

FILED

2009 FEB 2 AM 10:47

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

BY: \_\_\_\_\_

1 DAVID C. SHONKA  
Acting General Counsel

2 JOHN D. JACOBS, Cal. Bar No. 134154  
3 BARBARA Y.K. CHUN, Cal. Bar No. 186907  
MARICELA SEGURA, Cal Bar No. 225999  
4 FAYE CHEN BARNOUW, Cal. Bar No. 168631  
Federal Trade Commission  
5 10877 Wilshire Blvd., Ste. 700  
Los Angeles, CA 90024  
6 (310) 824-4343 (ph.)  
(310) 824-4380 (fax)  
7 jjacobs@ftc.gov; bchun@ftc.gov

8 Attorneys for Plaintiff FTC

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

13 **Federal Trade Commission,**  
14 Plaintiff,  
15 v.  
16 **National Foreclosure Relief, Inc.,**  
a corporation;  
17 **David Ealy,**  
18 an individual;  
19 **Chele Stone, a/k/a Chele Medina,**  
an individual; and  
20 **Hugo Tapia,**  
21 an individual,  
22 Defendants.

Case No. SACV09-117 DOC(MLGx)

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

23

24

25 Plaintiff, the Federal Trade Commission ("FTC"), for its complaint alleges:

26 1. The FTC brings this action under Section 13(b) of the Federal Trade  
27 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and  
28 permanent injunctive relief, rescission or reformation of contracts, restitution,

1 disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or  
2 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,  
5 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

6 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and  
7 15 U.S.C. § 53(b).

8 **PLAINTIFF**

9 4. Plaintiff FTC is an independent agency of the United States Government  
10 created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with  
11 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits  
12 unfair or deceptive acts or practices in or affecting commerce. The FTC is authorized  
13 to initiate federal district court proceedings, by its own attorneys, to enjoin violations  
14 of the FTC Act and to secure such equitable relief as may be appropriate in each case,  
15 including restitution and disgorgement. 15 U.S.C. § 53(b).

16 **DEFENDANTS**

17 5. Defendant National Foreclosure Relief, Inc. ("NFR") is a Nevada  
18 corporation that has its principal place of business at 1505 E. 17th St. in Santa Ana,  
19 California. NFR has been in business since at least 2006. NFR transacts or has  
20 transacted business in the Central District of California.

21 6. Defendant David Ealy has been the president of NFR since its inception  
22 and is also a director and shareholder of NFR. Ealy resides or has transacted business  
23 in this District. At all times material to this complaint, acting alone or in concert with  
24 others, Ealy has formulated, directed, controlled, or participated in the acts and  
25 practices of NFR, including the acts and practices set forth in this complaint.

26 7. Defendant Chele Stone, a/k/a Chele Medina, was a director of NFR  
27 between approximately May 2006 and May 2007. Stone is also a shareholder of  
28 NFR. At all times material to this complaint, acting alone or in concert with others,

1 Stone has formulated, directed, controlled, or participated in the acts and practices of  
2 NFR, including the acts and practices set forth in this complaint.

3 8. Defendant Hugo Tapia has been a director of NFR since at least May 30,  
4 2007. Tapia has been NFR's corporate treasurer since June 30, 2006, and its  
5 corporate secretary since November 26, 2007. Tapia is also a shareholder of NFR.  
6 At all times material to this complaint, acting alone or in concert with others, Tapia  
7 has formulated, directed, controlled, or participated in the acts and practices of NFR,  
8 including the acts and practices set forth in this complaint.

9 **COMMERCE**

10 9. At all times relevant to this complaint, Defendants have maintained a  
11 substantial course of trade in or affecting commerce, as "commerce" is defined in  
12 Section 4 of the FTC Act, 15 U.S.C. § 44.

13 **DEFENDANTS' BUSINESS PRACTICES**

14 10. Since at least 2006, NFR has engaged in a course of conduct to  
15 advertise, market, offer to sell, and sell to consumers mortgage foreclosure rescue  
16 services. NFR targets consumers who are in arrears on their home mortgages and are  
17 facing foreclosure. NFR typically makes its initial contact with consumers by  
18 sending them a postcard or flyer in the U.S. mail. NFR sends these advertisements to  
19 consumers throughout the country.

20 11. One flyer that NFR has sent to consumers states the following:

21 **We understand things can happen beyond your control that**  
22 **may cause you to get behind in payments. You can now take**  
23 **advantage of a special program specifically designed to assist**  
24 **you during these times.**

25 **WE GUARANTEE OUR PROGRAM**

26 The "**Fresh Start Program**" should allow us to help you stop  
27 your current foreclosure by rewriting your existing loan. This  
28 program is for borrowers who are in foreclosure and not able to

1 bring their loan current. Using the Fresh Start Program, you will  
2 be able to resume your mortgage payment, plus a small "catch-up"  
3 payment. A filing fee is charged by National Foreclosure Relief  
4 to package your paperwork and submit it for the Fresh Start  
5 Program.

6 . . .

7 To possibly stop your foreclosure using the "Fresh Start  
8 Program", please call us immediately at 1-866-389-4283.

9 You can take advantage of the "**Fresh Start Program**" right now  
10 and possibly prevent this from happening by calling National  
11 Foreclosure Relief. There is not much time remaining so you  
12 must take action now to possibly save your home. We are not  
13 your lender or your lender's agent. We work on your behalf with  
14 your lender.

- 15 12. One version of NFR's postcard reads in relevant part as follows:  
16 It is required that you are notified of these options. We have  
17 attempted to contact you without success. Please contact us soon.  
18 Your time to enter a repayment plan is running out. Rights may  
19 include:

- 20 1. a repayment plan
- 21 2. putting your past due payments into the balance of the loan
- 22 3. paying your past due payments at the end of your loan.

23 100% GUARANTEE

- 24 13. NFR includes the following statements in another version of its  
25 postcard:

26 We are happy to inform you that you have been pre-approved to  
27 have your current mortgage, including your past due payments,  
28

1 wrapped into a new loan, with a minimum new loan amount of  
2 \$100,000 and no maximum.

3 You have already been pre-approved for this loan program.

4 Please contact us immediately we are interested in helping you  
5 resolve this problem. Following final approval, our program may  
6 allow any foreclosure proceedings to be stopped.

7 14. Consumers speak to an NFR sales representative when they call the  
8 telephone number provided in NFR's mail solicitations.

9 15. During the call, the NFR sales representative elicits information about  
10 the consumer's mortgage and his financial situation. The information is used during  
11 the call to determine whether the consumer "qualifies" for NFR's program.

12 16. The NFR sales representative assures consumers who "qualify" that  
13 NFR will stop foreclosure and will save the consumer's home. The sales  
14 representative tells consumers that NFR guarantees its service. In addition, the sales  
15 representative promises that NFR will immediately begin negotiating with the  
16 consumer's lender.

17 17. Consumers are instructed that they will have to pay NFR's fee  
18 immediately, so that NFR can begin working on the consumer's file right away.  
19 NFR's fee varies and ranges primarily between \$300 and \$1,000. Consumers who do  
20 not wish to pay by credit or debit card are instructed to purchase a MoneyGram.  
21 Consumers typically pay NFR or provide NFR with payment information before the  
22 consumer receives any contract or other paperwork from NFR.

23 18. In numerous instances, NFR sales representatives represent that NFR  
24 will refund the consumer's money if NFR does not stop foreclosure.

25 19. After consumers have paid NFR for foreclosure-relief services, NFR  
26 often does not return consumers' telephone calls or provide updates concerning the  
27 status of its communications with the consumer's lender. In other instances, when  
28

1 consumers are able to speak with a live representative, consumers are told  
2 negotiations with the consumer's lender are proceeding smoothly.

3 20. NFR does not stop mortgage foreclosure or save consumers' homes in all  
4 or virtually all instances.

5 21. Many consumers who retain NFR's services ultimately lose their homes  
6 to foreclosure. Other consumers avoid foreclosure only through their own efforts and  
7 not because of any service provided by NFR. Consumers who stop foreclosure  
8 through their own efforts sometimes learn that their lenders offer the same settlement  
9 terms to consumers who negotiate on their own behalf that they offer through third  
10 parties such as NFR; other consumers learn that their lenders will negotiate only with  
11 consumers and not with third parties. In the end, many consumers who keep their  
12 homes are harmed by having purchased NFR's services because of NFR's delays in  
13 starting negotiations with consumers' lenders, and because of the additional late fees,  
14 penalties, and other costs that accrue during those delays.

15 22. In many or most instances when NFR fails to stop foreclosure as  
16 promised, NFR denies refund requests from consumers.

17 23. In those instances when NFR refunds any of its fees to such consumers,  
18 NFR frequently returns substantially less than the consumer paid.

19 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

20 24. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or  
21 deceptive acts and practices in or affecting commerce."

22 25. Misrepresentations or deceptive omissions of material fact constitute  
23 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

24 **Count 1**

25 26. Defendants represent, expressly or by implication, that Defendants will  
26 stop foreclosure in all or virtually all instances.

27 27. In truth and in fact, Defendants do not stop foreclosure in all or virtually  
28 all instances.

1 28. Therefore, Defendants’ representation as set forth in Paragraph 26 is  
2 false and misleading and constitutes a deceptive act or practice in violation of Section  
3 5(a) of the FTC Act, 15 U.S. C. § 45(a).

4 **Count 2**

5 29. In numerous instances, Defendants represent to consumers, expressly or  
6 by implication, that Defendants will give full refunds to consumers if Defendants fail  
7 to stop foreclosure.

8 30. In truth and in fact, in numerous instances when Defendants make this  
9 representation to consumers, Defendants do not give full refunds to consumers when  
10 Defendants fail to stop foreclosure.

11 31. Therefore, Defendants’ representation as set forth in Paragraph 29 is  
12 false and misleading and constitutes a deceptive act or practice in violation of Section  
13 5(a) of the FTC Act, 15 U.S. C. § 45(a).

14 **CONSUMER INJURY**

15 32. Consumers in the United States have suffered and will suffer injury as a  
16 result of Defendants’ violations of the FTC Act. In addition, Defendants have been  
17 unjustly enriched as a result of their unlawful practices. Absent injunctive relief by  
18 this Court, Defendants are likely to continue to injure consumers, reap unjust  
19 enrichment, and harm the public interest.

20 **THIS COURT’S POWER TO GRANT RELIEF**

21 33. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to  
22 grant injunctive and such other relief as the Court may deem appropriate to halt and  
23 redress violations of the FTC Act. The Court, in the exercise of its equitable  
24 jurisdiction, may award ancillary relief, including rescission of contracts and  
25 restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any  
26 violation of any provision of law enforced by the FTC.  
27  
28

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of  
3 the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that  
4 the Court:

5 A. Award Plaintiff such preliminary injunctive and ancillary relief as may  
6 be necessary to avert the likelihood of consumer injury during the pendency of this  
7 action, and to preserve the possibility of effective final relief, including but not  
8 limited to temporary and preliminary injunctions, an order freezing assets, immediate  
9 access, and the appointment of a receiver;

10 B. Enter a permanent injunction to prevent future violations of the FTC Act  
11 by Defendants;

12 C. Award such relief as the Court finds necessary to redress injury to  
13 consumers resulting from Defendants' violations of the FTC Act, including but not  
14 limited to rescission or reformation of contracts, restitution, the refund of monies  
15 paid, and the disgorgement of ill-gotten monies; and

16 D. Award Plaintiff the costs of bringing this action, as well as such other  
17 and additional relief as the Court may determine to be just and proper.

18  
19 Respectfully submitted,

20 DAVID C. SHONKA  
21 Acting General Counsel

22 Dated: Jan. 21, 2009

23 John D. Jacobs  
24 Barbara Y.K. Chun  
25 Maricela Segura  
26 Faye Chen Barnouw  
27 Attorneys for Plaintiff  
28 FEDERAL TRADE COMMISSION