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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12 SOUTHEAST DISTRICT

13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

14 Plaintiff,

15 v.

16 LIFETIME FINANCIAL, INC., a California
Corporation; E. PONY, INC., a California
17 Corporation; NATIONS MORTGAGE, INC., a
California Corporation; DIRECT CREDIT
18 SOLUTIONS, INC.; a California Corporation;
GREEN LEAF LENDING, INC.; a Nevada
19 Corporation; DEAN DAVID STORM, an
individual; ERIC MICHAEL PONY, an
20 individual; PAULETTE PONY, an individual;
WILMA PONY, an individual; ELI HASSINE,
21 an individual; JOHN D H N NIELSEN, a.k.a.
DOO HYUN NO, an individual; OLYMPIC
22 ESCROW, INC., a California Corporation;
CAROL PENCILLE, an individual; SIBPUN
23 AMPORNPET, an individual; VIRTUAL
ESCROW, Inc., a California Corporation; and
24 DOES 1 through 20, inclusive;

25 Defendants.

CASE NO.

- (1) THE PEOPLE'S EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION; AND
APPLICATION FOR ASSET
FREEZE AND SEIZURE OF
VEHICLES;
- (2) MEMORANDUM OF POINTS
AND AUTHORITIES;
- (3) SUPPORTING DECLARATIONS
(6 volumes, filed under separate
cover);
- (4) REQUEST FOR JUDICIAL
NOTICE;
- (5) [PROPOSED] ORDER
(Lodged under separate cover)

26 DATE ACTION FILED: March 17, 2008
27 TRIAL DATE: None set

1 Pursuant to Business and Professions Code section 17203 and 17535, Government Code
2 section 12527, California Code of Civil Procedure section 527 and the California Rules of Court
3 3.1150 and 3.1200 et seq. (the “ex parte rules”) of the California Rules of Court, Plaintiff, the
4 People of the State of California (“Plaintiff” or “the People”) applies ex parte for a temporary
5 restraining order, asset freeze and limited asset seizure to stop defendants Lifetime Financial,
6 Inc. (Lifetime), E. Pony, Inc.(E. Pony); Nations Mortgage, Inc. (Nations), Direct Credit
7 Solutions, Inc. (Direct Credit Solutions), Green Leaf Lending, Inc.(Green Leaf), Dean David
8 Storm (Storm), Eric Michael Pony (Eric Pony), Paulette Pony, Wilma Pony, Eli Hassine
9 (Hassine), John D H N Nielsen (Nielsen), a.k.a. Doo Hyun No (collectively “Mortgage
10 Defendants”); Olympic Escrow, Inc. (Olympic), Carol Pencille (Pencille), Sibpun Ampornpet
11 (Ampornpet), and Virtual Escrow (Virtual) (collectively “Escrow Defendants”) from continuing
12 to engage in a predatory lending scheme by which they have defrauded hundreds, or even
13 thousands, of consumer. Defendants involvement in what the Department of Real Estate’s Cease
14 and Desist Order refers to as a “fraudulent mortgage loan substitution scheme” that utilized bait
15 and switch tactics involving “a continued and flagrant course of misrepresentations or making of
16 false promises,” necessitates immediate action by this Court to protect the public. (Lagunzad
17 Dec., ¶ 13, Exh. L.) Defendants’ misrepresentations, coupled with their pattern of forging
18 documents to ensure that loans went through at onerous terms which were never disclosed to
19 victims prior to the close of escrow, must immediately be halted. Some of the homeowner
20 borrowers, including senior citizens and the disabled, are unable to make payments on the new
21 mortgage loans, which contain terms they never agreed to, and have already lost their homes to
22 foreclosure or face default, foreclosure, and the loss of their homes as a direct result of these
23 practices. (infra at p. 12, 24.) This motion also seeks to protect and preserve assets that can be
24 used as restitution if Plaintiff prevails in this matter.

25 Defendants have violated, and are continuing to violate, Business and Professions Code
26 section 17200 (prohibiting unfair business practices) and 17500 (false statements). Defendants’
27 real estate scam is discussed in detail at pages 12-28 of the application and is incorporated herein
28 by this reference.

1 The relief that the People request is necessary to protect consumers from being
2 irreparably harmed by Defendants' misconduct.

3 **I. APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND OSC RE**
4 **PRELIMINARY INJUNCTION.**

5 A. The People apply for a Temporary Restraining Order and Order to Show Cause
6 re: Preliminary Injunction enjoining Defendants and their agents, employees, representatives,
7 successors, partners, assigns, and those acting in concert or in participation with them, from
8 doing the following:

9 1. Soliciting borrowers, negotiating or arranging loans or performing
10 servicers for borrowers in connection with loans that are secured by real property without a valid
11 active real estate license;

12 2. Employing any person to solicit borrowers, negotiate or arrange loans, or
13 perform services for borrowers in connection with loans that are secured by real property unless
14 the person to be employed as a valid active real estate license;

15 3. Making or causing to be made any untrue or misleading statements in
16 connection with soliciting, making, or arranging a mortgage loan or in connection with
17 performing any escrow services involving any mortgage loan, including, any misrepresentation
18 that a loan is or will be made at a fixed rate of interest when the loan is or will be made at an
19 adjustable rate of interest, any misrepresentation of the interest rate or any fees or charges, any
20 misrepresentation comparing the terms of a borrower's current loan with the terms of any
21 proposed refinancing of that loan, any misrepresentation of a borrower's income, employment,
22 or assets on any loan application, any misrepresentation of the market value of any property that
23 will be used as security for the repayment of a loan, or any misrepresentation related to a
24 borrower's right to cancel or rescind a loan;

25 4. Disbursing or receiving any money or property out of any escrow except
26 pursuant to escrow instructions actually signed by all of the relevant parties to the escrow and
27 notarized by a notary who is not employed by or affiliated with any defendant;

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- 1 5. Forging any document or altering any loan document after it has been
2 signed;
- 3 6. Recording or causing to be recorded any deed, trust deed, or other
4 instrument affecting title to real property that has been forged, altered, or falsified in any respect;
- 5 7. Processing a loan or escrow related to a loan or recording a trust deed
6 securing a loan if the loan or loan escrow has been canceled by the borrower pursuant to the
7 Truth in Lending Act (12 C.F.R 226.23) or rescinded by the borrower on any ground specified in
8 section 1689 of the Civil Code;
- 9 8. Notarizing any deed, trust deed or any other instrument affecting title to
10 real property;
- 11 9. Operating a credit services organization, as defined in Civil Code section
12 1789.12(a), without a certificate of registration from the Department of Justice as required by
13 Civil Code section 1789.25;
- 14 10. Operating a credit services organization without obtaining and
15 maintaining a surety bond as required by Civil Code section 1789.18;
- 16 11. Failing to deliver copies of any loan documents, including loan
17 applications and escrow instructions, at the time of execution to all persons executing those
18 documents.
- 19 12. Failing to timely provide to borrowers all accurately completed disclosure
20 statements required by law including the mortgage loan disclosure statement required under
21 Business and Professions Code sections 10240 and 10241, the Good Faith Estimate and HUD-1
22 forms required under the Real Estate Settlement Procedures Act, and the disclosures required
23 under the Truth in Lending Act;
- 24 13. Negotiating or arranging the terms of a mortgage loan in a language other
25 than English without providing borrowers with a translation in that language of all documents
26 related to the loan, including any disclosure forms disclosing loan terms and fees, before any
27 borrower is asked to sign any document purporting to obligate the borrower in a loan transaction.

28 The People also request that the Court enter an order enjoining Defendants and their

1 agents, employees, officers, representatives, successors, partners, assigns, and those acting in
2 concert or participation with them, from spending, transferring, disbursing, encumbering, or
3 otherwise dissipating any real or personal property without prior Court approval, including, but
4 not limited to the following assets:

5 1. any money or other consideration that Defendants have received from
6 consumers for any loans, refinance transactions or appraisals made with Lifetime Financial, Inc.
7 E. Pony, Incorporated, Nations Mortgage, Inc. Green Leaf Lending, Inc.;

8 2. any accounts maintained at any financial institution, including, but not
9 limited to, Wells Fargo Bank, Bank of America, Citibank, East West Bank, First Federal Bank
10 and Washington Mutual, in which any Defendant deposited any of this money, including, but not
11 limited to:

- 12 a. East West Bank, Account Number 91310482, Account Title
13 “Olympic Escrow Trust, Inc. Trust Account”(Bremner Dec., ¶7,
14 Exh. E; Lagunzad Dec ¶8, Exh. G.)
- 15 b. First Federal Bank, Account Number 6025006216, Account Title
16 “E. Pony, Inc.”(Bremner Dec., ¶7, Exh. E.)
- 17 c. Citibank, Account Number 201856671, Account Title “E. Pony,
18 Inc., DBA Lifetime Financial”(Bremner Dec., ¶7, Exh. E.)
- 19 d. First Federal Bank, Account Number 32227110660250062615,
20 Account Title “Lifetime Escrow.” (Lagunzad Dec., ¶11, Exh. J.)

21 3. any profits derived from this money;

22 4. any real property purchased or maintained, in whole or in part, by any of
23 this money, including, but not limited to, the following:

- 24 a. 6316 Crebs Ave., Tarzana, CA 91335-6817 (Eric, Wilma, and
25 Samuel Pony) (Request for Judicial Notice), Exh. C1.)
- 26 b. 6928 Owensmouth Ave., Canoga Park, CA 91303 (EricPony)
27 (Req. for Judicial Notice, Exh. C6.)

- 1 c. 4715 Caritina Drive, Tarzana, CA 91365 (Eric, Wilma, and
- 2 Samuel Pony) (Req. for Judicial Notice, Exh. C4)
- 3 d. 3771 Cahuenga Blvd., Studio City, CA 91604 (Eric Pony)(Hintz
- 4 Dec., ¶3, Exh. A.)
- 5 e. 18817 Erwin Street, Tarzana, CA 91356 (Eric, Wilma, and
- 6 Samuel Pony) (Req. for Judicial Notice, Exh. C2.)
- 7 f. 900 Las Vegas Blvd. S., Unit 1101, Las Vegas, NV 89101 (Eric
- 8 Pony)(Hintz Dec., ¶3, Exh. A.)
- 9 g. 900 Las Vegas Blvd. S., Unit 1113, Las Vegas, NV 89101 (Eric
- 10 Pony)(Hintz Dec., ¶3, Exh. A.)
- 11 h. 11734 Oak Park Gln., San Antonio, TX 78254 (Eric Pony)(Hintz
- 12 Dec., ¶3, Exh. A.)
- 13 i. 8214 Shumard Oak Dr., San Antonio, TX, 78223 (Eric Pony)
- 14 (Hintz Dec., ¶3, Exh. A.)
- 15 j. Vacant Residential, Parcel Number 173-42-173, AZ (Eric Pony)
- 16 (Hintz Dec., ¶3, Exh. A.)
- 17 k. Vacant Residential, Parcel Number 173-42-174, AZ (Eric Pony)
- 18 (Hintz Dec., ¶3, Exh. A.)
- 19 l. 3775 Cahuenga Blvd., Studio City, CA 91604 (Eric Pony)
- 20 (Req. for Judicial Notice) Exh. C5.)
- 21 m. 14290 Dickens St., Unit 301, Sherman Oaks, CA 91423 (Hassine)
- 22 (Lagunzad Dec., ¶5, Exh. C, D.)
- 23 n. 11676 Collins St., North Hollywood, CA 91601 (Ampornpet)
- 24 o. 4628 Buffalo, Sherman Oaks, CA 91423 (Pencille)
- 25 p. 6036 North Hazelhurst Pl., Los Angeles, CA 91606 (Eric
- 26 Pony)(Req. for Judicial Notice, Exh. C7.)

27 5. any personal property purchased or maintained, in whole or in part, by any
 28 of this money, including, but not limited to, the following:

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- a. Mercedes, license plate number 1GASTON, VIN number WDBDA28D3HF300656, registered to Dean D. Storm (Req. for Judicial Notice, Exh. D4.)
- b. Ferrari, license plate number 5KGS812, VIN number ZFFXR41A5X0115613, registered to Dean D. Storm (Req. for Judicial Notice, Exh. D4.)
- c. Audi, license plate number 4YNF378, VIN number WAULT68E12A104269, registered to Eric Pony and Wilma Anne Pony (Req. for Judicial Notice, Exh. D3.)
- d. Ferrari, license plate number 5VCW180, VIN number ZFFEW58A160148330, registered to Eric Michael Pony (Req. for Judicial Notice, Exh. D1.)
- e. Mercedes, license plate number 5WRN597, VIN number WDDNG71X17A088511, registered to Paulette Pony and Eric Michael Pony (Req. for Judicial Notice, Exh. D2.)
- f. Bentley, license plate number 5WXH650, VIN number SCBBR93WX7C040228, registered to Eric Michael Pony (Req. for Judicial Notice, Exh. D1.)
- g. Land Rover, license plate number 5HUT580, VIN Number SALMF11434A168781, registered to Eric Michael Pony (Req. for Judicial Notice, Exh. D1.)
- h. BMW, license plate number 6BRC681, VIN number 5UXFE83527LZ46416, registered to Financial Services Vehicle Trust and Paulette Pony (Req. for Judicial Notice, Exh. D2.)
- i. Mercedes, license plate number 5KQH354, VIN number WDBTJ65J85F125085, registered to USB Leasing LT LSR and Eric Pony (Req. for Judicial Notice, Exh. D1.)

1 j. Mercedes, license plate number LUKKY21, VIN number
2 4JGBB86EX6A054537, registered to DCFS Trust and Carol
3 Pencille (Req. for Judicial Notice, Exh. D5.)

4 b. any money or other consideration (“the Funds”) that Defendants have received
5 as a result of the their Mortgage Scheme including but not limited to, money or other
6 consideration obtained from borrowers, lenders, or other entities for the transactions¹.

7 **II. SEIZURE OF ASSETS**

8 The People Further Request that this Court order the seizure of the following vehicles
9 by the Attorney General to hold to ensure that such assets are not dissipated or unlawfully
10 transferred:

11 A. Attorney General may seize the following vehicles:

- 12 1. Ferrari, license plate number 5VCW180, VIN number
13 ZFFEW58A160148330, registered to Eric Michael Pony (Req. for
14 Judicial Notice, Exh. D1.)
- 15 2. Ferrari, license plate number 5KGS812, VIN number
16 ZFFXR41A5X0115613, registered to Dean D. Storm; (Req. for Judicial
17 Notice, Exh. D4.) and
- 18 3. Bentley, license plate number 5WXH650, VIN number
19 SCBBR93WX7C040228, registered to Eric Michael Pony (Req. for
20 Judicial Notice, Exh. D1.)

21 The People request that this Court allow for the seizure of the above referenced
22 vehicles owned by Defendants so that these assets may be protected for use as restitution if
23 this Court finds that such restitution is proper. Under Government Code section 12527(g) this
24 Court can “issue any order necessary to assure that the defendant does not transfer or encumber
25 any property which may be used to satisfy a judgment in this action.” In this case, Defendant

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27 ¹ (Request for Judicial Notice filed concurrently; Bremner Dec., Exh. E, Bank Accounts
28 Tab);(Hintz Dec. at p. 1, Exh. A); (Lagunzad Dec., ¶9 Exh. H); (Notice of Lodging Copies of
Deposition Transcript of Eric Pony, Exh. A.)

1 Eric Pony possesses properties in multiple states including Texas, Arizona, Nevada, and
2 Florida where he could easily move and hide these vehicles thereby circumventing the purpose
3 behind the statute of ensuring that assets are preserved to compensate victims. (Req. for
4 Judicial Notice, Exh. C1 - C7, D1 - D3.) Further, Eric Pony's recent practice of transferring
5 partial title to real property to family members, for no consideration, to hold title jointly with
6 him, suggests that Mr. Pony may try to use such improper methods to transfer, damage or hide
7 these restitutionary assets. (Req. for Judicial Notice, Exh. C1 - C3.) If the asset seizure order is
8 issued, these vehicles will be towed to a secure location under the direction of peace officers
9 and held pending further orders from this Court. (Declaration of Christina Tusan (Tusan Dec. ¶
10 2).)

11 B. The application for a temporary restraining order and order to show cause re
12 preliminary injunction is made on the grounds that:

13 1. Defendants have violated, and are continuing to violate, Business and
14 Professions Code section 17200 (prohibiting unfair business practices) and 17500 (prohibiting
15 false or misleading statements). Defendants' real estate scam is discussed in detail at pages
16 12-28 of the application and is incorporated herein by this reference.

17 2. The relief that the People request is necessary to protect consumers from
18 being irreparably harmed by Defendants' misconduct.

19 3. Under Government Code section 12527(g), because the Attorney
20 General has proven a reasonable probability of success on the merits at trial, the Court is
21 empowered to make *all* necessary orders, to protect Defendants' assets – even those that were
22 not taken by unlawful means – for use in satisfying a judgment against Defendants.

23 C. The People have submitted declarations and attached exhibits showing the
24 following:

25 1. Nature of emergency/ great or irreparable injury:

26 a. For each day that this Court waits, new consumers can be
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1 victimized by Defendants’ unlawful and fraudulent schemes. Defendants Lifetime, Nations and
2 Greenleaf Lending currently have websites in both English and Spanish with information
3 concerning low interest fixed rate loans. (Lagunzad Dec., ¶6, Exh. E, ¶7, Exh. F, ¶12, Exh. K.)

4 b. Defendants’ “flagrant” course of making misrepresentations or
5 false statements was sufficient to subject Dean Storm and Eric Pony to a Cease and Desist
6 order meant to prohibit the same type of conduct sought by the Attorney General in this matter.
7 (Lagunzad Dec., ¶13, Exh. L). (DRE Cease and Desist Order Dated June 13, 2007).)

8 c. The People believe that an asset freeze is necessary to prevent
9 Defendants from wrongfully disposing of, encumbering or causing damage to the real
10 properties during the pendency of this action.

11 2. Nature and approximate size or extent of the business:

12 Defendants’ business is a complex real estate fraud scheme by which they have conducted, by
13 their own admission, thousands of transactions. (See Certified Transcript of Ana Maria
14 Gallegos at p. 8.) In addition, in a 6 month period, documents obtained from a search warrant
15 confirmed that Lifetime received more than \$1,700,000 from Olympic Escrow alone. (Bremner
16 Dec., ¶ 8.) The restitution that is due to consumers defrauded by this scheme is likely to be in
17 excess of 10 million dollars, although the People do not at this time have a precise estimate.

18 3. Impact on operation of ongoing business: Defendants’ business is

19 bilking consumers out of millions of dollars in the aggregate by making false representations
20 concerning alleged refinancing programs and engaging in criminal conduct including forgery,
21 theft, and the filing of false documents. The People submit that the impact on ongoing
22 business, which is essentially a criminal enterprise, does not form any basis for this court to
23 consider denial of the People’s request.

24 **III. NO NOTICE GIVEN TO DEFENDANTS**

25 The People have not given notice of this application. The People are not required to
26 give notice, pursuant to Code of Civil Procedure section 527(c)), which allows for the granting
27 of a temporary restraining order without notice where “it appears from facts shown by
28 affidavit. . . that great or irreparable injury will result to the applicant before the matter can be

1 heard on notice” and where the applicant’s attorney certifies “that for the reasons specified the
2 applicant should not be required to inform the opposing party or the opposing party’s
3 attorney.” (Code of Civ. Proc. § 527 (c).) In this case, great or irreparable injury would result
4 if the People were required to wait until notice was given to defendants for the following
5 reasons: 1) giving notice to defendants would pose a threat to the public by placing defendants
6 on notice about the upcoming arrest and search by the San Bernardino District Attorney that
7 will be taking place tomorrow; 2) giving notice could allow defendants sufficient time to flee
8 the jurisdiction and destroy documents that will be sought in a search warrant tomorrow; and
9 3) giving notice would allow Defendants to dissipate assets and to destroy documents before
10 the Court has been able to enter an appropriate order to prevent such conduct and before search
11 warrants scheduled to be executed tomorrow can be served. (Code of Civ. Proc. § 527(c));
12 (Bremner Dec., ¶ 10-11.) Providing Defendants notice of this motion would necessarily tip
13 them off to the planned arrests set for tomorrow and create a significant risk that they may flee
14 to avoid prosecution. (Bremner Dec., ¶3,4 at Ex. B; ¶ 11-12.) This is of particular concern as it
15 relates to defendant Eric Pony who is known to have ties to another country. (Bremner Dec.,
16 ¶11; Sharrit Dec., ¶ 15.)

17 Pursuant to California Code of Civil Procedure section 527(c), this application must be
18 made without notice because it appears from the facts shown by affidavit that great or
19 irreparable injury will result to the application before the mater can be heard on notice and that
20 for reasons specified in the Declaration of Deputy Attorney General Christina Tusan, the
21 Attorney General should not be required to give notice. (Tusan Dec., ¶ 3.)

22 **IV. PERMISSION TO FILE A BRIEF IN EXCESS OF 15 PAGES**

23 The memorandum of points and authorities exceeds 15 pages. The People submit that a
24 brief in excess of the 15-page limit of Rule 3.1113 is necessary in this case due to the complex
25 nature of the misconduct, the People’s submission of detailed factual support to show the
26 propriety of the requested relief, and the extensive legal argument concerning the requirements
27 for such relief.

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1 **V. BOND**

2 No bond is required of the People. (Code Civ. Proc., § 995.220.)

3 This application is based on this application and memorandum of points and
4 authorities, the complaint on file herein, the declarations filed in support of this application and
5 exhibits thereto, any other documents that may be filed, and such evidence and argument that
6 may be presented at or before the hearing, or of which the Court may take judicial notice.

7
8 DATED: March 18, 2008

EDMUND G. BROWN JR.
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RONALD A. REITER
Supervising Deputy Attorney General
CHRISTINA TUSAN
Deputy Attorney General

13 By _____
14 CHRISTINA TUSAN

15 Attorneys for Plaintiff,
16 the People of the State of California

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants operate a complex predatory lending scheme which uses bait and switch
4 tactics to victimize hundreds, if not thousands, of consumers through the State. (Certified
5 Transcript of Ana Maria Gallegos at p. 8; Bremner Dec., ¶ 8.) Many consumers have already
6 lost their homes to foreclosure or face default, foreclosure, and the loss of their homes as a
7 direct result of these practices. (Ballard Dec., ¶ 23; Bracamontes Dec., ¶ 15; Chow Dec., ¶ 21;
8 Estrada Dec., ¶ 28-30 (“I lost my home because of Lifetime’s false promises”); Flores Dec. ¶
9 21; Nelson Dec., ¶ 15; Nuusila Dec., ¶ 6; Mosher Dec., ¶ 20; Saucedo Dec. ¶ 14; Woodcock
10 Dec., ¶ 23; Garcia Dec., ¶ 20-21.) A temporary restraining order and asset freeze is necessary to
11 protect California consumers from further being victimized by defendants.

12 In the absence of an order granting an asset freeze, there will be no constraints on
13 Defendants with respect to their properties and bank accounts, and no means to ensure that the
14 assets obtained by Defendants through their real estate scam are not dissipated. While the
15 criminal case may address the financial harm to the complaining witnesses, this parallel civil
16 proceeding is essential to make all of the victims whole and to prevent Defendants from
17 continuing to engage in unfair and illegal business practices.

18 Accordingly, the People request that this Court immediately enjoin Defendants from
19 continuing to engage in the practices that have caused such devastation to their victims, and
20 from dissipating assets that could be used to make restitution that the Court may award. In
21 addition, to protect the subject assets, the People request that this Court allow the People to
22 seize the certain expensive vehicles owned by Defendants, as proceeds of their unlawful and
23 fraudulent practices, to ensure they are not transferred out of state or damaged in a way that
24 would prevent them from being used for restitution for the many victims in this case.

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1 **II. STATEMENT OF FACTS**

2 **A. The Defendants.**

3 **1. Defendant Eric Michael Pony**

4 Defendant Eric Michael Pony (“Eric Pony”) is the owner, President, Chief Executive
5 Officer, Secretary and Chief Financial Officer of defendant Lifetime Financial, Inc.
6 (“Lifetime”), a mortgage lending business (Request for Judicial Notice (“RJN”), Exh. A1.)
7 Eric Pony is also the Chief Executive Officer, Secretary, and Chief Financial Officer of
8 defendant E. Pony, Inc. (“E. Pony”), a mortgage company (*Id.*, Exh.. A2.). Eric Pony was a
9 real estate salesperson initially licensed by the California Department of Real Estate (“DRE”)
10 on or about December 18, 2001. Defendant Eric Pony is subject to a DRE Cease and Desist
11 Order issued on June 13, 2007 which prohibits him from, inter alia, “engaging in predatory
12 lending practices involving but not limited to operating a bait and switch mortgage loan
13 substitution scheme”; accepting or receiving trust funds from borrowers until he is in
14 compliance with the Real Estate Law, or performing acts that require a real estate license in
15 California unless he is in compliance with the relevant sections of the California Predatory
16 Lending Law. On or about September 10, 2007, Eric Pony surrendered his real estate
17 salesperson’s license to the DRE following the DRE’s filing of an administrative proceeding to
18 revoke Eric Pony’s license. (Beltramo Dec., ¶7.) Following the issuance of the cease and
19 desist order, Eric Pony has continued to engage in predatory lending practices, including
20 soliciting and arranging loans secured by real property for borrowers, through defendants
21 Nations Mortgage, Inc. and Green Leaf Lending, Inc. (Declaration of Arnold Bracamontes
22 (“Bracamontes Dec.”, ¶¶6-14.) In addition, it appears that as of December 2007, following
23 the suspension of his license, Eric Pony continues to improperly solicit and arrange for
24 predatory loans and also participates in the promises to repair consumers’ credit, an additional
25 way to bilk consumers. (Declaration of Francisco Flores (Flores Dec.), ¶ 20, 21.) Mr. Pony
26 appears to now use the name “Oren Pony” when transacting with consumers in order to
27 conceal his unlawful practices. (Flores Dec., ¶ 20, 21 (picking out Eric Pony from a six pack
28

1 photo line up as appearing to the person who identified himself as “Oren Pony” from Nations
2 Mortgage).)

3 **2. Defendant Paulette Pony**

4 Defendant Paulette Pony is the sister of Eric Pony, and worked for Lifetime as both a
5 notary and sale representative. (Declaration of Tracylyn Sharrit (Sharrit Dec.), ¶19 & Exh. G
6 at p.2; Declaration of Barry Woodcock (Woodcock Dec.), ¶10 & Exh. B; Beltramo Dec., ¶10
7 & Exh. D (stating Paulette is Eric Pony’s sister); RJN, Exh. B7.) Paulette Pony was appointed
8 a notary public in and for the State of California on November 8, 2004. Her notary
9 commission was revoked by the California Secretary of State effective December 19, 2007
10 because of (a) her conviction on September 7, 2004 of felony conspiracy under 18 United
11 States Code section 371 and (b) her failure to disclose on her notary application that she had
12 been convicted on February 20, 2003 for the misdemeanor of forgery under Penal Code section
13 470(a). (Request for Judicial Notice., Exhs. B1-B7.)

14 Defendant Paulette Pony actively participated in the scheme as a representative of
15 Lifetime, and later Direct Credit services, which provided blatantly false and misleading
16 information to consumers concerning the terms of their mortgages. (See, e.g., Woodcock Dec.,
17 ¶¶ 10, 11, 22 (Paulette claimed the loan documents were in error, wrote in 6.5% fixed rate as
18 promised; the loan funded at an adjustable rate starting at 9.5% with a 12.5% APR);
19 Declaration of Francisco Flores (Flores Dec.), ¶ 7, 8, 23.) If consumers questioned the
20 paperwork she tried to get them to sign, Paulette Pony would falsely represent to consumers
21 that her boss, often identified as Eric Pony, would fix “errors” in the paperwork or would give
22 them other favorable terms. (*Id.*) Paulette would even cross out and correct the interest rates
23 and interlineate them with the favorable rates promised. (Woodcock Dec., ¶ 10.) In many
24 cases Paulette would even have Eric Pony, or a person she identified as her “boss” speak
25 directly with consumers on the telephone to verify the promised terms. (Woodcock Dec., ¶
26 10.) Despite these actions and promises, consumers were not give the favorable rates or terms
27 interlienated or promised. (Woodcock Dec., ¶ 24.) Paulette Pony was also involved in the
28 forgeries of consumers’ signatures. (Declaration of Barbara Fitzgerald (B. Fitzgerald Dec.), ¶

1 7,8 (victim was home bedridden, never signed any documents for Lifetime and never met
2 Paulette Pony who purported to notarize her signature).) Following the forgery of this
3 signature, on May 10, 2007, Paulette Pony wrote a letter to the Secretary of State claiming the
4 following: “Please be advised that on Easter weekend our home was burglarized and among
5 the things taken was my Notary Journal Book (2006).” (Request for Judicial Notice at Exh.
6 B7.)

7 **3. Defendant Eli Hassine**

8 Defendant Eli Hassine worked as a notary for Lifetime. (Nelson Dec., ¶¶7-10 & Exh.
9 A at p.15 of 16; Sharritt Dec., ¶20 & Exh. H at p.14 of 16.) Hassine was appointed a notary
10 public in and for the State of California on January 30, 2005 for a term of four years. (Req. for
11 Judicial Notice, Exh. B11.) Eli Hassine was also involved in forging consumers’ signatures for
12 consumers that he never personally met. (Declaration of Tracylyn Sharrit (Sharrit Dec.), ¶ 20;
13 Declaration of Luis Garcia (Garcia Dec.), ¶12.). In some instances, forgeries even misspelled
14 the victims’ names, such as misspelling “Sharritt” rather than the true spelling “Sharrit.”(*Id.*
15 (purported notarization by Eli Hassine on July 25, 2006.) Following the completion of
16 forgeries in July 2006 and November 2006, Eli Hassine subsequently submitted a letter to the
17 Secretary of State claiming that he had “lost [his] notary book on the 29th day of July, 2007.”
18 (Request of Judicial Notice at Exh. B9.)

19 **4. Defendant Wilma Pony**

20 Defendant Wilma Pony is Eric Pony’s mother, and worked as a notary for Lifetime.
21 (Beltramo Dec. re Harts, ¶5, Exh. A p.15 of Deed of Trust & checks made to W. Pony.)
22 Wilma Pony was appointed a notary public in and for the State of California for a term of four
23 years on September 3, 2004. (RJN, Exh. B13.) Wilma Pony is the President, Chief Executive
24 Officer, Secretary and Chief Financial Officer of defendant Nations Mortgage, Inc.
25 (“Nations”), a mortgage broker business. (*Id.*, Exh. A3.) Wilma Pony is also President of
26 defendant Direct Credit Solutions, Inc. (“Direct Credit Solutions”) (Lagunzad Dec., ¶3, Exh.
27 A.) Wilma Pony was also involved in forging consumers signatures. (Declaration of Cynthia
28 Harts (Harts Dec., 58 - 59, ¶ Exh. 1(page 15 of 15 of Deed of Trust)).) Following the forging of

1 that signature, Wilma Pony submitted the following letter to the secretary of state “On 6/22/06
2 my family was burglarized. Among the items taken was my book (only)[.] Enclosed is a copy
3 of the police report.” (Request for Judicial Notice at Ex. B-10.)

4 Wilma Pony acts as a repository of the assets that Eric Pony acquires via his mortgage
5 scheme, apparently to protect those assets from consumer victims of Mortgage Defendants²,
6 and other judgment creditors. Eric Pony transfers to her, for no consideration, a partial interest
7 in property purchased with funds taken from the victims of the Mortgage Defendants’ scheme.
8 For example, Eric Pony quitclaimed to Wilma Pony and Samuel Pony, for no consideration,
9 interest in various properties. (RJN, Exhs. C1-C3.)

10 **5. Defendant John D H N Nielsen**

11 Defendant John D H N Nielsen, a.k.a. Doo Hyun No (“Nielsen”), is licensed by the
12 DRE as a real estate broker. (Req. for Judicial Notice, Exh. D5.) Nielsen is the responsible
13 broker of record for Nations and Green Leaf Lending, Inc. (“Greenleaf”). (*Id.*) He is also the
14 Chief Executive Officer, Secretary and Chief Financial Officer of Green Leaf, a mortgage
15 broker business. (Request for Judicial Notice, Exh. A4.)

16 **6. Defendant Carol Pencille**

17 Defendant Carol Pencille is an escrow officer, and also Chief Executive Officer of
18 defendant Olympic Escrow, Inc. (“Olympic Escrow”), an escrow services company. (*Id.*, Exh.
19 A5.) Carol Pencille, through her company Olympic Escrow, conducted a substantial number of
20 transactions with Defendants Lifetime and Eric Pony. (Bremner Dec., ¶8.) In a six month
21 period alone, Olympic Escrow issued checks to Eric Pony/Lifetime for more than \$1,700,000.
22 (*Id.*) Pencille was also involved in a kickback scheme whereby approximately \$2,700, in
23 addition to the already high fees charged, was taken from the escrow proceeds in particular
24 escrow transactions through forged or otherwise falsified “amendments” to escrow instructions
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26
27 ²“Mortgage Defendants” is a term defined in paragraph 16 of the Complaint to include
28 defendants Lifetime, Eric Pony, Paulette Pony, Wilma Pony, Hassine, E. Pony, Inc., Storm,
Nielsen, Nations Mortgage, Green Leaf Lending

1 purportedly authorizing these additional payments to Mortgage Defendants and Escrow
2 Defendants.³ (Lagunzad Dec., ¶10, Exh. I.)

3 **7. Defendant Sibpun Ampornpet**

4 Defendant Sibpun Ampornpet (“Ampornpet”) is an escrow officer and an owner and
5 Secretary of Olympic Escrow. (*Id.*) Ampornpet was appointed a notary public in and for the
6 State of California on June 22, 2001 for a term of four years and again on June 22, 2005 for
7 another term of four years. (*Id.*, Exh. B12.) On November 1, 2005, Ampornpet sent a letter to
8 the Secretary of State stating the following: “regarding my notary commission #1581812, I
9 would like to inform you that my notary journals dated up to May 31, 2005 have been lost. I
10 recently moved in May and the journals that were packaged in boxes have since disappeared.”
11 (Request for Judicial Notice at B12.) The search warrant issued by the San Bernardino District
12 Attorney’s Office also revealed that the shredder in Ampornpet’s office contained various
13 documents that contained cut and pasted signatures of consumers as well as cut and pasted
14 information to conceal the true information on a check. (Bremner Dec., ¶ 3-4.)

15 **8. Defendant Dean Storm**

16 Defendant Dean David Storm (“Storm”) was a licensed real estate broker from on or
17 about July 26, 2005 until September 10, 2007, when he surrendered his real estate broker’s
18 license to the DRE following the DRE’s filing of an administrative proceeding to revoke
19 Storm’s license. (Beltramo Dec., ¶8) Storm is the broker of record for Lifetime and is doing
20 business as Lifetime Financial. (*Id.*, Exh. C1.) Dean Storm is subject to the same June 13,
21 2007 DRE Cease and Desist Order as Eric Pony, including findings that Storm violated the real
22 estate law by engaging in a “continued and flagrant course of misrepresentations or making of
23 false promised through real estate agents or sales persons.” (Request for Judicial Notice at E3
24 (Order at p.3).)The findings also note that Eric Pony has been employed by Storm since July
25 31, 2003. (Lagunzad Dec., ¶13, Exh. L) (Order at p.3.)

27 ³“Escrow Defendants” is a term defined in paragraph 16 of the Complaint to include
28 defendants Virtual Escrow, Olympic Escrow, Pencille, and Ampornpet.

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9. Defendant Virtual Escrow

Defendant Virtual Escrow, Inc. (“Virtual Escrow”) is a California Corporation which provides escrow services. ((Req. for Judicial Notice, Exh. A6.) Ampornpet worked for Virtual Escrow. (*Id.*, Exh. B8)

B. Summary of Defendants’ Scheme

1. Mortgage Defendants Make False Representations that Mortgages are Low Interest Fixed Rate Loans that will Save Consumers Money.

Defendants have engaged in a predatory lending scheme to cheat homeowners of substantial home equity by inveigling homeowners to refinance their current mortgages with new mortgage loans to be made or arranged by the Mortgage Defendants. (See Generally Consumer Declarations filled concurrently with this Application.) The Mortgage Defendants solicit prospective customers for their refinance services through their team of telemarketers who work for defendants Lifetime, Nations and Green Leaf Lending. (*See e.g.*, Burns Dec., ¶2; Bracamontes Dec., ¶ 6; Saucedo Declaration (Saucedo Dec.), ¶ 4) In addition to contacting English speaking homeowners, the Mortgage Defendants target members of the Latino and Filipino communities with telephone sales solicitations conducted entirely in Spanish and Tagalog. (Flores Dec., ¶ 4; Garcia Dec. ¶ 1; Ramos Dec., ¶ 2; Sarmiento Dec., ¶3.) The Mortgage Defendants also target homeowner borrowers who have adjustable rate mortgages and make bogus representations that these homeowners have been pre-approved for a fixed rate loan of around 5% or 6%. (Estrada Dec., ¶4 (6.5% fixed), ¶29; Sarmiento Dec., ¶5, ¶28 (4.9% fixed); Harts Dec., ¶7 (5.9%), ¶30; R. Fitzgerald Dec. ¶8, ¶42; Nelson Dec., ¶3; Woodcock Dec., ¶4 (6.5%), ¶8, ¶21; Sharrit Dec., ¶5 (6.3%); Parra Dec., ¶4, ¶7, ¶30.) They also claim that the consumers’ monthly payments will be lower, in some cases by hundreds of dollars per month following the refinance with Mortgage Defendants. A Lifetime

1 telemarketing script, seized during service of a search warrant, sets forth the general sales
2 pitch:

3 I'm calling because your house has been approved for a 5.2 fixed rate for 30
4 years and a 4.9 fixed rate for 15 years, both of which can lower your monthly
5 payments by up to 300 dollars. And if you need cash out, to pay off credit card
bills, consolidate debt, or fix up your house, we can get you that cash and help
you start making your house work for you.

6 (Bremner Dec., ¶5, Exh. C.)

7 Based on homeowners' testimony, Defendants appear to have generally followed that script
8 with some variations with respect to the interest rates offers.

9 **2. Defendants Falsely Represent that Homeowners Will Get
10 Thousands of Dollars in Cash Back without Disclosing that Much of
the Money will Be Retained to Cover Defendants' High Fees.**

11 The Mortgage Defendants also falsely represent that they will arrange for the
12 homeowners to get tens of thousands of dollars in cash out of the equity in their homes and
13 attempt to persuade people to take out significant amounts of equity. (Garcia Dec., ¶3, ¶7;
14 Nuusila Dec., ¶6 (stating she did not want to take out equity).) Homeowners like Mr.
15 Fitzgerald, who were not interested in taking equity out, were persuaded to do so based on the
16 attractive fixed interest rate. (Fitzgerald Dec., ¶7, ¶8.) Due to the great rates offered on the
17 mortgage, Mr. Fitzgerald took cash out to put in a savings account to earn more interest than
18 would be owed on the loan. (*Id.*) What the Mortgage Defendants actually sell the homeowners
19 through the use of deceit and trickery are high-cost adjustable rate mortgages. The cash taken
20 out of the home, which the homeowners believe is theirs to keep, often must instead be used to
21 pay the exorbitant, unwarranted and hidden fees the Mortgage Defendants charge for their
22 "services."

23 **3. Defendants Falsely Represent that They will Reimburse or Obtain a
24 Waiver of Victims' Prepayment Penalties from their Current
Lenders.**

25 In some cases, the Mortgage Defendants falsely claim that the monthly payment will
26 also cover property tax and insurance payments as well as interest and principal payments.
27 (Burns Dec., ¶13; Ballard Dec., ¶4, ¶9; Solano Dec., ¶12.) The Mortgage Defendants also
28

1 make false promises to homeowners who are hesitant to refinance because of prepayment
2 penalties on their existing loans; the Mortgage Defendants falsely represent that they either can
3 help borrowers avoid the prepayment penalties or that they will reimburse borrowers for those
4 penalties by lowering their fees. (Burns Dec., ¶3, ¶6; Chow Dec., ¶6; Nuusila Dec., ¶5
5 (promising to waive the prepayment penalty because they are a direct lender).) As explained
6 below, in reality, homeowners who refinance with the Mortgage Defendants typically wind up
7 paying high interest rates, higher monthly payments than they were paying before, prepayment
8 penalties on their old loans, and fees to the Mortgage Defendants in amounts exceeding
9 \$20,000. (Nuusila Dec., ¶ 5, ¶20; Sharrit Dec., ¶33.)

10 **4. Defendants attempt to Encourage Victims Proceed with the**
11 **Transaction Through Bogus Promises that Up-Front Appraisal Fees**
will be Refunded at the Close of Escrow

12 Once homeowners express interest in the Mortgage Defendants' offer to get them cash
13 and to save them substantial amounts of money per month on their home loans, the Mortgage
14 Defendants advise them to set up an appraisal to start the process. Such an appraisal typically
15 costs the victim between \$300 and \$400. (Garcia Dec., ¶9, ¶21; Mosher Dec., ¶10, ¶15.) The
16 Mortgage Defendants falsely represent that they will refund the appraisal fees to the victims at
17 the close of the loan transactions. (Declaration of Marcus Beltramo, Exh. D at p. 2
18 (Hovhannisyan Dec.); Burns Dec., ¶3, ¶5; Garcia Dec., ¶6, ¶9; Harts Dec., ¶23; Declaration of
19 Sharon Mosher (Mosher Dec.) ¶10, ¶15; Declaration of Claudia Parra [Parra Dec.] ¶12, ¶13;
20 Declaration of Noemi Ramos (Ramos Dec.) ¶5. When victims later complain about the failure
21 to refund these fees, the Mortgage Defendants repeatedly refuse to answer or return victims'
22 calls or make false representations about the president of the company refunding the fees.
23 (Declaration of Marcus Beltramo, Exh. D at p. 2.) The Mortgage Defendants rarely, if ever,
24 provide homeowners with copies of the appraisals, which typically overinflate the value of
25 victims' homes in an effort to qualify those victims for loans in amounts that far exceed their
26 home value or ability to pay, and that will allow the Mortgage Defendants to extract large
27 amounts of cash from the homes. (Declaration of Rosa Estrada (Estrada Dec.), ¶7; Fitzgerald
28

1 Dec., ¶10; Harts Dec., ¶33; Parra Dec., ¶9, ¶32; Declaration of Ramil Sarmiento (Sarmiento
2 Dec.) ¶8; Sharrit Dec. ¶(6).)

3 **5. Defendants Insist on Using Defendant Notaries who Pressure**
4 **Victims to Sign Incomplete or Inaccurate Documents by Promising**
5 **that Excessive Fees or Incorrect Rates or Payment Amounts will be**
6 **Corrected or Modified.**

7 Once the appraisal is completed, the Mortgage Defendants send a notary to the victim's
8 home to try to induce the victim to sign loan documents. At this point, the victim is invested in
9 making sure the transaction goes through because he or she is expecting to get a \$300 or \$400
10 refund of the appraisal fee. Defendants refuse to allow homeowners to use their own notaries
11 and insist that defendant notaries are used. (Woodcock Dec., ¶7; Parra Dec., ¶10) Defendants
12 have gone so far as to fly a notary up to Nice, California, several hundred miles from
13 Defendants' business premises, rather than allow the homeowner to use a local notary.
14 (Woodcock Dec., ¶7.) The notaries often arrive late in the evening, with documents that
15 typically contain loan terms that are completely different from those promised over the
16 telephone, and are written in English regardless of whether the deal was negotiated in Spanish
17 or Tagalog. (Bracamontes Dec., ¶8; Ballard Dec., ¶ 4 (arrived at 8:00pm with different terms
18 than promised.) (Garcia Dec., ¶ 11 (monolingual Spanish Speaker given documents in English
19 but transaction explained in Spanish).) In some cases, the documents presented for signature
20 include a number of portions that are blank. (R. Fitzgerald Dec., ¶ 13.) The Mortgage
21 Defendants successfully persuade victims to sign blank documents by promising that they will
22 send the documents back to the victims with the agreed upon terms filled in. (*Id.* at ¶ 13-15)
23 When the Mortgage Defendants eventually provide the documents, at a much later date than
24 promised, the documents include unfavorable terms that differ considerably from what the
25 Mortgage Defendants initially promised. (Fitzgerald Dec., ¶ 42-43.)

26 **6. Defendants Fail to Provide Victims with Copies of Documents they**
27 **Sign and Provide Homeowners with Incomplete Sets of Documents**
28 **to Sign.**

29 The Mortgage Defendants typically fail to provide victims with copies of the
30 documents they sign, fail to provide copies of documents in the languages in which the terms

1 of the mortgages were negotiated with non-English speaking borrowers, and fail to timely
2 provide disclosure statements required under state and federal law, such as a mortgage loan
3 disclosure statement or a Good Faith Estimate of mortgage costs and a Truth in Lending
4 disclosure accurately setting forth loan terms. (Garcia Dec., ¶ 11; Nuusila Dec., ¶14, ¶15, ¶19;
5 Solano Dec., ¶8.) In the event documents are left with the victims, they are often either
6 incomplete or different from those the victim signed. (Burns Dec., ¶8; Bremner Dec., ¶6 Exh.
7 D (declaration of former employee confirming this practice).)

8 **7. Defendants Forge Victims Names on Loan Documents**

9 Both consumer victims and a former employee who worked for the Mortgage
10 Defendants confirm that the Mortgage Defendants not only would show victims incomplete
11 loan documents, but also would forge victims' names on documents prior to submitting them.
12 (Beltramo Declaration, Exh. D at p. 2; Solano Dec., ¶14 (wife's signature was forged).) In at
13 least two cases, the forged documents found in the victims' files show that the Mortgage
14 Defendants actually misspelled the victims' names in the forged documents. (Richmond Dec.,
15 ¶6, Exh. C; Sharrit Dec., ¶20, Exh. H.) Tracylnn Sharrit confirms that she has met Eli Hassine,
16 the notary who purported to notarize her signature on the deed of trust. (Sharrit Dec., ¶20.) In
17 another case, the victim's wife was bedridden and was never even been presented with the
18 documents that contained her forged signatures. (B. Fitzgerald Dec., ¶1, ¶¶16 - 20.) With
19 respect to Ms. Harts, her daughter was present through the entire transaction where she
20 specifically refused to sign the promissory note because it was for an adjustable rate. (Harts
21 Dec., ¶28.) In another case, when the victim complained about the loan going through without
22 her signature, she was told by Mr. Pony that she had "signed enough" of the documents for
23 him to process the loan. (Sharrit Dec., ¶16.)

24 **8. Defendants Falsify Loan Applications, Including Income Amounts, 25 Without Homeowners' Knowledge to Place Them in Loans They 26 Cannot Afford.**

26 The Mortgage Defendants regularly falsify loan applications, without the victims'
27 knowledge or consent, in order to place unwitting homeowners in loans that far exceed their
28 ability to repay the loan based on their current monthly incomes. (Garcia Dec., ¶¶16 - 20;

1 Ballard Dec., ¶17; Bracamontes Dec., ¶8, 10; Nuusila Dec., ¶ 2, 19.) The Mortgage
2 Defendants have falsely reported that a homeowner’s monthly income is between \$6,000 and
3 \$8,000 when, in fact, the homeowner’s true monthly income is significantly less.
4 (Bracamontes Dec., ¶8, 10 (falsely claimed he earned \$8,950 rather than \$2,600); Ballard Dec.,
5 ¶16 (falsely stating her husband buys and sells cars; overinflating income by \$3,500); Garcia
6 Dec., ¶17 (falsely claiming he had a drywall business when he is a disabled senior); Nuusila
7 Dec., ¶ 2, ¶19 (falsely stating that she owns Smart and Health and earned \$8,100 when she is a
8 homemaker).) In some cases, the monthly payments due after the refinance transaction with
9 the Mortgage Defendants wind up exceeding the consumer’s entire actual monthly income.
10 (Bracamontes Dec., ¶ 14, ¶15 (\$3,998 month fees; income of \$2,600). (Parra Dec., ¶26 ¶¶33 -
11 34 (showing that she made \$2,200 and had a monthly payment of \$2,200).)

12 **9. Defendants Promise Low Rate Fixed Loans But Deliver High**
13 **Interest Adjustable Rate Loans With High Fees That Can Cost**
14 **Consumers Thousands More Per Month Than Promised.**

15 Once the Mortgage Defendants fill in and submit the final paperwork, the new loan
16 terms are typically for an adjustable rate mortgage at a high interest rate, rather than a fixed
17 rate mortgage at a low interest rate as the victim was promised. (Fitzgerald Dec., ¶42
18 (promised 4.5% fixed, received 8.5% adjustable; Nuusila Dec., ¶9, 20) The interest rate
19 charged is often higher than the rate promised by several percentage points. (*Id.*) As a result,
20 the monthly payments are often significantly higher, sometimes by \$1,000 or more, than the
21 amounts promised by the Mortgage Defendants. (Fitzgerald Dec., ¶ 42 (promised \$800 per
22 month; was \$1,788 per month); Parra Dec., ¶26 ¶¶33 - 34 (promised \$1,200 payments, paid
23 \$2,200).) Moreover, the Mortgage Defendants misrepresent to and conceal from victims
24 substantial charges and compensation that the Mortgage Defendants will reap from the
25 refinancings. The refinanced loans contain outrageous loan origination fees, processing fees,
26 underwriting fees and application fees. (Burns Dec., ¶12; Sharrit Dec., ¶13, ¶18.) These fees,
27 which are payable directly to Lifetime, range from approximately \$8,000 to in excess of
28 \$20,000. (Burns Dec., ¶¶11-12 (approx. \$18,000 in loan fees); Bracamontes Dec., (\$17,000 in
fees- promised \$2,000 to \$2,500 in fees) ; Nuusila Dec., ¶ 16 (\$11,000); Nelson Dec., ¶ 12

1 (\$21,979).) Further, the Mortgage Defendants often misrepresent the amount of cash back
2 consumers will receive from the transaction, often by tens of thousands of dollars. (Estrada
3 Dec., ¶ 18 (promised \$39,000 in cash back, but only received \$14,000; Burns (promised
4 \$25,752; received \$5,753); Bracamontes Dec., ¶ 14 (promised \$34,000 and received \$14,000).)

5 Accordingly, the total principal balance owed on the loan refinanced by the Mortgage
6 Defendants, due to the exorbitant fees and costs, is often tens of thousands of dollars more than
7 the victim owed before, even when money taken out as cash is factored into the calculation.
8 (Fitzgerald Dec., ¶ 43.)

9 **10. If Defendants Deception Is Discovered, Defendants Falsely Promise**
10 **to Waive or Reduce Fees, Promise That the Loan Will**
11 **Automatically Restructure after a Few On-time Payments, Claim**
12 **That There Was an Error That Will Be Correct in the Documents,**
13 **or Claim That Low Cash Back Numbers Are Written Because**
14 **Prepayment Penalties or the Pay-off of Credit Card Debts or**
15 **Vehicle Loans Is Included.**

16 In the event victims discover the unauthorized changes in terms or the outrageous fees
17 and confront Mortgage Defendants, the Mortgage Defendants offer false promises to induce
18 the victims to go forward with the loans. First, the Mortgage Defendants often promise to
19 waive or substantially reduce the thousands of dollars for the various origination fees,
20 application fees, processing fees and underwriting fees that are due to the Mortgage
21 Defendants. (Chow Dec., pp.3 (falsely promised to rebate \$20,000 in fees).) For example, the
22 Mortgage Defendants cross out the fees on paperwork shown to the victims, claiming they
23 were written in error, and promise that the victims will not owe the fees after the final
24 paperwork is submitted. (Woodcock Dec., ¶ 10; Sharrit Dec., ¶ 5.) Despite these oral and
25 written promises to remove such fees, the Mortgage Defendants submit the original loan
26 documents the consumer objected to and ultimately charge victims the excessive fees that they
27 specifically rejected. (Burns Dec., ¶¶11-12 (documents shown to her for signing differed from
28 the ones processed.)

Second, the Mortgage Defendants will promise to lower interest rates -- which the
Mortgage Defendants falsely represent were erroneously overstated in loan documents -- to the
terms that the defendants had originally represented, and to provide victims with future

1 refinancing at even lower rates if the victims accept the loans and make a few on-time
2 monthly payments. (Bracamontes Dec., ¶8; Estrada Dec., ¶11; Harts Dec., ¶11 (6 months); R
3 Fitzgerald Dec., ¶15; Nelson Dec., ¶13 (four months); Sharrit Dec., ¶10; Parra Dec., ¶12; Parra
4 Dec., ¶12.) Promises to automatically restructure the loans are typically made in writing on
5 Lifetime Financial letterhead and signed by either Eric Pony or another representative to
6 falsely reassure the victim that the Mortgage Defendants will comply with their promises.
7 (Chow Dec., ¶ 19, Exh. E.) The letter will promise a fixed rate of somewhere between 5.99%
8 to 7%, depending on the victim. If a consumer balks at the increase in the monthly payments
9 they will be forced to make for a few months, the Mortgage Defendants will sometimes
10 promise to refund the difference or suggest they use the promised cash back to make the
11 payments for a few months before it resets to a lower rate. (Bracamontes Dec., ¶ 8,10.)

12 Another tactic the Mortgage Defendants use to placate complaining victims is to falsely
13 represent that the loan amount is so high because it includes pay-offs of other debts (credit
14 cards or car loans) or prepayment penalties the victims owed. (Ballard Dec., ¶ 5,9, 22) Of
15 course, the victims later find out that the Mortgage Defendants never paid off these debts and
16 they still owe the Mortgage Defendants the exorbitant fees. (*Id.*)

17 Despite all of the Mortgage Defendants' promises, fees are not refunded and loan terms
18 are never restructured, even after timely payments are made by the victims. (Nelson Dec., ¶
19 13.) The Mortgage Defendants almost always sell off the loans within three months, and in
20 many cases are not the direct lenders in the first instance. In rare circumstances, the Mortgage
21 Defendants will refund certain amounts of money to settle pending litigation or to get victims
22 to withdraw complaints made to the Better Business Bureau, the Department of Consumer
23 Affairs or other agencies. (Fitzgerald Dec., ¶ 30,34; Sharrit Dec., ¶ ¶ 25, 30.) In those cases,
24 the Mortgage Defendants attempt to get victims to sign broad confidentiality agreements to
25 prohibit them from disclosing the nature of the transactions. (*Id.*)

26 **11. Defendants Refuse to Honor Written or Oral Demands to Cancel**
27 **Loans Made Within the Three Day Right of Rescission.**
28

1 If victims rescind the transactions during the 3-day cancellation period prescribed under
2 the federal Truth in Lending Act (see 12 C.F.R. 226.23) or otherwise attempt to cancel the
3 loans, the Mortgage Defendants ignore the rescission or other cancellation requests and
4 complete the loans. (Chow Dec., pp. 3-4 (loan processed despite written and oral cancellation
5 made within three days after signing the documents); Bracamontes Dec., ¶¶ 10-13 (attempted
6 to cancel the following day in person after learning of falsified loan application and terms);
7 Estrada Dec., ¶¶13-17, Exhs.F-G (fax confirmations of completed cancellation request; also
8 followed up with telephone call confirming cancellation); Nuusila Dec., ¶12 (faxed in
9 cancellation the next day and then received a call from Lifetime asking why she had canceled;
10 loan funded despite written and oral cancellation); Richmond Dec., ¶5 (notice of cancellation
11 was faxed the day after signing; phone calls were made to the escrow and to Lifetime Financial
12 to confirm cancellation).)

13 **12. Escrow Defendants Failed to Honor Requests to Cancel; Claim That**
14 **Transactions Can Not Be Canceled and Fail to Provide Consumers**
15 **with Required Documents Prior to the Close of Escrow to Conceal**
16 **That Fraudulent Loans are Being Processed.**

17 Similarly, Escrow Defendants also fail to honor request to cancel made by their
18 depositors. (Woodcock Dec., ¶17). In the case of Mr. Woodcock, he directly contacted the
19 Virtual Escrow three days after he had signed the paperwork and said that he wanted to cancel
20 the loan. Mr. Woodcock explained to Virtual representatives that he could not reach anyone at
21 Lifetime, despite repeated attempt to do so. (*Id.*) Mr. Woodcock was told by the Virtual
22 representative that the loan transaction would be put on hold. (*Id.* at ¶ 16.) Despite these
23 representations, Mr. Woodcock's loan was processed against his will and despite his efforts to
24 exercise his right to cancel. (*Id.* at ¶ 16.)

25 The Escrow Defendants failed to provide homeowner borrowers with timely closing
26 statements and correctly completed HUD-1 disclosure forms. (Chow ¶¶ 14-15.) Many
27 borrowers learn for the first time that the loans they canceled were processed without their
28 authorization following the close of escrow when they finally receive documents from Virtual
or Olympic Escrow. (Declaration of Cynthia Harts (Harts), ¶41, 42.)

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13. Escrow Defendants Falsify Documents.

Once the Escrow Defendants received the proceeds of new loans, the Escrow Defendants disburse additional funds, often around \$2,700, to some of the Mortgage Defendants without any instruction from homeowner borrowers and sometimes on the basis of forged escrow instructions. Olympic Escrow would receive \$700 and Eric Pony would receive \$2,000 over and above the fees the documents showed the Mortgage Defendants were due. This typically was facilitated by an amendment to the escrow instructions that was purportedly signed by the victim. (Lagunzad Dec., ¶ 10, Ex I.) The Escrow Defendants attempted to conceal the use of forged documents by destroying documents, including documents with forged signatures discovered by law enforcement investigators in locked shredder boxes maintained at Defendant Olympic Escrow’s office. (Bremner Dec., ¶ 3-4) Some documents retrieved from Olympic Escrow’s locked shredder bin actually had signatures that were literally cut and pasted onto other unsigned documents and, based on the Investigator’s 16 years of training as a police officer, appeared to be obvious forgeries. (Bremner Dec., ¶ 3.)

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14. Defendants Direct Credit Solutions, Paulette Pony and Wilma Pony Operate an Unlawful Credit Repair Company.

In addition to the predatory lending scheme, the Mortgage Defendants and defendant Direct Credit Solutions also represented that the defendants would, as an ancillary service, assist homeowners in improving their credit histories by removing allegedly erroneous information from credit reports. (Flores Dec., ¶ 19.) The credit repair offer was another attempt to extract fees from homeowners, and the Mortgage Defendants are operating a credit services organization in violation of various provisions of state law. (Declaration of Gayle Weller at p. 1.)

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15. Victims, Including Seniors and the Disabled, Are Losing Their Homes to Foreclosure or Are Being Forced to Sell Their Homes as a Result of Defendants’ Fraudulent Practices.

Some of the victims of defendants’ scam, including senior citizens and the disabled, are unable to make payments on the new mortgage loans and have already lost their homes to foreclosure or face default, foreclosure, and the loss of their homes. (Ballard ¶ 23; Bracamontes Dec., ¶ 15; Chow Dec., ¶ 21; Estrada ¶ 28-30 (“I lost my home because of

1 Lifetime’s false promises”); Flores Dec., ¶ 21; Nelson ¶ 15; Nuusila ¶ 6; Mosher ¶ 20; Saucedo
2 Dec., ¶ 14; Woodcock ¶ 23; Garcia Dec., ¶ 20-21.) These homeowners had not been in danger
3 of foreclosure prior to becoming involved with the Mortgage Defendants. (*Id.*) Other victims
4 have also suffered marital and family strife as a result of the stress and strain caused by
5 defendants deceptive and fraudulent practices. (Woodcock ¶ 23.) One victim’s son moved out
6 of the house because he could not stand the fighting that ensued between his parents following
7 the transaction with Defendants. (*Id.*)

8 For example, Mr. Garcia was tricked into signing documents in English that were
9 completely different from what was explained to him in Spanish by Mortgage Defendants, and
10 his signature was forged on certain documents. Mr. Garcia is now facing eminent foreclosure.
11 (Garcia Dec., ¶ 6; Bremner Dec., at ¶ 3.) Mr. Garcia is disabled and is 75 years old. (Garcia
12 Dec., ¶.) As a result of Defendants conduct, he and his wife will be forced to leave their home.

13 Lisbeth Parra, who is only in her 20s, is concerned that her family will be forced to
14 leave the home she purchased as a result of the extremely high payments she is now saddled
15 with as a result of Lifetimes’ actions. (Parra Dec., ¶ 34.)

16 Victims uniformly state that they never would have agreed to go forward with a
17 transaction with the Mortgage Defendants if the true terms had been disclosed to them. (Burns,
18 ¶ 13; Chow Dec., ¶ 20; Bracamontes Dec., ¶ 14, 15; Fitzgerald ¶ 43; Mosher Dec., ¶ 20;
19 Nuusila Dec. ¶ 8; Woodcock Dec., ¶ 20.)

20 **III. A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION SHOULD ISSUE**

21 **A. This Court Has the Authority to Issue an Injunction under Business and
22 Professions Code Section 17203 and 17535.**

23 Business and Professions Code section 17203 specifically empowers the Court to issue
24 orders “as may be necessary to prevent the use or employment by any person of any practice
25 which constitutes unfair competition.” “An action filed by the People seeking injunctive relief
26 . . . is fundamentally a law enforcement action designed to protect the public . . .” (*People v.*
27 *Pacific Land Research Co.* (1977) 20 Cal.3d 10, 17.) Once the trial court invokes its equitable
28 jurisdiction, it is within the court’s broad discretion to determine the scope or type of relief that

1 should be granted. (*People ex rel. Mosk v. Nat'l Research Co. of Cal.* (1962) 201 Cal.App.2d
2 765, 775, 779.) Such relief may be as “varied and diversified as the means that have been
3 employed by the Defendant to produce the grievance complained of.” (*Wickersham v.*
4 *Crittenden* (1892) 93 Cal. 17, 32; *Roman v. Ries* (1968) 259 Cal.App.2d 65, 70.)

5 **B. The People Likely Will Succeed on the Merits at Trial and the Interim
6 Harm the People Will Suffer If an Injunction Is Not Issued Is Presumed.**

7 Generally, a court determining whether to issue a preliminary injunction applies a two-
8 pronged test. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.) First, the court
9 considers the likelihood that the plaintiff will prevail on the merits at trial. (*Id.* at p. 69.)
10 Second, the court balances the interim harm that the plaintiff is likely to sustain if an injunction
11 is denied with the harm that the defendant may suffer if an injunction is issued. (*Id.* at pp. 69-
12 70.)

13 In a public action brought pursuant to a law in which the State may obtain injunctive
14 relief, harm to the public is presumed. (*IT Corp., supra*, 35 Cal.3d at p. 70.) In such a case, if
15 the governmental entity establishes a reasonable probability that it will prevail on the merits at
16 trial, there arises a rebuttable presumption that the potential harm to the public outweighs the
17 potential harm to the defendant. (*Id.* at p. 72.) The burden is on the defendants to show that
18 they would suffer irreparable harm if an injunction were issued. (*Ibid.*)

19 By authorizing injunctive relief to remedy violations of the Unfair Competition Law
20 (see Business and Professions Code, section 17203), the Legislature has already determined
21 that such violations harm the public interest and that an injunction is the proper way to protect
22 against that harm. Thus, if the People demonstrate a reasonable probability of prevailing on
23 the merits at trial, harm to the public is presumed. Instead, Defendant must demonstrate that
24 they will be harmed by issuance of the injunction.

25 More than a reasonable probability exists that the People will establish violations of
26 Business and Professions Code section 17200 and 17500. There is overwhelming evidence
27 that Defendants have violated, and continue to violate, Sections 17200 and 17500. Based on
28 this evidence, Defendants could not demonstrate that their interest in continuing to operate
their illegal enterprise outweighs the interest of the general public in being protected from such

1 unlawful practices. If Defendants are permitted to continue their unlawful scheme, the harm to
2 the public will be devastating and irreparable. The consumers are targeted by Defendants face
3 not only the loss of substantial amounts of money but, in most cases, are placed in a situation
4 where they are likely to lose their homes to foreclosure as a direct result of Defendants'
5 unscrupulous practices. If Defendants are not enjoined from this conduct, these consumers
6 will be irreparably harmed.

7 **1. The People Are Reasonably Likely to Prevail on the Merits at Trial.**

8 As discussed fully above, Defendants engage in the following unfair and unlawful
9 practices which are discussed in detail in the statement of facts: (1) Mortgage Defendants make
10 false representations that mortgages are low interest fixed rate loans that will save consumers
11 money; Defendants falsely represent that homeowners will get thousands of dollars in cash
12 back without disclosing that much of the money will be retained to cover Defendants' high
13 fees; (3) Defendants falsely represent that they will reimburse or obtain a waiver of victims'
14 prepayment penalties on from their current lenders; (4) Defendants attempt to encourage
15 victims proceed with the transaction through bogus promise that up-front appraisal fees will be
16 refunded at the close of escrow; (5) Defendants insist on using defendant notaries who pressure
17 victims to sign incomplete or inaccurate documents by promising that excessive fees or
18 incorrect rates or payment amounts will be corrected or modified; (6) Defendants fail to
19 provide victims with copies of documents they sign and provide homeowners with incomplete
20 sets of documents to sign; (7) Defendants forge victims names on loan documents; (8)
21 Defendants falsify loan applications, include income amounts, without homeowners'
22 knowledge to place them in loans they cannot afford; (9) Defendants promise low rate fixed
23 loans but deliver high interest adjustable rate loans with high fees that can cost consumers
24 thousands more per month than promised; (10) If Defendants deception is discovered,
25 Defendants falsely promise to waive or reduce fees, promise that the loan will automatically
26 restructure after a few on time payments, or claim that there was an error that will be correct in
27 the documents, or claim that low cash back numbers are written because prepayment penalties
28 or the paying off of credit card debts is included; (11) Defendants refuse to honor written or

1 oral demands to cancel loans made within the three day right of rescission; (12) Escrow
2 Defendants fail to honor requests to cancel and claim that transactions can not be canceled and
3 fail to provide consumers with required documents prior to the close of escrow to conceal that
4 fraudulent loans were being processed; (13) Escrow Defendants falsify documents; (14)
5 Defendants direct credit solutions, Paulette Pony and Wilma Pony operate an unlawful credit
6 repair company; (15) Victims, including seniors and the disabled, are losing their homes to
7 foreclosure or are being forced to sell their homes as a result of defendants' fraudulent
8 practices. (See discussion, supra p. 12, 27.)

9 **a. Defendants have made untrue or misleading statements in
10 violation of Business and Professions Code section 17500.**

11 Business and Professions Code section 17500 makes it unlawful for any person to make
12 any statement that such person knows or by the exercise of reasonable care should know to be
13 untrue or misleading in order to sell goods or services. Under Section 17500, a statement is
14 impermissibly untrue or misleading if the statement is likely to mislead members of the public.
(*Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.)

15 To prove a violation of section 17500, Plaintiff does not have to prove fraud, reliance,
16 or an intent to deceive. (See *People v. Superior Court (Olson)* (1979) 96 Cal.App.3d 181, 190,
17 cert. denied, 446 U.S. 935.) In addition, Plaintiff does not have to show that consumers were
18 actually deceived to establish a statutory violation. (*Id.* at p. 198) Thus, California courts have
19 repeatedly held that a violation occurs at the time that a consumer is solicited, regardless of
20 whether the consumer purchases the goods or services offered. (See, e.g., *People v. Toomey*
21 (1985) 157 Cal.App.3d 1, 22-23; *People v. Superior Court (Jayhill)* (1973) 9 Cal.3d 283, 289.)

22 A failure to disclose may also constitute an untrue or misleading "statement" for
23 purposes of a section 17500 violation. The omission of material information can be as
24 misleading as a direct misstatement of fact. (*Ford Dealers Ass'n v. Dept. of Motor Vehicles*
25 (1982) 32 Cal. 3d 347, 364; accord *Leoni v. State Bar* (1985) 39 Cal. 3d 609, 618-19, 627.)
26 Moreover, words and sentences that may be literally or technically true may also tend to
27 mislead or deceive the public. (*Federal Trade Comm'n v. Sterling Drug, Inc.* (2d Cir. 1963)
28 317 F.2d 669, 674-675.) A representation susceptible to both a misleading and a non-

1 misleading interpretation will be construed against the person making it. (*Resort Car Rental*
2 *System, Inc. v. Federal Trade Comm’n* (9th Cir. 1975) 518 F.2d 962, 964.)

3 Defendants have made untrue and misleading statements regarding the low cost fixed
4 rate refinance services they purport to offer as more fully addressed above. Defendants
5 continue to promise that they can provide low fixed rate mortgages (approximately 6% to
6 6.5%) on their websites for Nations and Lifetime. (Lagunzad Dec., ¶ 7, Ex. F.) As the
7 declarations submitted in this case have established, these promises are not honored and
8 consumers are left with high adjustable rate loans with significant fees. Therefore, Defendants
9 have violated, and continue to violate, section 17500 of the Business and Professions Code.
10 Because Defendants’ illegal conduct is overt and ongoing, the People are more than reasonably
11 likely to prevail on the merits at trial.

12 **b. Defendants have engaged in unfair business practices in**
13 **violation of Business and Professions Code section 17200.**

14 Unfair competition includes “any unlawful, unfair or fraudulent business act or
15 practice.” (Bus. and Prof. Code, § 17200.) In drafting the Unfair Competition Law, the
16 Legislature intentionally used “sweeping language,” and empowered the court to issue
17 injunctions to curb any such business practice “in whatever context such activity might occur.”
18 (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 111.) Also, the statute is written in
19 the disjunctive, thus establishing “three varieties of unfair competition -- acts or practices
20 which are unlawful *or* unfair *or* fraudulent. In other words, a practice is prohibited as ‘unfair’
21 or ‘deceptive’ even if not ‘unlawful’ or vice versa.” (*Podolsky v. First Healthcare Corp.*
22 (1996) 50 Cal.App.4th 632, 647.)

23 **i. Defendants have committed unlawful acts and**
24 **practices.**

25 Section 17200 “borrows” violations of other laws and makes them actionable as
26 unlawful business practices. (*State Farm Fire & Casualty Co. v. Superior Court* (1996) 45
27 Cal.App.4th 1093, 1103.) An unlawful business act or practice, then, includes any activity that
28 is forbidden by law, “be it civil or criminal, federal, state or municipal, statutory or regulatory,
or court-made [law].” (*Saunders v. Super. Ct.* (1994) 27 Cal. App. 4th 832, 838-839.)

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(a) Defendants violated Penal Code section 368(d) by committing theft, forgery and fraud against dependent and elderly adults.

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Defendants have violated 368(d) by committing theft, forgery and fraud with respect to the property and personal identifying information of elders and dependent adults. Defendants forgery of the signature of Ms. Fitzgerald, a woman who was bedridden and never even came into contact with Defendants directly, and subsequent use of that forged signature to process an unwanted and unfavorable loan constitutes such a violation. (Barbara Fitzgerald Dec., at ¶¶ 1,5,8-9.) Similarly, defendants’ forgeries and false representations made to Mr. Garcia, a 75 year old monolingual Spanish speaking man, in order to force through an unfavorable loan that bore no resemblance to the promised loan, also constitutes a violation of section Penal Code section 368(d).

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(b) Defendants have recorded false instruments.

It is a crime to knowingly procure or offer any false or forged instrument to be filed or recorded in any public office of the state. (Penal Code, § 115(a).) Defendants’ recording of a forged deeds is just such an act. Defendants are believed to have recorded a number of false instruments. (Harts Dec., ¶ 48; B. Fitzgerald Dec.,¶ 6-9, Sharrit Dec.,¶ 19-20.)

(c) Defendants have engaged in forgery.

A person commits forgery if he or she signs the name of another person on specified documents, knowing that he or she does not have the authority to do so, with the intent to defraud. (Penal Code section 470(a).) Those documents include contracts, promissory notes, and other documents including those to let, lease or convey real property, such as a deed of trust or quit claim deed, or the falsification of the acknowledgment of a notary public, or any notary public who issues an acknowledgment knowing it to be false. (Penal Code section 470(a).)

In this case Defendants have conspired together to forge countless documents in connection with unauthorized real estate transactions including but not limited to quit claim deeds, deeds of trust and false acknowledgments of a notary public on various real estate documents. (B. Fitzgerald Dec., 6-9; Sharrit Dec., ¶ 19-20.) As set forth in the Declaration of Investigator Eric Bremner, based on his 16 years of experience, several of the document he has

1 reviewed also appear to be obvious forgeries. (Bremner Dec., ¶ 3.) Furthermore based on the
2 declarations of Ms. Sharrit, Mr. Woodcock, Ms. Harts, the Fitzgerald family and others, it is
3 clear that defendants regularly forged victims signatures on various documents. (Sharrit Dec., ¶
4 19-22 ; Woodcock Dec., ¶ 18 ; Harts Dec., ¶ ¶ 42, 48, 53-54,59-62 ; B. Fitzgerald Dec., ¶ 6-9; R.
5 Fitzgerald Dec., ¶ 17,20; M. Fitzgerald Dec., ¶ 3-4.)

6 **(d) Defendants have Violated Financial
7 Code section 17403.3.**

8 As part of Defendants' scheme to unknowingly push though loans that consumers had
9 either canceled or had never agreed to go forward on, Escrow Defendants regularly fail to
10 deliver copies of each escrow instruction at the time of execution to all persons executing those
11 documents in violation of Financial Code section 17403.3 (See discussion supra at p. 26.)
12 These practices help Mortgage Defendants to conceal the fact that they are pushing through
13 unauthorized or canceled loan transactions without the approval of the borrower.

14 **(e) Defendants have Performed False
15 Notary Acts in Violation of Government
16 Code section 8214.2**

17 Paulette Pony, Wilma Pony, Ampornpet, and Hassine have knowingly performed false
18 notarial acts related to a false or forged trust deed on real property consisting of a single-family
19 residence containing not more than four dwelling units, in violation of Government Code
20 section 8214.2. These defendants notary stamps appeared on various consumers' documents
21 that consumers have testified they never signed. (See discussion, *supra*, at p. 14-16.) In some
22 case, the consumer can testify that they never even met a notary bearing the name listed on the
23 paperwork obtained by our office or through a search warrant. (B. Fitzgerald Dec., ¶ 9; Sharrit
24 Dec., ¶ 20.)

25 The People also note the fact that all four notaries involved with Lifetime and
26 Defendants' scheme claim to have either lost or had their notary books stolen. (Request for
27 Judicial Notice at Exh. B7-B10.) The time period for which such losses are claimed is
28 consistent with the timing of the forgeries in this case. (*Id.*)

**(f) Defendants have failed to provide
documents required by Business and
Professions Code section 10240.**

1 As part of Defendants' scheme, they often fail to provide homeowner borrowers with a
2 mortgage loan disclosure statement or a good faith estimate as required under the Real Estate
3 Settlement Procedures Act and all applicable disclosures required under the Truth in Lending
4 Act. This leave victims in the dark concerning true terms of the refinance, until escrow closes
5 and it is too late to object. (See generally Fitzgerald Dec.; Harts Dec.; Richmond Dec.) If
6 consumers do find out about the escrow company, they regularly claim it is too late because
7 the loan has already funded, or claim that it will fund the next day. (Richmond Dec., ¶ 4-5.)
8 With respect to Ms. Richmond, the claim that the loan had already funded seems suspicious in
9 light of the fact that the woman from the escrow called to ask her questions about the escrow
10 itself, (Id.) Ms. Richmond received her final HUD-1 for the first time with her check from the
11 escrow. (Id. at ¶ 6.) It was at that time that Ms. Richmond realized that her signature had been
12 forged and the forgery had misspelled her name as "Richson."

13 **(g) Defendant negotiate loans in Spanish
14 but provide paperwork in English to
15 sign.**

16 Mortgage Defendants appear to target Spanish Speaking and Filipino homeowners
17 through their bilingual telemarketing staff. Both Nations Mortgage and Lifetime also have an
18 active Spanish website which offers their services. (Lagunzad Dec., ¶ 6,7.) While all the
19 verbal transactions, including the initial solicitation, were done by Defendants with the help of
20 a translator, Defendants typically fail to have a translator available at the time of the final
21 signing. (Garcia Dec., ¶ 11.) Furthermore, such documents are not provided in Spanish as
22 required by Civil Code section 1632.

23 **(h) Defendants have violated various laws
24 governing Credit Services
25 Organizations.**

26 Defendants' ancillary credit repair services, run by Wilma Pony, utilizing Paulette Pony
27 as an employee, violates Civil Code section 1789.25 (no registration with the Attorney
28 General)⁴ Civil Code section 1789.18 (failure to have a bond), Civil Code sections 1789.14 and

⁴Declaration of Gayle Weller.

1 1789.15 (entering into a contract without providing information statement required by Civil
2 Code sections 1789.14 and 1789.15.); Civil Code section 1789.16 (failing to provide a notice
3 of cancellation as required by Civil Code section 1789.16.; and charging or receiving any
4 money before fully performing all agreed upon services in violation of Civil Code section
5 1789.13(a). (Francisco Flores Dec., ¶ 19; Weller Dec. at p. 1 (confirming defendant is not
6 registered with the California Attorney General.)

7 **ii. Defendants have engaged in deceptive and unfair
8 business acts and practices.**

9 Section 17200 also denounces “unfair” business practices in a broad manner. As the
10 Supreme Court has noted:

11 In permitting the restraining of all “unfair” business practices, section 3369 [the
12 predecessor to section 17200] undeniably establishes only a wide standard to guide
13 courts of equity; . . . given the creative nature of the scheming mind, the Legislature
14 evidently concluded that a less inclusive standard would not be adequate.

15 (*Barquis, supra*, 7 Cal.3d at p. 112.) “Unfairness” under Section 17200 has been equated to
16 violations of the “fundamental rules of honesty and fair dealing” (*Ibid.*) “Unfairness”
17 may also be determined by weighing the “impact [of the practice or act] on its alleged victim . .
18 . against the reasons, justifications and motives of the alleged wrongdoer.” (*Pastoria v.*
19 *Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1498 (citation omitted, alternations in original).

20 Defendants’ conduct is unfair according to any of these definitions. Defendants’
21 scheme certainly violates “fundamental rules of honesty and fair dealing. “Defendants engage
22 in bait and switch tactics where they promise victims low rate fixed loans and trick them into
23 adjustable rate mortgage at outrageous fees. In order to avoid detection prior to the funding of
24 the loans, Defendants often forge victims signatures or refuse to honor victims’ exercise of
25 their three day right to cancel and push through loans victims have specifically rejected
26 without their authorization. Defendants also make false verbal and written promises and
27 representations that: a) victims’ mortgage rates will automatically be lowered by Mortgage
28 Defendants after several on-time payments are made; b) excessive fees charged by Mortgage
29 Defendants will be refunded; c) high fees due for the fist several months will be refunded by

1 defendants; d) Mortgage Defendants will automatically restructure the loans in a few months at
2 no cost because they are the holders of the mortgage.

3 That many of Defendants victims are elderly or have limited English skills makes the
4 scheme all the more contrary to the fundamental rules of honesty and fair dealing by which
5 society's members should abide. (Garcia Dec., ¶ 1; B. Fitzgerald Dec., ¶ 1.) Moreover, the
6 impact on Defendants' victims outweighs any justification that Defendants could offer for
7 engaging in the conduct.

8 **iii. Defendants have engaged in fraudulent
9 business acts and practices.**

10 A "fraudulent" business act or practice under section 17200 bears little resemblance to
11 common law fraud and "only requires a showing [that] members of the public 'are likely to be
12 deceived.'" (*Saunders, supra*, 27 Cal.App.4th at p. 839.) Proof of actual deception,
13 reasonable reliance, and damage are unnecessary. (*Committee on Children's Television, Inc.
14 v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.)

15 Defendants' conduct is "fraudulent" within the meaning of Section 17200 in that
16 members of the public are likely to be deceived by defendants complex mortgage scheme in
17 which misrepresentations are made to consumers throughout ever set of the transaction. As
18 discussed fully above, the extensive fraudulent practices clearly violate Business and
19 Professions Code section 17200 in that there can be no dispute that members of the public are
20 likely to be deceived by such these practices including the forging of consumers' signatures.

21 **2. California consumers will be irreparably harmed from denial of an
22 injunction; Defendants will not suffer irreparable injury from its
23 issuance.**

24 As discussed above, in this case, there is a rebuttable presumption that the potential
25 harm to the public outweighs the potential harm to Defendants. (*Supra* at Section III(B).)
26 Defendants cannot rebut that presumption.

27 Defendants' ongoing violations of the law and unfair acts and practices pose a
28 continuing threat to consumers, both those already targeted by Defendants and those who
would become targets in the absence of an injunction. Homeowners face the emotional
devastation of losing their homes as a result of fraudulent practices in connection with what

1 they are led to believe will be a refinance transaction that will be financial beneficial to them.
2 While consumers can attempt to be financially compensated, the loss of a home and associated
3 trauma involved in that loss cannot be measured.

4 In contrast, Defendants cannot plausibly argue that their interest in continuing to
5 operate a scheme for which they will be facing criminal charges outweighs the interest of the
6 general public in being protected from such unlawful and fraudulent business practices. The
7 temporary restraining order and preliminary injunction only prevent various form of unlawful
8 and deceptive conduct. In addition, even if Defendants could offer evidence demonstrating
9 that they would suffer grave or irreparable harm from a preliminary injunction precluding
10 dishonest conduct, and assuming that Defendants could prevail in the balancing of the harms,
11 the Court may nonetheless issue a preliminary injunction. As long as “it appears fairly clear
12 that the plaintiff will prevail on the merits, a trial court might legitimately decide that an
13 injunction should issue even though the plaintiff is unable to prevail in a balancing of the
14 probable harms.” (*IT Corp., supra*, 35 Cal.3d at pp.72-73.)

15 It is, at the very least, “fairly clear” that the People will prevail on the merits at trial.
16 Despite any alleged harm Defendants might suffer, a temporary restraining order and order to
17 show cause re: preliminary injunction should issue to stop their illegal practices.

18 **IV. THE COURT MAY FREEZE DEFENDANTS’ ASSETS AND ALLOW THE**
19 **PEOPLE TO SEIZE CERTAIN VALUABLE VEHICLES PURSUANT TO**
20 **GOVERNMENT CODE SECTION 12757(G).**

21 Additionally, the Government Code recognizes the power of the Court to prevent the
22 dissipation of money or property that was collected through unlawful business practices and
23 thus will be returned as restitution to victims in cases such as this. (Govt. Code section
24 12527(g).) The People have met those conditions here.

25 **A. The People have a reasonable probability of prevailing on the merits**
26 **at trial.**

27 As set forth in detail above and in the accompanying declarations and exhibits, the
28 People are likely to prevail on their causes of action against Defendants. Therefore, there is a

1 reasonable probability that the People will prove at trial that Defendants “obtained real or
2 personal property by . . . unlawful means.” (Gov. Code, § 12527, subd. (b)(1).)

3 **B. Issuance of an Asset Freeze and Order Allowing Seizure of certain**
4 **vehicles will prevent Defendants from continuing to engage in**
5 **unlawful practices, and will facilitate the preservation and recovery**
6 **of that property to pay restitution to consumer victims.**

7 At this early stage, the People have not yet discovered the full extent to which
8 Defendants have profited from the real estate fraud scheme. However, by Defendant Eric
9 Pony’s own account, he claims to have closed approximately one thousand loans every six
10 months. ((See Certified Transcript of Ana Maria Gallegos at p. 8.; Beltramo Dec., ¶ 9
11 (confirming Eric Pony’s identity.) In addition, the search warrant issued by the San
12 Bernardino District Attorney revealed that in only a few short months, Defendant Lifetime, for
13 which Eric Pony has claimed to be the “owner” and “president”, was issued more than
14 \$1,700,000 from Olympic Escrow alone. (Bremner Dec., ¶ 8.) It is clear that Defendant Eric
15 Pony and his co-conspirators have greatly profited from their unlawful and fraudulent
16 enterprise.

17 At this time, the People have located certain bank accounts that appear to have been
18 funded by Defendants’ misconduct, as well as real estate and personal property that has been
19 acquired, at least in part, with the proceeds of the scheme. (Bremner Dec., ¶ 7, Ex. E.)
20 Freezing these assets will better ensure that those assets are available for restitution, in the
21 event that the Court orders restitution.

22 **C. The Court may Freeze Defendant’s Assets and Allow the People to Seize**
23 **and Hold Some of Defendants’ Vehicles under Government Code section**
24 **12757(g).**

25 Government Code section 12527(g) provides that:

26 If the court determines that the Attorney General has a reasonable probability of
27 prevailing on the merits at trial in establishing that the defendant obtained real or
28 personal property by unlawful means but that the appointment of a receiver is not
requested . . . the court shall issue *any* necessary orders to assure that the defendant
does not transfer or encumber any property which may be used to satisfy a judgment in
the action.

Under subdivision (g), where, as here, the Attorney General has proven a reasonable
probability of success on the merits at trial, the Court is empowered to make all necessary

1 orders to protect Defendants' assets – even those that were not taken by unlawful means – for
2 use in satisfying a judgment against Defendants. The People request that the Court do so here.
3 Specifically, the People request that the court freeze the assets listed in this application and
4 allow for the seizure of the following vehicles:

- 5 a. Ferrari, license plate number 5VCW180, VIN number
6 ZFFEW58A160148330, registered to Eric Michael Pony
- 7 b. Ferrari, license plate number 5KGS812, VIN number
8 ZFFXR41A5X0115613, registered to Dean D. Storm; and
- 9 c. Bentley, license plate number 5WXH650, VIN number
10 SCBBR93WX7C040228, registered to Eric Michael Pony

11 **D. The People have made the showing required by Code of Civil Procedure
12 section 527 for an ex parte TRO without Notice.**

13 The People are requesting an order freezing (and to a more limited extent seizing)
14 certain of Defendants' assets, without notice, for the reasons specified in this motion. The
15 order sought will safeguard the assets. These assets include, but are not limited to, the real
16 estate of various defendants who are all directly involved in the real estate industry and will
17 likely be drained of equity or sold if the Court does not intervene. These assets also include
18 several vehicles which could easily be transfers or diverted out of state. The freeze order will
19 also protect the assets that the People have not yet located.

20 The People submit that the asset freeze order cannot wait until a hearing on a noticed
21 motion. If defendants are not prohibited from transferring or encumbering their real
22 properties, vehicles and liquid assets, they will resume their wrongful conduct, the assets will
23 be dissipated and consumer victims will be deprived of restitution without recourse. The
24 issuance of an asset freeze is the only means to ensure that the subject properties are protected
25 during the pendency of this case and that the assets are preserved to make restitution that the
26 Court may impose after trial.

27 **E. The People have made Sufficient Showing to Justify the Imposition of an
28 Asset Freeze and Seizure.**

1 The People submit that an asset freeze is necessary for two independent reasons. First,
2 as set forth in the declarations of victims and former employees filed concurrently with this
3 motion, it is clear that Defendants’ conduct is causing irreparable injury to consumers. Based
4 on Defendants’ past actions, it is likely that they will continue to violate the law until they are
5 removed from a position that allows them to do so. Imposition of an Asset Freeze, limited
6 Asset Seizure and Temporary Restraining Order will greatly diminish Defendants’ ability to
7 continue to prey on consumers and place them in jeopardy of losing their homes.

8 Second, it is likely that defendants will attempt to dissipate their assets once they have
9 learned of this action. While this cannot be known with certainty until it is too late (i.e., once
10 they have already done so), there are many indications that this will result. As discussed
11 above, there is reason to be concerned that Eric Pony has continued to operate as a real estate
12 broker in light of the fact that he was doing so in early September on behalf of Nations.
13 (Bracamontes Dec., at pp.3-4, ¶ 9-10.) This conduct occurred after the Department of Real
14 Estate had issued a cease and desist order against Eric Pony and Dean Storm and around the
15 same time as Mr. Pony surrendered his license in response to the administrative accusation
16 filed by the Department of Real Estate. (Lagunzad Dec., ¶ 13, Ex. L.) Mr. Pony was
17 introduced by Gregory Sandoval as his “boss” at Nations Mortgage. (Bracamontes Dec., at pp.
18 3-4, ¶ 9.) Nations Mortgage has an active website, which is advertising its “services” in both
19 Spanish and English, and is purporting to offer fixed rate loans. (Lagunzad Dec., ¶ 7 at Exh.
20 L.) The Nations website also lists its address as 6928 Owensmouth Avenue, Canoga Park,
21 California a property owned and utilized by Eric Pony. (Bracamontes Dec., at pp. 3-4; Request
22 for Judicial Notice at C6.) Also, defendants Eric Pony transferred some portion of his interest
23 in several properties to both his mother and father for no consideration in late January 2008
24 after the filing of several civil lawsuits against Eric Pony and Lifetime Financial and after a
25 news report about his conduct aired. (Request for Judicial Notice at C1-C3; Certified
26 Transcript of Ana Maria Gallegos at p. 8.) Although the People intend to prove that this
27 strategy is ineffective, it is nevertheless evidence of his willingness to attempt to hide assets
28 from consumer victims and prosecutors. The issuance of an asset freeze order will safeguard

1 those assets that will be needed to provide restitution to consumers and civil penalties. In the
2 event that the People do not prevail at trial, control over those assets can be returned to
3 Defendants. In contrast if the assets are dissipated, consumer victims will be deprived of
4 restitution without recourse.

5 **V. PROTECTION OF ASSETS**

6 The People also request that the Court enter an order enjoining Defendants and their
7 agents, employees, officers, representatives, successors, partners, assigns, and those acting in
8 concert or participation with them, from spending, transferring, disbursing, encumbering, or
9 otherwise dissipating any of the assets as set forth in this Application and Proposed Order.

10 **VI. PERMISSION TO FILE A BRIEF IN EXCESS OF 15 PAGES (CRC 313, subd.
11 (e))**

12 The memorandum of points and authorities exceeds 15 pages. The People submit that a
13 brief in excess of the 15-page limit of Rule 313(a) is necessary in this case due to the numerous
14 defendants involved in the alleged misconduct, the People's submission of detailed factual
15 support to show the propriety of the requested relief, and the extensive legal argument
16 concerning the requirements for such relief.

17 **VII. NO NOTICE GIVEN**

18 The People have not given notice of this application. The provision of notice would
19 pose an additional threat to the public because it would allow Defendants to dissipate assets
20 and to destroy documents before the Court has been able to enter an appropriate order to
21 prevent such conduct. (California Code of Civil Procedure section 527.)

22 No bond is required of the People. (Code Civ. Proc., § 995.220.)

23 **VIII. CONCLUSION**

24 For the foregoing reasons, the People respectfully request that the Court grant the
25 requested relief.

26 This application is based on this application and memorandum of points and
27 authorities, the complaint on file herein, the declarations filed in support of this application and
28

1 exhibits thereto, any other documents that may be filed, and such evidence and argument that
2 may be presented at or before the hearing, or of which the Court may take judicial notice.

3 DATED: March 18, 2008

EDMUND G. BROWN JR.
Attorney General
CHRISTINA TUSAN
Deputy Attorney General

6 By _____
CHRISTINA TUSAN

Attorneys for Plaintiff,
the People of the State of California

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