STATE OF NORTH CARC	OLINA FILE D 2012 SEP 21 AM II: WAKE COUNTY, C.	: ON THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION S.C. FILE NO.
STATE OF NORTH CARC Roy Cooper, Attorney Gene	,	
Plaintiff,)	<u>C</u> OMPLAINT
KENNETH CARL MCCURD and TANYA LOUISA WILSON, individually, and doing business as LENDER EXCHANGE.		COMPLAINT
Defendants.)))	

I. <u>INTRODUCTION</u>

Plaintiff State of North Carolina, by and through its Attorney General, brings this action against defendants Kenneth Carl McCurd ("McCurd") and Tanya Louisa Wilson ("Wilson"), pursuant to North Carolina's Debt Adjusting Act, N.C. Gen. Stat. § 14-423, et seq. and Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, seeking preliminary and permanent injunctive relief, consumer refunds, statutory civil penalties, costs, and other appropriate relief.

II. PARTIES

- 1. Plaintiff is the State of North Carolina ("the State"), acting on relation of Attorney General Roy Cooper, pursuant to authority granted in Chapters 14, 75, and 114 of the General Statutes.
- 2. Defendant Kenneth Carl McCurd is a resident of Mecklenburg County, North Carolina.
- 3. Defendant Tanya Louisa Wilson is a resident of Mecklenburg County, North Carolina.
- 4. Since at least 2007, defendants have operated and controlled a mortgage loan modification business under the name "Lender Exchange." Lender Exchange is not currently incorporated or otherwise registered with the North Carolina Secretary of State. On information and belief, Lender Exchange's business office is located at 3325 Washburn Ave., Suite 200-201, Charlotte, North Carolina 28205.

III. <u>FACTUAL ALLEGATIONS</u>

- 5. Since at least 2007, defendants McCurd and Wilson, conducting business as "Lender Exchange," have purported to offer mortgage "loan modification" or "foreclosure assistance" services to financially distressed homeowners who are having difficulty making their mortgage loan payments and who may be faced with foreclosure of their homes.
- 6. Defendants have targeted consumers in the Charlotte area of North Carolina, but market and offer their services to consumers around the country. Defendants have advertised and solicited customers by various means, including but not limited to, Internet advertising, including a website at www.thelenderexchange.com; using leads generated from consumer

responses to Internet queries; and word-of-mouth communication, including through community groups and churches in the Charlotte area.

- 7. In soliciting prospective customers, among other representations, defendants have represented that they have extensive experience in the mortgage lending industry. The defendants' website states that Lender Exchange's principals have "years of experience as exloan officers closing subprime loans."
- 8. Defendants represent to prospective customers that, through their purported financial expertise and industry contacts, they are able to negotiate with homeowners' mortgage lenders or servicers to obtain favorable concessions, including permanent modifications of homeowners' mortgage loans with reduced interest rates and reduced monthly payments, so that homeowners may stay in their homes and avoid foreclosure. The defendants also represent that they can provide assistance in the foreclosure process. Lender Exchange's website states that, "We use the judicial process to turn the tables on the Lenders in the judicial states."
- 9. Defendants often meet with Charlotte-area customers at their office at 3325 Washburn Ave. For homeowners who live outside the Charlotte area, the defendants handle customer communications by e-mail, phone, fax and mail.
- 10. Upon information and belief, in almost all instances, regardless of homeowners' financial circumstances, the defendants assure the homeowners they will be successful in obtaining favorable loan modifications, and that they will save their homes from foreclosure. Indeed, in some instances, defendant McCurd has told consumers that he has "never had a customer lose their home to foreclosure." These representations by defendants are false.

- 11. In all instances, the defendants require consumers to pay a fee in advance, before the defendants will begin the performance of any loan modification or foreclosure assistance services, including contacting a consumer's mortgage lender or servicer on the consumer's behalf. The defendants typically charge homeowners one month's mortgage payment as their fee for loan modification services, and the defendants refuse to perform any services until the homeowner pays the defendants at least half of the fee upfront.
- 12. In many instances, the defendants have assured homeowners that if the defendants are unable to obtain a mortgage loan modification for the homeowner within sixty (60) days, the defendants will give the homeowner a refund. Notwithstanding such representations, upon information and belief, in most instances, the defendants have refused to refund homeowners' money.
- 13. The defendants regularly instruct homeowners to cease all communications with their mortgage lenders or servicers, representing that they will "take care of everything," including handling all communications with the homeowner's lender or servicer. In many instances, the defendants also instruct homeowners that they do not need to make their mortgage payments while their application for a loan modification is pending with their lender or servicer. As a result, based on the defendants' instructions, homeowners typically cease all communications with their mortgage lenders or servicers, and, in some instances, homeowners stop making their mortgage payments, which places them in greater danger of losing their homes to foreclosure.
- 14. After the defendants collect their advance fees from homeowners, many homeowners experience difficulty in subsequently contacting or reaching the defendants.

When customers are able to reach the defendants, the defendants exhort customers "not to worry" and represent that they are actively working on their behalf.

- 15. Despite the defendants' assurances to customers that they will obtain favorable loan modifications for them and stop lenders' foreclosure on their homes, upon information and belief, few customers have obtained permanent loan modifications or foreclosure relief from their mortgage lenders or servicers as a result of the defendants' efforts.
- 16. As a result of the defendants' charging of substantial unlawful advance fees, defendants' customers lose monies that they could have used to pay their mortgage lenders or to provide for their families in a time of financial distress. Further, because of the defendants' misleading and deceptive representations, consumers lose critical time and forego options that could have been used to actually and effectively address their foreclosure situation. Legitimate and meaningful foreclosure assistance counseling is available at no cost from HUD-certified non-profit agencies throughout North Carolina, and nationally.
- 17. The affidavits of Shirley Burns, Dawne Cornelius, Cheryl Rainwater, and Kathy Stoddard, which have been filed with the State's Complaint, illustrate the business practices of the defendants.
- 18. The experience of Shirley Burns, a resident of Durham, North Carolina, is representative of the defendants' conduct toward consumers. Ms. Burns retired in September of 2010 and due to her reduced income, she sought assistance in reducing her monthly mortgage payment. A family member referred Ms. Burns to the defendants. When Ms. Burns contacted the defendants, defendant McCurd assured her that Lender Exchange could obtain a loan modification that would significantly reduce her interest rate and her monthly mortgage

payments. Defendant McCurd also assured her that she would receive a refund if Lender Exchange was unable to obtain a loan modification. In addition to these oral representations, defendant McCurd gave Ms. Burns a written "Statement of Service" which stated that Ms. Burns would be refunded her upfront fee within five business days if Lender Exchange was unable to secure a favorable modification of her mortgage loan.

- 19. Persuaded by Mr. McCurd's representations, Ms. Burns paid Lender Exchange \$966.00 upfront so that Lender Exchange would begin working on a loan modification for her.
- 20. Defendant McCurd instructed Ms. Burns that she could stop making her mortgage payments while her modification request was pending, and that she should cease any contact with her lender while Lender Exchange was working on her behalf.
- 21. From November 2010 up through May 2011, whenever Ms. Burns contacted the defendants, they repeatedly represented that they were working on a modification for her, and told her "not to worry" about anything. Finally in May 2011, when Ms. Burns contacted Lender Exchange and requested an update, defendant McCurd told her that her lender, Bank of America, had denied her request for a modification.
- 22. At this time, Ms. Burns requested a refund. However, despite their previous oral and written promises, the defendants refused to issue Ms. Burns a full refund, only refunding approximately \$475 of the \$966 she had paid up front. Frustrated by the defendants' failure to obtain a loan modification for her and worried about her worsening financial situation, Ms. Burns contacted the State Home Foreclosure Prevention Project for assistance with her mortgage situation. In addition, Ms. Burns filed a complaint against the defendants with the Better

Business Bureau of the Southern Piedmont ("BBB"). Only after receiving Ms. Burns' complaint from the BBB, the defendants issued Ms. Burns a refund of the remainder that she had paid.

IV. CLAIMS FOR RELIEF

<u>COUNT I</u> <u>VIOLATION OF THE DEBT ADJUSTING ACT:</u> N.C. GEN. STAT. § 14-423, et seq.

- 23. Plaintiff incorporates herein by reference paragraphs one through twenty-two above.
- 24. The defendants are engaged in the unlawful business of "debt adjusting," which is prohibited by Article 56 of Chapter 14 of the General Statutes. Debt adjusting specifically includes the loan modification and foreclosure assistance services as offered and provided by the defendants.
- 25. N.C. Gen. Stat. § 14-423(2) prohibits the practice of "debt adjusting," which includes the business of "debt settlement" and "foreclosure assistance," where the debt adjuster collects an advance fee for its services. Specifically, the statute defines "debt adjusting" as follows:
 - ... Debt adjusting also includes the business or practice of debt settlement or foreclosure assistance whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the debtor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full.

N.C. Gen. Stat. § 14-423(2) (emphasis added).

- 26. The activity of debt adjusting is prohibited as a criminal offense by N.C. Gen. Stat. § 14-424, which provides that "[i]f any person shall engage in, or offer to or attempt to engage in the business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster, he shall be guilty of a Class 2 misdemeanor."
- 27. The defendants are engaged in "debt adjusting" services prohibited by North Carolina law, in that:
 - a. The defendants are engaged in the business or practice of "debt settlement," as the defendants hold themselves out as acting as an intermediary between consumers and their mortgage lenders in order to obtain loan modifications for consumers namely, for the purpose of negotiating, reducing, or altering the terms of consumers' mortgage loans;
 - b. The defendants are also engaged in the business or practice of "foreclosure assistance," as the defendants hold themselves out as acting as an intermediary between consumers and their mortgage lenders in order to obtain loan forbearances, loan modifications, or other concessions on behalf of consumers in order to prevent lenders' foreclosures on consumers' homes; and
 - c. The defendants receive a fee or other consideration for their services,
 which the defendants charge and collect, in part and sometimes in full, in
 advance of all the debt settlement or foreclosure assistance services agreed
 to having been rendered in full.

28. Pursuant to N.C. Gen. Stat. § 14-425, the Attorney General, in an action brought in the name of the State, may seek to enjoin as an unfair and deceptive trade practice, the continuation of any debt adjusting business or the offering of any debt adjusting services. The Attorney General also may seek, under this provision, the appointment of a receiver, the return to consumers of all monies paid to the debt adjuster, civil penalties under N.C. Gen. Stat. § 75-15.2, and attorneys' fees under N.C. Gen. Stat. § 75-16.1.

VIOLATION OF THE UNFAIR AND DECEPTIVE PRACTICES ACT: N.C. GEN. STAT. § 75-1.1, et seq.

- 29. Plaintiff incorporates herein by reference paragraphs one through twenty-eight above.
- 30. In connection with their solicitation, promotion, offering for sale, or rendering of "loan modification" and "foreclosure assistance" services, the defendants have engaged in a pattern of unfair and deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1. Such unfair and deceptive acts and practices include, but are not limited to, the following:
 - a. Holding themselves out as having special expertise in negotiating with mortgage lenders or servicers to obtain loan modifications, and as having special relationships with mortgage lenders, when the defendants have no such special expertise or special relationships;
 - Making deceptive representations to consumers that the defendants can
 and will prevent foreclosures on consumers' homes;

- c. Collecting money from financially distressed consumers for loan modification and foreclosure assistance services, but failing to render any meaningful or beneficial services on behalf of consumers;
- Inflicting substantial harm on financially distressed consumers by causing consumers to lose critical time and money in addressing their mortgage loan or foreclosure situations;
- e. Interfering with consumers' contractual obligations to, and relationships with, their mortgage lenders or servicers by advising consumers to cease making payments on their mortgage loans and to cease communicating with their mortgage lenders or loan servicers;
- f. Failing and refusing to provide refunds to consumers when the defendants have collected unlawful fees and has failed to perform any useful services for consumers; and
- g. Taking unfair economic advantage of a class of vulnerable, financially distressed consumers.
- 31. In connection with the advertising, promotion, solicitation, offering for sale or sale of loan modification and foreclosure assistance services, the defendants have engaged in violations of North Carolina's Debt Adjusting Act, N.C. Gen. Stat. § 14-423, et seq., as alleged above, which pursuant to N.C. Gen. Stat. § 14-425, constitute violations of N.C. Gen. Stat. § 75-1.1.

PRAYER FOR RELIEF

WHEREFORE, the State of North Carolina prays the Court for the following relief:

- A. That the defendants, their members, officers, agents, and employees, be preliminarily and permanently enjoined from:
 - (1) Advertising or soliciting, entering into contracts with, or collecting money from consumers for the performance of loan modification services, foreclosure assistance services, or any other debt relief services in the State of North Carolina;
 - (2) Engaging in unfair or deceptive trade practices in the offering or conduct of their loan modification services, foreclosure assistance services, or any other debt relief services in this State; and
 - (3) Disposing of any customer or business records and spending or transferring any funds obtained from consumers for loan modification services, foreclosure assistance services, or any other debt relief services.
- B. That the defendants be ordered to refund all sums collected from North Carolina consumers resulting from the defendants' violations of the Debt Adjusting Act, pursuant to N.C. Gen. Stat. § 14-425, and resulting from the defendants' violation of N.C. Gen. Stat. § 75-1.1;
- C. That the defendants' existing agreements with consumers be cancelled pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15.1;
- D. That the defendants be ordered to pay appropriate civil penalties pursuant to N.C. Gen. Stat. § 75-15.2;
 - E. That the State be awarded costs of this action and reasonable attorneys' fees; and
 - F. That the Court award such other and further relief as may be just and proper.

This the 21st day of September, 2012.

STATE OF NORTH CAROLINA, ex rel. ROY COOPER, ATTORNEY GENERAL

By:

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

VERIFICATION

David C. Evers, being first duly sworn, deposes and says:

That he is a Consumer Protection Specialist employed by the North Carolina Department of Justice and that he is authorized to make this Verification; that he assisted in the Department of Justice's investigation of the named defendants; that he has read the foregoing Complaint, and that upon his information and belief, the matters and things alleged therein are true.

David C. Evers

Date '

Sworn and subscribed before me

1 -//

My Commission Expires: $\underline{\mathcal{C}}$