

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE PEOPLE OF THE STATE OF NEW YORK, by
ANDREW M. CUOMO, Attorney General of the State
of New York,

Plaintiff,

-against-

NATIONAL MODIFICATION SERVICE, LLC
and JOSEPH ROMANO

Defendants.
-----X

SUMMONS

Index No. 400792/2010
R.J.I. No.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York.

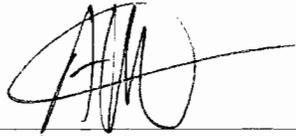
In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial.

Dated: New York, New York
March 25, 2010

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Plaintiff

By:



ALPHONSO B. DAVID
Bureau Chief

SPENCER FREEDMAN
Counsel for Civil Rights

Office of the New York State Attorney General
Civil Rights Bureau
120 Broadway
New York, New York 10271
Tel. (212) 416-8250
Fax (212) 416-8074

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COMPLAINT

Index No. 400792/2010
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Plaintiff, the People of the State of New York, by its attorney, Andrew M. Cuomo, Attorney General of the State of New York, allege upon information and belief:

PARTIES AND JURISDICTION

1. Plaintiff is the People of the State of New York, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York (“Attorney General”).
2. Plaintiff brings this action pursuant to New York Executive Law § 63(12), New York Real Property Law 265-b, New York Judiciary Law § 478, and New York General Business Law Article 22-A to enjoin Defendants from engaging in fraudulent and illegal acts and practices in connection with their loan modification business.
3. Executive Law § 63(12) empowers the Attorney General to seek injunctive relief, restitution, damages and costs when any person or business entity has engaged in or otherwise demonstrated repeated or persistent fraudulent or illegal acts in the transaction of business.
4. Defendants engaged in violations of Real Property Law § 265-b, including the collection of illegal upfront fees from their consumers and the failure to provide consumers with contracts that contain provisions required by law. Real Property Law § 265-b regulates the

conduct of “distressed property consultants” when providing services relating to New York State properties, and provides, among other things, that distressed property consultants: (1) shall not charge or accept payments for consulting services before the full completion of such services; and (2) shall provide consumers with certain disclosures and notices of their rights. Real Property Law § 265-b empowers the Attorney General to enjoin and restrain violations of its provisions, and permits the court to direct restitution and impose a civil penalty of up to ten thousand dollars for each violation.

5. Defendants engaged in the unlawful practice of law without being admitted and registered as attorneys, in violation of Judiciary Law § 478. New York State law expressly prohibits non-lawyers from providing legal advice or conveying the impression that they are lawyers or qualified to provide legal services.

6. Defendants also engaged in false advertising and deceptive acts or practices in violation of General Business Law § 349(a), which prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in New York; and General Business Law § 350 which prohibits false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in New York. General Business Law § 350-d empowers the Attorney General to seek penalties of up to five thousand dollars for each violation when any person or entity has engaged in deceptive business practices or false advertising in violation of General Business Law Article 22-A.

7. National Modification Service, LLC (“National Modification”) is a New York State corporation, with its principal place of business at 100 Broadhollow Road, Suite 204,

Farmingdale, NY 11735. National Modification Service, LLC operates a website, <http://www.nationalloanhelp.com>.

8. Joseph Romano is the Founder and served as President of National Modification. He currently manages the office and actively oversees, manages, and participates in the business.

FACTS

9. National Modification, which began operating in June 2008, is engaged in the business of offering to provide loan modification services to homeowners who are behind in their mortgage payments and facing possible foreclosure.

10. Since September 1, 2008, National Modification has operated as a “distressed property consultant” within the meaning of Real Property Law § 265-b, and has contracted with over 100 consumers who own homes in New York State. The majority, if not all, of these New York consumers are mortgagors with respect to a home loan that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitle the lender to accelerate full payment of the mortgage and repossess the property, or a home loan where the lender has commenced a foreclosure action.

11. Beginning in 2009, the Attorney General received complaints alleging that National Modification was engaged in a range of unlawful conduct, including, but not limited to, illegally charging up front fees to New York consumers for loan modification services and engaging in deceptive practices and advertising regarding their qualifications and services to entice homeowners at risk of foreclosure. This included telling individual consumers that they could guarantee them a loan modification and that paying the fees up front would accelerate the modification process.

12. Based on these allegations, the Attorney General conducted an investigation by reviewing hundreds of documents and records, conducting undercover testing, and taking sworn testimony from National Modification's principal.

13. The investigation revealed that National Modification has engaged in, and continues to engage in widespread illegal conduct, including collecting hundreds of thousands of dollars in illegal upfront fees from financially-vulnerable New York consumers in violation of New York Real Property Law.

National Modification Violates the Law by Charging Consumers Fees Before Any Services Are Performed and by Failing to Utilize Contractual Language Required by Law

14. National Modification's consumers sign a contract wherein National Modification agrees to attempt to obtain a loan modification solution to the consumer's mortgage default or pending foreclosure proceedings. Pursuant to the contract, National Modification typically charges its consumers 1% of the loan amount, which is typically several thousand dollars, or a flat fee of \$2,995.

15. In violation of Real Property Law § 265-b, National Modification requires New York consumers to pay at least a portion of the fee upfront, before any effort is made to obtain a loan modification or contact the lender. In fact, at the time National Modification accepts its fee, it does not know whether it can obtain a loan modification on the consumer's behalf. National Modification has collected hundreds of thousands of dollars of illegal upfront fees from New York homeowners.

16. In violation of Real Property Law § 265-b, National Modification's contract also fails to include certain notices and disclosures legally required to be included in such consulting

contracts. These notices provide important guidance that could help prevent consumers from falling prey to foreclosure rescue scams.

17. For example, the contract fails to advise consumers that National Modification is prohibited from accepting any payments until it has finished providing services under the contract. In addition, the contract fails to notify consumers that they should not consult with an attorney recommended by a distressed property consultant. The contract also does not provide contact information for the New York State Banking Department for obtaining a list of housing counselors.

18. In further violation of Real Property Law § 265-b, National Modification fails to provide notice to consumers of their right to cancel the contract within five business days without penalty, and instead, informs them that they may only cancel within three business days. It also fails to provide the legally required “Notice of Cancellation” form, which informs consumers of their right to cancel and instructs consumers how to do so. National Modification also fails to sign and notarize the contracts, as required by law. In fact, one out of every six consumers do not sign any contract at all.

National Modification Engages in False Advertising and Deceptive Sales Practices

19. National Modification has engaged in a number of deceptive business practices and false and misleading advertising to homeowners on the brink of foreclosure.

20. National Modification has used false and misleading website advertisements and targeted mail solicitations to attract consumers in various states, including New York, suggesting that they were affiliated with the federal government, and stating that they assist homeowners in modifying their mortgages and avoiding foreclosure. The targeted mailings were sent to people who had either received foreclosure notices or defaulted on their mortgage for one month or

more. For nearly a year, National Modification mailed weekly and biweekly batches of solicitations to these homeowners.

21. Further, Joseph Romano, National Modification's President, acknowledged that National Modification discontinued use of its direct mail solicitations because a newspaper article stated that the mailer was deceptive.

22. National Modification's standard consumer contracts offers a "refund [of] the Consumer's payments or deposits within 30 calendar days, less monies earned" if they are unable to obtain a solution with the lender. National Modification's script for consumer phone calls similarly includes the language, "[i]f for any reason we are not able to find a resolution for you, our fee is refundable translating to a money back guarantee." Additionally, National Modification's website states, "[w]e offer a money back guarantee if we cannot get you a work out agreement with your lender(s) as long as no sale date has been set." However, National Modification has failed to obtain a loan modification for a majority of its New York consumers and has not provided all of these consumers with refunds as promised.

23. National Modification has also provided its consumers with false information regarding the likelihood of success. During the Attorney General undercover testing, a National Modification's representative stated that they had a 98% success rate in obtaining loan modifications for consumers. Joseph Romano also told the Attorney General under oath that they can provide a modification over than 80% of the time and a solution over 90% of the time. National Modification's website states, "[w]e are very proud of our track record of success and the numerous satisfied consumers. They are strong evidence that we deliver on our promises."

24. In addition, National Modification also claims that it can lower consumers' interest rates 5-6% for most loans or 2-3% for Freddie Mac and Fannie Mae. To bolster its claims of success, National Modification's website explains that they have connections and credibility with lenders, which gives them a unique advantage. Finally, the website states "homeowners who have tried to negotiate on their own, with their mortgage company have usually come up with something worse than what they started with," suggesting that working with National Modification would provide consumers with better results.

25. However, these claims are demonstrably false given the large percentage of consumers for whom National Modification has not obtained a loan modification. National Modification's false representation induced consumers to pay National Modification their upfront fee with the belief that the company could achieve a solution with their particular lender, though not all lenders are amenable to a loan modification. Some consumers, months after contracting with National Modification, paid enormous fees to banks or to National Modification without having their monthly payments lowered at all or without knowing the terms of their potential modification. In some cases, the modifications and solutions offered by National Modification were precisely the same offered to consumers who had consulted with their lenders before contracting with and paying National Modification for services.

26. National Modification often significantly underestimated the amount of time it takes to obtain a loan modification. National Modification's website stated that a modification can take "anywhere from 2 days to several months." However, most of National Modification's consumers wait considerably longer, including some consumers who have been waiting for over a year, but have not yet received a loan modification.

27. Thus, homeowners facing foreclosure would pay National Modification's significant, illegal upfront fees expecting that their payments and interest rates would be reduced quickly, when, in fact, it typically takes much longer for a loan modification to be approved, if it is approved at all. These deceptive statements regarding the timing of the loan modification process made it impossible for consumers to make an informed decision as to whether a loan modification is the best option for their particular situation.

28. In addition, National Modification informs consumers that they should not make any payments to their lenders or negotiate with them on their own. The website warns potential consumers that if they contact their lender and "don't have something worked out within 1-2 weeks, then it's obvious that your lender is not serious about working things out with you directly." This advice can have serious, detrimental consequences for its consumers, since failing to pay or communicate with a lender can, in fact, put a homeowner at greater risk of foreclosure and damage consumers' credit.

29. Finally, National Modification's website asserts that the company is an "attorney-backed" organization. According to Joseph Romano, National Modification was taken over in January 2009 by The Law Office of Jay I. Waldhauser PC. However, Romano testified that National Modification has no written documents with Jay I. Waldhauser that represents the firm's purchase of the company. Furthermore, Romano has admitted that this attorney does not play any role in negotiating loan modifications with banks, nor does he work directly with consumers.

**National Modification's President Joseph Romano Has Been Actively Involved
In the Company's Illegal and Deceptive Practices**

30. As Founder, President, Manager of National Modification, Joseph Romano has at all times had knowledge of and participated in National Modification's business practices and advertising. Among other things, Romano was responsible for overseeing cases and handling day-to-day business. He supervises and trains National Modification's employees and develops the company's policies. Romano has also been involved in the drafting and reviewing the language of the consumer contracts and the company's marketing efforts. Romano was aware that the company collected upfront fees and was familiar with the content of the standard consumer contract and the content of the website.

31. Furthermore, Romano has at all times been involved in the unlawful practice of law without being admitted and registered as an attorney. He has been and continues to be primarily responsible for overseeing National Modification's cases. Jay I. Waldhauser, the only licensed attorney purportedly working in concert with Romano, has minimal contact with any consumers and does not work on loan modifications with lenders.

**FIRST CAUSE OF ACTION
PURSUANT TO REAL PROPERTY LAW § 265-b – DISTRESSED PROPERTY
CONSULTING SERVICES**

32. Real Property Law § 265-b prohibits "distressed property consultants" from charging or accepting payments for consulting services before the completion of such services, and requires that consumers receive "distressed property consulting contracts" that contain certain notices of the consumers' rights.

33. National Modification is a distressed property consultant within the meaning of Real Property Law § 265-b(1).

34. By reason of the acts and practices alleged in paragraphs 1 through 33, Defendants have engaged in conduct that violates Real Property Law § 265-b.

SECOND CAUSE OF ACTION
PURSUANT TO GENERAL BUSINESS LAW § 349 – DECEPTIVE PRACTICES

35. General Business Law § 349 prohibits deceptive acts and practices in the conduct of any business, trade or commerce in the state of New York.

36. By reason of the acts and practices alleged in paragraphs 1 through 35, Defendants have engaged in deceptive practices in violation of General Business Law § 349.

THIRD CAUSE OF ACTION
PURSUANT TO GENERAL BUSINESS LAW § 350 – FALSE ADVERTISING

37. General Business Law § 350 prohibits false advertising in the conduct of any business, trade or commerce.

38. By reason of the acts and practices alleged in paragraphs 1 through 37, Defendants have engaged and in false advertising in violation of General Business Law § 349.

FOURTH CAUSE OF ACTION
PURSUANT TO NEW YORK JUDICIARY LAW § 478 – UNLAWFUL PRACTICE OF LAW

39. Pursuant to New York Judiciary Law § 478, it is illegal for a person to practice law without being admitted and registered as an attorney.

40. By reason of the acts and practices alleged in paragraphs 1 through 39, Defendants have engaged in repeated and persistent fraudulent conduct in violation of New York Judiciary Law § 478.

FIFTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) –FRAUD

41. Pursuant to Executive Law § 63(12), it is illegal for a business to engage in repeated fraudulent business conduct.

42. By reason of the acts and practices alleged in paragraphs 1 through 41, Defendants have engaged in repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) - ILLEGALITY
VIOLATION OF REAL PROPERTY LAW § 265-B

43. By reason of the acts and practices alleged in paragraphs 1 through 42, Defendants have engaged in conduct that violates Real Property Law § 265-b.

44. By its acts in violation of Real Property Law § 265-b, Defendants have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

SEVENTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) - ILLEGALITY
VIOLATION OF GENERAL BUSINESS LAW § 349

45. By reason of the acts and practices alleged in paragraphs 1 through 44, Defendants have engaged in conduct that violates General Business Law § 349.

46. By its acts in violation of General Business Law § 349, Defendants have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

EIGHTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) - ILLEGALITY
VIOLATION OF GENERAL BUSINESS LAW § 350

47. By reason of the acts and practices alleged in paragraphs 1 through 46, Defendants have engaged in conduct that violates General Business Law § 350.

48. By its acts in violation of General Business Law § 350, Defendants have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

NINTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) - ILLEGALITY
VIOLATION OF NEW YORK JUDICIARY LAW § 478

49. By reason of the acts and practices alleged in paragraphs 1 through 48, Defendants have engaged in conduct that violates New York Judiciary Law § 478.

50. By its acts in violation of New York Judiciary Law § 478, Defendants have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

RELIEF

WHEREFORE, Plaintiffs requests that an order and judgment be issued providing the following:

A. permanently enjoining Defendants from violating Real Property Law § 265-b, General Business Law §§ 349 and 350, New York Judiciary Law § 478, and Executive Law § 63(12), and from engaging in the fraudulent, deceptive and illegal acts and practices alleged in this complaint;

B. permanently enjoining Defendants from conducting business involving the marketing and provision of loan modification services in violation of Real Property Law § 265-b;

C. directing Defendants to make full monetary restitution and pay damages to all injured New York consumers, including those not identified at the time of the order;

D. directing Defendants to render an accounting to the Attorney General of the names and addresses of each New York consumer who paid fees to National Modification, and the amount of money received from each such consumer;

E. directing Defendants to pay a penalty to the State of New York for each violation of General Business Law Article 22-A, pursuant to General Business Law § 350-d;

F. directing Defendants to pay a penalty to the State of New York for each violation of Real Property Law § 265-b, pursuant to Real Property Law § 265-b(4)(d); and

G. granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 25, 2010

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Plaintiff

By:



ALPHONSO B. DAVID
Bureau Chief



SPENCER FREEDMAN
Counsel for Civil Rights

Office of the New York State Attorney General
Civil Rights Bureau
120 Broadway, 23rd Floor
New York, NY 10271
Tel: (212)416-8250
Fax: (212) 416-8074

VERIFICATION

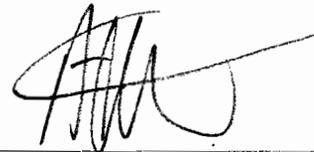
STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ALPHONSO B. DAVID, being duly sworn, deposes and says:

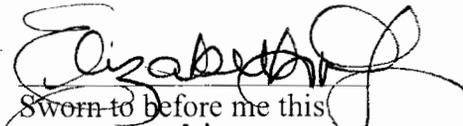
I am Civil Rights Bureau Chief in the Office of Andrew M. Cuomo, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to all matters stated upon information and belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by Plaintiff is that Plaintiff is a body politic and the Attorney General is its duly authorized representative.



ALPHONSO B. DAVID
Bureau Chief
Civil Rights Bureau



Sworn to before me this
25th day of March 2010

ELIZABETH DE LEÓN
Notary Public - State of New York
No. 02DE6146784
Qualified in New York County
Commission Expires May 22, 2010

Sir: Please take notice that the within is a true copy of
duly filed and entered in the office of the Clerk of
County, on the day of
200

Yours, etc.,
ANDREW M. CUOMO,
Attorney General,

Attorney For
Office and P.O. Address
120 Broadway, New York, NY 10271

To
Attorney for
, Esq.

Sir: Please take notice that the within will
be presented herein to the Hon one of
the judges of the within named Court, at in
the Borough of City of New York, on the
day of 201 , at M.

Dated, N.Y. , 201
Yours, etc.,
ANDREW M. CUOMO,
Attorney General,

Attorney For
Office and P.O. Address
120 Broadway, New York, NY 10271

To
Attorney for
, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

**PEOPLE OF THE STATE OF NEW YORK,
by ANDREW M. CUOMO, ATTORNEY
GENERAL OF THE STATE OF NEW YORK,**

PETITIONER,

-against-

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RESPONDENTS.

SUMMONS and COMPLAINT

ANDREW M. CUOMO,
Attorney General
Attorney for Petitioner

Office and P.O. Address
120 Broadway, New York, NY 10271
Tel.(212) 416-8250

Personal service of a copy of
within day of
is admitted this day of
..... 2010