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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

v.

FREEDOM DEBT RELIEF, LLC, A Delaware Limited
Liability Company, et al.,

Defendants.

No. CIV477991

CONSENT JUDGMENT

Plaintiff, the People of the State of California, having filed the complaint herein, and plaintiff appearing through its attorneys James P. Fox, District Attorney of San Mateo County, John E. Wilson, Deputy District Attorney In Charge and Chuck Finney, Deputy District Attorney, and Preston DuFauchard, California Corporations Commissioner by Alan S. Weinger, Deputy Commissioner, and Joan E. Kerst, Senior Corporations Counsel, and defendants FREEDOM DEBT RELIEF, LLC, a Delaware Limited Liability Company; FREEDOM DEBT RELIEF, INC., a California Corporation; FREEDOM FINANCIAL NETWORK, LLC, a Delaware Limited Liability Company; ALIVIO HOLDINGS, LLC, a Delaware Limited Liability Company; BILLS.COM, INC., a Delaware Corporation; BILLS.COM, LLC, a Delaware Limited Liability Company; FREEDOM TAX RELIEF, LLC, a Delaware Limited Liability Company; and ALIVIO MORTGAGE, LLC, a Delaware Limited Liability Company, appearing through their attorneys Fenwick & West LLP by Kevin P. Muck and Christopher J. Steskal and Law Offices of Dek Ketchum by Dek Ketchum, and defendants ANDREW HOUSSER, and BRAD STROH appearing through their attorneys Law

1 Offices of Allen Ruby by Allen Ruby (All such defendants may be referred to collectively as
2 “Defendants.”); and

3 Defendants having disputed the allegations of wrongdoing and liability in this action, and
4 denying that any relief should be granted in connection with the claims and allegations asserted in the
5 action; and

6 Following active litigation, including discovery and motion practice, the parties having
7 engaged in extensive arms-length negotiations concerning settlement of the claims that were or could
8 have been asserted in the action; and

9 All parties having agreed to the stipulation and this consent judgment prior to the taking of
10 any proof and without trial or adjudication of any issue of law or fact and without the stipulation and
11 consent judgment constituting evidence of or an admission by any of the Defendants regarding any
12 issue of law or fact alleged in said complaint; and

13 The court having considered the pleadings and the stipulation of the parties;

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

15 1. This court has jurisdiction over the subject matter of this lawsuit and over the parties
16 hereto.

17 2. All claims against FREEDOM DEBT RELIEF, INC., a California Corporation,
18 FREEDOM FINANCIAL NETWORK, LLC, a Delaware Limited Liability Company, ALIVIO
19 HOLDINGS, LLC, a Delaware Limited Liability Company, BILLS.COM, INC., a Delaware
20 Corporation, BILLS.COM, LLC, a Delaware Limited Liability Company, FREEDOM TAX RELIEF,
21 LLC, a Delaware Limited Liability Company, ALIVIO MORTGAGE, LLC, a Delaware Limited
22 Liability Company, ANDREW HOUSSER and BRAD STROH, and each of them, are hereby
23 dismissed in their entirety with prejudice.

24 3. This consent judgment is applicable to defendant FREEDOM DEBT RELIEF, LLC, a
25 Delaware Limited Liability Company and to its officers, directors, partners, assignees and successors

1 in interest, with actual or constructive notice of this consent judgment (hereinafter referred to as
2 “FDR”). FDR has voluntarily stipulated and agreed to the provisions of this consent judgment for the
3 purpose of resolving disputed claims. The Court finds that the stipulation was entered into as a
4 compromise of disputed potential liability and to avoid the risk and expense of continued litigation
5 and neither the stipulation nor this consent judgment shall constitute an admission of liability by FDR
6 or any of the other defendants or evidence of any fact or claim alleged in the complaint, and nothing
7 herein may be used against the defendants by any non-party to this consent judgment in any other
8 proceeding of any nature.

9 4. Pursuant to Business and Professions Code sections 17203 and 17535 and Financial Code
10 sections 12105 and 12307.1, FDR shall continue to use the following procedures for those clients
11 who reside in California when FDR engages in the business of debt settlement:

12 A. Each client will continue to own a separate federally insured account where they
13 may accumulate money for the purposes of (i) funding settlement payments to their respective
14 creditors and (ii) paying FDR’s fees, and will open and maintain those accounts in their own names
15 and not in FDR’s name.

16 B. At no time will FDR have the authority to withdraw, transfer, or otherwise have
17 control over any funds saved by clients in their respective accounts (although this provision shall not
18 impair or affect FDR’s ability to enter into settlement negotiations with clients’ creditors, to negotiate
19 settlements on behalf of its clients or receive fees from such accounts as specifically authorized by
20 clients).

21 C. Clients will continue to expressly authorize every transaction involving the
22 accounts where they accumulate money, including any settlement payments to their respective
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1 creditors and all fee payments to FDR (such authorization for fee payments may be made in advance,
2 including at the time the client enters into his or her agreement with FDR).

3 D. Clients will continue to make settlement payments to their respective creditors
4 directly from their respective accounts and not through FDR.

5 E. Clients will continue to be notified of every recommended settlement with a
6 creditor obtained by FDR on their behalf and will expressly approve every settlement payment from
7 their respective bank accounts before any settlement payment is made to such creditor. In connection
8 with this obligation, certain negotiated settlements may entail multiple payments over a period of
9 time, and the client's initial approval of any such settlement shall be sufficient to authorize the
10 contemplated payments to follow (and separate approvals shall not be necessary for each ensuing
11 installment).

12 F. Clients will continue to have the ability to terminate the program at any time,
13 without penalty or payment of additional program fees.

14 G. FDR shall continue to accurately, clearly and conspicuously disclose in substance
15 the following prior to entering into an agreement to provide the services described in paragraph 4:

16 i. That it will take time, and in many cases 6-9 months, before FDR will begin
17 negotiations with a client's creditors and before the client will begin making payments to creditors;

18 ii. All fees charged by FDR for this program and when those fees will be
19 collected;

20 iii. FDR's termination policies;

21 iv. How clients can obtain information about the status of their accounts.

22 H. As to all California residents who enter into a debt settlement agreement with FDR
23 as a result of a telephonic solicitation, FDR shall continue to:

24 i. Provide a written contract to the client;

1 ii. Advise the client in writing, upon entering into the contract, that he or she
2 has three (3) business days from that date to cancel the contract. This written advisement shall
3 appear in bold type in close proximity to the client’s signature line on the contract;

4 iii. Provide the client with a “Notice of Cancellation” form which can be
5 delivered, mailed or sent by facsimile to FDR’s stated business address no later than midnight of the
6 third business day after the date on which the contract was signed;

7 iv. Refund all fees paid by a client who uses this procedure to cancel the
8 contract within three (3) business days from entering into the contract.

9 These provisions in paragraph 4 shall not prevent FDR from adopting additional procedures
10 that are not inconsistent with the provisions listed above or with applicable California or federal laws
11 or regulations. If California or federal laws or regulations applicable to FDR’s business in California
12 are enacted subsequent to the date of entry of this consent judgment, the provisions listed above shall
13 be subordinate to those requirements mandated or practices permitted by such subsequent legislation
14 or regulation.

15 5. Pursuant to Business and Professions Code section 17206 FDR shall pay the San Mateo
16 County District Attorney’s Office Ninety Thousand Dollars (\$90,000) for alleged violations of Civil
17 Code sections 1689.5 et seq., as set forth in the complaint. This payment shall not constitute an
18 admission or finding of liability, and is being agreed to because it is the policy of the San Mateo
19 County District Attorney’s Office to require a payment under Business and Professions Code section
20 17206 for the resolution of actions brought under Business and Professions Code section 17200.
21 FDR shall also pay the San Mateo County District Attorney’s Office the additional sum of One
22 Hundred Sixty Thousand Dollars (\$160,000) as reimbursement of costs. FDR shall pay the
23 Department of Corporations Two Hundred Thousand Dollars (\$200,000) as reimbursement of costs.
24 These respective sums shall be paid on the date of entry of judgment in the form of cashier’s checks
25 payable to: (i) the “District Attorney of San Mateo County” and delivered to the District Attorney’s

1 Office, 400 County Center, 3rd Floor, Redwood City, CA 94063, Attention: Chuck Finney, Deputy
2 District Attorney; and (ii) the “Department of Corporations” and delivered to the Department of
3 Corporations, 71 Stevenson Street, Suite 2100, San Francisco, CA 94105, Attention: Joan E. Kerst,
4 Senior Corporations Counsel.

5 6. FDR shall fund, carry out and complete a refund program as described below:

6 A. FDR shall allocate Five Hundred Thousand Dollars (\$500,000) for refunds
7 (“Refund Fund”). This amount shall be deposited in a separate bank account in Silicon Valley Bank
8 N.A. on the date of entry of this consent judgment and shall be used solely for refunds or in
9 accordance with paragraph 7 as provided herein. FDR shall bear the administrative costs of this
10 refund program.

11 B. “Refund Eligible Clients” shall be persons who (i) entered into agreements for debt
12 settlement services with FDR during the period of time from November 1, 2004 through May 31,
13 2008 and (ii) were California residents at the time they entered into such debt settlement agreements.
14 Notwithstanding the previous sentence, Refund Eligible Clients shall not include any client who (i)
15 completed the FDR program by having paid off all debts through the program that he or she brought
16 into the program, (ii) received more in settlement benefits than he or she paid for program fees or (iii)
17 had, as of the Mailing Date (defined below), received a refund of at least fifty percent (50%) of the
18 fees paid by such person to FDR. For purposes of this paragraph, the term “settlement benefits”
19 means the aggregate dollar amount of debt reduction achieved by FDR, at the time of each
20 settlement, for the client.

21 C. Within thirty (30) days from the entry of this consent judgment, FDR shall prepare
22 a written list of Refund Eligible Clients, which list shall contain each Refund Eligible Client’s name,
23 last known address and total fees paid to FDR and furnish that list to the San Mateo County District
24 Attorney’s Office and the Department of Corporations.

1 D. No later than twenty (20) days from the submission of the list of Refund Eligible
2 Clients (hereinafter the “Mailing Date”), FDR shall send a Refund Offer Letter, in the form attached
3 hereto as Exhibit 1 (hereinafter “Letter”), by either: (i) electronic mail, for any current client as to
4 whom FDR has a current electronic mail address; or (ii) First Class United States Mail to the last
5 known address of each other Refund Eligible Client. The Letter shall be accompanied by a “Refund
6 Request Claim,” which shall be in the form attached hereto as Exhibit 2, and a “Contingent Release
7 Form,” which shall be in the form attached hereto as Exhibit 3. In addition, FDR shall designate a
8 toll-free telephone number for the purpose of responding to inquiries from Refund Eligible Clients,
9 which toll-free telephone number shall be staffed during business hours by a member of FDR’s
10 Distribution Processing Team.

11 E. All Refund Eligible Clients who return a signed Contingent Release within sixty
12 (60) days following the Mailing Date (hereinafter the “Cutoff Date”) shall be eligible to receive a
13 Refund Payment in the amount provided in paragraph 6.F below (hereinafter “Refund Recipients”).
14 Thereafter, no further request for a Refund Payment shall be honored.

15 F. The amount of Refund Payment which each Refund Recipient shall receive shall be
16 determined by the number of Refund Recipients who make a timely claim and the amount of fees
17 which such Refund Recipients paid to FDR, pursuant to the following formula: Each Refund
18 Recipient who files a timely claim shall receive a portion of the Refund Fund that is directly
19 proportional to the amount of fees that that Refund Recipient paid to FDR compared to the total
20 amount of fees paid by all Refund Recipients who file timely claims. No Refund Recipient shall
21 receive a refund pursuant to this consent judgment that is greater than fifty percent (50%) of the fees
22 that he or she paid to FDR.

23 G. Within 120 days from the Cutoff Date, FDR shall take the following actions with
24 respect to those persons who are determined to be Refund Recipients: Send a check for the amount
25 of the Refund Payment as calculated pursuant to paragraph 6.F above by First Class United States

1 Mail to the last known address of such Refund Recipient. Each such check shall be honored for a
2 period of ninety (90) days after the date of issuance, after which time FDR shall instruct Silicon
3 Valley Bank, N.A. to cancel and dishonor such check(s). Any Refund Payment that is not negotiated
4 within ninety (90) days after the date of execution shall be considered abandoned by the Refund
5 Recipient to whom it was sent.

6 H. Within two hundred ten (210) days from the Cutoff Date, FDR shall prepare and
7 submit to the San Mateo County District Attorney's Office and the Department of Corporations a
8 written record of (i) all Refund Eligible Clients who received a Refund Payment, including each such
9 client's name, address, the amount of payment and the refund check number; (ii) all Refund Eligible
10 Clients who received a Refund Payment but did not negotiate the check sent to such Refund Eligible
11 Client, including each such client's name, address, the amount of payment and the refund check
12 number; and (iii) all Refund Eligible Clients who did not receive a Refund Payment, including each
13 such client's name and address.

14 I. The documents described in this paragraph 6 shall be the only documents that FDR
15 sends to Refund Eligible Clients; provided, however, that nothing in this paragraph 6.I shall prevent
16 FDR from responding in writing to an inquiry from any Refund Eligible Client or third party,
17 provided that such response is factual.

18 J. FDR shall keep written records of each action described above and taken with
19 respect to each Refund Eligible Client and shall, upon request, furnish a copy of such records and a
20 copy of bank statements relating to the bank account created pursuant to this consent judgment to the
21 San Mateo County District Attorney's Office and/or the Department of Corporations.

22 7. Within thirty (30) days after all Refund Payments have either been paid to Refund Eligible
23 Clients or considered abandoned pursuant to the terms of paragraph 6.G, all remaining amounts in the
24 Refund Fund which have not been refunded to FDR's Refund Eligible clients, if any, shall be divided
25 equally between the San Mateo County District Attorney's Office and the Department of

1 Corporations, as further reimbursement of costs. With regard to any such amounts remaining in the
2 Refund Fund, FDR shall send checks payable to those entities to the San Mateo County District
3 Attorney's Office, 400 County Center, 3rd Floor, Redwood City, CA 94063, Attention: Chuck
4 Finney, Deputy District Attorney; and the Department of Corporations, 71 Stevenson Street, Suite
5 2100, San Francisco, CA 94105, Attention: Joan E. Kerst, Senior Corporations Counsel, respectively.

6 8. All written records required pursuant to this consent judgment shall be maintained by FDR
7 for a period of five (5) years after the date of entry of this consent judgment. Such records shall be
8 made available for inspection and copying by representatives of the San Mateo County District
9 Attorney's Office and/or the California Department of Corporations upon reasonable, written notice.

10 9. FDR shall advise all of its officers, directors, partners and employees in California of the
11 provisions of paragraph 4 of this consent judgment and prepare and maintain written records of such
12 advisement. These records or legible copies thereof shall be retained by FDR for a period of five (5)
13 years after the date of entry of this judgment and shall be available for inspection, by representatives
14 of the San Mateo County District Attorney's Office and the Department of Corporations, upon
15 reasonable written notice.

16 10. The parties waive the right to appeal this consent judgment both as to form and content.

17 11. All parties shall bear their own costs and attorneys' fees, except as provided herein.

18 12. Within five (5) court days of the date this consent judgment is entered, the Department of
19 Corporations shall withdraw the Desist and Refrain Order issued by the California Commissioner of
20 Corporations on May 29, 2008 (the "D&R Order") against Defendants.

21 13. The consent judgment shall have a res judicata effect and shall bar any further civil or
22 administrative action that may be brought by the California Department of Corporations or the San
23 Mateo County District Attorney against Defendants under the Business and Professions, Financial or
24 Civil Codes based on the conduct alleged in the complaint herein, in the D&R Order or in the
25 pleadings in *People vs. Freedom Debt Relief, et al. Superior Court of California, County of San*

1 Francisco, No. CPF-09 509 190, to the extent such acts or practices occurred prior to the date of entry
2 of this consent judgment. Within five (5) court days of the date this consent judgment is entered, the
3 Department of Corporations shall dismiss with prejudice the action entitled *People vs. Freedom Debt*
4 *Relief, et al., Superior Court of California, County of San Francisco No. CPF-09 509 190* (the “San
5 Francisco Action”), with each party to bear its own costs and attorneys’ fees therein.

6 14. Jurisdiction is retained for purposes of enabling any party to this consent judgment to
7 apply to the court at any time for such further orders and directions as are necessary or appropriate
8 for carrying out this consent judgment, for the modification of any of the non-monetary orders herein,
9 for the enforcement of compliance herewith and for punishment of violations hereof.

10 15. This consent judgment shall take effect immediately upon entry hereof.

11
12 Dated: 12/22/09

Carol L. Mittlesteadt
JUDGE OF THE SUPERIOR COURT

13
14 Approved as to form and content.

15
16 Dated: 12/22/09

Chuck Finney, Deputy District Attorney

17
18 Dated: 12/22/09

Alan S. Weinger, Deputy Commissioner
Department of Corporations
Attorneys for Plaintiff

19
20
21 Dated: 12/22/09

Fenwick & West LLP, by Kevin P. Muck,
Attorneys for Freedom Debt Relief, LLC,
Freedom Debt Relief, Inc.,
Freedom Financial Network, LLC,
Alivio Holdings, LLC,
Bills.Com, Inc., Bills.Com, LLC,
Freedom Tax Relief, LLC, and
Alivio Mortgage, LLC,

1 Dated: 12/22/09

2 Law Offices of Dek Ketchum, by Dek Ketchum
3 Attorneys for Freedom Debt Relief, LLC,
4 Freedom Debt Relief, Inc.,
5 Freedom Financial Network, LLC,
6 Alivio Holdings, LLC,
7 Bills.Com, Inc.,
8 Bills.Com, LLC,
9 Freedom Tax Relief, LLC, and
10 Alivio Mortgage, LLC

11 Dated: 12/15/09

12 Law Offices of Allen Ruby, by Allen Ruby,
13 Attorneys for Andrew Houser and Brad Stroh

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FREEDOM DEBT RELIEF – REFUND OFFER LETTER

Date: (Insert date mailed)

Dear (Insert Name and Address of Refund Eligible client):

Freedom Debt Relief, LLC (“FDR”) has recently entered into a Consent Judgment in connection with San Mateo County Superior Court Case No. CIV 477991. While there was no finding of liability or wrongdoing in the case, in order to resolve the action, FDR agreed to provide refunds to a segment of its client base. Because you were a California resident who entered into an agreement for debt settlement services with FDR between November 1, 2004 and May 31, 2008, you may be eligible to receive a partial refund of the fees that you paid to FDR. The amount of the partial refund will be determined based on the amount of the fee that you paid and the number of persons who make claims for refund money. If you wish to make a claim for a partial refund, fill out, date and sign the attached Refund Request Claim and Contingent Release Form and mail them to: Freedom Debt Relief, LLC, ATTN: ROBERT LINDERMAN, 1875 S. Grant Street, Suite 450, San Mateo, California 94402 in the enclosed postage paid envelope. You must mail the Refund Request Claim and Contingent Release Form no later than sixty (60) days after the date of this letter to be eligible to receive a partial refund. After you mail the Refund Request Claim and Contingent Release Form, you need take no further action. If you are determined to be entitled to a partial refund, it will be mailed to you within approximately seven (7) months. The Contingent Release Form will only become effective if and when you cash or deposit the partial refund check.

We appreciate the opportunity to serve you, and please address any questions to the phone number below: Freedom Debt Relief Refund Administrator, Telephone: 800 -544-7211, extension 16265.

1 **EXHIBIT 1**

2 **FREEDOM DEBT RELIEF – REFUND REQUEST CLAIM**

3
4 I _____ (clearly print your name), would like to claim a partial refund of the
5 fees that I paid to Freedom Debt Relief, LLC. The partial refund check may be sent to me at the
6 address listed on the Refund Offer Letter unless I provide a new address below (print clearly):

7 _____ (Number and Street)

8 _____ (City)

9 _____ (State and Zip Code)

10 I understand that when I receive my partial refund check, I must cash or deposit it within 90 days of
11 the date of its issuance or the check will no longer be honored and my right to a partial refund under
12 this program will have expired. I further understand that I am not entitled to any refund unless this
13 request is accompanied by a signed and dated Contingent Release Form

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15 _____ Signature _____ Date
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1 **EXHIBIT 2**

2 **FREEDOM DEBT RELIEF – CONTINGENT RELEASE FORM**

3 I/We, former/present client(s) of Freedom Debt Relief, LLC (“FDR”), in consideration of my
4 receipt of a partial refund check from FDR and my cashing or depositing of the partial refund check,
5 acknowledge and agree to a general release of FDR for all claims I/We have or may have for
6 damages or losses (whether known or unknown, foreseen or unforeseen) against FDR and its
7 affiliated entities, officers, directors, partners, agents, employees, assignees, and successors in interest
8 (hereafter FDR) regarding FDR’s debt settlement services on my/our behalf on or prior to (Insert date
9 of entry of consent judgment). I/We thereby waive application of California Civil Code section
10 1542. I/We certify that I/We have read the following provisions of Civil Code section 1542:

11 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
12 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
13 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
14 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
15 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

16 I/We understand and acknowledge that in consequence of this waiver of Civil Code
17 Section 1542, even if I/We should eventually suffer additional damages arising out of my/our having
18 previously entered into a contract with FDR, I/We will not be able to make any claim for those
19 damages. Furthermore, I/We acknowledge that I/We intend these consequences even as
20 to claims for damages that may exist as of the date of this release but that I/We do not know
21 exist, and that if known, would materially affect my/our decision to execute this release,
22 regardless of whether my/our lack of knowledge is the result of ignorance, oversight, error,
23 negligence, or any other cause.

24 I/We understand that this Contingent Release is a compromise and shall not be construed as
25 an admission of any fact, claim, or allegation of liability or responsibility on the
part of FDR to me/us.

I/We acknowledge and agree that I/We have been advised to consult an attorney in

1 connection with this Contingent Release and have carefully read and fully understand this
2 Contingent Release and its legal effect and knowingly and voluntarily agree to all the terms
3 in this Contingent Release and to be legally bound thereby. Moreover, if any provision of this
4 Contingent Release is held by a competent jurisdiction to be invalid, void, or unenforceable, the
5 remaining provisions will continue in full force and effect without being impaired or
6 invalidated in any way.

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8 Dated: _____
9 Client

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11 _____
12 Client

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Dated:
Freedom Debt Relief, LLC

By: _____

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EXHIBIT 3

1 James P. Fox, District Attorney (State Bar No. 45169)
County of San Mateo, State of California

2 John E. Wilson, Deputy District Attorney in Charge
Chuck Finney, Deputy District Attorney

3 400 County Center, 3rd Floor
Redwood City, California 94063

4 Telephone: (650) 363-4097

5 Preston DuFauchard, California Corporations Commissioner
Alan S. Weinger, Deputy Commissioner

6 Joan E. Kerst, Senior Corporations Counsel (State Bar No. 123351)
71 Stevenson Street, Suite 2100

7 San Francisco, California 94105

8 Telephone: (415) 972-8547

9 Attorneys for Plaintiff

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11
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF SAN MATEO

14 THE PEOPLE OF THE STATE OF CALIFORNIA

15 Plaintiff,

16 v.

17 FREEDOM DEBT RELIEF, LLC, a Delaware Limited
Liability Company, et al.

18 Defendants.
19

No. CIV477991

**STIPULATION FOR
ENTRY OF
CONSENT JUDGMENT**

20 It is hereby stipulated by and between plaintiff, the People of the State of California,
21 appearing through its attorneys James P. Fox, District Attorney of San Mateo County, John E.
22 Wilson, Deputy District Attorney In Charge and Chuck Finney Deputy District Attorney, and Preston
23 DuFauchard, California Corporations Commissioner, Alan S. Weinger, Deputy Commissioner and
24 Joan E. Kerst, Senior Corporations Counsel, and defendants FREEDOM DEBT RELIEF, LLC, a
25

1 Delaware Limited Liability Company; FREEDOM DEBT RELIEF, INC., a California Corporation;
2 FREEDOM FINANCIAL NETWORK, LLC, a Delaware Limited Liability Company; ALIVIO
3 HOLDINGS, LLC, a Delaware Limited Liability Company; BILLS.COM, INC., a Delaware
4 Corporation; BILLS.COM, LLC, a Delaware Limited Liability Company; FREEDOM TAX
5 RELIEF, LLC, a Delaware Limited Liability Company; and ALIVIO MORTGAGE, LLC, a
6 Delaware Limited Liability Company, appearing through their attorneys Fenwick & West LLP by
7 Kevin P. Muck and Christopher J. Steskal and Law Offices of Dek Ketchum by Dek Ketchum, and
8 defendants ANDREW HOUSSER, and BRAD STROH appearing through their attorneys Law
9 Offices of Allen Ruby by Allen Ruby; that the consent judgment, a copy of which is attached hereto
10 and by reference made a part hereof, may be entered in the above captioned matter. This stipulation
11 and the consent judgment may be signed by counsel and by the parties in counterpart.

12
13 Respectfully submitted,

14 James P. Fox, District Attorney

15 Dated: 12/22/09

16 By _____
17 Chuck Finney, Deputy District Attorney

18 Preston DuFauchard, California Corporations
19 Commissioner

20 Dated: 12/21/09

21 By _____
22 Alan S. Weinger, Deputy Commissioner

23
24 Attorneys for Plaintiff
25

1 Dated: 12/21/09

Fenwick & West LLP, by Kevin P. Muck,
Attorneys for Freedom Debt Relief, LLC,
Freedom Debt Relief, Inc.,
Freedom Financial Network, LLC,
Alivio Holdings, LLC,
Bills.Com, Inc.,
Bills.Com, LLC,
Freedom Tax Relief, LLC, and
Alivio Mortgage, LLC

7 Dated: 12/16/09

Law Offices of Dek Ketchum, by Dek Ketchum
Attorneys for Freedom Debt Relief, LLC,
Freedom Debt Relief, Inc.,
Freedom Financial Network, LLC,
Alivio Holdings, LLC,
Bills.Com, Inc.,
Bills.Com, LLC,
Freedom Tax Relief, LLC, and
Alivio Mortgage, LLC

13 Dated: 12/15/09

Law Offices of Allen Ruby, by Allen Ruby,
Attorneys for Andrew Houser and Brad Stroh

16 Dated: 12/16/2009

Andrew Houser, Co-Chief Executive Officer
Freedom Debt Relief, LLC

19 Dated: 12/16/2009

Brad Stroh, Co-Chief Executive Officer
Freedom Debt Relief, LLC

21
22
23
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25

1 James P. Fox, District Attorney (State Bar No. 45169)
2 County of San Mateo, State of California
3 Hall of Justice 400 County Center, Third Floor
4 Redwood City, CA 94063
5 By Chuck Finney, Deputy
6 Telephone: (650) 363-4097

7 Preston Dufauchard, California Corporations Commissioner
8 Alan S. Weinger
9 Acting Deputy Commissioner
10 Joan E. Kerst (State Bar No. 123351)
11 Senior Corporations Counsel
12 71 Stevenson Street, Suite 2100
13 San Francisco, California 94105
14 Telephone: (415) 972-8547

15 Attorneys for Plaintiff

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN MATEO

18	THE PEOPLE OF THE STATE OF)	Case Number:
19	CALIFORNIA,)	
20)	
21	Plaintiff,)	
22)	COMPLAINT FOR INJUNCTION, CIVIL
23	v.)	PENALTIES AND ANCILLARY RELIEF
24)	
25	FREEDOM DEBT RELIEF, LLC, a Delaware)	(Business and Professions Code sections 17200,
26	Limited Liability Company; FREEDOM DEBT)	17203, 17204, 17206, 17500, 17535, and 17536
27	RELIEF, INC. a California Corporation;)	Financial Code sections 12105, 12106, 12108,
28	FREEDOM FINANCIAL NETWORK, LLC, a)	12307.1 and 12316)
29	Delaware Limited Liability Company dbas)	
30	FREEDOM DEBT RELIEF, FREEDOM DEBT)	
31	HELP, FDR; FREEDOM MORTGAGE;)	
32	ALIVIO MORTGAGE, LLC, a Delaware)	
33	Limited Liability Company; ALIVIO)	
34	HOLDINGS, LLC, a Delaware Limited Liability)	
35	Company; BILLS.COM, INC., a Delaware)	
36	Corporation; BILLS.COM, LLC, a Delaware)	
37	Limited Liability Company dba BILLS.COM;)	
38	FREEDOM TAX RELIEF, LLC, a Delaware)	
39	Limited Liability Company; ANDREW)	
40	HOUSSER, an individual, BRAD STROH, an)	
41	individual, and DOES 1 through 25, inclusive,)	
42	Defendants.)	
43)	
44)	

1 The People of the State of California appearing by and through James P. Fox, District
2 Attorney of San Mateo County, by Chuck Finney, Deputy District Attorney, and Preston DuFauchard,
3 California Corporations Commissioner, by Alan S. Weinger, Acting Deputy Commissioner, alleges
4 upon information and belief:

5 **I.**

6 **JURISDICTION AND VENUE**

7 1. The authority of the San Mateo County District Attorney to bring this action is derived
8 from the statutory law of the State of California, specifically Business and Professions
9 (hereinafter, B&P) Code sections 17200, 17203, 17204, 17206, 17500, 17535, and 17536. The
10 California Corporations Commissioner brings this action under Government Code section 11180 and
11 Financial Code sections 12105, 12106, 12307.1, 12108 and 12316 to obtain preliminary and
12 permanent injunctive relief, rescission, restitution, disgorgement and other equitable relief for
13 violations of the Check Sellers, Bill Payers and Proraters Law (“CSBPPL”) and the California
14 Finance Lenders Law (“CFLL”) found respectively in sections 12000 et seq. and 22000 et seq. of
15 Financial Code (hereinafter, “FC”).

16 2. This Court has jurisdiction of the subject matter of this action and of the parties. Venue
17 as to all matters between the parties relating to this action is proper in this Court. Defendants
18 maintain systematic, continuous and substantial contacts with California consumers by their presence,
19 in the form of public advertisements, websites and their offices located in California. Defendants’
20 principal place of business is located at 1875 S. Grant Street, San Mateo, California and they have
21 transacted business within and from the County of San Mateo and elsewhere in the State of
22 California. Defendants’ activities involve their advertisements, publications and toll-free telephone
23 numbers to promote their services and solicit consumers to contact Defendants via the Internet to
24 become their clients online by use of interactive websites. Defendants’ websites provide consumers
25 the means of transacting business from their computers with Defendants. Defendants’ activities
26 conducted by means of websites are not passive, but highly interactive, systematic and continuous so
27 as to support a finding of general jurisdiction in this State. The violations of law alleged herein have
28 been carried out within and from the County of San Mateo and have victimized consumers

1 throughout the State of California and in other states. At all times herein mentioned and continuing
2 currently, Defendants advertised to and solicited consumers to purchase Defendants' services.

3 **II.**

4 **THE PARTIES**

5 3. Plaintiff, by this action and pursuant to B&P Code sections 17200, 17203, 17206, 17500,
6 17535, and 17536 and FC sections 12105, 12106, 12108, 12307.1 and 12316 seeks to enjoin the
7 Defendants from engaging in business practices alleged herein and seeks to obtain consumer
8 restitution, disgorgement, civil penalties and costs for Defendants' violations.

9 4. Individual Defendant Andrew Houser ("Houser"), with others, created, owned, directed
10 or controlled and continues to own, direct or control the entity Defendants. Previously, Houser
11 worked for Lorantec Systems, a suspended California corporation, and for Abenona Networks, Inc., a
12 dissolved corporation, both of which were located at the same address, 1052 Penleton Avenue,
13 Sunnyvale, California.

14 5. Individual Defendant Bradford Stroh ("Stroh") with Houser and others created, owned,
15 directed, or controlled and continues to own, direct or control the entity Defendants, described below.

16 6. In 2002 Houser and Stroh co-founded Defendant Freedom Financial Network, LLC
17 ("FFN"), a Delaware Limited Liability Company, with headquarters at 1875 S. Grant Street, San
18 Mateo, California.

19 7. The following year on March 10, 2003, Houser arranged for FFN to do business in
20 California by filing with the California Secretary of State's Office

21 8. Houser and Stroh state that FFN is the "umbrella company" and that its five divisions
22 include: "Bills.com, Freedom Debt Relief, Freedom Tax Relief, Freedom Student Loans and
23 Freedom Mortgage." Stroh states, "we're already one of the biggest companies in the industry. And
24 we're doing well."

25 9. On March 18, 2003, Houser filed a fictitious business name statement for another
26 company, Defendant Freedom Debt Relief ("FDR"). Houser described FDR's business as "Credit &
27 Debt Counseling Services".

28 10. Six months later on September 9, 2003, Houser filed with the California Secretary of

1 State's Office documents for Defendant Freedom Debt Relief, Inc., ("FDR, Inc.") stating it is a non-
2 profit corporation located at 1875 S. Grant Street, San Mateo, California. However, on June 29,
3 2006, the California Secretary of State suspended FDR, Inc., for its failure to comply with legal
4 requirements of the California Corporations Code and tax provisions. FDR, Inc. continued to remain
5 a suspended California corporation until the San Mateo's District Attorney's Office inquired about
6 the company in 2007. After these inquiries by the District Attorney's Office FDR, Inc. was revived
7 as a non-profit corporation and contemporaneously dissolved on February 1, 2008.

8 11. On October 29, 2004, Housser filed articles of organization with the California Secretary
9 of State's Office for Defendant Freedom Debt Relief, LLC ("FDR, LLC") stating it was a Delaware
10 Limited Liability Company.

11 12. Defendants FDR, Inc. and FDR, LLC also use the business names "Freedom Debt
12 Relief" and "FDR", operate in the same offices, through their affiliates or their websites and
13 hereinafter are designated "FDR".

14 13. One of the other "divisions" of FFN is Defendant Freedom Tax Relief, LLC, a Delaware
15 Limited Liability Company, which filed with the California Secretary of State's Office on October
16 29, 2004. Freedom Tax Relief, LLC ("FTR") also operates at 1875 S. Grant Street, San Mateo,
17 California and via its website, www.freedomtaxrelief.com. FTR offers to provide consumers bill
18 paying services that include ACH processing, returned check processing, and credit card processing.

19 14. In 2005 Housser and Stroh created Defendant Alivio Holdings, LLC purportedly to
20 act as FFN's parent entity or holding company. Alivio Holdings, LLC first filed with the California
21 Secretary of State's Office on January 10, 2005 and it is also located at 1875 S. Grant Street, San
22 Mateo, California. Housser and Stroh are the only members and managers of Alivio Holdings, LLC.

23 15. On November 14, 2005, Alivio Holdings, LLC acquired Defendant Bills.com to
24 provide bill payment services. Housser stated his companies, Alivio Holdings, LLC and FFN, were
25 very excited about the acquisition of Bills.com, viewed it as a key step in enhancing their brand and
26 profile in the consumer debt management industry and that they "were looking forward to entering
27 the fast growing bill payment space."

28 16. On June 21, 2006, Housser filed articles of incorporation with the California Secretary

1 of State's Office for Bills.com, Inc., also showing its business address as 1875 S. Grant Street, San
2 Mateo, California. On February 1, 2008, Housser filed a statement with the California Secretary of
3 State's Office listing himself as the president of Bills.com, Inc.

4 17. Then two months after creating Bills.com, Inc., on August 7, 2006, Housser filed the
5 articles of organization with the California Secretary of State's Office for Bills.com, LLC. Housser
6 listed himself as its member and manager of this limited liability company and stated its business
7 address was also located at 1875 S. Grant Street, San Mateo, California. Housser described the
8 business of Bills.com, LLC as "debt negotiation services."

9 18. Bills.com advertised on FFN's website that it offers a comprehensive Resource Center
10 on many different financial topics and provides various debt consolidation sources. Bills.com also
11 offers services that include debt consolidation, mortgage refinancing, bill payments, payment
12 protection insurance, and consolidated credit card bill payments. Both Housser and Stroh provide
13 audiovisual presentations to consumers on Bills.com's website. FFN's website provides a link to the
14 website for Bills.com. The Bills.com website fails to disclose if it is for Bills.com Inc. or Bills.com,
15 LLC or both entities. Bills.com states that since 2002 it has served more than 30,000 customers
16 nationwide while managing more than \$500 million in consumer debt.

17 19. On September 4, 2007, Housser obtained from the California Department of Real
18 Estate ("DRE") a real estate broker's license (DRE number 01815317) for Bills.com, Inc. Housser
19 also has a real estate license (DRE number 01758735) and is the designated officer of the
20 corporation, Bills.com, Inc. The locations for both Housser's personal California real estate license
21 and the California real estate broker's license for Bills.com, Inc. are at 1875 Grant Street, San Mateo,
22 California.

23 20. Affiliated with both FDR and FFN is Defendant Alivio Mortgage, LLC, a Delaware
24 Limited Liability Company that filed with the California Secretary of State's Office on October 29,
25 2004. It is also located at 1875 Grant Street, San Mateo, California. Alivio Mortgage, LLC is 100%
26 owned by Alivio Holdings, LLC.

27 21. On September 19, 2005, Alivio Mortgage, LLC applied for a license as a California
28

1 Finance Lender and Broker from the Commissioner of the California Department of Corporations,
2 which has jurisdiction over and regulates finance lenders and brokers pursuant to the CFLL.

3 22. On December 13, 2005, the Commissioner granted a license as a finance lender and
4 broker (Department of Corporations CFLL File No 605-3240) to Alivio Mortgage, LLC, which is
5 conditioned on its compliance with the applicable provisions of the Financial Code. After being
6 granted the license Alivio Mortgage, LLC moved its location without approval from the Department
7 as required by CFLL. In fact, Alivio Mortgage, LLC did not even inform the Department about its
8 desire to change its place of business and violated FC section 22153.

9 23. Alivio Mortgage, LLC as a licensee was required at all times to maintain a minimum
10 net worth of at least \$25,000 pursuant to FC section 22104. Alivio Mortgage, LLC's income
11 statement for 2007 shows a net loss of over \$115,000. Its balance sheet dated December 31, 2007,
12 shows it failed to meet the statutory net worth requirement and instead had a net worth deficiency
13 of over \$4,600. Alivio Mortgage, LLC violated FC section 22104.

14 24. Alivio Mortgage, LLC, co-located with the other above described businesses of
15 Housser and Stroh, conducted business at a place in which business other than making loans is
16 engaged in without either written notification to and the authorization of the Department. This
17 activity violated FC section 22154.

18 25. Alivio Mortgage, LLC advertises its mortgage services as mortgage brokers, mortgage
19 companies and real estate loans through the Yellow Pages. Alivio Mortgage, LLC marketed
20 its services via the Internet, a call center and through other organizations. Alivio Mortgage, LLC did
21 not disclose to the Commissioner its advertisement materials, including its website as legally
22 required. This activity violated California Code of Regulations section 1550.

23 26. On April 2, 2008, Housser filed with the California Secretary of State's Office for his
24 company, Freedom Lending, LLC, listing its address at 1875 S. Grant Street, San Mateo, California.

25 27. The individual and entity Defendants described above (hereafter collectively
26 "Defendants") are owners, operators, managers, and/or directors of a businesses that advertises on the
27 Internet and solicits consumers in California and in other states of the United States (hereafter, "other
28 states") who have debt problems claiming that they will help consumers by negotiating settlements

1 with consumers' creditors who, for the most part, are credit card companies. Defendants solicit
2 consumers to enter into debt reduction or bill paying contracts and agreements (hereafter,
3 agreements).

4 28. During all relevant times since 2003 Housser and Stroh were the officers, directors,
5 managers and operations principals of the entity Defendants. All the entity Defendants were co-
6 located and operated from the same business address, namely 1875 S. Grant Street, San Mateo.
7 Housser and Stroh were also the owners, shareholders, members and control persons of the entity
8 Defendants. Housser and Stroh are the only signatories on all the bank accounts held for the above
9 named entities. Housser and Stroh failed to file the fictitious names they use, as required by law.
10 The only fictitious name statement that was filed in San Mateo County for Defendants expired at
11 least eight months ago. All of these entities and fictitious business names used by Housser and Stroh
12 functioned as their alter egos. Housser and Stroh controlled all the fees, commissions and
13 compensation being paid to them or their alter egos. There is such a unity of interest, ownership,
14 dominion and control of the entity Defendants by Housser and Stroh that any corporate, company, or
15 entity form should be disregarded. Housser and Stroh using the various entity Defendants as their
16 alter egos violated numerous provisions of the California law.

17 29. At all times herein mentioned and continuing, Defendants Housser and Stroh engaged in,
18 caused, permitted, and/or ratified the unfair competition activities of FDR and FFN and made, caused
19 to be made, permitted, and/or ratified untrue or misleading statements and material fact omissions to
20 consumers in order to induce consumers to purchase Defendants' debt services in violation of B& P
21 Code sections 17200 and 17500.

22 30. The Defendants made or caused to be made and continue to make or cause to be made
23 untrue or misleading statements and material fact omissions and engaged in and continue to engage in
24 unfair competition as herein alleged in San Mateo County violating the rights of consumers in
25 California as well as consumers in other states.

26 31. The Defendants engaged in, caused and/or ratified violations of the CSBPPL and CFLL
27 as herein alleged violating the rights of consumers in California and other states.

28 32. The websites soliciting consumers that describe the debt reduction program of

1 Defendants do not disclose whether the debt reduction program is with Housser's fictitious business
2 name, FDR, FDR , Inc., FDR, LLC, or one of their affiliates, such as Century Negotiation, Inc.
3 Debtmerica, which also uses the name DebtAmerica. Often consumers do not know which company
4 they are dealing with because the websites for FFN, FDR, their affiliates and others are linked or
5 similar in appearance and content by offering a "Debt Reduction Guarantee" that a consumer will be
6 completely debt free in as little as 12-36 months.

7 33. Plaintiff is informed and believes and on that ground alleges that Defendants, Does 1
8 through 25, inclusive, are persons, corporations, partnerships, companies or other entities who at all
9 times mentioned herein, have acted and are continuing to act in concert with the Defendants named
10 in this Complaint, and each of them has participated in the acts and transactions referred to below,
11 and each of them is responsible for said acts and transactions. The true names and capacities of
12 Does 1 through 25, whether individuals, corporations or otherwise, are unknown to the Plaintiff, who
13 therefore sues said Defendants under such fictitious names, pursuant to the provisions of section 474
14 of the California Code of Civil Procedure. The Plaintiff hereby asks leave of the Court to amend this
15 Complaint to allege the true names and capacities of such Defendants at such time as the same have
16 been ascertained.

17 34. Plaintiff is informed and believes, and on such information and belief alleges that, at all
18 times mentioned herein, each Defendant is and was, the agent, servant, employee, partner, and/or
19 joint venturer of the other Defendants, and that each Defendant, in performing the acts alleged in this
20 Complaint, was acting within the scope of such agency, service, employment, partnership or joint
21 venture, and with the knowledge, permission, and/or consent of each and every other Defendant.

22 The Plaintiff is informed and believes, and on such information and belief alleges that each
23 Defendant alleged to have committed any act, did commit the same pursuant to a common plan and
24 scheme among all Defendants, and did so as the agent for each and all of its co-defendants and
25 pursuant to and in furtherance of the common plan and scheme.

26 35. Whenever reference is made in this Complaint to "Defendants" doing any act or omission,
27 the allegation shall mean the act of each Defendant acting individually, jointly and severally and the
28 conspiring of these Defendants to do so.

1 36. Whenever reference is made in this complaint to any act or omission, and/or the making
2 of or causing the making of untrue or misleading statements and/or omission of material facts by
3 Defendants such reference shall be deemed to include Defendants' managers, directors, employees,
4 agents, or representatives who authorized, or ratified such acts or omissions, untrue or misleading
5 statements and/or omission of material facts while actively engaged in the management, direction or
6 control of the affairs of said Defendants or while acting within the course and scope of their duties.

7 37. At all times herein mentioned and continuing, each Defendant has made, caused,
8 permitted others to make, and/or ratified the untrue or misleading statements and material fact
9 omissions alleged in the First Cause of Action in this Complaint, and has committed the acts, caused
10 others to commit the acts, permitted others to commit the acts, or ratified the acts of others alleged in
11 the Second, Third, and Fourth Cause of Action in this Complaint.

12 38. At all times herein mentioned and continuing, Defendants, and each of them, knew or
13 realized that the other Defendants were engaging in or planned to engage in the violations of law
14 alleged in the causes of action in this Complaint. Knowing or realizing that other Defendants were
15 engaging in such unlawful conduct, each Defendant nevertheless facilitated and continued to
16 facilitate the commission of the unlawful conduct. Each Defendant intended to and continues to
17 intend to encourage and facilitate the commission of the unlawful conduct, and did encourage,
18 facilitate, aid, promote, or instigate the commission of unlawful conduct, and thereby, aided and
19 abetted and continues to aid and abet the other Defendants in unlawful conduct. The unlawful
20 conduct alleged in this Complaint was and is conduct the Defendants intended and did facilitate and
21 continue to do and facilitate or was and is the natural and reasonable consequence of the Defendants'
22 conduct.

23 39. Whenever reference is made in this complaint to "Defendants," such reference shall mean
24 the Defendants specified in paragraphs 4 through 38 of this complaint. Whenever reference is made
25 in this complaint to any act or omission of Defendants, such allegation shall mean acts done or
26 authorized by the officers, directors, agents and employees of the Defendant(s) while actively
27 engaged in the management, direction or control of the affairs of the Defendants and while acting
28 within the course and scope of their duties or employment. Each such act alleged to have been

1 committed by one Defendant is alleged to have occurred with the knowledge and ratification of all
2 other Defendants named in that cause of action. At all times herein mentioned and continuing, each
3 of the Defendants was and is the agent or employee of each of the remaining Defendants, and was
4 and is acting within the course and scope of such agency or employment in performing the acts herein
5 alleged. At all times herein mentioned and continuing, Defendants have engaged in a common
6 enterprise and common course of conduct the purpose of which was to make untrue or misleading
7 statements and material fact omissions, commit acts of unfair competition, and engage in violations
8 of the California Civil Code, the B&P Code, the CSBPPL, and the CFLL as alleged in the four causes
9 of action in this Complaint.

10 III.

11 DEFENDANTS' UNLAWFUL BUSINESS ACTIVITIES

12 40. Since at least 2003 and continuing thereafter, Defendants and their affiliates have offered
13 financial services to consumers including debt negotiation, debt reduction throughout the United
14 States. Defendants have promoted their services by a variety of means, including Internet web sites
15 via <http://www> that Defendants developed, maintain or accessed that include, but are not limited to
16 the following: bills.com, freedomdebtrelief.com, freedomdebt.net, financialfreedomnetwork.com,
17 debthelp.com, debtmerica.com, and debtamerica.com. Defendants' websites, advertisements or
18 solicitation materials state:

19 Our "Debt Reduction Program" is an innovative solution for consumers
20 struggling with large debt burdens. FDR uses debt negotiation to
21 dramatically lower both your debt levels and your monthly payments. . .

22 We can help you save more money than simple consumer Credit
23 Counseling while protecting you from the harsh impacts of bankruptcy.

- 24 • Be debt free in as little as 12-36 months!
- 25 • Lower debts down to as low as 50% of what you owe!
- 26 • Service Fee Money Back Guarantee
- 27 • Better alternative to bankruptcy, debt consolidation or credit counseling
- 28 • One Simple Monthly Payment

1 41. Defendants also use toll free telephone numbers and advertise through print and other
2 media in which they claim that they can negotiate a reduction in the amount a consumer owed to his
3 or her unsecured creditors by 40-60%, which would enable a consumer to pay off their debts for
4 substantially less than the amount owed. The ads or websites tell consumers to contact Defendants
5 for a description of their services of reducing credit card debt for an individual consumer.
6 Defendants invite consumers to FILL OUT A QUICK ONLINE FORM to “Get A Free Quote To See
7 How Quickly You Can Be Completely Debt Free” in 12-36 months.

8 42. In consumers’ initial telephone conversations with Defendants’ representatives, they
9 offer consumers a “Free Savings Consultation.” Consumers are asked to identify all of their
10 unsecured credit card accounts and the total respective amount owed. Defendants’ representatives
11 then calculate an amount for which Defendants would purportedly be able to settle the accounts –
12 often as low as forty percent (40%) of the balance on a consumers’ account. Defendants claimed that
13 this reduction will save consumers money and enable them to “Be Debt Free Fast.”

14 43. Defendants charge their clients upfront fees of hundreds of dollars that are usually fifteen
15 percent (15%) of the total amount of a consumer’s unsecured debt. Consumers were required to pay
16 the fee before Defendants perform any debt negotiation services for them.

17 44. Consumers were often instructed to stop making payments to all of their unsecured
18 creditors and to cease any communication with them indicating that creditors would be more willing
19 to settle for a reduced amount once consumers’ accounts were sufficiently delinquent.

20 45. Defendants also represented that they would contact and inform all of a consumer’s
21 unsecured creditors that they (Defendants) now represented the consumer. Consumers are required to
22 grant Defendants as “lawful attorney-in fact full power and authority to represent” and to act on
23 behalf of them, the “principal[s].” Defendants stated they “act in the principal’s name, place and
24 stead.”

25 46. Defendants claimed that they could cause creditors to cease contacting consumers and
26 negotiate directly with them. Consumers were informed to cease communicating with any of their
27 unsecured creditors who might attempt to contact them and to direct their creditors to Defendants.

28 47. Defendants represented that purchasing their services constituted “no risk” to consumers

1 because Defendants guaranteed that its services would produce the advertised results. Consumers
2 were told by Defendants that there were “no service fees unless we save you money.”

3 48. Defendants’ representations were false. Rather than negotiating a substantial reduction in
4 the amount owe, Defendants were usually unable to negotiate any substantial reduction. Instead
5 consumer’s failure to make payment or to respond to their creditors payment demands (pursuant to
6 Defendants instructions) typically resulted in an increased amount of debt due to late fees incurred, as
7 well as additional finance charges and possible over limit charges. In some cases, creditors also
8 increased consumer interest rates and decreased their credit lines. Others found that the creditors
9 were unwilling to settle for the percentage amount Defendants initially indicated.

10 49. Additionally, consumer’s respective credit reports were negatively affected due to
11 their creditors’ reports about the consumer’s non-payment, and over limit charges as well as late fees
12 charge offs, collections, litigation and levies or garnishments. Such negative comments and
13 information usually remain on a consumer’s credit report for up to seven (7) years.

14 50. Often Defendants did not even contact all of the consumers’ creditors to negotiate a
15 settlement. Thus, after months of being told that Defendants were settling their accounts, many
16 consumers found that creditors had sent their accounts to a collection agency, or had initiated legal
17 actions against them.

18 51. Defendants were unresponsive to consumers who attempted to contact them after
19 discovering a problem with Defendants’ services. For example, consumers who were seriously
20 concerned about the continuing dunning notices from creditors contacted Defendants only to find
21 their calls, emails, faxes, or letters were ignored.

22 52. Consumers who attempted to obtain a refund of the fees paid to Defendants for
23 their debt negotiation services, based on Defendants’ guarantee, have usually been unable to get their
24 money returned. In those instances where a partial refund was made consumers were required to sign
25 a questionable release that in essence prevents consumers from contacting regulators or muzzles and
26 dictates the response that consumers are required to give regulators.

27 53. The Department of Corporations has jurisdiction over and regulates bill payers and
28 proraters under the CSBPPL. FC section 12200, states:

1 No person shall engage in the business, for compensation, of selling
2 checks, drafts, money orders, or other commercial paper serving the
3 same purpose, or of receiving money as agent of an obligor for the
4 purpose of paying bills, invoices, or accounts of such obligor, or acting
5 as a prorater, nor shall any person, without direct compensation and
6 not as an authorized agent for a utility company, accept money for the
7 purpose of forwarding it to others in payment of utility bills, without
8 first obtaining a license from the commissioner.

6 54. The definition of prorater, found in FC section 12002.1, states:

7 A prorater is a person who, for compensation, engages in whole or in
8 part in the business of receiving money or evidences thereof for the
9 purpose of distributing the money or evidences thereof among creditors
10 in payment or partial payment of the obligations of the debtor.

11 55. All non-exempt bill payers and proraters in this state are required to be licensed by the
12 Commissioner. FDR, Freedom Debt Relief, Freedom Debt Relief, Inc., Freedom Debt Relief, LLC,
13 FFN; Freedom Tax Relief, LLC, Bills.com, Inc.; Bills.com, LLC; Bills.com; Housser, Stroh and their
14 affiliates can not satisfy the criteria to meet any statutory exemption from the CSBPPL licensing
15 requirement. During all relevant times they have been unlicensed and unauthorized to act as either
16 bill payers or proraters in the State of California.

17 56. On May 29, 2008, pursuant to FC section 12103 the Commissioner issued a Desist and
18 Refrain Order (“Order”), which required Defendants to, inter alia, cease from engaging in business as
19 a bill payer or prorater unless and until they are licensed or exempt. The Order was necessary, in the
20 public interest, for the protection of consumers and remains in full force and effect. Defendants were
21 served with the Commissioner’s Order and required to immediately comply with the Order. The
22 Order informed Defendants they had violated FC section 12200 by engaging as a bill payer or
23 prorater without a license or exemption. Along with the Order Defendants were informed of their
24 right to a hearing and given a copy of FC section 12103, but never went to a hearing on the merits.

25 57. Companies may seek an exemption from the licensing requirements of the CSBPPL
26 found in FC section 12200. FC sections 12100 and 12104 provide exemptions if, and only if, all the
27 legal obligations set forth in those sections have been met. The legal obligations set forth in FC
28 sections 12100 and 12104 are not elective, optional or discretionary but essential. Fulfillment of
these legal obligations is a prerequisite to establishing an exemption from licensure. Thus, for

1 Defendants to be exempt from licensure pursuant to FC section 12100 or 12104, the mandatory
2 conditions found in those sections must be met. Defendants cannot meet the legal requirements for
3 any licensing exemption.

4 58. The California Legislature imposes the burden of proving an exemption from the
5 licensing requirement on the one seeking the exemption. Defendants' burden of proving an
6 exemption is found in FC section 12101.5, which states, "[i]n any proceeding under this law the
7 burden of proving an exemption or exception from a definition is upon the person claiming it."

8 59. Defendants represented that they had approximately \$1 billion (\$1,000,000,000) under
9 Management in September 2007. Since Defendants charge a fee of approximately 15% of the debt
10 they manage, their unlicensed activities in violation of California law has resulted in revenues
11 exceeding \$150 million (\$150,000,000). The exact amount of salaries and benefits that Housser and
12 Stroh paid themselves has not been determined.

13 60. In November 2007, the Rhode Island Department of Business Regulation's Division of
14 Banking issued an order to Freedom Debt Relief and FFN to immediately cease and desist their
15 unlicensed debt management plan activities in their state and ordered them to refund all fees received
16 relating to all debt management plans currently being serviced.

17 61. In 2008 the State of Colorado contacted Defendants about their failure to comply with the
18 Colorado Debt Management Services Act (DMSA), §12-14.5-201, C.R.S. Defendants are unlicensed
19 and did not timely file to register as required by Colorado law DMSA § 12-14.5-204, C.R.S.
20 Moreover, it appears that they have violated the following legal requirements:

21 Agreement requirements, § 12-14.5-219, C.R.S. (neither FDR's current or
22 former agreements comply);

23 Disclosure requirements, §§ 12-14.5-217 & 220, C.R.S.;

24 Advertising requirements, § 12-14.5-230, C.R.S.; and,

25 Excessive upfront fees, § 12-14.5-223(d)(2)(A), C.R.S.

26 62. Freedom Debt Relief and FFN are unlicensed in other states. Defendants have not
27 disclosed the existence of the California, Rhode Island or Colorado regulatory actions and inquiries to
28 their clients, consumers or the public.

1 63. Defendants have engaged in and continue to engage in unlawful conduct, which has
2 victimized consumers residing in California as well as in other states. The Defendants were not
3 licensed or exempted from licensure to do business as a prorater, which is a violation of the CSBPPL.
4 The Defendants promise to offer consumers' relief from harassment from creditors or bill collectors
5 and to negotiate with consumers' credit card company's debt settlements as low as thirty to fifty
6 percent of the total outstanding debts of consumers. Defendants represent to consumers that their
7 total fees will be no larger than fifteen per cent of the amount Defendants have saved for consumers
8 in negotiating and settling consumers' debts with their creditors. Defendants' promises are illusory.
9 Defendants' solicitations result in agreements with consumers and consumers issuing a power of
10 attorney to Defendants to take control of consumers' funds representing that such funds will be
11 disbursed to consumers' creditors.

12 64. Pursuant to the terms of the FDR agreement with consumers, a consumer's funds are
13 deposited into a special bank account, which is controlled by Defendants, by the said power of
14 attorney issued by the consumers to Defendants. Defendants represent to consumers that from this
15 bank account, the consumers' creditors will be paid an amount, which will be negotiated by the
16 Defendants with the consumers' creditors. Funds are immediately taken from a consumer's bank
17 account on a monthly basis in amounts that Defendants refer to as a retainer fee, administrative fees
18 and service fee. Additionally, amounts are taken from the consumers' accounts and paid to
19 Defendants' affiliates.

20 65. Complaints of many consumers state that consumers' credit standing worsened after
21 entering the Defendants' debt program because of the Defendants failure to make contact with
22 creditors and begin negotiations for settlement of consumers' debts. The Defendants' said failure has
23 resulted in creditors assessing additional late fees, imposing other adverse consequences, and/or filing
24 collection lawsuits against consumers. Some consumers have complained that the Defendants' said
25 failure has caused the consumers to have to file for bankruptcy protection, which they would not have
26 had to do otherwise if they had not joined the Defendants' debt program.

27 66. The Defendants' advertisements and Internet and telephone solicitations of consumers to
28 enter into agreements with defendant FDR for debt reduction services have been made, or caused to

1 be made, and continue to be made or caused to be made from the Defendants' principal place of
2 business in San Mateo County, California. Such Internet and telephone solicitations have resulted
3 and continue to result in consumers responding by calling the Defendants' toll-free telephone number
4 and entering into agreements with FDR for the purchase of the Defendants' debt services. The
5 Defendants made, or caused to be made, and continue to make untrue or misleading statements and
6 material fact omissions and have engaged in and continue to engage in unfair competition and
7 unlawful business practices as herein alleged in the County of San Mateo, California, victimizing
8 consumers in California and in other states. During all times herein alleged and continuing, the
9 Defendants have solicited and continue to solicit consumers in the state of California to purchase
10 Defendants' debt services in violation of the California Civil Code as follows:

- 11 a) by failing to orally inform prospective consumers at the time the Defendants'
12 sales solicitation agreements for debt reduction negotiations were executed that
13 the consumers had the right to cancel these agreements without penalty or
14 obligation within three business days from the date of the transaction as required
15 by Civil Code section 1689.7(a)(1);
- 16 b) by failing to inform consumers in Defendants' agreements in the immediate
17 proximity to the consumer's signature, in a conspicuous statement in 10-point
18 boldface type, that the consumer had the right to cancel the transaction at any time
19 prior to midnight of the third business day after the date of the transaction as
20 required by Civil Code section 1689.7(a)(1); and,
- 21 c) by failing to inform consumers of their cancellation rights by failing to attach to
22 Defendants' agreements a "Notice of Cancellation" statement in duplicate, easily
23 detachable, containing the cancellation language, in 10-point type, as required by
24 Civil Code section 1689.7(c).

25 67. In addition, during all times herein mentioned alleged, the Defendants have conducted
26 and continue to conduct their debt reduction business in violation of the FC as follows:

- 27 a) by acting as a proratee and controlling consumers' monies (deposited into a
28 special bank account) for the purpose of distributing money among consumers'
creditors in payment or partial payment of consumers' debt obligations incurred
primarily with credit card companies, and failing to be licensed by the California
Department of Corporations as required by FC section 12200;
- b) by acting as a proratee and controlling consumers' monies (deposited into a
special bank account) for the purpose of distributing the monies among creditors
in payment or partial payment of consumers' debt obligations and charging
consumers amounts in excess of the statutory maximum found permitted by FC

1 section 12314; and,

2 c) by charging consumers a cancellation fee or termination penalty in violation of
3 FC section 12314.1.

4 **IV.**

5 **FIRST CAUSE OF ACTION**

6 **UNTRUE OR MISLEADING STATEMENTS**
7 **AND OMISSION OF MATERIAL FACTS**
8 **BUSINESS & PROFESSIONS CODE SECTION 17500**

9 68. Plaintiff alleges and incorporates by reference all allegations contained in paragraphs 1
10 through 67, as though set forth herein in their entirety.

11 69. Within three (3) years prior to the filing of this complaint and continuing, Defendants
12 have engaged in a practice to violate and violated B&P Code section 17500 by making, causing, or
13 ratifying untrue or misleading statements and omissions of material facts via the Internet and the
14 telephone to consumers in San Mateo County, California, throughout the State of California, and to
15 consumers in other states, in order to induce consumers to enter into FDR's agreements for the
16 purchase of Defendants' advertised debt reduction services. Defendants knew, or by the exercise of
17 reasonable care should have known, that these statements were untrue or misleading and/or omitted
18 to provide material facts at the time such statements were made or caused to be made. Such untrue
19 or misleading statements and the omission of material facts in violation of Civil Code section
20 1689.7(a)(1) include, but are not necessarily limited to, the following:

- 21 (a) failing to orally inform California consumers who responded to Defendants'
 - 22 advertisements and solicitations via the Internet and by the telephone at the time
 - 23 FDR's agreements for FDR's debt reduction services were executed that the consumers
 - 24 had the right to cancel or rescind the transactions without penalty or obligation within
 - 25 three business days from the date of the transaction;
- 26 (b) failing to provide to California consumers who entered into a FDR agreement for
 - 27 FDR's debt reduction services with a written agreement which contained in the
 - 28 immediate proximity to the space reserved for the purchaser's signature, a
 - conspicuous statement in a size equal to at least 10 point boldface type the following:

You, the buyer, may cancel this transaction at any time
prior to midnight of the third business day after the date

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of this transaction. See the attached notice of cancellation form for an explanation of this right.

- (c) failing to provide to California consumers who entered into a FDR agreement for FDR’s debt reduction services with a written contract or agreement to which was attached a completed form in duplicate, captioned “Notice of Cancellation”, easily detachable and containing in type of at least 10 point, the following:

"Notice of Cancellation"

Enter date of transaction _____(Date)
 You may cancel this transaction, without any penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____(name of seller) at _____ (Address of seller's place of business) not later than midnight of _____(Date). I hereby cancel this transaction _____(Date) _____(Buyer's signature),

- (d) Representing to consumers that FDR will aggressively work to settle consumers’ debts;
- (e) Representing to consumers that FDR has a guarantee of “Guarantee: Do not pay service fees unless we save you money”;
- (f) Representing to consumers that “With Freedom Debt Relief’s Debt Reduction Program, you can finally stop suffering and start living again.”;
- (g) Representing to consumers that “In a nutshell, you’ll deal with us and we’ll deal with your creditors. Our goal is to get each and every one of your creditors to settle for

1 pennies on the dollar.”;

- 2 (h) Representing to consumers that “FDR stands behind our service. If we can’t negotiate
3 your debts, you pay no fees. It’s that simple – you have nothing to lose but your debts.”;
- 4 (i) Representing to consumers that “Speaking with your creditors or collection agents is the
5 worst thing you can do. . . it only encourages them to call you instead of Freedom Debt
6 Relief and can impair our ability to settle your account. Creditors believe that they can
7 collect more money from you than from us, which is why they would rather speak to you
8 if you let them.”;
- 9 (j) Representing to consumers in reference to consumers’ creditors that “So we need to
10 emphasize that you should provide absolutely no other information, no matter what
11 they say.”;
- 12 (k) Representing to consumers that “Creditors, and particularly debt collectors, will say
13 almost anything to get you to speak to them instead of Freedom Debt Relief. For
14 example, they will tell you that ‘they never deal with Freedom Debt Relief’ or that
15 ‘Freedom Debt Relief does not return their calls.’ Do not believe them. We will
16 keep you fully informed of the negotiation process.”;
- 17 (l) Representing to consumers that “If a particular creditor continues to call you, notify
18 us immediately. In cases where a collection agent or collection attorney is
19 involved, we can issue an order to cease communication in accordance with Federal
20 Law (FDCPA). Be sure to record which creditor or collector contacted you, and
21 provide the name and telephone number of the person who called if you have it –
22 their harassment may help your settlement if they are breaking the law!”;
- 23 (m) Representing to consumers that “Guarantee of Services: . . . guarantees that it will,
24 during the Client’s plan period, negotiate, reduce, and deliver to Client a settlement
25 offer from Client’s creditors or else. . . will refund the fee paid (if any). . . .”;
- 26 (n) Representing to consumers that “Below is the checklist of things that you will need to
27 do before sending it back to me. Once you have all this information together, we will
28 start working for you right away.”;
- (o) Representing to consumers that FDR’s settlement rate is between 30 – 50 percent;
- (p) Representing to consumers that we will save you up to 70 percent, have you debt free in
about 24 – 30 months, or else we will refund the program fees at the end of the program;
- (q) Representing to consumers that “we are working hard to keep your creditors at bay
and to save you money.”;
- (r) Representing to consumers that “On average, Freedom’s Debt Reduction Program gets
you out of debt 10 times faster than making monthly payments, and about three times
faster than credit counseling. It truly is the best and fastest way to pay off your
creditors, and get free of your debts without bankruptcy!”; and,

1 (s) failing to inform consumers that FDR does not begin negotiations with consumers’
2 creditors for many months.

3 **V.**

4 **SECOND CAUSE OF ACTION**

5 **UNFAIR COMPETITION BY ALL DEFENDANTS IN VIOLATION OF**
6 **BUSINESS AND PROFESSIONS CODE SECTIONS 17200 AND 17203**

7 70. Plaintiff alleges and incorporates by reference paragraphs 1 through 69 as if set forth
8 herein.

9 71. Within four (4) years prior to the filing of this complaint and continuing, Defendants, and
10 each of them, knowingly and willfully agreed among themselves to, and have engaged in unfair
11 competition as defined in B&P Code section 17200 and continue to do so. The Defendants, and each
12 of them, did the acts and things herein alleged pursuant to, and in furtherance of the above-alleged
13 agreement. Such unlawful and unfair business acts and practices include, but are not necessarily
14 limited, to the following:

- 15 (a) Conducting debt reduction/prorating business activities and receiving and controlling
16 consumers’ monies for the purpose of distributing monies to consumers’ creditors in
17 payment or partial payment of debt obligations, which constitutes prorater activities,
18 and failing to obtain a license from the California Commissioner of Corporations, in
19 violation of FC section 12200;
- 20 (b) Conducting prorater activities and controlling consumers’ monies for the purpose of
21 distributing the monies among creditors in payment or partial payment of consumers’
22 debt obligations and charging consumers amounts in excess of the statutory
23 maximum permitted by FC section 12314; and,
- 24 (c) Conducting debt reduction/prorating activities by charging consumers a cancellation
25 fee or termination penalty in violation of FC section 12314.1.
- 26 (d) Conducting advertising and solicitations from San Mateo County, and elsewhere in
27 California, to consumers in California via the Internet and the telephone to enter into
28 written agreements with Defendants for Defendants’ debt reduction services and
failing to orally inform consumers at the time the sales solicitation FDR agreements
were executed that consumers shall have the right to cancel the FDR agreement
without penalty or obligation within three business days from the date of the
transaction, in violation of Civil Code section 1689.7(a)(1);
- (e) Conducting advertising and solicitations from San Mateo County, and elsewhere in

1 California, to consumers in California via the Internet and the telephone to enter into
2 agreements with Defendants for Defendants' debt reduction services in violation of Civil
3 Code section 1689.7(a)(1) by failing to provide to consumers who entered into FDR's
4 agreements with a written agreement which contained in the immediate proximity to the
5 consumer's signature, a conspicuous statement in 10-point boldface type the following:

6 You, the buyer, may cancel this transaction at any
7 time prior to midnight of the third business day after
8 the date of this transaction. See the attached notice of
9 cancellation form for an explanation of this right.

- 10 (f) Conducting advertising and solicitations from San Mateo County, and elsewhere in
11 California, to consumers in California via the Internet and the telephone to enter into
12 agreements with Defendants for Defendants' debt reduction services in violation of Civil
13 Code Section 1689.7(c) by and failing to provide to consumers who entered into FDR's
14 agreements with a written agreement to which was attached a completed form in
15 duplicate, captioned "Notice of Cancellation", easily detachable and containing in type of
16 at least 10-point, the following:

17 "Notice of Cancellation"

18 Enter date of transaction _____(Date)
19 You may cancel this transaction, without any penalty
20 or obligation, within three business days from the
21 above date. If you cancel, any property traded in, any
22 payments made by you under the contract or sale, and
23 any negotiable instrument executed by you will be returned
24 within 10 days following receipt by the seller of your
25 cancellation notice, and any security interest arising out of
26 the transaction will be canceled. If you cancel, you must
27 make available to the seller at your residence, in substantially
28 as good condition as when received, any goods delivered
to you under this contract or sale, or you may, if you wish,
comply with the instructions of the seller regarding the return
shipment of the goods at the seller's expense and risk.
If you do make the goods available to the seller and
the seller does not pick them up within 20 days of the date
of your notice of cancellation, you may retain or dispose of
the goods without any further obligation. If you fail to make
the goods available to the seller, or if you agree to return the
goods to the seller and fail to do so, then you remain liable for
performance of all obligations under the contract. To cancel
this transaction, mail or deliver a signed and dated copy of
this cancellation notice, or any other written notice, or send
a telegram to _____(name of seller) at _____
(address of seller's place of business) not later than

1 midnight of _____(Date). I hereby cancel this transaction
2 _____(Date) _____(Buyer's signature),

3 **VI.**

4 **THIRD CAUSE OF ACTION**

5 **UNLICENSED ACTIVITIES**
6 **FINANCIAL CODE SECTION 12200**

7 72. Plaintiff alleges and incorporates by reference paragraphs 1 through 71 of this Complaint
8 as if set forth herein.

9 73. Defendants have been engaging in business as a bill payer or prorater as defined in the
10 CSBPPL without a license or exemption from the Commissioner in violation of FC section 12200.
11 FC 12200 states:

12 No person shall engage in the business, for compensation, of selling
13 checks, drafts, money orders, or other commercial paper serving the same
14 purpose, or of receiving money as agent of an obligor for the purpose of
15 paying bills, invoices, or accounts of such obligor, or acting as a prorater,
16 nor shall any person, without direct compensation and not as an authorized
agent for a utility company, accept money for the purpose of forwarding it
to others in payment of utility bills, without first obtaining a license from
the commissioner.

17 **VII.**

18 **FOURTH CAUSE OF ACTION**

19 **FEE OVERCHARGES AND UNAUTHORIZED CHARGES**
20 **FINANCIAL CODE SECTION 12314 AND 12314.1**

21 74. Plaintiff alleges and incorporates by reference paragraphs 1 through 73 of this Complaint
22 as if set forth herein.

23 75. Defendants while engaging in business as a bill payer or prorater have violated that law
24 by overcharging consumers in violation of FC sections 12314 and 12314.1. FC section 12314 states:

25 The total charges received by a prorater, or any other person for the prorater's services, may
26 not exceed in the aggregate twelve percent (12%) for the first three thousand dollars
27 (\$3,000), eleven percent (11%) for the next two thousand dollars (\$2,000), and ten percent
28 (10%) for any of the remaining payments distributed by a prorater to the creditors of a
debtor, except for payments made on recurrent obligations. Recurring obligations shall be
defined for the purpose of this section as follows: current rent payments, current utility
payments, current telephone bills, current alimony payments, current monthly insurance

1 premium payments, and payments made on obligations which are secured by a first
2 mortgage or first deed of trust on real property.

3 (a) Notwithstanding the provisions of Section 12315, upon compliance with the
4 provisions of Sections 12315.1, and 12320, an origination fee of a sum not to exceed fifty
5 dollars (\$50) may be charged;

6 (b) A fee not to exceed four dollars (\$4) per disbursement on recurring obligations,
7 consisting of current rent payments or obligations which are secured by a first mortgage or
8 first trust deed on real property, may be charged.

9 (c) A fee not to exceed one dollar (\$1) on other recurring obligations.

10 When a debtor has not canceled or defaulted on the performance of his contract with
11 the prorater within 12 months after execution of the prorate contract, the prorater shall
12 refund any origination fee charged to the debtor. At least once each month the prorater
13 shall pay not less than 70 percent of all funds received from the debtor to the creditors
14 of the debtor.

15 Section 12314.1 prohibits a cancellation or termination fee and states “[a] cancellation fee or
16 termination penalty may not be charged to a debtor.”

17 76. Pursuant to FC section 12106 the Commissioner may investigate, review, examine and
18 audit the books, accounts, records and files of bill payers and proraters. During an investigation
19 Plaintiff discovered that Defendants charged consumers fees in excess of the amounts authorized by
20 law. Consumers’ complaints reveal some details of amounts consumers were overcharged in
21 aggregate of at least \$300,000. Defendants may have received over an aggregate of \$150,000,000 in
22 charges from 2003 to the present based on their representations of the assets under management and
23 the percentage fee they charge consumers.

24 77. Defendants contracts with consumers to engage in unlicensed activities are subject to
25 voiding pursuant to FC section 12316. If Defendants’ contracts with consumers are void then
26 Defendants are required to return all amounts received to consumers.

27 78. Plaintiff’s review also reveals that Defendants directly and indirectly charged consumers
28 additional unauthorized fees that including but not limited to retention of funds obtained by
consumers after they cancel their contracts. Defendants claim they are entitled to funds that amount

1 to up to fifteen percent (15 %) of a consumers' debt as a "retainer fee." FC section 12314.1
2 unequivocally prohibits the charging of a cancellation or termination fee.

3 79. Defendants' violations were not accidental but willful. Defendants continue to overcharge
4 California consumers now even after the Commissioner's Order was issued to them on May 29, 2008.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment as follows:

7 1. That all Defendants, their managers, employees, agents, servants, partners,
8 representatives, successors, assignees, and all persons, corporations, and other entities acting in
9 concert or in participation with any Defendant, who have actual or constructive knowledge of the
10 injunction, be preliminary and permanently enjoined from making or causing to be made untrue or
11 misleading statements and omissions of material facts as set forth in paragraph 69, above, and from
12 engaging in unfair competition as set forth in paragraph 71, above, pursuant to B&P Code sections
13 17535, 17203 and 17204 and FC sections 12105, 12106, 12307.1.

14 2. For a preliminary and permanent injunction restraining and enjoining all Defendants and
15 all Does, and their officers, directors, successors in interest, controlling persons, agents, employees,
16 attorneys in fact, and all other persons acting in concert or participating with them, or any of them,
17 from directly or indirectly:

- 18 (a) Engaging in unlicensed activities, in violation of FC section 12200;
- 19 (b) Charging or receiving excessive fees and additional fees whether as part of the
20 scheme described herein or otherwise, in violation of FC section 12314 and
21 12314.1;
- 22 (c) Changing locations without notification to and the approval of the Commissioner,
23 in violation of FC section 22153;
- 24 (d) Failing to maintain minimum net worth of \$25,000, in violation of FC section
25 22104;
- 26 (e) Conducting business at a place in which business other than making loans is
27 engaged in without either written notification to and the authorization of the
28 Department, in violation of FC section 22154;

1 (f) Using advertising without prior approval from the Commissioner, in violation of
2 California Code of Regulations section 1550.

3 (g) Violating the Commissioner's Desist and Refrain Order;

4 (h) Making false statements about the Commissioner's Desist and Refrain Order and
5 this civil complaint whether as part of the scheme complained of herein or
6 otherwise;

7 (i) Destroying, mutilating, concealing, altering, transferring or otherwise disposing
8 of, in any manner, any books, records, documents, correspondence, brochures,
9 manuals, or other documents of any kind, including those in electronic format,
10 relating to prorating and bill paying in the possession, custody or control of any of
11 the Defendants until further order of this Court.

12 3. That Defendants and each of them pay to Plaintiff a civil penalty in the amount of Two
13 Thousand Five Hundred Dollars (\$2,500) for each separate act in violation of B&P Code section
14 17200, pursuant to B&P Code section 17206, according to proof.

15 4. That Defendants and each of them pay to Plaintiff a civil penalty in the amount of Two
16 Thousand Five Hundred Dollars (\$2,500) for each separate act in violation of B&P Code section
17 17500, pursuant to B&P Code section 17536, according to proof.

18 5. That Defendants be ordered to make restitution of all funds they have acquired by their
19 violations of B&P Code sections 17200 and 17500 and FC section 12316.

20 6. For an Order of Final Judgment, pursuant to FC section 12105, requiring Defendants and
21 all Does to disgorge to the affected consumers all fees, charges and amounts received directly or
22 indirectly from consumers for bill paying and prorating services.

23 7. For an Order of Final Judgment, pursuant to FC section 12105, requiring Defendants and
24 all Does to pay civil penalties of up to \$10,000 for each violations of the CSBPPL and the rules
25 promulgated thereunder, according to proof.

26 8. For an Order declaring Defendants' contracts wherein Defendants contracted for, received
27 and made any charge in excess of the maximum permitted by the CSBPPL void pursuant to FC
28 section 12316 and requiring Defendants to return to the consumers all charges received by

1 Defendants.

2 9. That Defendants be ordered to pay for examination, audit and investigative costs,
3 attorney's fees and related expenses as allowed by FC sections 12105, 12106, 12305 and to pay
4 Plaintiff's costs of suit.

5 10. That Plaintiff be given such other and further relief as the nature of the case may require
6 and the court deems proper and just.

7 Dated: October 30, 2008
8 San Mateo, California

9 JAMES P. FOX, DISTRICT ATTORNEY

10
11
12
13 By _____

14 CHUCK FINNEY, Deputy
15 Attorney for Plaintiff

16
17 PRESTON DuFAUCHARD,
18 CALIFORNIA CORPORATIONS COMMISSIONER

19
20
21 By _____

22 JOAN E. KERST, Senior Corporations Counsel
23 Attorney for Plaintiff

24
25 NOTE: that this action is by the People of the State of California and therefore the answer to this
26 complaint must be verified. Code of Civil Procedure Section 446.

27
28