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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 17 2012

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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF RIVERSIDE

13 LOIS WILLIAMS, an individual; DAN
14 HILES, an individual; MARIA A.
CISNEROS, an individual; BONNIE
15 GUERRERO, an individual; JAMES
RICHARD, an individual; and SHAWNA
16 FITCH, an individual, on behalf of themselves
and all others similarly situated,

17 Plaintiffs,

18 v.

19 PREMIERE LOAN SERVICES, INC., a
20 California Corporation; RAED FARRAJ
a.k.a. ROD FARRAJ, an individual;
21 NATHANIEL GENIS, an individual; DNKZ
MARKETING & MEDIA, INC., a California
22 Corporation doing business as NATIONAL
BAILOUT APPLICATION ASSISTANCE;
23 SAMER J. FARRAJ, an individual; ERNEST
AUGER, an individual; GEORGE FARRAJ,
24 an individual; EMERGE FINANCIAL
ADVISORS, LLC, a California Limited
25 Liability Company; THOMAS DUCK, an
individual; LARRY FOSTER, an individual;
26 and DOES 1 THROUGH 100, inclusive,

27 Defendants.
28

CASE NO. 1215573

CLASS ACTION COMPLAINT FOR:

- 1) Breach Of Contract;
- 2) Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*);
- 3) Statutory Remedies Based on Failure To Translate A Contract (Cal. Civ. Code § 1632);
- 4) Unfair Or Deceptive Practices Against Senior Citizens (Cal. Civ. Code § 3345);
- 5) Elder Financial Abuse;
- 6) Fraud; and
- 7) Injunctive Relief

DEMAND FOR JURY TRIAL

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- 4) **Unfair Or Deceptive Practices Against Senior Citizens (Cal. Civ. Code § 3345);**
- 5) **Elder Financial Abuse;**
- 6) **Fraud; and**
- 7) **Injunctive Relief**

DEMAND FOR JURY TRIAL

1 Plaintiffs Lois Williams, Dan Hiles, Maria A. Cisneros, Bonnie Guerrero, James Richard,
2 and Shawna Fitch (collectively, "Plaintiffs"), on behalf of themselves and a class of all other
3 persons similarly situated, allege as follows:

4 **I. INTRODUCTION**

5 1. As the foreclosure crisis sweeps across this nation, an underlying issue threatens
6 to push homeowners, who are desperate to modify their loans, further into debt and despair –
7 loan modification scams. Too often, individuals or companies purporting to offer assistance,
8 instead offer phantom services for sizable upfront fees. These operations defraud and victimize
9 vulnerable homeowners by operating corrupt for-profit loan modification businesses that target
10 low-and middle income homeowners who are in danger of foreclosure.

11 2. This is an action brought by plaintiffs on behalf of a class of homeowners lured
12 by Premiere Loan Services, Inc. ("Premiere") and its statewide network of cohorts to pay
13 thousands of dollars in up-front fees for mortgage loan modification and related legal services
14 that Premiere never provided.

15 3. Raed Farraj, a.k.a Rod Farraj, (hereinafter referred to as "Raed Farraj") the
16 principal of Premiere, and Nathaniel Genis, a broker-manager at Premiere, sat atop a loan
17 modification scam network that funneled homeowners who were fearful of losing their homes to
18 foreclosure to his company and other participating companies.

19 4. Participating with Defendants Raed Farraj and Premiere was DNKZ Marketing &
20 Media, Inc., dba National Bailout Application Assistance ("NBAA"), a sham front for Defendant
21 Samer J. Farraj, and whose employees include Defendants Ernest Auger and George Farraj.
22 Emerge Financial Advisors, LLC ("Emerge"), its principal, Defendant Thomas Duck, and an
23 employee, Defendant Larry Foster, also engaged in the scheme. Premiere, NBAA, and Emerge
24 shall hereinafter collectively be referred to as the "Entity Defendants." Raed Farraj, Nathaniel
25 Genis, Samer J. Farraj, Ernest Auger, Thomas Duck, and Larry Foster shall hereinafter
26 collectively be referred to as the "Individual Defendants."
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1 5. The Entity Defendants and their controlling principals, the Individual Defendants,
2 (collectively, "Defendants") market their loan modification services to struggling homeowners,
3 often guaranteeing that the homeowners will be approved for a modification under the federal
4 government's Home Affordable Modification Program (HAMP). The Entity Defendants
5 promised to work directly with homeowners' lenders, to expedite the approval process, and, in
6 some instances, to provide legal assistance.

7 6. These consumers typically paid an upfront fee, either as a lump sum or in
8 installments, after being guaranteed a successful loan modification.

9 7. The Entity Defendants guaranteed to refund the homeowners' payments should
10 the entity fail to acquire loan modifications for the homeowners, but like Premiere, NBAA and
11 Emerge failed to deliver on their promises.

12 8. This scam was heavily marketed. Many homeowners received mailings from the
13 Entity Defendants and called to inquire about their services; others received unsolicited phone
14 calls. The Entity Defendants maintained substantial websites and advertising material, including
15 brochures. Certain Entity Defendants held presentations and conferences for struggling
16 homeowners.

17 9. The promotional activities, taken together with the promise of a guaranteed
18 money-back refund, were intended to induce victims to enter into an agreement and to quickly
19 furnish the scammers with up-front payments.

20 10. Given the inevitable differences in their individual circumstances, not all
21 homeowners were eligible for loan modifications. Nevertheless, all of the Entity Defendants
22 promoted their "services" on a one-size-fits-all basis, with no regard for each homeowner's
23 particular financial circumstances.

24 11. Moreover, once the homeowners provided requested documentation and paid the
25 upfront fees, many were suddenly unable to get in contact with the Entity Defendants or were
26 constantly shuffled between employees, none of whom provided meaningful assistance. Some
27 homeowners made unsuccessful attempts to secure a refund once they realized the Entity
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1 Defendants were not providing any service. Other homeowners obtained a refund of only a
2 portion of the fees paid under the guise that services had been performed when in truth no such
3 services were ever performed.

4 12. Particularly egregious is the fact that Defendants, through their network of agents,
5 promoted and negotiated the contracts with many of the victims in Spanish, and upon
6 information and belief, Chinese, Tagalog, Vietnamese, or Korean, but provided only English-
7 language written contracts for them to review and keep. Because this sub-class of victims could
8 not read the English-language contracts that Defendants provided to them, they relied solely on
9 the verbal representations made to them, which were that they would obtain a loan modification
10 or receive a refund of the upfront fee paid.

11 13. Ultimately, after extracting thousands of dollars from victims already at the brink
12 of financial ruin, Defendants did not perform the services that were contracted for, nor did they
13 return all of the homeowners' upfront fees.

14 14. Much ink has been spilled in recent years regarding the housing crisis in this
15 country. The crisis has caused many homeowners to become trapped in high-cost home loans for
16 property that has plummeted in value and has therefore become difficult, if not impossible, to
17 sell. These now-unaffordable mortgages, coupled with high unemployment and
18 underemployment resulting from the declining economy, have left many homeowners facing late
19 payments, default or even foreclosure on their home mortgages.

20 15. Sadly, these factors have sown a fertile breeding ground for unprincipled
21 individuals—such as the Defendants in this lawsuit—looking to prey on distressed homeowners
22 desperately seeking to save their homes and obtain some relief from unaffordable home loans.

23 16. Plaintiffs, on behalf of a class of similarly situated persons, seek to stop this
24 wrongful scheme from injuring any other distressed homeowners and to recover relief for past
25 wrongs.

1 **II. JURISDICTION AND VENUE**

2 17. The Superior Court for the State of California has jurisdiction over this action due
3 to Defendants' violations of California laws, including breach of California contracts and
4 numerous violations of California statutory provisions including Civil Code, section 1632 and
5 Business & Professions Code, section 17200.

6 18. Venue is proper in Riverside County pursuant to Code of Civil Procedure,
7 sections 395(a) and 395.5, because (1) on information and belief, several Defendants are located
8 or reside in Riverside County; (2) many of the contracts were entered into in Riverside County;
9 (3) many of the contracts were for acts to be performed in Riverside County; (4) Defendants'
10 obligation or liability under many of the contracts arose in Riverside County; (5) Defendants'
11 breach of many of the contracts occurred in Riverside County; and (6) much of the injury to
12 Plaintiffs' personal property occurred in Riverside County.

13 **III. THE PARTIES**

14 19. Plaintiff LOIS WILLIAMS is an individual residing in Diamond Bar, California.

15 20. Plaintiff DAN HILES is an individual residing in Apple Valley, California.

16 21. Plaintiff MARIA A. CISNEROS is an individual residing in Victorville,
17 California.

18 22. Plaintiff BONNIE GUERRERO is an individual residing in Pico Rivera,
19 California.

20 23. Plaintiff JAMES RICHARD is an individual residing in Quail Valley, California.

21 24. Plaintiff SHAWNA FITCH is an individual residing in Las Vegas, Nevada.

22 25. Defendant PREMIERE LOAN SERVICES, INC. ("Premiere") is a California
23 corporation maintaining a principal place of business at 561 North Central Avenue in Upland,
24 California. Through the use of local agents to solicit and obtain clients for its services,
25 Defendant Premiere conducted business activities within San Bernardino County during the time
26 period relevant for this Complaint.

1 26. Defendant RAED FARRAJ (“Raed Farraj”) is an individual who, at all relevant
2 times, was the owner of Defendant Premiere Loan Services, Inc. Through the use of local agents
3 to solicit and obtain clients for his services, Defendant Raed Farraj conducted business activities
4 within San Bernardino and Riverside Counties during the time period relevant for this
5 Complaint. Plaintiffs are informed and believe that Defendant Premiere is the alter ego of
6 Defendant Raed Farraj, given the commingling and diversion of the funds and assets of each, the
7 failure to segregate said funds, Raed Farraj’s treatment of Premiere’s assets as his own, the
8 failure to maintain minutes, the absence of corporate assets, the undercapitalization, the use of
9 the corporation as a mere shell, the concealment or misrepresentation of the responsible
10 ownership, management and financial interests, the concealment or misrepresentation of personal
11 business activities, the disregard of legal formalities, and the use of the corporation as a
12 subterfuge for illegal transactions.

13 27. Defendant NATHANIEL GENIS (“Nathaniel Genis”) is an individual who, at all
14 relevant times, was the Broker of Record for Premiere. Through the use of local agents to solicit
15 and obtain clients for his services, Defendant Nathaniel Genis conducted business activities
16 within San Bernardino and Riverside Counties during the time period relevant for this
17 Complaint.

18 28. Defendant DNKZ MARKETING & MEDIA, INC., a California Corporation
19 doing business as NATIONAL BAILOUT APPLICATION ASSISTANCE, (“NBAA”) is a
20 California corporation maintaining a principal place of business at 573 North Central Avenue in
21 Upland, California. Through the use of local agents to solicit and obtain clients for its services,
22 Defendant NBAA conducted business activities within San Bernardino and Riverside Counties
23 during the time period relevant for this Complaint.

24 29. Defendant SAMER J. FARRAJ (“Samer Farraj”) is an individual who, at all
25 relevant times, was the principal and agent for service of process of Defendant NBAA. Through
26 the use of local agents to solicit and obtain clients for his services, Defendant Samer Farraj
27 conducted business activities within San Bernardino and Riverside Counties during the time
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1 period relevant for this Complaint. Plaintiffs are informed and believe that Defendant NBAA is
2 the alter ego of Defendant Samer Farraj, given the commingling and diversion of the funds and
3 assets of each, the failure to segregate said funds, Samer Farraj's treatment of NBAA's assets as
4 his own, the failure to maintain minutes, the absence of corporate assets, the undercapitalization,
5 the use of the corporation as a mere shell, the concealment or misrepresentation of the
6 responsible ownership, management and financial interests, the concealment or
7 misrepresentation of personal business activities, the disregard of legal formalities, and the use of
8 the corporation as a subterfuge for illegal transactions.

9 30. Defendant ERNEST AUGER ("Ernest Auger") is an individual who, at all
10 relevant times, was an agent of Defendant NBAA. Through the use of local agents to solicit and
11 obtain clients for his services, Defendant Ernest Auger conducted business activities within San
12 Bernardino and Riverside Counties during the time period relevant for this Complaint.

13 31. Defendant GEORGE FARRAJ ("George Farraj") is an individual who, at all
14 relevant times, was an agent of Defendant NBAA. Through the use of local agents to solicit and
15 obtain clients for his services, Defendant Ernest Auger conducted business activities within San
16 Bernardino and Riverside Counties during the time period relevant for this Complaint.

17 32. Defendant EMERGE FINANCIAL ADVISORS, LLC ("Emerge") is a California
18 limited liability company maintaining a principal place of business at 3700 Hilborn Road, Suite
19 300, in Fairfield, California. Through the use of local agents to solicit and obtain clients for its
20 services, Defendant Emerge conducted business activities within Solano County during the time
21 period relevant for this Complaint.

22 33. Defendant THOMAS DUCK ("Duck") is an individual who, at all relevant times,
23 was the owner and president of Defendant Emerge. Through the use of local agents to solicit and
24 obtain clients for his services, Defendant Duck conducted business activities within Solano
25 County during the time period relevant for this Complaint. Plaintiffs are informed and believe
26 that Defendant Emerge is the alter ego of Defendant Thomas Duck, given the commingling and
27 diversion of the funds and assets of each, the failure to segregate said funds, Thomas Duck's
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1 treatment of Emerge's assets as his own, the failure to maintain minutes, the absence of corporate
2 assets, the undercapitalization, the use of the corporation as a mere shell, the concealment or
3 misrepresentation of the responsible ownership, management and financial interests, the
4 concealment or misrepresentation of personal business activities, the disregard of legal
5 formalities, and the use of the corporation as a subterfuge for illegal transactions.

6 34. Defendant LARRY FOSTER ("Foster") is an individual who, at all relevant times,
7 was an employee of Defendant Emerge. Through the use of local agents to solicit and obtain
8 clients for his services, Defendant Foster conducted business activities within Solano County
9 during the time period relevant for this Complaint.

10 35. The true names and capacities of the Defendants identified only as DOES 1
11 through 100 ("Doe Defendants" or "Doe Defendant") are unknown to Plaintiffs at this time.
12 Plaintiffs will amend this Complaint to insert the true names and capacities of the Doe
13 Defendants when such are finally ascertained. Plaintiffs are informed and believe, and thereon
14 allege, that each of the fictitiously named Doe Defendants is liable to Plaintiffs and the Class for
15 the acts, events and occurrences alleged herein as a result of said Doe Defendants' relationship to
16 the named Defendants or participation in said acts, events and occurrences, or approval or
17 ratification thereof. In particular, Does 1-25 are attorneys or law offices that performed legal
18 services for the named Defendants and conspired with, aided and abetted or otherwise assisted or
19 knowingly permitted the named Defendants to carry out their schemes and the unlawful conduct
20 alleged herein. Does 26-50 are real estate agents, brokers, salespeople, and/or staff members
21 who worked for the named Defendants, and conspired with, aided and abetted or otherwise
22 assisted or knowingly permitted the named Defendants to carry out their schemes and the
23 unlawful conduct alleged herein. Does 51-75 are persons or entities to whom the illicit profits
24 and fruits of the named Defendants' schemes and unlawful acts were transferred, or who assisted,
25 aided and/or abetted in the transfers, or in the acquisition, use or disposition of the property
26 resulting from such transfers. Does 76-100 are individuals or entities that conspired with, aided
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1 and abetted or otherwise assisted or knowingly permitted the named Defendants to carry out their
2 schemes and the unlawful conduct alleged herein.

3 36. Plaintiffs are informed and believe, and thereon allege, that each of the
4 Defendants was at all times the alter ego, agent, employee, servant, or representative of each of
5 the other Defendants, and was acting, at least in part, within the course, scope and authority of
6 said relationship, or participated in some manner in the other Defendants' wrongful acts,
7 conspired with the other Defendants to engage in such acts or aided and abetted the named
8 Defendants to commit such acts, or was otherwise the recipient of the other Defendants' ill-
9 gotten gains. Each Defendant ratified the conduct of the other named Defendants.

10 **IV. FACTS SUPPORTING CLASS ALLEGATIONS AND CAUSES OF ACTION**

11 **A. Premiere Defendants**

12 37. Defendant Premiere and its owners, managers, and operators, including
13 Defendants Raed Farraj and Nathaniel Genis, have injured numerous victims due to their
14 unscrupulous loan modification scam tactics, including Plaintiffs Dan Hiles ("Mr. Hiles") and
15 Lois Williams ("Ms. Williams").

16 **1. Plaintiff Dan Hiles**

17 38. Mr. Hiles is over the age of 65. At all relevant times, he was living in his first
18 home in Apple Valley, California. Mr. Hiles had a thirty (30) year fixed mortgage at 6.125%
19 interest.

20 39. Due to a work-related injury in 2005, Mr. Hiles was forced to retire early. As a
21 result, he experienced a significant and sudden decline in his current income and was starting to
22 struggle to make his monthly mortgage payments. However, at all relevant times prior to his
23 interactions with Premiere, Mr. Hiles was current on his mortgage payments.

24 40. In or around June or July of 2009, Mr. Hiles began to consider a loan
25 modification to allow him to start paying down the principal balance on his mortgage. At or
26 around this time, Mr. Hiles noticed a billboard detailing a loan modification opportunity offered
27 by Premiere and decided to find out more information.

1 41. Mr. Hiles subsequently visited the Premiere office located in Upland, California
2 and spoke with a staff member to set up an appointment for a subsequent in-person meeting
3 regarding a loan modification. The staff member instructed Mr. Hiles to bring information
4 regarding his income, monthly expenses and current mortgage details to the meeting.

5 42. A few days later, Mr. Hiles met with Defendant Raed Farraj, who assisted him
6 with his questions and informed him about the loan modification services offered by Premiere.
7 During this meeting, Mr. Hiles provided various financial documents to Defendants, including
8 pay stubs, recent mortgage statements and tax information. Raed Farraj represented to Mr. Hiles
9 that Premiere would perform a loan modification and reduce his monthly mortgage payments
10 from approximately \$1,886.00 to \$951.41. Raed Farraj represented to Mr. Hiles that, after
11 accounting for tax and insurance, his payments would total \$1,135.75 per month.

12 43. During this meeting, Raed Farraj guaranteed Mr. Hiles a loan modification and
13 represented that they had an "80-90% success rate" on obtaining loan modifications.

14 44. Raed Farraj informed Mr. Hiles that he must pay for the loan modification
15 services in three monthly installments, totaling \$2,800.00. Mr. Hiles informed Raed Farraj that
16 due to his income restrictions, he was unable to make these monthly payments unless he
17 refrained from paying for his monthly mortgage payments. Raed Farraj instructed Mr. Hiles to
18 temporarily stop repaying his monthly mortgage payments and instead pay the monthly
19 installment fees to Premiere. Raed Farraj told Mr. Hiles that Premiere would take care of him
20 and had an attorney working on the case who would be in contact with his mortgage provider.
21 Raed Farraj informed Mr. Hiles that Premiere could not start work on his loan modification until
22 receipt of all of the installment payments.

23 45. Mr. Hiles followed Raed Farraj's and Premiere's instructions and stopped making
24 his monthly mortgage payments. Mr. Hiles paid Premiere the three monthly installments for its
25 services, in the amounts of \$934.00, \$933.00, and \$933.00 for the months of July, August and
26 September of 2009.

1 46. On July 21, 2009, Mr. Hiles executed the Advance Fee Agreement for Loan
2 Modification Services (“Advance Fee Agreement”). Pursuant to the Advance Fee Agreement,
3 Premiere represented that it would complete the loan modification process no later than 120
4 calendar days from the date that Mr. Hiles executed the Advance Fee Agreement. The Advance
5 Fee Agreement represented that Premiere was entitled to the full amount of the advance fee only
6 for the “successful loan modification performance” under the agreement and that the “advance
7 fee paid by the Principal is fully refundable until earned by the Company.” The Advance Fee
8 Agreement stated that a refund would be issued within 5 business days if the services were not
9 completed by the Company by the agreed upon completion dates.

10 47. Premiere instructed Mr. Hiles not to contact his bank and to instead refer to
11 Premiere at all times with any questions or concerns.

12 48. Upon various inquiries by Mr. Hiles into the status of Premiere’s services,
13 Premiere represented to Mr. Hiles over the phone and in writing that it was in “consistent
14 contact” with his lender. However, after several weeks of not hearing or receiving any response
15 from Premiere, Mr. Hiles contacted his mortgage lender. The representative told him that it had
16 never received any communications regarding a loan modification from Premiere.

17 49. At various times over the next several months, Mr. Hiles called the office of
18 Premiere and left several messages. Mr. Hiles never received a response.

19 50. On information and belief, Premiere did not perform any loan modification or
20 related services for Mr. Hiles.

21 51. Throughout the purported loan modification process, Mr. Hiles fully cooperated
22 with Premiere, and performed all of his obligations under the contracts that he signed.

23 52. Mr. Hiles never received a loan modification through Premiere and never received
24 a refund of the \$2,800.00 that he had paid to Premiere.

25 53. After Premiere instructed Mr. Hiles to forgo payments on his mortgage, he began
26 to fall behind in his repayment plan. Mr. Hiles is currently over a year behind in his mortgage
27 payments and at risk of having his house foreclosed upon.

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1 54. As a result of the lack of services provided by Premiere, Mr. Hiles has suffered
2 financial harm.

3 **2. Plaintiff Lois Williams**

4 55. Ms. Williams is another victim of Premiere's loan modification scam. Ms.
5 Williams had a thirty (30) year mortgage at 5.375% interest. Ms. Williams was, at all relevant
6 times, current on her mortgage payments. However, Ms. Williams was experiencing difficulty
7 making her monthly mortgage payments.

8 56. In or around August or September of 2009, Ms. Williams considered a loan
9 modification to allow her to keep current on her mortgage payments and to help her pay down
10 the principal balance on her mortgage. Ms. Williams received an advertisement in the mail
11 detailing a loan modification opportunity offered by Premiere and decided to find out more
12 information.

13 57. Ms. Williams subsequently telephoned the Premiere office located in Upland,
14 California and spoke with a staff member to set up an appointment for a meeting. Ms. Williams
15 was instructed to bring information regarding her income, monthly expenses and current
16 mortgage details.

17 58. A short time later, Ms. Williams met with David Duarte, a representative of
18 Premiere, who assisted her with her questions and informed her about the loan modification
19 process. During this meeting, Ms. Williams provided various financial documents to Mr. Duarte,
20 including pay stubs, recent mortgage statements and tax information. Premiere represented to
21 Ms. Williams that it would perform a loan modification and reduce her monthly mortgage
22 payments from \$2,184.00 to \$1,426.73. After accounting for taxes and insurance, Ms. Williams
23 was told by Premiere that her payments would total \$1,705.73 per month.

24 59. Mr. Duarte informed Ms. Williams that she must pay for the loan modification
25 services up front in four monthly installments totaling \$2,700.00. Premiere told Ms. Williams
26 that it would take care of her and that it was confident it would be able to obtain a loan
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1 modification for her. Mr. Duarte informed Ms. Williams that Premiere could not start work on
2 her loan modification until all installment payments were received.

3 60. In September, 2009, Ms. Williams provided Premiere with a check for \$675.00 as
4 well as three post dated checks of \$675.00 each, made payable in October, November and
5 December, 2009.

6 61. On September 10, 2009, Ms. Williams executed the Advance Fee Agreement for
7 Loan Modification Services. Pursuant to the Advance Fee Agreement, Premiere represented that
8 it would complete the loan modification process no later than 120 calendar days from the date
9 that Ms. Williams executed the Advance Fee Agreement. The Advance Fee Agreement
10 represented that Premiere was entitled to the full amount of the advance fee only for the
11 "successful loan modification performance" under the agreement and that the "advance fee paid
12 by the Principal is fully refundable until earned by the Company." The Advance Fee Agreement
13 stated that a refund would be issued within 5 business days if the services were not completed by
14 the Company by the agreed upon completion dates.

15 62. Premiere instructed Ms. Williams not to contact her bank and to instead refer to
16 Premiere at all times with any questions or concerns.

17 63. At various times, Premiere represented to Ms. Williams over the phone that it was
18 in "consistent contact" with her lender. However, after several weeks of not hearing or receiving
19 any response from Premiere, Ms. Williams contacted Flag Star Bank, her mortgage lender. The
20 representative from Flag Star Bank informed Ms. Williams that it had never received any
21 communications regarding a loan modification from Premiere.

22 64. At various times over the next several months, Ms. Williams called the office of
23 Premiere and left several messages. Ms. Williams also sent a letter to Premiere demanding a
24 refund of the \$2,700 she paid to Premiere. Ms. Williams never received a response. Ms.
25 Williams then personally visited the offices of Premiere and was eventually able to obtain a 15%
26 refund of \$400.00 from Premiere.

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1 65. On information and belief, Premiere did not perform any services for Ms.
2 Williams.

3 66. Throughout the purported modification process, Ms. Williams fully cooperated
4 with Premiere, and performed all of her obligations under the contracts that she signed.

5 67. Ms. Williams never received a loan modification through Premiere and never
6 received a refund of the remaining \$2,300.00 that she paid to Premiere.

7 68. As a result of the lack of services provided by Premiere, Ms. Williams has
8 suffered financial harm.

9 **B. NBAA Defendants**

10 69. Defendant NBAA and its owners, managers, and operators, including Samer
11 Farraj, Ernest Auger, and George Farraj, have injured numerous victims due to their
12 unscrupulous loan modification scam tactics, including Plaintiffs Maria A. Cisneros (“Ms.
13 Cisneros”), Bonnie Guerrero (“Ms. Guerrero”), and James Richard (“Mr. Richard”).

14 **1. Plaintiff Maria A. Cisneros**

15 70. In January 2010, Plaintiff Cisneros, an eighty-year-old woman who speaks only
16 Spanish, received a telephone call from a representative of NBAA. During this telephone call,
17 the NBAA representative, speaking only in Spanish, spoke with Ms. Cisneros regarding services
18 offered by NBAA, including loan modification services.

19 71. Ms. Cisneros, accompanied by her sons, Julio and Daguberto Cisneros, then met
20 with NBAA representative Jessie at NBAA’s offices in Victorville, California. The conversation
21 took place entirely in Spanish. Jessie told Ms. Cisneros that she would have to pay \$1,500 in
22 advance for NBAA’s services and that the entire amount would be refunded if Ms. Cisneros did
23 not ultimately obtain a loan modification.

24 72. On or around February 27, 2010, Ms. Cisneros paid \$750.00 to NBAA via check.
25 On or around March 27, 2010, she paid the remaining \$750.00 to NBAA via check.

26 73. On or around February 27, 2010, Ms. Cisneros, who speaks no English, signed a
27 contract for loan modification services with NBAA that was entirely in English.
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1 74. After several months, Ms. Cisneros checked in with NBAA to find out about the
2 status of her application for a loan modification. She was informed that NBAA was in the midst
3 of processing her loan modification paperwork.

4 75. When Ms. Cisneros heard no response for another several months, her son, Julio,
5 visited NBAA's Victorville location, only to find that NBAA had moved to Upland. Julio then
6 visited the Upland location and spoke with a NBAA representative named Michael, who
7 informed Julio that, while Jessie no longer worked for the company, Ms. Cisneros's paperwork
8 was still being processed. On August 28, 2010, Julio traveled to the Upland location once again
9 and found that that location was closed.

10 76. Since then, NBAA has not contacted Ms. Cisneros regarding her application. Ms.
11 Cisneros has not received a loan modification through NBAA, nor has Ms. Cisneros received a
12 refund of the \$1,500 in advance fees she paid to NBAA.

13 77. At the time these events took place, Samer Farraj was the president of NBAA and,
14 upon information and belief, authorized the conduct engaged in by NBAA's representatives.

15 78. As a result of the lack of services provided by and the payments she made to
16 NBAA, Ms. Cisneros has suffered financial harm.

17 **2. Plaintiff Bonnie Guerrero**

18 79. In or around May 2010, seventy-six-year-old Plaintiff Bonnie Guerrero received a
19 telephone call from Defendant Ernest Auger, who offered her loan modification services,
20 promising to lower Ms. Guerrero's monthly mortgage payments for an upfront fee of \$1,500.
21 Ms. Guerrero agreed to an in-person meeting with Defendant Auger.

22 80. In or around June 2010, Defendant Auger visited Ms. Guerrero at her home.
23 Among the services he offered were loan modification assistance or refinancing, legal
24 representation, and foreclosure relief and consulting. He stated that should Ms. Guerrero retain
25 NBAA's services, her mortgage payments would be reduced by approximately \$3,000 or \$4,000
26 and that the entire process would take approximately two to three months.

1 81. In exchange for these services, Ms. Guerrero provided NBAA with two checks
2 made payable to the company, one dated June 1, 2010, in the amount of \$750.00, and the other
3 dated July 1, 2010, in the amount of \$750.00.

4 82. On July 1, 2010, Ms. Guerrero called NBAA to check on the status of her loan
5 modification. An NBAA representative informed her that Defendant Auger had quit and that
6 another employee would contact her regarding her loan modification.

7 83. Since then, NBAA has not contacted Ms. Guerrero regarding her loan
8 modification, nor has she received any information that any such application was ever made on
9 her behalf by NBAA.

10 84. At the time these events took place, Samer Farraj was the president of NBAA and,
11 upon information and belief, authorized the conduct engaged in by Defendant Auger.

12 85. As a result of the lack of services provided by and the payments she made to
13 NBAA, Ms. Guerrero has suffered financial harm.

14 **3. Plaintiff James Richard**

15 86. In or around May 2010, Plaintiff James Richard received correspondence in the
16 mail from NBAA regarding the loan modification services the company offered. The letter
17 guaranteed that NBAA would reduce his mortgage payments and estimated that once his loan
18 modification application papers were processed, it would take between 72 hours and one week to
19 be approved.

20 87. Mr. Richard called NBAA and spoke with a representative, who made an
21 appointment for Mr. Richard to come into the office the next day. The representative also
22 informed Mr. Richard that NBAA would be able to obtain a 2% interest loan in forbearance and
23 instructed Mr. Richard to bring certain paperwork to the NBAA office in order to complete his
24 application, including among other documents his social security card, bank statements, pay
25 stubs, and tax returns.

26 88. Mr. Richard visited the NBAA office in Upland, California, and met with George
27 Farraj. Defendant George Farraj stated that NBAA offered loan modification assistance and
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1 consulting services and legal representation. Mr. Richard spent approximately two hours with
2 Defendant Farraj discussing the paperwork and completing his loan modification application
3 with him.

4 89. Mr. Richard then signed an agreement to retain NBAA to provide him with loan
5 modification services. Defendant Farraj estimated that it would take 60-90 days for Mr.
6 Richard's application papers to be processed.

7 90. Only after these transactions were completed did Defendant Farraj inform Mr.
8 Richard that in order for NBAA to process his application and paperwork, Mr. Richard would
9 have to pay NBAA a fee of \$1,600.00.

10 91. On or around June 10, 2010, Mr. Richard gave Defendant Farraj a money order
11 made payable to NBAA, in the amount of \$1,600.00. Defendant Farraj informed Mr. Richard
12 that included in this price was the use of legal services in the event his loan modification
13 application was not approved.

14 92. Soon afterwards, NBAA informed Mr. Richard that NBAA had sent a complete
15 set of the necessary paperwork to his mortgage lender, Bank of America.

16 93. Mr. Richard then contacted Bank of America to check on the status of his loan
17 modification application.

18 94. In a letter dated July 8, 2010, Bank of America responded by informing him that
19 many of the required documents were missing from his loan modification application, including:

- 20 a. Copy of his most recently filed federal tax return with all schedules;
- 21 b. Copy of his two most recent pay stubs not more than 90 days old indicating year-
22 to-date earnings (clean and readable);
- 23 c. If self-employed, a copy of his most recently filed federal tax return with all
24 schedules, and a copy of his most recent quarterly or year-to-date profit/loss
25 statement;
- 26 d. Copy of his two most recent bank statements for two consecutive months;

- 1 e. Copy of his benefits statement or provider letter that states the amount, frequency
2 and duration of his benefit, and evidence of receipt of payment, such as bank
3 statements showing deposit amounts;
- 4 f. If applicable, copy of a divorce decree, separation agreement or other written
5 agreement or court decree that states the amount of the alimony or child support
6 and period of time over which it will be received and evidence of receipt of
7 payment, such as bank statements showing deposit amounts;
- 8 g. Copy of Schedule-E Supplemental Income and Loss for the most recent tax year
9 for rental income or, if there is no Schedule E available, copies of his current
10 lease agreements and bank statement or cancelled rent checks;
- 11 h. IRS W2 form;
- 12 i. Utility bill (gas, electric, water); and
- 13 j. Verification of Employment.

14 95. Bank of America further informed him that all of his information and paperwork
15 would have to be received by Bank of America no later than August 7, 2010.

16 96. Because NBAA had promised to submit all required paperwork to Bank of
17 America in support of his loan modification, Mr. Richard attempted to contact NBAA to handle
18 the issues cited in Bank of America's July 8, 2010 letter. A representative of NBAA told him to
19 fax all of the required paperwork to Bank of America himself.

20 97. After submitting the paperwork, Mr. Richard called NBAA to ask if NBAA could
21 follow up on the status of his application and to inquire into how he could retain the legal
22 services that had been promised in the event his application was denied. NBAA did not return
23 any of these calls and has not contacted Mr. Richard regarding the status of his loan modification
24 since.

25 98. In February 2011, Mr. Richard called Bank of America to find out the status of
26 his loan modification and discovered that his loan modification application had been denied for
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1 reasons that were not disclosed to him. Bank of America informed him that he would have to re-
2 file his application in order to obtain a loan modification.

3 99. At the time these events took place, Samer Farraj was the president of NBAA and,
4 upon information and belief, authorized the conduct engaged in by Defendant George Farraj.

5 100. Mr. Richard has suffered financial harm as a result of the payments that he made
6 to NBAA, NBAA's failure to provide the services that were promised him and agreed to by him
7 and NBAA, and NBAA's failure to obtain the guaranteed loan modification.

8 **C. Emerge Defendants**

9 101. Defendant Emerge and its owners, managers, and operators, including Defendants
10 Larry Foster and Thomas Duck, have also injured numerous victims due to their unscrupulous
11 loan modification scam tactics, including Plaintiff Shawna Fitch ("Ms. Fitch").

12 102. Ms. Fitch met Larry Foster, an employee of Emerge, in October of 2009.

13 103. When she sought the services of Emerge, Ms. Fitch and her husband were on the
14 brink of foreclosure on their home in Las Vegas, Nevada.

15 104. Larry Foster advertised Emerge's loan modification services, lauding that the
16 company had a ninety percent success rate and that a loan modification would be obtained and
17 completed within ninety days.

18 105. To utilize Emerge's services, Ms. Fitch was informed by Larry Foster that she
19 would need to advance \$3,000 to the company. Ms. Fitch advanced the fee with a personal
20 check.

21 106. Ms. Fitch signed a number of agreements with Emerge and Larry Foster, who was
22 acting as Emerge's agent. The documents she executed contained personal and sensitive
23 information about Ms. Fitch and her family.

24 107. Shortly after Ms. Fitch paid the advance fee, Mr. Foster disappeared from Emerge
25 and, upon information and belief, never performed any work on behalf of Ms. Fitch. After she
26 could no longer reach him through Emerge, Ms. Fitch was able to communicate with him via
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1 electronic mail and requested a refund, but he refused to refund the money she paid for the loan
2 modification.

3 108. Ms. Fitch also attempted to obtain reimbursement directly from Emerge but it
4 claimed that Mr. Foster had been fired and refused to refund the money she had paid.

5 109. On October 21, 2009, at approximately the same time that Ms. Fitch lodged her
6 complaints with Emerge, Emerge sent a communication to all of its clients describing the
7 passage of Senate Bill 94, which prohibits the use of advance fees in obtaining loan
8 modifications. In that communication, Emerge declared it will no longer perform any services
9 for any of its clients, explaining that "we are . . . prohibited from working on files at this time
10 without being in violation of this law."

11 110. On information and belief, Emerge did not perform any services for Ms. Fitch.

12 111. Throughout the purported loan modification process, Ms. Fitch fully cooperated
13 with Emerge, and performed all of her obligations under the written and oral instructions given
14 by Emerge.

15 112. Ms. Fitch never received a loan modification through Emerge and never received
16 a refund of the \$3,000.00 that she had paid to Emerge.

17 113. Thomas Duck is the president of Emerge and, upon information and belief,
18 authorized the conduct engaged in by Mr. Foster.

19 114. As a result of the lack of services provided by Emerge, Ms. Fitch has suffered
20 financial harm.

21 **V. CLASS ALLEGATIONS**

22 115. Pursuant to section 382 of the California Code of Civil Procedure, Plaintiffs bring
23 this action on behalf of themselves and a similarly situated class defined as any individual who
24 (1) entered into contracts with the Defendants for loan modification services; (2) paid advance
25 fees for those loan modification services; (3) was not provided with the loan modification
26 services promised; and (4) did not receive promised refunds from the Defendants. Excluded
27 from the Class are the Defendants and their officers, affiliates, directors, members, employees,
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1 shareholders, independent contractors, onsite managers and supervisors, offsite managers and
2 supervisors, real estate agents and brokers, other agents however denominated, (collectively,
3 “Defendants’ Agents”), and the immediate family members of Defendants’ Agents.

4 116. The proposed Class includes two Subclasses, the first comprising:
5 All Class Members who negotiated primarily with the Defendants
6 in Spanish, Chinese, Tagalog, Vietnamese, or Korean, but did not
7 receive a translation of every term and condition of any agreement
8 with the Defendants (“1632 Subclass”).

9 117. The second Subclass comprises:
10 All Class Members who were over the age of 65 at the time they
11 entered into negotiations and agreements with the Defendants
12 (“Elder Subclass”).

13 118. Plaintiffs reserve the right under California Rules of Court, rule 3.765(b), to
14 amend or modify the class description with greater specificity or division into subclasses or
15 limitation to particular issues.

16 119. This action has been brought and may be maintained as a class action pursuant to
17 Code of Civil Procedure, section 382 because there is a well-defined common interest of many
18 persons, and it is impractical to bring them all before the Court.

19 **A. Numerosity**

20 120. The Class as defined is so numerous that joinder of all members would be
21 unfeasible and impractical. The disposition of their claims through this class action will benefit
22 both the parties and this Court. The size of the Class is unknown to Plaintiffs at this time;
23 however, it is estimated that Class members will be in excess of one hundred (100) individuals.
24 The quantity and identity of such membership is readily ascertainable via inspection of
25 Defendants’ records.
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- 1 a. Defendants' pattern and practice of negotiating with the 1632 Subclass Members
2 in a language other than English, such as Spanish;
- 3 b. Defendants' pattern and practice of providing English-language form contracts to
4 the 1632 Subclass Members;
- 5 c. Defendants' pattern and practice of failing to provide a complete translation of
6 the English-language form contracts to the 1632 Subclass Members;
- 7 d. Defendants' pattern and practice with respect to failing to provide loan
8 modification services and communicating with the victims regarding loan
9 modification options; and
- 10 e. Additional common questions of law and fact that may develop as the litigation
11 progresses.

12 123. Additional common questions of law and fact exist as to all Elder Subclass
13 Members, and predominate over any questions that affect only individual members of the Elder
14 Subclass. In addition to the common questions of law and fact identified above, these questions
15 include, but are not limited to:

- 16 a. Defendants' express contractual promise to provide refunds to the Elder Subclass
17 Members in the event that a loan modification could not be obtained;
- 18 b. Defendants' pattern and practice of failing to obtain loan modifications for the
19 Elder Subclass Members;
- 20 c. Defendants' pattern and practice of failing to provide the contractual refund;
- 21 d. Defendants' pattern and practice with respect to providing loan modification
22 services and communicating with the victims regarding loan modification options;
23 and
- 24 e. Additional common questions of law and fact that may develop as the litigation
25 progresses.
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1 **C. Typicality**

2 124. The claims of Plaintiffs are typical of the claims of all members of the Class (and,
3 if applicable, Subclasses) defined herein because all members of the Class (and, if applicable,
4 Subclasses) sustained similar injuries and damages arising out of Defendants' common course of
5 conduct in violation of law, which included taking money from, making promises to, and failing
6 to perform the services they promised to provide to the Class; and the injuries and damages of all
7 members of the Class (and, if applicable, Subclasses) were caused by Defendants' wrongful
8 conduct in violation of law, as alleged herein.

9 **D. Adequacy of Representation**

10 125. Plaintiffs are adequate representatives of the Class and Subclasses defined herein,
11 will fairly protect the interests of the members of the Class and Subclasses, have no interests
12 antagonistic to the members of the Class and Subclasses, and will vigorously pursue this suit via
13 attorneys who are competent, skilled, and experienced in litigating matters of this type. Class
14 counsel is competent and experienced in litigating large class actions.

15 **E. Superiority**

16 126. The nature of this action and the nature of laws available to Plaintiffs make the
17 use of the class action format a particularly efficient and appropriate procedure to afford relief to
18 Plaintiffs for the wrongs alleged herein. Individual joinder of all Class Members is impractical.
19 Class action treatment will permit a large number of similarly situated persons to prosecute their
20 common claims in a single forum simultaneously, efficiently, and without the unnecessary
21 duplication of effort and expense that numerous individual actions engender. Because the losses,
22 injuries, and damages suffered by some of the individual Class Members are in almost all cases
23 too small to support an independent lawsuit, the expenses and burden of individual litigation
24 would make it extremely difficult or impossible for individual Class Members to redress wrongs
25 done to them.

1 **VI. CAUSES OF ACTION**

2 **First Cause of Action**

3 **Breach of Contract**

4 *(By All Members of the Class Against the Entity Defendants)*

5 127. Plaintiffs incorporate all of the foregoing allegations in all previous paragraphs as
6 though fully set forth herein.

7 128. In exchange for valuable consideration, Plaintiffs executed written contracts with
8 Defendants.

9 129. Because Defendants failed to perform the promised loan modification services for
10 Plaintiffs and the Class Members, Defendants were obligated to repay the full amount of their
11 up-front payments and failed to do so.

12 130. By failing to do so, Defendants breached one or more provisions under the subject
13 agreements or contracts.

14 131. As a consequence of Defendants' breach of the agreements, Plaintiffs and Class
15 Members were damaged in an amount to be proven at trial, including attorneys' fees under Civil
16 Code, section 1717.

17 **Second Cause of Action**

18 **Unfair Competition (Cal. Bus. & Prof. Code § 17200 et seq.)**

19 *(By All Members of the Class Against All Defendants)*

20 132. Plaintiffs incorporate all of the foregoing allegations in all previous paragraphs as
21 though fully set forth herein.

22 133. Section 17200 of the Business and Professions Code prohibits unfair competition,
23 including any unlawful, unfair or fraudulent business act or practice. Section 17200 further
24 prohibits unfair, deceptive, untrue or misleading advertising.

25 134. Defendants have violated Business & Professions Code, Section 17200 et seq., by
26 engaging in unlawful, unfair and deceptive conduct and advertising by, among other things: (i)
27 failing to reimburse the Class Members in accordance with the money-back guaranty after
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1 Defendants failed to perform the promised loan modification services; (ii) making false and/or
2 deceptive representations to the public through numerous channels including oral
3 representations, the Internet, radio, mass mailings and form contracts in a manner likely to
4 mislead a reasonable consumer; (iii) violating Civil Code section 2945 et seq. by, among other
5 things, requiring the payment of advance fees for commencement of services; (iv) violating Civil
6 Code section 1632 by failing to deliver translations of the subject contracts or agreements in the
7 language in which the contract or agreement was negotiated; and (v) violating Welfare and
8 Institutions Code section 15610.30 by fraudulently taking, appropriating, secreting and retaining
9 the property of an elder.

10 135. These acts and omissions constitute unlawful, unfair and/or deceptive business
11 practices within the meaning of Section 17200.

12 136. As a result of the conduct described above, Plaintiffs and the Class Members have
13 suffered and will suffer injury in fact, and have lost money and/or property that is subject to
14 restitution.

15 137. Accordingly, the Class is entitled to equitable relief under Section 17200 in the
16 form of restitution and injunctions and any other equitable relief permissible under Section
17 17200.

18 **Third Cause of Action**

19 **Statutory Remedies Based on Failure to Translate (Cal. Civ. Code § 1632)**

20 *(By 1632 Subclass Against Defendants NBAA and Samer Farraj)*

21 138. Plaintiffs incorporate all of the foregoing allegations in all previous paragraphs as
22 though fully set forth herein.

23 139. Defendants were engaged in a trade or business and negotiated primarily in
24 Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, with the 1632 Subclass
25 Members in the course of entering into contracts that contained a statement of fees or charges, or
26 authorized such negotiations. The 1632 Subclass Members entered into these contracts for the
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1 purpose of obtaining loan modification services to be provided by Defendants in their capacity as
2 brokers.

3 140. Defendants failed to deliver to the 1632 Subclass Members a translation of the
4 subject contract or agreement that ultimately was signed in the language in which the contract or
5 agreement was negotiated. Defendants' failure to provide a translation of every term and
6 condition in that contract or agreement violated Civil Code, section 1632, subdivision (b)(4).

7 141. As a consequence of Defendants' violations of Section 1632, the 1632 Subclass
8 Members are entitled to rescission of their contract or agreement with Defendants, restitution,
9 compensatory damages, and consequential damages, pursuant to Civil Code, section 1632,
10 subdivision (k).

11 **Fourth Cause of Action**

12 **Unfair or Deceptive Practices Against Senior Citizens (Cal. Civ. Code § 3345)**

13 *(By Elder Subclass Against Defendants Premiere, Raed Farraj, NBAA, Samer Farraj, and Ernest*
14 *Auger)*

15 142. Plaintiffs incorporate all of the foregoing allegations in all previous paragraphs as
16 though fully set forth herein.

17 143. Section 3345 of the California Civil Code prohibits unfair or deceptive practices
18 against senior citizens, defined by Civil Code 1761(f) to be persons over the age of 65.

19 144. Defendants conducted unfair or deceptive business practices against senior
20 citizens when they authorized or presented form contracts promising "guaranteed" loan
21 modifications in order to obtain up-front payments from each of the class members.

22 145. Defendants conducted unfair or deceptive business practices when they failed to
23 honor refund requests by the class members for upfront fees they had paid, after the Defendants
24 failed to secure loan modifications, as promised, with more favorable terms for the class
25 members.

26 146. These actions, individually and collectively, are unfair and deceptive acts in
27 violation of Cal. Civil Code § 3345.
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1 147. Defendants knew or should have known that their conduct was directed at one or
2 more senior citizen persons.

3 148. Defendants' conduct caused senior citizens to suffer loss and/or encumbrance of a
4 primary residence; substantial loss of property set aside for retirement and/or assets essential to
5 the health and welfare of the senior citizen.

6 149. The Elder Subclass Members affected by Defendants' unfair and deceptive
7 practices are substantially more vulnerable than other members of the public due to Defendants'
8 conduct because of their age, poor health, impaired understanding, restricted mobility or
9 disability, and actually suffered substantial physical, emotional and economic damage resulting
10 from Defendants' conduct.

11 150. As a result of these unfair or deceptive acts or practices, the Elder Subclass
12 Members have suffered and will suffer injury in fact, and have lost money and/or property.

13 **Fifth Cause of Action**

14 **Elder Financial Abuse**

15 *(By Elder Subclass Against Defendants Premiere, Raed Farraj, NBAA, Samer Farraj, and Ernest*
16 *Auger)*

17 151. Plaintiffs incorporate all of the forgoing allegations in all previous paragraphs as
18 though fully set forth herein.

19 152. Defendants made or authorized various representations to the Elder Subclass
20 regarding the possibility and likelihood that the Elder Subclass may lose their homes and that by
21 paying Defendants to secure loan modification, this consequence would be avoided. As a direct
22 result of these representations, the Elder Subclass paid Defendants money for these alleged
23 services.

24 153. When Defendants were unable to secure a loan modification for the Elder
25 Subclass, each member of the Elder Subclass demanded his or her money back. Defendants did
26 not refund the Elder Subclass' money.

1 154. The services and items provided by Defendants to the Elder Subclass were of no
2 value or were of a value far less than the amount paid by the Elder Subclass. In addition,
3 Defendants' services were inconsistent with the representations made and required the Elder
4 Subclass to incur additional expense to remedy these errors.

5 155. In violation of the Elder Abuse and Dependent Adult Civil Protection Act,
6 codified at Welfare & Institutions Code section 15600 *et seq.* (the "Elder Abuse Act"),
7 Defendants fraudulently took, appropriated, secreted and retained the property of the Elder
8 Subclass, who qualify as elders, to a wrongful use under the meaning of Welfare and Institutions
9 Code Section 15610.30. Defendants engaged in such conduct either directly or by assisting
10 others in such conduct.

11 156. In engaging in such conduct in violation of Welfare and Institutions Code Section
12 15610.30, Defendants intended to, and did, defraud the Elder Subclass within the meaning of
13 Welfare and Institutions Code Section 15610.30.

14 157. As a direct and proximate result of Defendants' wrongful conduct, the Elder
15 Subclass Members have been deprived of their property (money), have sustained related damages
16 of loss of income on that money, and will incur additional expenses for attempting to correct the
17 damage that Defendants have done.

18 158. In addition to all other remedies available under the law, the Elder Subclass is
19 entitled to recover reasonable attorneys' fees and costs for financial abuse pursuant to Welfare
20 and Institutions Code Section 15657.5.

21 159. Defendants' conduct was reckless, oppressive, fraudulent and malicious in the
22 commission of the financial abuse and the Elder Subclass is entitled to recover damages for the
23 sake of example and in order to punish Defendants for financial abuse pursuant to Welfare and
24 Institutions Code Section 15657.5 and Civil Code section 3294.

25 **Sixth Cause of Action**

26 **Fraud**

27 *(By All Members of the Class Against All Defendants)*

1 160. Plaintiffs incorporate all of the forgoing allegations in all previous paragraphs as
2 though fully set forth herein.

3 161. Defendants made representations to Plaintiffs regarding Defendants' ability to
4 secure loan modifications for Plaintiffs, among other services, that were false, misleading and
5 misrepresented Defendants' intent, or authorized such representations.

6 162. These false and misleading statements were material to Plaintiffs' decision to pay
7 substantial amounts of money to Defendants. Plaintiffs reasonably relied on these false and
8 misleading statements to their detriment by paying Defendants the aforesaid money.

9 163. Defendants knew that these statements were false and misleading when they were
10 made, and that the Plaintiffs would rely upon the statements to their detriment.

11 164. Defendants thereby intended to defraud Plaintiffs.

12 165. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs
13 suffered the damages as alleged herein.

14 166. Defendants' conduct was oppressive, fraudulent and malicious and Plaintiffs are
15 entitled to recover punitive damages pursuant to Cal. Civil Code section 3294.

16 **Seventh Cause of Action**

17 **Injunctive Relief**

18 *(By All Members of the Class Against All Defendants)*

19 167. Plaintiffs incorporate all of the foregoing allegations in all previous paragraphs as
20 though fully set forth herein.

21 168. Unless enjoined, Defendants will continue to engage in their illegal and fraudulent
22 conduct as described above, which includes, among other things:

- 23 • inducing homeowners to enter into agreements for loan modification services that
- 24 require the payment of advance fees;
- 25 • failing to provide the legally required Spanish, Chinese, Tagalog, Vietnamese, or
- 26 Korean translations of such agreements to homeowners;
- 27 • guaranteeing success rates with no basis in fact; and,

- 1 • utilizing attorneys for the purposes of complying with Civil Code section 2945 et
2 seq. while such attorneys do not actually perform any legal services for
3 homeowners.

4 169. Unless and until so enjoined, the public, especially homeowners currently in debt
5 or seeking loan modifications, will be irreparably injured in that they will continue to be
6 subjected to the illegal and fraudulent conduct of Defendants as described above and will likely
7 suffer similar financial damages as Plaintiffs have.

8 170. Plaintiffs have no adequate remedy at law to prevent or redress this illegal
9 conduct.

10 **VII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs and the Class Members respectfully pray for judgment against
12 Defendants, and each of them, as follows:

- 13 a. That the Court determine that this action may be maintained as a class action;
14 b. A declaration that the Defendants have breached their agreements with the Class
15 Members and Subclass Members;
16 c. A declaration that the Defendants have engaged in unfair competition to the
17 detriment of, and/or utilized unfair or deceptive practices with, the Class
18 Members and Subclass Members;
19 d. That Plaintiffs be appointed as the representatives of the Class and Subclasses;
20 e. That the attorneys of record for Plaintiffs whose names appear in this Complaint
21 be appointed as Class Counsel;
22 f. For compensatory damages as proven at trial;
23 g. For restitution to Plaintiffs and the Class and Subclasses of money or property
24 wrongfully taken from them;
25 h. For provisional remedies against Defendants, including a preliminary injunction
26 prohibiting the Defendants from continuing their unlawful acts and unfair acts, or
27 transferring the profits and ill-gotten gains of such acts;

- 1 i. For permanent injunctions prohibiting the Defendants from engaging in the
2 conduct set forth above;
- 3 j. For an order of specific performance by the Defendants to honor the guaranty
4 provisions of the form contracts at issue;
- 5 k. For exemplary damages as permitted under the Civil Code or under any other
6 statute or rule applicable to the claims set forth above;
- 7 l. For treble damages as permitted by the Elder Abuse Act or under any other
8 applicable law;
- 9 m. For a constructive trust against all Defendants over the property wrongfully
10 obtained by Defendants for the benefit of Plaintiffs and the Class and Subclasses,
11 requiring any Defendant in possession of monies wrongfully taken from Plaintiffs
12 and the Class and Subclasses to hold such monies for the benefit of, and distribute
13 such monies to, Plaintiffs and the Class and Subclasses;
- 14 n. For an accounting of the books and records of Defendants and all persons and
15 entities acting in coordination with Defendants, to determine the amount due from
16 Defendants to Plaintiffs and the Class and Subclasses and the location and source
17 of all monies and property obtained by Defendants from Plaintiffs and the Class
18 and Subclasses, including from persons providing funds to Defendants on behalf
19 of Class and Subclasses Members;
- 20 o. For reasonable attorneys' fees as permitted by the statute(s) set forth above, the
21 parties' contracts (per Civ. Code, § 1717) and as permitted under Code of Civil
22 Procedure, section 1021.5, or any other applicable legal provision;
- 23 p. For costs of suit;
- 24 q. For pre judgment interest at the legal rate; and

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r. For any other injunctive and equitable relief the Court may deem proper.

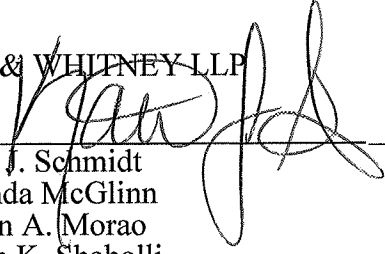
VIII. JURY DEMAND

Plaintiffs and the Class Members hereby demand a trial by jury for all issues which may be tried by a jury.

DATED: October 17, 2012

DORSEY & WHITNEY LLP

By: _____


Kent J. Schmidt
Lynnda McGlenn
Karen A. Morao
Sarah K. Shaholli
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