

A Practical Guide for Identifying, Investigating, and Bringing Suit against Consumer Financial Scams



**Lessons Learned and Tips Developed From Combatting
Loan Modification Scams**

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DISCLAIMER: The information contained herein is not intended to provide legal advice.



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I. Introduction

Scammers are very adept at identifying and then profiting from consumer financial crises. That is exactly what occurred starting in 2007 when fraudsters took advantage of the unprecedented foreclosure crisis as millions of homes went into foreclosure, and which by 2009 had become one of the worst economic crises since the Great Depression. As the number of homeowners facing foreclosures continued to increase, a “second wave” of the foreclosure crisis emerged—fraudulent foreclosure rescue and loan modification schemes.

Specifically, to fight these increasing fraudulent foreclosure rescue and loan modification schemes, a coalition was created in 2009 by the Lawyers’ Committee for Civil Rights Under Law, in conjunction with Fannie Mae, Freddie Mac, NeighborWorks America and the Homeownership Preservation Foundation called the “Loan Modification Scam Prevention Network” (LMSPN), which now consists of over 200 government, non-profit and private agencies and organizations that have brought together different resources and skills over these past six years to the fight against foreclosure rescue fraud for its victims. Such coalition work proved invaluable in fighting these scams and is important to consider when combatting other types of financial scams due to the breadth of resources that such coalition work brings to bear in addressing scam operators and operations.

Important in the effort to increase public awareness of emerging scams and to recognize them and address them early was the use of a website and also the creation of a database to track the financial scam complaints. Specifically, in the loan scam area, the LMSPN launched in February of 2010 a website that provides state and national resources for the public through helpful and informative publications, analyses and reports. In addition, the LMSPN website includes the LMSPN database to which homeowners can submit complaints of alleged loan modification /foreclosure rescue scams and through which housing counselors and other non-profits are able to input the information that they gathered during the course of their assistance to homeowners who had been victimized by scamming operations while trying to save their homes. To date, over 46,000 complaint reports have been entered into the database, which provided the initial information for the launching of investigations and lawsuits, not just by the private sector but also by over 100 enforcement agencies on the federal, state and local levels.¹ Regardless of the nature of the financial scam, a website and database are invaluable resources not only for scam victims but also for enforcement agencies in their efforts to investigate and prosecute scammers on the state and federal levels.

Indeed, in the efforts to fight foreclosure rescue and loan modification scams, the database has been the key tool in the Lawyers’ Committee’s private litigation program which was launched in 2011 and which has resulted in the Lawyers’ Committee being at the forefront in bringing private litigation to assist homeowners affected by scamming operations. In

¹ For further information on the efforts to combat loan modification scams since 2009, see the Lawyers’ Committee’s “Foreclosure Rescue Inc.” report, which can be accessed at <http://lawyerscommittee.org/wp-content/uploads/2015/09/Final-Foreclosure-Rescue-Inc-Project-Report.pdf>.

conjunction with its pro bono law firms, the Lawyers' Committee filed fourteen lawsuits starting in March of 2011 - seven in New York, five in California, one in Virginia and one in Georgia.² It is our experience in investigating and then filing the 14 lawsuits, principally the six filed and litigated in New York with the law firm of Davis Polk & Wardwell LLP, together with our experience in several of the California cases, which forms the basis for the tips and tools contained in this Guide. The Lawyers' Committee is very appreciative of the dedicated attorneys with Davis Polk who played an instrumental role in litigating those six cases and in developing this Guide and to all of the law firms that dedicated significant resources in attorney time and litigation costs to the efforts to combat loan modification and foreclosure rescue scams, especially the attorneys with Latham & Watkins whose attorneys also provided valuable insight for this Guide based on their California loan scam case work with the Lawyers' Committee.

This Guide is intended to assist those on the front lines dedicated to identifying, investigating and bringing suit against scammers and their operations.

Disclaimer: The tips, resources and other information contained in this Guide primarily reflect the knowledge gained through investigating and then bringing the New York and California loan modification scam cases. This Guide is not intended to provide legal advice. State specific laws will need to be carefully examined when identifying and investigating a potential financial scam and in considering filing suit in a specific state.

II. Background: Anatomy of the Scam

Those who work to assist consumers facing a financial crisis to which they have been seeking a solution must be particularly vigilant when identifying and then investigating potential scams and the various forms such scams can take. When evaluating the facts that a potential victim of a fraud provides, the following two questions must be answered initially: (1) To what type of scam, if any, has the consumer apparently fallen victim, and (2) Whether the victim experienced misleading and false statements that may be actionable.

Set forth below are the various forms of foreclosure rescue scams and the types of misleading and false statements made to consumers to lure them into the scheme. Regardless of the type of financial scam involved, consumer financial scams will have certain characteristics and warning signs that should be explored with the consumer in evaluating whether he or she has fallen victim to a scam. In addition, regardless of the form that the scam takes, they all are designed with one purpose—to extract money from the victim without providing the services that were promised.

² The Lawyers' Committee's investigative and litigation efforts would not have been possible without the commitment and dedicated resources provided by the following firms, in addition to Davis Polk & Wardwell, all of which served as co-counsel on these cases: Arnold & Porter; Cooley LLP, Dorsey & Whitney; K & L Gates LLP; King & Spaulding LLP; Latham & Watkins LLP; McDermott Will & Emery and Orrick, Herrington & Sutcliffe LLP.

A. **The Various Forms of Foreclosure Rescue Scams**

In assessing whether a homeowner has fallen victim to a foreclosure rescue scam and what type, it is important to recognize that scam operations take several different forms, all designed to fraudulently extract money from distressed homeowners.

- ***Forensic or Securitization Loan Audits***
 - Scammer claims that an attorney or expert will identify “errors” in the homeowner’s mortgage documents; the scammer then assures the homeowner that such “errors” will compel the homeowner’s mortgage lender to give the homeowner a loan modification or forgive the entire loan amount.
- ***Sham Foreclosure Representation/Sham Lawsuits***
 - Scammer claims that they are attorneys or represent a law firm.
 - They promise, for a fee, to handle the homeowner’s foreclosure case or they promise to file a lawsuit against a lender or servicer that will result in a loan modification for the homeowner and additional compensation to the homeowner, or forgiveness/elimination of the entire loan balance.
- ***Rent to Buy/Equity Stripping Scam***
 - Scammer requires the homeowner to surrender ownership of his/her home by signing over the deed but then when a foreclosure commences, the homeowner learns that he or she is liable for the unpaid mortgage because the homeowner only transferred the deed, which does not impact what is owed on the mortgage.
- ***Loan Modification/Refinance Scam—the most common type of scam***
 - Scammer claims, in addition to other claims, to have contacts in the bank that can speed up the modification process and guarantees to obtain a loan modification fast for the homeowner.
 - *This type of scam is the focus of the Lawyers’ Committee’s private litigation efforts and this Guide.*

B. **Misleading Statements Made/ Tactics Employed by Loan Modification Scammers**

Scam operators are very adept in using multi-media resources to locate consumers who are trying to find a solution for their particular financial crisis. During the Lawyers’ Committee’s and its pro bono counsel’s (hereinafter jointly referred to as the Lawyers’ Committee) investigations, it was found that homeowner victims were located through a variety of means as scam operations advertised on television and radio, and through newspapers, street flyers, billboards and direct mail solicitation. Such solicitation targeted neighborhoods hard hit by the foreclosure crisis and homeowners on foreclosure lists were directly sent solicitations, with such solicitations in English and Spanish.

Generally, the variety of marketing avenues available to scamming operations and the easy access to and use of the internet by consumers looking for relief from their particular financial crisis provide fertile grounds for carrying out scamming operations. In the loan modification scam area, homeowners often reported going on-line to search for government programs and assistance. They completed on-line forms believing that they were contacting a government resource, but then would receive a phone call response from what turned out to be

the scamming operators who had effectively misled the unsuspecting homeowner who thought they were in contact with a legitimate resource to assist them.

While the internet played a major role in solicitation efforts by scammers who attracted homeowners to their out of state scamming operations, solicitation of Hispanic/Latino and African American homeowners was more local. The Lawyers' Committee's investigations in California and Virginia found, and the LMSPN database supported the fact, that Hispanic/Latino homeowners often heard about the scamming operations on their local radio and television stations, which had advertisements targeting homeowners with limited English language skills or through cold calls received in their native language and where the scamming operations were locally based. Certain California homeowners also reported being targeted by local "chapters" or "affiliates" of larger loan scam organizations. The Lawyers' Committee's investigation for its Georgia litigation found that scammers targeted African Americans through local churches, friends and events heavily attended by African Americans.

Regardless of the medium used for locating struggling and financially strapped consumers, the scammers use high-pressure sales tactics and make a variety of false claims. The following ones were commonly being used, both orally and in writing, to lure in homeowners into the foreclosure rescue schemes, but such sales tactics and false claims are easily applied to other situations where a consumer has been lured into a financial scam:

- ***The false "Guarantees of Success:"*** The homeowner will "definitely" get a loan modification that will significantly reduce his/her mortgage payments
- ***The false "Assurance of Paying Less Monthly or Overall:"*** The homeowner's mortgage payments will be reduced, for example, by half or by \$1,000.00.
- ***The false "Assurance of an Overall Rate Reduction:"*** The homeowner's interest rate will be reduced, e.g., down to 2% and a fraction.
- ***The "Obligation to Pay Upfront to get the Work Started:"*** The work cannot commence on the homeowner's loan modification until an "upfront fee" or "retainer fee" is paid, usually ranging from approximately \$3,000 to \$5,000, with the scammers sometimes being willing to accept payment by several checks, which they promise not to cash until an agreed upon date in the future, but which they then immediately cash.
- ***The "Opportunity to Pay Monthly if the Consumer Cannot Pay the Upfront in Full:"*** The work will not continue unless the homeowner pays a monthly "membership" fee, or similar regular additional payments, either in addition to or in lieu of the typical upfront fees.
- ***The false "Guarantee That Consumer Qualifies:"*** The scammers "only" take cases that they "know" will qualify for a loan modification.
- ***The false "Claims of Insider Relationships the Consumer does not Have:"*** The scammers have close professional relationships with high-ranking personnel at the homeowner's mortgage lenders, which allow them to better "negotiate" lower mortgage payments.

- ***The false “Claim of Success or Resolution in a Short Period of Time:”*** That a loan modification can be obtained in a relatively short time (e.g., 60-90 days) when, in fact, it could take more than a year, if a modification could be achieved at all.
- ***The “Warning not to Contact the Holder of the Consumer’s Debt or Obligation:”*** The homeowners should not contact their lenders while the scammers are “negotiating” the homeowners’ loan modifications as this will impair the scammers’ abilities to achieve maximum results.
- ***The “Advice to Stop Payments to Debt Holder:”*** That the homeowners should not make their mortgage payments, sometimes having the homeowner pay the monthly payment to the scammer who then pockets the money and does not pay the lender. (This tactic is likely followed since the scammers are well aware that the homeowner, already financially strapped, cannot pay both the scammer’s fee and the mortgage payment.)
- ***The “Damaging Advice to Stop Making the Payment Obligations:”*** The homeowner should fall behind on his/her mortgage payments, which gives the homeowner a better chance of getting a loan modification or other mortgage relief.
- ***The false “Promise of a Refund if Scammer is not Successful:”*** The upfront fee or “retainer fee” collected by scammers from the homeowner will be refunded, minus a small processing fee, if the modification is not successful.
- ***The false “Claims of Government or other Legitimate Affiliation:”*** The scammers’ websites and advertising materials/flyers use the names of legitimate government mortgage relief programs such as “Home Affordable Modification Program”/“HAMP” and include various government logos to provide the illusion of legitimacy and government affiliation.
- ***The false “Claim of an Attorney or other Expert being Involved in Work for Consumer:”*** With increasing regularity after 2010, scammers made false promises that attorneys or “legal experts” will be involved in the homeowner’s modification work, and misled the homeowner by calling the scamming entity a “law group,” “legal group,” “litigation group,” or “attorney group.” In the vast majority of cases, the lawyers did nothing for customers. In some instances, “law firms” padded bills with services that were never performed.
- ***The “Differences between any Written Contract and the Oral Promises:”*** The scammer describes the terms and conditions of the “contract” for the services to be provided orally, but then requires that the homeowner sign documents that contain different or less favorable terms; or explains the terms in the homeowner’s first language and then only provides for signature a contract that is not translated into the homeowner’s language.

One website read:

Ask yourself: Are you an expert in dealing with banks to work out payment issues associated with financial hardship?

While most banks will be very helpful on the initial call, do you know what to do when your request for help is rejected?

Will you be able to evaluate ALL the terms of a loan modification offer and all the fine print?

Do you know the importance of responding to a Notice of Default, Foreclosure conference, Summons and complaint? Do you know how to respond?

If the bank will not deal with you at all, or they decline your request after working on a loan modification with you, do you know your legal options?³

What the Lawyers' Committee has learned through its investigations and cases is that those victimized by the scammers have in most situations been given no or little help by the scamming entities. The victims have typically received nothing or next to nothing for their money. Typically the scam organization has some employees devoted to trying to modify mortgages, but those employees quickly become overwhelmed by the number of clients and lack the resources to help them. Notwithstanding these limitations, the scammers continue to sell their services to many additional customers.⁴

In addition, many have followed the advice of the scammers and stopped making their mortgage payments, thus further jeopardizing their ability to save their homes even further.

III. Tools and Tips for Counselors, Investigators and other Practitioners

The suggestions set forth in this Section are based on the experiences and lessons learned during the Lawyers' Committee's investigations of and litigation against loan modification scam operations and operators.

In investigating and considering litigation in other consumer fraud related situations, the tools and tips contained in this Section may well provide valuable suggestions to adapt for use when investigating other types of consumer fraud.

A. The Fact Gathering Process

1. Fact Gathering from the Victims

Key to assessing the strength of a potential case is to carefully obtain and examine the facts as to each potential plaintiff before going forward and to obtain key documents related to the potential plaintiff's experience with the scammers.

The factual and document gathering process should include:

³ Website of the Law Office of David M. Green, at <http://www.davidmgreenlaw.com> (last accessed October 2011). As of March 2, 2012, this website was no longer accessible.

⁴ Some companies are involved strictly in the sales efforts, then transfer the victim's file to another organization. The referral company collects a large portion of the upfront payment and leaves the second company overwhelmed and unable to deliver the promised services.

- a. Obtaining the victims' best memory of what was said to them and given to them at the time they were solicited by the scammers and any efforts made to obtain reimbursement/refund for the money that they paid to the scammers—in as specific of terms as they recall.
- b. Gathering the names and titles of those with whom the victims spoke at the alleged scamming organization whether in person or by telephone, which is particularly important so that such individuals can be properly identified in the complaint and pursued both as parties and witnesses.
- c. Gathering all of the documents that the victims have related to their experience with the scammers, including any voicemails, emails, cancelled checks [which may contain important information on the scammers' bank account(s)], payment receipts and contracts or other documents provided by the scammers, including written solicitation materials.
- d. Preparing a chronology with dates, facts and documents tied to the dates.
- e. Discussing with the victims their objectives: Does the victim want to recover money damages; does the victim want to ensure that the scammers do not do this to others—so they are stopped from being involved in any way in mortgage assistance relief services; is the victim in need of some other form of financial assistance immediately instead of being involved in a lawsuit?
- f. Using a standard interview process document to ensure the gathering of all relevant facts. *See Model Client Interview Form*—which can be adapted by practitioners and others for use in gathering facts during the investigative process.
- g. Carefully considering the strength of the victims' claims, the quality of the documents they provided to support their claims, and the willingness of the victim to be a plaintiff in a lawsuit, with the intrusions and demands that will be required.

2. Identifying and Tracking the Scammer and Scamming Entities

The scammers and their operations present challenges not normally present in investigations and lawsuits against established companies with other business operations to protect. Scammers and their operations are “fly by night” by nature and are designed to quickly defraud consumers and then disappear or morph into an entity by another name or location, often quickly spending the money that they took from their victims. The same individuals will switch corporate entities multiple times in order to continue the scam.

During the course of the Lawyers' Committee's investigations of scammers and scamming operations and litigation, it had to adapt to the evolving actions by scammers and their operations as they tried to avoid being held accountable for their actions.

The following are tips based on what the Lawyers' Committee learned in tracking and bringing to justice the scammers and their operations:

- a. At the outset, it is important to perform basic research on the scamming operation and operators to avoid expending further time and resources on operations and operators that are judgment-proof. That includes locating any incorporation information, public records related to assets and bankruptcies, online complaints and any government enforcement actions that have been brought against the scammers that can be gleaned from publicly available resources. *See Sample Research Guide*

- b. Conduct internet searches, including information located on the Rip-Off Report and other similar websites that focus on reports of consumer scamming. Often too, once an organization or individual has been identified as a likely scammer, further information can be obtained through the normal search techniques, such as use of Google Search, and on social media.
 - c. The Lawyers' Committee also employed a number of techniques to find new addresses for scammers and scam operations that had moved. Those techniques included: (1) using the forward services of the U.S. mail; (2) searching social media and/or other publicly available websites, (3) searching more robust subscription-based services such as LexisNexis's "Find a Person" search tool; and (4) hiring a private investigator or locating such a person who will provide some pro bono assistance.
 - d. It is important to continue to be vigilant in gathering as much information as possible by downloading, collecting or copying advertisements, websites, fliers, business cards, job posting, LinkedIn profiles, Better Business Bureau complaints and any other sources that can be identified to provide information on the scammers and their operations. As with any internet-based fact gathering, take care to archive any evidence you discover offline in case a website or posting disappears or changes drastically soon after you find it. Utilizing "cached" internet pages can also be extremely helpful, especially in cases where the scammers have recently changed their behavior or become more cautious following a complaint or lawsuit.
 - e. Recognize that not every investigation will result in a lawsuit, as some will need to be discontinued for such reasons as the limited number of potential plaintiffs that can be located, the lack of recent activity by the scamming operations and operators, bankruptcies, governmental actions that stay any private actions, or insufficient evidence of a scam.
3. Resources for Locating Victims—the Value of a Database

The loan scam litigation effort immensely benefited from the LMSPN database; and, where it is possible in other scamming situations to create a database with input from counselors and legal aid organizations that are on the front line of learning about new scams and scamming operations, enforcement efforts will be greatly advanced by such a resource.

For the Lawyers' Committee's litigation efforts, both the names of scamming operations and individual plaintiffs primarily were obtained from the Lawyers Committee's LMSPN database which contains the reports of individuals who believe that they have been the victims of mortgage modification scamming across the United States. Multiple complaints about particular organizations and individuals engaged in scamming permitted the Lawyers' Committee to center on such organizations and individuals in choosing which cases initially to investigate and bring.

Legal assistance organizations and housing counselors played a key role in the efforts to identify victims and address loan scammers and their operations. Legal services organizations brought suits on behalf of victims of scams, and housing counselors provided valuable input into the database by having the complaints entered into the database. Legal assistance

organizations also benefited from the information contained in the database when they requested information and were provided access to such a resource.

For attorneys who are interested in assisting in this effort, access to the database may be an important tool for them, in addition to teaming up with legal assistance organizations to assist in bringing lawsuits to stop scammers.

B. Key Steps in Developing the Case—Practical and Legal Considerations

1. Memorializing the Plaintiffs' Facts and Damages—the Value of Declarations/Affidavits

Once the decision has been made about which victims to include as plaintiffs in a lawsuit based on the strength of their claims against the scammers, the quality of the documents they provided to support the claims, and their commitment to be involved in the litigation process, it has proved to be beneficial to obtain declarations/affidavits from those who become plaintiffs as to their experience and the specific damage amounts to be sought on their behalf. The Lawyers' Committee also learned that when the plaintiffs were asked to sign the declaration/affidavit to confirm the accuracy of the information provided, the plaintiffs often were able to provide further clarity on the facts and timeline, to ensure that the plaintiffs' best recollections of the facts related to their experiences were included in the complaint.

The Lawyers' Committee further found that putting the plaintiff's story into such a document at the outset, which included obtaining the information supporting damages, can save time later when such verification as to damage amounts may be needed to support the calculation of damages for default judgments. Such declarations/affidavits also proved to be an important litigation tool against scammers and scammer operations in the early stages of the litigation. Not only did these declarations/affidavits provide the basis for the factual allegations in the complaint, but they also were used in the cases where the plaintiffs were able to seek preliminary relief, either through a temporary restraining order or a preliminary injunction shutting down the scam operations identified in the complaint, both of which required supporting declarations or affidavits from the plaintiffs.

As a general tip, the Lawyers' Committee found that it proved to be very beneficial to stay in relatively frequent contact with the plaintiffs over the life of the litigation. It permitted them to ask questions and stay aware of the litigation and, if necessary, permitted counsel to address any concerns they may have.

2. Determining the Scammers/Scamming Operations to Sue and Where to File Suit

Many of the most prolific scam operations (and those most appropriate to pursue based on limited resources) do not limit their business to a single state or region. Indeed, the Lawyers' Committee found that the majority of scamming operations were nationwide in scope, primarily as a result of their presence on the internet, and that often none of the plaintiffs hailed from the scammers' home state. These cross-jurisdictional and long-distance features presented challenges. First, the question became where to file the suit? The Lawyers' Committee found it most beneficial to file the case near the site of the scamming operations so as to ensure personal jurisdiction over, and the best opportunity to have the participation of, the defendants in the suit. The plaintiffs' residences sometimes also were used to supply jurisdiction for a nearby forum.

In addition, the Lawyers' Committee had to carefully consider who within the scam operations to sue. Salespeople for scam organizations and referral organizations most often were the individuals who made actionable misrepresentations to victims, and accordingly, were prime targets for suit. Often the plaintiffs principally had contact with "processors" who were back-room paper pushers whose job involved contacting plaintiffs, often to ask for more documents or the same documents over and over again, and who plaintiffs called to find out what was happening with their modifications as they became more and more concerned about the lack of progress on their promised loan modification. While the Lawyers' Committee sued processors who made misrepresentations to the plaintiffs, it did not sue each such processor with whom the plaintiffs had contact. During the investigations it was learned that a number of the processors were not the ones making the actionable misrepresentations, so the Lawyers' Committee concentrated on naming as defendants the scamming operations, the key owners or operators, and those that conducted the training and managed the back room operations, including naming as defendants the attorneys who were involved in such operations.

As the Lawyers' Committee proceeded with preparing for suit, it proved especially important to obtain from the plaintiffs the names (first and last with spelling) of those they spoke with at the alleged scamming organization. This was not only important so that each such individual could be properly identified in the complaint as a party, but also, if not sued, to have their identification as witnesses.

The fact that many entities will be judgment-proof puts a premium on pursuing individuals who may have access to resources. Enjoining individuals is often more important than enjoining a corporation that is a fly-by-night entity because the individual can keep establishing new corporate entities until he or she is enjoined. As a result of targeting individuals, the Lawyers' Committee contributed to certain individuals being indicted.

3. Determining How Much Detail to Include in the Complaint

It proved to be important to set out in considerable detail in each complaint the experience of the plaintiff (or plaintiffs in the case of a couple that purchased a house jointly), including their best memory of what was said to them and given to them at the time they were solicited by the scammers. Telling the story in detail in the complaint demonstrated the egregious conduct of the defendants and also ensured that the facts supported the causes of action set forth in the complaint, such as fraud, breach of contract, failure to translate the contract, false advertising and other legal theories that formed the basis of the suit.

4. Determining What Legal Claims and Preliminary Relief to Pursue

At the outset of this Section, it is important to recognize the differences among state laws that may or may not afford the same opportunities as, for example, New York does for ending scams and collecting meaningful damages. Where states do not have similar laws, it would be well to consider promoting the passage of such laws.

Especially because facts and laws differ from case to case and state to state, in discussing the legal claims the Lawyers' Committee pursued, only that experience is being recounted and legal advice is not being provided. When considering the filing of a suit in a particular jurisdiction, it will be important to conduct research to determine the laws of that jurisdiction, including case law and relevant statutes.

a. Key Legal Tools Available in New York-“Private Attorneys’ General,” Ban on Upfront Fees and Broker Registration Requirements

The following have proved to be the most important elements in the Lawyers’ Committee’s efforts in New York:

- (1) Critical to that effort in New York have been the provisions in the state law that not only make extracting upfront payments in such circumstances unlawful but also (a) provide that individuals who were victimized may bring individual claims and, at the same time, act as Private Attorneys General in seeking injunctive relief against the scammers (N.Y. Gen. Bus. L. § 349(h)), and (b) provide for treble and quadruple exemplary damages (N.Y. Real Prop. L. § 265-b; N.Y. Banking L. § 598(5)). Because the law also provides that scammers may be jointly and severally liable for their scamming activities, those actively associated with the scam can each be held liable for significant damages. *See American Transit Ins. Co. v Faison*, 661 NYS2d 624, 625 [1st Dept. 1997] (noting that “[i]f defendant’s claim that he received the overpayment due to a conspiracy to defraud Plaintiff in a ‘scheme’ by an adjuster is true, then defendant is a co-conspirator and is jointly and severally liable for the full amount paid. Under New York law, the liability of co-conspirators is joint and several, notwithstanding the amount of any direct benefit conferred upon them through a fraudulent transaction.” (internal citations omitted)); *Ravo v Rogatnick*, 70 NY2d 305, 309 [1987] (“When two or more tort-feasors act concurrently or in concert to produce a single injury, they may be held jointly and severally liable. This is so because such concerted wrongdoers are considered ‘joint tort-feasors’ and in legal contemplation there is a joint enterprise and a mutual agency such that the act of one is the act of all and liability for all that is done is visited upon each.” (internal citations omitted)); *Sweeney, Cohn, Stahl & Vaccaro v Kane*, 773 NYS2d 420, 426 [2d Dept 2004] (holding husband and wife jointly and severally liable for fraud committed on wife’s creditors because the husband was a “driving force” behind the scheme and “benefitted as much as she did” from abusing the corporate form for tax advantages).
- (2) The Lawyers’ Committee has consistently used the provision of New York Law that makes it unlawful for those engaged in mortgage modification activities to obtain upfront payments from those victimized and which allows individual consumers to seek injunctions on behalf of consumers generally. N.Y. Real Prop. L. § 265-b (2)(b)(“Prohibitions...[include] charging for or accepting payment for consulting services before the full completion of such services.”); N.Y. Real Prop. L. § 265-b(4)(d). (“[I]f it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby .”)
- (3) As noted, the Lawyers’ Committee has relied on Section 349(h) of the New York General Business Law which allows individual consumers to proceed not only on their own behalf but also as Private Attorneys General. Under this provision, individual consumers need not show they have personally suffered irreparable harm. Instead, the irreparable harm is the injury to the public that would result if the offending conduct was not enjoined. *See* N.Y. Gen. Bus. L. § 349(h) (“In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act

or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions.”)

Using the Private Attorneys General provision, the Lawyers’ Committee focused first on obtaining injunctions aimed not just at corporate entities but at individuals engaged in the scamming. Obtaining damage recovery can take time but injunctions can be obtained promptly. The Lawyers’ Committee tailored the standard injunction so that it specifically proscribed only scamming in connection with mortgage modifications, thereby avoiding any claim that such injunctions were preventing individuals from making a legitimate livelihood beyond mortgage modifications. Use of that provision has made it possible to focus on specific, provable and often collectable damage amounts. It has also made it easier to get courts to issue injunctions and to obtain settlements in which injunctions were accepted.

- (4) The Lawyers’ Committee also included in its complaints New York Law’s provision requiring those engaged in mortgage modification activities to register as brokers (N.Y. Banking L. § 590). As with the laws rendering upfront payment unlawful, this provision has made it relatively easy to show a violation because the scammers rarely, if ever, are registered.
- (5) In addition, the Lawyers’ Committee relied on New York Law’s provisions permitting recovery of either quadruple or treble exemplary damages. N.Y. Gen. Bus. L. § 349. (Private plaintiffs may recover the greater of actual damages or \$50, and the court may treble these damages up to \$1,000); N.Y. Gen. Bus. L. § 350-E (“The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, up to ten thousand dollars.”); N.Y. Banking L. § 598 (“If any non-exempt unlicensed or unregistered person or entity engages in activities encompassed by this article, he shall be liable to any person or entity affected by such activities for a sum of money of not less than the amount of money paid to an affected person or entity in connection with such activities, nor more than four times such sum.”) The quadrupling provision does not apply to victims outside New York State, of which there have been many because of the use of the internet by the scammers, but it does apply to those victimized within New York. The treble damage provision applies to both New York and non-New York residents. Both provisions have permitted a relatively easy computation of damages, just multiplying the upfront payment that has permitted us to obtain default judgments and conduct damage inquests where there can be little or no debate as to damage amounts.

b. Experience in California in Seeking TROs and Preliminary Injunctive Relief

New York is a particularly favorable jurisdiction and its laws provide a strong consumer emphasis for stopping and shutting down scammers and scamming operations early on in the litigation process through its statutory structure. The ability of plaintiffs to obtain injunctive relief for the benefit of the public at large varies across states and different state statutes which informed later efforts to obtain injunctive relief under those and other statutes.

In California, the Lawyers’ Committee experienced mixed results in its efforts to obtain preliminary relief. In the Superior Court in Riverside County California, the Lawyers’ Committee sought and was granted a temporary restraining order (TRO) and then a preliminary injunction in its unfair competition and false advertising case based on the

injury suffered and money lost as a result of defendants' unlawful conduct under California Business and Profession Code §§ 17203, 17204 and 17535. In that case, the court, in granting the TRO, found premature the Lawyers' Committee's effort to obtain an accounting of the defendants' assets and an asset freeze, but encouraged the plaintiffs to seek such relief at the preliminary injunction hearing scheduled for six weeks thereafter. At the TRO hearing and in the Lawyers' Committee's supporting brief, it was argued that the court can award broad relief upon the plaintiffs making a showing that there is a likelihood of success on the merits and based on the harm to the public that would occur if defendants are not restrained. Not only did the court grant the TRO in part, but the court also granted the preliminary injunction, which continued to enjoin the defendants from mortgage assistance relief services. The court also ordered a freeze of defendants' assets and required defendants to provide an accounting of those assets, with such information on the assets to be provided within 5 days.

The Lawyers' Committee experienced a different result in Orange County Superior Court when seeking injunctive relief under California Business & Professions Code §§ 17203 and 17535. In seeking such relief under the Unfair Competition Law ("UCL") and the False Advertising Law ("FAL"), the defendants argued, and the court agreed, that plaintiffs are procedurally barred from obtaining injunctive relief because "(1) plaintiffs lacked standing to seek injunctive relief that will prevent harm to other homeowners; and (2) plaintiffs cannot enjoin past conduct." As the Lawyers' Committee learned during the course of its injunctive relief effort there, prior to Proposition 64, which sought to eliminate frivolous lawsuits, the UCL permitted "any person acting for the general public to sue for relief from unfair competition," even if that person had not suffered injury in fact. *Californians for Disability Rights v. Mervyn, LLC*, 39 Cal. 4th 223, 227 (2006). To avoid these frivolous lawsuits, Proposition 64 added two key requirements to the UCL: (1) a private person has standing only if that person "has suffered injury in fact and has lost money or property as a result of the unfair competition;" and (2) plaintiffs may only pursue "representative claims or relief on behalf of others" through a class action. Cal Bus. & Prof. Code §§ 17204, 17203. Taken together, "the effect of Proposition 64 is to 'prevent uninjured private persons from suing for restitution on behalf of others.'" *In re Tobacco II Cases*, 46 Cal. 4th 298, 314. Even though the Lawyers' Committee argued that Proposition 64 did not alter the remedies provision of the UCL, nor did it restrict an injured plaintiff from obtaining broad injunctive relief,⁵ Judge Frederick P. Horn of the Superior Court of California, County of Orange, denied plaintiffs' motion for the preliminary injunction:

Having considered the papers filed by the parties in connection with the Motion for Preliminary Injunction, the court DENIES the request that a preliminary injunction should issue. Plaintiffs have not established by a preponderance of evidence a likelihood of success on the merits at trial and have not established the balance of harms is in their favor.

The evidence submitted by plaintiffs establishes that all harm allegedly caused by defendants has occurred as to them. At this point, each has a perfected claim for

⁵ The Lawyers' Committee argued that each plaintiff did have standing under Section 17204 to obtain relief under the UCL because each plaintiff had suffered "an injury in fact and lost money or property" as a result of the defendants' illegal loan modification scheme. Thus, the Lawyers' Committee asserted that plaintiffs did have standing to seek injunctive relief under the UCL.

damages, nothing more. Therefore, as to their individual claims an injunction is not warranted.

It is apparent from the papers filed that the injunction plaintiffs seek is not to prevent future injury to themselves but to members of the public. Since they have not sought class certification, they cannot pursue injunctive relief under Business and Professions Code §§17203 or 17535 as representatives of members of the public; they have no standing. *Arias v. Superior Court* (2009) 46 Cal.4th 969. Plaintiffs' arguments to the contrary are unpersuasive, being based on authority that pre-dates Proposition 64 or does not support the arguments made. Thus, since plaintiffs cannot obtain injunctive relief on behalf of the public or themselves they have not demonstrated a probability of success at trial.

For the reason that all harm defendants could have caused to these plaintiffs has occurred, plaintiffs have shown no future harm to them at all, let alone irreparable harm. For the reasons stated above, they have no standing to prevent harm to members of the public.”

Minute Order, issued February 11, 2013, Bates et al. vs. William D. Goodrich, Attorney, Inc. et al., Case Number: 30-2012-00615512-CU-BC-CJC

During the oral argument on the motion for the preliminary injunction, while the defendants' attorney was reading the amendment to Section 17203 requiring representative claims for relief on behalf of others, the Court made sure that defendants' counsel read the following section of the statute: “these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.” Judge Horn signaled his opinion that the last part was key to the intent of the statute. In other words, the Judge was under the opinion that consumers seeking injunctive relief should bring class actions; otherwise, they should look to the Attorney General, et al. for injunctive relief to protect the public.

Given the two different experiences in the Superior Courts in different counties, careful consideration should be given to such different results in considering in which jurisdiction to file suit and the possibility of different results in seeking preliminary relief or whether to even seek such preliminary relief.

c. Legal Claims Generally Included in the Lawyers' Committee's Case Filings

- (1) Fraud: The Lawyers' Committee has regularly included in the New York complaints and in its cases filed in other states fraud claims based on intentional misconduct. The cases have sought punitive damages based on the fraud claims and, with one exception, the cases have consistently used the law's exemplary damages provisions as a basis for calculating the punitive damages sought, which has made it relatively easy for the courts to decide that the measure of punitive damages was reasonable. It is what the law indicates is reasonable.

The one exception to that practice in New York of seeking just the exemplary damage amounts in calculating punitive damages was a claim against one individual who organized and ran more than one scamming enterprise, flaunted the court process and openly violated two injunctions. His conduct permitted the obtaining of a \$1,000,000 punitive damage award just as to him, over and above the usual exemplary damages.

In the Lawyers' Committee's California class action, Judge Peter H Kirwan of the Superior Court, County of Santa Clara, in entering an order for default judgment, not only awarded compensatory damages in the amount of almost a million dollars, but also granted plaintiffs' request for \$300,000 in punitive damages jointly from the five defaulting defendants. The court found that plaintiffs had presented prima facie evidence that the five defendants engaged in fraud and also found that the evidence presented "suggests that **Gallant** and **ABC's** true net worth has been manipulated." Based on the evidence presented, the court found that the \$300,000 punitive damage award would sufficiently punish but not cripple the defendants.

Fraud claims that the Lawyers' Committee pursued in New York and other jurisdictions included: common law fraud, fraudulent inducement, fraudulent concealment, civil conspiracy to commit fraud and aiding and abetting fraud. Each of those causes of actions should be researched and evaluated in the states where filing suit is being considered.

- (2) In addition to fraud, the Lawyers' Committee's suits also contained claims for breach of contract; breach of fiduciary duty; breach of duty of good faith and fair dealing and false advertising.

5. Planning for the Possibility of a Bankruptcy Filing by a Defendant

A fraud claim is not dischargeable in bankruptcy. By including fraud claims in its suits, the Lawyers' Committee frustrated efforts that might otherwise have been made by the scammers to avoid damage recovery by declaring bankruptcy.

To protect that advantage it is important to proceed promptly after notice of a bankruptcy filing (within 60 days) to file a complaint seeking the courts determination that the claim is non-dischargeable.

Potential bankruptcies should be carefully considered when entering into any settlement agreement with a defendant. Although fraud is not dischargeable in bankruptcy, some courts require that there be a fraud conviction, rather than a settlement agreement, in order to enforce this rule.

6. Examining Attorney Involvement and Legal Tools for Including in the Lawsuit

Under an express provision of New York Law, N.Y. Real Prop. L. § 265-b, it is unlawful for the scammers to receive upfront payments. Such payments are prohibited where the services to be provided are to promote assistance in the modification of mortgages.

Because New York law provides an exception to the ban on upfront payments for a lawyer's customary retainer, the scammers have frequently associated themselves with lawyers and represented falsely that the work performed was being performed by attorneys. In such cases, the use of the lawyer's name has proved to be a sham, with the lawyer doing little for those who paid. In one case, the lawyer was not admitted to practice in New York, so that he would not, in any event, have been entitled to the retainer exemption. Whether admitted in New York or not, the lawyers were typically not engaged in any regular law practice or, if they

practiced in other areas besides mortgage modifications, that additional work had become incidental to their scamming activities. Such use of lawyers as, in effect, cover for the operation was, of course, not consistent with the intent of the law in granting exemptions for lawyers engaged in regular and legitimate practice. As the New York Attorney General said some years ago:

OAG's investigation also has revealed instances where companies have developed various arrangements with attorneys in an apparent attempt to circumvent the requirements of Section 265-b, which exempts from the definition of distressed property consultant "an attorney admitted to practice in the state of New York **when the attorney is directly providing consulting services** to a homeowner **in the course of his or her regular legal practice.**" (Emphasis supplied.) Please note that this exemption only applies when attorneys are "directly" working on the client's loan modification file as part of their "regular legal practice." Merely having an attorney on staff does not exempt a company from the requirements of Section 265-b.

In the Lawyers' Committee's California cases, attorneys participated in and even led the scamming operations. Therefore, those cases included claims for attorney malpractice, in addition to the other causes of action associated with the other non- attorney defendants.

7. Evaluating the Costs of Suit and Resources Available to Assist

As the Lawyers' Committee's experience in combating mortgage modification scams has illustrated, law firms of size willing to take on the representation of individuals can add significantly to the overall effort to end mortgage modification scamming and other such consumer offenses. Davis Polk reported: "Because our firm committed its resources, pro bono, the Private Attorney General Provision was given life as an enforcement arm, supplementing what the government agencies could do."

Davis Polk also found that "while the cost of such an effort is, of course, significant, firms that are interested in providing rich opportunities for pro bono work to their lawyers should know that our experience has been exceptionally rewarding, both because the effort has been clearly in the public interest and also because it has afforded a very large number of young Davis Polk litigators the chance to make court appearances, take depositions, gain meaningful practical experience in working in state court and prepare court papers aimed at the public good. We strongly encourage other firms to consider such benefits in deciding whether to sign on for such projects. They need not take on as many cases as we have, and there is ample room for firms to share such cases and work together."

Latham & Watkins attorneys had a similar experience with their California case. "Working on this worthy matter not only enabled our attorneys to make a very real difference in the lives of a number of struggling homeowners, but also resulted in significant training opportunities for junior litigators, including client interviews, oral argument at hearings, depositions, and incredible brief-writing experience. The case continues to be viewed positively by the large team of associates who worked on it, and has strengthened numerous careers."

Legal assistance organization and legal aid advocates have few resources but they also have played an important role in bringing such suits and in advising and assisting victims of these scams.

8. Considering Whether to Bring the Case as a Class Action

In all but one of the Lawyers' Committee's cases in California the cases have not been brought as class actions. Instead, the Lawyers' Committee proceeded in the suits with a relatively limited numbers of plaintiffs (from 7 to 25) who are appearing in their individual capacities rather than seeking class certification for all victims of a particular scam. At the outset of these cases, it was decided that waiting for classes to be certified would only serve to slow the effort and would likely do little good if, as anticipated, the scammers have limited resources with which to pay judgments. Early on it was decided that it was better to obtain injunctions and substantial recoveries for a relative few than practically nothing for each member of a large class. Proceeding promptly in seeking injunctions and judgments on behalf of a defined number of plaintiffs has also prevented the future scamming of hundreds rather than waiting for class certification on the hope that hundreds in a class could be compensated.

C. Once the Case is Filed—Some Suggestions Based on Lessons Learned

1. Proceeding Against the Pro Se Defendant

A number of defendants have appeared pro se, making it necessary to carefully ensure that the unrepresented defendants understood the fact that the Lawyers' Committee represented the plaintiffs, their adversaries, and not them. Such defendants may ask for guidance on court procedure and it has been important to avoid giving them advice. On the other hand, the Lawyers' Committee did give them notice of upcoming court dates so that they could participate, to avoid taking advantage of their ignorance.

Also, having pro se defendants presents challenges of having on the defense side an individual who is not trained and is unfamiliar with motion practice and obligations in a suit. It was found, however, that such defendants may be more willing to try to seek an early resolution, to put this situation behind them.

2. Seeking Early Resolution - the Terms

Because it will often be very expensive for a defendant to bear legal fees on such a matter and the defendant will know that liability will very likely be established in the end, a number of defendants may want to embrace early settlement. The Lawyers' Committee welcomed such initiatives and those who have settled early have typically been wise to do so. Even when they settle early, they still may need to provide testimony as to the scamming operation.

Not infrequently defendants, both those proceeding pro se or represented, will decide to testify in detail on the scamming practices at an organization as a way of "cooperating." They often hope that such cooperation will lead to a more attractive settlement or even being dropped from the case. The Lawyers' Committee typically recognized such efforts by defendants in considering appropriate settlement amounts, while not promising that testimony helpful to plaintiffs' cases will be rewarded. The Lawyers' Committee also often suggested to

defendants in a group that if they all contribute significant, but not exceptionally large, amounts to a settlement, they will all be able to pay less than if only a few pay individually.

Importantly, whenever negotiating a settlement with a represented or pro se defendant, the acceptance of an injunction was a non-negotiable settlement term for all named defendants. That injunction was a full injunction that barred the individual and/or entity from ever being involved in any mortgage assistance relief services.

Also, the Lawyers' Committee always ensured with any of the settlements that the court retained jurisdiction and that the Lawyers' Committee monitored the former defendants' activities—moving for sanctions and contempt for breaches of settlements or court orders.

3. Default Judgments and Orders of Default

The Lawyers' Committee consistently has moved for default judgment against those defendants in all of its cases who failed to file an answer or appear timely. It has been an important procedural tool to ensure that such defendants have monetary judgments entered against them and that, thereafter, plaintiffs can move to collect any assets that can be found and seized, including garnishments. The Lawyers' Committee also suggests sending restraining notices and information subpoenas in connection with serving the notice of entry of the money judgment.

The Lawyers' Committee also ensured that all default judgments included injunctions.

4. Collecting Judgments

Collection of damage amounts where judgments have been entered can be difficult, with many defendants claiming they have limited resources. In addition to suggesting that the defendants look to collateral sources for funds, such as relatives and friends, the Lawyers' Committee found the following techniques to be helpful in collecting on the judgments: (1) personal income and assets may be located and/or confirmed through the use of personal depositions and document subpoenas as well as through third party subpoenas to financial institutions; (2) titled assets may also be discovered by searching public property records—third party services such as LexisNexis aggregate public property records by individual; (3) restraining notices or other similar devices, such as a court ordered account freeze, will prevent the judgment debtor from transferring non-exempt property; (4) non-exempt personal property or funds, whether in the possession of the judgment debtor or a third party, may be obtained through a garnishment action or by asking a court to order turnover; (5) non-exempt equity in real property can be pursued by obtaining a judicial lien on the property and/or by executing on the property and forcing the property to be sold at a sheriff's sale; and (6) judgment debtor's non-exempt wages may be garnished.

A key tool in certain states in the collection process to enforce the judgment is the debtors' exam and discovery filed prior to that exam. In preparing to undertake such an effort, ensure that you research the specific state requirements. For example, in California, there are forms for the application for an order and appearance form for such examinations: "Application and Order for Appearance and Examination (Attachment—Enforcement of Judgment) per Code of Civil Procedure §§ 491.110, 708.110, and 708.120. You will not need an abstract of judgment or affidavit if you are requesting the order from the court that issued the original judgment. CCP Section 708.160. But it is essential to read the rules to ensure that you are following the needed procedure for your situation. Also, prior to the debtor's exam, it

is important to file interrogatories and requests for production related to assets so that relevant documents and information can be obtained prior to the debtor's exam, which are authorized pursuant to CCP Section 708.010 et.seq. Those examinations and the information provided in discovery prior to the exam proved helpful in locating other resources and information on assets, such as accountants and information about ex-wives and others that may have information on assets.

In New York, a plaintiff seeking to enforce a default judgment may notice a post-judgment deposition pursuant to CPLR 5224. It is important to ensure that any post-judgment notice to a judgment debtor is accompanied by the appropriate statutory notifications. See, e.g., CPLR 5222.

Where defendants have left the state, the Lawyers' Committee has been able to domesticate its New York State judgment in the state to which the defendant has moved. Depending on the jurisdiction, the entry of a judgment might result in a lien being entered on any property the judgment debtor owns in that jurisdiction. Litigants should review the Enforcement of Foreign Judgments Act, which most states have adopted and which governs the process for domesticating a judgment. Lexis searches of individuals can be fruitful in locating real property owned by the defendant (and therefore figuring out in what county the judgment should be entered), though care must be taken that the results pertain to the correct individual and not someone else by the same name. Using information gathered in the litigation and information subpoenas can narrow the search. To that end, in New York, one may request a social security number in an information subpoena.

D. Examples of Pleadings, Motions, Memoranda, Orders and Discovery Requests

Although state laws and facts will vary, the following examples of filings in a number of the Lawyers' Committee cases in California and New York are being provided as helpful resources

I. Defendant Research Guide

II. Defendant Research Memorandum

III. Model Client Interview Form

IV. Complaints – California and New York

A. California: Cox et al. vs. Certified Financial Protection Group et al, Case No: RIC 1214494 (Superior Court of the State of California, County of Riverside)

B. New York: Aviles et al. v. Norton Law Group LLC et al., Index No: 10882/12 (Supreme Court of State of New York, County of Nassau)

V. Class Action Complaint – California: Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)

VI. Document Requests and Interrogatories – California

A. Interrogatories-Special (Not form) – Plaintiffs’ First Set of Specially Prepared Interrogatories to Defendant Jerry Stevenson, Baker et al. v Platinum Law Group, Inc. et al, Case No: BC508727 (Superior Court of the State of California, County of Los Angeles)

B. Requests for Production of Documents – Plaintiffs’ First Set of Requests For Production of Documents and things to Defendant Jerry Stevenson, Baker et al. v. Platinum Law Group, Inc. et al, Case No: BC508727 (Superior Court of the State of California, County of Los Angeles)

VII. Filings for Temporary Restraining Orders and Court Orders – California and New York

A. California: Ex Parte Application for Temporary Restraining Order and Order to Show Cause for a Temporary Straining Order and Order to Show Cause for a Preliminary Injunction, and Memorandum of Points and Authorities In Support Thereof, Cox et al. v. Certified Financial Protection Group, LLC, Case No: RIC 1214494 (Superior Court of the State of California, County of Riverside)

1. Order granting Temporary Restraining Order
2. Order granting Order to show Cause

B. New York: Memorandum of Law in Support of Temporary Restraining Order, Order of Attachment, Preliminary Injunction and Expedited Discovery, Mook et al. v. Homesafe America, Inc. et al., Index No:009472/2011 (Supreme Court of the State of New York, County of Nassau)

1. Affidavit of Daniel Kolb in Support of Ex Parte Application for Temporary Restraining Order Seeking Order of Attachment, Preliminary Injunction and Expedited Discovery
2. Emergency Affidavit of Daniel Kolb
3. Ex Parte Order to Show Cause with Temporary Restraining Order Seeking Order of Attachment, Preliminary Injunction and Expedited Discovery

VIII. Filings for Preliminary Injunctions and Court Orders – California and New York

A. California: Motion for a Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof, Cox et al. v. Certified Financial Protection Group, LLC, Case No: RIC 1214494 (Superior Court of the State of California, County of Riverside)

1. Order Granting Preliminary Injunction

B. *New York:* Filings the same as VII.B., above

1. Order Granting Preliminary Injunction

IX. Court Orders on Punitive Damages – California and New York

A. California: Order awarding Punitive Damages, under Request for Punitive Damages Section of Order, Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)

B. *New York:*

1. Memorandum of Law In Support of Plaintiffs’ Damage Assessment at Inquest (including compensatory, Exemplary, and punitive damages), Rush et al. v. Save My Home Corp., et al., Index No. 3605/2011(Supreme Court of State of New York, County of Nassau)

- a. Judgment (granting punitive damages)
2. Inquest Hearing Transcript (includes award of \$1 million in punitive damages against David Gotterup), Osmanzai et al. v. Save My Home Corp., et al., Index No. 9471/2011 (Supreme Court of State of New York, County of Nassau)

X. Default Judgment Motions, Memoranda, and Judgments/Orders – California and New York

A. *California:*

1. Plaintiffs’ Supplemental Application for and Memorandum of Points and Authorities in Support of Default Judgment against Defendants American Brother Corporation Inc., Gallant Group LTD., Troy Holland, and TMG Financial Services, Inc. Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)

a. Order on Entry of Default Judgment, under 3. Plaintiffs’ Motion for Default Judgment against Holland, TMG, ABC and Gallant.

2. Plaintiffs’ Case Summary in Support of Application for Default Judgment; Memorandum of Points and Authorities in Support of Application for Default Judgment, Baker et al. v. Platinum Law Group, Inc. et al, Case No: BC508727 (Superior Court of the State of California, County of Los Angeles)

- a. Evidence In Support of Plaintiffs’ Application for Default Judgment
- b. Memorandum of Costs
- c. Proposed Judgment
- d. Request for Court Judgment

B. *New York:* Plaintiffs’ Memorandum of Law in Support of Their Motion to Strike the Norton Defendants’ Answer with Affirmative Defenses and for the entry of default judgment, Aviles et al. v. Norton Law Group LLC et al., Index No: 10882/12 (Supreme Court of State of New York, County of Nassau)

1. Orders Ruling on Damages: (a) Inquest Transcript on Granting of Default Judgment; (b) Signed Final Default Judgment with damages contained therein; and (c) Modified Award of Prejudgment Interest, based on Plaintiffs’ Motion for Reconsideration

XI. Judgment Debtor Exam/Notice of Post Judgment Deposition Filings

A. *California:* Order to Appear for Examination for Enforcement of Judgment/Judgment Debtor, Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)

B. *New York:* Subpoena and Restraining Notice Kyle Eric Norton Judgment Debtor- compelling testimony; restraint on any disposition of property, and document requests; Aviles et al. v. Norton Law Group LLC et al., Index No: 10882/12 (Supreme Court of State of New York, County of Nassau)

XII. Judgment Debtor Interrogatories and Document Requests

A. *California:*

1. Interrogatories:

a. Individual: Plaintiffs’ First Set of Judgment Debtor Interrogatories to Adeel Amin Pursuant to Code Civ. Proc. Section 708.020, Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)

- b. Individual: Plaintiffs' First Set of Judgment Debtor Interrogatories to Jeff Marklein, Baker et al. v. Platinum Law Group, Inc. et al, Case No: BC508727 (Superior Court of the State of California, County of Los Angeles)
- c. Corporate: Plaintiffs' First Set of Judgment Debtor Interrogatories to American Brother Corporation Inc. pursuant to Code Civ. Proc. Section 708.20, Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)
- 2. Requests for Production:
 - a. Individual: Plaintiffs' First Set of Requests for the Production of Documents from Adeel Amin Pursuant to Code Civ. Proc. Section 708.030, Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)
 - b. Individual: Plaintiffs' First Set of Judgment Debtor Requests for Production to Jeff Marklein, Baker et al. v. Platinum Law Group, Inc. et al, Case No: BC508727 (Superior Court of the State of California, County of Los Angeles)
 - c. Corporate: Plaintiffs' First Set of Requests for the Production of Documents from American Brother Corporation Inc., Pursuant to Code Civ Proc. Section 708.030, Ocegueda et al v. Nathanson et al., Case No: 1-11-CV-202525 (Superior Court of the State of California, County of Santa Clara)
- B. *New York:* See XI. B. above, for sample per New York procedure.

NOTE: This Guide, with links to the above Examples, is located on the Lawyers' Committee's Website at: <http://lawyerscommittee.org/wp-content/uploads/2015/12/GUIDE-REVISED-FINAL-12-15-15.pdf>