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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, ex rel., TERRY
GODDARD, Attorney General,

11 Plaintiff,

12 v.

13 SANTOYA FINANCIAL COMPANY,
14 LLC, an Arizona limited liability company;
THOMAS J. MONTOYA and JANE DOE
15 MONTOYA, husband and wife; and
ROBERT SANCHEZ and JANE DOE
16 SANCHEZ, husband and wife,

17 Defendants.

Case No: CV2009-022360

**COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**

(Unclassified Civil)

18
19 For its complaint, Plaintiff, the State of Arizona upon the relation of Terry Goddard,
Attorney General (“the State”), alleges as follows:

20 **INTRODUCTION**

21
22 Santoya Financial Company, LLC, (“Santoya Financial”) is located in Phoenix,
23 Arizona and represents itself as providing mortgage loan modification and “credit
24 restoration” services to consumers. The State alleges that Defendants violated the Arizona
25 Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) § 44-1521 et seq., by, among
26

1 other things: misrepresenting that Santoya Financial has a working relationship with the
2 federal Department of Housing and Urban Development (“HUD”) and that the company’s
3 activities are endorsed, authorized, or otherwise approved by HUD; misrepresenting that
4 Santoya Financial and an “allied” company were approved by HUD to provide counseling to
5 homeowners, and; misrepresenting the limited nature of the actual services Santoya
6 Financial provides while failing to disclose that all actual loan modification negotiations are
7 performed by independent entities for which Santoya Financial has no responsibility and
8 who have not complied with Arizona law regulating loan modification activities in Arizona.

9 The State also alleges that the Defendants violated the Arizona Credit Services Act,
10 A.R.S. § 44-1701 et seq., by, among other things: failing to provide consumers with required
11 Information Statements before the execution of contracts; using contracts that omitted
12 disclosures required by law; and charging consumers before the completion of services
13 without having first obtained a surety bond.

14 JURISDICTION AND VENUE

15 1. This action is brought pursuant to the Arizona Consumer Fraud Act and the
16 Arizona Credit Services Act to obtain injunctive relief to prevent the unlawful acts and
17 practices alleged in this Complaint and other relief, including restitution, civil penalties, costs
18 of investigation and attorney’s fees

19 2. This Court has jurisdiction to enter appropriate orders both prior to and
20 following a determination of liability pursuant to the Arizona Consumer Fraud Act and the
21 Arizona Credit Services Act.

22 3. Venue is appropriate in Maricopa County pursuant to A.R.S. § 12-401.

23 PARTIES

24 4. Plaintiff Terry Goddard is the Attorney General of Arizona.

25 5. Defendant Santoya Financial Company, LLC, is an Arizona limited liability
26 company whose address is 2225 West Whispering Wind Drive, Suite 110, Phoenix, Arizona,

1 85085.

2 6. Defendant Thomas J. Montoya, an Arizona resident, is a member/manager of
3 Santoya Financial Company, LLC and is the company's President. Defendant Montoya's
4 actions alleged herein were taken in furtherance of his and Defendant Jane Doe Montoya's
5 marital community. As the President of Santoya Financial, Defendant Montoya, with actual
6 and/or constructive knowledge, approved, endorsed, directed, ratified, controlled or
7 otherwise participated in the illegal acts and practices alleged herein.

8 7. Defendant Robert Sanchez, an Arizona resident, is a member/manager of
9 Santoya Financial Company, LLC and is the company's Chief Executive Officer. Defendant
10 Sanchez's actions alleged herein were taken in furtherance of his and Defendant Jane Doe
11 Sanchez's marital community. As the Chief Executive Officer of Santoya Financial,
12 Defendant Sanchez, with actual and/or constructive knowledge, approved, endorsed,
13 directed, ratified, controlled or otherwise participated in the illegal acts and practices alleged
14 herein.

15 FACTUAL BACKGROUND

16 8. Santoya Financial, Thomas J. Montoya, and Robert Sanchez (collectively
17 "Defendants") advertise their loan modification services to Arizona consumers and others
18 through a website, press releases, and media interviews, and have done so since at least
19 March 2009.

20 9. In addition to their advertising, the Defendants solicit clients for their loan
21 modification services through telephone solicitations made by an independent contractor
22 hired by Defendants.

23 10. The Defendants repeatedly reference HUD in their advertising, stating, among
24 other things, that Santoya Financial has a working relationship with HUD and that its loan
25 modification activities are approved or otherwise endorsed by HUD.

26 11. Defendant Sanchez gave an interview to a Phoenix television station that was

1 broadcast in April 2009 in which Santoya Financial was represented as working with HUD
2 while providing home loan modification services to consumers.

3 12. The Defendants generated and distributed a press release dated April 16, 2009,
4 touting Santoya Financial's mortgage loan modification services and entitled "Santoya
5 Financial Works to Stem the Tide of Foreclosures, Help Americans Keep Biggest Asset."

6 13. The Defendants' April 16th press release begins by stating: "Two local
7 businessmen are out to reform home loan modifications. T.J. Montoya and Robert Sanchez
8 of Santoya Financial are working to strip away the mystique and shoddy business practices
9 that are quickly beginning to envelop the industry."

10 14. The Defendants' April 16th press release quotes Defendant Montoya as stating:
11 "This is a no-risk option for homeowners who are facing foreclosure. The program is backed
12 by the federal government and any fees are refundable, if the loan modification cannot be
13 completed."

14 15. The Defendants failed to disclose in the April 16, 2009 press release that
15 consumers can apply for and obtain mortgage loan modification services through HUD
16 approved counselors without paying any fees whatsoever.

17 16. The Defendants' April 16th press release contained the following
18 representations:

19 " . . . Santoya Financial has worked closely with the federal government and
20 HUD to develop a plan that offers homeowners a chance to reduce their
monthly mortgage payments while stopping foreclosure proceedings."

21 "Arizona-based company partners with HUD to provide home loan
22 modifications that work."

23 "HUD-backed pilot program ensures government and TARP compliance."

24 "Santoya Financial also provides the HUD counseling that many homeowners
25 will be required to participate in if their mortgage is modified."

26 "Santoya Financial allies with Partners in Charity, to modify mortgage loans
and provide HUD counseling."

1 “Company also provides the HUD counseling required for participation.”

2 “ . . . we are able to assist with total debt relief solutions, including mortgage
3 loan modifications and HUD counseling ”

4 17. Contrary to Defendants’ representations referenced in paragraph sixteen,
5 neither Santoya Financial nor Defendants Montoya or Sanchez worked with the federal
6 government in general, or with HUD in particular, to develop any plan related to the
7 reduction of homeowners’ mortgage payments or stopping foreclosure proceedings.

8 18. Contrary to Defendants’ representations referenced in paragraph sixteen,
9 neither Santoya Financial nor Defendants Montoya or Sanchez ever partnered with HUD to
10 provide home loan modifications.

11 19. Contrary to Defendants’ representations referenced in paragraph sixteen, HUD
12 has never backed, endorsed, approved, or in any way sanctioned Santoya Financial’s
13 activities.

14 20. Contrary to Defendants’ representations referenced in paragraph sixteen, HUD
15 has never approved Santoya Financial to provide counseling to homeowners.

16 21. From March 29, 2009 to June 5, 2009, Santoya Financial represented on its
17 website that the company “allies with Partners in Charity, to modify mortgage loans and
18 provide HUD counseling. This is to assist homeowners to avoid foreclosure.”

19 22. Contrary to Defendants’ representations referenced in paragraph sixteen and on
20 Santoya Financial’s website, HUD had not approved Partners in Charity to provide
21 foreclosure avoidance counseling to homeowners until June 5, 2009, and has never approved
22 Partners in Charity to provide such counseling to Arizona homeowners.

23 23. Since June 5, 2009, Santoya Financial represented on its website that it “allies
24 with Partners in Charity to, modify mortgage loans and provide HUD counseling. This is to
25 assist homeowners to avoid foreclosure.”

26 24. Since June 5, 2009, Santoya Financial failed to disclose on its website that

1 HUD-approved counselors, including Partners in Charity, are prohibited from charging a fee
2 for foreclosure prevention counseling.

3 25. The Defendants stated in their April 16, 2009 press release: "Once an applicant
4 has been approved, Santoya Financial will negotiate directly with the financial institution
5 that owns the homeowner's mortgage to reduce the monthly payment and lower the interest
6 rate on the loan. The company's background in the industry allows them to negotiate the
7 fairest-possible deal available for its clients."

8 26. On its web site, Santoya Financial references its "experienced staff" that will
9 work with consumers to make loans affordable.

10 27. On its web site, Santoya Financial features photographs and professional
11 profiles of Defendants Montoya and Sanchez underneath the statement "[S]antoya Financial
12 is a group of quality driven professionals dedicated to a unique approach for your total debt
13 solutions."

14 28. Santoya Financial failed to disclose in its April 16th press release or on its web
15 site that the only service Santoya Financial provides as part of its loan modification program
16 is to collect and forward clients' information to entities for which Santoya has no
17 responsibility and who have not complied with Arizona law regulating loan modification
18 activities in Arizona.

19 29. Santoya Financial represents to consumers during telephone solicitations made
20 on its behalf that any fees paid by consumers to Santoya Financial for loan modification
21 services will go directly to Partners in Charity, a company that Santoya Financial "allies
22 with" according to Santoya Financial's website.

23 30. Contrary to Santoya Financial's representations to the contrary, the fees
24 consumers pay for the loan modification services advertised by Santoya Financial do not go
25 to Partners in Charity or any other charitable organization.

26 31. The fees consumers pay for the loan modification services advertised by

1 Santoya Financial go to a law firm for which Santoya Financial has no responsibility and
2 that has not complied with Arizona law regulating loan modification activities in Arizona.

3 32. Santoya Financial represents to consumers who are delinquent on their
4 mortgage payments that, as part of its loan modification services, it can work with the
5 consumers' lenders to reduce principal and interest rates, convert the type of loan involved,
6 extend the term of the loan involved, or the combination of any of the above.

7 33. Santoya Financial charges consumers one thousand one hundred ninety-nine
8 dollars (\$1,199.00) plus the equivalent of one month of their mortgage payment for loan
9 modification services.

10 34. Santoya Financial charges consumers a fee for loan modification services
11 before its full performance of those services, or the full performance of those services by any
12 entity working with Santoya Financial on behalf of Santoya Financial's clients.

13 35. At all times relevant hereto, Santoya Financial had not obtained a surety bond
14 consistent with A.R.S. §§ 44-1703 and 1708 of the Arizona Credit Services Act.

15 36. At all times relevant hereto, Santoya Financial failed to provide consumers
16 who contracted with it for loan modification services an Information Statement, consistent
17 with A.R.S. §§ 44-1704 and 1705 of the Arizona Credit Services Act.

18 37. At all times relevant hereto, Santoya Financial used a contract with consumers
19 that did not include all of the disclosures provided in A.R.S. § 44-1706 of the Arizona Credit
20 Services Act.

21 **FIRST CLAIM FOR RELIEF**

22 **Consumer Fraud Act, A.R.S. § 44-1521, et seq.**

23 Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth
24 herein.

25 38. The Defendants engaged in the use of deception, deceptive acts or practices,
26 fraud, false pretense, false promise, misrepresentation, or concealment, suppression or

1 omission of any material fact with intent that others rely upon such concealment, suppression
2 or omission, in connection with its advertisement, sale or delivery of services. Such acts and
3 practices include:

4 39. The Defendants deceptively implied to consumers that any fees paid by
5 consumers for loan modification services with Santoya Financial are refundable because the
6 modification program is backed by HUD, without disclosing that Santoya Financial's
7 services are not in any way endorsed or approved by HUD and that consumers can obtain
8 assistance from HUD in applying for and obtaining loan modifications without paying any
9 fee whatsoever.

10 40. The Defendants misrepresented to consumers that Santoya Financial's
11 activities are endorsed, approved, authorized, or otherwise supported by the federal
12 government and HUD.

13 41. Santoya Financial misrepresented that it works with a charitable organization
14 to provide consumers HUD counseling when neither Santoya Financial nor the charitable
15 organization, Partners in Charity, were approved by HUD to provide foreclosure avoidance
16 counseling to homeowners at the time of the representations.

17 42. Santoya failed to disclose to consumers, with the intent that others rely upon
18 such failure to disclose, that HUD-approved counselors are prohibited from charging a fee
19 for foreclosure avoidance counseling.

20 43. The Defendants failed to disclose, with the intent that others rely upon such
21 failure of disclosure, that Santoya Financial's only role in the loan modification process is to
22 collect and forward clients' information to independent entities who perform any actual
23 negotiations on behalf of Santoya Financial's clients; that Santoya Financial has no
24 responsibility for these independent entities; and that the independent entities have not
25 complied with Arizona law regulating loan modification activities in Arizona.

26 44. The Defendants deceptively represented to consumers, through their hired

1 telemarketer acting on their behalf, that the fees for their loan modification services go
2 directly to Partners in Charity, when the fees do not go to Partners in Charity or any other
3 charitable organization, but to a law firm that has not complied with Arizona law regarding
4 loan modification activities in Arizona.

5 45. At all times relevant to this Complaint, Santoya Financial, Thomas J. Montoya,
6 and Robert Sanchez acted willfully, in violation of A.R.S. § 44-1531.

7 **SECOND CLAIM FOR RELIEF**

8 **Credit Services Act, A.R.S. § 44-1701, et seq.**

9 Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth
10 herein.

11 46. Santoya Financial is a credit services organization subject to the Credit
12 Services Act, A.R.S. § 44-1701, et seq.

13 47. Santoya Financial violated the Arizona Credit Services Act by engaging in the
14 following acts and practices:

15 48. Santoya Financial charged consumers fees for the loan modification services it
16 advertised prior to the complete performance of those services by Santoya Financial, or any
17 other entity with whom it associated, without having first obtained a surety bond, consistent
18 with A.R.S. §44-1703.

19 49. Santoya Financial failed to provide consumers who signed a contract for its
20 loan modification services with a separate Information Statement, consistent with A.R.S.
21 §§ 44-1704 and 1705.

22 50. Santoya Financial used a contract with consumers that failed to contain all of
23 the disclosures provided by A.R.S. § 44-1706.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff respectfully requests that the Court:

3 1. Enter an injunction against Defendants prohibiting them from engaging in the
4 unlawful acts and practices alleged in this Complaint and from doing any acts in furtherance
5 of such acts and practices, pursuant to A.R.S. §§ 44-1528 and 44-1710(B);

6 2. Order Defendants to restore to all persons any money and property acquired by
7 any unlawful means or practice alleged in the Complaint, as deemed appropriate by the Court
8 pursuant to A.R.S. § 44-1528;

9 3. Order Defendants to pay to the State of Arizona a civil penalty of no more than
10 \$10,000 for each willful violation of the Consumer Fraud Act, pursuant to A.R.S. § 44-1531;

11 4. Order Defendants to pay the State of Arizona its costs of investigation and
12 prosecution of this matter, including reasonable attorneys' fees, pursuant to A.R.S. §§ 44-
13 1534, and;

14 5. Such other and further relief as the Court deems just and proper.

15 RESPECTFULLY SUBMITTED this 13th day of July, 2009.

16 TERRY GODDARD
17 Attorney General

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19 By: 
20 Cherie L. Howe
21 Assistant Attorney General
22 Attorneys for Plaintiff
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