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THOMAS R. FALLOQUIST
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,

Plaintiff,

v.

FORECLOSURE ASSISTANCE
SOLUTIONS, LLC, a Florida limited
liability company,

Defendant.

NO. 08201832-1

CIVIL COMPLAINT

COMES NOW, plaintiff State of Washington, by and through its attorneys Robert M. McKenna, Attorney General, and Jack G. Zurlini, Jr., Assistant Attorney General, and brings this action against defendant named herein and alleges as follows:

1. JURISDICTION

1.1. This complaint is filed and these proceedings are instituted under the provisions of RCW 19.86, the Unfair Business Practices—Consumer Protection Act (CPA); RCW 19.134, the Credit Services Organization Act (CSOA); and RCW 19.158, the Commercial Telephone Solicitation Act (CTSA).

1.2. Jurisdiction of the Attorney General to commence this action is conferred by RCW 19.86.080, 19.86.140, and 19.134.070. Defendant mailed solicitation letters and post cards to homeowners living in Spokane County and elsewhere in Washington State who were

1 in danger of losing their homes to foreclosure. In addition, numerous Washington
2 homeowners (including those residing in Spokane County) called defendant in response to the
3 solicitations, paid \$1200 to \$1500 to defendant, and entered into contracts to obtain the
4 services defendant promised, namely, to find alternatives to foreclosure and thus rescue
5 consumers' homes from foreclosure.

6 1.3. The violations alleged herein have been and are being committed in whole or
7 in part in Spokane County, State of Washington, and other counties in the State of
8 Washington by defendant named herein.

9
10 **2. DEFENDANTS**

11 2.1. Defendant Foreclosure Assistance Solutions, LLC (FAS), is a Florida limited
12 liability company whose registered office is 2465 N. McMullen Booth Road, Unit J,
13 Clearwater, Florida, 33759. FAS does business in Washington in connection with the
14 marketing and sale of the products and services offered by FAS, namely, a purported
15 foreclosure rescue service.

16
17 **3. NATURE OF TRADE OR COMMERECE**

18 3.1. FAS represents to Washington consumers that for an up front fee of \$1200,
19 later increased to \$1500, it will help homeowners rescue their homes from foreclosures. But
20 that representation is false. On the contrary, FAS has victimized numerous Washington
21 consumers by taking money that most consumers could ill afford and then doing little or
22 nothing to help them save their homes.

23 3.2. FAS is a "credit service organization" as that term is defined by RCW
24 19.134.010(2)(a), and is also a "commercial telephone solicitor" as that term is defined by
25 RCW 19.158.020(1).

1 3.3. FAS operates its business by first identifying consumers whose homes are in
2 foreclosure. FAS then sends consumers solicitation letters and postcards. Some of the written
3 solicitations deceptively mimic official government notifications. The written solicitations
4 represent that FAS can help consumers save their homes and direct consumers to call FAS.

5 3.4. Consumers who respond to the written solicitations and call FAS are read a
6 sales pitch script. This script and others that FAS uses to sell its services are unfair and
7 deceptive for numerous reasons. For example, the scripts repeatedly misrepresent that: (1)
8 FAS is successful at stopping foreclosures and saving homes for consumers, and (2) if it's not
9 successful, then FAS will refund consumers. One script reads, "We know 47 different ways
10 to save a house in default and one will work for you. If we take you on as a client we will get
11 you a solution or you will get your money back." Another example of unfair and deceptive
12 scripts is FAS' "hard sell statements" scripts. One hard sell statement, referred to as the "ice
13 water dip", is meant to shock hesitant consumers into paying the up front fee during the initial
14 call. FAS employees perform the "ice water dip" by telling hesitant consumers a story about a
15 consumer who didn't buy their services during the initial call, but who later ended up calling
16 FAS back just before the foreclosure. According to the story, FAS was able to save the
17 consumer's home, but with a worse deal than if the consumer had bought their services in the
18 first place. FAS employees then warn the hesitant consumers to not delay starting the process
19 now or else they'll end up like the consumer in the story.

20 3.5. Another unfair and deceptive sales tactic FAS uses to get consumers to pay
21 during the first call is using a script that creates a false sense of scarcity. This particular script
22 directs FAS employees to tell reluctant consumers the following misinformation: "The
23 Mitigation Department does not have very many spots open so we have to fill them with
24 people who are absolutely committed to saving their home. If you are not, we'll fill your spot
25 with someone who is." Another unfair and deceptive sales tactic of FAS is when it directs its
26 employees to create a false sense of urgency to close a sale. In fact, this tactic is an "FAS

1 Sales Maxim” that reads: “YOU CAN CREATE URGENCY BY LIMITING THE AMOUNT
2 OF TIME THE CALLER HAS TO ACT OR THE AVAILABILITY OF SERVICE.”

3 3.6. Another unfair and deceptive sales tactic FAS uses to prod reluctant consumers
4 to part with their money is one that frightens them with the specter of mounting legal fees and
5 loss of their homes if they delay hiring FAS with statements like: “Every day that the
6 foreclosure process continues, the more action done by the attorneys, resulting in stacked up
7 legal fees that you have to pay to get your home out of foreclosure! How much is first, last
8 and security deposit on an apartment? Add in the moving cost and turning on the utilities.
9 Believe me, it will be a lot more than what it will cost for us to SAVE your home!” And with
10 respect to consumers who enroll, then change their minds and want to cancel or do not follow
11 through on a promise to pay, referred to as “back-outs” by FAS, FAS implores its
12 telemarketers: “DO NOT in any way let the customer think it is okay with you that they
13 backed out--Hold their feet to the fire!” And if consumers object to making the initial \$1,200
14 to \$1,500 payment because they do not have enough cash or available credit, FAS rebuts the
15 objection by telling consumers to borrow money from family and friends.

16 3.7. Once consumers agree to sign a contract and pay the up front fee, the FAS
17 sales representative transfers the calls to another person who “verifies” the sale by reading a
18 script and recording the conversation with consumers. This script is also unfair and deceptive
19 for a number of reasons. For example, it unfairly requires consumers who use credit or debit
20 cards as payment to agree to contact FAS first and not their banks if consumers dispute the
21 charges. If they go to their bank first, then according to FAS they “will void any possible
22 refund of fees.” And FAS threatens to “challenge any dispute based on [the] recorded
23 authorization.”

24 3.8. Once consumers go through the sales and verification process, FAS then faxes
25 or mails a contract packet to consumers. Among other documents, the packet includes a copy
26 of the contract between FAS and consumers. Among other unfair and deceptive provisions,

1 the contract prohibits consumers from contacting the financial institutions foreclosing on their
2 homes for any reason. The contract also provides that if consumers contact the financial
3 institutions in violation of the contract, then FAS will stop working on behalf of consumers
4 and consumers will forfeit their \$1,200 to \$1,500 payment. As a result, consumers are
5 entirely dependent on FAS to fulfill its promise to save their homes and are unable to check
6 with their financial institutions to see if FAS has even contacted them. And when consumers
7 contact FAS to check on the status of the foreclosure rescue efforts, FAS routinely fails to
8 return their phone calls and is otherwise unresponsive, thus aggravating the unfairness of the
9 "no contact" provision.

10 3.9. In addition, contrary to FAS' representations, the majority of consumers
11 receive little to no help from FAS. FAS routinely fails to contact the financial institution
12 entirely or in a meaningful way on behalf of consumers, and then fails or refuses to refund
13 money to consumers.

14 3.10. Furthermore, FAS' actions violate the CSOA in a number of ways. A violation
15 of the CSOA is also a per se violation of the CPA.

16 3.11. FAS' actions also violate the CTSA in a number of ways. A violation of the
17 CTSA is also a per se violation of the CPA.

18 3.12. FAS is in competition with others in the State of Washington engaged in
19 similar business.

20 21 **4. CAUSES OF ACTION**

22 23 **FIRST CAUSE OF ACTION -- DECEPTIVE ADVERTISING**

24 4.1. Plaintiff realleges paragraphs 1.1 through 3.12 and incorporates them herein by
25 this reference.
26

1 4.2. In the context of conducting its business, Defendant used numerous false and/or
2 misleading advertisements. Such conduct constitutes unfair or deceptive acts or practices in
3 trade or commerce, and/or unfair methods of competition in violation of RCW 19.86.020.
4

5 **SECOND CAUSE OF ACTION – MISREPRESENTATIONS**

6 4.3. Plaintiff realleges paragraphs 1.1 through 4.2 and incorporates them herein as if
7 set forth in full.

8 4.4. In the context of conducting its business, Defendant made numerous
9 misrepresentations. Such conduct constitutes unfair or deceptive acts or practices in trade or
10 commerce, and/or unfair methods of competition in violation of RCW 19.86.020.
11

12 **THIRD CAUSE OF ACTION – UNFAIR PRACTICES**

13 4.5. Plaintiff realleges paragraphs 1.1 through 4.4 and incorporates them herein as if
14 set forth in full.

15 4.6. In the context of conducting its business, Defendant engaged in numerous unfair
16 acts and practices. Such conduct constitutes unfair or deceptive acts or practices in trade or
17 commerce, and/or unfair methods of competition in violation of RCW 19.86.020.
18

19 **FOURTH CAUSE OF ACTION—VIOLATIONS OF THE**
20 **CREDIT SERVICES ORGANIZATION ACT, RCW 19.134**

21 4.7. Plaintiff realleges paragraphs 1.1 through 4.6 and incorporates them herein as
22 if set forth in full.

23 4.8. In the context of conducting its business, Defendant violated the Credit
24 Services Organization Act, RCW 19.134. For each Washington consumer that Defendant
25 entered a contract with, Defendant violated the statute in numerous ways by committing,
26 among others, the following acts:

1 (i) requiring consumers to pay a fee before Defendant completes its
2 promised services without first obtaining a surety bond in violation of RCW
3 19.134.020(1);

4 (ii) making untrue and misleading representations in the offer or sale of
5 their services in violation of RCW 19.134.020(4);

6 (iii) failing to maintain "information statement" files in violation of RCW
7 19.134.040;

8 (iv) failing to provide consumers with "information statements" and thus
9 failing to provide the seven separate disclosures to be communicated by the statement
10 in violation of RCW 19.134.050;

11 (v) failing to include in the contract the mandatory notification of the 5-day
12 cancellation period in violation of RCW 19.134.060(1)(a);

13 (vi) attempting to or requiring consumers to waive attorney fees and other
14 damages provided by RCW 19.134.080 in violation of RCW 134.070(1);

15 (vii) failing to provide the mandatory "notice of cancellation" forms to
16 consumers in violation of RCW 134.060(2);

17 (viii) attempting to or requiring consumers to waive the 5-day cancellation
18 period provided by RCW 19.134.060 in favor of a 3-day period in violation of RCW
19 19.134.070(1); and

20 (ix) failing to fully and in detail describe in the contract the services to be
21 provided, guarantees, promises of refunds, estimated date by which the services are to
22 be performed, or estimated length of time for performing the services in violation of
23 RCW 19.134.060(1)(c).

24 4.9. Pursuant to RCW 19.134.070(5), each of the several separate violations of
25 RCW 19.134 alleged against Defendant in this cause of action is also a separate per se
26 violation of the Consumer Protection Act, RCW 19.86.

1 **FIFTH CAUSE OF ACTION—VIOLATIONS OF THE COMMERCIAL**
2 **TELEPHONE SOLICITATION ACT, RCW 19.158**

3 4.10. Plaintiff realleges paragraphs 1.1 through 4.9 and incorporates them herein as
4 if set forth in full.

5 4.11. In the context of conducting its business, Defendant violated the Commercial
6 Telephone Solicitation Act, RCW 19.158. For each Washington consumer that Defendants
7 contacted with their telephonic sales pitch, Defendant violated the statute in numerous ways
8 by committing, among others, the following acts:

9 (i) engaging in unfair or deceptive commercial telephone solicitations in
10 violation of RCW 19.158.040(1),

11 (ii) failing to provide purchasers of its services with written confirmations
12 as required by RCW 19.158.120(1), and

13 (iii) failing to register with Washington State prior to conducting
14 commercial telephone solicitations of Washington consumers in violation of RCW
15 19.158.150.

16 4.12. Pursuant to RCW 19.158.030, each of the several separate violations of RCW
17 19.158 alleged against Defendant in this cause of action is also a separate unfair or deceptive
18 act in trade or commerce for the purpose of applying the Consumer Protection Act, RCW
19 19.86.

20
21 **5. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff State of Washington prays for relief as follows:

23 5.1. That the Court adjudge and decree that Defendant has engaged in the conduct
24 complained of herein.

25 5.2. That the Court adjudge and decree that the conduct complained of in paragraphs
26 1.1 through 4.12 constitutes unfair or deceptive acts and practices and unfair methods of

1 competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

2 **5.3.** That the Court assess civil penalties pursuant to RCW 19.86.140 of up to two
3 thousand dollars (\$2,000.00) per violation against Defendant for each and every violation of
4 RCW 19.86.020 caused by the conduct complained of herein.

5 **5.4.** That the Court adjudge and decree that the conduct complained of in paragraphs
6 1.1 through 4.12 constitutes violations of the Credit Services Organization Act, RCW 19.134,
7 and are per se violations of RCW 19.86 pursuant to RCW 19.134.070(5).

8 **5.5.** That the Court adjudge and decree that the conduct complained of in paragraphs
9 1.1 through 4.12 constitutes violations of the Commercial Telephone Solicitation Act, RCW
10 19.158, and are per se violations of RCW 19.86 pursuant to RCW 19.158.030.

11 **5.6.** That the Court assess civil penalties pursuant to RCW 19.158.140 of up to two
12 thousand dollars per violation against Defendant for each and every violation of RCW 19.158
13 caused by the conduct complained of herein.

14 **5.7.** That the Court adjudge and decree that in each instance Defendant violated
15 RCW 19.158 in making a sale of their property, goods or services to a Washington resident,
16 the resulting contract is voidable as provided by RCW 19.158.120(3).

17 **5.8.** That the Court adjudge and decree that in each instance Defendant failed to
18 provide Washington resident purchasers of their property, goods or services with written
19 confirmations as required by RCW 19.158.120(1), the resulting sale is not final and subject to
20 cancellation as provided by RCW 19.158.120.

21 **5.9.** That the Court adjudge and decree that in each instance Defendant contracted
22 with a Washington resident for its foreclosure rescue services, the contract is void and
23 unenforceable by reason of public policy because of the contract's numerous violations of the
24 Credit Services Organization Act, RCW 19.134.

25 **5.10.** That the Court issue a permanent injunction pursuant to RCW 19.86.080, RCW
26 19.134.070(3), and RCW 19.158.090 enjoining and restraining Defendant, and its members,

