



**By Order of the Court, Judge Joseph N. Camacho**

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**FOR PUBLICATION**



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**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>SALTY SAIPAN CORPORATION and DONICIA METTAO LIFOIFOI,</b>	)	<b>CIVIL ACTION NO. 11-0082</b>
	)	
<b>Plaintiffs,</b>	)	<b>ORDER GRANTING DEFENDANTS’ MOTION FOR RECONSIDERATION AS SECTION 55 OF THE RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT ONLY APPLIES TO ACQUISITION OF PROPERTY AT THE EXPENSE OF THE CLAIMANT; AND GRANTING PLAINTIFF SALTY SAIPAN’S MOTION TO AMEND JUDGMENT AS LIQUIDATED DAMAGES ARE REQUIRED FOR WILLFUL VIOLATIONS OF THE CONSUMER PROTECTION ACT</b>
<b>v.</b>	)	
<b>MUSTAFA SHAKIR, SHAKIR CNMI, INC. and SAMA HOLDINGS, LLC</b>	)	
	)	
<b>Defendants.</b>	)	

**I. INTRODUCTION**

This matter came before the Court on June 30, 2015 on the Defendants’ Motion for Reconsideration in Courtroom 220A. Plaintiff Salty Saipan Corporation (“Salty Saipan”) was represented by Attorney Colin Thompson and Attorney Daniel Guidotti. Defendants Mustafa Shakir (“Mr. Shakir”), Shakir CNMI Inc., and SAMA Holdings, LLC (collectively “Defendants”) were represented by Attorney Stephen Nutting.

The bench trial in this case began on March 4, 2013, and was completed on April 18, 2013 in Courtroom 220A. On December 22, 2014, the Court issued its Findings of Fact and Conclusions of Law and Order Imposing Constructive Trusts on Real Estate Agent for Consumer Protection Act

1 Violation and Breach of Fiduciary Duty. The Court entered a final judgment in this case on April  
2 18, 2015.

3 There are currently two motions before the court:

4 1. Defendants’ Motion for Reconsideration, filed on May 1, 2015. Salty Saipan filed its  
5 Opposition to Defendants’ Motion to Amend Judgment Under NMI R. Civ. P 59(e) on  
6 June 5, 2015. Defendants filed their Reply to Plaintiff’s Opposition to Motion to  
7 Reconsider on June 26, 2015.

8 2. Salty Saipan’s Motion to Amend Judgment Under NMI R. Civ. P 59(e), also filed on  
9 May 1, 2015. Defendants did not file a written opposition, although they did oppose the  
10 motion orally at the June 30, 2015 motion hearing.

11 Based on a review of the filings, oral arguments, and applicable law, the Court makes the  
12 following decisions.

13 **II. BACKGROUND**

14 This matter initially came before the Court for a bench trial that began on March 4, 2013  
15 and was completed on April 18, 2013 in Courtroom 220A. At the bench trial, Salty Saipan was  
16 represented by Colin Thompson, Esq. Plaintiff Donicia Mettao Lifoifoi was represented by Robert  
17 T. Torres, Esq. Defendants were represented by Steven J. Nutting. The parties filed their proposed  
18 findings of fact and conclusions of law on October 7, 2013, and October 9, 2013. The Court issued  
19 its Findings of Fact and Conclusions of Law on December 22, 2014. *See Salty Saipan v. Shakir*, Civ  
20 No. 11-0082 (NMI Super. Ct. Dec. 22, 2014) (Findings Of Fact and Conclusions of Law Imposing  
21 Constructive Trusts on Real Estate Agent for Consumer Protection Act Violation and Breach of  
22 Fiduciary Duty) (“FFCL”). In the FFCL, the Court found that a number of facts were established by  
23 a preponderance of the evidence. FFCL at 2.

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1 The Court entered a Final Judgment in this case on April 17, 2015. On May 1, 2015,  
2 Plaintiff Salty Saipan filed a Motion to Amend Judgment Under NMI R. Civ. P. 59(e) and a Motion  
3 to Correct a Clerical Error Under NMI R. Civ. P. 60(a). The Court granted the Motion to Correct a  
4 Clerical Error Under NMI R. Civ. P. 60(a) on July 31, 2015.

5 On May 1, 2015, Defendants filed their Motion for Reconsideration. Salty Saipan filed its  
6 Opposition to Defendants' Motion to Amend Judgment Under NMI R. Civ. P. 59(e). Defendants  
7 filed their Reply to Plaintiff's Opposition to Motion to Reconsider on June 29, 2015.

8 **A. The Court's Initial Factual Findings Issued on December 22, 2014**

9 Defendants are requesting that the Court reconsider its imposition of a constructive trust. In  
10 the FFCL, the Court made a number of factual findings, which the Court will again repeat below.

11 **1. The Parties, the Properties, and the Real Estate Transactions**

12 The claims in this case involve transfers of interest in two parcels of adjacent real property,  
13 Tract No. 22597-R2 ("the Mettao Property") and Tract No. 22597-2 ("the Salty Property"), that  
14 took place in November 2007. The Salty Property is owned in fee simple by Ms. Lifoifoi, a person  
15 of Northern Marianas descent. The Mettao Property was leased by Bonifacio and Francisa F.  
16 Mettao to Martin Lifoifoi, Ms. Lifoifoi's late husband, for a period of fifty-five years, from October  
17 23, 1990 until October 23, 2045. During the autumn of 2007, the Mettao Property lease was held by  
18 the Estate of Martin Lifoifoi ("the Estate"). Ms. Lifoifoi and Juan Santiago Tenorio were co-  
19 executors of the Estate.

20 On November 2, 2007, Ms. Lifoifoi leased the Salty Property to Salty Saipan. Salty Saipan  
21 is a corporation existing and organized under the laws of the CNMI with its principal place of  
22 business on Saipan. Salty Saipan is owned by a Korean family. At the time of the transactions at  
23 issue in this case, Salty Saipan was largely directed by two sisters, Kyung Min Song ("Ms. Song")  
24 and Kyung Won Song ("Ms. Ann"). In the autumn of 2007, Salty Saipan was seeking to lease a

1 commercial property on Saipan for an acupuncture clinic for one of the family members. At the  
2 time, Ms. Lifofoi was in default on a mortgage secured by the Salty Property and needed funds to  
3 avoid foreclosure and other penalties. The November 2, 2007 lease granted Salty Saipan a leasehold  
4 interest in the Salty Property for a term of fifty-five years in exchange for a payment of \$40,000 and  
5 the agreement that Salty Saipan would assume the existing mortgage on the property.

6 On November 16, 2007, the Estate, through the actions of co-executors Ms. Lifofoi and  
7 Juan Tenorio, assigned the ground lease of the Mettao Property to Mr. Shakir. Mr. Shakir is a  
8 businessman who resides in Saipan and has been involved in the real estate business in the  
9 Commonwealth as an investor and agent since about 1992. Mr. Shakir operates a number of  
10 business entities that are also involved in the real estate business. Two of these entities are also  
11 named as defendants in this case: (1) Shakir CNMI Inc. is a corporation organized and existing  
12 under the laws of the CNMI, with its principal place of business in Saipan; and (2) SAMA  
13 Holdings, LLC is a limited liability company organized and existing under the laws of the CNMI  
14 with its principal place of business in Saipan. In the November 16, 2007 assignment of ground  
15 lease, the Estate assigned the leasehold interests in the Mettao Property to Mr. Shakir in exchange  
16 for payment of \$40,000. This assignment was pre-approved by the probate court overseeing the  
17 disposition of the Estate on November 15, 2007. *In re Estate of Lifofoi*, Civ. No 99-0071 (NMI  
18 Super. Ct. Nov. 15, 2007) (Order Approving Assignment of Lease).

19 There was a dispute concerning whether Mr. Shakir paid the \$40,000 due under the lease  
20 assignment, and that dispute was settled by Mr. Shakir and the executors of the Estate, as is  
21 reflected in the Petition for Final Distribution filed June 5, 2008 in Civil Action 99-0071,<sup>1</sup> and  
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23  
24 <sup>1</sup> The Estate acknowledged that Mr. Shakir had paid the full consideration for the assignment of the Mettao Property  
lease by making payments to the Estate, Ms. Lifofoi, and Commonwealth Health Center.

1 approved by the probate court on August 11, 2008. *In re Estate of Lifoifoi*, Civ. No. 99-0071 (NMI  
2 Super. Ct. Aug. 11, 2008) (Order of Final Distribution).

## 3 4 **2. Mr. Shakir's Introduction to the Plaintiffs**

5 As noted above, in the autumn of 2007, Salty Saipan was looking for a commercial property  
6 to lease and Ms. Lifoifoi was facing foreclosure on a mortgage secured by the Salty Property. In  
7 September 2007, Ms. Ann, her husband, Gil Sang Park ("Mr. Park"), and her brother-in-law, Dr.  
8 Jung San Park ("Dr. Park"), met with Ms. Lifoifoi and discussed the possibility of leasing both the  
9 Salty Property and the Mettao Property. This conversation occurred before either Salty Saipan or  
10 Ms. Lifoifoi had spoken with Mr. Shakir. After the September meeting, Mr. Park had dinner with a  
11 family friend, Mr. Jung Gon Kim ("Mr. Kim"), and asked Mr. Kim if he would ask Mr. Shakir  
12 about the properties. Mr. Kim was well-acquainted with Mr. Shakir and knew Mr. Shakir as a friend  
13 and as his tenant. The next morning after having dinner with Mr. Park, Mr. Kim spoke with Mr.  
14 Shakir and explained that Salty Saipan had an interest in leasing the two properties. After receiving  
15 this information, Mr. Shakir asked another one of his acquaintances, Rick Rangamar, if Mr.  
16 Rangamar knew Ms. Lifoifoi and could make contact. Mr. Rangamar did know Ms. Lifoifoi and set  
17 up a meeting between Ms. Lifoifoi and Mr. Shakir.

## 18 **3. Autumn 2007 Events**

19 Mr. Shakir and Ms. Lifoifoi met several times in September and October 2007. During the  
20 course of these meetings, they entered into several agreements. On September 21, 2007 and  
21 October 24, 2007, Mr. Shakir paid money to Ms. Lifoifoi that was understood by both parties to be  
22 advance payments for the money Ms. Lifoifoi would receive from leasing the Mettao Property to  
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1 Mr. Shakir.<sup>2</sup> On October 13, 2007, Ms. Lifoifoi and Mr. Shakir attempted to enter into an  
2 Assignment of Ground Lease for the Mettao Property, under which the remainder of the 1990 lease  
3 would be assigned to Mr. Shakir. However, because Ms. Lifoifoi was not the owner of the 1990  
4 lease, this assignment was ineffective. Also on October 13, 2007, Ms. Lifoifoi and Mr. Shakir, on  
5 behalf of his company, Shakir CNMI Inc., entered into an Exclusive Brokerage Agreement to  
6 facilitate the lease of the Salty Property. Under the brokerage agreement, Mr. Shakir was to receive  
7 half of any amount paid under the lease agreement that exceeded the amount required to pay off the  
8 mortgage underlying the Salty Property. On October 29, 2007, Mr. Shakir loaned Ms. Lifoifoi \$300  
9 to be repaid with the proceeds of the lease of the Salty Property.

10 During this same period of time, September and October 2007, Mr. Shakir met with  
11 representatives of Salty Saipan. Additionally, Mr. Shakir had Mr. Kim communicate with Salty  
12 Saipan about the properties. In particular, Mr. Shakir asked Mr. Kim to relay the message that the  
13 Salty Property was available for lease; that the Mettao Property had legal problems and was not  
14 currently available; and that the Mettao Property would be available for Salty Saipan to lease later  
15 at a reasonable price. Mr. Shakir did not communicate to Salty Saipan that he sought to obtain the  
16 leasehold interest in the Mettao Property, either temporarily or permanently. Nor did he  
17 communicate that fact to Mr. Kim. Similarly, Mr. Shakir did not communicate to Salty Saipan or  
18 Mr. Kim that he had entered various advance payment or loan repayment agreements with Ms.  
19 Lifoifoi.

20 Upon hearing that the Mettao Property was unavailable due to legal problems, Salty Saipan  
21 agreed to lease just the Salty Property. Based on Mr. Shakir's representations, communicated

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23 <sup>2</sup> The Court notes that Ms. Lifoifoi testified that she was unaware that Mr. Shakir would be the assignee of the Mettao  
24 Property lease. However, the Court did not find this testimony credible given the consistent documentation that Mr. Shakir intended to lease the Mettao Property, the assignment agreement listing Mr. Shakir as the assignee, and the multitude of payments from September 21, 2007 to May 9, 2008 from Mr. Shakir to Ms. Lifoifoi for the Mettao Property.

1 through Mr. Kim, Salty Saipan believed that the Mettao Property transaction would shortly follow  
2 at a minimal price (“pocket change”). Salty Saipan and Ms. Lifoifoi entered the Ground Lease  
3 Agreement on November 2, 2007, and Salty Saipan paid \$40,000 to Ms. Lifoifoi that day. Under  
4 the Ground Lease Agreement, Salty Saipan agreed to “assume payment of a debt on an existing real  
5 property mortgage encumbering the property with the City Trust Bank.” Pl.’s Ex. 7 at 3. City Trust  
6 Bank would not agree to allow Salty Saipan to take over the mortgage, so Salty Saipan, in order to  
7 fulfill its responsibility under the Ground Lease Agreement, made payments to City Trust Bank  
8 necessary to avoid foreclosure until Salty Saipan was able to obtain a separate loan in June 2008.

9 Mr. Shakir, directly and through Mr. Kim, provided several services to Salty Saipan in the  
10 course of the Salty Property lease transaction. Mr. Shakir obtained a title report and provided it to  
11 Salty Saipan. Mr. Shakir helped Salty Saipan obtain the financing necessary to pay off Ms.  
12 Lifoifoi’s mortgage underlying the Salty Property, which was a material term of the ground lease.  
13 To obtain this loan, Mr. Shakir contacted Mr. Robert DeCourteney, president and chief executive  
14 officer of the Bank of Federated States of Micronesia (“Bank of FSM”). In late 2007, when Mr.  
15 Shakir contacted Mr. DeCourteney about a loan for Salty Saipan, Bank of FSM did not have a  
16 Saipan office, so a client introduction was necessary to have a loan application reviewed. The Bank  
17 of FSM first denied Salty Saipan’s loan application. After the loan application was denied, Mr.  
18 Shakir approached Mr. DeCourteney on behalf of Salty Saipan again, with a request for a smaller  
19 loan to be paid back over a longer period of time. That loan application was approved.

20 Mr. Shakir charged Salty Saipan a three-percent commission on the price of the lease  
21 agreement, totaling \$9,350, and a three-percent commission for his assistance with obtaining the  
22 loan from Bank of FSM, totaling \$6,000. Salty Saipan paid Mr. Shakir \$9,350 on November 13,  
23 2007, and \$6,000 on June 10, 2008. These commission payments were in addition to the \$20,000  
24 commission that Ms. Lifoifoi paid to Mr. Shakir under their written brokerage agreement.

1 In addition to the September 21, 2007 and October 24, 2007 advance payments for the  
2 Mettao Property lease assignment, in November and December 2007, Mr. Shakir and Ms. Lifoifoi  
3 entered into five other temporary loan agreements, wherein Mr. Shakir gave Ms. Lifoifoi cash  
4 payments to be repaid when the Mettao Property was cleared from probate.<sup>3</sup> A portion of this  
5 money was used by Ms. Lifoifoi and her family members to cover the expenses of moving out of  
6 the Mettao Property. During the course of Ms. Lifoifoi's dealings with Mr. Shakir, she was assisted  
7 by her daughter, Teresa Lifoifoi James, and her daughter's husband.

#### 8 **4. Mettao Property Offered to Salty Saipan**

9 On June 5, 2008, the probate court issued its Order of Final Distribution and in doing so,  
10 recognized that all terms of the lease assignment from the Estate to Mr. Shakir had been performed.  
11 In the late summer or early fall of 2008, after the probate court issued the Order of Final  
12 Distribution, Mr. Shakir offered to assign the lease of the Mettao Property to Salty Saipan. This  
13 offer was orally conveyed by Mr. Kim to Ms. Song. Mr. Shakir recalls that the price he asked was  
14 \$66,000. Both Song sisters recall that the offered price was \$160,000. Mr. Kim, recalls that the  
15 price was something between \$100,000 and \$150,000. The Court finds that the evidence  
16 establishes that the offered price was \$160,000.<sup>4</sup> Salty Saipan declined the \$160,000 offer.

#### 17 **5. Driveway Blockage, Easement Offer, and Mettao Property Improvements** 18 **and Subleases**

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20 <sup>3</sup> The wording of these various agreements differs slightly, but all of the agreements indicate that Mr. Shakir is giving  
21 Ms. Lifoifoi cash, and that the cash is an advance that will be repaid through the Mettao Property. See Pl.'s Exs. 18-22  
22 (Ms. Lifoifoi agrees to repay sums of money "borrowed as temporary loan payable upon completion of probate of my  
23 lot TR 2257 R2"); Pl.'s Ex. 17 (Ms. Lifoifoi agrees to pay a sum of money "advanced upon receiving payment for my  
24 lot leased to him and upon completion of the probate"); Pl.'s Ex. 15 (Ms. Lifoifoi acknowledges the receipt of cash "as  
advance payment for the assignment of Lot TR-22597-R2); and Pl.'s Ex. 11 (Ms. Lifoifoi acknowledges the receipt of  
advance payment for the assignment of "my lot # 22597-R2," and "agree[s] that Mr. Shakir will deduct the above  
amount from the downpayment to be paid upon signing of the assignment of lease.").

<sup>4</sup> Mr. Shakir's testimony about the offered price is not credible given that the evidence also demonstrated that Mr. Shakir offered the Mettao Property lease to Ms. Song individually at a later time for \$120,000. There would be no reason for Mr. Shakir to make a second, higher, offer after the first offer was declined. Also, Mr. Kim's recollection of the offered price was much closer to the figure testified to by the Song sisters than the figure testified to by Mr. Shakir.



1 A year passed with Salty Saipan occupying the Salty Property. For part of that time a church  
2 sub-leased the Mettao Property from Mr. Shakir. Then, in late 2009, with no notice to Salty Saipan  
3 large piles of gravel were placed on the driveway to the parking lot behind the Salty Property. As a  
4 result, the cars parked in the back were blocked in. Mr. Kim called Mr. Shakir on behalf of Salty  
5 Saipan to find out what was going on. During that conversation, Mr. Shakir told Mr. Kim that Mr.  
6 Shakir's friend from India had bought the lease of the Mettao Property; that the driveway used by  
7 Salty Saipan was actually on the Mettao Property; and that the friend was planning to build a  
8 building that went up to the property line, so Salty Saipan could not use the driveway any more. Mr.  
9 Shakir explained that the friend might be willing to grant an easement to Salty Saipan for around  
10 \$20,000. Mr. Shakir later wrote a letter to Dr. Park representing that Mr. Shakir's friend from India  
11 would grant an easement for the driveway for \$25,000.

12 Salty Saipan declined all of the easement offers and instead invested in building a new  
13 driveway on the other side of the building on the Salty Property. This cost Salty Saipan at least  
14 \$3,000.

15 At the time that the original driveway was blocked with gravel, Mr. Shakir was the owner of  
16 the Mettao Property lease. The Mettao Property lease was never transferred to his friend from India.  
17 The Mettao Property lease was transferred at some point before September 2010 to SAMA  
18 Holdings, LLC, one of the companies controlled by Mr. Shakir that he uses as a holding company  
19 for some of his property interests. Mr. Shakir spent \$167,000 to construct a new building on the  
20 Mettao Property. On September 2, 2010, Mr. Shakir, on behalf of SAMA Holdings, LLC, subleased  
21 the portion of the Mettao Property with the new building to Union of Professionals, a CNMI  
22 corporation, for a term of thirty-five years in exchange for \$225,000, of which SAMA Holdings had  
23 received about \$125,000 at the time of trial. Mr. Shakir has also subleased the remaining portion of  
24

1 the property to various sublessors, and had received approximately \$33,500.00 in rent at the time of  
2 trial.

### 3 **B. The Court’s Order in the FFCL**

4 In the FFCL, the Court found Defendants liable to Salty Saipan for violations of the  
5 Consumer Protection Act, 4 CMC § 5105(l) & (m). FFCL at 32. Section 5105(l) prohibits  
6 “[e]ngaging in any other conduct which similarly creates a likelihood of confusion or of  
7 misunderstanding.” 4 CMC § 5105(l). The Court found that Mr. Shakir’s “conduct in the  
8 transactions underlying this case was unfair, deceptive, and confusing to Salty Saipan.” FFCL at 16.  
9 Specifically, because Mr. Shakir “misrepresented the character and scope of his services” while to  
10 “honestly communicate his role [in the transaction] to Salty Saipan,” Mr. Shakir engaged in conduct  
11 prohibited by Section 5105(l). FFCL at 16.

12 Section 5105(m) prohibits “[e]ngaging in any act or practice which is unfair or deceptive to  
13 the consumer.” 4 CMC § 5105(m). The Court found that Mr. Shakir had violated Section 5105(m)  
14 when he “gave the impression to Salty Saipan that he was providing a service to the corporation,  
15 when in reality, he scooped up the property rights that they requested assistance with.” FFCL at 16-  
16 17. The Court then imposed a constructive trust on the profits earned from the Mettao Property,  
17 with Mr. Shakir as a trustee and Salty Saipan as the beneficiary. *Id.*

18 Defendants’ Motion for Reconsideration involves the constructive trust on the Mettao  
19 Property.<sup>5</sup> Salty Saipan’s Motion to Amend Judgment involves the Court’s failure to award  
20 liquidated damages for Defendants’ Consumer Protection Act violations.

### 21 **III. LEGAL STANDARD**

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23 <sup>5</sup> The Court also imposed a constructive trust related to commissions received by Mr. Shakir from Salty Saipan, with  
24 Mr. Shakir as the trustee and Ms. Lifoifoi as the beneficiary. FFCL at 32. The Court ordered that Defendants “must pay  
\$15,350 to Ms. Lifoifoi... Upon such payment, all trustee duties will be deemed satisfied.” *Id.* Defendants are not  
contesting this constructive trust in their Motion for Reconsideration.

1 A court may reconsider its earlier ruling when there is “an intervening change of controlling  
2 law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice.”  
3 *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI  
4 408, 414 (1992)). This standard applies in both civil and criminal cases. *Id.* Reconsideration may  
5 not be used “to repeat old arguments previously considered and rejected, or to raise new legal  
6 theories that should have been raised earlier.” *National Metal Finishing Com. v.*  
7 *BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990). Commonwealth law favors  
8 the finality of court decisions, to “maintain consistency and avoid reconsideration of matters once  
9 decided during the course of a single continuing lawsuit.” *Cushnie v. Arriola*, 2000 MP 7 ¶ 14.  
10 Motions for reconsideration brought under Rule 59(e) must be “served no later than 10 days after  
11 entry of the judgment.” NMI R. Civ. P. 59(e).

12 Manifest injustice is determined through a “case-by-case decision based on equitable  
13 considerations.” *Jones v. Stephens*, 998 F.Supp. 2d 529, 536 (N.D. Tex. 2014). Reconsideration  
14 based upon manifest injustice requires that “the record presented must be so patently unfair and  
15 tainted that the error is manifestly clear to all who view it.” *In re Titus*, 479 B.R. 362, 368 (Bankr.  
16 W.D. PA. 2012) (quoting *In re Roemmele*, 466 B.R. 706, 712 (Bankr. E.D. Pa. 2012)).

#### 17 **IV. DISCUSSION**

18 There are currently two motions before the Court: Defendants’ Motion for Reconsideration,  
19 and Salty Saipan’s Motion to Amend Judgment. The Court will address each of these motions  
20 below.

##### 21 **A. Defendants’ Motion for Reconsideration**

22 Defendants’ Motion for Reconsideration argues a number of grounds for reconsideration.  
23 First, Defendants argue that imposing a constructive trust on Mr. Shakir was in clear error. Mot. to  
24 Reconsider at 9. Second, Defendants argue that the Court’s imposition of a constructive trust on Mr.

1 Shakir is manifestly unjust to Mr. Shakir by unjustly enriching Salty Saipan and “sentenc[ing] Mr.  
2 Shakir to a 30 year term of indentured servitude.” Mot. to Reconsider at 11. Third, Defendants  
3 argue that the Court should not award Salty Saipan attorney’s fees, although Defendants do not  
4 state whether they are arguing this point as a clear error of law or a manifest injustice. Mot. to  
5 Reconsider at 16.

6 The Court notes that Defendants also appear to argue that the Court should reconsider its  
7 finding that Mr. Shakir violated the Consumer Protection Act. Although Defendants orally argued  
8 this point at the June 30, 2015 motion hearing, this particular argument was not mentioned in their  
9 written Motion for Reconsideration. This argument is mentioned in Defendants’ reply brief. Reply  
10 at 12.<sup>6</sup> Generally, “issues raised for the first time in a reply are deemed waived,” and courts have  
11 discretion in deciding to address these issues. *Bank of Saipan v. Superior Court (Disqualification of*  
12 *Lamorena)*, 2002 MP 17 ¶ 20.<sup>7</sup> Trial courts have “no obligation to consider an argument raised for  
13 the first time in a reply brief.” *Tafel v. Lion Antique Invs. & Consulting Servs.*, 459 F. App’x. 847,  
14 849 (11 Cir. 2012).

15 In Defendants’ Motion for Reconsideration, Defendants “respectfully [sought] the Court’s  
16 judgment in this matter ordering a constructive trust over any and all profits received or to be  
17 received from a certain real property.” Mot. to Reconsider at 1. Defendants’ written Motion for  
18 Reconsideration focused on the constructive trust and attorneys fees, not on the Consumer  
19 Protection Act violation itself.

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22 <sup>6</sup> Defendants’ argue: “[i]f the Court maintains its findings that Shakir somehow violated the Consumer Protection Act  
23 for failing to offer to sell the property at a ‘reasonable price’ after title has cleared, the Court should determine an  
appropriate measure of damages...” Reply at 12. Defendants later state, “if the Court remains committed to finding that  
Shakir had violated the [Consumer Protection] Act...” *Id.*

24 <sup>7</sup> Although this ruling applied to appellate courts, trial courts likewise have this discretion. *Tafel v. Lion Antique Invs. &*  
*Consulting Servs.*, 459 F. App’x. 847, 849 (11 Cir. 2012).

1 Further, Defendants’ arguments regarding whether there was clear error in finding a  
2 Consumer Protection Act violation were rehashing arguments and facts already decided by the  
3 Court. The Court made a number of factual findings and credibility determinations in the FFCL.  
4 Reconsideration may not be used “to repeat old arguments previously considered and rejected, or to  
5 raise new legal theories that should have been raised earlier.” *National Metal Finishing Com. v.*  
6 *BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990).

7 Defendants also orally raised another additional ground for reconsideration at the June 30,  
8 2015 motion hearing, related to fees that were split between Mr. Shakir and Ms. Lifoifofoi. This issue  
9 was not raised in Defendants’ Motion for Reconsideration. The Court will not consider this ground  
10 for reconsideration, nor Defendants’ arguments that the Court should reconsider its finding of a  
11 Consumer Protection Act violation, as the arguments were not properly plead in the written  
12 motions. Thus, the Court will turn to the grounds for reconsideration argued in Defendants’ written  
13 Motion for Reconsideration.

14 **1. Clear Error as to the Imposition of the Constructive Trust**

15 The Court will first turn to whether there was clear error in imposing a constructive trust on  
16 Mr. Shakir. Defendants argue that imposing a constructive trust on Mr. Shakir was in clear error  
17 under the restatement section relied upon by the Court, Restatement (First) of Restitution § 169.  
18 Mot. to Reconsider at 9-11. In the FFCL, the Court found that Mr. Shakir violated the Consumer  
19 Protection Act, specifically subsections (l) and (m) of 4 CMC § 5105. FFCL at 16-17. The  
20 Consumer Protection Act allows the Court to order “legal or equitable relief.” 4 CMC § 5112(a).  
21 The Court then imposed a constructive trust on Mr. Shakir.<sup>8</sup> FFCL at 26-30.

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<sup>8</sup> The Plaintiffs requested a constructive trust in the First Amended Complaint. First Amended Complaint at 16.

1 Defendants argue that there is clear error in applying Restatement (First) of Restitution §  
2 169 to Mr. Shakir, since Mr. Shakir did was not unjustly enriched, nor did he *acquire* the Mettao  
3 Property from the Estate by fraud, duress or undue influence. Mot. to Reconsider at 6-11. In  
4 essence, since Mr. Shakir *maintained* his interest in the Mettao Property, rather than *acquiring* the  
5 Mettao Property at Salty Saipan’s expense, Defendants argue that applying a constructive trust  
6 under Restatement (First) of Restitution § 169 is in clear error. *Id.* at 10-11.

7 Before examining whether a constructive trust was proper, the Court must first look to  
8 whether the proper law was applied in this case. In the FFCL, the Court relied on the Restatement  
9 (First) of Restitution. The most recent version of this restatement is the Restatement (Third) of  
10 Restitution and Unjust Enrichment, issued in 2011. Both restatements discuss constructive trusts.

11 In the Restatement (First) of Restitution, constructive trusts are described as an equitable  
12 remedy “[w]here a person holding title to property is subject to an equitable duty to convey it to  
13 another on the ground that he would be unjustly enriched if he were permitted to retain it.”  
14 RESTATEMENT (FIRST) OF RESTITUTION § 160. A number of examples are discussed by the  
15 Restatement (First) of Restitution, although it does not “cover every situation in which a  
16 constructive trust may arise.” *Id.* at § 160, cmt. 1.

17 Although a constructive trust under the Restatement (First) of Restitution is often used to  
18 restore property to the original transferor, a constructive trust may also arise “where the defendant  
19 wrongfully prevents the plaintiff from acquiring property and acquires the property for himself.”  
20 RESTATEMENT (FIRST) OF RESTITUTION, at § 160, cmt. d. In those cases, “the defendant can be  
21 compelled to surrender the property to the plaintiff, and not merely to restore the property to the  
22 person from whom the defendant wrongfully acquired it.” *Id.*

23 Section 169 of the Restatement (First) of Restitution, the section applied by the Court in the  
24 FFCL, provides: “[w]here a person *acquires property* from another *by fraud, duress, or undue*

1 *influence* under such circumstances that a third person is entitled to restitution from the transferee,  
2 the transferee holds the property upon a constructive trust for the third person.” RESTATEMENT  
3 (FIRST) OF RESTITUTION § 169 (emphasis added).

4 The Restatement (Third) of Restitution and Unjust Enrichment has a similar approach, albeit  
5 phrased differently. Section 55 of the Restatement (Third) of Restitution and Unjust Enrichment  
6 provides:

7 If a defendant is unjustly enriched *by the acquisition of title* to identifiable property *at the*  
8 *expense of the claimant or in violation of the claimant's rights*, the defendant may be  
9 declared a constructive trustee, for the benefit of the claimant, of the property in question  
10 and its traceable product.

11 RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 55 (emphasis added). The  
12 Court notes that Section 55’s Reporter’s Notes direct readers to Section 160 of the Restatement  
13 (First) of Restitution for information on the “nature and function of constructive trust[s].”  
14 RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 55 reporter’s note a. Both  
15 versions of the restatement focus on whether a defendant was unjustly enriched at the expense of a  
16 plaintiff through the acquisition of property. RESTATEMENT (FIRST) OF RESTITUTION §§ 160, 169;  
17 RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 55.

18 When there is no statutory authority in the Commonwealth, courts turn to the restatements  
19 of law from the American Law Institute. 7 CMC § 3401. Title 7, Section 3401 states that “the rules  
20 of the common law, as expressed in the restatements of law approved by the American Law  
21 Institute and, to the extent not so expressed as generally understood and applied in the United  
22 States, shall be the rules of decision in the courts of the Commonwealth.” 7 CMC § 3401. Section  
23 3401, however, is silent as to whether the most recent Restatement should be applied.

24 In the FFCL, the Court addressed this issue in determining which version of the Restatement  
of Agency should be applied in this case. FFCL at 21-24. In determining which Restatement of

1 Agency to apply, the Court looked to cases in both the CNMI Superior Court and the Superior  
2 Court of the Virgin Islands, which has a statute substantially similar to 7 CMC § 3401. *See Cabrera*  
3 *v. Micronesian Resort, Inc.*, Civ. No. 11-0085 (NMI Super. Ct. Nov. 6, 2013, pub. Mar. 20, 2014)  
4 (Order at 5-7); and *In re Manbodh Asbestos Litigation*, 47 V.I. 215, 224-243 (V.I. Super. Ct. Nov.  
5 23, 2005).

6 In *Cabrera*, the plaintiff argued that the court should apply the Restatement (Third) of Torts,  
7 rather than the Restatement (Second) of Torts. *Cabrera*, Civ. No. 11-0085 (Order at 5). The  
8 *Cabrera* Trial Court applied the Restatement (Third) of Torts, finding: (1) that prior Superior Court  
9 decisions applying the Restatement (Second) of Torts are not binding; (2) that the Court is not  
10 obligated to adopt a newer Restatement, “as it would be unconstitutional for the legislature to  
11 delegate its powers to an organization;” and (3) that the Court may apply newer restatements if the  
12 “provision of the Restatement is an actual expression of the common law” and the application of  
13 that provision is “in the best interests of the Commonwealth.” *Id.* at 5-7. In *Manbodh*, the Superior  
14 Court of the Virgin Islands determined that the applicable restatement sections are those that were  
15 in place at the time that the statute adopting the restatements as controlling common law was  
16 adopted, unless a later restatement reflects a change in the majority rule. *Manbodh*, 47 V.I. at 237.

17 In the FFCL, this Court combined the standards in *Cabrera* and *Manbodh*, “adopting a  
18 newer version of the Restatement . . . where that new version represents the current majority  
19 common law rule.” FFCL at 23. This Court then followed the Restatement (Third) of Agency,  
20 noting the newer restatement’s extensive Reporter’s Notes reflecting the common law. *Id.* The  
21 Court will continue to follow this approach in this order, and will look to whether the newer  
22 restatement represents “the current majority common law rule.” *Id.*

23 The Court will now look to whether the Court should apply the Restatement (Third) of  
24 Restitution and Unjust Enrichment in this case. Section 55 of the Restatement (Third) of Restitution



1 and Unjust Enrichment includes extensive Reporter’s Notes citing to case law and statutes to  
2 explain the background and modern application of constructive trusts. RESTATEMENT (THIRD) OF  
3 RESTITUTION AND UNJUST ENRICHMENT § 55.<sup>9</sup>

4 Thus, the Court will apply Section 55 of the Restatement (Third) of Restitution and Unjust  
5 Enrichment in determining whether it is clear error to impose a constructive trust on Mr. Shakir.  
6 Section 55 provides:

7 If a defendant is unjustly enriched *by the acquisition of title* to identifiable property *at the*  
8 *expense of the claimant or in violation of the claimant's rights*, the defendant may be  
9 declared a constructive trustee, for the benefit of the claimant, of the property in question  
10 and its traceable product.

11 RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 55 (emphasis added).

12 The Court will first look to whether Mr. Shakir acquired the title to the Mettao Property at  
13 the expense of Salty Saipan. In the FFCL, the Court looked to whether Mr. Shakir acquired his  
14 interest through fraud, duress or undue influence, since these were the key words in Restatement  
15 (First) of Restitution § 169. FFCL 27-28. The Court found that Mr. Shakir’s acquisition of the  
16 property from Ms. Lifoifoi was free of fraud, duress, or undue influence. FFCL at 27-28.

17 Next, the Court turned to “whether Mr. Shakir’s conduct constituted fraud, undue influence,  
18 or duress, when he *maintained* his interests in the Mettao Property by offering it to Salty Saipan at  
19 an unreasonable price.” FFCL at 28 (emphasis added). The Court ultimately found “that by  
20 fraudulently representing to Salty Saipan that the Mettao Property would be available later at a  
reasonable price, while secretly acquiring the Mettao Property himself and then offering it to Salty

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21 <sup>9</sup> 7 CMC § 3401 only applies where there is no written law on point, and written law can include “the Commonwealth  
22 Constitution and Commonwealth statutes, along with case law, court rules, legislative rules, and administrative rules.”  
23 *Cabrera*, Civ. No. 11-0085 (Order at 6) (quoting *SARMA v. Wan Jin Yoon*, 2011 MP 12 ¶ 19). The Court notes that the  
24 Restatement (First) of Restitution has been cited by the Commonwealth Supreme Court. *See Westenberger v. Atalig*, 3  
NMI 471, 476 (1993); *Rogolofoi v. Guerrero*, 2 NMI 468, 480 (1992); *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14 ¶¶ 22, 27,  
39, 40; *Olaitiman v. Emran*, 2011 MP 8 ¶¶ 15-16. However, since the Restatement (First) of Restitution was issued in  
1937, eighty years ago, the Court will follow the newer version, which would reflect the modern state of the common  
law.

1 Saipan at an unreasonable price, Mr. Shakir *acquired* the Mettao Property in a fraudulent manner.”  
2 FFCL at 29 (emphasis added).

3         Despite the Court’s use of the word “acquired” in the FFCL, Mr. Shakir merely maintained  
4 his interest in the Mettao Property through his dealings with Salty Saipan. Section 55 of the  
5 Restatement (Third) of Restitution and Unjust Enrichment focuses on whether a defendant “is  
6 unjustly enriched by the *acquisition of title*...at the expense of the claimant or in violation of the  
7 claimant’s rights.” RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 55  
8 (emphasis added). Since Mr. Shakir had already properly obtained the property from the Estate, he  
9 did not acquire the property at the expense of Salty Saipan. Thus, under Section 55, there can be no  
10 constructive trust under these facts.

11         Further, the Court notes that even under the Restatement (First) of Restitution, applying a  
12 constructive trust in this situation was clear error. RESTATEMENT (FIRST) OF RESTITUTION § 169  
13 governs wrongdoing by a transferee to a third party. Specifically, “[w]here a person *acquires*  
14 *property* from another *by fraud, duress, or undue influence* under such circumstances that a third  
15 person is entitled to restitution from the transferee, the transferee holds the property upon a  
16 constructive trust for the third person.” RESTATEMENT (FIRST) OF RESTITUTION § 169 (emphasis  
17 added). As described above, the Court found that Mr. Shakir did not obtain the property from the  
18 Lifoifoi Estate through fraud, duress or undue influence. FFCL at 27-28. Thus, imposing a  
19 constructive trust in this situation is clear error under both the Restatement (First) of Restitution and  
20 the Restatement (Third) of Restitution and Unjust Enrichment.

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1 Accordingly, imposing a constructive trust on Mr. Shakir was in clear error.<sup>10</sup> The  
2 Consumer Protection Act allows the Court to order “legal or equitable relief.” 4 CMC § 5112(a).  
3 The Court notes that the Defendants request that the Court determine an appropriate measure of  
4 damages.<sup>11</sup> Reply at 12. Thus, the Court will set a hearing to determine the proper “legal or  
5 equitable relief,” if any, for the Defendants’ Consumer Protection Act violations.

6 **2. Manifest Injustice as to the Constructive Trust**

7 Defendants argue that the imposition of a constructive trust on Mr. Shakir works a manifest  
8 injustice. The Defendants argue that the constructive trust subjects Mr. Shakir to “indentured  
9 servitude” to Salty Saipan, requiring him to manage the property for Salty Saipan’s benefit for the  
10 remaining 25 year term on the lease. Mot. for Reconsideration at 12. Defendants also argue that the  
11 constructive trust unjustly enriches Salty Saipan by giving Salty Saipan “all profits from the  
12 property, not just from the dilapidated home that originally sat on the property, but from all  
13 improvements Shakir erected.” Mot. for Reconsideration at 13-14. Further, Defendants argued that  
14 any liquidated damages would essentially require Mr. Shakir to turn over all the profits from the  
15 Mettao Property plus an additional amount equal to the profits. Mot for Reconsideration at 14.  
16 Finally, Defendants argue that the constructive trust is completely disproportionate to any damage  
17 Salty Saipan suffered from Mr. Shakir’s misconduct. Mot for Reconsideration at 15.

18 Salty Saipan, on the other hand, argues that if Mr. Shakir wishes to be free of his  
19 “indentured servitude,” that he could simply convey the Mettao Property to Salty Saipan. Opp. at  
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22 <sup>10</sup> The Court notes that Defendants also argue that Mr. Shakir was not unjustly enriched by the transaction; however,  
since Mr. Shakir properly acquired the property, the Court need not reach the issue of whether he was unjustly enriched.  
Mot. for Reconsideration at 6-8.

23 <sup>11</sup> The Court notes that the Defendants couched this argument in a statement regarding the Court “maintain[ing] its  
24 findings that Mr. Shakir somehow violated the Consumer Protection Act.” Reply at 12. The Court emphasizes that it is  
not reconsidering the Defendants’ request to reconsider the Consumer Protection Act violations, since this was not  
argued in the Defendants’ Motion for Reconsideration.

1 12. According to Salty Saipan, they have been deprived of the opportunity to develop and profit  
2 from the Mettao Property. *Id*

3 Manifest injustice is determined through a “case-by-case decision based on equitable  
4 considerations.” *Jones v. Stephens*, 998 F.Supp. 2d 529, 536 (N.D. Tex. 2014). Reconsideration  
5 based upon manifest injustice requires that “the record presented must be so patently unfair and  
6 tainted that the error is manifestly clear to all who view it.” *In re Titus*, 479 B.R. 362, 368 (Bankr.  
7 W.D. PA. 2012) (quoting *In re Roemmele*, 466 B.R. 706, 712 (Bankr. E.D. Pa. 2012).

8 The Court agrees with Defendants’ that the constructive trust works a manifest injustice  
9 because it imposed fiduciary duties on Mr. Shakir, tying him to Salty Saipan for twenty-some years.  
10 The Court imposed this fiduciary duty on Mr. Shakir without holding a hearing on the appropriate  
11 legal or equitable remedy. Obligating Mr. Shakir to manage the property for Salty Saipan’s benefit  
12 for the remainder of the lease is disproportionate to both Mr. Shakir’s misconduct and the injury  
13 borne by Salty Saipan. Salty Saipan’s injury was, in essence, that they missed out on a good deal by  
14 not being able to purchase the property for “pocket change.” Requiring Mr. Shakir to manage the  
15 Mettao Property for Salty Saipan for years is disproportionate to the damage his actions caused.

16 The Consumer Protection Act allows the Court to order “legal or equitable relief.” 4 CMC §  
17 5112(a). The Court notes that the Defendants request that the Court determine an appropriate  
18 measure of damages.<sup>12</sup> Reply at 12. Thus, the Court will set a hearing to determine the proper “legal  
19 or equitable relief,” if any, for the Defendants’ Consumer Protection Act violations.

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23 <sup>12</sup> The Court notes that the Defendants couched this argument in a statement regarding the Court “maintain[ing] its  
24 findings that Mr. Shakir somehow violated the Consumer Protection Act.” Reply at 12. The Court emphasizes that it is  
not reconsidering the Defendants’ request to reconsider the Consumer Protection Act violations, since this was not  
argued in the Defendants’ Motion for Reconsideration.

1                                   **C. Attorney’s Fees**

2                   The Defendants’ argue that the Court should not award attorney’s fees to Salty Saipan. The  
3 Consumer Protection Act states: “the court shall award costs and reasonable attorney’s fees if the  
4 plaintiff prevails.” 4 CMC § 5112 (a). The Commonwealth Supreme Court has held that "shall"  
5 means "must," which "has the effect of creating a duty." *Aquino v. Tinian Cockfighting Bd.*, 3 NMI  
6 284, 293 (1992). Thus, an award of costs and reasonable attorney’s fees are mandatory in cases of  
7 Consumer Protection Act violations.

8                   The Court notes that the parties stipulated to the award of attorney’s fees and costs on April  
9 17, 2015. In the Stipulation to Award of Attorneys Fees and For Entry of Final Judgment, the  
10 parties “stipulate[d] to the award of attorneys fees and costs totaling \$42,980.25 to Colin S.  
11 Thompson.” Stip. at 1. The Court notes that counsel for the Defendants’, Stephen Nutting,  
12 submitted this stipulation to the Court.

13                   The Stipulation explicitly stated: “In entering this stipulation the parties do not waive their  
14 rights to file motions to seek appropriate post judgment remedies or their right to appeal.” Stip. at 1.  
15 The Court notes that the parties have exercised their rights to file for post judgment remedies, such  
16 as the present Motion for Reconsideration regarding the imposition of a constructive trust and the  
17 Motion to Amend Judgment.

18                   Although the parties explicitly stipulated as to the attorneys fees and costs, the Defendants  
19 now ask that the Court reconsider the award of attorney’s fees. Since the parties have stipulated to  
20 the attorney’s fees, the Court will not reconsider the award of attorney’s fees.

21                                   **B. Salty Saipan’s Motion to Amend Judgment**

22                   The Court now turns to Salty Saipan’s Motion to Amend Judgment. Salty Saipan argues that  
23 the Court erred in failing to award liquidated damages. The Consumer Protection Act states: “the  
24 court shall award liquidated damages in an amount equal to the actual damages in cases of willful

1 violations.” 4 CMC § 5112 (a). The Commonwealth Supreme Court has held that "shall" means  
2 "must," which "has the effect of creating a duty." *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284,  
3 293 (1992). Thus, an award of liquidated damages is mandatory in cases of willful Consumer  
4 Protection Act violations.

5 The Defendants did not file a written opposition to Salty Saipan’s motion. At the June 30,  
6 2015 motion hearing, the Defendants orally opposed the motion. The Defendants argued that the  
7 Court should reconsider its finding that the Defendants had violated the Consumer Protection Act,  
8 per their Motion for Reconsideration.<sup>13</sup> The Defendants also argued that, in the alternative, that the  
9 Court should consider imposing a less severe measure of damages than those imposed by the  
10 constructive trust. Despite these arguments, the Defendants did agree that the Consumer Protection  
11 Act was clear as to the imposition of liquidated damages.

12 According to Black’s Law Dictionary, “willful” means “voluntary and intentional, but not  
13 necessarily malicious.” BLACK’S LAW DICTIONARY 1372 (9th Ed. Abr.). In the FFCL, the Court  
14 found that Mr. Shakir’s “act of concealing his ownership of the lease of the Mettao Property was  
15 deceptive and intentional.” FFCL at 17. The Court also found that Mr. Shakir “did not honestly  
16 communicate his role to Salty Saipan.” *Id.* Since the Court found that Mr. Shakir’s actions were  
17 willful, the Court must impose liquidated damages as required by the Consumer Protection Act.

## 18 V. CONCLUSION

19 Accordingly, the Defendants’ Motion for Reconsideration is **GRANTED**.

20 Salty Saipan’s Motion to Amend Judgment is likewise **GRANTED**.

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24 <sup>13</sup> The Defendants did not argue the Consumer Protection Act in their written Motion for Reconsideration.

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The Court will issue a separate order setting a status conference hearing regarding the appropriate legal and/or equitable remedy for the Defendants' Consumer Protection Act violations.

**IT IS SO ORDERED** this 7<sup>th</sup> day of March, 2017.

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/s/  
JOSEPH N. CAMACHO  
Associate Judge