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CHAMBERS OF
MARIA MARRINARI SYPEK
J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY
DOCKET NO. MER-C-

ANNE MILGRAM, Attorney General of the
State of New Jersey, DAVID M. SZUCHMAN,
Director of the New Jersey Division of
Consumer Affairs, and STEVEN M.
GOLDMAN, Commissioner of the New Jersey
Department of Banking and Insurance,

Plaintiffs,

v.

BEST INTEREST RATE MORTGAGE
COMPANY, L.L.C.,

Defendant.

Civil Action

VERIFIED COMPLAINT

Plaintiffs Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 25 Market Street, Trenton, New Jersey 08625; David M. Szuchman, Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Steven M. Goldman, Commissioner of the New Jersey Division of Banking and Insurance ("Commissioner"), with

offices located at 20 West State Street, Trenton, New Jersey 08625, (collectively “Plaintiffs”) by way of Verified Complaint state:

PRELIMINARY STATEMENT

1. The downturn in the economy, along with loose mortgage lending practices over the last few years, have led to an unprecedented number of homeowners facing foreclosure. Many of these homeowners, desperate to avoid losing their homes, seek assistance from companies that represent that they can help prevent foreclosures through mortgage loan modification programs.

2. The defendant in this action, Best Interest Rate Mortgage Company, LLC (“BIRMCO”), has engaged in repeated violations of State law by taking thousands of dollars in up-front fees from financially strapped homeowners, by falsely promising distressed homeowners that they will obtain a loan modification on their behalf, and by operating as an unlicensed debt adjustment business in the State of New Jersey.

3. Defendant solicited its loan modification services to distressed homeowners with a mailing made to appear as if it was sent from a governmental agency. Once these homeowners contact BIRMCO, the company demands an up-front fee for its services, promising homeowners lower interest rates and lower monthly payments, and then often makes little or no attempt to engage in mortgage modification services. Moreover, even when Defendant does make an effort to modify the consumers’ mortgages, it is selling a service that it cannot legally provide.

4. Further, after homeowners (referred to herein as “homeowners” or “debtors”) pay Defendant’s up-front loan modification fee, Defendant encourages them to stop making mortgage payments and to refrain from contacting their lenders themselves, and represent that Defendant will negotiate mortgage modifications on their behalf. In fact, Defendant often fails to modify

the homeowners' mortgages, and consumers fall further behind with their mortgage payments. In some instances, consumers are in danger of losing their homes in foreclosure or otherwise incurring late fees and penalties, and become ineligible for certain loan modification programs when time passes and further missed payments accrue. In some cases, homeowners end up with even higher monthly mortgage payments after contracting with BIRMCO, as a result of having to make up for missed payments after following the company's advice to stop paying their mortgage.

5. Under New Jersey's Debt Adjustment and Credit Counseling Act ("DACCA"), N.J.S.A. 17:16G-1 et seq., only the lender or owner of the loan, the mortgage servicing company acting as an agent for the loan's owner, an entity licensed by the Department of Banking and Insurance as a Debt Adjuster under DACCA, or other entities that are exempt from Debt Adjuster licensure, as set forth at N.J.S.A. 17:16G-1c(2), may modify home mortgage loans. Under DACCA, only nonprofit social service agencies or consumer credit counseling agencies may obtain a license from the Department of Banking and Insurance to act as debt adjusters. Defendant does not hold such a license and is thus acting as an unlicensed debt adjuster in violation of DACCA.

6. The Attorney General, the Director, and the Commissioner (collectively, "Plaintiffs") bring this application seeking temporary, preliminary and ultimately permanent injunctive relief, as well as other equitable relief, to end the unlawful business practices committed by Defendant, which constitute multiple violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") and the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq. ("DACCA"). Plaintiffs submit this Verified Complaint together with

an Order to Show Cause with Temporary Restraints to prevent Defendant from harming additional consumers or otherwise engaging in the unlicensed adjustment of mortgage loans in New Jersey.

JURISDICTION AND PARTIES

7. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and the regulations promulgated thereunder (“CFA Regulations”), N.J.A.C. 13:45A-1.1 et seq.

8. The Director is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General. Plaintiffs bring the CFA claims pursuant to their authority under N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19.

9. The Commissioner is charged with the responsibility of enforcing the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq., and its attendant regulations, N.J.A.C. 3:25-1.1 et seq. This action seeking injunctive and other relief is brought by the Commissioner in his official capacity pursuant to authority under N.J.S.A. 17:1-15g.

10. The Commissioner is also authorized pursuant to N.J.S.A. 17:16G-8 to proceed with a summary action in the name of and on behalf the State against the person or licensee and any other person concerned or in any way participating in or about to participate in those practices or transactions constituting a violation of the DACCA, to enjoin the person or licensee from continuing those practices or engaging in or doing any act in furtherance of those practices constituting a violation of the DACCA.

11. Defendant Best Interest Rate Mortgage Company, L.L.C. (BIRMCO) is a company formed under the laws of the State of New Jersey, with offices at 216 Haddon Avenue, Suite 405

in Westmont, New Jersey. BIRMCO is licensed as a mortgage lender by the New Jersey Department of Banking and Insurance.

12. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is the county in which Plaintiffs Attorney General and Commissioner of Banking and Insurance maintain their principal offices. Venue is further appropriate in Mercer County because Defendant conducted business across the State of New Jersey, in addition to nationwide, and took part in transactions across the State.

13. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of BIRMCO who have been involved in the conduct that gives rise to this Verified Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

14. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Verified Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

15. Non-profit housing counselors and other non-profit financial counselors or licensed attorneys can help distressed homeowners understand their financial situation and all options available to them. Many of these organizations are certified by the Federal Department of Housing and Urban Development and the New Jersey Housing and Mortgage Finance Agency,

and work in conjunction with government programs to assist struggling homeowners at no cost to the homeowner.

16. Under the DACCA, non-profit social service agencies or non-profit consumer credit counseling agencies may act as debt adjusters and offer credit counseling, but must first obtain a license from the Commission. The DACCA requires licensed agencies to be bonded to the satisfaction of the Commissioner, and to have its financial records audited annually by a certified public accountant or registered public accountant, with the audit certifying that the salaries and expenses paid by the licensee are reasonable compared to those incurred by comparable agencies providing similar services. The DACCA also restricts the fees a licensee may charge and who may serve on a licensee's board of directors.

17. Since at least November 2008, Defendant has engaged in unlicensed debt adjustment in the State of New Jersey, including entering into agreements with New Jersey homeowners to modify their home mortgage loans.

18. Upon information and belief, since at least November 2008, Defendant has engaged in the advertisement and sale of merchandise to consumers in New Jersey and elsewhere, including, but not limited to, loan modification assistance.

19. Defendant charges homeowners fees, ostensibly to renegotiate mortgage loan terms on their behalf.

20. BIRMCO identifies distressed homeowners facing foreclosure, and solicits its mortgage modification business to these homeowners through direct mail and telephone solicitations.

21. After identifying distressed homeowners and acquiring information about their mortgage, BIRMCO forwards a direct mail solicitation to these homeowners that is made to appear as if it were being sent by a government agency. The solicitation lists the homeowner's mortgage information, discusses government programs for distressed homeowners, indicates that the homeowner may be eligible to participate in these programs and provides a telephone number to contact for further information. The telephone number provided is for BIRMCO, although BIRMCO's name does not appear anywhere on the solicitation. A copy of one of these solicitations is attached as Exhibit A, with the subject consumer's personal information redacted.

22. BIRMCO promises consumers that it can obtain for them a mortgage modification with a lower interest rate and lower monthly payments. BIRMCO requires consumers to pay an up-front fee, generally more than a thousand dollars, and sign a contract to obtain services. BIRMCO also promises a refund of the fee should it be unable to obtain a modification.

23. BIRMCO encourages the consumers to cease making their mortgage payments, purportedly to get into a better position to obtain a modification, and to not contact their mortgage company directly.

24. Once it accepts the up-front fee, BIRMCO often does little or no work toward obtaining a loan modification. Generally, despite its promises, BIRMCO does not obtain a loan modification that lowers the consumer's interest rate or monthly payment. In many cases, after failing to obtain a modification through BIRMCO the homeowner obtains a modification on his or her own by working directly with the mortgage servicer. In other cases, BIRMCO merely obtains a repayment plan for missed payments (much of which accrued at BIRMCO's direction) or the mortgage servicer offers a standard modification package that is no different than what

would have been offered to the homeowner if he or she directly contacted the mortgage servicer, but BIRMCO nonetheless forwards a letter to the consumer taking credit for negotiating a beneficial modification. In many cases, the homeowner ends up with a monthly mortgage payment even higher than the one he or she had prior to contracting with BIRMCO.

25. When consumers obtain a mortgage modification on their own, or determine that BIRMCO has not obtained a modification, and requests a refund, BIRMCO often refuses to provide a refund, or, if the consumer makes a complaint, might offer only a partial refund.

26. By offering mortgage modification and debt adjustment services to New Jersey homeowners, Defendant has engaged in conduct prohibited by the New Jersey Debt Adjustment and Credit Counseling Act.

27. By soliciting desperate homeowners fearing foreclosure pretending to be part of a government program, promising to save their homes and negotiate a more favorable mortgage for them, and taking a significant up-front fee to do so, then doing little or no work to actually obtain a favorable modification, Defendant has engaged in unconscionable and deceptive conduct in violation of the New Jersey Consumer Fraud Act.

28. The experiences of the following homeowners provide typical examples of Defendant's conduct, by way of illustration:

KEN AND KAREN SMITH

29. Ken and Karen Smith own their home in Saylorsburg, Pennsylvania. In or around the end of October 2008, the Smiths were behind on her mortgage payments when they received a document in the mail offering help in getting a loan modification. The document contained the

following text which made it appear to be a government document: "Form 008-S Payment Reduction Notification." The document stated that the Smiths "may be eligible for special modification program guidelines created in conjunction with Government Economic Stimulus Act of 2008." The document's appearance gave the Smiths the impression that it came from a government agency.

30. On November 5, 2008, Ms. Smith called the telephone number on the document and spoke to a BIRMCO employee who identified himself as Al Branco. During that conversation, Branco said that BIRMCO could obtain a favorable modification of the Smiths' mortgage. Branco also instructed Ms. Smith not to talk to her lender at all and not to pay her mortgage until BIRMCO successfully negotiated with the lender. Branco also sent Ms. Smith an email that stated: "Per our conversation, if we are not able to successfully negotiate a loan modification with your existing lender which would include modifying your adjustable to a fixed rate, we will refund you 75% of any and all fees collected."

31. On November 7, 2008, Ms. Smith entered into an agreement with BIRMCO that stated BIRMCO would refund the Smiths 75% of the fee if they were unable to secure a loan modification. BIRMCO's service fee was \$1,863, which was paid in two installments; \$1,250 charged to Ms. Smith's Visa debit card on November 20, 2008, and \$613 charged to the same card on December 4, 2008. Ms. Smith signed the agreement in her husband's name.

32. On January 8, 2009, the Smiths received a letter from Michael DiPlacido, Sr., President of BIRMCO, stating that BIRMCO had obtained a loan modification from the Smiths' lender. The modification required that the Smiths make a lump-sum payment of \$4,978 by January 31, 2009, and stated that their new monthly mortgage payment would be \$2,209.25,

which was \$362 per month greater than their payment before the modification. The first payment under this plan was due on February 28, 2009.

33. On January 15, 2009, Ms. Smith sent an e-mail to BIRMCO asking for a refund of the fee she was charged because BIRMCO had not obtained a loan modification for her and her husband. Ms. Smith also requested that BIRMCO refund the late fees they were charged because they had followed BIRMCO's advice not to pay their mortgage.

34. BIRMCO refused to provide any refund until the Smiths filed a complaint with the Better Business Bureau of New Jersey. After this complaint, BIRMCO later changed their stance and provided the Smiths a partial refund of \$700.

35. The Smiths' home is currently in foreclosure.

DEBORAH MANGROO

36. Deborah Mangroo owns her home in Belleville, New Jersey. In or around December of 2008, Ms. Mangroo received an e-mail solicitation from BIRMCO. The solicitation stated that BIRMCO could lower her monthly mortgage payment by negotiating a modification of her mortgage.

37. Ms. Mangroo called BIRMCO in response to the solicitation and spoke to an individual who identified himself as Michael Scian. Scian told Ms. Mangroo he could try and get a loan modification for her that would lower her payments. He also instructed her not to make her mortgage payments, since she would only be considered for a modification if she was late on her payments.

38. Ms. Mangroo paid BIRMCO's fee of \$2,900 and, as instructed, stopped making her mortgage payments.

39. In or around March 2009, BIRMCO contacted Ms. Mangroo and advised that it had worked out a modification for her. Under what was called a “modification” by BIRMCO, Ms. Mangroo’s monthly payment would increase by \$70 per month. When Ms. Mangroo asked her lender for some clarification regarding the modification, she was advised that she was not given a modification of her loan, but a repayment plan to cover the mortgage payments she had missed. Among these were the payments BIRMCO had instructed her not to pay. The lender also advised that she could have received this repayment plan on her own without using a third-party negotiator.

40. Ms. Mangroo requested a refund from BIRMCO of her \$2,900 fee. BIRMCO refunded \$1,450, but has refused to refund the remaining \$1,450.

VICKI HRANJ

41. Vicki Hranj owns her home in New Egypt, New Jersey. Ms. Hranj was looking to modify her mortgage when she received a document in the mail that appeared to be from a government agency advising her that she could qualify for a lower interest rate or monthly payment on her mortgage.

42. Ms. Hranj called the phone number on the document and discovered it was from BIRMCO. She spoke with a person who identified herself as Becky Canon. Canon said that BIRMCO could get her a modification that would lower her interest rate and monthly payment. She also told Ms. Hranj that it would be better if she stopped making her mortgage payments, since there was higher likelihood that she would obtain a modification if she were behind in her payments.

43. About six months after retaining BIRMCO, Ms. Hranj was notified that a modification had been obtained. Under what was termed a modification by BIRMCO, Ms. Hranj's monthly payment would increase by almost \$200 per month and the balance of her loan would increase by more than \$28,000 to make up for the missed payments.

JOSEPH KAY

44. Joseph Kay owns his home in Tuckerton, New Jersey. In or around November 2008, Mr. Kay was falling behind in his mortgage payments when he received a document in the mail that looked like it had been sent by a government agency advising him that he may be eligible for a special mortgage modification under the Economic Stimulus Act of 2008.

45. Mr. Kay called the telephone number on the document and spoke to a person who identified herself as "Laura" from BIRMCO. Laura advised Mr. Kay that BIRMCO could obtain a lower interest rate and monthly payment for him, and that he would not need to make any mortgage payments while they were working on the modification of his mortgage. Laura told Mr. Kay that it was much harder to get a settlement with the lender if he was making timely payments. Based on this instruction, Mr. Kay stopped making his mortgage payments.

46. In early November 2008, Mr. Kay completed the contract for services sent to him by BIRMCO and paid BIRMCO a fee of \$1,250.

47. In mid-January 2009, Mr. Kay received a notice from his lender that a request for a modification had been received on his behalf. Mr. Kay received a call several weeks later from BIRMCO stating that his loan had been modified. The proposed modification would save him about \$100 per month on his mortgage for one year only, and would increase for several years in a row after that. He also would have the balance of his loan increase by

\$7,000. He later received papers from his mortgage company outlining the same proposal, but also indicating that he needed to pay an additional contribution fee of \$1,100 to obtain the proposed modification. BIRMCO did not mention the contribution fee when it communicated the modification offer to Mr. Kay. Mr. Kay contacted Laura, who instructed him to cross out references to the contribution fee on the papers sent by the lender, and not to pay the fee. Mr. Kay did as instructed. He was then notified by the lender that the modification was denied.

48. After receiving the denial, Mr. Kay contacted BIRMCO. Duane Jones, who identified himself as a vice president of BIRMCO, told Mr. Kay that BIRMCO had done all that it could and it was now up to him to get a modification.

49. After speaking with Jones, Mr. Kay contacted his lender directly and worked out his own modification.

50. Mr. Kay requested a refund from BIRMCO, but BIRMCO has not provided one.

51. Upon information and belief, BIRMCO has accepted fees from additional consumers for loan modification services, and has failed to provide such services.

COUNT I
VIOLATIONS OF THE CFA
(UNCONSCIONABLE COMMERCIAL PRACTICES)

52. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 51 above as if more fully set forth herein.

53. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

54. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c). The CFA defines “person” as including “any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestius que trustent thereof.” N.J.S.A. 56:8-1(d).

55. Defendant is a “person” as defined by the CFA and have sold “merchandise” as defined by the CFA.

56. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices in connection with the sale of merchandise, including, but not limited to, the following:

- a. Offering debt adjustment services to New Jersey debtors without a license to do so;
- b. Accepting payment from consumers and then failing to provide consumers with the contracted-for loan modification assistance;
- c. Demanding excessive up-front payments from distressed homeowners facing foreclosure of their homes;

d. Placing distressed homeowners in worse financial position by instructing them not to pay their mortgages;

e. Representing that it obtained a loan modification for the consumer, when in fact it only obtained a repayment plan concerning missed payments BIRMCO instructed the consumer not to pay;

f. Inducing homeowners to rely on BIRMCO to avoid foreclosure when in fact BIRMCO was doing nothing to prevent foreclosure;

g. Soliciting consumers facing foreclosure with direct mail designed to appear as if it was from a government agency offering participation in a government program;

h. Entering into debt adjustment agreements with New Jersey debtors without a license;

i. Failing to refund money when agreements are canceled or the contracted services were not performed; and

j. Failing to respond to consumer complaints, inquiries and/or requests for refunds in a timely manner or at all.

57. Defendant's conduct constitutes multiple unconscionable commercial practices in violation of the CFA, N.J.S.A. 56:8-2.

COUNT II
VIOLATIONS OF NEW JERSEY CONSUMER FRAUD ACT
(FALSE PROMISES, MISREPRESENTATION, AND KNOWING OMISSIONS OF
FACT)

58. Plaintiffs reallege the allegations in paragraphs 1 through 61 above as if more fully set forth herein.

59. In the operation of their business, Defendant has made false promises, misrepresentations and/or knowing omissions of material fact, including, but not limited to:

- a. Falsely representing that BIRMCO would work to obtain loan modifications to distressed homeowners and not doing so;
- b. Falsely promising to modify mortgages to obtain lower interest rates and lower monthly payments for homeowners to prevent foreclosure;
- c. Misrepresenting to consumers that it was soliciting them for loan modification services through a mailing made to appear as if it was sent from a government agency;
- d. Failing to advise consumers that it did not have a license to act as a debt adjuster;
- e. Misrepresenting to consumers that BIRMCO was negotiating with consumers' mortgage lenders or servicers when in fact it had not; and
- f. Promising to refund consumers' payments and then failing to do so.

60. Each false promise, misrepresentation and/or knowing omission of material fact by Defendant constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF CONSUMER FRAUD ACT **(OPERATING IN A MANNER SIMULATING GOVERNMENTAL AGENCY)**

61. Plaintiffs reallege the allegations in paragraphs 1 through 60 above as if more fully set forth herein.

62. N.J.S.A. 56:8-2.1 declares it to be an unlawful practice for any person to operate in a manner which wrongfully implies that the person is associated with any department or agency of the Federal or State government, or to use any format which simulates that of any governmental department or agency.

63. BIRMCO forwarded a mailing to homeowners facing foreclosure that was designed to appear as it was being sent by a governmental agency. The solicitation contained a form number, referenced Federal government programs to assist distressed homeowners and a Federal government website. BIRMCO's name did not appear anywhere on the solicitation.

64. The mailing had the capacity to mislead consumers into believing that it was being sent by a governmental agency.

65. By sending a mailing having the capacity to mislead consumers into believing it was from a governmental agency, Defendant has violated N.J.S.A. 56:8-2.1.

COUNT IV
VIOLATION OF CFA ADVERTISING REGULATIONS

66. Plaintiffs reallege the allegations in paragraphs 1 through 65 above as if more fully set forth herein.

67. The Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA, among other things, govern general advertising practices.

68. Specifically, the Advertising Regulations provide, in pertinent part:

- (a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9)].

69. The Advertising Regulations define “Advertisement” as:

“Advertisement” means any attempt by an advertiser, other than by use of a price tag, catalog or any offering for the sale of a motor vehicle subject to the requirements of N.J.A.C. 13:45A-26A, to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.[N.J.A.C. 13:45A-9.1].

70. The Advertising Regulations define “Advertiser” as

“any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale or rental of merchandise at retail and who placed, either directly or through an advertising agency, and advertisement before the public.” [N.J.A.C. 13:45A-9.1].

71. Defendant is an advertiser and has placed advertisements before the public including, but not limited to, directing mail to consumers identified as in danger of foreclosure and telemarketing its mortgage modification services.

72. In its advertisement of pre-foreclosure loan modification assistance, Defendant has violated the Advertising Regulations by making false and/or misleading representations that mislead consumers to believe that the company would obtain a mortgage modification with lower interest rates and lower monthly payments.

72. Defendant's violations of the advertising regulations include sending direct mail solicitations to homeowners facing foreclosure designed to appear as if the mail was from a government agency and disguising the fact that it was sent by BIRMCO.

73. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT V
VIOLATIONS OF THE DEBT ADJUSTMENT AND CREDIT COUNSELING ACT

74. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 73 above as if more fully set forth herein.

75. Pursuant to N.J.S.A. 17:16G-2a, "No person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster."

76. Pursuant to N.J.S.A. 17:16G-1c:

(1) Debt adjuster means a person who either (a) acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (b) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor. (2) The following persons shall not be deemed debt adjusters: (a) an attorney-at-law of this State who is not principally engaged as a debt adjuster; (b) a person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts; (c) a person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this State or the United States; (d) a person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; or (e) a person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts

in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting those debts.

77. Defendant has engaged in loan modification services in the State of New Jersey that constituted debt adjustment activity within the scope of the DACCA without first obtaining a license from the Commissioner pursuant to N.J.S.A. 17:16G-2.

78. Defendant, a for-profit entity, engaged in loan modification services in the State of New Jersey that constituted unlicensed debt adjustment activity within the scope of the DACCA in violation of N.J.S.A. 17:16G-2, which provides that no person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster, and that any entity acting as a debt adjuster must be licensed as such.

79. Defendant has engaged in loan modification services in the State of New Jersey that constituted unlicensed debt adjustment activity within the scope of the DACCA without first meeting the bonding and reporting requirements for licensees as set forth in N.J.S.A. 17:16G-5.

80. Defendant has engaged in loan modification services in the State of New Jersey that constituted unlicensed debt adjustment activity within the scope of the DACCA and charged fees for Defendants' debt adjustment services in violation of the statutory limitations of 1% of the gross monthly income of the person to whom the service is rendered but not more than \$25.00 in any one month, as set forth at N.J.S.A. 17:16G-6 and N.J.A.C. 3:25-1.2.

81. Defendant has engaged in loan modification services in the State of New Jersey that constituted unlicensed debt adjustment activity within the scope of the DACCA without maintaining a separate trust account in a qualified bank in the name of the debt adjuster for the

benefit of the debtors serviced by the debt adjuster and failed to maintain an appropriate ledger book for the trust account in violation of N.J.S.A. 17:16G-9.

82. Since at least November 2008, Defendant has held itself out to the New Jersey public as a “debt adjuster” within the meaning of N.J.S.A. 17:16G-1.

83. In the establishment of its business, Defendant has formed in New Jersey as a Domestic for-profit company and has proceeded to operate as a for-profit business in the State.

84. In the operation of its business, Defendant has offered for sale and/or sold debt adjuster services to New Jersey debtors for substantial consideration.

85. Upon information and belief, scores more New Jersey debtors have been solicited by and/or entered into agreements with Defendant, all in violation of the DACCA.

86. Defendant’s conduct constitutes multiple violations of N.J.S.A. 17:16G-2(a) and N.J.S.A. 17:16G-2(b), which also constitute violations of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that Defendant’s acts and omissions constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the regulations promulgated thereunder, specifically the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;
- (b) Temporarily, preliminarily, and permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the regulations promulgated thereunder, specifically the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq. and

the DACCA, 17:16G-1 et seq., including, but not limited to, the acts and practices alleged in this Verified Complaint and the activity that is the subject of Plaintiffs' request for temporary and preliminary injunctive relief, as set forth in the accompanying Order to Show Cause with Temporary Restraints Pursuant to Rule 4:52;

- (c) Finding that the acts and practices engaged in by the Defendant constitute multiple violations of the DACCA, N.J.S.A. 17:16G-1 et seq.;
- (d) Permanently enjoining the Defendant and its owners, officers, directors, shareholders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the DACCA, N.J.S.A. 17:16G-1 et seq., including but not limited to, the acts and practices alleged in this Verified Complaint;
- (e) Assessing a penalty of \$1,000 for the first violation of the DACCA and \$5,000 for the second and each subsequent violation pursuant to N.J.S.A. 17:16G-8;
- (f) Providing restitution to any New Jersey homeowner that paid Defendant a fee, in violation of the DACCA;
- (g) Directing the assessment of restitution and damages amounts against Defendant, to restore to any affected person, whether or not named in this Verified Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8 and the DACCA, N.J.S.A. 17:16G-8.
- (h) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (i) Directing the assessment of costs and fees, including attorneys' fees, against Defendant for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56: 8-11 and N.J.S.A. 56:8-19;
- (j) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the Debt Adjustment and Credit Counseling Act, in accordance with N.J.S.A. 17:16G-8; and

(k) Granting such other relief as the interests of justice may require.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


James R. Michael
Deputy Attorney General

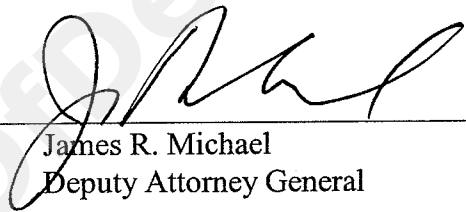
Dated: July 10, 2009
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq. and the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


James R. Michael
Deputy Attorney General

Dated: July 10, 2009
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General James R. Michael is hereby designated as trial counsel on behalf of Plaintiffs in this matter.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


James R. Michael
Deputy Attorney General

Dated: July 10, 2009
Newark, New Jersey

VERIFICATION

I, Jared O’Cone, of full age, hereby certifies as follows:

1. I am an Investigator with the New Jersey Division of Consumer Affairs (“Division”), Office of Consumer Protection.

2. I have read the foregoing complaint and on my own personal knowledge and review of documents in possession of the Division, including the Certifications of Joseph Kay, Deborah Mangroo, Vicki Hranj, and Karen Smith, which are attached as Exhibits. I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.

3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

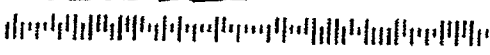


JARED O’CONE

Dated: July/0, 2009
Newark, New Jersey

Exhibit A

From Article at
GetOutOfDebt.org

a. ID Number 1030	Loan Modification - Payment Reduction		Code 1030
b. Mortgage Company Phone Number (866) 288-0518	Property State: PA		
c. property address, and ZIP code [REDACTED] [REDACTED] (PA 17322-749)	Property Type: RESIDENTIAL		
	Notice Type: 008-S	Subject: NOTIFICATION	
d. Addressee's Personal ID Number PA102909019			
e. name, address, and ZIP code [REDACTED] [REDACTED] 22431 [REDACTED] 	RE: HR 5140 Economic Stimulus Act of 2008		
	State PA	BUYOUT PROGRAM	Issuer: Program Director
			Total Loan Amount \$189,021

Form **008-S** Payment Reduction Notification

2008

**FORM 008
PAYMENT REDUCTION NOTIFICATION**

STIMULUS ACT 2008

PLEASE READ ENTIRE DOCUMENT CAREFULLY

RE: Payment Reduction Program

Issued Date: October 31st 2008

Your property located at RR 4 Box 71e may be eligible for special modification program guidelines created in conjunction with the Governmental Economic Stimulus Act of 2008.

These new programs may enable you to modify your existing home loan and reduce your monthly mortgage payments, receive interest rate reductions, and /or freeze your existing interest rate, without the traditional restrictions on credit history, income or employment status, equity and reserves.

If you have experienced financial hardship, have late mortgage payments, or have negative equity Call (866) 288-0518 to confirm eligibility. When calling please reference **File number PA102909019**

HR 5140 Economic Stimulus Act of 2008 was designed to provide economic stimulus through recovery rebates to individuals, incentive for business investment, and increase in conforming and loan limits. This Act became Public Law No: 110-185 on February 13, 2008 and will expire on 12/31/2008. HR 5140 information is available to anyone at www.govtrack.us/congress/bill.xpd?bill=h110-5140

This product or service has not been approved or endorsed by any government agency and this offer is not being made by an agency of government. All borrowers must be qualified and approved under the lender's current underwriting guidelines. Rates and terms are subject to change.