

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

Plaintiff,

vs.

Case No.

**DONALD R. GILLETTE,  
FLYNN McCARTHY,  
MORTGAGE CRISIS SOLUTIONS ASSOCIATION, LLC,  
PROPERTY SOLUTIONS SPECIALISTS, INC.,  
ONE SOURCE COMMUNICATIONS, INC., and  
NATIONWIDE FINANCIAL PARTNERS, INC.**

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EMERGENCY  
MOTION FOR INJUNCTIVE RELIEF WITHOUT NOTICE**

Plaintiff, **OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA**, by and through the undersigned attorney, files this Memorandum of Law in Support of Motion for Injunctive Relief Without Notice regarding Defendants, **DONALD R. GILLETTE, FLYNN McCARTHY, MORTGAGE CRISIS SOLUTIONS ASSOCIATION, LLC, PROPERTY SOLUTIONS SPECIALISTS, INC., ONE SOURCE COMMUNICATIONS, INC., and NATIONWIDE FINANCIAL PARTNERS, INC.** (hereinafter referred to as "Defendants"), and in support thereof states as follows.

INTRODUCTION  
Initial Misrepresentations to Consumers

Defendants' scheme started with the solicitation and procurement of distressed homeowners. Defendants obtained clients by representing expertise in "helping individuals through one of the most difficult and stressful issues a person may ever have to face, the prospect of losing their home." [Ex. 1]<sup>1</sup> Defendants also represented that they "are consultants and assist in preparing you with the laws that are in place to protect you against foreclosure." [Ex. 2] After the enactment of F.S. § 501.1377, Defendants represented that they "provide ... practical information and education on legal alternatives, mediation, negotiation, defense and proactive steps to save their homes and equity and deal with threat of foreclosure ...." [Ex. 3] Nevertheless, none of the Defendants is an attorney or a duly constituted legal services entity.

The foregoing misrepresentations constitute deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act. However, the foregoing misrepresentations are only the tip of the iceberg as Plaintiff's investigation has uncovered conduct that may constitute fraud, as hereinafter set forth.

STATEMENT OF FACTS

1. *Defendants' Business Practices prior to enactment of F.S. § 501.1377.* Prior to the enactment of the Florida foreclosure rescue statute, F.S. § 501.1377, Defendants' contracts (through Property Solutions Specialists, Inc.) with homeowners represented that Defendants:

- "are consultants and assist in preparing you with the laws that are in place to protect you against foreclosure."
- "cannot and will not represent you as an attorney in your present situation or during the foreclosure and any chapter 7 or 13 court proceedings."
- "can and will respond to any inquiries necessary for you to understand and utilize the court documents."

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<sup>1</sup> All Exhibit numbers refer to the Exhibits attached to the affidavit of Randi Shapiro filed herewith.

- “assist you in the preparation of any documents that are necessary for your chapter 13 bankruptcy or foreclosure sale protection.” [Ex. 3]

Notwithstanding the foregoing, Defendants also stated that “[t]he sole function of Property Solutions Specialists, Inc. is to make available all laws applicable to your situation to better assist you with your defense against foreclosure.” [Ex. 2] Inconsistently and deceptively, Defendants represented that “[w]e assist you in the preparation of any documents that are necessary for your chapter 13 bankruptcy or foreclosure sale protection. We guarantee this process will take up to approximately a year ....” [Ex. 2] Defendants made this guarantee although Defendants were not attorneys or legal services entities. In consideration for the foregoing described services, homeowners paid a start-up fee of \$1495.00 and then a monthly fee of \$450.00. [Ex. 2]

2. *Defendants Business Practices subsequent to enactment of F.S. § 501.1377.* After the enactment of F.S. § 501.1377 in late May of 2008 with an effective date of October 1, 2008, Defendants changed their practices and contracts with homeowners.

Defendants had previously changed their contracts with homeowners so that homeowners contracted for *membership* in Mortgage Crisis Solutions Association, LLC with Property Solutions Specialists, Inc. as manager. [Ex. 4] Membership fees were similar to before: a start-up fee up to \$2995.00 and then a monthly fee of \$450.00. [Ex. 4] In return, homeowners were to be provided “education, credit and mortgage counseling, information about legal alternatives and negotiation, and such other member services and association activities as it deems appropriate based upon assessment of the members’ needs and difficulties caused by the current mortgage crisis and members’ particular financial problems.” [Ex. 4] The contracts also stated to homeowners that “[n]o obligation to provide legal services is created by this

Agreement.” [Ex. 4] Nonetheless, Defendants also represented to homeowners that paralegal services (through Loss Mitigation Services) would also be provided in order for the homeowners to represent themselves or \$1000.00 would be refunded to help the homeowner pay for an attorney of his or her choice. [Ex. 3-5]

Due to the enactment of F.S. § 501.1377, on or about September 8, 2008, the Defendants through correspondence of Mortgage Crisis Solutions Association, LLC communicated to homeowners that “it will not be possible for the current arrangements negotiated with Loss Mitigation Associates to remain in effect.” [Ex. 6] The correspondence went on to state that “MCSA has negotiated for its members to be eligible to contract for legal services from the attorneys of FIRST NATIONAL LAW FIRM, PL.... MCSA has agreed to make payment through our manager to cover FIRST NATIONAL LAW FIRM’s services to you....” [Ex. 6]

### ARGUMENT

1. *Legal Standards.* The Office of the Attorney General, Department of Legal Affairs, State of Florida is prosecuting the Defendants for violations of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501 Part II, Florida Statutes (2008), hereinafter referred to as “the Act” or “FDUTPA”. Defendants' business activities with consumers are acts within the purview of Chapter 501, Part II, Florida Statutes (2008). The Act is to be "construed liberally" to, inter alia, "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202(2), Florida Statutes (2008).

The Defendants are engaged in "trade or commerce", defined by the Act as "the

advertising, soliciting, providing, offering or distributing...of any good or service, or any property... or thing of value". F.S. § 501.203(8). Consumers are defined as "an individual; ... business; firm; association; joint venture; partnership; ... or any other group or combination." F.S. § 501.203(7). The purpose of the Act is to "protect the consuming public ... from those who engage in ... unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." F.S. § 501.202(2). Violations of the Act may be based on violations of "any law, statute, rule, regulation, or ordinance which proscribes...unfair, deceptive, or unconscionable acts or practices." F.S. § 501.203(3)(c).

Florida Rules of Civil Procedure, Rules 1.610 authorize injunctive relief. The Plaintiff is statutorily authorized to seek injunctive relief pursuant to Section 501.207(3), Florida Statutes (2008).

Generally, "injunctive relief is an extraordinary remedy to preserve the status quo, pending a final hearing, which ordinarily should not be granted absent a showing of irreparable harm; a clear legal right to the relief requested or substantial likelihood of success on the merits; an inadequate remedy at law; and considerations of the public interests. ... (citations omitted) ... However, because section 501.207... expressly authorizes the Department to seek injunctive relief on behalf of the state, the Department does not have to establish irreparable harm, lack of an adequate legal remedy or public interest. ... (citations omitted) ... The Department's sole burden at a temporary injunction hearing under FDUTPA is to establish that it has a clear legal right to a temporary injunction." Millennium Communs. & Fulfillment, Inc. v. Office of the AG, Dep't of Legal Affairs, 761 So. 2d 1256, 1260 (Fla. Dist. Ct. App. 3<sup>rd</sup> Dist. 2000).

In State v. Beeler, 530 So. 2d 932 (1988), the Supreme Court reviewed both the issuance

of a temporary injunction and the appointment of a receiver. In its opinion the Court enunciated the following standard:

“A temporary injunction without notice is an extraordinary remedy and should be granted sparingly. ... (citations omitted) ... The allegations verified by the presenter must be strong and clear, and the trial judge should raise in his or her own mind all possible responses a defendant could raise if present. Because the incursion upon precious due process rights is facilitated by issuance of ex parte orders, trial courts should issue them only where an immediate threat of irreparable injury ‘which forecloses opportunity to give reasonable notice’ exists. ... (citation omitted) ... In such circumstances the trial court must balance the harm sought to be prevented against the rights of notice and hearing.” *Id.* at 933-934.

The Supreme Court in Beeler felt “compelled to mention the sufficiency of the allegations” in language which is germane to the instant application. The Court said:

“The state's complaint is replete with averments of fraud and misrepresentations against Beeler, including the creation of bogus mortgage paper, concealing funds, and inflating property values. Sworn affidavits reveal that Beeler had to continuously seek out new investors to avoid the collapse of his scheme. In light of the evidence of an ongoing course of fraud and deception the trial court did not abuse its discretion when it issued the temporary injunction. ... (citation omitted) ... The legislature enacted chapters 517 and 494 to protect the public from fraud and deceit in the investment in securities. The laws are especially concerned with inexperienced investors who may be duped by unscrupulous brokers. Because of the statutes' public importance, the state should not be unduly restricted in its attempt to enforce them.” *Id.* at 934.

2. *Deceptive Practices.* Plaintiff has uncovered facts establishing that Defendants have engaged in conduct that constitutes deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act, Chapter 501 Part II, Florida Statutes (2008).

a. **Roxann Wurst.** One of the Defendants' victims is Roxann Wurst. Ms. Wurst has filed a complaint with the Plaintiff. Ms. Wurst has provided copies of two letters to Defendant Donald R. Gillette wherein she outlines the repeated instances when the Defendants failed to provide the represented services. [Ex. 7 and 8] Among the failures were failing to provide

representation for Ms. Wurst at the foreclosure hearing on May 12, 2008; failing to provide representation for Ms. Wurst at the foreclosure sale on July 3, 2008; and advising Ms. Wurst to file bankruptcy without benefit or reason in August of 2008. [Ex. 7 and 8]

Pursuant to the terms of her contract, Ms. Wurst requested a full refund of her payments totaling \$12,885.00, less attorneys' fees, by letter to Mr. Gillette dated January 15, 2009. [Ex. 8] Mr. Gillette responded by letter dated February 5, 2009 that the contract does not contain any provision for a refund in event of termination of membership. [Ex. 9] Furthermore, Mr. Gillette stated that Ms. Wurst's "membership ... provided you with legal services at a pre-negotiated fixed price ...." [Ex. 9]

Mr. Gillette described those legal services as "an Emergency Motion to Vacate Sale" and an "attempt[] to negotiate with the lender". [Ex. 9] Ms. Wurst's documents show that such putative legal services rendered by or through the Defendants entailed the following: the filing of a motion to vacate the July 3 sale on July 8, 2008 although Defendants were aware of the foreclosure sale as late as July 1, 2008; and an email inquiry in October of 2008 to the foreclosure buyer about Ms. Wurst's options for re-purchase. [Ex. 10 and Ex. 11]

**b. Claudia and Juan Cifuentes.** Other victims of the Defendants are Mr. and Mrs. Cifuentes who have also filed a complaint with the Plaintiff and provided an affidavit. [Ex. 12] In her affidavit, Mrs. Cifuentes makes the following statements:

- i. she responded to an advertisement in early December of 2008 on Channel 23, Univision, that offered assistance to people facing foreclosure;
- ii. she and her husband signed up with Mortgage Crisis Solutions Association through Property Solutions Specialists, Inc. on December 4, 2008, paid an initial fee of \$1695.00 and

executed an automatic withdrawal authorization for \$650.00 per month;

iii. on or about January 5, 2009, Mrs. Cifuentes informed Defendants that she and her husband were terminating their relationship with Defendants due to Defendants' failure to pay First National Law Firm. They requested a refund of the \$1695.00 payment;

iv. when they signed up, they thought they were securing protection against foreclosure and that the Defendants would try to work out some arrangement with their bank that would not result in foreclosure; and

v. their \$1695.00 payment has not been refunded.

The contractual documents between Mr. and Mrs. Cifuentes and the Defendants, dated December 4, 2008, provided Mr. and Mrs. Cifuentes with "membership" but imposed no obligations on the Defendants to do anything in return for the payment of the membership fees. [Ex. 13] Defendants instead provided a "guarantee" that they will refund \$1000.00 if Mr. and Mrs. Cifuentes select their own counsel or otherwise pay all attorney's fees if they select the law firm contracted by the Defendants, First National Law Firm, PL. [Ex. 14] On January 2, 2009, Mr. and Mrs. Cifuentes were informed that the Defendants had failed to pay to First National Law Firm, PL for legal services, notwithstanding this so-called "guarantee". [Ex. 12]

c. **Alex Beaton.** Alex Beaton was employed by the Defendants from April to June of 2008 as a sales person who reported to Don Gillette, Flynn McCarthy and Bob Fallacara. [Ex. 15, pp. 10, 12-13] Mr. Beaton testified that the sales pitch to homeowners was scripted and entailed the following: "we have attorneys that can give you twelve to twenty-four months away from your mortgage payments, it is almost verbatim because it was scripted. Twelve to twenty-four month break from your mortgage payments while we renegotiate your mortgage with your



lender for more affordable terms, of which there was never a loan modification done while I was there.” [Ex. 15, p. 18] Mr. Beaton also testified that there was never a loan modification while he was employed by the Defendants. [Ex. 15, pp. 26-27] Finally, Mr. Beaton testified that the Defendants instructed sales personnel to tell homeowners that they did not have to pay their mortgage payments to lenders. [Ex. 15, p. 20]

Mr. Beaton explained that, while he was employed by Defendants, he never saw legal services provided to homeowners. [Ex. 15, p. 29] However, if a homeowner were in foreclosure, Mr. Beaton explained that the people at client services would call FYAD Enterprises to draft bankruptcy pleadings for the homeowner to file. [Ex. 15, p. 30] FYAD Enterprises was an operation run by Victor Rodriguez who is not an attorney. [Ex. 15, p. 30] Mr. Beaton then summarized the “bankruptcy” process for homeowners in foreclosure:

“The process was we would get them the paperwork and instruct the client where to go to. It also involved the client taking a credit course, I think they would give them directions on the credit course. And then basically once the bankruptcy was filed and the sale stopped the file just went back in the cabinet and nothing usually was ever touched again.” [Ex. 15, p. 33]

d. **Jeffrey Kaiser.** Jeffrey Kaiser, an inactive status member of the Florida Bar, was employed by the Defendants from March to August of 2008. [Ex. 16, pp. 5, 7, 23] At the time of his hiring, Mr. Kaiser noted that the contracts with homeowners were non-specific so that it was nearly impossible to tell what the Defendants were selling to consumers. [Ex. 16, p. 8] Moreover, Mr. Kaiser was concerned about the paralegal organization operated by Victor Rodriguez that assisted with legal documents pertaining to foreclosure proceedings. [Ex. 16, p. 10]

As a result of his concerns, Mr. Kaiser suggested to Donald Gillette that the organization be changed to some type of mutual benefit entity. [Ex. 16, p. 12] Mr. Gillette agreed and Mortgage Crisis Solutions Association, LLC was organized with Property Solutions Specialists, Inc. as the manager. [Ex. 16, pp. 13-14] The benefit of membership for homeowners was described by Mr. Kaiser as follows:

“The envisioned assistance was going to be a staff of people who were qualified on the phones to help people with nomenclature and suggestions as to steps that might be taken in order to put people in the best position to effectively obtain modification of their mortgages and save their homes and be sure that they didn’t overlook anything that needed to be done to get them on the right track as early in the process as possible as far as trying to put some monies aside or whatever to try to work some kind of arrangement out with their mortgage company and to keep them abreast of things that the association would be able to point out to them about new developments in the laws concerning the current mortgage crisis that was rapidly picking up steam and overwhelming the housing industry at the time.” [Ex. 16, p. 14]

Mr. Kaiser went on to say that the concept “was not selling legal services ... what the concept was that it was selling knowledge assistance and encouragement for people, ..., to be part of this organization and promising them benefits ... with regards to people available to talk to them and assist them and the newsletter and the opportunity to have someone within the organization actually do direct negotiations with lenders as far as the mortgages were concerned.” [Ex. 16, p. 17]

When Florida’s mortgage rescue statute, § 501.1377, was enacted in May of 2008, Mr. Kaiser informed Donald Gillette that changes had to be made by ceasing use of the paralegals. [Ex. 16, p. 20] Accordingly, an arrangement was agreed to by Donald Gillette with Attorney Christopher Clark and the First National Law Firm, PL (FNLF) whereby FNLF would provide services to members of the association at reduced rates with FNLF’s fees paid by the Defendants

from the homeowners' membership fees. [Ex. 16, pp. 25-27]

This arrangement was agreed upon in September of 2008 and referrals were made through December of 2008. [Ex. 16, pp. 28-29, 31] But in November, payment checks from the Defendants to FNLFF for homeowners' legal services began to bounce and continued to bounce until January, 2009 when FNLFF notified the homeowners that FNLFF had not been paid by the Defendants although the monthly membership fees were still being collected. [Ex. 16, pp. 31-34, 36-37] Finally, Mr. Kaiser testified that he had been informed by homeowners that Donald Gillette continued to withdraw funds from the homeowners' accounts even after homeowners reportedly withdrew the authorization. [Ex. 16, pp. 38-39]

Mr. Kaiser also advised that Donald Gillette and Flynn McCarthy had recently established a new operation called Nationwide Financial on Blue Lagoon Drive in Miami to reportedly buy or refinance homes for distressed homeowners and that the offices for Mortgage Crisis Solutions and Property Solutions Specialists had recently been vacated. [Ex. 16, pp. 48-51]

**e. Undercover Investigation.** On February 11, 2009, John Konopka, a Financial Investigator with the Economic Crimes Division of the Office of the Attorney General, interviewed with Donald Gillette for an advertised position. [Ex. 17] The substance of Mr. Konopka's investigation is as follows:

- The business is comprised of three entities:
  - One Source Communications – described as a call center.
  - Property Solution Specialists – Lead gatherers.
  - National Financial - Sales Office.
- Property Solution Specialists has a dedicated T1 line and can handle approximately 45 call stations. These are split into two teams. One team of 35, and one team of 15. If a sales person succeeds at Property Solutions, they will be promoted to "Supervisor." There are two (2) supervisors, one supervises a 35 member team and one supervises a 15

member team. There is also a Vice President who supervises all 45. Gillette indicated that this was a position that was held by Flynn McCarthy, prior to McCarthy moving to supervise the sales center at the Blue Lagoon location (National Financial).

- Our task would be to cold call mortgage loss mitigation businesses and foreclosure relief businesses and solicit them for referrals for the persons they could not assist. The business granting the referral and the interviewee who contacted that business would only be credited and paid for the lead/referral once the deal had been closed and the lead had paid the \$5000.00 fee. If there was no payment by the lead, then there was no payment to the business or to the interviewee.
- National Financial is the sales center. It is located on Blue Lagoon and Flynn McCarthy supervises the sales center. The sales center closes the sales from the leads that are generated from Property Solution Specialists. Once a lead that was generated from Property Solution Specialists was closed by the sales team, and only upon the sales team obtaining \$5,000 in order to close the lead, would an interviewee be given credit for the lead and receive a commission based upon that transaction.
- A question was put to Gillette about the inability of persons in foreclosure to make a \$5000 payment, and whether the sales team offered any financing in order to close the deal. Gillette advised that the money had to be obtained upfront; otherwise the persons helped would not have any incentive to pay. He also advised that interviewees should encourage the lead to sell everything, to beg or borrow from family, friends and relatives, so that they could stay in their home. Gillette indicated that if this concept made the interviewees feel uncomfortable, then they may not be suited for this position.
- One Source Communications was not discussed in any detail during the interview. It was described as a call center, but Gillette did not indicate their purpose or function. Interviewees were introduced to Flynn McCarthy during the interview. Upon leaving, McCarthy advised that he was picking up leads from One Source to take to the sales center.
- Mr. Gillette stated that the process that the leads were paying for was a process that allowed the “unwinding of a foreclosure.” Mr. Gillette stated that he had sought out and contracted with an attorney that specialized in this service. He further stated that the attorney had zero bar complaints, and that he specialized in this particular service.

3. *Conclusion.* In regard to the Defendants’ deceptive trade practices under FDUTPA, the court in State v. Beeler, *supra*, discusses the defendant’s continuously seeking new investors [consumers] to avoid the collapse of the scheme in an ongoing course of fraud and deception.

Id. at 934. Similarly, the Defendants herein have consumers continuously sign up for foreclosure rescue services and make start-up and then monthly payments into the Defendants' account.

Consumers become clients of the Defendants to avail themselves of Defendants' advertised expertise in foreclosure rescue. In sum, consumers pay *membership* fees for advertised counseling and education plus legal drafting/bankruptcy/foreclosure services which services would be paid for by the Defendants from the consumers' membership fees.

Notwithstanding their representations, the Defendants have devised an unscrupulous scheme to divert the homeowners' payments to themselves without providing any services, despite the prohibitions of F.S § 501.1377.

Contrary to their representations, Defendants fail to provide representation at foreclosure hearings; fail to provide representation at foreclosure sales; and advise consumers to file bankruptcy without benefit or reason. [Ex. 7 and 8] Defendants also fail to pay the law firm that was engaged by the Defendants to provide foreclosure defense services for member homeowners. [Ex. 12; Ex. 16, pp. 31-34, 36-37] Furthermore, although the Defendants' scripted sales pitch is that Defendants can renegotiate the homeowner's mortgage for more affordable terms, Defendants fail to do loan modifications. [Ex. 15, p. 18, pp. 26-27] In this regard, the Defendants also instructed sales personnel to tell homeowners that they did not have to pay their mortgage payments to lenders. [Ex. 15, pp. 20]

Defendants also deceived homeowners who were in foreclosure by advising them to file bankruptcy:

"The process was we would get them the paperwork and instruct the client where to go to. It also involved the client taking a credit course, I think they would give them directions on the credit course. And then basically once the bankruptcy was filed and the sale stopped the file just went back in the cabinet and nothing usually was ever touched again."  
[Ex. 15, pp. 33]

The homeowners who filed bankruptcy were told by the Defendants that the bankruptcy would be withdrawn. [Ex. 8] Unfortunately for homeowners, the bankruptcy filings end up being dismissed by the Court for failure to file required pleadings beyond the petition. [Ex. 18]

Although the Defendants collected the monthly membership fees, Defendants failed to pay the law firm for homeowners' legal services that were promised by the Defendants. [Ex. 16, pp. 31-34, 36-37] It also appears that that Donald Gillette continued to withdraw funds from the homeowners' accounts even after homeowners reportedly withdrew the payment authorization. [Ex. 16, pp. 38-39]

It appears that Defendants Donald Gillette and Flynn McCarthy recently established a new operation called Nationwide Financial on Blue Lagoon Drive in Miami to scam distressed homeowners and that the offices for Mortgage Crisis Solutions and Property Solutions Specialists have been vacated. [Ex. 16, pp. 48-51] This information is consistent with the information obtained by the undercover job interview of the Plaintiff's financial investigator that National Financial is a sales center located on Blue Lagoon Drive which closes the sales from the leads that are generated from Property Solution Specialists. [Ex.17] Gillette's and McCarthy's lack of scruples and common decency was demonstrated during the undercover interview when Gillette was asked the about the inability of persons in foreclosure to make the up-front \$5000 payment. Gillette advised that the money had to be obtained upfront; otherwise the persons would not have any incentive to pay. Gillette also advised that interviewees should encourage the lead to sell everything, to beg or borrow from family, friends and relatives, so that they could stay in their home. Gillette indicated that if this concept made the interviewees feel uncomfortable, then they may not be suited for this position. [Ex. 17] Uncomfortable is one

thing but Gillette's preying upon the most vulnerable to scrap \$5000 together to pay him when the same money would go a long way toward helping the homeowner do a loan modification to stay in the home is morally despicable and legally unconscionable.

STATUTORY RIGHT TO INJUNCTIVE RELIEF

Plaintiff's exhibits filed in support of this motion clearly present prima facie evidence of violations of Chapter 501, Part II, Florida Statutes (2008). The language of the United States District Court for the Southern District of Florida in U.S. v. Sene X Eleemosynary Corp., Inc., 479 F.Supp. 970 (S.D.Fla. 1979) is germane to the Plaintiff's request for injunctive relief and appointment of a receiver: "Where an injunction is authorized by statute, it is proper to issue such an order to restrain violations of the law if the statutory conditions are satisfied." Id. at 980. "Proof of irreparable harm . . . need not be established . . ." and ". . . the government is not bound to prove the absence of an adequate remedy at law where a statute authorizes an injunction." Id. at 981.

A statutorily created right to equitable relief exists in this case. Therefore, injunctive relief and the appointment of a receiver without notice regarding **DONALD R. GILLETTE, FLYNN McCARTHY, MORTGAGE CRISIS SOLUTIONS ASSOCIATION, LLC, PROPERTY SOLUTIONS SPECIALISTS, INC., ONE SOURCE COMMUNICATIONS, INC.,** and **NATIONWIDE FINANCIAL PARTNERS, INC.** is clearly in the public interest based upon the allegations contained in the motion and instant memorandum as supported by the exhibits filed herewith.

IT IS HEREBY CERTIFIED that a true and correct copy of this Memorandum of Law and accompanying Exhibits will be served with the Emergency Motion for Injunctive Relief Without Notice.

Dated this 13<sup>th</sup> day of March, 2009

Respectfully Submitted,

**BILL McCOLLUM**

**Attorney General**

By: Fulvio Joseph Gentili



Assistant Attorney General

FL Bar No. 0037493

Office of the Attorney General

Department of Legal Affairs

110 S.E. 6th Street, Tenth Floor

Ft. Lauderdale, FL 33301

(954) 712-4600