to \$4,495.
21 Rather than helping homeowners modify their mortgage loans or avoid foreclosure,
22 Defendants dupe distressed homeowners into paying thousands of dollars based on false
23 promises and misrepresentations. Indeed, Defendants provide little, if any, meaningful
24 assistance to modify homeowners' mortgage loans or prevent foreclosure.

25 12. During the initial calls and interactions with homeowners, Defendants
26 promise homeowners substantial reductions in mortgage payments and interest rates in
27 exchange for an upfront fee. Defendants send contract documents to the homeowners
28 from which it appears that their savings from just a few reduced monthly payments will

1 exceed the amount of the Defendants' fee. Further, Defendants make the amount of the
2 fee seem attractive by claiming that it has been reduced by a federal government grant.
3 Defendants also say that the vast majority of Defendants' clients obtain the modification
4 described in the contract documents, that Defendants' prequalification procedure ensures
5 they will receive the modification, and that if it does not come through, Defendants will
6 fully refund the fee.

7 13. Defendants also claim to be a "legal team" or "law office" that "will
8 provide legal services" to the consumer.

9 14. In reality, Defendants do little or nothing to assist consumers. They do not
10 make consumers' mortgage payments more affordable or help them escape foreclosure.
11 Instead, Defendants direct consumers to avoid interactions with their lender. Consumers
12 who have paid Defendants' fees have suffered significant economic injury.

13 **COMMERCE**

14 15. At all times material to this Complaint, Defendants have maintained a
15 substantial course of trade in or affecting commerce, as "commerce" is defined in
16 Section 4 of the FTC Act, 15 U.S.C. § 44.

17 **GOVERNMENT MORTGAGE ASSISTANCE**

18 16. Numerous mortgage lenders and servicers have offered certain borrowers
19 the opportunity to modify loans that have become unaffordable. Many of these loan
20 modification programs have expanded dramatically as lenders have increased
21 participation in the federal government's "Making Home Affordable" program, a plan to
22 stabilize the U.S. housing market and help millions of Americans reduce their monthly
23 mortgage payments to more affordable levels. The Making Home Affordable program
24 includes the Home Affordable Modification Program, in which the federal government
25 has committed up to \$75 billion to keep significant numbers of Americans in their
26 homes by preventing avoidable foreclosures. The mortgage assistance relief services
27 Defendants market are not connected with the Making Home Affordable program or
28

1 affiliated or otherwise associated with, or endorsed, sponsored, or approved by, the
2 United States Government in any way.

3 **DEFENDANTS' BUSINESS ACTIVITIES**

4 17. Defendants have diverted consumers from authentic, government-affiliated
5 programs by engaging in a course of conduct to advertise, market, promote, offer to sell,
6 and sell to consumers purported mortgage assistance relief services.

7 18. Defendants have marketed and sold their mortgage assistance relief services
8 to homeowners who are in financial distress, behind on their mortgage loans, or in
9 danger of losing their homes to foreclosure.

10 **DEFENDANTS' REPRESENTATIONS**

11 19. Typically, Defendants' representatives contact consumers by telephone and
12 inquire whether the consumers have a home mortgage that they would like to modify to
13 reduce the monthly payment. If a consumer indicates interest, the caller solicits
14 information about the consumer's financial situation, telling the consumer that if he or
15 she qualifies for a loan modification, Defendants will contact the consumer's lender and
16 negotiate a loan modification that will reduce the interest rate significantly and reduce
17 the monthly payment by hundreds of dollars.

18 20. Within a few days after taking the consumer's "prequalification"
19 information, Defendants typically contact the consumer again by telephone or email to
20 congratulate the consumer on being approved for a loan modification, representing that
21 the loan modification is virtually certain or very likely.

22 21. In numerous instances, Defendants' email notifying consumers that they are
23 "approved" also states that the forms attached to the email will "complete your
24 modification." These forms typically consist of (a) two authorization forms by which
25 the consumers authorize Defendants to negotiate with their lender and debit their bank
26 account; and (b) two contractual documents that Defendants require consumers to sign, a
27 "Loan Approval Disclosure & Agreement" ("Loan Agreement") and a "Legal Team-
28 Client Fee Agreement" ("Fee Agreement"). The Loan Agreement sets forth the specific

1 terms of the consumer's new loan, including interest rate and monthly payment. In
2 numerous instances, Defendants also discuss these terms with consumers by phone.

3 22. Defendants tell consumers that they must pay the up-front service fee in the
4 amount specified in both the Loan Agreement and the Fee Agreement. In numerous
5 instances, Defendants represent that the amount of this fee has been, or will be, reduced
6 by the amount of a government grant that Defendants will obtain or have obtained for
7 them, typically called a "Home Saver" grant. Defendants create the impression that
8 Defendants are associated with the federal government by stating that the federal
9 government pays Defendants to help homeowners or by stating that Defendants obtain
10 these grants from the government on consumers' behalf. Defendants solicit a net
11 amount from consumers (after deduction of any purported government grant) ranging
12 from \$1,495 to \$4,495 per mortgage to be modified. In some instances, Defendants
13 contract to modify more than one mortgage and collect more than one fee.

14 23. Both the Loan Agreement and the Fee Agreement refer to the consumers'
15 fees as "Legal Fees." In the Fee Agreement, Defendants proclaim themselves to be "a
16 California Professional Legal Team" that "will provide legal services to" the consumer
17 and "use its' [*sic*] best efforts to negotiate and counsel Client in Real Estate matters
18 related to a Loan Modification of residential property." The Fee Agreement also says
19 that the "Legal Team" reserves the "right to associate or bring in an additional [*sic*]
20 Attorneys/Legal Teams." These documents are sent to consumers with a transmittal
21 sheet stating that they are from the "Legal Department." Emails from Defendants to
22 consumers also refer to Home Guardian or American Mortgage as a "law office." In
23 fact, neither Home Guardian nor American Mortgage is a law office, and Defendants
24 typically do not provide legal representation to consumers.

25 24. In a variety of ways, Defendants assure consumers of the virtual certainty
26 that consumers will obtain the loan modification described in the Loan Agreement. For
27 example, in the Loan Agreement, Defendants state, "The vast majority of our clients
28

1 obtain the solutions they contract for.” In the same document, Defendants assure
2 consumers that:

3 Because we pre-qualify you for a program BEFORE we accept your money we
4 both avoid loss of precious time and resources. You can be sure that when we
5 take you on as a client we are convinced that we can get your lender to offer you a
6 solution to your problem.

7 Defendants augment these claims by telephone, telling consumers, for example, that
8 Defendants have a “track record” of successfully modifying mortgage loans or that the
9 new mortgage loan is “100% guaranteed.” These representations are bolstered by
10 Defendants’ claim that they have experience and “past histories” with the consumer’s
11 lender. In some instances, Defendants’ telemarketers also make oral claims that
12 Defendants are affiliated with or otherwise associated with the consumer’s lender.

13 25. Defendants also represent that consumers will receive a full refund if
14 Defendants are unable to obtain the modified loan. Consumers rely on such statements
15 made by telephone and in the contractual documents they receive before paying
16 Defendants’ fee. For example, the Loan Agreement includes an underlined statement,
17 “The service fee is refundable in the event” that Defendants are “not able to perform as
18 listed above or perform any services that are beneficial to borrower.” The same
19 document also contains what is headed a “MONEY BACK GUARANTEE,” which
20 states that when “things do not work out as all intend,” Defendants will “promptly
21 provide a refund.”

22 26. In numerous instances, Defendants instruct consumers, orally and/or in
23 writing, not to communicate with their lender while Defendants are in the process of
24 negotiating the loan modification. Defendants tell consumers to forward all
25 communications from the lender to Defendants and otherwise to ignore them.

26 CONSUMER EXPERIENCE

27 27. In numerous instances, consumers who pay fees to Defendants do not
28 obtain loan modifications or have their mortgage payments substantially reduced.

1 28. In numerous instances, when consumers contact Defendants for status
2 updates, Defendants fail to answer or return consumers' telephone calls or emails. When
3 consumers are able to reach Defendants, Defendants' salespersons generally assure
4 consumers that their files are being handled.

5 29. In numerous instances, consumers learn from their lenders that they have
6 never been contacted by Defendants. In other instances, consumers learn from their
7 lenders that Defendants did contact the lender, but failed to follow up.

8 30. In numerous instances in which consumers do not obtain loan
9 modifications, Defendants do not provide any refunds to consumers. Typically,
10 Defendants provide no explanation for the failure to provide either the loan modification
11 or a refund.

12 **DEFENDANTS FAIL TO MAKE THE REQUIRED DISCLOSURES**

13 31. Nowhere in Defendants' consumer-specific commercial communications,
14 including telephone calls, and email messages and their attachments, do Defendants
15 make the following disclaimers:

- 16 a. That the consumer may stop doing business with the Defendants at
17 any time. Further, that the consumer may accept or reject the offer of
18 mortgage assistance Defendants obtain from the consumers' lender
19 and that, if the consumer rejects the offer, the consumer does not
20 have to pay the Defendants. If the consumer accepts the offer, the
21 consumer will have to pay the Defendants for their services;
- 22 b. That Defendants are not associated with the government, and their
23 services are not approved by the government or the consumers'
24 lender; and
- 25 c. That, even if a consumer accepts the Defendants' offer and uses the
26 Defendants' service, the consumer's lender may not agree to change
27 the consumer's loan.
- 28

1 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

2 32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
3 deceptive acts and practices in or affecting commerce.”

4 33. Misrepresentations or deceptive omissions of material fact constitute
5 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

6 **Count I**

7 34. In numerous instances, in connection with the advertising, marketing,
8 promoting, offering for sale, or sale of mortgage assistance relief services, Defendants
9 have represented, directly or indirectly, expressly or by implication, that Defendants
10 generally will obtain for consumers mortgage loan modifications that will make
11 consumers’ payments substantially more affordable.

12 35. In truth and in fact, Defendants generally do not obtain for consumers
13 mortgage loan modifications that will make consumers’ payments substantially more
14 affordable.

15 36. Therefore, Defendants’ representation as set forth in Paragraph 30 is false
16 and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of
17 the FTC Act, 15 U.S.C. § 45(a).

18 **Count II**

19 37. In numerous instances, in connection with the advertising, marketing,
20 promoting, offering for sale, or sale of mortgage assistance relief services, Defendants
21 have represented, directly or indirectly, expressly or by implication,
22 that they will refund the consumer’s fee if Defendants fail to obtain the promised
23 mortgage loan modification.

24 38. In truth and in fact, in numerous instances in which Defendants have made
25 the representation set forth in Paragraph 33, Defendants do not refund the consumer’s
26 fee when Defendants fail to obtain the promised mortgage loan modification.

1 39. Therefore, Defendants’ representation as set forth in Paragraph 33 is false
2 and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of
3 the FTC Act, 15 U.S.C. § 45(a).

4 **THE MORTGAGE ASSISTANCE RELIEF SERVICES RULE**

5 40. In 2009, Congress directed the FTC to prescribe rules prohibiting unfair or
6 deceptive acts or practices with respect to mortgage loans. Omnibus Act § 626,
7 123 Stat. at 678, as clarified by Credit Card Act, § 511, 123 Stat. at 1763-64. Pursuant
8 to that direction, the FTC promulgated the MARS Rule, 16 C.F.R. Part 322, all but one
9 provision of which became effective on December 29, 2010. The remaining provision,
10 Section 322.5, became effective on January 31, 2011. Section 1097 of the Dodd-Frank
11 Act, 12 U.S.C. § 5538, transferred rulemaking authority over the MARS Rule to the
12 Consumer Financial Protection Bureau, which recodified the Rule as 12 C.F.R.
13 Part 1015, effective December 30, 2011, and designated it “Regulation O.” The FTC
14 retains authority to enforce the MARS Rule pursuant to Section 1097 of the Dodd-Frank
15 Act, 12 U.S.C. § 5538.

16 41. The MARS Rule and Regulation O define “mortgage assistance relief
17 provider” as “any person that provides, offers to provide, or arranges for others to
18 provide, any mortgage assistance relief service” other than the dwelling loan holder, the
19 servicer of a dwelling loan, or any agent or contractor of such individual or entity.
20 16 C.F.R. § 322.2(j), recodified as Regulation O, 12 C.F.R. § 1015.2.

21 42. Defendants are “mortgage assistance relief service provider[s]” or
22 “provider[s]” engaged in providing “mortgage assistance relief service[s]” as those terms
23 are defined in the MARS Rule, 16 C.F.R. § 322.2(i) and (j), recodified as Regulation O,
24 12 C.F.R. § 1015.2.

25 43. The MARS Rule and Regulation O prohibit any mortgage assistance relief
26 provider from requesting or receiving payment of any fee or other consideration until the
27 consumer has executed a written agreement between the consumer and the consumer’s
28 dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the

1 provider obtained from the consumer's dwelling loan holder or servicer. 16 C.F.R.
2 § 322.5(a), recodified as 12 C.F.R. § 1015.5(a).

3 44. The MARS Rule and Regulation O prohibit any mortgage assistance relief
4 service provider from representing, expressly or by implication, in connection with the
5 advertising, marketing, promotion, offering for sale, sale, or performance of any
6 mortgage assistance relief service, that a consumer cannot or should not contact or
7 communicate with his or her lender or servicer. 16 C.F.R. § 322.3(a), recodified as
8 Regulation O, 12 C.F.R. § 1015.3(a).

9 45. The MARS Rule and Regulation O prohibit any mortgage assistance relief
10 service provider from misrepresenting, expressly or by implication, any material aspect
11 of any mortgage assistance relief service including, but not limited to, the following:

- 12 a. The likelihood of negotiating, obtaining, or arranging any represented
13 service or result. 16 C.F.R. §322.3(b)(1), recodified as Regulation O,
14 12 C.F.R. § 1015.3(b)(1);
- 15 b. That a mortgage assistance relief service is affiliated with, endorsed
16 or approved by, or otherwise associated with the government, or the
17 maker, holder, or servicer of the consumer's dwelling loan.
18 16 C.F.R. § 322.3(b)(3), recodified as Regulation O, 12 C.F.R.
19 § 1015.3(b)(3);
- 20 c. The terms or conditions of any refund, cancellation, exchange, or
21 repurchase policy for a mortgage assistance relief service, including,
22 but not limited to, the likelihood of obtaining a full or partial refund,
23 or the circumstances in which a full or partial refund will be granted,
24 for a mortgage assistance relief service. 16 C.F.R. § 322.3(b)(6),
25 recodified as Regulation O, 12 C.F.R. § 1015.3(b)(6); or
- 26 d. That the consumer will receive legal representation. 16 C.F.R.
27 § 322.3(b)(8), recodified as Regulation O, 12 C.F.R. § 1015.3(b)(8).

1 46. The MARS Rule and Regulation O prohibit any mortgage assistance relief
2 provider from making a representation, expressly or by implication, about the benefits,
3 performance, or efficacy of any mortgage assistance relief service unless, at the time
4 such representation is made, the provider possesses and relies upon competent and
5 reliable evidence that substantiates that the representation is true. 16 C.F.R. § 322.3(c),
6 recodified as Regulation O, 12 C.F.R. § 1015.3(c).

7 47. The MARS Rule and Regulation O prohibit any mortgage assistance relief
8 service provider from failing to disclose the following information in every consumer-
9 specific commercial communication:

- 10 a. “You may stop doing business with us at any time. You may accept
11 or reject the offer of mortgage assistance we obtain from your lender
12 [or servicer]. If you reject the offer, you do not have to pay us. If
13 you accept the offer, you will have to pay us (insert amount or
14 method for calculating the amount) for our services.” 16 C.F.R.
15 § 322.4(b)(1), recodified as Regulation O, 12 C.F.R. 1015.4(b)(1);
- 16 b. “(Name of company) is not associated with the government, and our
17 service is not approved by the government or your lender.”
18 16 C.F.R. § 322.4(b)(2), recodified as Regulation O, 12 C.F.R.
19 § 1015.4(b)(2); and
- 20 c. In cases where the mortgage assistance relief service provider has
21 represented, expressly or by implication, that consumers will receive
22 any service or result, “[e]ven if you accept this offer and use our
23 service, your lender may not agree to change your loan.” 16 C.F.R.
24 § 322.4(b)(3), recodified as Regulation O, 12 C.F.R. § 1015.4(b)(3).

25 48. Pursuant to Section 626 of the Omnibus Act, as clarified by Section 511 of
26 the Credit Card Act, and amended by Section 1097 of the Dodd-Frank Act, 12 U.S.C.
27 § 5538, and pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a
28 violation of the MARS Rule and Regulation O constitutes an unfair or deceptive act or

1 practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C.
2 § 45(a).

3 **Count III**

4 49. In numerous instances on or after January 31, 2011, in connection with
5 providing, offering to provide, or arranging for others to provide mortgage assistance
6 relief services, Defendants have requested or received payment of a fee or other
7 consideration before the consumer has executed a written agreement between the
8 consumer and the consumer's dwelling loan holder or servicer incorporating the offer of
9 mortgage assistance relief the Defendants obtained from the consumer's dwelling loan
10 holder or servicer.

11 50. Defendants' practices as alleged in Paragraph 45 are unfair or deceptive
12 acts or practices that violate Sections 322.5(a) of the MARS Rule, 16 C.F.R. § 322.5(a),
13 and Regulation O, 12 C.F.R. § 1015.5(a).

14 **Count IV**

15 51. In numerous instances on or after December 29, 2010, in connection with
16 the advertising, marketing, promoting, offering for sale, sale, or performance of
17 mortgage assistance relief services, Defendants have represented, expressly or by
18 implication, that a consumer cannot or should not contact or communicate with his or
19 her lender or servicer.

20 52. Defendants' practices as alleged in Paragraph 47 are unfair or deceptive
21 acts or practices that violate Section 322.3(a) of the MARS Rule, 16 C.F.R. § 322.3(a),
22 and Regulation O, 12 C.F.R. § 1015.3(a).

23 **Count V**

24 53. In numerous instances on or after December 29, 2010, in connection with
25 providing, offering to provide, or arranging for others to provide any mortgage
26 assistance relief service, Defendants have misrepresented, expressly or by implication,
27 material aspects of those services, including, but not limited to:
28

- 1 a. Defendants' likelihood of obtaining a modification of mortgage loans
2 for consumers that will make their payments substantially more
3 affordable;
- 4 b. That a mortgage assistance relief service is affiliated with, endorsed
5 or approved by, or otherwise associated with the government or the
6 maker, holder, or servicer of the consumer's dwelling loan;
- 7 c. The terms or conditions of any refund, cancellation, exchange, or
8 repurchase policy for a mortgage assistance relief service, including,
9 but not limited to, the likelihood of obtaining a full or partial refund,
10 or the circumstances in which a full or partial refund will be granted,
11 for a mortgage assistance relief service; or
- 12 d. That the consumer will receive legal representation.

13 54. Defendants' practices as alleged in Paragraph 49 are unfair or deceptive
14 acts or practices that violate Sections 322.3(b)(1), (3), (6), and (8) of the MARS Rule,
15 16 C.F.R. § 322.3(b)(1), (3), (6), and (8) and Regulation O, 12 C.F.R. § 1015.3(b)(1),
16 (3), (6), and (8).

17 **Count VI**

18 55. In numerous instances on or after December 29, 2010, in connection with
19 providing, offering to provide, or arranging for others to provide any mortgage
20 assistance relief service, Defendants have made representations, expressly or by
21 implication, about the benefits, performance, or efficacy of their mortgage assistance
22 relief services when, at the time such representations were made, the Defendants did not
23 possess and rely upon competent and reliable evidence that substantiated that the
24 representations were true, including, but not limited to, representations by Defendants
25 that the vast majority of their clients obtain the solutions they contract for.

26 56. Defendants' practices as alleged in Paragraph 51 are unfair or deceptive
27 acts or practices that violate Section 322.3(c) of the MARS Rule, 16 C.F.R. § 322.3(c),
28 and Regulation O, 12 C.F.R. 1015.3(c).

1 **Count VII**

2 57. In numerous instances on or after December 29, 2010, in connection with
3 providing, offering to provide, or arranging for others to provide any mortgage
4 assistance relief service, Defendants have failed to disclose the following information, in
5 a clear and prominent manner, in their consumer-specific commercial communications:

- 6 a. “You may stop doing business with us at any time. You may accept
7 or reject the offer of mortgage assistance we obtain from your lender
8 [or servicer]. If you reject the offer, you do not have to pay us. If
9 you accept the offer, you will have to pay us (insert amount or
10 method for calculating the amount) for our services;”
11 b. “(Name of company) is not associated with the government, and our
12 service is not approved by the government or your lender;” and
13 c. “Even if you accept this offer and use our service, your lender may
14 not agree to change your loan.”

15 58. Defendants’ practices as alleged in Paragraph 53 are unfair or deceptive
16 acts or practices that violate Sections 322.4(b)(1), (2), and (3) of the MARS Rule,
17 16 C.F.R. §§ 322.4(b)(1), (2), and (3), and Regulation O, 12 C.F.R. § 1015.4(b)(1), (2),
18 and (3).

19 **CONSUMER INJURY**

20 59. Consumers have suffered and will continue to suffer substantial injury as a
21 result of Defendants’ violations of the FTC Act and the MARS Rule. In addition,
22 Defendants have been unjustly enriched as a result of their unlawful acts or practices.
23 Absent injunctive relief by this Court, Defendants are likely to continue to injure
24 consumers, reap unjust enrichment, and harm the public interest.

1 **THE COURT’S POWER TO GRANT RELIEF**

2 60. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
3 grant injunctive and such other relief as the Court may deem appropriate to halt and
4 redress violations of any provision of law enforced by the FTC. The Court, in the
5 exercise of its equitable jurisdiction, may award ancillary relief, including rescission or
6 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
7 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced
8 by the FTC.

9 61. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 626 of the
10 Omnibus Act, as clarified by Section 511 of the Credit Card Act, authorize this Court to
11 grant such relief as the Court finds necessary to redress injury to consumers resulting
12 from Defendants’ violations of the MARS Rule or Regulation O, including the
13 rescission or reformation of contracts and the refund of money.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and
16 19 of the FTC Act, 15 U.S.C. 53(b) and 57b, the Omnibus Act, and the Court’s own
17 equitable powers, requests that the Court:

18 A. Award Plaintiff such preliminary injunctive and ancillary relief as may be
19 necessary to avert the likelihood of consumer injury during the pendency of this action,
20 and to preserve the possibility of effective final relief, including, but not limited to,
21 preliminary injunctions;

22 B. Enter a permanent injunction to prevent future violations of the FTC Act
23 and the MARS Rule or Regulation O by Defendants;

24 C. Award such relief as the Court finds necessary to redress injury to
25 consumers resulting from Defendants’ violations of the FTC Act and the MARS Rule or
26 Regulation O, including, but not limited to, rescission or reformation of contracts,
27 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
28

1 D. Award Plaintiff the costs of bringing this action, as well as such other and
2 additional relief as the Court may determine to be just and proper.

3
4 Dated: _____, 2012

5 Respectfully submitted,
6 WILLARD K. TOM
7 General Counsel

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9 MAXINE R. STANSELL
10 KATHRYN C. DECKER
11 Attorneys for Plaintiff
12 Federal Trade Commission
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