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10 THE PEOPLE OF THE STATE OF CALIFORNIA,  
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11 THE CITY AND COUNTY OF SAN FRANCISCO

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED JURISDICTION

15 THE PEOPLE OF THE STATE OF  
16 CALIFORNIA, acting by and through San  
Francisco City Attorney Dennis J. Herrera,  
17 Plaintiff,

18 vs.

19 MARTIN R. GUAJARDO; CHRISTOPHER  
20 STENDER; IMMIGRATION PRACTICE  
GROUP, P.C.; and DOES 1 through 20,  
21 inclusive,

22 Defendants.

Case No. CGC-10-505449

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF THE  
PEOPLE'S MOTION FOR PRELIMINARY  
INJUNCTION**

Hearing Date:  
Hearing Judge: The Honorable Peter J. Busch  
Time:  
Place: Dept. 301

Date Action Filed: November 17, 2010  
Trial Date:

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## INTRODUCTION

1  
2 The People bring this action to protect vulnerable immigrants from a massive fraud being  
3 perpetrated by Martin Guajardo, a disbarred immigration attorney, by Christopher Stender, a licensed  
4 attorney, and by their law firm, Immigration Practice Group (IPG). Despite resigning from the bar  
5 over two years ago, Guajardo continues to hold himself out as a lawyer and provide legal advice and  
6 representation that he cannot legally, and does not competently, provide. Stender and IPG provide  
7 Guajardo with the means to do so. Together, they have taken thousands of dollars from immigrants  
8 who can ill afford to pay. Many of those immigrants are in custody or face imminent deportation. All  
9 of them are vulnerable and in some cases desperate. Guajardo, Stender, and IPG take money from their  
10 clients under false pretenses and typically provide no services of value in return. Indeed, they have left  
11 many clients in a worse position than they were before they retained Guajardo and IPG.

12 This Court should intervene because Guajardo has proven incorrigible and because as a  
13 resigned lawyer he is no longer subject to the authority of the State Bar. Both the Ninth Circuit and the  
14 State Bar have found on myriad occasions that Guajardo provided clients with inadequate  
15 representation and exploited them financially. Both the Ninth Circuit and the State Bar have exhausted  
16 their available sanctions against Guajardo. The Ninth Circuit and State Bar disciplined him *five times*  
17 during the 1990s, but this discipline had no effect on his behavior. When the Ninth Circuit and State  
18 bars were on the verge of disbaring him, he resigned from both with charges pending in 2007 and  
19 2008, respectively. He was disbarred from the Board of Immigration Appeals (BIA) in 2008.

20 Despite repeated suspensions and ultimate bar resignations, remarkably Guajardo *continues* to  
21 engage in the same misconduct he has for the last twenty years. He is able to do so because he has an  
22 accessory to aid him in his predatory practice. By substituting Stender as the sole officer and director  
23 of his law corporation and changing his firm's name to IPG to remove his own from the title, Guajardo  
24 carries on his practice as if nothing had changed. Indeed, except for these cosmetic changes, and  
25 having Stender and others sign pleadings and make occasional court appearances, nothing did change.

26 Guajardo has never informed his immigrant clients of his repeated suspensions and ultimate  
27 resignation from the State Bar and Ninth Circuit. Instead, he continues to meet with clients, holds  
28

1 himself out as their lawyer, gives them legal advice, and takes their money. He continues to promise  
2 results he cannot and does not achieve. He continues to provide few or none of the services he  
3 promised. With the assistance of Stender and IPG, Guajardo continues to harm his clients by taking  
4 their money and worsening their chances of gaining legal admission to this country.

5 In doing so, Guajardo, Stender, and IPG have committed and continue to commit unlawful  
6 business practices in violation of Business and Professions Code §17200. They violate their legal  
7 obligations by failing to notify clients of Guajardo's resignation and, more egregiously, by engaging in  
8 or permitting Guajardo to engage in the unauthorized practice of law. They also engage in unlawful  
9 and unfair business practices by making false and misleading statements to clients to perpetuate the  
10 belief that Guajardo is their lawyer and is competently representing them. Indeed, their entire course of  
11 conduct—from renaming the firm and substituting Stender as CEO to failing to notify clients' of  
12 Guajardo's resignation and allowing Guajardo to continue practicing law—is both illegal and unfair.

13 Absent an injunction, countless more victims will be defrauded by Guajardo, IPG and Stender.  
14 Vulnerable immigrants will continue to lose their hard earned money in exchange for representation  
15 that is worse than none at all. For some, a good lawyer would tell them that they have little chance to  
16 remain in the country, thereby saving them thousands of dollars and allowing them to put their affairs  
17 in order. For others, competent representation could mean the difference between legal status and  
18 deportation of themselves or a loved one—between a family remaining together and being torn apart.

## 19 **FACTUAL BACKGROUND**

### 20 **I. GUAJARDO'S LONG HISTORY OF MISCONDUCT AND DISCIPLINE.**

#### 21 **A. The Ninth Circuit And The State Bar Disciplined Guajardo For Misconduct 22 Multiple Times Throughout The 1990's**

23 Guajardo was admitted to the State Bar of California in 1977. *See* Declaration of Joshua White  
24 ("White Dec.") ¶7, Ex. E. Guajardo was suspended from the California State Bar three times in the  
25 1990's, and disciplined twice by the Ninth Circuit. In 1991, the Ninth Circuit suspended Guajardo for  
26 five months because he failed to file opening briefs or respond to orders to show cause in two cases.  
27 *Gao-Ay v. INS*, 1991 U.S. App. LEXIS 8235, at \*5 n.1 (9th Cir. 1991). The court found Guajardo had  
28 neglected his clients and invited the State Bar to investigate his misconduct. *Id.*



1           The State Bar accepted this invitation and uncovered many instances where Guajardo  
2 inadequately represented and financially exploited clients. For example, in 1985, he failed to file a  
3 brief in support of his client's petition to the Ninth Circuit, and the petition was dismissed. *See*  
4 Declaration of Meghan Higgins ("Higgins Dec.") Ex. A, at A-8. In another matter, Guajardo failed to  
5 return \$1500 in unearned fees. *Id.* at A-9. In two other matters, he failed to take any action yet refused  
6 to refund the hundreds of dollars his clients had paid him. *Id.* at A-9-11. Based on these incidents, in  
7 1992 Guajardo was suspended from the practice of law for 75 days and placed on three-year probation.  
8 *Id.* at A-1. The State Bar Court ordered Guajardo to file a quarterly report and to develop a law office  
9 management and organization plan approved by his assigned probation monitor. *Id.* at A-11-13. He did  
10 neither, and in 1993 the court suspended him for another year, stayed that suspension, and placed him  
11 on probation for an additional year. *Id.* Ex. B at B-1.

12           Undeterred, Guajardo continued to exploit his clients. In *Pagarigan v. INS*, 1995 U.S. App.  
13 LEXIS 9701, at \*5 (9th Cir. 1995), the court observed, "This is not the first time that ... Martin  
14 Resendez Guajardo has engaged in conduct that appears to have resulted in forfeiting his clients'  
15 opportunity to assert their rights." *Id.* (citing *Dacuycuy v. INS*, 1995 U.S. App. LEXIS 735, at \*10 (9th  
16 Cir. 1995)). In 1996, Guajardo failed to obtain waivers from two clients before representing them in  
17 their motions to reopen their immigration proceedings based on *his own* prior ineffective assistance.  
18 *See* Higgins Dec. Ex. C, at C-30. Based on that misconduct, the Ninth Circuit suspended Guajardo  
19 again – this time for two years. *Id.* at C-10. The Commissioner suggested that Guajardo had protected  
20 himself at the expense of his clients, *id.* at C-32-34, and called his misconduct "extremely troubling."  
21 *Id.* at C-30. In 1998, the California Supreme Court also suspended Guajardo again for a year, stayed  
22 the suspension, and placed him on probation. *Id.* at C-1.

23           **B.     An Unrepentant Guajardo Continued To Engage In The Same Practices Until He**  
24           **Was Forced To Resign With Charges Pending**

25           Despite this discipline, Guajardo continued to overcharge clients for bad legal advice and  
26 representation. In *Ray v. Gonzales*, 439 F.3d 582, 588 (9th Cir. 2006), the Ninth Circuit noted that he  
27 "took from Ray \$10,000 in fees, and ... provided no substantive legal assistance whatsoever..." *See*  
28 *also Saldivar v. Gonzales*, 235 Fed. App'x. 399 (9th Cir. 2007) (holding Guajardo provided ineffective

1 assistance where he advised petitioner to marry the father of her children, forfeiting her chance at  
2 obtaining a visa); *Singh v. Holder*, 365 Fed. App'x. 908, 909 (9<sup>th</sup> Cir. 2010) (Guajardo charged  
3 \$15,000 for "fraudulent and ineffective" representation). Other Ninth Circuit cases contain allegations  
4 that Guajardo failed to adequately represent clients after he took their money. *See, e.g. Devi v.*  
5 *Mukasey*, 2008 U.S. Dist. LEXIS 106032, at \*5-6 (E.D. Cal. 2008) (Guajardo filed untimely motion to  
6 reopen, was paid to appeal its denial, then never filed appeal); *Ray*, 439 F.3d at 586 n.4 (petitioner  
7 claimed Guajardo "stated he knew judges and could take care of this problem," but instead "has done  
8 nothing but give me additional appointments"). And one Ninth Circuit judge suggested that Guajardo  
9 be referred for disciplinary action after improperly contacting the court. *Yepes-Prado v. United States*  
10 *INS*, 36 F.3d 83, 84 (9th Cir. 1994) (Kozinski, J., dissenting).

11 On April 19, 2006, the Ninth Circuit ordered Guajardo to show cause why he should not be  
12 suspended or disbarred for repeated violations of the court's rules and orders and for conduct  
13 unbecoming a member of the bar.<sup>1</sup> Higgins Dec., Ex. G at G-73, 75. The same day as the hearing,  
14 Guajardo notified the Ninth Circuit that he intended to resign from its bar. *Id.* at G-58-59. On  
15 November 1, 2007, the Court accepted Guajardo's resignation, sanctioned him \$5,450 for his admitted  
16 violation of the Court's orders and rules, and ordered him not to practice law in the Ninth Circuit. *Id.* at  
17 G-4-5. Subsequently, on March 5, 2008, the Board of Immigration Appeals (BIA) suspended Guajardo  
18 from practice before the BIA, the Immigration Courts, and the Department of Homeland Security.  
19 Higgins Dec., Ex. H. The Ninth Circuit and BIA required Guajardo to notify all clients with cases  
20 pending before the court or those three agencies in writing that he was suspended. *Id.* Ex. G at 4-6, Ex.  
21 H.

22 In 2007, the State Bar brought new charges against Guajardo. The Bar alleged that he charged  
23 a mother and son \$75,000 to represent them in removal proceedings, then failed to submit a timely  
24 appellate brief or to request permission to file it late. *See* Higgins Dec., Ex. D at D-15-17. As a result,  
25

26 <sup>1</sup> The Court's order identified, among others, 30 cases in which Guajardo filed defective or  
27 untimely motions for extensions of time, 14 in which he failed to oppose motions to dismiss or  
28 summarily deny his petitions, seven in which he raised frivolous issues or asserted jurisdiction where  
the Court clearly had none, and six where he raised frivolous arguments. Higgins Dec. Ex. G at G-73.

1 the brief was returned as untimely, and the appeal was denied. *Id.* Guajardo then failed to tell his  
2 clients until months later. *Id.* The Bar further alleged that Guajardo charged another client \$25,000 to  
3 advise him of possible immigration consequences of criminal proceedings against him. *Id.* at D-18-22.  
4 Guajardo collected \$10,000 from the client but performed no significant work on his case. When no  
5 deportation proceedings were initiated, the client terminated Guajardo's representation and requested a  
6 refund. Guajardo not only refused to return the \$10,000, he also demanded payment of an additional  
7 \$15,000. *Id.* In another matter, the Bar charged that Guajardo collected \$10,000 from a client to  
8 "mak[e] routine requests for documents, conduct[] unnecessary meetings..." and prepare one  
9 declaration. *Id.* at D-22-23. Guajardo failed to refund any of the unearned \$10,000 after the client  
10 terminated his representation. *Id.*

11 **II. DESPITE RESIGNING FROM THE STATE BAR, GUAJARDO IMPLEMENTED A**  
12 **SCHEME TO CONTINUE PRACTICING LAW AND DEFRAUDING CLIENTS**

13 With disbarment imminent, Guajardo concocted a scheme to allow him to continue his  
14 lucrative law practice without a law license. One day before he resigned from the State Bar, Guajardo  
15 changed the name of his law firm from "Martin Resendez Guajardo, a Professional Corporation" to  
16 "Immigration Practice Group, P.C." (IPG). *See* Higgins Dec., Ex. F at F-16; Andrade Dec. ¶16. Weeks  
17 later, Guajardo made Christopher Stender, an attorney licensed in Connecticut and New York but not  
18 in California, IPG's CEO, CFO, secretary and sole director. *See* White Dec. ¶5, Higgins Dec., Ex. F at  
19 F-9-13. This transfer of power occurred on paper only; Guajardo controlled and continues to control  
20 his law firm. Indeed, Stender still has his own law firm in San Diego. White Dec. ¶6.<sup>2</sup>

21 The day after he formed IPG, Guajardo resigned from the State Bar. Higgins Dec., Ex. E. In  
22 resigning, Guajardo acknowledged that he would be ineligible to hold himself out as practicing law.  
23 *Id.* He also agreed to notify existing clients within 30 days that he had resigned from the Bar with  
24 charges pending and was no longer authorized to practice law and to file an affidavit with the State  
25 Bar Court confirming that he had done so. *Id.*

26 \_\_\_\_\_  
27 <sup>2</sup> An attorney may practice before the immigration courts and the Ninth Circuit as long as he is  
28 a member in good standing of any state's bar. *See* 8 C.F.R. §§ 1001.1(f) & 1003.101(b); Fed. R. App.  
P. 46(a)(1).

1 **III. GUAJARDO, STENDER, AND IPG ENGAGE IN UNLAWFUL AND UNFAIR**  
2 **PRACTICES, DEFRAUDING AND PREJUDICING THEIR CLIENTS**

3 **A. Because Guajardo, Stender, And IPG Did Not Notify Clients Of Guajardo's**  
4 **Resignation, Clients Continue To Meet With Him, Believing He Is Their Lawyer**

5 Despite his resignation, Guajardo led his existing clients to believe that he was still licensed to  
6 practice law, and those clients continued to believe he was their lawyer. Andrade Dec. ¶23; Ledezma  
7 Dec. ¶13; J. Hernandez Dec. ¶29; B. Singh Dec. ¶25. He did not inform his clients orally or in writing  
8 that he had resigned from the State and Ninth Circuit Bars with charges pending or that he had been  
9 suspended from practice before the immigration tribunals. Andrade Dec. ¶30; M. Hernandez Dec. ¶52;  
10 J. Singh Dec. ¶14; Ledezma Dec. ¶41; J. Hernandez Dec. ¶¶26, 56; B. Singh Dec. ¶¶ 26, 28-29; H.  
11 Hernandez Dec. ¶ 11. Nor did he file an affidavit with the State Bar attesting that he had. White Dec.  
12 ¶2. Guajardo also never mailed notice of his resignation to the State Bar's Chief Trial Counsel. *Id.* ¶3.  
13 Nor did IPG or Stender inform Guajardo's clients that he was no longer licensed to practice law or that  
14 he had resigned from all bars. Andrade Dec. ¶31 M. Hernandez Dec. ¶¶53, 54; J. Singh Dec. ¶15;  
15 Ledezma Dec. ¶43; J. Hernandez Dec. ¶¶58, 59; Ledezma Dec. ¶¶42, 43; B. Singh Dec. ¶26-29; H.  
16 Hernandez Dec. ¶ 11. IPG and Stender submitted no paperwork to the State Bar confirming that their  
17 clients had been informed of Guajardo's resignation. White Dec. ¶4.

18 As a result, new and existing clients continue to seek legal advice and representation from  
19 Guajardo even after his resignation. Andrade Dec. ¶11; Ledezma Dec. ¶13; J. Hernandez ¶¶26, 28; J.  
20 Singh Dec. ¶23; B. Singh Dec. ¶10; H. Hernandez Dec. ¶ 12. IPG remains in the same building, uses  
21 the same phone number, and sends bills from the same address as Guajardo's "old" firm. Ledezma  
22 Dec. ¶44. Clients call and make appointments with Guajardo, and Guajardo continues to meet with  
23 clients alone. Ledezma Dec. ¶36; J. Hernandez Dec. ¶24; M. Hernandez Dec. ¶18; B. Singh Dec.  
24 ¶¶15-16. Guajardo provides legal advice during these meetings, Andrade Dec. ¶19; J. Hernandez Dec.  
25 ¶52; B. Singh Dec. ¶¶9-11, 18, counsels clients about next steps, and discusses case law and legal  
26 strategy with them. Andrade Dec. ¶19; J. Singh Dec. ¶24; Ness Dec. ¶17; Ledezma Dec. ¶29; H.  
27 Hernandez Dec. ¶¶ 12, 15.

28 Even when IPG attorneys are present, Guajardo conducts the meetings as if he were the  
attorney in charge. Ness Dec. ¶17; J. Hernandez Dec. ¶52; M. Hernandez Dec. ¶53; Ledezma Dec. 28;

1 J. Singh Dec. ¶24; B. Singh Dec. ¶¶9-11, 18; H. Hernandez Dec. ¶¶ 13-14. Typically, only Guajardo  
2 discusses his clients' cases with them. J. Hernandez Dec. ¶39; M. Hernandez Dec. ¶18; B. Singh Dec.  
3 ¶18. Other IPG attorneys, including Stender, rarely, if ever, speak during the meetings. Andrade Dec.  
4 ¶20; Ledezma Dec. ¶36; J. Hernandez Dec. ¶¶24, 52; Ness Dec. ¶17; J. Singh Dec. ¶¶24, 25; B. Singh  
5 Dec. ¶¶9,18. Sometimes they observe, and sometimes they do other work while Guajardo speaks to the  
6 clients. J. Singh Dec. ¶24; J. Hernandez Dec. ¶39.

7 Guajardo gives clients the impression that the IPG staff and attorneys work for him. Andrade  
8 Dec. ¶20; Ledezma Dec. ¶28; M. Hernandez Dec. ¶16; Ness Dec. ¶17; H. Hernandez Dec. ¶ 14.  
9 Guajardo leads the discussions even if Stender or other staff members are present. Indeed, Stender and  
10 the others rarely say anything. Ledezma Dec. ¶26; J. Hernandez Dec. ¶52; J. Singh Dec. ¶25; B. Singh  
11 Dec. ¶¶9, 18; Ness Dec. ¶17; H. Hernandez Dec. ¶¶ 13-14. Guajardo does not ask Stender's opinion,  
12 Andrade Dec. ¶22; B. Singh Dec. ¶9, and on at least one occasion berated an IPG attorney who  
13 disagreed with him. Andrade Dec. ¶21. He directs other staff members to do specific tasks. Andrade  
14 Dec. ¶21; Ness Dec. ¶17. Once, when a client directed a question to one of the attorneys, Guajardo  
15 explained why that the particular avenue of relief would not be pursued. Andrade Dec. ¶19.

16 Guajardo's billing practices also remain unchanged. One client received an "Account History"  
17 listing payments covering a period that extended from July 2002 through July 2008 (before and after  
18 Guajardo resigned), all in the same format. Ledezma Dec., Ex. G. Guajardo continues to request more  
19 fees from his clients. Ledezma Dec. ¶24, J. Hernandez Dec. ¶34, J. Singh Dec. ¶23. He continues to  
20 discuss the cost of his services with clients. J. Hernandez Dec. ¶30, Ledezma Dec. ¶24, B. Singh Dec.  
21 ¶¶10, 13. M. Hernandez Dec. ¶19. He also charges them whether or not he does any work on their  
22 case, often personally accepting payment for his services, frequently in cash. Ledezma Dec. ¶40, M.  
23 Hernandez Dec. ¶19, J. Singh Dec. ¶13, J. Hernandez Dec. ¶31, B. Singh Dec. ¶¶12, 16.

24 **B. Guajardo, IPG, And Stender Did Make Cosmetic Changes To Shield Guajardo's**  
25 **Illegal Practice Of Law And Keep Clients In The Dark**

26 To hide his illegal practice of law, Guajardo nominally transferred control of his firm to  
27 Stender and introduced Stender and other attorneys to some clients. J. Hernandez Dec. ¶38; Ledezma  
28 Dec. ¶31; Ness Dec. ¶9; J. Singh Dec. ¶25; Andrade Dec. ¶17; B. Singh Dec. ¶¶8, 18; H. Hernandez

1 Dec. ¶ 13. He handed out new business cards that said "Immigration Practice Group." Andrade Dec.  
2 ¶16; Ledezma Dec. ¶26. He also stopped signing pleadings, receipts, letters and contracts. Andrade  
3 Dec. ¶24; M. Hernandez Dec. ¶20; J. Hernandez Dec. ¶36; B. Singh Dec. ¶13. One former client later  
4 learned that someone she had never heard of had signed her petition for review. Ledezma Dec. ¶19.  
5 Guajardo has someone else at IPG sign client agreements. M. Hernandez Dec. ¶¶15-16, 21, 23, 24,  
6 34; J. Hernandez Dec. ¶¶16-17, 22, 36; B. Singh Dec. ¶13.

7 Finally, Guajardo provided misleading explanations for the changes at his office. He has told  
8 clients that the other lawyers at IPG worked for him or that he now had a "team of lawyers," M.  
9 Hernandez Dec. ¶16; Andrade Dec. ¶17; J. Singh Dec. ¶16, or that he was retiring and transferring his  
10 practice to Stender, but that he (Guajardo) would still work on the client's case. J. Hernandez Dec. ¶38.  
11 When a client asked Guajardo about his trouble with the State Bar, Guajardo told him the suspension  
12 was only for one or two months and assured him: "I'm still your attorney and I'll take care of your  
13 case." J. Singh Dec. ¶¶17, 18. Attorneys and staff at IPG assisted Guajardo in these  
14 misrepresentations. When Stender sat in on meetings where Guajardo provided legal advice, he rarely  
15 said anything and did not correct any clients' mistaken belief that Guajardo was their lawyer. Ledezma  
16 Dec. ¶36; J. Hernandez Dec. ¶¶38, 39; J. Singh Dec. ¶25; B. Singh ¶9; Andrade Dec. ¶20. Stender told  
17 one client that Guajardo's "still your guy. We're just here to help." Andrade Dec. ¶17.

### 18 **C. Guajardo Continues To Harm His Clients By Providing Faulty Legal Advice And** 19 **Representation And Charging Exorbitant Fees**

20 Even after his resignation, Guajardo continues to provide ineffective representation after  
21 making extravagant promises and charging exorbitant fees. For example, he promised Jaime  
22 Hernandez, whose son had been deported, that Mr. Hernandez would pay the remaining \$5,000 he  
23 owed Guajardo "when Hector is sitting in that chair next to you and has a green card in his hand." J.  
24 Hernandez Dec. ¶32. Yet the only "assistance" Guajardo provided for the \$10,000 Jaime paid him was  
25 to file a frivolous motion that Stender signed and the immigration court denied. *Id.* ¶¶40-42, Ex. H.  
26 Once Mr. Hernandez learned that Guajardo was not an attorney, he hired a lawyer who successfully  
27 argued that Guajardo's motion constituted ineffective assistance of counsel. *Id.* ¶¶49, 50, Ex. I.

1 Maria Hernandez retained Guajardo in 2010 when her daughter, Brenda, was detained at the  
2 border after fleeing from her abusive father. M. Hernandez Dec. ¶15. Guajardo told Ms. Hernandez he  
3 would get Brenda out of detention within 15 days and then help legalize her status. *Id.* But no one  
4 from IPG contacted Brenda during her two months in custody or attended her hearings with U.S.  
5 Immigrations and Customs Enforcement. *Id.* ¶¶22, 23, 31. As a result, Brenda was deported to El  
6 Salvador, where she now lives with the abusive father she was trying to escape. *Id.* ¶49.

7 Guajardo promised Jagdeep Singh he would get him out of detention and obtain a green card.  
8 J. Singh Dec. ¶7. Mr. Singh paid Guajardo \$95,000. *Id.* ¶12. Until Mr. Singh fired him, Guajardo  
9 claimed that Mr. Singh would be able to stay in the U.S. with his wife and children. J. Singh Dec. ¶19.  
10 Mr. Singh later learned from a licensed attorney that he had to leave the country to adjust his status,  
11 and has now departed for India, leaving his wife and two young children here. J. Singh Dec. ¶¶10,11.

## 12 ARGUMENT

13 Courts consider two factors when deciding whether to issue a preliminary injunction: "1) are  
14 the plaintiffs likely to suffer greater injury from the denial of the injunction than the defendants are  
15 likely to suffer from its grant; and 2) is there a reasonable probability that the plaintiff will prevail on  
16 the merits." *Robbins v. Superior Court of Sacramento County* (1985) 38 Cal. 3d 199, 206. Both  
17 factors support issuance of an injunction in this case.

### 18 I. THE PEOPLE ARE LIKELY TO SUCCEED ON THE MERITS

19 "Unlawful competition" is "any unlawful, unfair, or fraudulent business act or practice." Bus.  
20 & Prof. Code § 17200. Unlawful practices include those "forbidden by law, be it civil or criminal,  
21 federal, state, or municipal, statutory or regulatory, or court-made." *Saunders v. Superior Court*, 27  
22 Cal. App. 4<sup>th</sup> 832, 838-39 (1994). The "unlawful" prong "borrows violations of other laws" and treats  
23 them as "practices independently actionable under section 17200." *Farmers Ins. Exch. v. Superior*  
24 *Court*, 2 Cal. 4<sup>th</sup> 377, 383 (1992) (quotations omitted). The unauthorized practice of law and other  
25 violations of the State Bar Act constitute unlawful business practices. 76 Ops. Cal. Atty. Gen.  
26 193, 196 (1993); *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.*, 104 Cal. App. 4th at 517;

1 *Brockey v. Moore*, 107 Cal. App. 4th 86, 98 (2003); *People v. Landlords Profl Servs.*, 215 Cal. App.  
2 3d 1599, 1603, 1609-10 (1989).

3 "An unfair business practice occurs when the practice offends an established public policy or  
4 when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
5 consumers." *Podolsky v. First Healthcare Corp.*, 50 Cal. App.4th 632, 647 (1996) (quotations omitted.)  
6 This prong is "intentionally broad, thus allowing courts maximum discretion to prohibit new schemes  
7 to defraud." *Farmers Ins.*, 2 Cal. 4th at 383. Finally, a practice is fraudulent if "members of the public  
8 are likely to be deceived." *Comm. on Children's Television v. General Foods Corp.* 35 Cal. 3d 197,  
9 211 (1983). Holding oneself out as providing services one does not or cannot provide is an unfair and  
10 fraudulent business practice. *See Fremont Life Ins. Co.*, 104 Cal. App. 4th at 517.

11 As explained below, defendants engage in unlawful, unfair, and fraudulent business practices.

12 **A. Guajardo Has Violated And Is Continuing To Violate Numerous State And  
Federal Statutes and Regulations**

13 **1. Guajardo Failed To Notify His Clients And Others Of His Resignation  
From The State And Ninth Circuit Bars As Required By Law**

14  
15 Under the terms of his resignation, Guajardo agreed to abide by California Rule of Court  
16 (CRC) 9.20(a)-(c). Higgins Dec., Ex. D. Thus, Guajardo had to: (1) notify all current clients of his  
17 resignation from the state bar and disqualification to act as an attorney, and direct them to seek legal  
18 advice elsewhere; (2) deliver to clients all papers to which they were entitled; and (3) refund any  
19 unearned fees. CRC 9.20(a)(1)-(3). He had to provide these notifications by registered or certified  
20 mail. CRC 9.20(b). Finally, Rule 9.20(c) required that Guajardo file proof of compliance with the  
21 State Bar Court. The Ninth Circuit also ordered Guajardo to: (1) notify clients within 21 days that he  
22 had resigned from its bar; (2) promptly advise the clients he would turn over their files; and (3) file  
23 various documents with the Court. Higgins Dec. Ex. G at G-5-6. The BIA issued a similar order. *Id.*  
24 Ex. H. Under Business & Professions Code sections 6180 and 6180.1, Guajardo had to serve notice of  
25 his resignation on his "then clients, to opposing counsel, [] courts and agencies in which [he] then had  
26 pending matters" and the Office of the Chief Trial Counsel of the State Bar.



1 Guajardo did none of these things. He did not notify existing or prospective clients that he had  
2 resigned from any bar. *See* M. Hernandez Dec. ¶52; J. Hernandez Dec. ¶56; J. Singh Dec. ¶14;  
3 Ledezma Dec. ¶41; B. Singh Dec. ¶¶26, 28-29. He did not return files to clients and resisted requests  
4 by clients for copies of their files. *See* Andrade Dec. ¶28; Ness Dec. ¶¶20-21; Ledezma Dec. ¶20. He  
5 never mailed notice of his resignation to the Chief Trial Counsel. White Dec. ¶2. Nor did he file proof  
6 of compliance with the Clerk of the State Bar Court. *Id.* ¶3.

## 7 2. Guajardo Continues To Engage In The Unauthorized Practice Of Law

8 Business & Professions Code sections 6125 and 6126 prohibit a person from practicing law  
9 unless he or she is an active member of the State Bar, and make it a criminal offense for a person who  
10 is not authorized to practice law to hold himself out as a lawyer. The Ninth Circuit also prohibited  
11 Guajardo from practicing law before it. Higgins Dec. Ex. G at G-5. The unauthorized practice of law  
12 includes a broad range of activities, such as "legal advice and counsel and the preparation of legal  
13 instruments and contracts by which the legal rights are secured although such matter may or may not  
14 be pending in a court." *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 17 Cal. 4<sup>th</sup>  
15 119, 142 (1998). It also "includes the mere holding out by a layman or a suspended attorney that he is  
16 practicing or is entitled to practice law." *Farnham v. State Bar*, 17 Cal. 3d 605, 612 (1976). Likewise,  
17 the handling of "an entire...matter, including conferences with the client" is illegal even if a licensed  
18 lawyer "appear[s] in court on the matter." *Crawford v. State Bar*, 54 Cal. 2d 659, 667 (1960).  
19 Providing legal advice constitutes the unauthorized practice of law, *id.* at 668; *see also* *Bluestein v.*  
20 *State Bar*, 13 Cal. 3d 162, 173-74 (1974), as does receiving client funds. *In re Cadwell*, 15 Cal. 3d  
21 762, 768 (1975). Thus, a disbarred lawyer may not meet with a client alone, discuss legal aspects of  
22 the case with that client, accept money from the client, or fail to tell the client that he is not a lawyer.  
23 *Id.* at 771 n.3.

24 Despite his resignation from the State and Ninth Circuit bars, Guajardo engages in all of these  
25 prohibited activities. *See supra* at 5-9. He has not informed clients that he has resigned from the bar  
26 and encourages the impression that he is their attorney. Clients continue to call IPG and make  
27 appointments with Guajardo. Clients attend meetings with Guajardo at the same office he used before  
28

1 his resignation, and during those meetings he gives clients legal advice and discusses legal strategy.  
2 He conducts these meetings with and without licensed lawyers in the room and often directs other  
3 lawyers at IPG. He also discusses fees with clients and accepts payments from clients, sometimes  
4 running their credit cards for payment himself or taking their cash. Guajardo regularly engages in  
5 these activities and therefore engages in the unauthorized practice of law.

6 **B. Stender and IPG Engage In Unlawful And Unfair Business Practices.**

7 **1. IPG and Stender Have Not Provided Written Notice To Clients And The  
8 State Bar That They Employ A Resigned Attorney**

9 Under Business & Professions Code §6167, law corporations like IPG must abide by all  
10 statutes and rules governing attorney conduct. In addition to his liability for violation of statutes  
11 applicable to him, Stender, as the CEO, director, and sole shareholder of IPG, is also liable when he  
12 meaningfully participates in any unlawful conduct by IPG. *See, e.g., U.S. Liability Ins. Co. v.*  
13 *Haidinger-Hayse, Inc.*, 1 Cal. 3d 586, 594-95 (1970).

14 California Rule of Professional Conduct 1-311(D) requires any member of the State Bar who  
15 employs a resigned member to serve on the State Bar written notice of such employment, including a  
16 full description of the person's activities and an acknowledgment that the resigned member will not  
17 engage in activities prohibited under Rule 1-311(B). The member must also serve such notice on each  
18 client whose case the resigned member will work on. *Id.* Similarly, Business & Professions Code  
19 §§6180 and 6180.1 require persons with control of a resigned attorney's files to provide notice of the  
20 attorney's resignation to clients, opposing counsel, courts and agencies, and the State Bar.

21 IPG and Stender have control of Guajardo's files and have not served the required notice on  
22 either the State Bar or the firm's clients. White Dec. ¶5; M. Hernandez Dec. ¶54; J. Hernandez Dec.  
23 ¶59; Singh Dec. ¶15; Ledezma Dec. ¶43, B. Singh Dec. ¶26, 28-29. Their failure to do so violates Rule  
24 1-311(D) and Business & Professions Code §§6180, 6180.1, and harms clients who have retained and  
25 paid Guajardo instead of seeking legal representation elsewhere.

26 **2. IPG and Stender Aid And Abet Guajardo's Unauthorized Practice Of Law**

27 A member of the Bar may not assist a non-member in the unauthorized practice of law. *See*  
28 Cal. R. Prof. Conduct 1-300(A); *see also* Bus. & Prof. Code §6133 (prohibiting attorney or law

1 corporation from "permit[ing] [a resigned] attorney to practice law or to hold himself or herself out as  
2 practicing law"). Immigration regulations also provide for discipline whenever "an attorney assists any  
3 person, other than a practitioner...in the performance of activity that constitutes the unauthorized  
4 practice of law." 8 C.F.R. § 1003.102(m). And aiding and abetting any unfair or unlawful business  
5 practice is itself unfair and unlawful. *People v. Toomey*, 157 Cal. App. 3d 1, 14 (1972).

6 A broad range of activities constitute aiding and abetting the unauthorized practice of law. In  
7 *Bluestein, supra*, 13 Cal. 3d at 175, a licensed attorney referred clients to an unlicensed attorney who  
8 he claimed had knowledge of foreign law. The Court held the licensed attorney had aided and abetted  
9 the unauthorized practice of law by introducing clients to the unlicensed attorney, conveying the  
10 impression that the unlicensed lawyer was associated with him, and allowing the unlicensed attorney  
11 to consult with clients without supervision. *Id.* Similarly, in *Crawford, supra*, 54 Cal. 2d at 666, an  
12 attorney partnered with his disbarred father who provided legal advice on discrete matters and directed  
13 his former clients to his son. Considering the relative experience of the two men, the ambiguity as to  
14 whether the two maintained a partnership, and the large number of former clients the father had  
15 channeled to his son, the Court concluded that the son had aided and abetted his father's unauthorized  
16 practice. *Id.* at 668-69.

17 IPG and Stender aided and abetted Guajardo's unauthorized practice of law by providing a  
18 front that masks the fact of his resignation from the Bar. As sole shareholder and CEO of IPG, Stender  
19 allows Guajardo to continue his law practice. Under the aegis of IPG and Stender, Guajardo regularly  
20 meets with clients without supervision, advises clients, and engages in other activities constituting the  
21 practice of law. Stender and IPG allow Guajardo to do so even though they know that he is  
22 unlicensed. *See supra* at 6-8. Although Stender has met many of Guajardo's clients, all those clients  
23 believed Guajardo was their lawyer. Indeed, Stender has actively contributed to this misperception.  
24 For example, he told one client Guajardo was "still your guy. We're just here to help." Andrade Dec.  
25 ¶17. Stender and other IPG attorneys also aid Guajardo's unauthorized practice of law by signing court  
26 documents and client contracts and by appearing at hearings on behalf of Guajardo's clients.

1                   **C.     Guajardo, Stender, And IPG Make Misleading Statements In Immigration**  
2                   **Proceedings By Failing To Disclose That Guajardo Is Not A Lawyer**

3                   Defendants' practices violate Penal Code § 653.55 (making it a misdemeanor for any person  
4                   for compensation to knowingly make a false or misleading material statement or assertion of fact in  
5                   the preparation of an immigration matter if another person detrimentally relies on the false statement)  
6                   and 8 C.F.R. § 1003.102(f) (prohibiting immigration practitioners from knowingly or recklessly  
7                   making false or misleading communications about their qualifications or services). Guajardo, Stender,  
8                   and IPG do not disclose to clients that Guajardo is not licensed to practice law. Instead, all three make  
9                   statements to clients suggesting Guajardo is their lawyer. Declarations of J. Hernandez, Andrade, M.  
10                  Hernandez, J. Singh, B. Singh, G. Ledezma, *supra* pages 6-8. Guajardo also makes promises to obtain  
11                  relief that he cannot or does not obtain. For example, he falsely promises clients he will legalize their  
12                  status, G. Ledezma Dec. ¶8, Andrade Dec. ¶29; reunite them with their children, M. Hernandez Dec.  
13                  ¶15, J. Hernandez Dec. ¶21; or help them stay in the U.S. with their families, J. Singh Dec. ¶28.  
14                  Clients, in reliance on these statements and omissions, continued to seek legal advice from him and to  
15                  pay him large sums of money.

16                   **D.     Guajardo, Stender And IPG Engage In Fraudulent Business Practices By**  
17                   **Misleading Clients Into Believing That Guajardo Can Provide Legal Services**

18                  Guajardo, Stender, and IPG's practices are also fraudulent in that they deceive clients into  
19                  believing that Guajardo, despite his resignation from the bar, may provide them with competent legal  
20                  services. Stender and IPG enable Guajardo to do so. Thus, defendants' use of untrue or misleading  
21                  statements and omissions to market Guajardo's unauthorized legal services violates §17200. *People ex*  
22                  *rel. Bill Lockyer*, 104 Cal. App. 4<sup>th</sup> at 517.

23                   **II.     ABSENT AN INJUNCTION, THE PEOPLE WILL SUFFER IRREPARABLE HARM**

24                  Where a governmental entity seeks to enjoin the violation of a statute that authorizes injunctive  
25                  relief, if the entity "establishes that it is reasonably probable it will prevail on the merits, a rebuttable  
26                  presumption arises that the potential harm to the public outweighs the potential harm to the  
27                  defendant." *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 72 (1983). Only "[i]f the defendant shows  
28                  that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, [must]

1 the court then examine the relative harm to the parties." *Id.* Because the People have established more  
2 than a reasonable probability that they will prevail on their \$17200 claims, the presumption applies,  
3 And this presumption is dispositive here because defendants can suffer no harm from an order  
4 enjoining their *unfair and illegal* conduct.

5 Even without the presumption, there is more than enough evidence of irreparable harm to  
6 support injunctive relief. The evidence establishes that Guajardo continues to mislead his immigrant  
7 clients into believing he is a licensed and competent attorney and to provide grossly deficient legal  
8 advice and representation to those clients. It further establishes that IPG and Stender aid and abet  
9 Guajardo in defrauding immigrants by failing to satisfy their legal obligation to disclose to clients that  
10 Guajardo is no longer licensed and by enabling his unauthorized practice of law. As a result, Guajardo,  
11 Stender and IPG defraud immigrants who are in desperate need of competent legal counsel so they can  
12 stay and work in this country and keep their families intact, out of thousands of dollars. Moreover,  
13 these immigrants typically suffer adverse consequences in their immigration proceedings due to  
14 defendants' malfeasance. Without an injunction, immigrants will continue to suffer these  
15 consequences.

## 16 CONCLUSION

17 Plaintiff respectfully requests that the Court issue a preliminary injunction against defendants  
18 Guajardo, Stender and IPG. As detailed in the attached [Proposed] Preliminary Injunction, defendants  
19 should be ordered to notify former and existing clients of Guajardo's resignation from all bars to which  
20 he was admitted. Guajardo should also be enjoined from engaging in the unauthorized practice of law.  
21 Stender and IPG should be ordered to notify Guajardo's former and existing clients of his resignation  
22 and enjoined from aiding and abetting Guajardo's unauthorized practice of law.

23 Dated: November 17, 2010

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