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 22 CENTRAL DISTRICT OF CALIFORNIA

23 FEDERAL TRADE COMMISSION,
 THE PEOPLE OF THE STATE OF
 24 CALIFORNIA, AND THE STATE OF
 MISSOURI,
 25 Plaintiffs,
 26 v.
 27
 28 US FORECLOSURE RELIEF CORP.,

Case No. SACV09-768 JVS(MLGX)

 COMPLAINT FOR PERMANENT
 INJUNCTION AND OTHER
 EQUITABLE RELIEF

1 a corporation, also d/b/a U.S.
2 Foreclosure Relief, Inc., Lighthouse
3 Services, and California Foreclosure
Specialists,

4 GEORGE ESCALANTE, individually
5 and as an officer of US
FORECLOSURE RELIEF CORP.,

6 CESAR LOPEZ, individually and also
7 trading and doing business as H.E.
Service Company, and

8 ADRIAN POMERY, ESQ.,
9 individually and also trading and doing
business as Pomery & Associates,

10 Defendants.

11 Plaintiffs, the Federal Trade Commission ("FTC" or "Commission"), the
12 People of the State of California, and the State of Missouri, for their complaint
13 allege:

14 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
15 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
16 Telemarketing and Consumer Fraud Abuse Prevention Act ("Telemarketing Act"),
17 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent
18 injunctive relief, rescission or reformation of contracts, restitution, disgorgement of
19 ill-gotten monies, and other equitable relief for Defendants' acts or practices in
20 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade
21 Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

22 2. The People of the State of California, by and through Edmund G.
23 Brown Jr., Attorney General of the State of California, brings this action under
24 Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and under the
25 California unfair competition law ("UCL") codified at California Business and
26 Professions Code § 17200 *et seq.*, and false advertising law ("FAL") codified at
27 California Business and Professions Code § 17500 *et seq.*, to obtain injunctive
28

1 such equitable relief as may be appropriate in each case, including restitution and
2 disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

3 9. The State of California is one of the fifty sovereign states of the
4 United States. The Attorney General is authorized to initiate federal district court
5 proceedings to enjoin telemarketing practices that violate the FTC's Telemarketing
6 Sales Rule, and in each such case, to obtain damages, restitution, and other
7 compensation on behalf of residents of the State of California, and to obtain such
8 further relief as the Court may deem appropriate. 15 U.S.C. § 6103(a). The
9 Attorney General also brings pendent or supplemental UCL and FAL claims in the
10 name of the People of the State of California to obtain injunctive relief, restitution,
11 civil penalties, and any such further relief as the Court may deem appropriate under
12 pendent or supplemental jurisdiction. 28 U.S.C. § 1367.

13 10. Plaintiff State of Missouri is one of fifty sovereign states of the United
14 States. The State of Missouri, through its Attorney General, is authorized to
15 initiate proceedings to enjoin violations of the Missouri Merchandising Practices
16 Act and to seek injunctions, restitution, civil penalties and other equitable relief as
17 the Court may deem appropriate. This Court has supplemental jurisdiction over
18 Plaintiff State of Missouri's claims under 28 U.S.C. § 1367.

19 **DEFENDANTS**

20 11. Defendant US Foreclosure Relief Corp. ("US Foreclosure Relief" or
21 "USFR"), also doing business as U.S. Foreclosure Relief, Inc., Lighthouse
22 Services, and California Foreclosure Specialists, is a California corporation with its
23 principal place of business at 1010 West Chapman Avenue, Suite 200, Orange, CA
24 92868. USFR transacts or has transacted business in this district and throughout
25 the United States.

26 12. Defendant George Escalante ("Escalante") is the owner and president
27 of US Foreclosure Relief. At times material to this Complaint, acting alone or in
28 concert with others, he has formulated, directed, controlled, had authority to

1 control, or participated in the acts and practices set forth in this Complaint.
2 Defendant Escalante, in connection with the matters alleged herein, transacts or has
3 transacted business in this district and throughout the United States.

4 13. Defendant Cesar Lopez ("Lopez") is an individual who trades and
5 does business as H.E. Service Company. H.E. Service Company is a sole
6 proprietorship with its principal place of business at 2125 East Katella Avenue,
7 Suite 330, Anaheim, CA 92806. At times material to this Complaint, acting alone
8 or in concert with others, Lopez has formulated, directed, controlled, had authority
9 to control, or participated in the acts and practices set forth in this Complaint.
10 Defendant Lopez, in connection with the matters alleged herein, transacts or has
11 transacted business in this district and throughout the United States.

12 14. Defendant Adrian Pomery, Esq. ("Pomery") is an individual who
13 trades and does business as Pomery & Associates. Pomery & Associates is a sole
14 proprietorship with its principal place of business at 2050 West Chapman Avenue,
15 Suite 221, Orange, CA 92868. At times material to this Complaint, acting alone or
16 in concert with others, Pomery has formulated, directed, controlled, had authority
17 to control, or participated in the acts and practices set forth in this Complaint.
18 Defendant Pomery, in connection with the matters alleged herein, transacts or has
19 transacted business in this district and throughout the United States.

20 15. Since at least Spring 2008 until at least November 2008, acting alone
21 or in concert with others, US Foreclosure Relief advertised, marketed, offered for
22 sale, or sold loan modification and foreclosure rescue services to consumers
23 throughout the United States. In or around December 2008, H.E. Service
24 Company and Pomery & Associates took over the operation of US Foreclosure
25 Relief and since that time have advertised, marketed, offered for sale, or sold loan
26 modification and foreclosure rescue services to US Foreclosure Relief clients.
27 Since that time, H.E. Service Company and Pomery & Associates, acting alone or
28 in concert with others, also advertised, marketed, offered for sale, or sold those

1 same services to other consumers throughout the United States.

2 COMMERCE

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

6 AVAILABILITY OF FREE LOAN MODIFICATION

7 AND FORECLOSURE RELIEF SERVICES

8 17. Numerous mortgage lenders and servicers have instituted free
9 programs to assist financially distressed homeowners by offering them the
10 opportunity to modify loans that have become unaffordable. Many of these "loan
11 modification" programs have expanded dramatically as lenders have increased
12 participation in the President's "Making Home Affordable" plan. Moreover,
13 numerous major mortgage lenders and servicers, non-profit and community-based
14 organizations, the federal government, and the news media have helped publicize
15 the availability of these free mortgage loan modification programs. Lenders often
16 notify consumers of the availability of these programs, or of consumers' eligibility,
17 through their "loss mitigation" departments. Proposed defendants divert
18 consumers from these free programs and induce them to spend thousands of dollars
19 on their purported "Loss Mitigation Services."

20 DEFENDANTS' BUSINESS PRACTICES

21 18. Defendants have advertised, marketed, offered for sale, and sold
22 purported home loan modification and foreclosure rescue services. Defendants
23 market their services to homeowners who are in financial distress and searching for
24 a loan modification.

25 19. At various times since Summer 2008, Defendants have made
26 outbound telemarketing calls to consumers, including to consumers on the National
27 Do Not Call Registry.

28 20. At various times since Spring 2008, Defendants have advertised their

1 loan modification services on various Internet websites, including
2 www.cafspecialists.com, www.stopforeclosuretogether.com,
3 www.pomerylaw.com, and www.homelegalassistance.com.

4 21. The www.cafspecialists.com website has contained, among other
5 things, the following statements:

6 a. US Foreclosure Relief prides itself on upholding the highest
7 standards of business ethics and competitive greatness. US
8 Foreclosure Relief provides homeowners with peace of mind:
9 knowing that they have taken a proactive approach to control
10 their destiny.

11 **b. Proven Track Record**

12 US Foreclosure Relief has created a proven track record in
13 creating successful coalitions with homeowners and lenders.
14 We have proven time and time again our ability to get the job
15 done - and do it well.

16 (Exhibit A)

17 22. The www.pomerylaw.com website has contained, among other things,
18 the following statements:

19 a. Losing your Home to Foreclosure? You have options, We can
20 help!

21 b. Pomery & Associates saves homes. Just call us and we can
22 help you stay in your home at a payment you can afford.

23 (Exhibit B)

24 23. The www.homelegalassistance.com website has featured a seal with a
25 legal scale inside it and has contained, among other things, the following
26 statements:

27 a. HOMEOWNERS LEGAL ASSISTANCE - Loan Modification
28 Services

- 1 b. Now is the perfect opportunity to negotiate a livable mortgage
2 rate, have your loan modified and stop foreclosure on your
3 dream home. Take advantage of the government bailout money
4 given to YOUR lender to help YOU. Act now before it's too
5 late!
- 6 c. Regardless of your current mortgage situation, Homeowners
7 Legal Assistance will strive to negotiate a reasonable mortgage
8 loan.
- 9 d. **At Homeowners Legal Assistance**, our mission and priority is
10 to provide homeowners in every city across America with an
11 ethical, affordable, and effective loss mitigation program to
12 avoid Foreclosures. Our vision is inspired by creating the
13 largest and most reputable loss mitigation law firm in the
14 country by providing client resolution and superior customer
15 service.
- 16 e. You will find that the skill, professionalism, and consideration
17 we offer each client is a truly stress relieving and positive
18 experience for you and your loved ones.
- 19 f. Our goal is to help you save your home!
- 20 g. We pressure your bank to pay attention to your needs because
21 they know and trust us. We negotiate a significant number of
22 cases each month and use that leverage when negotiating cases.
23 We have brought together a knowledgeable team from loss
24 mitigation, collections, real estate and banking industries to
25 offer the most complete negotiation program available.
- 26 h. We have rescued homeowners from foreclosure, adjustable
27 mortgages, and lack of equity. Our proven track record gives
28 us credibility with your lender, and our significant volume of

1 cases gives us leverage when negotiating. Homeowners Legal
2 Assistance is the right law firm to help you through this
3 difficult time.

4 (Exhibit C)

5 24. At various times since Spring 2008, Defendants have advertised
6 through radio advertisements, including but not limited to Exhibit D. That radio
7 advertisement contains the following statements:

- 8 a. Homeowners Legal Assistance would like to offer you a free,
9 no obligation consultation that will show you how to stop
10 foreclosure, reduce your interest rates, and save thousands on
11 your mortgage. Do not let this economic slowdown take your
12 home from you and your family.
- 13 b. Homeowners Legal Assistance is an attorney-based loan
14 modification firm that can negotiate the terms of your mortgage
15 so you can afford to live in and enjoy your home.
- 16 c. It does not matter how far behind you are on payment or what
17 your credit score is. Homeowners Legal Assistance is here to
18 listen and help.

19 (Exhibit D)

20 25. Consumers have contacted Defendants by calling toll-free numbers
21 provided in the Defendants' radio advertisements and on their websites and have
22 spoken to Defendants' representatives.

23 26. In numerous instances, during inbound and outbound telephone calls,
24 Defendants' representatives state to consumers that Defendants will stop any
25 foreclosure or sale date on the consumer's property, substantially lower the interest
26 rate on the consumer's home loan, change the interest rate on the consumer's home
27 loan from an adjustable rate to a fixed rate, substantially reduce the principal
28 amount of the consumer's home loan, negotiate any late payments or fees, and

1 substantially lower the consumer's monthly home loan payment.

2 27. In numerous instances, during inbound and outbound telephone calls,
3 Defendants' representatives tell consumers that Defendants have a success rate of
4 85 percent or greater, and that Defendants can obtain a loan modification for
5 consumers within a specified period of time, often no more than two months.

6 28. In numerous instances, during inbound and outbound telephone calls,
7 Defendants' representatives tell consumers that, if they are not satisfied with the
8 company's service, they are entitled to a refund of the fees paid, minus a
9 processing fee.

10 29. In numerous instances, during inbound and outbound telephone calls,
11 Defendants' representatives advise consumers not to contact their lenders or
12 answer inquires from their lenders. Defendants' representatives also tell some
13 consumers to stop paying their home loan while Defendants allegedly negotiate
14 with the consumers' lenders.

15 30. In numerous instances, Defendants require consumers to pay an
16 advance fee, typically \$1,800 to \$2,350, before Defendants render any service.

17 31. In numerous instances, Defendants fail to obtain the promised home
18 loan modifications that would make the consumers' loans more affordable.

19 **VIOLATIONS OF THE FTC ACT**

20 32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
21 deceptive acts or practices in or affecting commerce."

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

24 **COUNT I**

25 **False Loan Modification Claim**

26 **(By Plaintiff Federal Trade Commission)**

27 34. In numerous instances in connection with the advertising, marketing,
28 promotion, offering for sale, or sale of loan modification or foreclosure rescue

