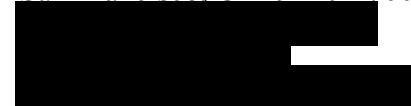


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[EXEMPT FROM FILING FEES
UNDER GOVT. CODE SEC. 6103]

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Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HOME RELIEF SERVICES, LLC, a
California limited liability company; THE
DIENER LAW FIRM, a California
professional corporation; GOLDEN STATE
FUNDING, INC., a Nevada corporation;
PAYMENT RELIEF SERVICES, INC., a
California corporation, CHRISTOPHER L.
DIENER, an individual; KATHLEEN
MARRERO-DAVIS, an individual;
TERENCE GREEN SR., an individual;
STEFANO MARRERO, an individual; MAYA
BURRELL MARRERO, an individual;
RONALD C. SPECTER, an individual;
KENNETH BUHLER, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No.

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

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

3 1. This action is brought against Defendants, who regularly violate California law
4 while preying on consumers facing foreclosure and the loss of their homes. Defendants have
5 unlawfully charged thousands of customers up front fees (ranging in the thousands of dollars)
6 while falsely promising to help them negotiate better mortgage terms from their lenders and to
7 rescue them from foreclosure. Despite taking these exorbitant advance fees, Defendants provide
8 little or no assistance to their customers.

9 2. As many other foreclosure rescue companies have done, in an attempt to avoid
10 statutory prohibitions on collecting fees before any services have been rendered, Defendants have
11 included one or more attorneys in their scheme. Noting the alarming trend in the number of
12 complaints issued against attorneys involved with foreclosure rescue companies, the State Bar has
13 issued an Ethics Alert cautioning attorneys from lending their names to loan modification
14 companies when non-lawyers purportedly negotiate with the lenders on the customers' behalf but
15 actually provide little to no services; meanwhile, the non-lawyers also collect fees from the
16 consumers and provide distressed homeowners with reckless and harmful advice on how to deal
17 with their lenders.

18 3. Thousands of California consumers have fallen prey to Defendants' unlawful scam,
19 losing thousands of dollars that could have been used toward mortgage payments or finding new
20 housing. In this action, Plaintiff seeks an order permanently enjoining Defendants from engaging
21 in their unlawful business practices, granting restitution for affected consumers, imposing civil
22 penalties, and all other relief available under California law.

23 DEFENDANTS AND VENUE

24 4. Defendant Home Relief Services, LLC (HRS) is a California limited liability
25 company with its principal place of business at 9910 Research Drive, Irvine, California 92618.
26 HRS has also conducted business at 9150 Irvine Center Drive, Irvine, California 92618, and at
27 1665 West Katella Avenue, Anaheim, California 92802. HRS has done business under the
28 fictitious name US Loan Mod Processing. HRS is not a law corporation or licensed as a real

1 estate broker or an entity authorized to make loans or extensions of credit. At all relevant times,
2 HRS has transacted and continues to transact business throughout California, including Orange
3 County.

4 5. Defendant the Diener Law Firm (Diener Law Firm) is a California professional
5 corporation with its principal place of business at 18881 Von Karman Avenue, Suite 1600, Irvine,
6 California 92612. At all relevant times, the Diener Law Firm has transacted and continues to
7 transact business throughout California, including Orange County.

8 6. Defendant Golden State Funding, Inc. (Golden State Funding) is a Nevada
9 corporation licensed to do business in California with its principal place of business at 9910
10 Research Drive, Irvine, California 92618. Golden State Funding also does business at 30211
11 Avenida de Las Banderas, Suite 200, Rancho Santa Margarita, California 92688. Golden State
12 Funding also does business under the fictitious names Golden State Funding & Realty and GS
13 Funding, Inc. At all relevant times, Golden State Funding has transacted and continues to
14 transact business throughout California, including Orange County. At all relevant times, Golden
15 State Funding was a corporation licensed by the California Department of Real Estate (DRE).

16 7. Defendant Payment Relief Services, Inc. (PRS) is a California corporation with its
17 principal place of business at 125 Baker Street, Suite 290, Costa Mesa, California 92626. PRS
18 has previously operated as Mercury Financial Services Corporation. PRS is not a law corporation
19 or licensed as a real estate broker or an entity authorized to make loans or extensions of credit. At
20 all relevant times, PRS has transacted and continues to transact business throughout California,
21 including Orange County.

22 8. Defendant Christopher L. Diener (Diener), an individual, is a licensed California
23 attorney doing business at the Diener Law Firm. Defendant Diener lists his business address as
24 18881 Von Karman Avenue, Suite 1600, Irvine, California 92612. Defendant Diener resides at 2
25 Roshelle Lane, Ladera Ranch, California 92694 and 22 Potters Bend, Ladera Ranch, California
26 92694. Defendant Diener, acting alone or in concert with others, has formulated, directed,
27 controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all
28

1 relevant times, Defendant Diener has transacted and continues to transact business throughout
2 California, including Orange County. Defendant Diener is a resident of Orange County.

3 9. Defendant Kathleen Marrero-Davis (Marrero-Davis) is an individual also known
4 as Kathleen Davis and Kathleen Marrero. Defendant Marrero-Davis is a principal of HRS and
5 also does business under the name Dynamic Business Solutions. Dynamic Business Solutions is
6 at 2433 West Jefferson Boulevard, Los Angeles, California 90018. Defendant Marrero-Davis
7 resides at 3529 5th Avenue, Los Angeles, California 90018. Defendant Marrero-Davis, acting
8 alone or in concert with others, has formulated, directed, controlled, authorized, or participated in
9 the acts and practices set forth in this Complaint. At all relevant times, Defendant Marrero-Davis
10 has transacted and continues to transact business throughout California, including Orange County.
11 Defendant Marrero-Davis is a resident of Los Angeles County.

12 10. Defendant Terence Green Sr. (Green), an individual, is a principal of HRS and
13 Golden State Funding. Defendant Green resides at 2 Merrill Hill, Ladera Ranch, California
14 92694. Defendant Green, acting alone or in concert with others, has formulated, directed,
15 controlled, authorized, or participated in the acts and practices set forth in this Complaint.
16 Defendant Green is not an attorney and is not licensed as a real estate broker or person authorized
17 to make loans or extensions of credit. At all relevant times, Green has transacted and continues to
18 transact business throughout California, including Orange County. Green is a resident of Orange
19 County.

20 11. Defendant Stefano Marrero (Marrero), an individual, is a principal of HRS and
21 Golden State Funding. Defendant Marrero resides at 12 Roshelle Lane, Ladera Ranch, California
22 92694. Defendant Marrero, acting alone or in concert with others, has formulated, directed,
23 controlled, authorized, or participated in the acts and practices set forth in this Complaint. At all
24 relevant times, Defendant Marrero was a real estate salesperson licensed by DRE and associated
25 with Golden State Financial. Defendant Marrero is not an attorney and is not licensed as a real
26 estate broker or person authorized to make loans or extensions of credit. At all relevant times,
27 Defendant Marrero has transacted and continues to transact business throughout California,
28 including Orange County. Defendant Marrero is a resident of Orange County.

1 12. Defendant Maya Burrell Marrero (Burrell Marrero), an individual, is a principal of
2 Golden State Funding. Defendant Burrell Marrero resides at 12 Roshelle Lane, Ladera Ranch,
3 California 92694. Defendant Burrell Marrero, acting alone or in concert with others, has
4 formulated, directed, controlled, authorized, or participated in the acts and practices set forth in
5 this Complaint. Defendant Burrell Marrero is a real estate broker licensed by DRE and, at times
6 relevant to this complaint, Defendant Burrell Marrero was the broker of record for Golden State
7 Funding and doing business as GS Funding. At all relevant times, Defendant Burrell Marrero has
8 transacted and continues to transact business throughout California, including Orange County.
9 Defendant Burrell Marrero is a resident of Orange County.

10 13. Defendant Ronald Craig Specter (Specter), an individual, is a licensed California
11 attorney and an agent of Defendant HRS. Defendant Specter lists his business address as 4685
12 MacArthur Court, Suite 422, Newport Beach, California 92660. Defendant Specter resides at 19
13 Lennox Court, Ladera Ranch, California 92694. Defendant Specter, acting alone or in concert
14 with others, has formulated, directed, controlled, authorized, or participated in the acts and
15 practices set forth in this Complaint. At all relevant times, Defendant Specter has transacted and
16 continues to transact business throughout California, including Orange County. Defendant
17 Specter is a resident of Orange County.

18 14. Defendant Kenneth Buhler (Buhler), an individual, is a principal of PRS.
19 Defendant Buhler resides at 3044 Kittendale Bay, Costa Mesa, California 92626. Defendant
20 Buhler, acting alone or in concert with others, has formulated, directed, controlled, authorized, or
21 participated in the acts and practices set forth in this Complaint. At times relevant to this
22 complaint, Defendant Buhler was a real estate broker licensed by DRE. At all relevant times,
23 Defendant Buhler has transacted and continues to transact business throughout California,
24 including Orange County. Defendant Buhler is a resident of Orange County.

25 15. The true names and capacities, whether individual, corporate, associate or
26 otherwise, of defendants sued herein as Does 1 through 100, inclusive, presently are unknown to
27 Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave to
28 amend this Complaint to allege the true names of Does 1 through 100 when the same have been

1 ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 fictitiously named defendants participated in some or all of the acts alleged herein.

3 16. The defendants identified in Paragraphs 4 through 15 above are referred to
4 collectively in this Complaint as the “Defendants.”

5 17. At all times mentioned herein, each of the Defendants acted as the principal, agent,
6 or representative of each of the other Defendants, and in doing the acts herein alleged, each
7 Defendant was acting within the course and scope of the agency relationship with each of the
8 other Defendants, and with the permission and ratification of each of the other Defendants.

9 18. At all relevant times, Defendants have controlled, directed, formulated, known
10 and/or approved of, and/or agreed to the various acts and practices of each of the Defendants.

11 19. Whenever reference is made in this Complaint to any act of any Defendant or
12 Defendants, such allegation shall mean that such Defendant or Defendants did the acts alleged in
13 this Complaint either personally or through the Defendant’s or Defendants’ officers, directors,
14 employees, agents and/or representatives acting within the actual or ostensible scope of their
15 authority.

16 20. At all times mentioned herein, each Defendant knew that the other Defendants
17 were engaging in or planned to engage in the violations of law alleged in this Complaint.
18 Knowing that other Defendants were engaging in such unlawful conduct, each Defendant
19 nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and
20 did encourage, facilitate, or assist in the commission of the unlawful acts alleged in this
21 Complaint, and thereby aided and abetted the other Defendants in the unlawful conduct.

22 21. Defendants have engaged in a conspiracy, common enterprise, and common
23 course of conduct, the purpose of which is and was to engage in the violations of law alleged in
24 this Complaint. The conspiracy, common enterprise, and common course of conduct continue to
25 the present.

26 22. Whenever reference is made in this Complaint to any act of Defendants, such
27 allegation shall mean that each Defendant acted individually and jointly with the other
28 Defendants named in that cause of action.

1 27. Defendant HRS and Defendant PRS are not licensed by DRE. None of the
2 Defendants have submitted advance fee agreement applications and none of the Defendants have
3 received the required response from DRE — known as “no objection” — allowing them to charge
4 advance fees from consumers.

5 28. Defendants market and sell their loan modification services to consumers who are
6 particularly vulnerable to fraud, including the disabled and/or those 65 years of age or older, and
7 Spanish-speaking consumers.

8 29. Before engaging Defendants’ services, many of Defendants’ customers had
9 already defaulted on their mortgages by falling behind on their mortgage payments.

10 30. Defendants market and sell their loan modification services to consumers even
11 when they are aware that a lender has recorded a notice of default on the consumer’s home.

12 31. Defendants market and sell their loan modification services to consumers even
13 when they are aware that a lender may have posted a notice of trustee sale on the consumer’s
14 property, which typically occurs three months after a notice of default has been recorded and
15 notifies the homeowner that a sale will take place within 20 days.

16 32. Defendants solicit consumers for loan modification services in a number of ways,
17 including advertising on radio and television, and direct mailings. Through these advertisements,
18 consumers are told that no matter how dire their housing situation, Defendants can offer a
19 solution to allow them to keep their homes. The advertisements list a toll-free number for them to
20 call for more information.

21 33. Defendants employ the use of logos and seals on their documents, which appear to
22 resemble the governmental seal of the United States Department of Housing and Urban
23 Development.

24 34. Defendants also solicit consumers through telemarketing and in-home solicitations,
25 and through the use of referrals from brokers and other third parties.

26 35. Defendants are not currently registered as telephonic sellers in the State of
27 California.

28

1 36. When consumers speak to Defendants' representatives over the telephone or in
2 person, they are told that Defendants have significant negotiating experience and success in
3 negotiating with their particular lenders. Defendants also tell consumers that their success rate in
4 modifying loans is 90% or 95%. In fact, Defendants are unable to obtain loan modifications for
5 most of their customers.

6 37. Despite the fact that they are unable to negotiate loan modifications for most of
7 their customers, Defendants' representatives make the following false statements to the consumer
8 after obtaining information about the prospective customer's mortgage:

9 (a) Defendants guarantee a loan modification for their customers;

10 (b) Defendants will be able to negotiate lower interest rates, including securing
11 fixed rates for adjustable loans, from lenders;

12 (c) Defendants will be able to secure principal reductions of the consumer's
13 mortgage;

14 (d) Defendants will be able to secure lower monthly mortgage payments for
15 the consumer;

16 (e) Defendants will be able to eliminate a consumer's second mortgage
17 through a loan modification; and

18 (f) Defendants will be able to get the consumer's arrears forgiven by the
19 consumer's lenders.

20 38. In some cases, Defendants have promised consumers that they could obtain
21 interest rates in the range of 4%; conversion of adjustable rate loans to low fixed-rate loans; 50%
22 principal reductions; and principal reductions of \$100,000 or more. Based on Defendants'
23 presentation of such favorable proposed terms, consumers are induced to sign contracts to engage
24 Defendants' loan modification services.

25 39. Defendants tell consumers that the loan modification process may be completed in
26 as few as 30 days or between 30 and 60 days. Once consumers engage Defendants' services,
27 however, Defendants revise the length of the process to as long as nine months. In fact, most
28 customers never obtain a loan modification from Defendants.

1 40. Defendants also tell consumers that if Defendants are unable to obtain a loan
2 modification for them, they will be able to receive a full refund of fees paid (or, in some cases,
3 minus a processing fee). When customers request a refund, however, Defendants deny the
4 request or do not respond at all.

5 41. Defendants also falsely tell consumers that attorneys affiliated with Defendants
6 review customers' financial paperwork and also negotiate with the lenders on their behalf. Indeed,
7 as a result of Defendants' solicitation, some of Defendants' customers are pressed by Defendants'
8 representatives to sign or otherwise unwittingly sign contracts with Defendants Diener and Diener
9 Law Firm, believe the contracts are with Defendant HRS or another entity. These contracts
10 obligate consumers to pay Defendants Diener and Diener Law Firm a fee and authorize
11 Defendants Diener and Diener Law Firm to hire the other Defendants, even though the consumer
12 has never spoken with nor ever heard of Defendants Diener and Diener Law Firm. Customers are
13 not given any opportunity to speak with or have any contact with any attorneys affiliated with
14 Defendants about their loans, and neither Defendants Diener and Diener Law Firm nor any other
15 attorneys affiliated with Defendants review customers' financial documents or negotiate with
16 lenders on their behalf. Moreover, Defendants' customers are informed by their lenders that the
17 lenders have not been contacted by Defendants Diener and Diener Law Firm, or any of their
18 lawyers, on the customers' behalf.

19 42. While California's law defining and regulating foreclosure consultants under the
20 Mortgage Foreclosure Consultant Act ("the Act"), as codified in Civil Code section 2945 *et seq.*,
21 includes exceptions for attorneys licensed to practice law in California when "render[ing]
22 [foreclosure consultant] service in the course of his or her practice as an attorney at law" (Civil
23 Code, § 2945.1(b)(1)), and while Defendant Diener is an attorney licensed to practice law in
24 California, the exemption does not apply here, nor do any of the exceptions set forth in the Act.
25 Defendant Diener does not perform (or claim to perform) foreclosure consultant services for
26 consumers while also providing them with legal services.

27 43. Defendants improperly collect fees before completing all services they agree to
28 provide to consumers.

1 44. Defendants' contracts with consumer are deficient in multiple ways, including but
2 not necessarily limited to the following:

3 (a) Defendants do not include a notice, printed in at least 14-point boldface
4 type, advising consumers that Defendants cannot take money until they have completely finished
5 doing everything they say they would do, and that Defendants cannot make consumers sign any
6 lien, deed of trust, or deed;

7 (b) Defendants fail to include in their contracts the address where a consumer
8 may send notice of cancellation of the contract with Defendants;

9 (c) Defendants do not always providing consumers with a notice of
10 cancellation form prescribed by law;

11 (d) Defendants collect advance fees for loan modification services, even when
12 the consumers they solicited for services had already defaulted on their mortgage obligations,
13 lenders had recorded notices of default against the consumers' properties, and/or lenders had
14 issued a notice of trustee sale of the consumers' properties, as described in Paragraphs 26 through
15 28 above; and

16 (e) Defendants are not registered with the Department of Justice as foreclosure
17 consultants.

18 45. Defendants inform consumers that they will be acting as their agent and negotiator
19 with their lenders. To that end and to control what is communicated to the lenders, Defendants
20 instruct customers not to speak to their lenders about their financial circumstances and to avoid
21 responding to any communications they received from the lender. Defendants instruct customers
22 to forward all communications from the lender to Defendants. In this way, Defendants'
23 customers are shut out of negotiations with their lender and depend on Defendants for
24 information about the progress of their loan modifications. However, when Defendants fail to
25 contact or remain in contact with their lenders, and the customers proceed under the Defendants'
26 advice and steadfastly refuse to communicate with their lenders, the lenders cancel or reject the
27 loan modification application altogether, due to the borrowers' perceived lack of interest or
28 cooperation with the lenders.

1 46. Defendants require consumers to pay Defendants an upfront fee ranging from
2 \$ 1,395 to \$ 4,444 before Defendants will render loan modification services. Many of the
3 distressed homeowners solicited do not have sufficient financial resources to make their mortgage
4 payments at all, much less pay Defendants' upfront fee and continue making their mortgage
5 payments.

6 47. Defendants inform consumers that they may suspend their mortgage payments (or
7 continue to do so, as the case may be) while they have engaged Defendants for loan modification
8 services. By doing so, consumers could then apply whatever money they would have normally
9 used to make mortgage payments to pay Defendants' upfront fee. Defendants assure consumers
10 that their lenders will either forgive these missed payments altogether or include them as part of a
11 future modification agreement. Defendants also advise consumers that lenders will not modify
12 mortgages that are not already in default, and that lenders will not be convinced that consumers
13 are in financial distress until they actually fail to make their monthly mortgage payment. As a
14 result, Defendants' customers, in reliance on this advice and assurance, miss mortgage payments
15 or continue to do so. In fact, heeding this advice caused many customers to have their foreclosure
16 proceeding accelerated by their lenders.

17 48. Defendants also prepare false financial statements that do not reflect their
18 customers' actual income and expenses and submit the fraudulently modified information to
19 lenders. Specifically, Defendants inflate income amounts or create additional income streams,
20 while also reducing expenses and debts, so that the financial worksheet ultimately submitted to
21 the lender reflects income greater than expenses. When their customers inquire about this
22 practice, Defendants explain that it was to ensure the success of their loan modification
23 application to the lender. In other instances, Defendants knowingly submit false information
24 related to consumers' income and expenses to federally insured lenders without consumers'
25 knowledge and/or permission.

26 49. Defendants solicit and market their loan modification services to Spanish-speaking
27 consumers in Spanish but present these consumers with English-language contracts to execute.
28

1 Defendants and their representatives did not explain the contract terms to the Spanish-speaking
2 consumers before they are asked to sign the documents.

3 50. After Defendants receive the advance fee payments from customers, Defendants
4 rarely remain in contact with them. While customers repeatedly call, e-mail, fax, or even visit
5 Defendants' offices seeking updates on the status of their loan modification applications,
6 Defendants regularly failed to respond to their inquiries.

7 51. In the instances where customers are able to make contact with Defendants and
8 their agents, Defendants tell customers to remain patient because negotiations are proceeding
9 normally with the lender. In other instances, Defendants tell customers that a modification
10 agreement is imminent or that Defendants have finalized modification agreements with their
11 lenders. These representations are false, and Defendants know they are false at the time they are
12 stated.

13 52. In fact, despite assurances to their customers to the contrary, Defendants make
14 very little effort to initiate contact or negotiate with lenders. Beyond forwarding to the lenders
15 authorization forms signed by their customers allowing Defendants to discuss the consumers'
16 loan with the lenders and sending the doctored financial worksheets that Defendants themselves
17 drafted, Defendants make no attempt to seek a loan modification on behalf of their customers.
18 Defendants' customers are informed by their lenders that the lenders have not been contacted by
19 Defendants Diener and Diener Law Firm, or any of their lawyers, on the customers' behalf. This
20 essentially represents the entirety of the actual services provided by Defendants.

21 53. When customers contact their lenders to confirm Defendants' statements about the
22 progress of their modification application, their lenders tell them they received no
23 communications from Defendants or, at most, that the only communication the lenders received
24 from Defendants was the signed authorization form allowing Defendants to discuss the
25 consumers' loan with the lenders and the financial worksheet. Often, the lenders try to contact
26 Defendants for more information regarding their clients' loans to no avail.

27 54. Lenders offer some of Defendants' customers forbearance agreements. Under the
28 terms of a forbearance agreement, the homeowner must pay back any missed mortgage payments

1 over time, plus interest, and the lender agrees not to foreclose on the borrower. While some
2 agreements allow the homeowner to delay making mortgage payments for a length of time, the
3 reprieve is short-lived and costly, and not a permanent loan modification. Forbearance
4 agreements do not reduce the interest rate or principal balance of the loan but merely allow
5 lenders to recover past due mortgage payments. Indeed, because these agreements typically
6 involve interest payments on past due amounts and can also include other fees and penalties that
7 accrued while the borrower missed making mortgage payments, the resultant mortgage payment a
8 homeowner must pay under a forbearance plan is usually much higher than the original amount.

9 55. When lenders have offered forbearance agreements to their customers, Defendants
10 claim to their customers that they fulfilled their obligations to negotiate a loan modification
11 because the customers have been given a way to resolve the matter with their lenders, no matter
12 how unaffordable the option and despite the fact that the “modification” proposed results in
13 higher, not lower, payments for the customers.

14 56. After customers realize that Defendants are not going to provide assistance with a
15 loan modification, the customers demand the promised refund of their fees. Defendants regularly
16 deny these refund requests or promise customers refunds but then fail to return any funds.

17 57. Defendants fail to obtain for their customers the promised mortgage loan
18 modifications that would lower their interest rates and/or principal. Instead, despite having paid
19 thousands of dollars to Defendants to prevent such an occurrence, customers lose their homes to
20 foreclosure, or must secure a short sale or are forced to attempt to negotiate a modification with
21 their lenders without any assistance from Defendants.

22 58. Consumers retain Defendants to be their negotiator and advisor during the loan
23 modification process. Defendants then use information provided by their customers to market
24 their real estate services to lenders. Defendants advertised *to their own customers’ lenders* that,
25 on average, it would take eight months before lenders could sell their clients’ homes. This pitch
26 is not meant to advantage the customer; rather, Defendants mean to highlight their “retail auction”
27 services to lenders, whereby Defendants act as the lenders’ agent in a short sale of their
28 customers’ homes. Defendants assure the lenders that Defendants could short sell their

1 customers' homes in 45 days or less. By exploiting their trusted position with their customers
2 and their inside information about their customers' financial circumstances, Defendants attempt
3 to use this information for the benefit of themselves and the lenders, and to the extreme detriment
4 of their customers.

5 59. Defendants acted as mortgage loan brokers in connection with negotiating home
6 loans for customers, performing services for customers in connection with home loans, and/or
7 engaging in any other conduct requiring real estate licensure and, therefore, owed a fiduciary duty
8 to each customer. That fiduciary duty imposed an obligation (1) to make a full and accurate
9 disclosure of the status of the customer's loan modification application and the material terms of
10 any proposed modification agreement that might affect a borrower's decision to accept the
11 modification; (2) to act always in the utmost good faith toward the customer; (3) to act in
12 accordance with principles of complete loyalty to the customer's best interests and to the
13 exclusion of all others' interests; (4) to avoid taking any positions or making any statements that
14 are in conflict with the customer's best interests; and (5) not to obtain any advantage over the
15 customer. By offering to be the lenders' agent to short sale their customers' homes while
16 purporting to act as their customers' agent in loan modification, Defendants violated their
17 fiduciary duties to their customers.

18 60. Consumers have suffered and continue to suffer substantial monetary loss to
19 Defendants as a result of Defendants' unlawful acts and practices. Defendants have been unjustly
20 enriched as a result of the unlawful practices set forth in this Complaint. Absent injunctive relief
21 from the Court, Defendants are likely to continue to injure consumers and harm the public interest.

22 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

23 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500

24 (UNTRUE OR MISLEADING REPRESENTATIONS)

25 61. Plaintiff realleges Paragraphs 1 through 60 and incorporates these Paragraphs by
26 reference as though they were fully set forth in this cause of action.

27 62. Defendants have violated and continue to violate Business and Professions Code
28 section 17500 by making or causing to be made untrue or misleading statements with the intent to

1 induce members of the public to purchase Defendants' services, as described in Paragraphs 32
2 through 41 above. Defendants' untrue or misleading representations include, but are not limited
3 to, the following:

- 4 (a) That Defendants' success rate in modifying loans is 90% or 95%;
- 5 (b) That Defendants have significant negotiating experience and success with
6 particular lenders;
- 7 (c) That Defendants guarantee a loan modification for customers;
- 8 (d) That Defendants will be able to secure lower interest rates, including fixed
9 rates for adjustable loans, for customers;
- 10 (e) That Defendants will be able to secure principal reductions of the
11 customers' mortgages;
- 12 (f) That Defendants will be able to secure lower monthly mortgage payments
13 for customers;
- 14 (g) That Defendants will be able to eliminate a customer's second mortgage
15 through a loan modification;
- 16 (h) That Defendants will be able to get customers' arrears forgiven by the
17 customers' lenders;
- 18 (i) That the upfront fees that Defendants collect from their customers are
19 refundable if the customer does not get a loan modification; and
- 20 (j) That attorneys affiliated with Defendants review the customers' financial
21 paperwork and also negotiate with the lenders on their behalf.

22 63. At the time the representations set forth in Paragraph 62 were made, Defendants
23 knew or by the exercise of reasonable care should have known that the representations were
24 untrue or misleading.

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1 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
2 VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
3 (UNFAIR COMPETITION)

4 64. Plaintiff realleges Paragraphs 1 through 63 and incorporates these Paragraphs by
5 reference as though they were fully set forth in this cause of action.

6 65. From a date specific unknown to Plaintiff and continuing to the present,
7 Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and
8 continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices
9 that constitute unfair competition as defined in Business and Professions Code section 17200.
10 Such acts or practices include, but are not limited to, the following:

11 (a) Failing to perform on their promises, made in exchange for upfront fees
12 from their customers, that Defendants would negotiate modifications of their mortgage loans and
13 secure lower and/or fixed interest rates, principal reductions, and, in some cases, elimination of
14 second mortgages. Defendants did little or nothing to help customers modify their mortgage
15 loans. Instead, consumers, having already paid large sums of money to Defendants, lost their
16 homes or were forced to attempt a loan modification on their own, as described in Paragraph 57
17 above;

18 (b) Luring customers into paying upfront fees with promises to refund all, or
19 most, of the upfront fees if they do not get a loan modification. When customers learned that
20 their lenders were unwilling to modify their loans, or that Defendants had done little or nothing to
21 assist in a modification, they demanded the promised refund. Despite Defendants' promises,
22 Defendants regularly denied customers' refund requests, as described in Paragraphs 40 and 56
23 above;

24 (c) Deceiving customers into believing that failing to contact their lenders, or
25 evading their lenders' communications, would increase the odds that their modification
26 applications would be successful. Customers relied on Defendants' advice because Defendants
27 assured them that Defendants would remain in contact with lenders. In fact, Defendants were not
28 in contact with lenders and lenders assumed that consumers were not willing to work with the

1 lender to save their homes. Heeding Defendants' advice placed customers in even greater
2 jeopardy of losing their homes, as described in Paragraph 45 above; and

3 (d) Deceiving customers into believing that suspending mortgage payments,
4 and diverting those funds to pay Defendants' upfront fees instead, would increase the odds that
5 their modification application would be successful. Defendants also promised their customers
6 that the missed mortgage payments would not endanger or adversely impact lenders' decisions on
7 their modification applications or otherwise accelerate the foreclosure process. Defendants'
8 advice placed consumers in even greater jeopardy of losing their homes, as described in
9 Paragraphs 46 and 47 above;

10 (e) Negotiating with consumers in a language other than English, but requiring
11 consumers to sign contracts printed in English, as described in Paragraph 49 above;

12 (f) Violating Penal Code section 487, by taking money of a value exceeding
13 \$400 from consumers by theft, as described in Paragraphs 46, 57, and 60 above;

14 (g) Violating Penal Code section 532, by knowingly and designedly obtaining
15 consumers' money by false pretenses, as described in Paragraphs 37 and 46 above;

16 (h) Violating section 17511.3 of the Business and Professions Code by failing
17 to register as a telephonic seller prior to utilizing the telephone to conduct sales of its loan
18 modification services, as described in Paragraphs 34 and 35 above;

19 (i) Violating Business and Professions Code section 17533.6, by employing
20 the use of logos and seals on their documents, which appear to resemble the governmental seal of
21 the United States Department of Housing and Urban Development, as described in Paragraph 33
22 above;

23 (j) Violating Business and Professions Code sections 6151 and 6152, by
24 engaging in "running and capping," the practice of non-attorneys obtaining business for an
25 attorney, as described in Paragraph 41 above;

26 (k) Violating Business and Professions Code section 6155, by Defendants
27 HRS, Golden State Funding, PRS, Marrero-Davis, Green, Marrero, Burrell Marrero, Specter,
28 Buhler, and Does 1-100 in directly or indirectly referring potential clients to Defendants Diener

1 and Diener Law Firm without seeking registration as a lawyer referral service by the State Bar,
2 and by Defendants Diener and Diener Law Firm in accepting referrals of such potential clients, as
3 described in Paragraph 41 above;

4 (l) Violating 18 United States Code section 1014 and California Penal Code
5 section 532a by knowingly submitting false statements regarding their customers' income and
6 expenses in attempt to induce federally insured lenders to agree to modifications of the
7 customers' mortgage loans, as described in Paragraph 48 above;

8 (m) Violating Civil Code section 1632 by negotiating foreclosure consultant
9 contracts primarily in Spanish to Spanish-speaking consumers, but not providing a translation of
10 the contract in that language before requiring the consumer to sign a contract printed in English,
11 as described in Paragraph 49 above;

12 (n) Violating their fiduciary duty to their customers by offering to be the
13 lenders' agent to short sale the consumers' homes while acting as the customers' agent in loan
14 modification negotiations, as described in Paragraphs 58 and 59 above;

15 (o) Violating Business and Professions Code section 17500, as more
16 particularly alleged in Paragraphs 61 through 63 above.

17 THIRD CAUSE OF ACTION AGAINST DEFENDANTS HRS,
18 GOLDEN STATE FUNDING, PRS, MARRERO-DAVIS, GREEN, MARRERO,
19 BURRELL MARRERO, BUHLER, AND DOES 1 THROUGH 50
20 (COLLECTIVELY NON-ATTORNEY DEFENDANTS)
21 VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
22 (UNFAIR COMPETITION)

23 66. Plaintiff realleges Paragraphs 1 through 65 and incorporates these Paragraphs by
24 reference as though they were fully set forth in this cause of action.

25 67. From a date specific unknown to Plaintiff and continuing to the present, Non-
26 Attorney Defendants, and each of them, have engaged in and continue to engage in, aided and
27 abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts
28

1 or practices that constitute unfair competition as defined in Business and Professions Code
2 section 17200. Such acts or practices include, but are not limited to, the following:

3 (a) Violating Civil Code section 2945.3, subdivision (b) by not including the
4 required notice in their contract, as described in Paragraph 44 above;

5 (b) Violating Civil Code section 2945.3, subdivision (d) by failing to include
6 in their contracts the address where a consumer may send notice of cancellation of the contract
7 with Defendants, as described in Paragraph 44 above; and

8 (c) Violating Civil Code section 2945.3, subdivisions (e) and (f) by not always
9 providing consumers with the Notice of Cancellation form required under the statute, as described
10 in Paragraph 44 above.

11 FOURTH CAUSE OF ACTION AGAINST NON-ATTORNEY DEFENDANTS

12 VIOLATION OF SECTION 2945.4 OF THE CIVIL CODE

13 68. Plaintiff realleges Paragraphs 1 through 67 and incorporates these Paragraphs by
14 reference as though they were fully set forth in this cause of action.

15 69. In addition to the conduct alleged as part of the Second and Third Causes of
16 Action in this Complaint, Non-Attorney Defendants also violate subdivision (a) of section 2945.4
17 of the Civil Code by collecting advance fees for loan modification services even when the
18 consumers they solicited for services had already defaulted on their mortgage obligations, lenders
19 had recorded notices of default against the consumers' properties, and/or lenders had issued a
20 notice of trustee sale of the consumers' properties, as described in Paragraphs 29 through 31 and
21 Paragraph 44 above.

22 FIFTH CAUSE OF ACTION AGAINST NON-ATTORNEY DEFENDANTS

23 VIOLATION OF SECTION 2945.45 OF THE CIVIL CODE

24 70. Plaintiff realleges Paragraphs 1 through 69 and incorporates these Paragraphs by
25 reference as though they were fully set forth in this cause of action.

26 71. In addition to the conduct alleged as part of the Second, Third, and Fourth Causes
27 of Action in this Complaint, Non-Attorney Defendants also violate section 2945.45 of the Civil
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1 Code by failing to register with the Department of Justice as foreclosure consultants, as described
2 in Paragraph 44 above.

3 SIXTH CAUSE OF ACTION AGAINST DEFENDANTS SPECTER,

4 DIENER, AND DIENER LAW FIRM

5 VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

6 (UNFAIR COMPETITION)

7 72. Plaintiff realleges Paragraphs 1 through 71 and incorporates these Paragraphs by
8 reference as though they were fully set forth in this cause of action.

9 73. In addition to the conduct alleged as part of the Second Cause of Action in this
10 Complaint, Defendants Specter, Diener and Diener Law Firm, as attorneys, have engaged in
11 unfair competition as defined in Business and Professions Code section 17200 by engaging in
12 acts and practices which include, but are not necessarily limited to:

13 (a) Violating the fiduciary duty and duties of good faith and fair dealing owed
14 to their clients/customers by failing to review financial documents or negotiate with lenders on
15 their behalf, as described in Paragraph 41 above;

16 (b) Violating California Rules of Professional Conduct, rule 1-320(A) by
17 directly or indirectly sharing legal fees with a non-lawyer, as described in Paragraph 41 above;

18 (c) Violating California Rules of Professional Conduct, rule 1-320(B) by
19 compensating persons or entities for the purpose of securing employment or as a reward for
20 having made a recommendation resulting in the employment of Defendants Diener and Diener
21 Law Firm by a client, as described in Paragraph 41 above;

22 (d) Violating California Rules of Professional Conduct, rule 1-300(A) by
23 aiding persons or entities in the unauthorized practice of law, as described in Paragraph 41 above;

24 (e) Violating California Rules of Professional Conduct, rule 3-110(A) by
25 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
26 described in Paragraph 41 above; and

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1 (f) Violating California Rules of Professional Conduct, rule 4-200(A) by
2 entering into an agreement for, charge, or collect an illegal or unconscionable fee, as described in
3 Paragraph 41 above.

4 74. From a date specific unknown to Plaintiff and continuing to the present,
5 Defendants Specter, Diener and Diener Law Firm, and each of them, have aided and abetted and
6 continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices
7 that constitute unfair competition as defined in Business and Professions Code section 17200.
8 Such acts or practices include, but are not limited to, the following:

9 (a) Violating Civil Code section 2945.3, subdivision (b) by not including the
10 required notice in their contract, as described in Paragraph 44 above;

11 (b) Violating Civil Code section 2945.3, subdivision (d) by failing to include
12 in their contracts the address where a consumer may send notice of cancellation of the contract
13 with Defendants, as described in Paragraph 44 above;

14 (c) Violating Civil Code section 2945.3, subdivisions (e) and (f) by not always
15 providing consumers with the Notice of Cancellation form required under the statute, as described
16 in Paragraph 44 above; and

17 (d) Violating Civil Code section 2945.3, subdivision (a) of section 2945.4 of
18 the Civil Code by collecting advance fees for loan modification services even when the
19 consumers they solicited for services had already defaulted on their mortgage obligations, lenders
20 had recorded notices of default against the consumers' properties, and/or lenders had issued a
21 notice of trustee sale of the consumers' properties, as described in Paragraphs 29 through 31 and
22 Paragraph 44 above.

23 SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS MARRERO,

24 BURRELL MARRERO, AND BUHLER

25 VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

26 (UNFAIR COMPETITION)

27 75. Plaintiff realleges Paragraphs 1 through 74 and incorporates these Paragraphs by
28 reference as though they were fully set forth in this cause of action.

1 in interest any money or property, real or personal, which may have been acquired by means of
2 such unfair competition, under the authority of Business and Professions Code section 17203;

3 5. That the Court assess a civil penalty of \$2,500 against each Defendant for each
4 violation of Business and Professions Code section 17200, in an amount according to proof but
5 not less than \$ 10,000,000, under the authority of Business and Professions Code section 17206;

6 6. That the Court assess a civil penalty of \$2,500 against each Defendant for each
7 violation of Business and Professions Code section 17500, in an amount according to proof but
8 not less than \$ 10,000,000, under the authority of Business and Professions Code section 17536;

9 7. That the Court assess a civil penalty of \$2,500 against each Defendant for each
10 violation of Business and Professions Code section 17200 perpetrated against a senior citizen or
11 disabled person, in an amount according to proof but not less than \$ 10,000,000, under the
12 authority of Business and Professions Code section 17206.1;

13 8. That the Court assess a fine of not more than \$10,000 against each Non-Attorney
14 Defendant for each violation of Civil Code section 2945.4, in an amount according to proof but
15 not less than \$ 10,000,000, under the authority of Civil Code section 2945.7;

16 9. That the Court assess a fine of not less than \$1,000 and not more than \$25,000
17 against each Non-Attorney Defendant for each violation of Civil Code section 2945.45(a), in an
18 amount according to proof, under the authority of subdivision (d) of Civil Code 2945.45;

19 10. That Plaintiff recovers its costs of suit, including costs of investigation; and

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11. For such other and further relief that the Court deems just, proper, and equitable.

Dated: July __, 2009

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
FRANCES T. GRUNDER
Senior Assistant Attorney General
KATHRIN SEARS
Supervising Deputy Attorney General

By: _____
AMY C. TENG
Deputy Attorney General
Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF
CALIFORNIA

