

E-FILED: 11/18/10

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 LEON W. WEIDMAN
 Assistant United States Attorney
 3 Chief, Civil Division
 4 INDIRA J. CAMERON-BANKS (State Bar No. 248634)
 Assistant United States Attorney
 5 SEKRET T. SNEED (State Bar No. 217193)
 Assistant United States Attorney
 6 Federal Building, Suite 7516
 7 300 North Los Angeles Street
 Los Angeles, California 90012
 8 Telephone: (213) 894-3551
 Facsimile: (213) 894-7819
 9 E-mail: indira.j.cameron-banks@usdoj.gov
 sekret.sneed@usdoj.gov
 10

11 Attorneys for Plaintiff
 UNITED STATES OF AMERICA
 12

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16 UNITED STATES OF AMERICA,
 17
 18 Plaintiff,
 19 v.
 20 PETER G. MORRIS, *et al.*
 21 Defendants.
 22

No. CV10-4436 GHK (RC)

[PROPOSED] FINDINGS OF FACT AND
 CONCLUSION OF LAW AGAINST
 DEFENDANTS ELIZABETH AGUILERA
 AND ALICE YOUNG

23
 24
 25
 26
 27
 28

1 After full consideration of the papers in support of the Application for
2 Temporary Restraining Order (“Application”) filed by plaintiff United States of
3 America (“United States”), and the lack of any filed oppositions by defendants Alice
4 Young and Elizabeth Aguilera, the Court deems the Application to be a Motion for
5 Preliminary Injunction unopposed by Young and Aguilera, and determines the
6 following Findings of Fact and Conclusions of Law:

7 **FINDINGS OF FACT**

8 1. Aguilera holds a State of California real estate salesperson license.
9 (Declaration of HUD-OIG Forensic Auditor Cindi Connor [“Connor Decl.”], ¶ 4, Ex.
10 1c.) While she was officially employed by defendant Peter Morris d/b/a The Team
11 Realty Group (“Team Realty”) from October 2008 to August 2009, she worked closely
12 with defendants Peter Morris individually and Team Realty out of the Riverside office
13 and continues to do so to the present. (Declaration of HUD-OIG Special Agent
14 Terrence West [“West Decl.”], ¶ 14, Ex. 14.)

15 2. Young also holds a State of California real estate salesperson license.
16 (Connor Decl., ¶ 4, Ex. 1a.) Team Realty served as Young’s employing broker from
17 May 2008 until June 2010. Young’s license expired on September 11, 2010. (*Id.*)

18 **Aguilera’s Acts**

19 3. In or around June 2008, Aguilera, through Team Realty, served as the real
20 estate agent for Borrowers¹ 3A and 3B’s purchase of certain real property on Bright
21 Way in Perris. (Connor Decl., ¶ 8, Ex. 2a-8.) Borrowers 3A and 3B applied for and
22 obtained an FHA-insured mortgage loan in the amount of \$214,963. (*Id.*, ¶ 20.)
23 Borrowers 3A and 3B’s mortgage loan application reflects that Borrower 3A was
24 employed and earning an annual salary over \$130,000, and the mortgage loan
25

26
27 ¹ In order to protect the privacy of the borrowers, the United States adopted identifying
28 numbers for certain borrowers in the Complaint and used the same numbers to
represent the same borrowers in its Application for Temporary Restraining Order.

1 application file contains images of fictitious paystubs, paychecks, bank statements, tax
2 documents, verifications of employment (“VOE”), and a letter purportedly signed by
3 Borrower 3A describing details of his employment. (Connor Decl., ¶¶ 11-15, Exs. 2d-
4 2h & ¶ 17, Ex. 2j.)

5 4. The Government’s investigation, however, revealed that the statements
6 and documents supporting these representations in the mortgage loan application are
7 indeed false, fictitious and fraudulent, and that defendant Peter Morris and Aguilera
8 worked in concert with each other and other defendants to conceal their falsity.
9 (Connor Decl., ¶¶ 8, 14 & 19, Exs. 2a-2b, 2l.)

10 5. For example, the subpoena response from the California Employment
11 Development Department (“EDD”) reveals that since, at least 2005, Borrower 3A has
12 not been employed, or earned an income. (Declaration of AUSA Indira J. Cameron-
13 Banks, Decl. ¶ 8, Ex. 16.) Further, aware of this fact, Aguilera carefully counseled
14 Borrowers 3A and 3B as to what Borrower 3A’s employer response should be to any
15 VOE inquiries received regarding his employment. (Connor Decl., ¶ 19, Ex. 2l.)
16 Additionally, HUD-OIG confirmed that Borrowers 3A and 3B’s bank statements were
17 digitally or electronically altered to reflect the bi-weekly deposits of Borrower 3A’s
18 purported salary. (Connor Decl., ¶ 14.)

19 6. In addition, Aguilera and Peter Morris recently worked in concert to
20 conceal Morris’ receipt of improper commissions through the short-sale of his own
21 properties from the bank mortgage-holder. (West Decl., ¶¶ 10-15, Exs. 8a and 8b.)
22 Within months of securing the \$525,000 mortgage loan, Morris defaulted on the
23 mortgage loan. (*Id.*, ¶ 11.) In order to relieve himself entirely of the mortgage loan
24 obligation, Morris again made false representations to the mortgage lender in order to
25 convince the bank to allow a short sale to proceed on the property for less than
26 \$200,000. (*Id.*, ¶ 12.) The bank, convinced by the false representations, allowed a
27
28

1 short-sale to proceed on the property, which Aguilera handled as the real estate agent.
2 (*Id.*, ¶¶ 13-14.)

3 Young's Acts

4 7. Young not only served as a real estate salesperson working for Morris,
5 she, along with several of her close family members that she directed to Morris,
6 worked in concert with Morris in order to secure government-insured mortgage loans
7 based on false representations, statements and documents. (West Decl. ¶¶ 7, 16-17;
8 Cameron-Banks Decl., ¶ 5, Ex. 10.)

9 8. In or around August 2008, Aguilera, through Team Realty, is listed as the
10 real estate agent for Borrowers 6A and 6B's purchase of certain real property on
11 Braidwood Court in Victorville. (Connor Decl., ¶ 32, Ex. 4a-9.) Borrowers 6A and
12 6B, however, who are Young's parents admitted that Young served as the real estate
13 agent on this transaction. (West Decl., ¶ 7.) Young then, in concert with defendant
14 Peter Morris, originated and processed an FHA-insured mortgage loan in the amount of
15 \$184,978 for Borrowers 6A and 6B to purchase this property as "straw-buyers" for
16 Young's sister and her nephew. (*Id.*)

17 9. The mortgage loan file contains statements regarding Borrowers 6A and
18 6B's intention to reside in the purchased property, when they, along with Young, knew
19 that Young's sister and her son were the actual purchasers of the property. (*Id.*;
20 Connor Decl., ¶ 33, Exs. 4b-1 & 4b-4.) In addition to concealing Young's sister and
21 son as the actual purchasers of the property, the documents supporting the mortgage
22 loan application contain a fraudulent rental agreement between Borrowers 6A and 6B
23 and Young's sister reflecting Young's sister as a tenant of the property in which
24 Borrowers 6A and 6B resided in at the time they applied for the mortgage loan for the
25 Braidwood Court property. Under the rental agreement, Young's sister paid Borrowers
26 6A and 6B \$1,650 in monthly income which counted as income towards the mortgage
27 loan application for the Braidwood Court property. (Connor Decl., ¶ 35, Ex. 4d.)
28

1 10. In addition to the false rental income being considered as part of their
2 application for the FHA-insured mortgage loan, Borrowers 6A and 6B's mortgage loan
3 application falsely inflated the monthly social security disability benefits received by
4 Borrower 6B by over \$1,000. (West Decl., ¶ 8.) Borrower 6B confirmed that the letter
5 from the SSA contained in the HUD Case Binder was indeed altered and that she only
6 received approximately \$345 on a monthly basis, instead of the \$1,352 reflected in the
7 letter. (*Id.*; Connor Decl., ¶ 38, Ex. 4g.) Accordingly, the bank statements contained
8 in the file also were altered to reflect the falsely inflated amounts. (Connor Decl., ¶ 37,
9 Ex. 4f.) Overall, Borrowers 6A and 6B's income was falsely inflated by \$2,657
10 monthly, or over \$31,000 annually.

11 11. In another example involving Young's family, Young's sister, aided by
12 Peter Morris, secured two mortgage loans on certain real property located at Brandt
13 Drive in Moreno Valley, and promptly defaulted on her payments in connection with
14 the loans. (Cameron-Banks Decl. ¶ 2, Ex. 10.) Peter Morris attempted to help
15 Young's sister halt foreclosure proceedings by (1) directing her to deed the property to
16 defendant Celeste Montoya, and once a borrower was found for the property, directing
17 Celeste Montoya to deed the property back to Young's sister, (*id.*), and (2) assisting
18 Borrower 5 purchase the Brandt Drive property with an FHA-insured mortgage loan
19 that Borrower 5 obtained through false representations and documents. (*Id.*; Connor
20 Decl., ¶¶ 22-31, Exs. 3a-3j.)

21 12. In June 2010, Young also made false representations to the FDIC-insured
22 lender/mortgagor related to the real property she owns on Polaris Lane in Victorville,
23 California, in order to convince the lender to approve a short sale of the property.
24 (West Decl., ¶ 16.) HUD-OIG Special Agent West's investigation revealed that the
25 attempted short sale of this property was based on fraud that began in 2005. In 2005,
26 Young obtained a mortgage loan for herself and her husband, Bryan Young, for the
27 property on Polaris Lane. (*Id.*, ¶ 17.)

1 17. 18 U.S.C. § 1014 applies to “[w]hoever knowingly makes any false
2 statement or report . . . for the purpose of influencing in any way the action of the
3 Federal Housing Administration . . . any institution the accounts of which are insured
4 by the Federal Deposit Insurance Corporation. . . or a mortgage lending business, or
5 any person or entity that makes in whole or in part a federally related mortgage loan...
6 upon any application, . . . purchase, [or] purchase agreement...shall be fined not more
7 than \$1,000,000 or imprisoned not more than 30 years, or both. . . .”

8 18. 18 U.S.C. § 1341 applies to “[w]hoever, having devised or intending to
9 devise any scheme or artifice to defraud, or for obtaining money or property by means
10 of false or fraudulent pretenses, representations, or promises . . . for the purpose of
11 executing such scheme or artifice or attempting so to do, places in any post office or
12 unauthorized depository for mail matter, any matter or thing whatever to be sent or
13 delivered by the Postal Service, or . . . private or commercial interstate carrier, or takes
14 or receives therefrom”

15 19. 18 U.S.C. § 1343 applies to “[w]hoever, having devised or intending to
16 devise any scheme or artifice to defraud, or for obtaining money or property by means
17 of false or fraudulent pretenses, representations, or promises, transmits or causes to be
18 transmitted by wire . . . in interstate or foreign commerce, any writings, signs, signals,
19 pictures, or sounds for the purpose of executing such scheme or artifice”

20 20. 18 U.S.C. § 1344 applies to “[w]hoever knowingly executes, or attempts
21 to execute, a scheme or artifice (1) to defraud a financial institution; or (2) to obtain
22 any of the moneys, funds, credits, assets, securities, or other property owned by, or
23 under the custody or control of, a financial institution, by means of false or fraudulent
24 pretenses, representations, or promises”

25 21. In addition to enjoining such violations, the Attorney General may seek an
26 order restraining individuals from alienating, disposing, withdrawing, transferring,
27 removing, or dissipating any property or assets traceable to §§ 1006, 1014, 1341, 1343,
28

1 and 1344, and seek the appointment of a temporary receiver to administer such relief.
2 *See* 18 U.S.C. 1345(a)(2).

3 22. The Fraud Injunction Statute further provides that “[t]he court shall
4 proceed as soon as practicable to the hearing and determination of such an action, and
5 may, at any time before final determination, enter such a restraining order or
6 prohibition, or take such other action, as is warranted to prevent a continuing and
7 substantial injury to the United States 18 U.S.C. § 1345(b).

8 23. A plaintiff seeking a preliminary injunction “must establish that he is
9 likely to succeed on the merits, that he is likely to suffer irreparable harm in the
10 absence of preliminary relief, that the balance of equities tips in his favor, and that an
11 injunction is in the public interest.” *Winter v. Natural Resources Defense Council,*
12 *Inc.*, 129 S. Ct. 365, 374 (2008).

13 24. Since *Winter*, the Ninth Circuit has reaffirmed the validity of the “serious
14 questions” approach, which supports granting a preliminary injunction when there are
15 serious questions going to the merits and the balance of hardships tips sharply in favor
16 of the plaintiff, provided the other *Winter* elements are met. *Alliance for Wild Rockies*
17 *v. Cottrell*, 613 F.3d 960, 965 (2010), *amended by* No. 09-35756, 2010 WL 3665149
18 (9th Cir. Sept. 22, 2010).

19 25. When seeking an injunction under the Fraud Injunction Statute, proof of
20 irreparable harm is not necessary. *See United States v. Sriram*, 147 F. Supp. 2d 914,
21 935 (N.D. Ill. 2001).

22 26. Based on the evidence submitted by the United States, the United States
23 has demonstrated probable success on the merits that Aguilera and Young violated 18
24 U.S.C. §§ 1006, 1014 and 1344, and a likely recurrence of such fraud in the absence of
25 the requested injunctive relief since Young and Aguilera recently have participated in
26 schemes to make false representations, supported by false statements and documents,
27 to financial institutions insured by the Federal Deposit Insurance Corporation
28

1 (“FDIC”). (West Decl., ¶¶ 10-18.) Moreover, the United States has demonstrated that
2 the balance of hardships favors the United States, and that the public interest favors the
3 entry of a preliminary injunction against Defendants.

4 27. Accordingly, the Court hereby grants the United States’ Motion for
5 Preliminary Injunction against defendants Elizabeth Aguilera and Alice Young.

6
7
8 Dated: 11/18/10



9 Honorable George H. King
10 United States District Court Judge
11

12 Respectfully submitted,

13 ANDRÉ BIROTTE JR.
14 United States Attorney
15 LEON W. WEIDMAN
16 Assistant United States Attorney
17 Chief, Civil Division

18 /s/
19 INDIRA J. CAMERON-BANKS
20 Assistant United States Attorney
21 SEKRET T. SNEED
22 Assistant United States Attorney

23 Attorneys for Plaintiff
24 UNITED STATES OF AMERICA
25
26
27
28