

1 cause was argued and submitted for decision. The court, having considered the evidence and heard the
2 arguments of counsel and being fully advised, issues the following statement of decision:

3 **PARTIES**

4 1. Plaintiff is the People of the State of California, by and through the Attorney General, Bill
5 Lockyer.

6 2. Defendant Miao Huang (“Huang”) is an individual.

7 3. Defendant Walter Wenko (“Wenko”) is an individual.

8 4. Wenko and Huang have done business as Asian Pacific Legal Services (“APLS”) and
9 Asian Pacific Services (“APS”). For purposes of this statement of decision, in referring to Asian
10 Pacific Legal Services, Asian Pacific Services, APLS, APS or “Defendants,” the Court is referring
11 collectively to Wenko and Huang.

12 5. Plaintiff filed this lawsuit against three non-attorneys (Wenko, Huang, and a former
13 employee, Jing Ruggles) (“Non-Attorney Defendants”) and six attorneys (Mark Rose, Patricia Boag,
14 Peter Nelson, Walter Burrier, Hueston Fortner, and Karen O’Donnell) (collectively “Attorney
15 Defendants”). Of these, all defendants have entered into stipulated final judgments with the People
16 prior to the trial in this action, with the exception of Wenko and Huang.

17 6. On September 19, 2003, the Court granted terminating sanctions with respect to Wenko
18 and entered default against him. At the final status conference on October 1, 2003, the Court agreed to
19 permit evidence introduced at trial to be deemed admissible for purposes of the default prove-up
20 against Wenko.

21
22 **SUMMARY**

23 7. The operative pleadings are the People’s Complaint for civil penalties, injunction and
24 other equitable relief filed on October 3, 2001, and Huang and Wenko’s answer to the People’s
25 Complaint, served on or about April 26, 2002.

26 8. The People’s Complaint alleges three causes of action based on (1) violation of California
27 Business and Professions Code section 17200 et seq. (“Section 17200”); (2) violation of California
28 Penal Code section 653.55; and (3) violation of California Business and Professions Code section

1 17500 et seq. ("Section 17500").

2 9. In relevant summary, Plaintiff alleges the following with respect to Huang, and the
3 Court finds that the following allegations were proven by Plaintiff.

4 Wenko is a disbarred attorney who has been prohibited from practicing law in California since
5 May 15, 1998, when the California State Bar ("Bar") enrolled him as an inactive member of the Bar.
6 He was later disbarred on December 19, 1998.

7 Wenko and his wife, Huang, wholly owned and operated a business known as Asian Pacific
8 Legal Services and/or Asian Pacific Services from approximately April or May 1998 to at least
9 October 2001. They operated their business first in Alhambra, at 2618 Main Street, and later in
10 Monterey Park, at 606 Monterey Pass Road.

11 Defendants solicited prospective clients by, among other things, advertising they were a law
12 office that would provide clients with legal services from an experienced immigration attorney. They
13 advertised in the Zhong Guo Daily News, a daily Chinese newspaper, from April 1998 to September
14 2000. They also advertised in the Chinese Consumer Yellow Pages for the years 1999, 2000, and
15 2001.

16 During this same time period, from approximately April 1998 through 2001, Wenko and Huang
17 also held themselves out as a law office to APLS clients, whom they induced to enter into contracts for
18 which consumers paid between \$1,800 and \$8,000, to obtain "legal services" to be provided by "Asian
19 Pacific Attorney's Office" (which is the literal translation of the Chinese characters used to spell "Asian
20 Pacific Legal Services").

21 Wenko and Huang engaged in the unauthorized practice of law with respect to these APLS
22 clients, preparing the pleadings, letters to the Immigration and Naturalization Service ("INS"), and other
23 documents necessary for their clients' applications for asylum and related immigration relief. To
24 facilitate their unauthorized practice of law, Wenko and Huang hired appearance attorneys to make
25 discrete appearances on behalf of APLS clients before the INS asylum office and in immigration courts.

26 10. The Court finds that from at least February 1999 until at least October 2001, Huang violated
27 Section 17200 et seq. by violating (1) the California Immigration Consultants Act, Business and
28 Professions Code section 22440 et seq., (2) the California State Bar Act, Business and Professions

1 Code Section 6100 et seq., and (3) Business and Professions Code Section 17500 et seq.^{1/}

2 However, the Court finds that Plaintiff failed to prove beyond a reasonable doubt that Huang violated
3 Penal Code section 653.55.

4 11. Accordingly, the Court orders Huang to pay \$175,000 in civil penalties for violations of Section
5 17200 et seq. and \$175,000 in civil penalties for violations of Section 17500 et seq. In addition to the
6 \$350,000 in civil penalties, the Court orders full restitution for the three consumer victims who testified
7 at trial, and further issues a permanent injunction with respect to Huang.

8 **MATTERS DECIDED**

9 **I. VIOLATION OF SECTION 17200 ET SEQ.**

10 12. Section 17200 defines unfair competition as: “any unlawful, unfair or fraudulent business
11 act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by
12 Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
13 Code.” Violations of statutory and regulatory law constitute unfair competition within the purview of
14 Business and Professions Code section 17200. (*Bank of the West v. Superior Court* (1992) 2
15 Cal.4th 1254, 1266; *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35
16 Cal.3d 197, 209-210.) A fraudulent business act or practice is one that is likely to deceive members of
17 the public. (*Saunders v. Superior Court* (1974) 27 Cal.App.4th 832, 839.)

18 California’s unfair competition law (UCL) (§ 17200 et seq.) defines
19 ‘unfair competition’ to mean and include ‘any unlawful, unfair or
20 fraudulent business act or practice and unfair, deceptive, untrue or
21 misleading advertising and any act prohibited by [the false advertising
22 law (§ 17500 et seq.)]’ (§ 17200.) The UCL’s purpose is to protect
23 both consumers and competitors by promoting fair competition in
commercial markets for goods and services. [Citation.] ¶ The UCL’s
scope is broad. By defining unfair competition to include any ‘unlawful
... business act or practice’ (§ 17200, italics added), the UCL
permits violations of other laws to be treated as unfair competition that
is independently actionable. [Citation.]

24 (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.)

25 The UCL overlaps with Section 17500 in regulating false advertising.
26 As the California Supreme Court explained in *Kasky v. Nike, supra*:
This court has recognized that ‘[a]ny violation of the false advertising

27
28 1. Unless otherwise noted, all statutory references are to the California Business and Professions Code.

1 law . . . necessarily violates' the UCL. [Citation.] We have also
2 recognized that these laws prohibit `not only advertising which is false,
3 but also advertising which[,] although true, is either actually misleading
4 or which has a capacity, likelihood or tendency to deceive or confuse
5 the public.' [Citation.] thus, to state a claim under either the UCL or
6 the false advertising law, based on false advertising or promotional
7 practices, `it is necessary only to show that `members of the public are
8 likely to be deceived.'" [Citations.]

9 (*Kasky v. Nike, supra*, 27 Cal.4th at pp. 950-951.)

10 As set forth below, Wenko and Huang's business scheme was unlawful and fraudulent.

11 **A. Violation of the Immigration Consultants Act**

12 10. Based upon the evidence presented at trial and the issue sanctions against Huang, the
13 Court finds that Huang committed numerous violations of the Immigration Consultants Act ("ICA"),
14 Business and Professions Code Section 22440 et seq., as follows. The ICA provides in part that:

15 "It is unlawful for any person, for compensation, other than persons authorized to
16 practice law or authorized by federal law to represent persons before the Board of
17 Immigration Appeals or the United States Immigration and Naturalization Service, to
18 engage in the business or act in the capacity of an immigration consultant within this
19 state **except as provided in this chapter.**"

20 (§ 22440, emphasis added.)

21 11. Wenko owned and operated a legal services business called Asian Pacific Legal Services
22 since at least May 1998. Since at least February 1999, Huang co-owned and operated that business
23 with Wenko.

24 12. Wenko, since May 1998, and Huang, since February 1999, acted as immigration
25 consultants by giving non-legal assistance or advice on immigration matters, in addition to legal advice
26 on immigration matters. Evidence of Wenko and Huang's business practices was presented at trial
27 through the testimony of consumer victims, attorneys formerly associated with APLS, as well as through
28 numerous documents bearing APLS' name, in letterhead and in documents submitted to the INS and
immigration courts.

13. From May 1998 to the present, neither Wenko nor Huang was authorized to practice law
or authorized by federal law to represent individuals at asylum interviews before the INS or in court
proceedings before the Board of Immigration Appeals (i.e., immigration courts). Accordingly, Wenko
and Huang were bound by the requirements of the ICA.

1 14. Persons acting in the capacity of immigration consultants are required to file a bond in the
2 amount of \$50,000.00, or a deposit in lieu of a bond, with the Secretary of State of the State of
3 California. (§ 22443.1.) The documentary evidence showed that Huang and Wenko failed to file such
4 a bond.

5 15. Persons acting in the capacity of immigration consultants are required, prior to providing
6 any services to clients, to provide written disclosures that include their names, addresses, telephone
7 numbers, agents for service of process, and evidence of compliance with applicable bonding
8 requirements and bond numbers, and to state that they are not attorneys. (§ 22442.2 , subd (a) and
9 (b).) Again, the documentary evidence showed that Huang and Wenko failed to file such a bond, and
10 thus, they failed to comply with these requirements.

11 16. Wenko and Huang were also required to provide written contracts that include
12 statements that they are not attorneys and may not perform the services of an attorney, and that the
13 client has a right to rescind the contract within 72 hours of signing it. (§ 22442.) The documentary
14 evidence showed that they failed to provide written contracts that included such statements.

15 17. The ICA prohibits an immigration consultant from making “false or misleading
16 statements to a client while providing services to the client.” (§ 22444.) Evidence of Wenko and
17 Huang’s false or misleading statements to APLS clients was presented at trial through (1) the
18 advertisements Huang and Wenko placed in the Zhong Guo Daily News and the Chinese Consumer
19 Yellow Pages, (2) the retainer agreements that Defendants entered into with APLS clients, (3) the
20 business cards APLS distributed to clients, and (4) testimony regarding the oral misrepresentations
21 made to APLS clients.

22 The Advertisements

23 APLS advertisements in the Zhong Guo Daily and the Chinese Consumer Yellow Pages
24 contained numerous false and misleading statements, designed to mislead consumers into thinking that
25 APLS was a law office. As Shiru Hong, a court-certified interpreter testified, the very name Asian
26 Pacific Legal Services translates to Chinese as “Asian Pacific Attorney’s Office.”

27 In the 1999, 2000, and 2001 Chinese Consumer Yellow Pages (“Yellow Pages”) for Southern
28 California, all three ads state that “Asian Pacific Attorney’s Office” specializes in asylum cases, other

1 immigration matters, and appeals. More than a year after Wenko’s disbarment, the 2000 Yellow
2 Pages ad still touted, “U.S. immigration specialists, Walter, Mark Rose prominent attorneys jointly
3 personally in charge . . . Experienced American attorneys.” Similarly, the 2001 Yellow Pages ad
4 promises that APLS clients will be “[a]ccompanied throughout the [immigration] process by
5 experienced American attorneys.”

6 Wenko and Huang’s Yellow Pages ads also had the tendency to mislead potential clients by
7 guaranteeing speedy, favorable outcomes in all immigration cases. The 2001 Yellow Pages ad
8 unrealistically guarantees that APLS clients will “[o]btain within the shortest time A#/work permit/green
9 card, until your entire family immigrates to the U.S. within 1 year.” Defendants presented no evidence
10 to show that Defendants had any reasonable basis for making such claims.

11 The circulation of the Chinese Consumer Yellow Pages in 2000 was 100,000, and in 2001 was
12 100,000.

13 From approximately April 1998 to at least September 2000, Defendants bought substantially
14 similar ads for APLS in Southern California Chinese newspapers, including the *Zhongguo Daily News*
15 [China Daily News]. These ads also misled potential clients into believing that APLS would provide
16 them with competent legal services from an attorney. Some of the ads touted “U.S. immigration
17 specialist, prominent attorney Walter personally in charge,” while others highlighted “Walter,” “Mike,”
18 “Peter,” “Robert,” and/or “Hueston” as being “personally in charge.”

19 Most of the ads also promised that attorneys would “personally handle court appearances” and
20 that APLS clients would be “[a]ccompanied by experienced American attorneys throughout the
21 [immigration] process.” As with their Yellow Pages ads, defendants’ newspaper ads tended to mislead
22 potential clients by guaranteeing speedy, favorable results in all immigration cases. Prior to July 2000,
23 most of the ads guaranteed that “within the shortest time you will obtain A#/work permit/green card,
24 until your entire family immigrates to the U.S. within 1 year.”

25 The circulation of the Zhong Guo Daily news in 2000 was 40,000.

26 The Retainer Agreements

27 None of the retainer agreements APLS provided to its clients contained the language required
28 by ICA and regulations interpreting ICA. (See Cal. Code Reg., tit. 16, § 3840.) As with the 41

1 retainer agreements introduced as Exh. 1, 17-18, 20-30 and 32-36, consumer victims Yao Xu and Q.
2 Yun Huang's agreements not only did not contain a statement that APLS was not an attorney's office,
3 but the agreement misleadingly suggested that APLS would provide these consumers with legal
4 services.

5 Ms. Carol Villareal's voluminous records testimony coupled with her demonstrative charts
6 proved that at the time of the search warrant in April 2001, there were at least 162 similar APLS
7 retainer agreements on file, which indicated on the individual retainer agreements themselves that APLS
8 clients agreed to pay total of \$802,100 in fees.

9 The Business Cards

10 APLS and its employees distributed business cards to clients which indicated "Walter Wenko,
11 Anorney [sic] at Law" and/or contained the misleading name "Asian Pacific Legal Services," which
12 translates into Chinese to mean "Asian Pacific Attorney's Office." As a result, consumers were led to
13 believe, and some did believe, that APLS was a law office.

14 False and Misleading Oral Statements

15 All three consumer victims testified that APLS made false and misleading oral statements to
16 them to the effect that APLS was an attorney's office capable of handling the consumer's immigration
17 case.

18 18. In operating their business, Huang and Wenko provided legal services and advice they
19 were not authorized to provide, in violation of Section 22441(d) of the ICA. For example, the
20 consumer victims testified that they met only with Huang, Wenko or another APLS employee to discuss
21 their cases, and that they only met the attorney who accompanied them to the asylum interview or the
22 court hearing on the day of the scheduled appearance.

23 Further evidence proved, through the testimony of former attorney defendants Peter Nelson
24 and Mark Rose, as well as the testimony of California Department of Justice Special Agent Supervisors
25 George Fawrup and Warren Wong, that Huang and Wenko prepared all the correspondence,
26 pleadings and documents to be submitted to the INS and the immigration courts on behalf of APLS
27 clients.

28 Specifically, Mr. Nelson testified that he never had control over client files, he did not consider

1 the APLS files to be his but rather those of the APLS office, never saw any of the APLS client files
2 and thus he did not review them, and that he did not maintain or work out of the APLS office. Mr.
3 Nelson further testified that his role at APLS was limited to making appearances, primarily asylum
4 interview appearances, and that as such, he never prepared any of the legal paperwork or advised any
5 of the APLS clients about their immigration case. Indeed, Mr. Nelson testified that prior to the actual
6 day of the interview, he never met with any APLS client and would sometimes actually have to call out
7 the client's name in the waiting room at the INS because he did not know what the client looked like.

8 Mr. Nelson further testified that Huang and Wenko maintained control over the clients' files and
9 cases and that he did not supervise Huang and Wenko. Rather, they paid him and instructed him
10 regarding when he was to make discrete appearances and on behalf of which clients he was to appear.
11

12 Similarly, Mr. Rose testified that the documents containing his name, which were found in client
13 files and in computer data seized pursuant to a search warrant at the APLS office and the home of
14 Huang and Wenko, were neither authored by him, nor did he authorize anyone at APLS to draft such
15 documents. Mr. Rose testified that he never signed any documents as the "attorney of record" for
16 APLS. As such, he was not the "attorney of record" for APLS clients, even though numerous
17 documents, including "Notice of Entry of Appearance as Attorney or Representative" forms (i.e., "G-
18 28" and "E-28" forms) seized pursuant to search warrant indicated he was. Moreover, Mr. Rose
19 testified that he never authorized APLS to sign his name on behalf of clients and further testified that all
20 signatures found in the possession of Huang and Wenko, in the client files located at their home and
21 office were not his.

22 **B. Unauthorized Practice of Law**

23 19. As described above in paragraph 18, Huang and Wenko's provision of legal services
24 within the context of their business scheme constituted the unauthorized practice of law. This
25 unauthorized practice of law violates not only the Immigration Consultants Act, section 22441, but also
26 section 6125 of the Business and Professions Code. Section 6125 of the State Bar Act provides that
27 "[n]o person shall practice law in California unless the person is an active member of the State Bar." (§
28 6125.)

1 20. “It is well settled in California that ‘practicing law’ means more than just appearing in
2 court.” (*Estate of Condon* (1998) 65 Cal.App.4th 1138, 1142.) Rather, the practice of law “includes
3 legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are
4 secured although such matter may or may not be [pending in court.” (*People v. Landlords
5 Professional Services* (1989) 215 Cal.App.3d 1599, 1604 [eviction service committed unauthorized
6 practice of law].)

7 21. Although mere clerical services or the provision of generalized legal information do not
8 require licensure, the rendering of personalized legal advice related to a specific client’s needs
9 constitutes the practice of law, especially when the advisor claims a level of expertise that increases the
10 likelihood that the client will follow the advice. (*People v. Landlords Professional Services, supra*,
11 215 Cal.App.3d at 1608-09.) "Providing advice as to which forms to use, which blanks to fill in with
12 what information . . . is itself the practice of law." (*Ibid.*) Thus, the selection of appropriate legal
13 instruments to fit a client's needs involves the practice of law. (See *People v. Sipper* (1943) 61
14 Cal.App.2d Supp. 844, 847, disapproved on other grounds, *Murgia v. Municipal Court* (1975) 15
15 Cal.3d 286.)

16 22. Wenko, Huang and their employees went far beyond providing mere clerical services
17 or generalized legal information to the public. The evidence showed that they - and no other - rendered
18 personalized legal advice after consulting with individual clients about the client’s specific needs and
19 eligibility for asylum. In addition, they collected what they themselves describe in their retainer
20 agreements as “attorney’s fees” and prepared documents to be submitted to the INS and/or the
21 immigration courts on behalf of clients over an attorney’s name, often without that attorney’s
22 knowledge.

23 23. The Court finds that Huang not only engaged in the unauthorized practice of law herself,
24 but that she also aided and abetted Wenko to engage in the unauthorized practice of law.

25 A party, such as Huang, who aids and abets deceptive or unlawful conduct or furnishes the
26 means for its accomplishment is equally liable with those who directly perpetrate the misconduct. (See
27 *People v. Bestline Products, Inc.* (1972) 61 Cal.App.3d 879, 918.) Liability is imposed on one who
28 aids and abets another’s wrongful conduct if the individual “(a) knows the other’s conduct constitutes a

1 breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives
2 substantial assistance to the other in accomplishing a tortious result and the person's own conduct,
3 separately considered, constitutes a breach of duty to the third person." (*Saunders v. Superior Court*
4 (1994) 27 Cal.App.4th 832, 846 [section 17200 action].) "Aiding and abetting requires not
5 agreement, but simply assistance." (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55,
6 78.)

7 Huang knew about Wenko's deceptive tactics to get around his disbarment, and she provided
8 substantial assistance or encouragement despite such knowledge. Indeed, Huang furnished the means
9 for Wenko's deception because she was the means by which Wenko could gain access to the Chinese-
10 speaking clients whom he sought to deceive.

11 Plaintiff presented ample evidence that Huang aided and abetted Wenko in the unauthorized
12 practice of law. This evidence was presented through the testimony of the three consumer victims,
13 through the advertisements these victims relied upon in seeking APLS' services, and through the
14 numerous APLS retainer agreements, G-28 and E-28 forms, correspondence to and from the INS and
15 the immigration courts, and pleadings found in the search of Defendants' home and office. The
16 evidence showed that Wenko and Huang used attorney's names, including that of Mark Rose and
17 Peter Nelson, to perpetuate the facade that their office was an attorney's office - and not the non-
18 attorney Defendants themselves - who was representing the clients through the immigration application
19 process.

20 24. Additionally, Wenko, with Huang aiding and abetting his actions, violated Section 6126
21 of the State Bar Act. Section 6126 prohibits a disbarred attorney, such as Wenko, from advertising or
22 holding himself out as practicing or otherwise entitled to practice law. Huang aided and abetted Wenko
23 in this unlawful practice, by, among other things, making oral misrepresentations to clients that Wenko
24 was a lawyer and was authorized to practice law.

25 **C. False Advertising**

26 25. As detailed in paragraph 17, the numerous advertisements APLS ran in the Zhong Guo
27 Daily News and the Chinese Consumer Yellow Pages also violated ICA and the State Bar Act. These
28 advertisements each individually also constitute a separate violation of Section 17500, as discussed

1 below.

2 **II. VIOLATION OF SECTION 17500 ET SEQ.**

3 26. Section 17500 provides in part that, “It is unlawful for any person, firm, corporation or
4 association . . . to make or disseminate or cause to be made or disseminated before the public in this
5 state, or to make or disseminate or cause to be made or disseminated from this state before the public
6 in any state . . . any statement . . . which is untrue or misleading, and which is known, or which by the
7 exercise of reasonable care should be known, to be untrue or misleading . . .” (§ 17500.) Under
8 Section 17500, a statement is impermissibly untrue or misleading if the statement has the capacity to
9 mislead members of the public. (*Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442,
10 451; *Chern v. Bank of America* (1976) 15 Cal.3d 866, 876; *People ex rel. Mosk v. Lynam* (1967)
11 253 Cal.App.2d 959, 965-966.) As the California Supreme Court has declared:

12 Under this section [Bus. & Prof. Code, §17500], a statement is false or
13 misleading if members of the public are likely to be deceived. Intent of the
14 disseminator and knowledge of the customer are both irrelevant. Referring to
15 both section 17500 and Civil Code section 3369 [now Bus. & Prof. Code,
§17200], it has been said: ‘The statute affords protection against the probability
or likelihood as well as the actuality of deception or confusion.’ [Citation
omitted.]

16 (*Chern v. Bank of America, supra*, 15 Cal.3d at 876; see *Ball v. American Trial Lawyers Assn.*
17 (1971) 14 Cal.App.3d 289, 310.)

18 Section 17500 makes it unlawful for any person to make any statement that the person knows
19 or by the exercise of reasonable care should know to be untrue or misleading in order to sell goods or
20 services. Section 17500's prohibition embraces both deceptive advertising in general and untrue and
21 misleading oral statements made directly to individuals by telephone or in-person. (See *Ford Dealers*
22 *Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 358.)

23 Any violation of section 17500 “‘necessarily violates’ the UCL.” (*Kasky v. Nike* (2002) 27
24 Cal. 4th 939, 950.) The capacity or likelihood that a statement might mislead is the touchstone of a
25 violation. Actual deception need not be shown, and the consumer’s knowledge, reasonable reliance,
26 and damage are likewise not elements of the offense and need not be pleaded or proven. (See
27 *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211
28 [“*Children’s Television*”].)

1 The California Supreme Court has recognized that both sections 17200 and 17500 “prohibit
2 ‘not only advertising which is false, but also advertising which[,] although true, is either actually
3 misleading or which has a capacity, likelihood or tendency to deceive or confuse the public.’” (*Kasky*
4 *v. Nike, supra*, 27 Cal. 4th at 951, quoting *Leoni v. State Bar* (1985) 39 Cal.3d 609, 626.

5 Thus, to state a claim under either section 17200 for unfair business practices or section 17500
6 for false advertising, “it is necessary only to show that `members of the public are likely to be
7 deceived.’” (*Kasky v. Nike, supra*, 27 Cal. 4th at 951 quoting *Committee on Children’s Television,*
8 *Inc. v. General Foods Corp., supra*, 35 Cal.3d at 211.) The primary evidence in a false advertising
9 case is the advertising itself. (*Brockey v. Moore* (2003) 107 Cal.App. 4th 86 [use of the term “legal
10 aid” by a non-attorney is misleading].)

11 27. The advertisements Wenko and Huang published, described in paragraph 17 were likely
12 to deceive the public, if not outright false, and therefore they constitute false and misleading statements
13 in violation of Section 17500.

14 28. Additionally, the retainer agreements, business cards, and Defendants’ oral
15 misrepresentations, described in paragraph 17, also constitute false and misleading statements for
16 purposes of Section 17500.

17 29. The Section 17500 violations described above are also independently actionable under
18 Section 17200. Accordingly, the Court finds that such violations form the basis for civil penalties under
19 Section 17200 as well as independently under Section 17500.

20 **III. No Violation of Penal Code Section 653.55**

21 30. Plaintiff also alleges a cause of action for violation of Penal Code Section 653.55.
22 Section 653.55 makes it a misdemeanor for “any person for compensation to knowingly make a false
23 or misleading material statement or assertion of fact in the preparation of an immigration matter which
24 statement or assertion is detrimentally relied upon by another.” (Pen. Code, § 653.55.) In a civil
25 action brought by the Attorney General, any person who violates section 653.55 “shall be liable” for
26 civil penalties of up to \$2,500 per violation. (Pen. Code, § 653.59.)

27 31. If the standard of proof for this cause of action were the preponderance of the evidence,
28 the Court would find Huang and Wenko violated Penal Code Section 653.55. However, because the

1 standard of proof for a penal code section violation is proof beyond a reasonable doubt, the Court finds
2 that Plaintiff did not meet its burden. Accordingly, the Court finds no liability on the part of Huang
3 based on Penal Code Section 653.55.

4 **AFFIRMATIVE DEFENSES**

5 32. Huang’s answer contains a general denial of the allegations in Plaintiff’s Complaint.
6 Huang’s answer seemingly contains one affirmative defense, in which she and Wenko assert “that this
7 court lacks subject matter jurisdiction as a result of the pre-emption [sic] of the U.S. immigration Laws
8 by congress.” The answer further purports that “Defendants reserve every defense available to them
9 including affirmative all [sic] defenses.”

10 33. Huang has failed to prove her affirmative defenses. She presented neither credible
11 evidence nor argument to support any of her defenses. The gravamen of Huang’s defense at trial was
12 that she was nothing more than an administrative assistant who performed clerical tasks at her
13 husband’s place of business. However, the overwhelming weight of the evidence revealed that Huang
14 co-owned the APLS business with Wenko, that she was responsible for placing the misleading
15 advertisements described above, and that, at a minimum, she assisted Wenko in the running of the
16 APLS business.

17 Huang has the burden of proof and burden of production as to her affirmative
18 defenses. (Evid. Code, §§ 500 & 550.) Having offered no evidence to support her affirmative
19 defenses, the Court rules that these defenses are unproven.

20 **REMEDIES**

21 33. Permanent Injunction: In light of the evidence presented in this case, and pursuant to
22 Business and Professions Code sections 17203 and 17535, the Court orders that a permanent
23 injunction be entered against Huang, to enjoin her from making the kind of misleading statements and
24 engaging in the kind of unfair acts of competition shown in this case.

25 34. Civil Penalties: Section 17206 provides that "[a]ny person who engages, has engaged, or
26 proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand
27 five hundred dollars (\$2,500) for each violation" (Emphasis added.) A separate civil penalty of
28 up to \$2,500 is likewise established for violations of Section 17500. (See Bus. & Prof. Code, §

1 17536.)

2 The imposition of a penalty under Section 17206 and of a penalty under Section 17536
3 for each violation is mandatory, although the precise assessment is discretionary. (*People v. Custom*
4 *Craft Carpets* (1984) 159 Cal.App.3d, 676, 686; *People v. National Association of Realtors*
5 (1984) 155 Cal.App.3d 578, 585.) The civil penalty remedies are cumulative to each other. (See Bus.
6 & Prof. Code, §§ 17205 and 17534.5.) Thus, a court is authorized to impose a cumulative civil
7 penalty under Sections 17206 and 17536 of up to \$5,000 per violation (see generally *People v.*
8 *Toomey* (1985) 157 Cal.App.3d 1, 22).

9 Having considered the relevant factors in determining the amount of civil penalties, the
10 Court orders that Huang pay civil penalties of \$350,000.00: \$175,000 in civil penalties for violations of
11 Section 17500, and \$175,000 in civil penalties for violations of Section 17200. The Court calculates
12 such penalties as follows: penalties are assessed for each deceptive advertised Defendant used, for
13 each deceptive and unlawful retainer agreement Defendant used, for each deceptive business card
14 Defendant used, for each deceptive statement made to APLS clients, and for each violation of the
15 Immigration Consultants Act.

16 Just reviewing the \$350,000.00 penalty assessed on the basis of the advertisements shows the
17 reasonableness of such a penalty amount, because the advertising contracts indisputably signed by
18 Huang, in and of themselves, justify a civil penalty substantially in excess of \$350,000. Specifically,
19 Plaintiff presented evidence of sixteen advertising contracts signed by Huang for APLS advertisements,
20 which ran three times a week in the Zhong Guo Daily News from February 1999 through July 2000.
21 (See Trial Ech. 130.) This constitutes a minimum of 204 violations - one for each ad that ran on each
22 different day - and as many violations as the number of consumers who read the APLS advertisement
23 in the Zhong Guo Daily News. (See *People v. Superior Court (Olson)* (1979) 92 Cal.App.3d 181.)

24 Similarly, Huang signed two advertising contracts with the Chinese Consumer Yellow Pages for
25 APLS ads that ran year round in 2000 and 2001. (See Trial Ech. 126.) This constitutes a minimum
26 of two violations - one for each annual ad - and as many 100,000, the circulation of the yellow pages,
27 or at a minimum, an additional violation for each consumer who read the APLS advertisement in the
28 Chinese Consumer Yellow Pages. See *People v. Superior Court (Olson)* (1979) 92 Cal.App.3d

1 181.^{2/}

2 35. Restitution: The Supreme Court has held that “section 17535 authorizes restitution not
3 only of any money which has been acquired by means of an illegal practice, but further, permits an
4 order of restitution of any money which a trial court finds ‘may have been acquired by means of any ...
5 [illegal] practice.’ (Italics added.) This language, we believe, is unquestionably broad enough to
6 authorize a trial court to order restitution without requiring the often impossible showing of the
7 individual’s lack of knowledge of the fraudulent practice in each transaction. . . . We do not deter
8 indulgence in fraudulent practices if we permit wrongdoers to retain the considerable benefits of their
9 unlawful conduct.” (*Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442, 451.)

10 Pursuant to Business and Professions Code sections 17203 and 17535, the Court orders
11 restitution for those consumer victims who testified at the trial in this action, for the amounts these
12 victims paid to APLS pursuant to the retainer agreements they entered into with APLS. These
13 amounts are as follows: (1) \$5,000 payable as restitution to consumer victim Miao Yun Huang; (2)
14 \$1,500 payable as restitution to consumer victim Kean (a.k.a. Jennifer) Hung; and (3) \$2,500 payable
15 as restitution for Yao (a.k.a. Irene) Xu.

16 36. This document is the statement of decision.

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18 Dated: _____, 2004

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The Hon. Jon Mayeda

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21 Submitted By:

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2. The numerical calculations are as follows:

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206 (204 newspaper ads + 2 yellow pages ads) violations under Section 17200 @ \$1,000.

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+ 206 (204 newspaper ads + 2 yellow pages ads) violations under Section 17500 @ \$1,000.

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= 412,000.00 > \$350,000.00.

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SABRINA S. KIM
OFFICE OF THE ATTORNEY GENERAL
Counsel for Plaintiff,
The People of the State of California

1 of counsel and good cause appearing therefrom:

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

3 1. The Court has jurisdiction of the subject matter and the parties.

4 2. Entry of this Final Judgment and Permanent Injunction (“Judgment”) is in the
5 public interest.

6 3. The injunctive provisions of this Judgment are applicable to Defendant Miao Huang
7 (“Huang”), who has done business as Asian Pacific Legal Services and Asian Pacific Services, and to
8 her agents, employees, representatives, successors, assigns, and to all persons acting by, through,
9 under or on behalf of any of them, and to all persons acting in concert with or participating with any of
10 them with actual or constructive knowledge of this Judgment, all of whom shall be referred to as
11 “Huang.”

12 **INJUNCTIVE PROVISIONS REGARDING BUSINESS PRACTICES**

13 4. Pursuant to California Business & Professions Code sections 17203 and
14 17535, Huang shall be and is hereby permanently enjoined and restrained from, directly or indirectly,
15 doing any of the following acts or practices:

16 A. Engaging in the business or acting in the capacity of an immigration consultant, as
17 defined in California Business & Professions Code section 22441,^{1/} unless and until
18 Huang:

19 (1) Complies with Bus. & Prof. Code sections 22440, *et seq.* (the “Immigration
20 Consultants Act” or “ICA”) by:

- 21 a. Complying with section 22443.1 (a) by posting a bond in the amount of
22 \$50,000.00 with the Secretary of State of California;
23 b. Complying with section 22441 (d) by not providing any legal advice or
24 assistance;
25 c. Complying with section 22442.2 (b) by providing all clients with the
26 written disclosures required by such section 22442.2 (b) prior to

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28 1. All statutory references are to the California Business and Professions Code, unless otherwise noted.

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- providing any services;
- d. Complying with section 22442 by providing all clients with a written contract that complies with the requirements of such section;
- e. Complying with section 22443 (a) by delivering copies of all documents completed on behalf of clients to those clients as required by such section;
- f. Complying with section 22443 (c) by not retaining the original documents of clients as prohibited by such section and by returning all original documents to clients;
- g. Complying with section 22443 (a) by including Huang’s name and address on all immigration documents and forms prepared by Huang, as required by such section;
- h. Complying with section 22442.2 (a) and 22444 (d) by conspicuously displaying in Huang’s office(s) notices which comply with the requirements of such sections;
- i. Complying with section 22442.2 (c) by including in any advertisement for services the information required by such section;
- j. Complying with section 22442.3 by not using in any document or advertisement hereafter printed or published, any terms in a language other than English which literally translate into the words or terms “licensed,” “attorney,” “law office,” “legal services,” “immigration specialist,” “handle court appearances,” or other similar words or phrases that imply that non-attorney immigration consultants are attorneys, as prohibited by such section;
- k. Complying with section 22444 (a) by not making false and misleading statements, including but not limited to representing that non-attorneys are attorneys, that non-attorneys are qualified to provide legal services,

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or that clients are guaranteed success in their immigration cases, as prohibited by such section;

- l. Complying with section 22444 (b) by not making unwritten guarantees or promises to clients as prohibited by such section;
- m. Complying with section 22444 (b) by not making written guarantees or promises to clients without some basis in fact for making the guarantee or promise, as prohibited by such section;
- n. Complying with section 22444 (d) by not charging clients a fee for referring their cases to attorneys as prohibited by such section;

(2) Provides Plaintiff with a sample copy of any new contract subject to the ICA, which is entered into following the entry of this Judgment.

- B. Engaging in the practice of law.
- C. Aiding and abetting non-attorneys, including disbarred attorneys are engaged in the unauthorized practice of law.
- D. Assisting attorneys who are engaged in aiding and abetting non-attorneys in the unauthorized practice of law.
- E. Referring cases to attorneys for compensation.
- F. Soliciting business for attorneys or acting as a runner and/or capper for attorneys, as defined by Business & Professions Code section 6151 (a).
- G. Making untrue or misleading statements in connection with the solicitation or sale of legal services and advice, such statements including but not limited to:
 - (1) Representing that Huang and/or other non-attorneys are attorneys when they are not;
 - (2) Representing that attorney(s) are immigration specialists or experts when they are not;
 - (3) Representing that Huang and/or other non-attorneys are qualified to provide immigration legal services and advice when they are not;

- 1 (4) Representing that an immigration consultant business is staffed by attorneys or is
- 2 a law office when it is not;
- 3 (5) Representing that Huang and/or other non-attorneys will refer a client's case to
- 4 attorney(s) when they will not;
- 5 (6) Representing that an attorney or attorneys will handle a client's case when
- 6 attorney(s) will not handle it from the beginning and will not handle all aspects of
- 7 the client's case;
- 8 (7) Making any guarantee or promise that certain legal benefits or results can or will
- 9 be obtained when there is no basis in fact for making such a guarantee or
- 10 promise.

11 H. Otherwise committing unlawful, unfair and/or fraudulent business acts or
12 practices in violation of the Unfair Competition Law (Chapter 5 [commencing with Section 17200] of
13 Part 2 of Division 7 of the Business & Professions Code) or the False Advertising Law (Chapter 1
14 [commencing with Section 17500] of Part 3 of Division 7 of the Business & Professional Code).

15 I. Failing for a period of five years following entry of this Judgment to notify Plaintiff, not
16 later than five days after employment by an attorney, of her employment by an attorney who practices
17 in a capacity related to immigration matters.

18 **MONETARY RELIEF**

19 5. **Civil Penalties:** Pursuant to Business and Professions Code sections 17206 and
20 17536, Huang shall pay to the California Attorney General on entry of this Judgment a civil penalty in
21 the sum of THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000.00).

22 6. **Restitution:** Pursuant to Business and Professions Code sections 17203 and
23 17535, Defendant Huang, jointly and severally with Defendant Walter Wenko, shall pay full restitution
24 to those consumer victims who testified at the trial in this action, for the amounts these victims paid to
25 Huang's business, Asian Pacific Legal Services ("APLS") pursuant to the retainer agreements they
26 entered into with APLS, minus any refund already provided by APLS. These amounts are as follows:
27 (1) \$5,000 payable as restitution to consumer victim Qiao Yun Huang; (2) \$1,500 payable as
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1 restitution to consumer victim Kwan (a.k.a. Jennifer) Hung; and (3) \$2,500 payable as restitution for
2 Yao (a.k.a. Irene) Xu.

3 7. Plaintiff is the prevailing party. Huang and Defendant Walter Wenko shall jointly and
4 severally pay Plaintiff's costs.

5 **RETENTION OF JURISDICTION**

6 8. This Court shall retain jurisdiction over this matter for the purpose of enabling
7 any party to this Judgment to apply to the Court at any time for such further orders or directions as may
8 be necessary or appropriate for the construction or carrying out of this Judgment, for modification of
9 the injunctive provisions of this Judgment, and for Plaintiff to apply at any time for enforcement of any
10 provisions of this Judgment and for punishment of any violations of this Judgment.

11 9. This Judgment shall take effect immediately on its entry.

12 10. The clerk is ordered to enter this Judgment forthwith.

13 IT IS SO ORDERED:

14 Date: _____

15 _____
16 JON MAYEDA
17 JUDGE OF THE SUPERIOR COURT

18 Submitted by:

19 _____
20 SABRINA S. KIM

21 OFFICE OF THE ATTORNEY GENERAL
22 Counsel for Plaintiff,
23 The People of the State of California

1 the above-referenced court, the Honorable Jon Mayeda, presiding without a jury. The case was tried
2 on December 4, 8, 9, 10, 11, 15 and 16, 2003. Deputy Attorneys General Sabrina S. Kim and
3 Catherine Z. Ysrael appeared as counsel for Plaintiff the People of the State of California (“People” or
4 “Plaintiff”). Timothy McCandless appeared as counsel for Defendant Miao Huang (“Huang”), the only
5 remaining defendant in this action other than Wenko.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

7 3. The Court has jurisdiction of the subject matter and the parties.

8 4. Plaintiff has established that Walter Wenko has committed numerous violations of
9 sections 17200, 17500, 6125, and 22240 et seq. of the Business and Professions Code.

10 5. Entry of this Final Judgment and Permanent Injunction (“Judgment”) is in the
11 public interest.

12 6. The injunctive provisions of this Judgment are applicable to Defendant Walter
13 Wenko (“Wenko”), who has done business as Asian Pacific Legal Services and Asian Pacific Services,
14 and to his agents, employees, representatives, successors, assigns, and to all persons acting by,
15 through, under or on behalf of any of them, and to all persons acting in concert with or participating with
16 any of them with actual or constructive knowledge of this Judgment, all of whom shall be referred to as
17 “Wenko.”

18 **INJUNCTIVE PROVISIONS REGARDING BUSINESS PRACTICES**

19 7. Pursuant to California Business & Professions Code sections 17203 and
20 17535, Wenko shall be and is hereby permanently enjoined and restrained from, directly or indirectly,
21 doing any of the following acts or practices:

22 A. Engaging in the business or acting in the capacity of an immigration consultant, as
23 defined in California Business & Professions Code section 22441,^{1/} unless and until
24 Wenko:

25 (1) Complies with Bus. & Prof. Code sections 22440, *et seq.* (the “Immigration
26 Consultants Act” or “ICA”) by:

27 _____
28 1. All statutory references are to the California Business and Professions Code, unless otherwise noted.

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- a. Complying with section 22443.1 (a) by posting a bond in the amount of \$50,000.00 with the Secretary of State of California;
- b. Complying with section 22441 (d) by not providing any legal advice or assistance;
- c. Complying with section 22442.2 (b) by providing all clients with the written disclosures required by such section 22442.2 (b) prior to providing any services;
- d. Complying with section 22442 by providing all clients with a written contract that complies with the requirements of such section;
- e. Complying with section 22443 (a) by delivering copies of all documents completed on behalf of clients to those clients as required by such section;
- f. Complying with section 22443 (c) by not retaining the original documents of clients as prohibited by such section and by returning all original documents to clients;
- g. Complying with section 22443 (a) by including Wenko’s name and address on all immigration documents and forms prepared by Wenko, as required by such section;
- h. Complying with section 22442.2 (a) and 22444 (d) by conspicuously displaying in Wenko’s office(s) notices which comply with the requirements of such sections;
- i. Complying with section 22442.2 (c) by including in any advertisement for services the information required by such section;
- j. Complying with section 22442.3 by not using in any document or advertisement hereafter printed or published, any terms in a language other than English which literally translate into the words or terms “licensed,” “attorney,” “law office,” “legal services,” “immigration specialist,” “handle court appearances,” or other similar words or

1 phrases that imply that non-attorney immigration consultants are
2 attorneys, as prohibited by such section;

3 k. Complying with section 22444 (a) by not making false and misleading
4 statements, including but not limited to representing that non-attorneys
5 are attorneys, that non-attorneys are qualified to provide legal services,
6 or that clients are guaranteed success in their immigration cases, as
7 prohibited by such section;

8 l. Complying with section 22444 (b) by not making unwritten guarantees
9 or promises to clients as prohibited by such section;

10 m. Complying with section 22444 (b) by not making written guarantees or
11 promises to clients without some basis in fact for making the guarantee
12 or promise, as prohibited by such section;

13 n. Complying with section 22444 (d) by not charging clients a fee for
14 referring their cases to attorneys as prohibited by such section;

15 (2) Provides Plaintiff with a sample copy of any new contract subject to the ICA,
16 which is entered into following the entry of this Judgment.

17 B. Engaging in the practice of law.

18 C. Aiding and abetting non-attorneys who are engaged in the unauthorized practice of law.

19 D. Assisting attorneys who are engaged in aiding and abetting non-attorneys in the
20 unauthorized practice of law.

21 E. Referring cases to attorneys for compensation.

22 F. Soliciting business for attorneys or acting as a runner and/or capper for attorneys, as
23 defined by Business & Professions Code section 6151 (a).

24 G. Making untrue or misleading statements in connection with the solicitation or sale of
25 legal services and advice, such statements including but not limited to:

26 (1) Representing that Wenko and/or other non-attorneys are attorneys when they
27 are not;

28 (2) Representing that attorney(s) are immigration specialists or experts when

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they are not;

- (3) Representing that Wenko and/or other non-attorneys are qualified to provide immigration legal services and advice when they are not;
- (4) Representing that an immigration consultant business is staffed by attorneys or is a law office when it is not;
- (5) Representing that Wenko and/or other non-attorneys will refer a client’s case to attorney(s) when they will not;
- (6) Representing that an attorney or attorneys will handle a client’s case when an attorney(s) will not handle it from the beginning and will not handle all aspects of the client’s case;
- (7) Making any guarantee or promise that certain legal benefits or results can or will be obtained when there is no basis in fact for making such a guarantee or promise.

H. Otherwise committing unlawful, unfair and/or fraudulent business acts or practices in violation of the Unfair Competition Law (Chapter 5 [commencing with Section 17200] of Part 2 of Division 7 of the Business & Professions Code) or the False Advertising Law (Chapter 1 [commencing with Section 17500] of Part 3 of Division 7 of the Business & Professional Code).

I. Failing for a period of five years following entry of this Judgment to notify Plaintiff, not later than five days after employment by an attorney, of his employment by an attorney who practices in a capacity related to immigration matters.

MONETARY RELIEF

8. **Civil Penalties:** Pursuant to Business and Professions Code sections 17206 and 17536, Wenko shall pay to the California Attorney General on entry of this Judgment a civil penalty in the sum of 1.5 MILLION DOLLARS (\$1,500,000.00).

9. **Restitution:** Pursuant to Business and Professions Code sections 17203 and 17535, Defendant Wenko, jointly and severally with Defendant Miao Huang, shall pay full restitution to those consumer victims who testified at the trial in this action, for the amounts these victims paid to Wenko’s business, Asian Pacific Legal Services (“APLS”) pursuant to the retainer agreements they

1 entered into with APLS, minus any refund already provided by APLS. These amounts are as follows:
2 (1) \$5,000 payable as restitution to consumer victim Qiao Yun Huang; (2) \$1,500 payable as
3 restitution to consumer victim Kwan (a.k.a. Jennifer) Hung; and (3) \$2,500 payable as restitution for
4 Yao (a.k.a. Irene) Xu.

5 10. Plaintiff is the prevailing party. Wenko and Defendant Miao Huang shall jointly and
6 severally pay Plaintiff's costs.

7 **RETENTION OF JURISDICTION**

8 11. This Court shall retain jurisdiction over this matter for the purpose of enabling
9 any party to this Judgment to apply to the Court at any time for such further orders or directions as may
10 be necessary or appropriate for the construction or carrying out of this Judgment, for modification of
11 any injunctive provisions of this Judgment, and for Plaintiff to apply at any time for enforcement of any
12 provisions of this Judgment and for punishment of any violations of this Judgment.

13 12. This Judgment shall take effect immediately on its entry.

14 13. The clerk is ordered to enter this Judgment forthwith.

15 IT IS SO ORDERED:

16 Date: _____

17 JON MAYEDA
18 JUDGE OF THE SUPERIOR COURT

19 Submitted By:

20 _____
21 SABRINA S. KIM

22 OFFICE OF THE ATTORNEY GENERAL
23 Counsel for Plaintiff,
24 The People of the State of California
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