

1 THOMAS C. HORNE
Attorney General
2 Firm Bar No. 14000
CHERIE L. HOWE
3 Assistant Attorney General
State Bar No. 013878
4 1275 W. Washington Street
Phoenix, Arizona 85007-2997
5 Telephone: (602) 542-7725
Fax: (602) 542-4377
6 Consumer@azag.gov
Attorneys for the State of Arizona
7

COPY

FEB 10 2012



MICHAEL K. JEANES, CLERK
A. FABIAN
DEPUTY CLERK

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, ex rel. THOMAS C.
HORNE, Attorney General,

11 Plaintiff,

12 -vs-

13 THE MORTGAGE LAW GROUP, LLP, a
14 foreign limited liability partnership, also
15 known as the law firm of MACEY, ALEMAN
& SEARNS; and UNDERWATER
16 PROPERTY SOLUTIONS, LLC, an Arizona
limited liability company,

17 Defendants.

Case No: CV2012-003966

COMPLAINT

(Unclassified Civil)

18
19 For its complaint, Plaintiff, the State of Arizona upon the relation of Thomas C. Horne,
20 Attorney General ("the State"), alleges as follows:

21 **INTRODUCTION**

22 Working in concert with one another, The Mortgage Law Group, LLP ("TMLG") and
23 Underwater Property Solutions, LLC ("UPS") advertised and sold mortgage modification
24 services to consumers, services that the Defendants represented, directly or by implication,
25 would be performed by TMLG lawyers, including local attorney "partners" who were
26 purportedly licensed in the states where TMLG's clients were located. In fact, to the extent any

1 substantive modification services were performed on behalf of TMLG clients, they were done so
2 by non-lawyer employees of third-party loan modification companies, including UPS, with
3 whom TMLG had an agreement to provide such services in exchange for compensation that
4 approximated the large majority of whatever “retainer fees” TMLG’s clients paid for purported
5 lawyer services. TMLG clients did not meet with or receive advice from a TMLG lawyer – or
6 one of the firm’s local attorney “partners” –as part of TMLG’s purported mortgage modification
7 services, nor did TMLG lawyers - or the firm’s local attorney “partners” - negotiate with
8 TMLG’s clients’ lenders or servicers as part of TMLG’s purported lawyer services.

9 The services, for which consumers paid TMLG thousands of dollars, largely consisted of
10 UPS requesting and compiling consumers’ financial information, UPS reviewing the
11 information to determine whether the consumers fell under guidelines for government or private
12 modification programs, UPS preparing mortgage modification requests for consumers, UPS
13 forwarding the consumers’ information to their mortgage lenders or servicers along with a
14 modification request, UPS negotiating with consumers’ lenders or servicers, UPS monitoring the
15 consumers’ modification requests, and UPS providing updates to consumers regarding the status
16 of their requests.

17 The Defendants also made specific, unsubstantiated representations to prospective TMLG
18 clients regarding the outcomes they could expect if they hired TMLG, including that they would
19 be guaranteed a modification if they hired TMLG, that TMLG would prevent the prospective
20 client’s home from being foreclosed, and that the prospective client could expect a modification
21 resulting in monthly mortgage payments hundreds of dollars less than their current payment.

22 The State alleges that the Defendants, by their actions described herein, violated the
23 Arizona Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) § 44-1521 et seq.

24 JURISDICTION AND VENUE

25 1. This action is brought pursuant to the Arizona Consumer Fraud Act to obtain
26 injunctive relief to prevent the unlawful acts and practices alleged in this Complaint and other

1 relief, including restitution, civil penalties, costs of investigation and attorney's fees.

2 2. This Court has jurisdiction to enter appropriate orders both prior to and following
3 a determination of liability pursuant to the Arizona Consumer Fraud Act.

4 3. Venue is appropriate in Maricopa County pursuant to A.R.S. § 12-401.

5 **PARTIES**

6 4. Plaintiff Thomas C. Horne is the Attorney General of Arizona.

7 5. Defendant The Mortgage Law Group, LLP is a Nevada limited liability
8 partnership with its principal place of business at 233 S. Wacker Drive, Suite 5150, Chicago,
9 Illinois. TMLG registered the trade name "The Mortgage Law Group, LLP" with the Arizona
10 Secretary of State's Office on March 16, 2011. TMLG also does business as the law firm of
11 Macey, Aleman & Searns.

12 6. For purposes of this Complaint, any reference to acts and practices of The
13 Mortgage Law Group shall mean that such acts and practices were by and through the acts and
14 practices of TMLG's officers, owners, members, directors, employees, representatives and/or
15 other agents.

16 7. Underwater Property Solutions, LLC is an Arizona limited liability company that,
17 at all times relevant to this Complaint, was in the consumer mortgage modification business and
18 operated from various locations in Scottsdale, Arizona, including 17767 N. Perimeter Dr., Suite
19 B101, Scottsdale, Arizona, 85255, TMLG's so called "administrative office."

20 8. For purposes of this Complaint, any reference to acts and practices of Underwater
21 Property Solutions, LLC shall mean that such acts and practices were by and through the acts
22 and practices of UPS's officers, owners, members, directors, employees, representatives and/or
23 other agents.

24 **FACTUAL BACKGROUND**

25 9. In late 2010, the Federal Trade Commission adopted the Mortgage Assistance
26 Relief Services ("MARS") Rule, 16 CFR Part 322, which applies to nearly all persons and non-

1 bank entities who offer mortgage modification services to consumers. Generally, the MARS
2 Rule mandates significant disclosures that must be made to consumers, prohibits certain
3 representations by mortgage modification providers, and prohibits mortgage modification
4 providers from charging or receiving fees from consumers before the consumer has obtained a
5 mortgage modification.

6 10. The MARS Rule's advance fee ban went into effect January 31, 2011.

7 11. The MARS Rule provides an exception to the advance fee ban for attorneys who
8 meet certain criteria set forth in the MARS Rule, including that the attorney is providing
9 mortgage modification services as part of the practice of law and that he or she is licensed to
10 practice law in the state in which the consumer for whom the attorney is providing mortgage
11 modification services resides, or in which the subject real property is located.¹

12 12. In an attempt to evade the MARS Rule's advance fee ban, the Defendants entered
13 into a "Strategic Alliance Agreement" on January 31, 2011 whereby they agreed to work
14 together pursuant to a business model in which they would market mortgage modification
15 services to consumers as legal services to be provided by TMLG and its local attorney
16 "partners" while UPS, a non-lawyer modification service provider, would actually perform
17 nearly all of the substantive modification work in exchange for compensation from TMLG in an
18 amount that was tied to the amount of the "retainer fees" paid to TMLG.

19 13. TMLG's "retainer fee" consisted of a "Processing Flat Fee" of approximately
20 \$1,600 and a "Mitigation Flat Fee" equal to one of the client's pre-modified monthly mortgage
21 payments, all of which was charged at the time the client hired TMLG and before he or she
22 received a mortgage modification as the result of hiring TMLG.

23 14. Pursuant to the parties' agreement, UPS's compensation for the services it
24 provided to TMLG's clients approximated well over half of whatever "retainer fee" a given
25 client paid to TMLG, and in some cases the amount was nearly 80% of such fee.

26

¹ 16 CFR § 322.7(a)(1),(2).

1 15. UPS's compensation for providing services to a particular TMLG client was
2 received by UPS from TMLG before the client received a mortgage modification as the result of
3 hiring TMLG.

4 16. Shortly after TMLG and UPS entered into their "Strategic Alliance Agreement",
5 UPS began providing mortgage modification services to TMLG clients at an office located in
6 Scottsdale, Arizona that UPS leased for that purpose.

7 17. The Defendants referred to UPS's leased office space in Scottsdale, Arizona as
8 TMLG's "administrative office" in their advertising and communications with consumers.

9 18. Pursuant to the Defendants' agreement, UPS promoted, marketed and sold
10 TMLG's purported lawyer services to consumers.

11 19. Pursuant to the Defendants' agreement, UPS purchased hundreds of thousands of
12 consumer marketing leads from third-party lead sellers for the purpose of contacting consumers
13 to sell them TMLG's purported lawyer services.

14 20. Pursuant to the Defendants' agreement, UPS purchased thousands of direct
15 mailers targeted to consumers with mortgages for the purpose of selling TMLG's purported
16 lawyer services.

17 21. Pursuant to the Defendants' agreement, UPS initiated telephone calls to
18 prospective TMLG clients to sell TMLG's purported lawyer services and, additionally, received
19 incoming telephone calls from consumers who were inquiring about modification services.

20 22. Pursuant to the Defendants' agreement, UPS answered prospective TMLG clients'
21 questions regarding the mortgage modification process and available government and private
22 modification programs.

23 23. Pursuant to the Defendants' agreement, UPS conducted basic intake services over
24 the telephone with prospective TMLG clients, obtaining their basic income and expense
25 information.

26 24. Pursuant to the Defendants' agreement, UPS performed an initial analysis of what

1 mortgage modification programs, if any, prospective TMLG clients might be eligible for, based
2 on the income and expense information provided by the prospective clients to UPS during the
3 intake process.

4 25. Pursuant to the Defendants' agreement, UPS reviewed mortgage modification
5 options with prospective TMLG clients based on the intake information UPS obtained from the
6 prospective clients.

7 26. Pursuant to the Defendants' agreement, UPS delivered TMLG's "Retainer
8 Agreement" to prospective TMLG clients, reviewed the agreement with them, answered
9 whatever questions prospective clients had regarding the agreement, and received the signed
10 agreements from consumers.

11 27. Pursuant to the Defendants' agreement, UPS assisted TMLG clients in preparing
12 financial affidavits and hardship letters to be submitted to the clients' mortgage lenders or
13 servicers as part of their modification requests.

14 28. Pursuant to the Defendants' agreement, UPS obtained all necessary information
15 from TMLG clients that their lenders or servicers required to be submitted in connection with
16 their modification requests and compiled and forwarded this information to the clients' lenders
17 or servicers.

18 29. Pursuant to the Defendants' agreement, UPS prepared requests for mortgage
19 modifications on behalf of TMLG clients and forwarded such requests to the clients' lenders or
20 servicers.

21 30. Pursuant to the Defendants' agreement, and to the extent that any such services
22 were performed at all, UPS negotiated on behalf of TMLG clients with the consumers' lenders
23 or servicers for a mortgage modification.

24 31. Pursuant to the Defendants' agreement, and to the extent any such updates were
25 provided, UPS provided TMLG clients with updates regarding their mortgage modification
26 requests.

1 32. TMLG hired an attorney to work in UPS's Scottsdale, Arizona office (a/k/a
2 TMLG's "administrative office") whose primary role with TMLG was to make "welcome calls"
3 to TMLG clients, during which the attorney identified herself as a lawyer with TMLG.

4 33. The TMLG attorney referenced in paragraph thirty-two herein did not provide any
5 substantive modification services to the TMLG clients to whom she made "welcome calls."

6 34. TMLG's purpose in hiring an attorney to make "welcome calls" to its clients was
7 to create and reinforce the impression that attorneys would be providing the services for which
8 the TMLG client would pay a "retainer fee" of thousands of dollars.

9 35. TMLG created and maintained a website located at
10 www.themortgagelawgroup.com.

11 36. TMLG listed local attorney "partners" on its website located at
12 www.themortgagelawgroup.com as well as in the letterhead of TMLG correspondence that it, or
13 UPS on its behalf, sent to TMLG clients.

14 37. In some cases, the local attorney "partners" listed on TMLG's website and
15 letterhead did not give TMLG or its owners permission to be listed as TMLG's local counsel nor
16 to act in that capacity.

17 38. TMLG attorneys did not personally meet with TMLG mortgage modification
18 clients solicited by UPS to advise them regarding mortgage modifications.

19 39. TMLG's local attorney "partners" did not personally meet with TMLG's mortgage
20 modification clients solicited by UPS to advise them regarding mortgage modifications.

21 40. TMLG's local attorney "partners" did not negotiate with TMLG clients' mortgage
22 lenders or servicers for mortgage modifications.

23 41. Thousand of consumers paid TMLG for purported lawyer mortgage modification
24 services that, to the extent the services were performed at all, were performed by UPS.

25 **A. The Defendants' Representations on their Website at www.masmortgagelaw.com**

26 42. Pursuant to the Defendants' agreement, UPS created and registered a website

1 located at www.masmortgagelaw.com.

2 43. UPS registered the www.masmortgagelaw.com website in March, 2011 and the
3 website became active on or about that date.

4 44. TMLG approved the content and use of the www.masmortgagelaw.com website to
5 market its purported lawyer services.

6 45. The Defendants stated on the www.masmortgagelaw.com website, under a
7 paragraph entitled "A Complete Approach to Mortgage Modification":

8 "Our experienced lawyers have the skills and dedication to guide you
9 through the mortgage modification process. Our goal is to effectively and
10 efficiently negotiate down your loan payments, giving you the financial stability to
keep your home and build towards a stable future."

11 46. The Defendants stated on the www.masmortgagelaw.com website, under a
12 paragraph entitled "Why Choose Macey, Aleman & Searns?":

13 "True MARS Compliance - The Federal Trade Commission recently
14 enacted law that governs how attorneys and non-attorneys can offer mortgage
15 modification services to the public. Since our firm is one of the only true national
16 law firms, with over 100 offices across the county, we have managing attorneys
licensed in each state we practice in that oversee the modification process."

17 47. The Defendants included on their website located at www.masmortgagelaw.com a
18 list of "Local Attorneys" from various states, including Arizona, following profiles of Thomas
19 Macey, Jeffrey Aleman and Jason Searns, TMLG's officers.

20 48. The Defendants stated on the www.masmortgagelaw.com website, under a
21 paragraph entitled "Why should I consider hiring an attorney to represent me?":

22 "The advantages to hiring an experienced law firm are numerous, and
collectively should result in achieving the best possible result" and;

23 "Most clients find the relief and potential economic benefit of retaining an
24 experienced firm far outweighs the cost to retain the firm."

25 **B. The Defendants' Verbal Representations to Prospective TMLG Clients**

26 49. In their telephone communications with potential and actual TMLG clients, the

1 Defendants represented, directly or by implication, that the mortgage modification services
2 TMLG clients would receive if they hired TMLG would be performed by TMLG attorneys and
3 their local attorney "partners".

4 50. In written guidance provided to UPS by TMLG for the purpose of soliciting
5 consumers for TMLG's purported lawyer services, TMLG advised UPS to tell prospective
6 TMLG clients who were on the telephone with UPS, waiting for an initial review of his or her
7 information by UPS staff to be completed, to say:

8 "While we're waiting for the result of the firm's initial review of your
9 financial profile, I need to obtain a solid understanding of your hardship so that the
10 firm's attorneys can properly build a case on your behalf with your lender",
adding;

11 "As you know the name of our law firm is Macey, Aleman & Searns and all
12 three of our partners have a long history of helping people escape financial
13 trouble. Typically our attorneys and staff can affect an affordable solution that
allows you to stay in your home with a mortgage payment you can afford."

14 51. Pursuant to written guidance used by UPS for the purpose of soliciting consumers
15 for TMLG's purported lawyer services, regarding things to say to prospective TMLG
16 modification clients after a UPS employee reviewed the consumer's preliminary income and
17 expense information:

18 "It looks like our underwriter is recommending Note Modification to solve
19 your issues . . . The firm will look to negotiate a note modification in order to, at a
20 minimum, cover your current budgetary shortfall. In addition, once the firm has
21 successfully negotiated a reduced payment any delinquencies will typically be
wrapped into the mortgage allowing you to get a fresh start."

22 52. Pursuant to written guidance used by UPS when discussing the cost of the TMLG
23 "retainer fees", UPS told prospective TMLG clients that the fee is for the "law firm to process
24 your mortgage note" and that it was a flat fee that would not change, regardless of how long it
25 took the law firm to complete the modification.

26 53. If a prospective TMLG client expressed reluctance to pay the several thousand

1 dollar “retainer fee”, UPS told the prospective client that they would be hiring “the top law firm
2 in the country” that “will continue to represent you until they [the law firm] have reached a
3 modification that allows you to afford your home and allows you [to] stay in it comfortably for
4 the foreseeable future.”

5 **C. The Defendants’ Representations to Prospective TMLG Clients Regarding**
6 **Successful Outcomes**

7 54. While soliciting consumers for TMLG’s purported mortgage modification
8 services, UPS told prospective TMLG clients that they would be guaranteed a mortgage
9 modification if they hired TMLG.

10 55. In written guidance provided by TMLG to UPS for the purpose of soliciting
11 TMLG clients, TMLG instructed UPS to discuss specific, projected savings that the prospective
12 client could realize if they hired TMLG for a mortgage modification.

13 56. During telephone communications with potential TMLG clients, UPS made
14 specific representations regarding the amount of money that the consumer would supposedly
15 save from a mortgage modification that TMLG would obtain for them, on a monthly basis and,
16 cumulatively, over a five year period.

17 57. UPS gave prospective TMLG clients specific, anticipated monthly and five-year
18 savings on their mortgage payments that UPS represented to them they could expect if they
19 hired TMLG.

20 58. At the time the Defendants made the representations described in paragraphs fifty-
21 four through fifty-seven, the representations were speculative and made without substantiation
22 or basis in fact.

23 **CLAIM FOR RELIEF**

24 **Consumer Fraud Act, A.R.S. § 44-1521, et seq.**

25 Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth herein.

26 59. The Defendants engaged in the use of deception, deceptive acts or practices, fraud,

1 false pretense, false promise, misrepresentation, or concealment, suppression or omission of any
2 material fact with intent that others rely upon such concealment, suppression or omission, in
3 connection with their advertisement, sale and/or delivery of purported lawyer mortgage
4 modification services. Such acts and practices include:

5 a. Making numerous, repeated representations, on their websites and in their
6 communications with consumers that, directly or by implication, created the false
7 impression that TMLG and its local attorney "partners" would provide the substantive
8 mortgage modification services, including negotiations with lenders, that consumers
9 would receive if they paid TMLG's "retainer fee";

10 b. Representing to consumers that they would obtain certain specific
11 outcomes if they hired TMLG for its purported lawyer services when such
12 representations were speculative and made without substantiation.

13 c. At all times relevant to this Complaint, the Defendants acted willfully, in
14 violation of A.R.S. § 44-1531.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff respectfully requests that the Court:

17 1. Enter an injunction against Defendants prohibiting them from engaging in the
18 unlawful acts and practices alleged in this Complaint and from doing any acts in furtherance of
19 such acts and practices, pursuant to A.R.S. §§ 44-1528;

20 2. Order Defendants to restore to all persons any money and property acquired by
21 any unlawful means or practice alleged in the Complaint, as deemed appropriate by the Court
22 pursuant to A.R.S. § 44-1528;

23 3. Order Defendants to pay to the State of Arizona a civil penalty of no more than
24 \$10,000 for each willful violation of the Consumer Fraud Act, pursuant to A.R.S. § 44-1531;

25 4. Order Defendants to pay the State of Arizona its costs of investigation and
26 prosecution of this matter, including reasonable attorneys' fees, pursuant to A.R.S. § 44-1534,

1 and;

2 5. Such other and further relief as the Court deems just and proper.

3 RESPECTFULLY SUBMITTED this 10th day of February, 2012.

4

5

THOMAS C. HORNE
Attorney General

6

7


By: _____

8

Cherie L. Howe
Assistant Attorney General
Attorney for Plaintiff

9

10

11

12

13

14

15

16

17

18

19 #2567932

20

21

22

23

24

25

26