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16 Attorneys for Plaintiff
17 FEDERAL TRADE COMMISSION

18 UNITED STATES DISTRICT COURT
19 DISTRICT OF NEVADA

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

23 PHILIP DANIELSON, LLC, a Utah Limited
24 Liability Company, also d/b/a Danielson Law
25 Group and d/b/a DLG Legal;
26

FILED	RECEIVED
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DISTRICT OF NEVADA	
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2:14-cv-00896-GMN-VCF

FILED UNDER SEAL

1 FOUNDATION BUSINESS SOLUTIONS,
2 LLC, a Utah Limited Liability Company;

3 emerchant, LLC, a Utah Limited Liability
4 Company, also d/b/a FULL BIZ SOLUTIONS;

5 LINDEN FINANCIAL GROUP, LLC, a Utah
6 Limited Liability Company;

7 ACUTUS LAW, P.C., a Utah Professional
8 Corporation, f/k/a DANIELSON SILVA
9 ATTORNEYS AT LAW, P.C.;

10 DIRECT RESULTS SOLUTIONS, LLC, a
11 Utah Limited Liability Company;

12 STRATA G SOLUTIONS, LLC, a Utah
13 Limited Liability Company;

14 PHILIP J. DANIELSON, in his individual and
15 corporate capacity;

16 TONY D. NORTON, in his individual and
17 corporate capacity;

18 SEAN J. COBERLY, in his individual and
19 corporate capacity;

20 TANYA L. HAWKINS, a/k/a Tonya L.
21 Hawkins, in her individual and corporate
22 capacity;

23 CHAD E. VANSICKLE, in his individual and
24 corporate capacity; and

25 JENNIFER B. DANIELSON, in her individual
26 and corporate capacity; *et al.*

27 Defendants, and

APRIL D. NORTON, in her individual
capacity,

Relief Defendant.

COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

1 Plaintiff, the Federal Trade Commission, for its Complaint alleges:

2 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
3 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the 2009 Omnibus
4 Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009)
5 ("Omnibus Act"), as clarified by the Credit Card Accountability Responsibility and Disclosure
6 Act of 2009, Public Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (May 22, 2009) ("Credit
7 Card Act"), and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,
8 Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) ("Dodd-Frank
9 Act"), 12 U.S.C. § 5538, to obtain temporary, preliminary, and permanent injunctive relief,
10 rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-
11 gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section
12 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Mortgage Assistance Relief Services Rule ("MARS
13 Rule"), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief Services ("Regulation O"),
14 12 C.F.R. Part 1015, in connection with the marketing and sale of mortgage assistance relief
15 services.

16 JURISDICTION AND VENUE

17 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
18 and 1345; 15 U.S.C. §§ 45(a), 53(b), and 57b; and Section 626 of the Omnibus Act, as clarified
19 by Section 511 of the Credit Card Act, and amended by Section 1097 of the Dodd-Frank Act, 12
20 U.S.C. § 5538.

21 3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and (c)(1) and
22 (c)(2), and 15 U.S.C. § 53(b).

23 PLAINTIFF

24 4. Plaintiff FTC is an independent agency of the United States Government created
25 by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15
26

1 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. In
2 addition, pursuant to 12 U.S.C. § 5538, the FTC enforces the MARS Rule, which requires
3 mortgage assistance relief service (“MARS”) providers to make certain disclosures, prohibits
4 certain representations, and generally prohibits the collection of an advance fee.

5 5. The FTC is authorized to initiate federal district court proceedings by its own
6 attorneys to enjoin violations of the FTC Act; the MARS Rule; and Regulation O; and to secure
7 such equitable relief as may be appropriate in each case, including rescission or reformation of
8 contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15
9 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), and 57b; § 626, 123 Stat. at 678, as clarified by § 511, 123
10 Stat. at 1763-64 and amended by § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538.

11 DEFENDANTS

12 6. Defendant **Philip Danielson, LLC** is a Utah limited liability company with its
13 registered address at 12257 Business Park Drive, Suite 225, Draper, UT 82020. It also has used
14 the addresses 12159 South Business Park Drive, Suite 140, Draper, UT, 84020 and 1733 West
15 12600 South, Suite 504, Riverton, UT 84065. Philip Danielson, LLC also does or has done
16 business as Danielson Law Group and DLG Legal (collectively “Danielson Law Group”). At
17 times material to this Complaint, as part of the common enterprise described in paragraph 20,
18 Danielson Law Group has advertised, marketed, provided, offered to provide, or arranged for
19 others to provide MARS, as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2.
20 Danielson Law Group transacts or has transacted business in this District and throughout the
21 United States.

22 7. Defendant **Foundation Business Solutions, LLC** is a Utah limited liability
23 company with its registered address at 63 East 11400 South, Suite 150, Sandy, UT 84070. It also
24 is associated with the address 9500 South 500 West, Suite 207, Sandy, UT 84070. At times
25 material to this Complaint, as part of the common enterprise described in paragraph 20,
26
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1 Foundation Business Solutions, LLC has advertised, marketed, provided, offered to provide, or
2 arranged for others to provide MARS, as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. §
3 1015.2. Foundation Business Solutions, LLC transacts or has transacted business in this District
4 and throughout the United States.

5 8. Defendant **emerchant, LLC**, also doing business as Full Biz Solutions
6 (hereinafter, "Full Biz Solutions"), is a Utah limited liability company with its registered address
7 at 12353 Lampton View Drive, Riverton, UT 84065. It also is associated with the addresses
8 9500 South 500 West, Suite 205, Sandy, UT 84070 and 1780 West 9000 South, Suite 107, West
9 Jordan, UT 84088. At times material to this Complaint, as part of the common enterprise
10 described in paragraph 20, Full Biz Solutions has advertised, marketed, provided, offered to
11 provide, or arranged for others to provide MARS, as defined in 16 C.F.R. § 322.2, recodified as
12 12 C.F.R. § 1015.2. Full Biz Solutions transacts or has transacted business in this District and
13 throughout the United States.

14 9. Defendant **Linden Financial Group, LLC** is a Utah limited liability company
15 with its registered address at 1780 West 9000 South, Suite 108, West Jordan, UT 84088. At
16 times material to this Complaint, as part of the common enterprise described in paragraph 20,
17 Linden Financial Group, LLC has advertised, marketed, provided, offered to provide, or
18 arranged for others to provide MARS, as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. §
19 1015.2. Linden Financial Group, LLC transacts or has transacted business in this District and
20 throughout the United States.

21 10. Defendant **Acutus Law, P.C.**, formerly known as Danielson Silva Attorneys at
22 Law, PC, is a Utah professional corporation with its registered address at 9500 South 500 West,
23 Suite 207, Sandy, UT 84070. At times material to this Complaint, as part of the common
24 enterprise described in paragraph 20, Acutus Law, P.C. has advertised, marketed, provided,
25 offered to provide, or arranged for others to provide MARS, as defined in 16 C.F.R. § 322.2,
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1 recodified as 12 C.F.R. § 1015.2. Acutus Law, P.C. transacts or has transacted business in this
2 District and throughout the United States.

3 11. Defendant **Direct Results Solutions, LLC** was a Utah limited liability company
4 with its registered address at 9500 South 500 West, Suite 205, Sandy, UT 84070. At times
5 material to this Complaint, as part of the common enterprise described in paragraph 20, Direct
6 Results Solutions, LLC has advertised, marketed, provided, offered to provide, or arranged for
7 others to provide MARS, as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2.
8 Direct Results Solutions, LLC transacts or has transacted business in this District and throughout
9 the United States.

10 12. Defendant **Strata G Solutions, LLC** was a Utah limited liability company with
11 its registered address at 12726 Burgen Circle, Riverton, UT 84065. Strata G Solutions also has
12 used the address at 9500 South 500 West, Suite 205, Sandy, UT 84070. At times material to this
13 Complaint, as part of the common enterprise described in paragraph 20, Strata G Solutions, LLC
14 has advertised, marketed, provided, offered to provide, or arranged for others to provide MARS,
15 as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2. Strata G Solutions, LLC
16 transacts or has transacted business in this District and throughout the United States.

17 13. Defendant **Philip J. Danielson**, is or was the principal or owner of Danielson
18 Law Group, Foundation Business Solutions, and Linden Financial Group. At times material to
19 this complaint, acting alone or in concert with others, and through interrelated entities described
20 in paragraphs 6 through 12, he has formulated, directed, controlled, had the authority to control,
21 or participated in the acts and practices set forth in this complaint. Philip Danielson, in
22 connection with the matters alleged herein, transacts or has transacted business in this District
23 and throughout the United States.

24 14. Defendant **Tony D. Norton** is or was a manager, managing member, principal, or
25 owner of Danielson Law Group, Strata G Solutions, Direct Results Solutions, and Foundation
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1 Business Solutions. At all times material to this complaint, acting alone or in concert with
2 others, and through interrelated entities described in paragraphs 6 through 12, he has formulated,
3 directed, controlled, had the authority to control, or participated in the acts and practices set forth
4 in this complaint. Tony Norton, in connection with the matters alleged herein, transacts or has
5 transacted business in this District and throughout the United States.

6 15. Defendant **Sean J. Coberly** is or was a manager, managing member, principal, or
7 owner of Danielson Law Group, Acutus Law, Strata G Solutions, Direct Results Solutions, and
8 Foundation Business Solutions. At all times material to this complaint, acting alone or in concert
9 with others, and through interrelated entities described in paragraphs 6 through 12, he has
10 formulated, directed, controlled, had the authority to control, or participated in the acts and
11 practices set forth in this complaint. Sean Coberly, in connection with the matters alleged herein,
12 transacts or has transacted business in this District and throughout the United States.

13 16. Defendant **Tanya L. Hawkins**, also known as Tonya Hawkins, is or was a
14 manager, managing member, principal, or owner of Danielson Law Group, Acutus Law,
15 Foundation Business Solutions, and Full Biz Solutions. At all times material to this complaint,
16 acting alone or in concert with others, and through interrelated entities described in paragraphs 6
17 through 12, she has formulated, directed, controlled, had the authority to control, or participated
18 in the acts and practices set forth in this complaint. Tanya Hawkins, in connection with the
19 matters alleged herein, transacts or has transacted business in this District and throughout the
20 United States.

21 17. Defendant **Chad E. VanSickle** is or was a manager, managing member, principal,
22 or owner of Danielson Law Group; Direct Results Solutions; Strata G Solutions; and Foundation
23 Business Solutions. At all times material to this complaint, acting alone or in concert with
24 others, and through interrelated entities described in paragraphs 6 through 12, he has formulated,
25 directed, controlled, had the authority to control, or participated in the acts and practices set forth
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1 in this complaint. Chad VanSickle, in connection with the matters alleged herein, transacts or
2 has transacted business in this District and throughout the United States.

3 18. Defendant **Jennifer C. Danielson** is or was a manager, managing member,
4 principal, or owner of Linden Financial Group. At all times material to this complaint, acting
5 alone or in concert with others, and through interrelated entities described in paragraphs 6
6 through 12, she has formulated, directed, controlled, had the authority to control, or participated
7 in the acts and practices set forth in this complaint. Jennifer Danielson, in connection with the
8 matters alleged herein, transacts or has transacted business in this District and throughout the
9 United States.

10 RELIEF DEFENDANT

11 19. Relief Defendant **April D. Norton** is an individual who has received funds or
12 assets that can be traced directly to Defendants' deceptive acts or practices alleged below, and
13 she has no legitimate claim to those funds. April Norton resides in Utah.

14 COMMON ENTERPRISE

15 20. Defendants Philip Danielson, LLC; Foundation Business Solutions; Full Biz
16 Solutions; Linden Financial Group; Acutus Law; Direct Results Solutions; and Strata G
17 Solutions (collectively, "Corporate Defendants") have operated as a common enterprise while
18 engaging in the deceptive acts and practices alleged below. These Corporate Defendants have
19 conducted the business practices described below through an interrelated network of companies
20 that have common ownership, officers, managers, business functions, employees, and office
21 locations; that have commingled funds; or that have shared one another's marketing materials.
22 Because these Corporate Defendants have operated as a common enterprise, each of them is
23 jointly and severally liable for the acts and practices alleged below. Defendants Philip
24 Danielson, Tony Norton, Sean Coberly, Tanya Hawkins, Chad VanSickle, and Jennifer
25 Danielson have formulated, directed, controlled, had the authority to control, or participated in
26

1 the acts and practices of the Corporate Defendants that constitute the common enterprise.

2 **COMMERCE**

3 21. At all times material to this complaint, Defendants have maintained a substantial
4 course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act,
5 15 U.S.C. § 44.

6 **DEFENDANTS' BUSINESS PRACTICES**

7 **Overview**

8 22. From at least January 2011 to the present, Defendants, through operation of the
9 common enterprise, have engaged in a course of conduct to advertise, market, sell, provide, offer
10 to provide, or arrange for others to provide MARS. Defendants have preyed on financially
11 distressed homeowners nationwide by promising a loan modification in exchange for an advance
12 fee. Defendants have promised that homeowners will receive legal representation from expert
13 loan modification attorneys who will fight homeowners' lenders to save their homes or make
14 their mortgage payments more affordable. Defendants also have purported to offer or provide
15 consumers with mortgage analysis reports to obtain loan modifications from lenders.

16 23. Defendants have attracted consumers primarily via mailers, cold calls, radio and
17 television advertisements, and websites deceptively promising substantial relief from
18 unaffordable mortgages and foreclosures. Defendants have promised a substantial reduction in
19 the consumers' mortgage payments, interest rates, or both, in exchange for an advance fee
20 typically from about \$500 to \$3,900. Defendants have duped financially distressed homeowners
21 into paying thousands of dollars based on false promises and misrepresentations. Defendants
22 have provided little, if any, meaningful assistance to modify or prevent foreclosure.

23 24. In numerous instances, consumers who have paid Defendants' fees have suffered
24 significant economic injury, including foreclosure and the loss of their properties.

Defendants' Deceptive Direct Mail Solicitations

25. As part of the scheme, Defendants have sent direct mail solicitations to financially distressed homeowners throughout the United States to convince them to call Defendants about Defendants' purported loan modification services.

26. In numerous instances, Defendants' direct mail solicitations have told consumers that they are pre-qualified for mortgage relief and that prior attempts to contact them have been unsuccessful. The solicitations have warned that the loan is at "RISK OF FORECLOSURE" or "PRE-FORECLOSURE" and urged consumers to call the listed toll-free number or visit a website to verify their pre-qualification status before the notice expiration date.

27. The solicitations are official-looking forms that contain file numbers, significant identifying information about the consumer's mortgage, and the federal program for which the consumer is purportedly pre-qualified. In numerous instances, the solicitations have been titled "FORECLOSURE DEFENSE ADVISORY." One version of such a solicitation appears as:

FORECLOSURE DEFENSE ADVISORY

.....
This is NOT an attempt to collect a debt
.....

PROPERTY ID	1-866-896-3337	RISK OF FORECLOSURE	YES
FIRST PREFERRED MTC		SFR	YES
PROPERTY ID	NCO437-07-23844	HAMP	YES

Home Retention Department
Program Director

1-866-896-3337 www.loanmodification.com

NOTICE EXPIRATION DATE: 5/17/2013
Office Hours: M-F 7:00am - 6:00pm PST
Openlines to Equal Housing Lenders

1 knocked off \$607 from the monthly mortgage.

2 First, their daughter got divorced forcing her to move in with them with her
3 children. Then, he lost his job and soon they were looking at foreclosure.
4 Skeptical of a scam, they thoroughly investigate [sic] the Danielson Law Group
5 before becoming a client. And, boy, aren't they glad they did. Old house
6 payment: \$941. New house payment: \$593.

7 Shortly after getting married, he was forced to take a huge pay cut to save his job.
8 He came to the Danielson Law Group with the hope of lowering his house
9 payment of \$2,430 to about \$1,700 or even \$1,500 if that was at all possible.
10 Well, the hard-working attorneys at DLG Legal got that monthly payment down
11 to \$1,376!

12 Divorced. Car repoed. Bills stacking up. Who you gonna call? Old monthly
13 payment: \$1,595 at 7%. New monthly payment: \$775 at 2%. That's right...DLG
14 Legal!

15 35. Defendants' websites and social media did not disclose, in accordance with the
16 MARS Rule and Regulation O, that Defendants are not associated with the government and that
17 their service is not approved by the government or the consumer's lender.

18 36. Defendants' websites and social media did not disclose, in accordance with the
19 MARS Rule and Regulation O, that, even if consumers use the modification service, their lender
20 may not agree to change their loan.

21 Defendants' Radio and Television Advertisements

22 37. Defendants also have marketed through television and radio advertisements. Like
23 the direct mail solicitations Defendants have sent, these television and radio advertisements have
24 included a toll-free number that consumers could call for more information or a free
25 consultation.

26 38. For example, one of Defendants' radio advertisements stated that Defendants
27 "helped thousands of people just like you stay in their homes and avoid the heartbreak of losing
their dreams." The advertisement then claimed that Defendants "can help you modify your loan
into one you can afford. The consultation is free and it only takes a few minutes to find out if we

1 can help.”

2 39. The radio advertisement also stated that struggling homeowners needed
3 Defendants help because “only five percent of homeowners who go it alone are successful.” The
4 radio advertisement further claimed that Defendants “know the rules and regulations the bank
5 don’t want you to know about.”

6 40. Defendants’ television and radio advertisements did not disclose, in accordance
7 with the MARS Rule and Regulation O, that Defendants are not associated with the government
8 and that their service is not approved by the government or the consumer’s lender.

9 41. Defendants’ television and radio advertisements, did not disclose in accordance
10 with the MARS Rule and Regulation O, that, even if consumers use the modification service,
11 their lender may not agree to change their loan.

12 **Defendants’ Seminars**

13 42. Defendants also have conducted seminars, frequently called “Homeowners
14 Solutions Workshops,” around the country to market and sell their MARS. In numerous
15 instances, Defendants’ representatives at the seminars have claimed that they will conduct a
16 review of the consumer’s situation and generate a mortgage analysis report that would determine
17 eligibility for particular loan modification programs and would be used to obtain a loan
18 modification from the consumer’s lender.

19 43. In numerous instances, Defendants also have pledged that consumers who receive
20 a report that indicated they do not qualify for a loan modification will receive a refund.

21 44. During the seminars, Defendants, did not disclose in accordance with the MARS
22 Rule and Regulation O, that Defendants are not associated with the government and that their
23 service is not approved by the government or the consumer’s lender.

24 45. During the seminars, Defendants’ did not disclose, in accordance with the MARS
25 Rule and Regulation O, that, even if consumers use the modification service, their lender may
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1 not agree to change their loan.

2 Defendants' Sales Pitch

3 46. Defendants have used telemarketing to pitch MARS, including through
4 unsolicited outbound telemarketing calls, inbound telephone calls from consumers originating
5 from Defendants' mailers, websites, or radio or television advertisements, and outbound calls to
6 consumers who have submitted their contact information on Defendants' websites.

7 47. In numerous instances, Defendants' representatives have told consumers
8 expressly or by implication that Defendants only accept consumers who qualify for a loan
9 modification. For example, Defendants' representative asked one consumer for his financial
10 information so that she purportedly could confer with an attorney to determine if the consumer
11 had a viable loan modification. After placing him on hold for about ten minutes, Defendants'
12 representative informed the consumer that he qualified and that Defendants would be able to
13 obtain a loan modification for him. Defendants did not obtain a loan modification for the
14 consumer.

15 48. In numerous instances, Defendants have offered to obtain loan modifications that
16 will lower consumers' monthly mortgage payments or interest rates. Defendants have made such
17 representations even to those consumers who have informed Defendants that their lenders have
18 previously denied modifications. For example, a consumer informed Defendants that she and
19 her husband had been denied loan modifications twice by their lender and specifically asked how
20 Defendants could help in light of those denials. Defendants' representative told the consumer
21 that she had been unsuccessful because lenders did not take consumers like her seriously.
22 Defendants' representative further stated that Defendants were successful because they had legal
23 expertise and knew how to deal with lenders, including the consumer's particular financial
24 institution. Defendants did not obtain a loan modification for the consumer.

25 49. In numerous instances, Defendants have told consumers that Defendants are
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1 affiliated with the consumer's lender, have a strong and unique relationship with the consumer's
2 lender, or that the lender referred Defendants to the consumer. For example, Defendants assured
3 at least three separate consumers that they have influential relationships with each of the
4 consumers' individual lenders—Bank of America, JP Morgan Chase, and US Bank. Defendants
5 told one consumer that JP Morgan Chase specifically referred his account to Defendants for
6 assistance. Defendants told another consumer that Bank of America was their number one client.
7 Defendants told the third consumer that Defendants had a relationship with US Bank and had
8 successfully obtained loan modifications for other US Bank clients. Defendants did not obtain a
9 loan modification for any of the three consumers.

10 50. In numerous instances, Defendants have told consumers that Defendants have
11 special expertise in loan modifications and a proven success rate in obtaining loan modifications.
12 For example, Defendants told one consumer that Defendants had an unbeatable record with over
13 a 90% success rate. Defendants did not obtain a loan modification for the consumer.

14 51. In numerous instances, Defendants have claimed that consumers will be able to
15 obtain a refund if Defendants do not obtain a loan modification for the consumer. For example,
16 one consumer contacted Defendants with his financial planner. The consumer explained his
17 situation, including the fact that his lender previously denied a loan modification and that he did
18 not have enough money to pay Defendants' fees. Defendants' representative informed the
19 consumer that Defendants had a money-back guarantee if they did not complete a modification
20 for him. The Defendants' representative again confirmed the refund policy in response to a
21 follow-up question from the financial planner. Defendants did not obtain a loan modification for
22 the consumer and did not refund any of the fees he had paid Defendants.

23 52. In numerous instances, Defendants have told consumers not to contact their
24 lenders and have claimed that Defendants will handle all communications with consumers'
25 lenders. For example, one consumer was told to stop communicating with her lender because
26

1 Defendants had assigned a lawyer in her state to handle the loan modification and deal with the
2 lender.

3 53. In numerous instances, Defendants have encouraged consumers to stop making
4 mortgage payments, and, in some instances, have told consumers that delinquency will
5 demonstrate the consumers' hardship to the consumers' lenders. In those instances, Defendants
6 have not disclosed that if consumers stop making mortgage payments they could lose their home
7 and damage their credit rating. For example, Defendants told one consumer to stop paying his
8 mortgage so that he could afford Defendants' fees. Defendants representative claimed that there
9 was no way the consumer could get a loan modification without being at least three months
10 behind on his mortgage payments.

11 54. During these calls, Defendants did not disclose, in accordance with the MARS
12 Rule and Regulation O, that consumers (i) may stop doing business with Defendants at any time,
13 (ii) may accept or reject any offer of mortgage assistance, and (iii) do not have to pay for MARS
14 if they reject the offer.

15 55. During these calls, Defendants did not disclose, in accordance with the MARS
16 Rule and Regulation O, that Defendants are not associated with the government and that their
17 service is not approved by the government or the consumer's lender.

18 56. During these calls, Defendants did not disclose, in accordance with the MARS
19 Rule and Regulation O, that, even if consumers use the modification service, their lender may
20 not agree to change their loan.

21 **Defendants' Enrollment and Loan Modification Process**

22 57. During the initial enrollment process, Defendants typically have transferred
23 consumers to another representative to verify information and obtain payment information and
24 authorization from consumers. Depending on the services, Defendants typically have charged a
25 fee ranging from about \$500 to \$3,900 and have told consumers that they must make the first
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1 payment before Defendants can begin to provide their services. Those consumers who have
2 made only a down payment are required to make additional payments until the full amount is
3 paid. Defendants also have charged a monthly maintenance fee, typically \$195, beginning
4 around the fifth month.

5 58. In numerous instances, Defendants have instructed consumers to sign one or more
6 agreements and have claimed that Defendants only collect fees when certain services specified in
7 the agreements have been completed. In reality, Defendants have established a monthly payment
8 schedule that automatically deducts the payments from consumers' bank accounts.

9 59. Typically, Defendants have assigned a non-attorney representative or a purported
10 paralegal to consumers who have engaged Defendants to act as the consumers' primary point of
11 contact. Defendants' employee initially may have reached out to the consumer to introduce him
12 or herself as the consumer's contact. Subsequently, the consumer typically has received little to
13 no communication from the Defendants' representatives. In numerous instances, consumers
14 have complained that Defendants' representatives have failed to return phone calls, shuffled
15 them around from employee to employee, have not contacted the lender, or have not performed
16 even the most basic promised services. After many months of payments for Defendants services,
17 numerous consumers have learned that Defendants have made no or little progress on their
18 behalf with their lenders.

19 60. In numerous instances, consumers have complained that they did not receive the
20 services or legal representation Defendants promised. Many consumers have never met or
21 spoken to an attorney licensed in the state where they reside or where the property at issue is
22 located. Instead, consumers often have found themselves on their own to negotiate with their
23 lenders.

24 61. In numerous instances, consumers have encountered difficulty in requesting and
25 obtaining refunds from Defendants. In numerous instances, Defendants have not provided any
26

1 refund or have refunded an amount substantially less than what consumers have paid.

2 62. In numerous instances, after consumers have engaged Defendants and have paid
3 the requested advance fees, Defendants have failed to obtain loan modifications or other relief to
4 stop foreclosures or make consumers' mortgage payments affordable.

5 63. In numerous instances, consumers who have engaged Defendants have suffered
6 significant economic injury, including paying hundreds or thousands of dollars to Defendants
7 and receiving little or no service in return, going into foreclosure, and even losing their homes.

8 **VIOLATIONS OF THE FTC ACT**

9 64. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts
10 or practices in or affecting commerce."

11 65. Misrepresentations or deceptive omissions of material fact constitute deceptive
12 acts or practices prohibited by Section 5(a) of the FTC Act.

13 **COUNT I**

14 **(Deceptive Representations Regarding Substantially More Affordable Loan Payments,
15 Substantially Lower Interest Rates, or Foreclosure Avoidance)**

16 66. In numerous instances, in connection with the offering for sale, sale or
17 performance of mortgage assistance relief services, Defendants have represented, directly or
18 indirectly, expressly or by implication, that Defendants typically will obtain mortgage loan
19 modifications for consumers that will make their payments substantially more affordable, will
20 substantially lower their interest rates, or will help them avoid foreclosure.

21 67. In truth and in fact, Defendants typically do not obtain mortgage loan
22 modifications for consumers that will make their payments substantially more affordable, will
23 substantially lower their interest rates, or help them avoid foreclosure.

24 68. Therefore, Defendants' representation as set forth in paragraph 66 is false and
25 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,
26

1 15 U.S.C. § 45(a).

2 COUNT II

3 **(Deceptive Representations Regarding Loan Modification Services or Mortgage Analysis**
4 **Reports)**

5 69. In numerous instances, in connection with the offering for sale, sale or
6 performance of mortgage assistance relief services, Defendants have represented, directly or
7 indirectly, expressly or by implication:

- 8 (a) that Defendants are affiliated with, endorsed or approved by, or otherwise
9 associated with the maker, holder, or servicer of the consumer's dwelling
10 loan;
- 11 (b) that the consumer is not obligated to, or should not, make scheduled
12 periodic payments or any other payments pursuant to the terms of the
13 consumer's dwelling loan;
- 14 (c) that the consumer will receive a refund in the event Defendants do not
15 deliver promised results from their mortgage assistance relief services;
- 16 (d) that the consumer will receive legal representation; and
- 17 (e) that as a result of a mortgage analysis report provided by Defendants,
18 consumers typically will obtain a mortgage loan modification that will
19 make their payments substantially more affordable, will substantially
20 lower their interest rates, or will help them avoid foreclosure.

21 70. In truth and in fact:

- 22 (a) Defendants are not affiliated with, endorsed or approved by, or otherwise
23 associated with the maker, holder, or servicer of the consumer's dwelling
24 loan;
- 25 (b) the consumer is obligated to make scheduled periodic payments or any
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1 other payments pursuant to the terms of the consumer's dwelling loan;

2 (c) consumers typically do not receive refunds when Defendants do not
3 deliver promised results from their mortgage assistance relief services;

4 (d) consumers do not receive legal representation from Defendants; and

5 (e) Defendants typically do not obtain mortgage loan modifications for
6 consumers that will make their mortgage payments substantially more
7 affordable, will substantially lower their interest rates, or help them avoid
8 foreclosure as a result of a mortgage analysis report provided by
9 Defendants, if at all provided.

10 71. Therefore, Defendants' representations as set forth in paragraph 69 are false and
11 misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act,
12 15 U.S.C. § 45(a).

13 VIOLATIONS OF THE MARS RULE

14 72. In 2009, Congress directed the FTC to prescribe rules prohibiting unfair or
15 deceptive acts or practices with respect to mortgage loans. Omnibus Act, § 626, 123 Stat. at 678,
16 as clarified by Credit Card Act, § 511, 123 Stat. at 1763-64. Pursuant to that direction, the FTC
17 promulgated the MARS Rule, 16 C.F.R. Part 322, all but one of the provisions of which became
18 effective on December 29, 2010. The remaining provision, Section 322.5, became effective on
19 January 31, 2011.

20 73. The MARS Rule and Regulation O define "mortgage assistance relief service
21 provider" as "any person that provides, offers to provide, or arranges for others to provide, any
22 mortgage assistance relief service" other than the dwelling loan holder, the servicer of a dwelling
23 loan, or any agent or contractor of such individual or entity. 16 C.F.R. § 322.2, recodified as 12
24 C.F.R. § 1015.2.

25 74. Since January 31, 2011, the MARS Rule and Regulation O prohibit any mortgage
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1 assistance relief service provider from requesting or receiving payment of any fee or other
2 consideration until the consumer has executed a written agreement between the consumer and
3 the consumer's loan holder or servicer that incorporates the offer that the provider obtained from
4 the loan holder or servicer. 16 C.F.R. § 322.5(a), recodified as 12 C.F.R. § 1015.5(a).

5 75. The MARS Rule and Regulation O prohibit any mortgage assistance relief service
6 provider from representing, expressly or by implication, in connection with the advertising,
7 marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief
8 service, that a consumer cannot or should not contact or communicate with his or her lender or
9 servicer. 16 C.F.R. § 322.3(a), recodified as 12 C.F.R. § 1015.3(a).

10 76. The MARS Rule and Regulation O also prohibit any mortgage assistance relief
11 service provider from misrepresenting, expressly or by implication, any material aspect of any
12 mortgage assistance relief service, including but not limited to:

- 13 (a) [t]he likelihood of negotiating, obtaining, or arranging any represented
14 service or result. 16 C.F.R. § 322.3(b)(1), recodified as 12 C.F.R.
15 § 1015.3(b)(1);
- 16 (b) [t]hat a mortgage assistance relief service is affiliated with, endorsed or
17 approved by, or otherwise associated with. . . [t]he maker, holder, or
18 servicer of the consumer's dwelling loan. 16 C.F.R. § 322.3(b)(3)(v),
19 recodified as 12 C.F.R. § 1015.3(b)(3)(v);
- 20 (c) [t]he consumer's obligation to make scheduled periodic payments or any
21 other payments pursuant to the terms of the consumer's dwelling loan. 16
22 C.F.R. § 322.3(b)(4), recodified as 12 C.F.R. § 1015.3(b)(4);
- 23 (d) [t]he terms or conditions of any refund, cancellation, exchange, or
24 repurchase policy for a mortgage assistance relief service, including but
25 not limited to the likelihood of obtaining a full or partial refund, or the
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1 circumstances in which a full or partial refund will be granted, for a
2 mortgage assistance relief service. 16 C.F.R. § 322.3(b)(6), recodified as
3 12 C.F.R. § 1015.3(b)(6); and

4 (e) [t]hat the consumer will receive legal representation. 16 C.F.R. §
5 322.3(b)(8), recodified as 12 C.F.R. § 1015.3(b)(8).

6 77. The MARS Rule and Regulation O prohibit any mortgage assistance relief service
7 provider from failing to place a statement in every general commercial communication
8 disclosing that (i) the provider is not associated with the government and its service is not
9 approved by the government or any lender, and (ii) in certain cases, a statement disclosing that
10 the lender may not agree to modify a loan, even if the consumer uses the provider's service. 16
11 C.F.R. §§ 322.4(a)(1)-(2), recodified as 12 C.F.R. §§ 1015.4(a)(1)-(2).

12 78. The MARS Rule and Regulation O prohibit any mortgage assistance relief service
13 provider from failing to place a statement in every consumer-specific commercial
14 communication (i) confirming that the consumer may stop doing business with the provider or
15 reject an offer of mortgage assistance without having to pay for the services, (ii) disclosing that
16 the provider is not associated with the government and its service is not approved by the
17 government or any lender, and (iii) in certain cases, a statement disclosing that the lender may
18 not agree to modify a loan, even if the consumer uses the provider's service, and (iv) in certain
19 cases, a statement disclosing that if they stop paying their mortgage, consumers may lose their
20 home or damage their credit. 16 C.F.R. §§ 322.4(b)(1)-(3) and (c), recodified as 12 C.F.R.
21 §§ 1015.4(b)(1)-(3) and (c).

22 79. Pursuant to the Omnibus Act, § 626, 123 Stat. at 678, as clarified by the Credit
23 Card Act, § 511, 123 Stat. at 1763-64 and amended by the Dodd-Frank Act, § 1097, 124 Stat. at
24 2102-03, 12 U.S.C. § 5538, and pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C.
25 § 57a(d)(3), a violation of the MARS Rule or Regulation O constitutes an unfair or deceptive act
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1 or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C.
2 § 45(a).

3 **COUNT III**

4 **(Collection of Advance Payments)**

5 80. In numerous instances, in the course of providing, offering to provide, or
6 arranging for others to provide mortgage assistance relief services, Defendants ask for or receive
7 payment before consumers have executed a written agreement between the consumer and the
8 loan holder or servicer that incorporates the offer obtained by Defendants, in violation of the
9 MARS Rule, 16 C.F.R. § 322.5(a), and Regulation O, 12 C.F.R. § 1015.5(a).

10 **COUNT IV**

11 **(Prohibited Representation)**

12 81. In numerous instances, in the course of providing, offering to provide, or
13 arranging for others to provide mortgage assistance relief services, Defendants, in violation of
14 the MARS Rule, 16 C.F.R. § 322.3(a), and Regulation O, 12 C.F.R. § 1015.3(a), have
15 represented, expressly or by implication, that a consumer cannot or should not contact or
16 communicate with his or her lender or servicer.

17 **COUNT V**

18 **(Material Misrepresentations)**

19 82. In numerous instances, in the course of providing, offering to provide, or
20 arranging for others to provide mortgage assistance relief services, Defendants, in violation of
21 the MARS Rule, 16 C.F.R. § 322.3(b), and Regulation O, 12 C.F.R. § 1015.3(b), have
22 misrepresented, expressly or by implication, material aspects of their services, including but not
23 limited to:

- 24 (a) Defendants' likelihood of obtaining mortgage loans modifications for
25 consumers that will make their payments substantially more affordable;

- 1 (b) Defendants' likelihood of obtaining mortgage loan modifications for
2 consumers that will make their payments substantially more affordable as
3 a result of a mortgage analysis report provided by Defendants;
- 4 (c) Defendants are affiliated with, endorsed or approved by, or otherwise
5 associated with the maker, holder, or servicer of the consumer's dwelling
6 loan;
- 7 (d) The consumer's obligation to make scheduled periodic payments or any
8 other payments pursuant to the terms of the consumer's dwelling loan;
- 9 (e) The terms or conditions of any refund, cancellation, exchange, or
10 repurchase policy for a mortgage assistance relief service, including but
11 not limited to the likelihood of obtaining a full or partial refund, or the
12 circumstances in which a full or partial refund will be granted, for a
13 mortgage assistance relief service; and
- 14 (f) That the consumer will receive legal representation.

15 **COUNT VI**

16 **(Failure to Disclose)**

17 83. In numerous instances, in the course of providing, offering to provide, or
18 arranging for others to provide mortgage assistance relief services, Defendants have failed to
19 make the following disclosures or have failed to make the disclosures in a clear and prominent
20 manner:

- 21 (a) in all general commercial communications –
- 22 (1) “[Name of Company] is not associated with the government, and our
23 service is not approved by the government or your lender,” in violation
24 of the MARS Rule, 16 C.F.R. § 322.4(a)(1) and (a)(3), and Regulation
25 O, 12 C.F.R. § 1015.4(a)(1) and (a)(3); and
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- 27

1 (2) "Even if you accept this offer and use our service, your lender may not
2 agree to change your loan," in violation of the MARS Rule, 16 C.F.R.
3 § 322.4(a)(2) and (a)(3), and Regulation O, 12 C.F.R. § 1015.4(a)(2)
4 and (a)(3);

5 (b) in all consumer-specific commercial communications –

6 (1) "You may stop doing business with us at any time. You may accept or
7 reject the offer of mortgage assistance we obtain from your lender [or
8 servicer]. If you reject the offer, you do not have to pay us. If you
9 accept the offer, you will have to pay us [insert amount or method for
10 calculating the amount] for our services," in violation of the MARS
11 Rule, 16 C.F.R. § 322.4(b)(1) and (b)(4), and Regulation O, 12 C.F.R.
12 § 1015.4(b)(1) and (b)(4);

13 (2) "[Name of company] is not associated with the government, and our
14 service is not approved by the government or your lender," in violation
15 of the MARS Rule, 16 C.F.R. § 322.4(b)(2) and (b)(4), and Regulation
16 O, 12 C.F.R. § 1015.4(b)(2) and (b)(4); and

17 (3) "Even if you accept this offer and use our service, your lender may not
18 agree to change your loan," in violation of the MARS Rule, 16 C.F.R.
19 § 322.4(b)(3) and (b)(4), and Regulation O, 12 C.F.R. § 1015.4(b)(3)
20 and (b)(4).

21 (4) "If you stop paying your mortgage, you could lose your home and
22 damage your credit," in violation of the MARS Rule, 16 C.F.R.
23 § 322.4(c), and Regulation O, 12 C.F.R. § 1015.4(c).

24
25 COUNT VII

1 (Relief Defendant)

2 84. Relief Defendant April Norton has received, directly or indirectly, funds or other
3 assets from Defendants that are traceable to funds obtained from Defendants' customers through
4 the deceptive and unlawful acts or practices described herein.

5 85. Relief Defendant April Norton is not a bona fide purchaser with legal and
6 equitable title to Defendants' customers' funds or other assets, and Relief Defendant April
7 Norton will be unjustly enriched if she is not required to disgorge funds or the value of the
8 benefit she received as a result of Defendants' deceptive and unlawful acts or practices.

9 86. By reason of the foregoing, Relief Defendant April Norton holds funds and assets
10 in constructive trust for the benefit of Defendants' customers.

11 CONSUMER INJURY

12 87. Consumers have suffered and will continue to suffer substantial injury as a result
13 of Defendants' violations of the FTC Act, the MARS Rule, and Regulation O. In addition,
14 Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent
15 injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust
16 enrichment, and harm the public interest.

17 THIS COURT'S POWER TO GRANT RELIEF

18 88. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
19 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
20 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
21 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
22 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
23 remedy any violation of any provision of law enforced by the FTC.

24 89. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 626 of the Omnibus Act
25 authorize this Court to grant such relief as the Court finds necessary to redress injury to
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1 consumers resulting from Defendants' violations of the MARS Rule, including rescission and
2 reformation of contracts and the refund of money.

3 **PRAYER FOR RELIEF**


4 Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the
5 FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Omnibus Act, and the Court's own equitable powers,
6 requests that the Court:

- 7 1. Award Plaintiff such preliminary injunctive and ancillary relief as may be
8 necessary to avert the likelihood of consumer injury during the pendency of this
9 action, and to preserve the possibility of effective final relief, including but not
10 limited to a temporary and preliminary injunction, and an order freezing assets;
- 11 2. Enter a permanent injunction to prevent future violations of the FTC Act, the
12 MARS Rule, and Regulation O by Defendants;
- 13 3. Award such relief as the Court finds necessary to redress injury to consumers
14 resulting from Defendants' violations of the FTC Act, the MARS Rule, and
15 Regulation O, including but not limited to rescission or reformation of contracts,
16 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
- 17 4. Enter an order requiring Relief Defendants to disgorge all funds and assets, or the
18 value of the benefit she received from the funds and assets, which are traceable to
19 Defendants' deceptive and unlawful practices; and
- 20 5. Award Plaintiff the costs of bringing this action, as well as such other and
21 additional relief as the Court may determine to be just and proper.

1 Dated: June 9, 2014

2 Respectfully submitted,

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4 General Counsel

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