

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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Henry Mook, David Thorpe, Ellen Shanahan, :
Terry Boddie, Joylynn Boddie, Angela :
Warbington-Hopkins, Albert Darwin, Melody :
Darwin, Randall Sweatt, Robert Moffett, Susan :
Moffett, Concetta Baker, Pherry Elden Baker, :
Joseph Iorio, Dianne Iorio :
 :
Plaintiffs, :
 :
- against - :
 :
Homesafe America, Inc., United Legal :
Solutions, Inc. (a/k/a United Solutions Law :
Firm, United Solutions Corporation), Scott :
Schreiber, Guy Samuel, Angel Gonzalez, Josef :
Dahari, Chad Walters, Teresa Marie Votto, :
Damon Laylock, Rupali Ahluwalia (a/k/a Rupa :
Singh, Rupi Singh, Rupa Ahluwalia), Darrell :
Keys, David Ainbinder, Nicole Lake, William :
DiDonato, Richard Gates, Kevin Cogan, :
Odette Talbert, Angie Estevez, Sophia :
Ricketts, Miladys Borohquez, Debra Rennie :
 :
Defendants. :
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AFFIDAVIT OF DANIEL KOLB
IN SUPPORT OF EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER SEEKING ORDER OF
ATTACHMENT, PRELIMINARY
INJUNCTION, AND EXPEDITED
DISCOVERY

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

DANIEL KOLB, being duly sworn, deposes and says:

1. I am a member of this Court, and the law firm of Davis Polk & Wardwell, attorneys for plaintiffs Henry Mook, David Thorpe, Ellen Shanahan, Terry Boddie, Joylynn Boddie, Angela Warbington-Hopkins, Albert Darwin, Melody Darwin, Randall Sweatt, Robert Moffett, Susan Moffett, Concetta Baker, Pherry Elden Baker, Joseph Iorio

and Dianne Iorio (collectively “Plaintiffs”). I submit this affidavit in support of Plaintiffs’ application for a temporary restraining order pursuant to CPLR Section 6313 pending a determination by the Court on Plaintiffs’ motion for an order of attachment and preliminary injunction with respect to Defendants Homesafe America, Inc., United Legal Solutions Incorporated (a/k/a United Solutions Law Firm, United Solutions Corporation), Scott Schreiber, and Guy Samuel (collectively, “Defendants”). I also submit this affidavit in support of Plaintiffs’ motion for expedited discovery and motion for a preliminary injunction enjoining Defendants from continuing to engage in deceptive practices and false advertising in violation of N.Y. General Business Law Section 349 and New York General Business Law Section 350.

2. For the reasons described below, Plaintiffs will suffer immediate and irreparable injury unless Defendants are restrained pending a hearing on Defendants motion for an order of attachment, filed herewith by order to show cause. In addition, Plaintiffs are entitled to a preliminary injunction and an order for expedited discovery.

Background on This Action

3. This is an action for damages resulting from Defendants’ violations of N.Y. General Business Law § 349 (the “Deceptive Practices Act”); N.Y. General Business Law § 350, and 350-a (the “False Advertising”); N.Y. Banking Law § 590 (“Registration of Mortgage Brokers”); N.Y. Real Property Law § 265-b (“Distressed Property Consulting”); 15 U.S.C. § 1693e (the “Electronic Fund Transfer Act”); as well as for breach of contract; common law fraud; fraudulent inducement; fraudulent concealment; civil conspiracy to commit fraud; aiding and abetting fraud; and conversion. Plaintiffs seek to recover a monetary sum totaling not less than \$56,104.00, together with pre-judgment interest at the

statutory rate of 9% per annum, as well as other actual and consequential damages. These damages include, but are not limited to, the loss of equity in some Plaintiffs' homes, fees from their mortgage lenders or servicers resulting from heeding Defendants' improper advice to stop paying their mortgages, the effects of impairment on their credit ratings, and the costs associated with foreclosure proceedings, where relevant. Finally, Plaintiffs seek punitive damages not less than \$1,500,000.00, to prevent Defendants and others from engaging in similar schemes. Plaintiffs seek a temporary restraining order and order of attachment only with respect to the damages they are owed under N.Y. General Business Law §§ 349, 350 & 350-a, which amount to \$42,078.00.

4. Defendant Homesafe America, Inc. ("Homesafe") is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. During relevant times, Defendant Homesafe has conducted business at 1975 Hempstead Turnpike, East Meadow, New York; 3000 Hempstead Turnpike, Suite 200, Levittown, New York and 3000 Hempstead Turnpike, Suite 317, Levittown, New York.

5. Defendant United Legal Solutions Incorporated (d/b/a United Solutions Law Firm) ("United Legal") is a domestic business corporation, organized and existing under the laws of the State of New York, with its principal place of business in Nassau County. During the relevant times, Defendant United Legal has conducted business at 3000 Hempstead Turnpike, Suite 317, Levittown, New York. On information and belief, Defendant United Legal is a successor corporation to Defendant Homesafe, and on or around December 10, 2010, Defendant Homesafe shifted a portion of its assets, employees, and customer files to Defendant United Legal.

6. Defendant Scott Schreiber (“Schreiber”) has been an owner, director, officer, manager, and agent of Defendants Homesafe and United Legal. He is designated as a recipient for service of process in the incorporation documents of Defendants Homesafe and United Legal. During relevant times, Defendant Schreiber engaged in business activities in the State of New York, offering loan modification services to consumers, without being registered as a mortgage broker with the New York State Banking Department.

7. Defendant Guy Samuel (“Samuel”) has been an owner, director, officer, manager, and agent of Defendant Homesafe. During relevant times, Defendant Samuel engaged in business activities in the State of New York, offering loan modification services to consumers, without being registered as a mortgage broker with the New York State Banking Department. He is not admitted to practice law in New York.

8. As of March 2011, Defendants Samuel and Schreiber each controlled fifty percent of Defendant Homesafe’s 200 shares and were the only two directors of the Company’s board.

9. The claims for relief arise out of the following facts and circumstances.

The Scam

10. Defendants’ business relies on a simple scheme: a false promise to modify a homeowner’s mortgage in exchange for an up-front payment of several thousand dollars. With the help of fast-talking salespeople and masterfully deceptive websites, the operation specifically targets lower- and middle-income families desperate for a solution to their financial troubles. The perpetrators lure in victims with a series of attractive offers:

Defendants will convince lenders to lower the homeowners' monthly mortgage payments; the homeowners need not make their monthly payments until this ostensible negotiation period is complete; homeowners will receive regular, personalized updates about the process. The scammers back up these promises with a "100% money back guarantee." At no point are they told that these services are typically provided for free by federally certified housing counselors.

11. As soon as the homeowners pay their fee and sign a package of "enrollment" documents, the lavish attention ends. They are then transferred from the salesperson to a "processor" or a "negotiator," who collects their financial documents and promises to pass the materials along to the homeowners' mortgage lender(s). In many cases, the employee does nothing with the file. On those occasions when he or she does send it to the bank, the preparation is so minimal that it does nothing to improve the homeowner's likelihood of receiving a loan modification. None of this is communicated to the homeowners, of course, who have stopped making their monthly mortgage payments at the instruction of the scammers and on the belief that their "expert" negotiators are making progress toward a modification.

12. As time goes on, the homeowners find it increasingly difficult to reach anyone at the operation. Calls to the processor go unreturned; e-mails to the salesperson are ignored. Eventually, the homeowners realize that nothing is being done on their behalf, and they demand a refund. Suddenly, they are unable to find anyone who can help. When they call the operation, the homeowners are passed from employee to employee, all of whom have a different excuse for why the callers are not entitled to their 100% money back guarantee.

13. Homesafe and United Legal market themselves extensively on the Internet. It has operated several websites, each of which contains numerous fraudulent or misleading statements regarding the type of services provided by Homesafe, United Legal and their representatives. The companies design their websites and online advertisements to trick visitors into believing that the companies are somehow affiliated with government agencies or large financial institutions. Rho Aff., Exs. 1-7. As of June 26, 2011, at least four of these websites remain online:

- <http://www.yourmortgagereliefnow.com>
- <http://www.theobamahamp.net>
- <http://www.theobamahamp.com>
- <http://www.ulsinc.co>

14. Victims who submit their contact information on Homesafe or United Legal's websites receive calls from company representatives, who typically describe themselves as "Loss Mitigation Specialists." During these initial calls, company representatives promise to reduce the homeowner's monthly mortgage payments. In Plaintiffs' cases, most of the representatives orally guaranteed a full refund if Homesafe failed to obtain a loan modification on their behalf.

15. Once homeowners agree to hire Homesafe, they receive a package of standardized "enrollment documents" through mail, fax or email. These documents include a form titled "Homeowner disclosure" and one titled "Client's Responsibilities during Loss Mitigation Processing" (hereinafter "Client's Responsibilities").

16. The "Homeowner disclosure" form states that Homesafe's "job is to make sure that you do not slip through the cracks." It promises that Homesafe is "committed to

keeping you informed with regular updates about your case, and with transparency throughout the process.” The document further promises a “Money Back guarantee” in the event that Homesafe were “unsuccessful in getting . . . a resolution.” Rho Aff., Ex. 11.

17. The “Client’s Responsibilities” document instructs Homeowners to set aside money “equal to [my] mortgage payment during the mitigation process” and further instructs that these funds were “NOT to be forwarded to lender unless otherwise directed.” In Plaintiffs’ cases, homeowners understood this statement as an instruction to stop making their monthly mortgage payments. See, e.g., Thorpe Aff. ¶ 16.

18. In addition, the “Client’s Responsibilities” document informs readers that “the process of loss mitigation for some lenders can take as long as 1 to 90 days to complete,” but that “[m]ost cases are completed in less than 60 days.” In Plaintiffs’ cases, homeowners understood this statement to imply that their loan modifications would be completed with 90 days. See, e.g., Thorpe Aff. ¶ 17.

19. Homeowners pay Homesafe or United Legal by completing a payment authorization form. Customers are convinced to pay using debit and credit cards, personal checks, cashier checks, wire transfers, and/or direct eCheck withdrawals. Homesafe and United Legal demand that homeowners either pay a single up-front payment or multiple installment payments over the course of several weeks at the beginning of their representation.

20. Once homeowners pay their up-front fees, however, the company’s representatives become virtually impossible to reach. When homeowners do receive an update from Homesafe or United Legal, it usually comes in the form of an auto-generated e-mail, which provides minimal details about developments in their case file.

21. Despite Homesafe's initial promises, not a single Plaintiff has received a loan modification as a result of Homesafe or United Legal's efforts. Indeed, the three Plaintiffs who have spoken with their banks or mortgage companies about Homesafe have all been told that Homesafe did nothing to increase their likelihood of receiving a loan modification. Verified complaint ¶¶ 83, 191; Thorpe Aff. ¶ 9.

Defendants' Repeated Failure to Honor the "Money Back Guarantee"

22. Homesafe has consistently refused to honor its "100% Money Back Guarantee," despite failing to provide the basic services that it initially promised homeowners. Homeowners who ask the company for a refund are handed from company representative to representative, and are repeatedly given bogus excuses for why they are not entitled to their refunds. In this case, not a single Plaintiff has received a refund.

The Disposal, Concealment, and Assigning of Assets

23. In February of 2011, Scott Schreiber filed a lawsuit against Homesafe America, Guy Samuel, and Samuel's new company, named Consumer First Corp. During the course of the litigation, Samuel and Schreiber swore under penalty of perjury that officers of the company had concealed or assigned funds belonging to Homesafe.

24. I have reviewed the court filings related to the Schreiber v. Homesafe America Inc., Index No. 002344-2011. Rho Aff., Exs. 19-36. Upon information and belief, Defendants engaged in the following acts:

25. Over the course of 2010, Defendant Samuel took two trips to the Dominican Republic, for a total of 10 weeks. During these trips, Samuel disposed of more than \$46,000.00 of Homesafe's assets. Rho Aff., Ex. 24 ¶ 7. Defendant Schreiber stated in a sworn affidavit that Samuel's trips "never resulted in any benefit to the company,"

and were nothing more than an “extended vacation.” Rho Aff., Ex. 19 ¶¶ 87, 90; Rho Aff. Ex. 26 ¶¶ 10-12. Schreiber also states that Samuel was never able to produce any receipts or a business plan relating to the trips. Rho Aff., Ex. 19 ¶¶ 89-90; Rho Aff., Ex. 24 ¶ 7. Samuel’s debit card statements indicate that he withdrew the equivalent of \$34,000 in cash from ATMs while in Santo Domingo. He spent an additional \$3,365.00 on hotels and hundreds of dollars on bars, clothes, and local boutiques. Rho Aff., Ex. 35. Samuel defended the trip by saying he went to establish a Homesafe “call center” in the country. Rho Aff., Ex. 25 ¶ 21.

26. Schreiber and Samuel both stated in sworn affidavits that Homesafe’s merchant transaction processor, TriSource Solutions LLC, shut down Homesafe’s account in or around November of 2010. Rho Aff., Ex. 25 ¶ 45; Rho Aff., Ex. 24 ¶ 10; Rho Aff., Ex. 26 ¶¶ 17 – 18. Schreiber states that TriSource blocked his and Samuel’s access to the account after Samuel made several unauthorized transactions involving customers’ credit cards. Rho Aff., Ex. 24 ¶ 10.

27. Samuel claims that in October of 2010, \$50,000.00 in profits earned by Homesafe went unreported and remain unaccounted for. Rho Aff., Ex. 25 ¶¶ 28 – 29, 31.

28. Upon information and belief, on December 3, 2010 Samuel withdrew \$175,000 of Homesafe’s assets from a money market account belonging to the company. The funds in this account, according to Schreiber, had been “set aside to have readily accessible capital if [it was] needed to issue customer refunds.” Rho Aff., Ex. 26 ¶ 5. Samuel admits to the withdrawal, but states that he was entitled to these funds as a co-owner of the corporation. Rho Aff., Ex. 25 ¶ 37. Schreiber claims that Samuel’s departure

was part of a premeditated scheme to steal as much of the corporation's money as possible while Schreiber was on vacation. Rho Aff., Ex. 19 ¶¶ 40-43.

29. Schreiber states that, immediately prior to Samuel's departure and withdrawal of the funds, Homesafe had total liquid assets of approximately \$200,000.00, Rho Aff., Ex. 19 ¶ 47, and that Samuel's withdrawal "stripped virtually all of the liquidity from the Corporation." Rho Aff., Ex. 19 ¶ 51; Rho Aff., Ex. 24 ¶ 10. Moreover, Schreiber states in his affidavit that Homesafe had a "substantial amount of outstanding debt" totaling \$157,068.44 at the time of Samuel's actions. Rho Aff., Ex. 24 ¶ 11; Rho Aff., Ex. 19 ¶ 59.

30. On November 10, 2010, a month before he left Homesafe, Samuel filed incorporation documents with the New York Secretary of State's Office, creating a new company called "Consumer First Corp." Upon information and belief, Samuel is the sole owner and the sole director of the new entity. Schreiber alleges that Consumer First Corp. is controlled "entirely" by Samuel, and that Consumer First Corp. is Samuel's "alter ego." Rho Aff., Ex. 19 ¶¶ 133-35. Upon information and belief, all or some of Consumer First Corporation's start-up and ongoing operating costs were funded with money Samuel withdrew from Homesafe's account between November 29, 2010 and December 6, 2010. Rho Aff., Ex. 19 ¶¶ 9-10, 53-54, 130.

31. According to Schreiber, prior to leaving Homesafe for Consumer First Samuel took with him computers that contained "critical contracts and marketing documents from Homesafe" on their hard drives. Rho Aff., Ex. 24 ¶ 12. Schreiber also states that Samuel is now using these materials in the operation of Consumer First. Rho Aff., Ex. 24 ¶ 12.

32. On December 10, 2010, Schreiber incorporated United Legal Solutions Incorporated (“United Legal”), which was based at 3000 Hempstead Turnpike. Upon information and belief, Schreiber began conducting all Homesafe business through this new entity, and all remaining funds, employees and clients were subsequently transferred from Homesafe to United Legal. Rho Aff., Ex. 25 ¶¶ 13, 49. Samuel states that United Legal uses “the same office, equipment, personnel, phone lines, [and] marketing plans” as Homesafe – and, like its predecessor corporation, “continues to collect the fees upfront.” Rho Aff., Ex. 25 ¶ 49. The “only difference” between Schreiber’s business before and after December 2010, Samuel states, is that it now “operates under the name of United Solutions Corp.” Id.

33. Upon information and belief, on February 28, 2011, Schreiber and seven or eight other persons delivered thirty to thirty-five boxes of approximately 900 unprocessed loan modification applications to Samuel’s new office at Consumer First Corp. and left the boxes in a “public hallway outside of Samuel’s office.” Rho Aff., Ex. 26 ¶ 32. The photographs included as an exhibit to Schreiber’s Affidavit indicate that these offices belonged to Consumer First Law Group. Schreiber states that when he returned to Homesafe’s offices the next morning on March 1, 2011, he found that the files “had been messily left outside Homesafe/United Legal’s office building with no one watching them.” Rho Aff., Ex. 26 ¶ 34.

34. Upon information and belief, Defendants typically charged between \$1,000 and \$4,000 in upfront fees to each of their victims. Accordingly, upon information and belief, the 900 unprocessed loan modification files represented significant refund liabilities to Defendants. If each of the 900 victims were charged \$1,000, then the unprocessed

applications would represent \$900,000 in refund liabilities to Defendants. If each of the 900 victims were charged \$4,000, Defendants would have faced \$3.6 million in refund liabilities. According to Schreiber, Homesafe only had \$200,000 in liquid assets and \$157,068.44 in debt even prior to Schreiber's looting of corporate assets. Upon information and belief, Homesafe was in no position to honor its "100% Money Back Guarantee" to Plaintiffs, or other victims.

Immediate Irreparable Injury Will Result in the Absence of Temporary Restraining Order Attaching Defendants' Funds

35. Plaintiffs seek a temporary restraining order pending this Court's ruling on Plaintiffs' motion for an order of attachment and preliminary injunction because Defendants have disposed of, transferred, or assigned significant assets with the intent to defraud Plaintiffs and prevent them from collecting an eventual judgment in their favor. Plaintiffs believe that unless immediately restrained, Defendants are likely to act to further dissipate assets, preventing Plaintiffs from collecting their eventual judgment, and to continue their deceptive acts and practices. Plaintiffs require an attachment and preliminary injunction, in addition, to prevent the removal of Defendants' assets from the State.

36. If Defendants' assets remain unrestrained pending the hearing of Plaintiffs' motions for an order of attachment, preliminary injunction, and expedited discovery, Defendants will be provided with a further opportunity to continue to dissipate, loot, and transfer assets. Once put on notice of this lawsuit, Defendants will have only added incentives to ensure that no creditors – including Plaintiffs – are ever able to collect against either Homesafe or United Legal, as well as Defendant Samuel and Defendant Schreiber in their individual capacities. Absent an immediate order attaching Defendants

funds in the amount contained in the Order to Show Cause, Plaintiffs will suffer an irreparable injury because they will have lost the ability to ensure satisfaction of any judgment ultimately to be entered against Defendants in this action.

37. In light of the foregoing facts, Defendants appear to have engaged in, and will continue to engage in, an effort to secrete and move assets so as to place them beyond the reach of bona fide creditors, including Plaintiff herein. The facts also establish the likelihood that Plaintiff will suffer irreparable harm absent the requested temporary restraining order.

38. The total amount of damages claimed by Plaintiffs, as well as the \$42,078.00 sought for attachment, exceeds all counterclaims known to me.

39. Plaintiffs also seek an expedited order of discovery to ensure that additional assets needed to satisfy court and attorneys' fees are located and not dissipated by Defendants during the pendency of the trial. Plaintiffs further require expedited discovery to ensure the preservation of highly relevant evidence, which is especially appropriate in given Defendants' reckless disregard for record-keeping and document preservation.

40. Plaintiffs seek a preliminary injunction to enjoin Defendants from continuing to engage in their deceptive practices and false advertising in violation of New York General Business Law Sections 349 and 350. As explained in the Memorandum of Law accompanying this Affidavit, Plaintiffs are entitled to a preliminary injunction under these statutes in order to protect the public at large. Future consumers will suffer irreparable harm in the absence of a preliminary injunction in that they will suffer irreparable injuries by being defrauded by Defendants' scam. These irreparable injuries include, but are not limited to, a decrease in their credit scores, possible foreclosure on

their homes, and disqualification from eligibility for certain federal mortgage assistance programs.

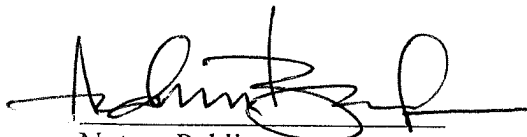
41. No prior application has been made in any court for the relief sought by this order to show cause.

DATED: June 26, 2011
New York, NY



DANIEL F. KOLB

Sworn to before me this
26th day of June, 2011



Notary Public
ANDREW BRUCK
NOTARY PUBLIC, State of New York
No. 02696217198
Qualified in Kings County
Certificate Filed in New York County
Commission Expires Feb. 8, 2014