

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

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JUDITH FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

2009-15985

MAURICIO HERNANDEZ
2611 Cherryvale Drive
Beltsville, Maryland 20705

Plaintiff,

v.

THE SHMUCKLER GROUP, LLC,
Serve:
Howard Shmuckler, Registered Agent
8200 Greensboro Dr., Suite 900
McLean, Virginia 22102

HOWARD R. SHMUCKLER
Serve:
Howard Shmuckler
8133 Leesburg Pike, Suite 720
Vienna, Virginia 22182

GAMMP, INC. d/b/a GOVERNMENT
APPROVED MORTGAGE MODIFICATION
PROGRAM, INC.,
Serve:
TSG Management Corp., Registered Agent
8133 Leesburg Pike, Suite 720
Vienna, Virginia 22182

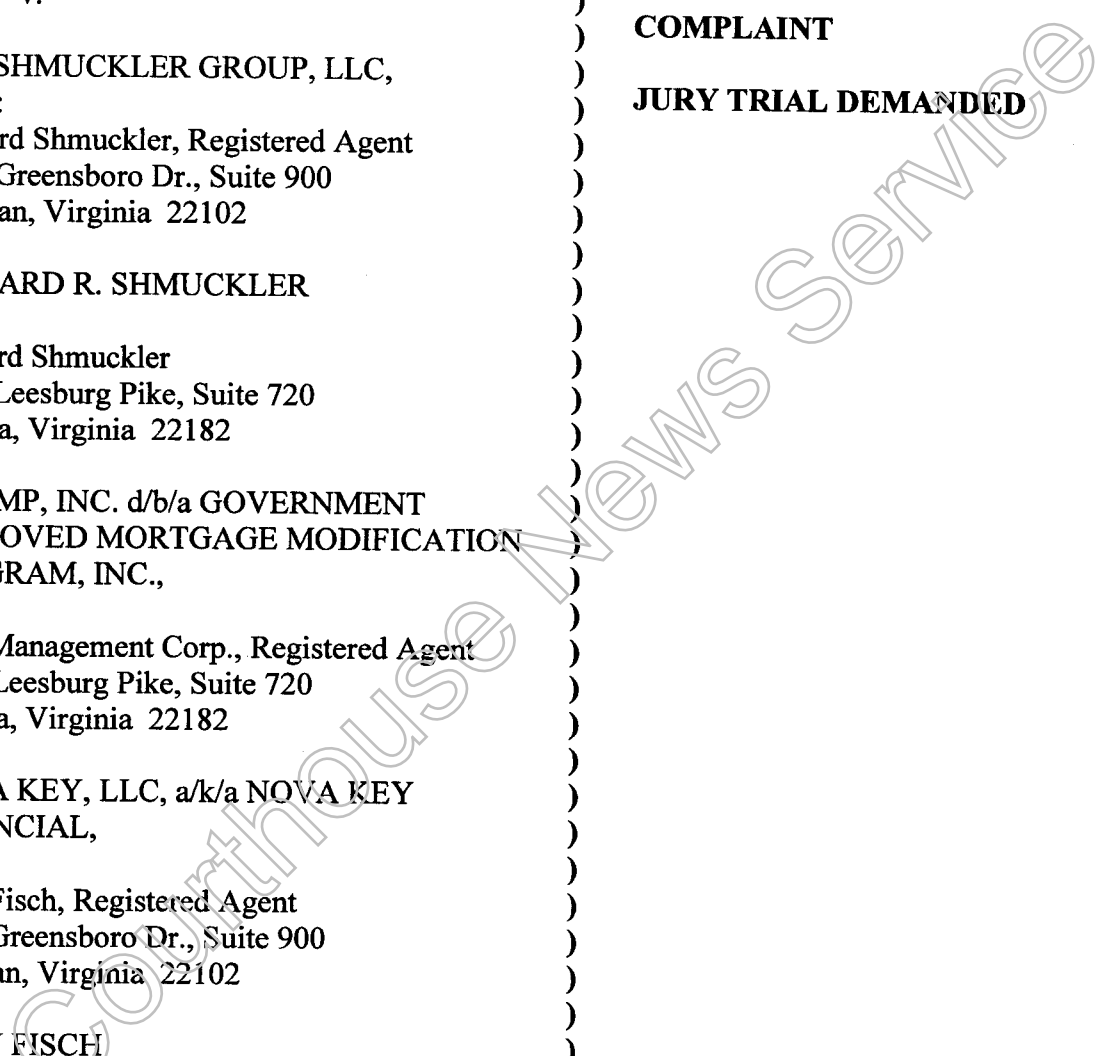
NOVA KEY, LLC, a/k/a NOVA KEY
FINANCIAL,
Serve:
Alon Fisch, Registered Agent
8200 Greensboro Dr., Suite 900
McLean, Virginia 22102

ALON FISCH
Serve:
Alon Fisch
8200 Greensboro Dr., Suite 900
McLean, Virginia 22102

Defendants.

COMPLAINT

JURY TRIAL DEMANDED



Plaintiff, Mauricio Hernandez, moves for judgment against defendants, The Shmuckler Group, LLC, Howard R. Shmuckler, Government Approved Mortgage Modification Program, Inc., Nova Key, LLC, and Alon Fisch on grounds and in the amount set forth below:

PARTIES

1. Plaintiff Mauricio Hernandez ("Mr. Hernandez") is a resident of Maryland. Mr. Hernandez contracted with The Shmuckler Group, LLC for mortgage consulting services offered in conjunction with Nova Key, LLC.
2. Defendant The Shmuckler Group, LLC ("TSG") is a Virginia corporation with its principal place of business in Vienna, Fairfax County, Virginia. TSG is purportedly a mortgage consulting company that advertises services such as modification and restructuring of home mortgages.
3. Defendant Howard R. Shmuckler ("Shmuckler") is the President and Chief Executive Officer of TSG.
4. Defendant GAMMP, Inc. d/b/a Government Approved Mortgage Modification Program, Inc. ("GAMMP") acquired TSG in July 2009. As part of the acquisition, GAMMP agreed to service existing TSG clients with continued mortgage modification or payment plans.
5. Defendant Nova Key, LLC ("Nova Key") is a Virginia corporation with its principal place of business in McLean, Virginia. Nova Key is purportedly a mortgage consulting company that advertises services in loan modifications, restructuring, debt forgiveness and various other financial strategies.
6. Defendant Alon Fisch ("Fisch") is the registered agent for Nova Key, LLC. Fisch is also the Vice President of Business Development of TSG and/or Nova Key.

FACT ASSERTIONS

7. Since 2007, home foreclosures in the United States have increased drastically due to the subprime mortgage crisis and other economic factors. In a March 2009 report addressing

the foreclosure crisis, the Congressional Oversight Panel concluded that “America is in the midst of a home foreclosure catastrophe, unprecedented since the Great Depression.”

8. According to the Mortgage Bankers Association, mortgage delinquencies are currently at an all time high, with one in ten mortgages over 30 days past due nationally.

9. Virginia is ranked tenth nationally in a ranking of states with high numbers of homeowners who are behind on mortgage payments.

10. As the mortgage crisis has grown throughout the United States, so has the prevalence of fraudulent foreclosure “rescue” companies and fraudulent loan modification companies. Foreclosure rescue scams engage in a variety of tactics designed to profit off of people afraid of losing their homes, and typically target vulnerable and low-income populations. Similarly, loan modification scams typically target vulnerable and low-income populations, and promise to obtain cheaper loan payments for families.

11. According to the Federal Trade Commission, one tactic used by scam artists is “phony counseling or phantom help.” In such a scheme, homeowners are told that the scam artist can negotiate a deal with the lender to save the homeowner’s property, provided the homeowner pay an upfront fee. It is typical for scam artists to advertise “special relationships” with banks that can speed up case approvals.

12. These scam artists will often instruct clients to cease making mortgage payments, not to contact their lender, lawyer, or credit counselor, and to let the scam artist handle all the details and negotiations with respect to the homeowner’s property.

13. However, rather than providing any counseling or negotiation services, the scam artist will do nothing after collecting the upfront fee, while the homeowner falls into default and foreclosure on their mortgage.

The Shmuckler Group, LLC and Nova Key, LLC

14. Both TSG and Nova Key are companies who advertise services similar to what the FTC has labeled “phony counseling or phantom help.”

15. TSG was incorporated in Virginia on June 18, 2008 by Howard Shmuckler.

16. TSG's office is located at 8133 Leesburg Pike, Suite 720, Vienna, Virginia. However, TSG's registered mailing address is 8200 Greensboro Dr., Suite 900, McLean, Virginia.

17. According to its website, TSG "is the largest, most successful group of professionals assembled from the Legal, Banking, Mortgage Financing, Real Estate, Government and International Sector coming together to help home owners keep their homes in a manageable and affordable manner."

18. TSG is not licensed as a mortgage company.

19. TSG is not licensed to negotiate loans for a fee under the Virginia Mortgage Lender and Broker Act.

20. Upon information and belief, TSG is currently being investigated by the Federal Bureau of Investigation and Virginia State Corporation Commission's Bureau of Financial Institutions for accepting money from homeowners in crisis and failing to provide loan modifications.

21. Howard Shmuckler is the sole owner of TSG, and is the alter ego thereof such that any and all actions of TSG are in fact and in law the actions of Howard Shmuckler as an individual.

22. Public records show that Shmuckler was convicted of bankruptcy fraud and received a sentence for time in federal prison.

23. In June 2007, the District of Columbia Court of Appeals made a referral to the District of Columbia Court of Appeals Board on Professional Responsibility ("the Board") seeking recommendations on whether Shmuckler should be disciplined. In its referral order, the Court suspended Shmuckler from the practice of law pending the outcome of the discipline proceedings. The Board recommended Shmuckler's disbarment in July 2008. On July 30, 2009, Shmuckler was disbarred from the practice of law in the District of Columbia. Shmuckler was also previously disbarred in California.

24. Shmuckler is not a member of the Virginia Bar.

25. Shmuckler is not licensed to negotiate loans for a fee under the Virginia Mortgage Lender and Broker Act.

26. In July 2009, TSG was purportedly “acquired” by Government Approved Mortgage Modification Program, Inc. (“GAMMP”). GAMMP advertises that it specializes in “government approved” mortgage modifications. According to TSG’s website, GAMMP agreed to service existing TSG clients with continued mortgage modification or payment plans.

27. GAMMP was incorporated in Virginia on July 1, 2009, and lists TSG Management Corporation (“TSG Management”) as its registered agent. The registered agent of TSG Management is Howard Shmuckler.

28. The address for GAMMP’s registered agent, TSG Management, is 8133 Leesburg Pike, Suite 720, Vienna, Virginia – the same address as The Shmuckler Group’s office.

29. Nova Key was incorporated in Virginia on February 12, 2007, and lists Alon Fisch as its registered agent.

30. According to business cards given to potential clients, Alon Fisch is the Vice President of Business Development for TSG and/or Nova Key.

31. Nova Key currently advertises itself as a marketing company.

32. Nova Key and TSG engaged in a business relationship in which Nova Key marketed TSG’s mortgage services, met with clients for TSG, and had clients sign contracts for TSG’s services.

33. Nova Key and TSG employees worked in the same building and were in frequent contact by telephone and in person regarding the clients that Nova Key signed up for TSG.

34. Certain employees of the two companies, including Alon Fisch, gave business cards to clients stating that they worked for both TSG and Nova Key.

35. In addition to its role in marketing TSG’s services, Nova Key also advertised itself as a mortgage consulting business with over 53 years combined experience in “help[ing]

Americans nationwide through loan modifications, restructur[ing], debt forgiveness and various other financial strategies.”

36. Nova Key is not a licensed mortgage company.

37. Nova Key is not licensed to negotiate loans for a fee under the Virginia Mortgage Lender and Broker Act.

38. Nova Key’s website advertised that a “highly skilled and specialized team of lawyers ensures the legal solidity of each and every Nova Key Financial transaction.”

39. Until on or about February 24, 2009, Nova Key had an office at 8133 Leesburg Pike, Suite 130, in the same building as TSG.

40. On or about February 24, 2009, Nova Key purportedly ended its business relationship with TSG and moved its office to 8200 Greensboro Dr., Suite 900, McLean, Virginia – the same address that TSG uses as its registered mailing address.

Plaintiff Hires Nova Key and/or TSG

41. Mr. Hernandez purchased his home at 2611 Cherryvale Drive, Beltsville, Maryland, in July 2006. He originally financed his home through a mortgage with Mortgage Lenders Network USA, Inc. and a second mortgage with Navy Federal Credit Union.

42. Mr. Hernandez received word from Wilshire, the servicer on his first mortgage, that the interest rate on his adjustable rate mortgage would be increasing.

43. In September 2008, Mr. Hernandez heard an advertisement for Nova Key on a Spanish radio station. The advertisement stated that Nova Key could help people who were in danger of losing their homes by negotiating mortgage refinancing or modification.

44. Although Mr. Hernandez had not yet missed a mortgage payment, he began to consider modifying his mortgage so as to avoid any financial problems that might occur as a result of an increased interest rate on his mortgage.

45. On October 10, 2008, Mr. Hernandez went to the offices of Nova Key in Vienna, Virginia and met with a female representative of Nova Key [name unknown] who used a Spanish

interpreter over the telephone. Mr. Hernandez provided Nova Key with documents including information about his home, bank statements, loan information, tax information, pay stubs, and credit card statements.

46. The representative told Mr. Hernandez that Nova Key had an experienced team of attorneys that were experts in working with banks to modify mortgages and that these attorneys would work on his case. She also told him that she trusted Nova Key's expertise so much that she referred her own mother to Nova Key for services and that they successfully lowered the interest rate on her mortgage.

47. The Nova Key representative also promised Mr. Hernandez that Nova Key would "handle everything" with his bank regarding his mortgage. The Nova Key representative told Mr. Hernandez that they would work to reduce the price of his home for tax purposes, lower the principal on his loan and reduce his monthly payments from approximately \$3,012 to \$1,500.

48. The Nova Key representative expressed to Mr. Hernandez that Nova Key would only be successful in negotiating with his bank if he quit making his monthly mortgage payments. She also suggested that he try not to work if possible because that would "help his case" to get a modification from his bank.

49. When the Nova Key representative asked for an up front fee of \$3,500, she told Mr. Hernandez to think of it as if he was simply paying TSG the money he would otherwise have given to the bank, and TSG would handle everything.

50. Mr. Hernandez trusted that Nova Key and TSG would take the steps described by the Nova Key representative, because he believed her representation that TSG had employees, including attorneys who would work on her mortgage.

51. In reliance on these representations about Nova Key and TSG, Mr. Hernandez signed a Representation Agreement hiring TSG to provide mortgage consulting services on November 6, 2008. *See Exhibit 1.*

52. At the time Mr. Hernandez signed the Representation Agreement, he was provided with a letter from TSG's Client Services Department advising him not to speak with his

financial institution. The letter explained that Mr. Hernandez should make it clear that he was represented by attorneys at the Schmuckler Group. The letter also included scripted telephone response cards to keep near the phone in the event his bank should call regarding his mortgage.

53. Also on November 6, Mr. Hernandez paid TSG \$3,500 with a personal check for the services Nova Key and TSG were to provide.

54. In reliance on the representations made by Nova Key and TSG, Mr. Hernandez stopped making payments on his mortgage.

Nova Key and TSG Fail to Provide Services to Plaintiff

55. Approximately one and a half months after signing the Representation Agreement with TSG, Mr. Hernandez began receiving phone calls from his bank regarding his overdue mortgage payments. Mr. Hernandez referred the bank representative to TSG, pursuant to the instructions on the call response card provided by TSG.

56. Mr. Hernandez immediately called TSG to report these phone calls from his bank. Each time he called, a TSG representative told him that they “would handle it.”

57. Over the following months, Mr. Hernandez received multiple notices from his bank regarding his overdue mortgage payments. Each time Mr. Hernandez received correspondence from his bank, he immediately sent it to Nova Key, per their initial instructions. Sometimes Mr. Hernandez faxed the documents to Nova Key, and sometimes he delivered them to the receptionist at the Nova Key office. He never received responses to his faxes or follow up communications to his hand-delivered documents.

58. In March, Mr. Hernandez traveled to Nova Key’s office. He noticed most of the furniture was gone and that the walls were being repainted. The only employee present was a receptionist who told Mr. Hernandez to go upstairs to TSG to discuss his case.

59. At TSG’s offices, Mr. Hernandez spoke with a gentleman named Brian [last name unknown] (“Brian”) who told him that TSG did not have any documents or files from Nova Key. He said that in order for TSG to assist him, they would need to collect documents from him.

60. Mr. Hernandez returned two days later and met with a different gentleman [name unknown]. Mr. Hernandez provided to TSG all of the same documentation he initially provided to Nova Key. At that time, the TSG representative claimed to place a telephone call to Mr. Hernandez's bank regarding his mortgage. Mr. Hernandez could not confirm that the TSG representative was actually speaking to anyone from the bank. The TSG representative also told Mr. Hernandez that he would fax all of the documentation over to the bank.

61. Mr. Hernandez called his bank in an attempt to confirm that TSG did actually speak to them and fax his documents to the bank. A representative at Mr. Hernandez's bank told him that they received some paperwork, but nothing about him being represented by TSG and nothing from TSG about a modification of his mortgage. Furthermore, the bank representative told him that the bank was only authorized to deal with Mr. Hernandez himself and that the bank was not authorized to speak to anyone from TSG or Nova Key regarding Mr. Hernandez's mortgage.

62. Mr. Hernandez learned that numerous clients of Nova Key and TSG were experiencing the same lack of response from Nova Key and TSG.

63. According to press reports, on Monday, March 30, 2009, the FBI raided TSG's offices, removing client files and computers.

64. On April 1, 2009, Howard Shmuckler posted a letter on the TSG website stating, "It has been brought to our attention that promises in the name of TSG were made by Nova Key and its commissioned paid salespeople, without the knowledge or authorization by TSG which were not only false and of Nova Key's own machinations but may also be criminal."

Plaintiff's Financial Situation After Nova Key/TSG's Failure to Provide Services

65. As a direct result of Mr. Hernandez not making his monthly mortgage payments – at the direction of Nova Key/TSG – his mortgage loan was declared in default.

66. On or around January 6, 2009, Mr. Hernandez received a notice of intent to foreclose from Navy Federal Credit Union regarding his second mortgage.

67. On or around February 18, 2009, Mr. Hernandez received a notice of intent to foreclose from Wilshire Credit Corporation, servicer of his first mortgage.

68. Mr. Hernandez is working with Navy Federal Credit Union and Wilshire Credit Corporation hoping to avoid foreclosure and keep his home.

69. Additionally, some of Mr. Hernandez's credit card companies cancelled his cards and others reduced his line of credit.

70. Mr. Hernandez was charged penalties for his failure to make payments during the five months that he thought that Nova Key and TSG were working on his mortgages.

71. Neither Nova Key nor TSG performed any services to assist Mr. Hernandez in refinancing or modifying his mortgage.

72. To this date, Mr. Hernandez has not received any money back from Nova Key or TSG.

**COUNT I
(For Fraud)**

73. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 72 of this Complaint as if fully set forth herein.

74. Defendants falsely promised foreclosure prevention and loan modification services knowing at the time that they could not or would not provide those services.

75. In connection with their offer to provide mortgage consulting services, Defendants misrepresented to Plaintiff that:

a. The services Defendants would provide would result in lower interest rates, and/or lower mortgage principal, and/or lower monthly mortgage payments for Plaintiff;

b. For the purpose of receiving a loan modification, Plaintiff should stop making monthly mortgage payments;

c. Defendants had successfully prevented foreclosure and/or modified loans for other clients;

d. Defendants were attorneys and/or employed attorneys who would work directly on Plaintiff's mortgage; and

e. Nova Key and TSG had years of experience in mortgage consulting.

76. These misrepresentations were material facts.

77. At the time that Defendants made these representations, Defendants knew that the representations were false.

78. Plaintiff did not know the falsity of Defendants' representations.

79. In reliance on Defendants' representations, Plaintiff was induced to sign the Representation Agreement, pay an upfront fee of \$3,500 to Defendants, and stop making payments on Plaintiff's mortgage.

80. Plaintiff's reliance on Defendants' representations was justified, because Defendants held themselves out as specialists who had superior knowledge of the mortgage and lending industry, and Plaintiff placed trust and confidence in Defendants' integrity, professional knowledge, and experience with the mortgage and lending industry.

81. Defendants encouraged and perpetuated this reliance by instructing Plaintiff not to speak to Plaintiff's lender and to ignore any communications from the lender.

82. Defendants knew or should have known that Plaintiff was relying on the Defendants' representations.

83. Defendants knew that their misrepresentations were likely to cause financial harm to Plaintiff and consciously disregarded or acted with reckless indifference to the knowledge that Defendants' conduct would likely injure Plaintiff.

84. Defendants' conduct constitutes fraud, entitling Plaintiff to compensation for all damages sustained as a result thereof, including payment of the upfront fee for loan modification services, payment of penalties and fees as a result of non-payment directed by Defendants, and the resulting damage to Plaintiff's credit.

85. Plaintiff is entitled to punitive damages.

**COUNT II
(For Fraud in the Inducement)
(In the Alternative)**

86. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 85 of this Complaint as if fully set forth herein, specifically Count 1.

87. In the alternative, the Plaintiff was induced to enter into various agreements for loan modification by the Defendants.

88. Defendants falsely promised foreclosure prevention and loan modification services knowing at the time that they could not or would not provide those services.

89. In connection with their offer to provide mortgage consulting services, Defendants misrepresented to Plaintiff that:

a. The services Defendants would provide would result in lower interest rates, and/or lower mortgage principal, and/or lower monthly mortgage payments for Plaintiff;

b. For the purpose of receiving a loan modification, Plaintiff should stop making monthly mortgage payments;

c. Defendants had successfully prevented foreclosure and/or modified loans for other clients;

d. Defendants were attorneys and/or employed attorneys who would work directly on Plaintiff's mortgage; and

e. Nova Key and TSG had years of experience in mortgage consulting.

90. These misrepresentations were material facts.

91. At the time that Defendants made these representations, Defendants knew that the representations were false.

92. Defendants knew that their misrepresentations were likely to cause financial harm to Plaintiff and consciously disregarded or acted with reckless indifference to the knowledge that Defendants' conduct would likely injure Plaintiff.

93. Plaintiff did not know the falsity of Defendants' representations.

94. In reliance on Defendants' representations, Plaintiff was induced to sign the Representation Agreement, pay an upfront fee of \$3,500 to Defendants, and stop making payments on Plaintiff's mortgage.

95. Consequently, Plaintiff has been damaged in an amount yet to be determined at trial.

COUNT III
(For Constructive Fraud)
(In the Alternative)

96. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 95 of this Complaint as if fully set forth herein.

97. In the alternative, if Defendants made the misrepresentations innocently, they were made with the intent that Plaintiff rely on them.

98. The Plaintiff relied on the Defendants' misrepresentation to his detriment.

COUNT IV
(For Breach of Contract Against TSG)
(In the Alternative)

99. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 98 of this Complaint as if fully set forth herein.

100. In the alternative, TSG breached its contract for services with Plaintiff. *See* Exhibit 1.

101. Plaintiff entered into a Representation Agreement for mortgage consulting services with TSG on January 10, 2009.

102. Plaintiff paid the upfront flat fee of \$3,500 required for the services. TSG had an obligation to perform the mortgage consulting services under the Representation Agreement.

103. Notwithstanding its obligation to do so, TSG failed to provide any mortgage consulting services for Plaintiff.

104. The conduct of TSG constitutes a material breach of the Representation Agreement.

105. As a result of the conduct of TSG, Plaintiff has sustained general and special damages as will be established at trial.

**COUNT V
(For Violation of the Virginia Consumer Protection Act)**

106. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 105 of this Complaint as if fully set forth herein.

107. Defendants were suppliers and Plaintiff was a consumer in a transaction regulated by the Virginia Consumer Protection Act, Va. Code § 59.1-196 et seq.

108. Defendants violated Va. Code § 59.1-200(A)(5) by misrepresenting that the loan modification services and credit counseling services would result in a lower interest rate and/or lower payments and/or lower principal for Plaintiff's mortgage.

109. Defendants violated Va. Code § 59.1-200(A)(6) by misrepresenting the characteristics of their services by suggesting that Defendants were and/or employed attorneys who were required to act in the best interests of Plaintiff.

110. Defendants violated Va. Code § 59.1-200(A)(8) by not providing loan modification services as stated in the agreement with Plaintiff.

111. Defendants violated Va. Code § 59.1-200(A)(14) by misrepresenting that they would provide a loan modification or foreclosure prevention.

112. Plaintiff relied on Defendants' misrepresentations.

113. Defendants' violations were willful.

114. In the alternative of the violations being willful, Defendants' violations were not the result of bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation.

115. If the violations were unintentional under Va. Code § 59.1-207, Plaintiff is entitled to restitution and payment of attorney's fees and court costs.

**COUNT VI
(For Civil Conspiracy in Violation of Virginia Common Law)**

116. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 115 of this Complaint as if fully set forth herein.

117. Defendants conspired to engage in a business relationship through which they collectively marketed and purportedly provided mortgage services.

118. Defendants had an unlawful purpose for conspiring to market and purportedly provide mortgage services, as Defendants had no intention of actually providing the services once they received upfront payments from their clients.

119. Plaintiff was damaged by the Defendants' acts committed in furtherance of the conspiracy because he stopped making payments on his mortgage based on the Defendants' instruction, resulting in penalties for his failure to make payments for six months, damage to his credit, and potential foreclosure.

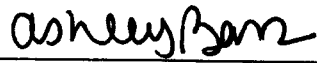
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment in its favor and the relief against TSG and/or Nova Key as follows:

1. Award actual damages under Counts I through VI in the amount of:
 - a. \$3,500 for payments made to TSG or Nova Key;
 - b. \$2,000 for penalties incurred for missing mortgage payments;
 - c. \$10,000 for damage to credit;
 - d. \$10,000 for general compensatory damages.
2. At minimum award statutory damages of \$500.00 for each violation of the Virginia Consumer Protection Act if higher actual damages are not awarded;
3. At minimum award treble actual damages, or at minimum \$1,000.00 for each willful violation of the Virginia Consumer Protection Act;
4. Assess punitive damages in the amount allowed by law;
5. Assess Plaintiff's costs and reasonable attorneys' fees in accordance with Virginia's fraud laws and the Virginia Consumer Protection Act;

6. Such other and further relief as this Court deems just and proper.

Respectfully submitted,



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HOWREY LLP
1299 Pennsylvania Ave., N.W.
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(202) 783-0800
(202) 383-6610 (fax)

Dated: 11/4/09

Attorney for Plaintiff Mauricio Hernandez